



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

NCUBE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE APPLICANT'S
MOTION TO AMEND APPLICATION
PURSUANT TO RULE 36.1 OF THE UNDT
RULES OF PROCEDURE**

Counsel for the Applicant:

Daniel Trup, OSLA

Alexandre Tavadian, OSLA

Counsel for the Respondent:

Stephen Margetts, ALS/OHRM

Introduction and Procedural History

1. The Applicant joined the Office for Coordination of Humanitarian Affairs (OCHA) as a National Professional Officer in Zimbabwe in 2007. On 11 July 2010, OCHA deployed him to Afghanistan on a one-year fixed-term appointment as a Humanitarian Affairs Officer at the P3 level. His appointment was extended through 20 March 2012, and not renewed thereafter.
2. On 11 May 2012, the Applicant filed the present Application with the United Nations Dispute Tribunal (UNDT) in New York challenging OCHA's decision to separate him from service on grounds of unsatisfactory performance.
3. On 18 June 2012, the Respondent filed his Reply to the Application.
4. The UNDT in New York issued Order No. 281 (NY/2013) transferring this case to the UNDT in Nairobi.
5. On 28 November 2013, the UNDT in Nairobi issued Order No. 258 (NBI/2013) advising the Applicant that representation by counsel would assist him and the Tribunal in the conduct and management of this case. To this end, the Tribunal directed the Registry to serve the Order on the Office of Staff Legal Assistance (OSLA) to facilitate the process.
6. On 3 December 2013, the Applicant formally enlisted the services of OSLA.
7. On 13 December 2013, counsel for the Applicant filed the subject Motion of this decision for leave to amend the Application.
8. The Motion was served on the Respondent on 17 December 2013. On 23 December 2013, the Respondent filed his submissions in response to the Motion.

Submissions

9. Counsel for the Applicant submits that an amended application would be in the interest of all parties to this Application, as it will clarify the scope and issues in this case and so assist both the Tribunal and the Respondent.

10. Counsel also submits that the Applicant's previous submissions have not been properly framed as he has only now secured representation by a lawyer. An amended application would place the Applicant in a position where he can better argue his case for the purposes of a fair trial.

11. The Respondent submits that the Motion should be dismissed as the "rules of procedure and practice directions of the Dispute Tribunal do not permit an applicant to improve his case by amending or otherwise replacing his Application". The Respondent contends that allowing the Motion would not be in the interest of justice as it risks continuous and unnecessary litigation.

12. Should the Tribunal be amenable to granting the Motion, the Respondent should be afforded 30 days to submit his reply to the amended application.

Deliberations

13. The Tribunal has reviewed the submissions of the Parties and finds that the Applicant's Motion is properly made.

14. Art. 19 of the UNDT Rules of Procedure grants the Tribunal the authority to issue any order or give any direction "which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties." Article 36 of the UNDT Rules further affords the Tribunal the authority to decide on matters "not expressly provided for in the rules of procedure."

15. Having been previously self-represented, the assistance of counsel, which he now has, will obviously facilitate a better presented and managed case. It is in the interest of justice that the Applicant be afforded the opportunity to put his case forward as best he can, which will in turn allow better management and expeditious disposal of the matter being litigated.

16. The submission of the Respondent on the lack of statutory authority allowing amendments to pleadings is misconceived. The Respondent appears to have overlooked the wide powers conferred on the Tribunal by articles 19 and 36 of the Rules of Procedure.

17. When an individual files an application before the Tribunal without the assistance of counsel as he/she is entitled to, he/she risks substantive and procedural mistakes such that relevant issues may not properly be put before the Tribunal.

18. Where an applicant later seeks counsel, as was done in the present case, it would be imprudent and unfair of the Tribunal to ignore the benefits of counsel's views. The apparently technical objections posed by the Respondent cannot pass muster under the circumstances.

19. The Applicant is **DIRECTED** to file his amended application by **31 January 2014**. It would be appropriate for the Applicant to serve the Respondent with the amended Application when it is being filed with the Tribunal.

20. The Respondent should file his submissions in response to the amended application by **3 March 2014**.

Case No. UNDT/NBI/2013/074

Order No.: 005 (NBI/2014)

(signed)

Judge Vinod Boolell

Dated this 15th day of January 2014

Entered in the Register on this 15th day of January 2014

(signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi