



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/098  
Order No.: 049 (NBI/2014)  
Date: 14 March 2014  
Original: English

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**Before:** Judge Coral Shaw  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

STAEDTLER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON DIRECTIONS FOR  
SERVICE**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Administrative Law Section, Office of Human Resources Management (ALS/OHRM)

## **The Application**

1. On 30 December 2013, the Applicant, a former staff member of the United Nations Human Settlements Programme (UN-Habitat), filed an application before the Tribunal contesting “the decision of the Office of Staff Legal Assistance (OSLA) to decline legal representation in the ongoing case 2013/NBI/021” and “the decision of the Office of Staff Legal Assistance (OSLA) to decline legal representation in the ongoing case 2013/NBI/061”.

## **Procedure**

2. In accordance with past practice and the precedent set by the Administrative Law Section (ALS) of the Office of Human Resources Management (OHRM)<sup>1</sup>, the Registrar of the Tribunal served the Application on ALS on 7 January 2014.

3. On the same day, ALS rejected service of the Application stating:

Dear Registry,

Kindly be informed that the Secretary-General is represented by counsel at UN-HABITAT in cases brought by former or current staff members of UN-HABITAT.

As such, please note that ALS will take no further action in respect of this message.

4. On 8 January the Registrar served the Application on UN-Habitat.

5. On 5 February 2014, UN-Habitat filed a Request for Direction that stated, *inter alia*, the following:

...By email of the same date, the Applicant informed the Dispute Tribunal that, “concerning your re-sending of the confirmation of receipt of the application dated 30 December 2013 and assignment as Case UNDT/NBI/2013/098 – this time addressed to UN-Habitat – the Applicant submits that it appears

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<sup>1</sup> See Worsley UNDT/2011/024, Worsley Order No. 079 (GVA/2010), Larkin UNDT/2011/024.

*to be elusive why UN-Habitat should be the proper Respondent concerning decisions of the Office of Staff Legal Assistance”.*

From the Applicant’s statement herein stated above and his filing of 3 December 2013, it appears that the Applicant does not consider UN-Habitat as the Respondent in this case. Rather, the Application, as filed on 30 December 2013, seems to be directed to OSLA and not UN-Habitat.

In light of the above, UN-Habitat requests the Dispute Tribunal to issue directions and seek further and better particulars from the Applicant as to who the proper Respondent should be in the Applicant’s Application of 30 December 2013, taking into consideration issues relating to receivability and the merits of the case.

6. The Registrar referred the matter to the undersigned Judge of the Tribunal.

### **Considerations**

7. It is not for the Applicant to determine who the proper Respondent should be. It is for the Tribunal to rule on any dispute about the identity of the Respondent and the validity of service of an Application.

8. The issue for the Tribunal in this case is whether the transmission of the Application to ALS on 7 January 2014 was in compliance with the Rules of Procedure of the Tribunal and if it amounted to effective service.

9. Article 8.4 of the UNDT Rules of Procedure provides that:

After ascertaining that the requirements of the present article have been complied with, the Registrar shall transmit a copy of the application to the respondent.

10. The named Respondent in this case as in all cases in the United Nations is the Secretary-General. The maker of the contested decisions in this case is the Chief of OSLA.

11. That OSLA is part of the United Nations Secretariat was settled by the Tribunal in at least two cases where decisions made by OSLA were contested.

12. In *Worsley* Order No. 79 (GVA/2010)<sup>2</sup>, the Tribunal stated:

.... OSLA not only is part of the United Nations Secretariat—created by General Assembly resolution 62/228, staffed with regular UN staff members and funded out of the Organization’s budget—but it is part of the core UN administrative machinery. Indeed, OSLA belongs to the Office of Administration of Justice (“OAJ”), which is within the UN Secretariat.

Although OAJ is an independent office within the Secretariat, this does not mean that a part of OAJ, like OSLA, should be regarded as an entity distinct from the Secretary-General.

13. In *Larkin* UNDT/2011/028, the Tribunal reiterated the point:

...for bodies endowed with an independent status in general and for OSLA in particular, that such bodies are integrated in the structure of the Organization and, whilst they may not receive instructions from their chain of command in performing the tasks entrusted to them, they are not entirely detached from the Secretary-General’s authority (see *Worsley* UNDT/2011/024, *Kunanayakam* UNDT/2011/006, *Comerford-Verzu* UNDT/2011/005, *Worsley* Order No. 79 (GVA/2010)).

14. In both *Worsley* and *Larkin*, the staff members who contested decisions made by OSLA were or had been employed by agencies outside the Secretariat. In each of those cases the Secretary-General was represented in the Tribunal proceedings by counsel from ALS.

15. The Tribunal finds that this practice was correct. Although the staff members were employed by UN agencies outside the Secretariat, the contested decisions had been made by persons within the Secretariat.

16. When an Applicant contests an administrative decision the responsibility for replying to the Application lies with the entity which made the contested decision. That entity may or may not be the agency which employs the Applicant.

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<sup>2</sup> Case No. UNDT/GVA/2010/097.

17. The Tribunal holds that responsibility for replying to an application which contests a decision made by OSLA lies with ALS as the Secretary-General's legal representative in relation to contested decisions made within the Secretariat. Service of an application contesting a decision by OSLA is effected by transmission of that application to ALS pursuant to article 8.4 of the Rules of Procedure.

**Order**

18. The Tribunal holds that the Application was properly served by transmission to ALS as the Respondent on 7 January 2014.

*(signed)*

Judge Coral Shaw

Dated this 14<sup>th</sup> day of March 2014

Entered in the Register on this 14<sup>th</sup> day of March 2014

*(signed)*

Abena Kwakye-Berko, Registrar, Nairobi