



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/002
& 006
UNDT/NBI/2011/053
& 065
Order No.: 203 (NBI/2014)
Date: 4 September 2014
Original: English

Before: Judge Nkemdilim Izuako
Registry: Nairobi
Registrar: Abena Kwakye-Berko

ATOGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON APPLICANT'S MOTION
FOR WITHDRAWAL**

Counsel for the Applicant:
Edwin Omari Mongeri, Advocate

Counsel for the Respondent:
Katya Melliush, UNON
Alan Gutman, UNON

Introduction

1. The Applicant (deceased), a Security Lieutenant at the G-6 level in the United Nations Offices at Nairobi (UNON), had three Applications before the Tribunal, namely:

- a. UNDT/NBI/2009/002 & 006 (consolidated) in which he, inter alia, alleged harassment, abuse of authority by the Respondent and retaliation flowing from two instances of whistle-blowing. This consolidated Application is part heard.
- b. UNDT/NBI/2011/053 in which he contested the decision to suspend his access to his office Lotus Notes email account.
- c. UNDT/NBI/2011/65 in which he contested the decision not to promote him to the rank of Inspector within a one-year period when he was on the roster of qualified candidates.

2. On 3 July 2012, the President of the Nairobi Staff Union sent an email to all staff working in the UNON compound informing them that the Applicant and four of his family members had been involved in a fatal road accident on 2 July 2012 in which the Applicant lost his life.

3. On 26 November 2012, a Counsel retained by the deceased Applicant's family filed a Motion praying the Tribunal for a substitution of the deceased Applicant's name with that of his widow, Mrs. Atogo, in accordance with art. 3.1(c) of the Statute of the Tribunal.

4. A case management hearing took place on 8 May 2013 during which Counsel for the Applicant again prayed the Tribunal to further substitute the name of the widow of the deceased with that of her daughter, Ms. Violet Monyangi.

5. On 5 June 2013, the Tribunal issued Order No. 131 (NBI/2013) consolidating UNDT/NBI/2009/002 & 006 with Case Nos. UNDT/NBI/2011/053 and UNDT/NBI/2011/65. The Tribunal also ordered that the name of the

Applicant on record (the widow of the deceased Applicant), be substituted with that of Ms. Violet Monyangi, her daughter, in accordance with art. 3.1(c) of the Statute of the Tribunal and scheduled the case for a hearing on 3 July 2013.

6. On 1 July 2013, Ms. Monyangi moved the Tribunal for an adjournment on the grounds that she needed time to engage new Counsel.

7. The Tribunal issued Order No. 107 (NBI/2014) on 21 May 2014 setting this matter down for hearing on 17 and 18 June 2014.

8. On 12 June 2014, Counsel for the Respondent brought a motion seeking the adjournment of the hearing to a date in August 2014.

9. On 3 September 2014, the Applicant filed Notices of Withdrawal in all the matters filed by the deceased Applicant, Jones Atogo, in the following terms:

Pursuant to the terms of a confidential settlement agreement, the Applicant hereby withdraws the applications in Dispute Tribunal Case... and all of the allegations and claims in the proceedings...

This is full and final withdrawal, including on the merits, with no right of reinstatement.

10. In the light of the withdrawal notices with respect to all the Atogo cases;

IT IS ACCORDINGLY ORDERED THAT:

11. The consolidated matters of *Atogo v. Secretary-General of the United Nations*, registered as Case Nos. UNDT/NBI/2011/053, UNDT/NBI/2011/065 and UNDT/NBI/2009/002 & 006 are struck off the Tribunal's docket.

12. The Tribunal congratulates and commends the Parties for having resolved this dispute informally.

(Signed)

Judge Nkemdilim Izuako

Dated this 4th day of September 2014

Entered in the Register on this 4th day of September 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi