



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/014  
Order No.: 105 (NBI/2013)  
Date: 16 May 2013  
Original: English

**Before:** Judge Nkemdilim Izuako  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko, Officer-in-Charge

Von Der SCHULENBURG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**  
**ON THE RESPONDENT'S MOTION**  
**FOR PRELIMINARY**  
**DETERMINATION OF**  
**RECEIVABILITY AND LEAVE TO**  
**FILE A REPLY LIMITED TO**  
**RECEIVABILITY**

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**Counsel for Applicant:**  
Francois Lorient, Esq.

**Counsel for Respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat  
Steven Dietrich, ALS/OHRM, UN Secretariat

## **Background**

1. The Applicant is a staff member who previously served as an Executive Representative of the Secretary-General at the level of Assistant Secretary-General (ASG) at the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) until his separation from the Organization on 12 April 2013.

2. On 16 April 2013, the Applicant filed an Application contesting the allegedly disguised disciplinary decision to suddenly terminate him without due process and based on allegedly ‘undated, endless, directionless, groundless, and unconcluded investigations which harmed his reputation, his contractual rights and career prospects’, in addition to alleged ‘concealment of the Office of Internal Oversight (OIOS) disciplinary investigations procedures, findings and reports.’

3. On 22 April 2013, the Registry of the Tribunal served the Application upon the Respondent and directed that pursuant to article 10 of the Dispute Tribunal’s Rules of Procedure, the Respondent was to submit his reply to the Application 30 calendar days from the date of receipt of the Application.

4. On 15 May 2013, the Respondent filed a Motion for Preliminary Determination of Receivability and Leave to File a Reply limited to Receivability. Therein, the Respondent submits that the Application is not receivable *ratione temporis* on account of the Applicant’s failure to request management evaluation of the alleged decisions to either terminate him or not to renew his appointment within the 60 day time limit posited in Staff Rule 11.2 (c)

5. Vide the motion dated 15 May 2013, the Respondent further argues that the issue of receivability raises questions of law, not fact, and can be determined in advance of the hearing on the merits and cites case law to the effect that ‘judicial economy is better served by considering time issues first.’

## **Consideration**

6. The Tribunal is cognizant of the fact that its jurisdiction to entertain the present Application hinges on whether the receivability threshold as posited in the Statute and Rules of Procedure of the Dispute Tribunal is met. In that respect, the disposition of this matter will proceed only after a determination is made of whether the Application is receivable or otherwise.

7. While the Respondent is entitled to adjudication on the matter of receivability or jurisdiction, the Tribunal is of the view that neither the Statute nor the Rules of Procedure of the Dispute Tribunal provide for a partial response. Article 10.1 of the Rules of Procedure quite succinctly states as follows:

The Respondent's reply *shall* be submitted within 30 calendar days of the date of receipt of the Application by the Respondent [...]

8. The filing of the Motion for Preliminary Determination of Receivability and Leave to file a Reply limited to Receivability presupposes that the Tribunal will act to either discharge the entire Application or delay the Respondent's obligation to file a Reply to the Application and join issues with the Applicant within the time limits stipulated in the Rules of Procedure.

9. The Tribunal relies on the ruling in *Appleton* Order No. 289 (NY/2010) and concurs with the finding in that case that it is not open to the Respondent to choose to only reply to the issues that the Respondent as a litigant in the case deems appropriate. The Respondent is statutorily enjoined to file a Reply and join issues with the Applicant and the Tribunal expects the Respondent to comply with this obligation.

## **IT IS ACCORDINGLY ORDERED:**

10. The Applicant's Motion for Leave to File a Reply Limited to Receivability is rejected.

11. Pursuant to the notification sent to the Respondent on 22 April 2013, the Respondent shall file his Reply to the Application by or before 22 May 2013.

12. The Applicant shall file his response to the Respondent's Motion on Receivability by or before 31 May 2013.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 16<sup>th</sup> day of May 2013

Entered in the Register on this 16<sup>th</sup> day of May 2013

*(Signed)*

Abena Kwakye-Berko, Officer-in-Charge, Nairobi Registry