



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

NCUBE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE RESPONDENT'S
RESPONSE TO ORDER NO. 113
(NBI/2015)**

Counsel for the Applicant:

Daniel Trup, OSLA
Alexandre Tavadian, OSLA

Counsel for the Respondent:

Stephen Margetts, ALS/OHRM
Nicole Wynn, 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.

20. On 8 April 2015, the Tribunal issued Order No. 113 (NBI/2015) denying the Respondent's motion to have the hearing rescheduled and directed the Respondent to make the necessary arrangements for the matter to proceed as scheduled.

DELIBERATIONS

21. At the outset, the Tribunal feels compelled to record its displeasure at the conduct of the Respondent in this case. 'Responding' to an order of the court is inappropriate and displays a disturbing lack of respect. It is basic procedure and practice that court orders are *never responded to* unless a response is called for. The Tribunal has previously stated in the matter of *Maiga*¹

It is important to underscore the legal principle that orders of a Court or Tribunal are not made to be responded to by any of the parties to a proceeding. An Order, as the word "order" denotes, is a directive made by a Court or Tribunal and the only course open to parties is to obey the said Order.

22. Be that as it may, the Tribunal will read the Respondent's Response as tantamount to a motion to amend its previous order.

23. While the Tribunal does not wish to meddle in the Respondent's representational arrangements, it is difficult to understand why he chose to have a matter such as this represented from New York and then choose to assign co-counsel who is away from the duty station on official business at the time of assignment!

¹ Order No. 060(NBI/2015).

24. Quite apart from the propriety of the motion and the practical implications for the court and the Applicant, by conducting himself in the manner that he has, the Respondent appears to be placing the personal interests of his counsel over and above that of effective representation and defense of the case before the court.

25. In this instance, the Respondent's choice of co-counsel places her in an invidious position.

26. In the interest of justice and so as not to place an undue burden on counsel who has been chosen to replace the original counsel the Tribunal exceptionally grants the request.

27. **NOTICE** is hereby issued that the matter of *Ncube v Secretary-General of the United Nations* (UNDT/NBI/2013/074) will commence at **1400hrs (Nairobi time)** on **15 April 2015** in the **UNDT Courtroom (CR-12)**.

(Signed)

Judge Vinod Boolell

Dated this 10th day of April 2015

Entered in the Register on this 10th day of April 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi