



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/049

Order No.: 138 (NBI/2013)

Date: 19 June 2013

Original: English

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**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko, Acting Registrar

WAMALALA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON CASE MANAGEMENT**

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**Counsel for Applicant:**

Miles Hastie, OSLA

**Counsel for Respondent:**

Steven Dietrich, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant is a staff member with the United Nations Organization Mission in the Democratic Republic of the Congo (“MONUSCO”). He filed an Application with the United Nations Dispute Tribunal (The Dispute Tribunal) appealing the decision by the Advisory Board on Compensation Claims (ABCC) to award him \$49,114.03 for permanent loss of function of his right leg as a result of injuries sustained in a road accident. The Applicant further asserted a claim for gross negligence against the Secretary-General for failing to adequately ensure his safety and security in connection with the accident.

2. On 23 February 2012, the Respondent filed a “Motion for Leave to Have Receivability Considered as a Preliminary Issue”. In this motion, the Respondent contended that the Applicant’s negligence claim was not receivable because: (i) the Applicant was not contesting an administrative decision; and (ii) even if there was an administrative decision, the Applicant had failed to request management evaluation.

3. On 17 April 2012, the Tribunal ruled in Judgment No. UNDT/2012/049 that the Application was receivable and that the claim of negligence should be determined together with the compensation issue.

4. The Respondent appealed against Judgment No. UNDT/2012/049 on 15 June 2012. In his appeal, the Respondent requested that the United Nations Appeals Tribunal (the Appeals Tribunal) overturn the Dispute Tribunal judgment and find the application not receivable “to the extent that it relates to a claim for conduct constituting gross negligence”<sup>1</sup>.

5. On 28 March 2013, the Appeals Tribunal ruled in Judgment No. 2013-UNAT-300 that a claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D.

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<sup>1</sup> Wamalala 2013-UNAT-300, paragraph 10.

Additionally, the Appeals Tribunal held that the Applicant failed to request management evaluation of his claim of gross negligence and as such, this claim is not receivable *ratione materiae*. Consequently, the Appeals Tribunal set aside the Dispute Tribunal's finding that the claim of gross negligence is receivable.

### **Considerations**

6. In view of the finding of the Appeals Tribunal that the Applicant's claim of gross negligence is not receivable *ratione materiae*, the Dispute Tribunal will not proceed to a consideration of the merits of this particular claim.

7. However, since the receivability of the claim relating to the amount of compensation awarded to the Applicant upon the recommendation of the ABCC is not in dispute, the Tribunal will continue with its assessment of this claim. Accordingly, the Tribunal has decided to hold a case management hearing for the purpose of determining the further conduct of this matter.

### **ORDERS**

8. This matter is set down for a case management hearing on **Tuesday, 2 July 2013** at 1600 hours Nairobi Time (UTC+3) in the UNDT Boardroom.

9. In accordance with Article 16.4 of the Rules of Procedure, the parties or their duly designated representatives must be present at the hearing either in person or, where unavailable or where directed by the Tribunal, by electronic means. If a party intends to appear by electronic means, he should provide the Registry with his contact information including a land line telephone number no later than **Wednesday, 26 June 2013**.

10. This Order serves as a Hearing Notice pursuant to Article 16 of the Tribunal's Rules of Procedure.

*(Signed)*

Judge Vinod Boolell

Dated this 19<sup>th</sup> day of June 2013

Entered in the Register on this 19<sup>th</sup> day of June 2013

*(Signed)*

Abena Kwakye-Berko, Acting Registrar, Nairobi