



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

NCUBE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**DECISION ON THE RESPONDENT'S  
REQUEST FOR RESCHEDULING OF  
THE FURTHER HEARING**

---

**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 a motion for leave to amend the Application.
8. The Respondent filed his submissions in response to the Motion on 23 December 2013.

9. On 15 January 2014, the Tribunal issued Order No. 005 (NBI/2014) allowing the Applicant to amend his Application and adjusting the timeline for the Respondent to file his reply.

10. The Applicant filed his amended Application on 16 January 2014.

11. The Respondent replied to the amended Application on 26 February 2014.

12. On 4 November 2014, the Tribunal issued Order No. 244 (NBI/2014) directing counsel for both Parties to agree and file joint submissions on the facts and issues in this case, and to indicate their position on the need for an oral hearing.

13. On 2 December 2014, the Parties filed their joint submissions.

14. Both Parties indicated that an oral hearing is necessary in this case.

15. Three hearing days were scheduled covering 2-5 February 2015, and trial commenced as scheduled.

16. It became apparent the three afternoons scheduled for the matter to be heard was insufficient and that a further six hearing days was necessary for the testimony of the Respondent's three remaining witnesses.

17. On 6 February 2015, the Registry wrote to the Parties setting the continuation of this trial down for 14-16 April and 21-23 April 2015.

18. On 8 April 2015, counsel for the Respondent filed the subject motion of the present decision. Counsel is seeking a rescheduling of the continuation of this trial because of the absence of his "spouse from New York" and the "consequent change in the allocation of family responsibilities."

19. Counsel for the Applicant responded to the Respondent's request indicating that he does not object to the matter being rescheduled and that he would make himself available for the scheduled hearing dates despite being on annual leave at the time.

## **DELIBERATIONS**

20. The Tribunal has taken note of the motion filed by counsel on behalf of the Respondent with surprise and dismay.

21. The only reason advanced by counsel for Respondent to justify a rescheduling of the hearing is that his spouse's travel plans have resulted in a change in family responsibilities.

22. In managing its' case load, Courts have a wide discretion in the scheduling of cases. The court also has a discretionary power to grant a postponement of hearing on good cause shown.

23. Requests for adjournments are usually made on a number of grounds. Personal reasons like illness of counsel or parties or witnesses; unavailability of witnesses; the absence of counsel for good cause; chances of case being settled; unexpected discovery of new facts.

24. This list is not exhaustive and any request for an adjournment should be decided on a case by case basis taking into account the specific circumstances of each case; unforeseen circumstances beyond the control of counsel or parties;

25. In deciding whether to grant a postponement the court should carefully scrutinize the reason put forward for such a request; the impact on the mover of the motion; the impact on the parties concerned; the ability of parties to present their case fairly to the court in the absence of counsel; the length the case has been on the docket of the court.

26. Counsel appearing in this matter has advanced no justification for the requested rescheduling other than the change in his family circumstances. While the Tribunal realises that last minute personal issues may prevent counsel from appearing at a hearing this is not a determining factor unless it amounts to a *force majeure*.

27. The Tribunal notes that the Respondent has large set-up comprising many counsel tasked with representing him. Counsel with carriage over this case is therefore not a sole practitioner. A change in circumstances such as that facing one counsel should surely be a matter for the Administrative Law Section to address.

28. In *Wilson III* Order No. 228 (NBI/2013), the Tribunal held as follows:

The Tribunal is concerned that this case has been assigned to counsel based in New York.

The time difference between the locations of counsel, the Registry, the Applicant and his counsel would mean that any hearing of this matter can only commence in Nairobi in the afternoon simply because of where the Respondent is being represented from.

The Tribunal feels very strongly that expeditious handling and management of this case is better served by the Respondent being represented by counsel present in Nairobi. This would also minimise cost and remove one layer of technology-aided communications and therefore save a considerable amount of the court's time and resources. [...]

In the interest of the fair and expeditious determination of this matter, the Respondent is requested to modify the arrangements of their representation in this case.

29. If counsel handling the present matter is unable to appear on the scheduled dates, the Respondent should make alternative arrangements as he has at his disposal an armada of lawyers capable of handling cases on his behalf.

30. **NOTICE** is hereby issued that the matter of *Ncube v Secretary-General of the United Nations* (UNDT/NBI/2013/074) will continue as scheduled at **1400hrs (Nairobi time) from 14 to 16 April and 21-23 April 2015** in the **UNDT Courtroom (CR-12)**.

*(Signed)*

Judge Vinod Boolell

Dated this 8<sup>th</sup> day of April 2015

Entered in the Register on this 8<sup>th</sup> day of April 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi