



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

HUNT-MATTHES

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**CASE MANAGEMENT ORDER**

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**Counsel for the Applicant:**

Nicole Washienko, OSLA

**Counsel for the Respondent:**

Elizabeth Brown, UNHCR

## **Procedural History**

1. The Applicant is a former staff member of the United Nations High Commissioner for Refugees (UNHCR). She filed an appeal with the former United Nations Administrative Tribunal (former United Nations Administrative Tribunal) challenging UNHCR's decision to not renew her fixed-term appointment on grounds of poor performance.

2. On 1 January 2010, the matter was transferred to the Geneva Registry of the United Nations Dispute Tribunal (UNDT) in accordance with ST/SGB/2009/11 (Transitional measures related to the introduction of the new system of administration of justice). The case was later transferred to the UNDT in Nairobi by Order No. 51 (GVA/2010).

3. On 28 May 2013, the UNDT rendered Judgment No. UNDT/2013/084 in which it found for the Applicant.

4. On 26 July 2013, the Secretary-General appealed the first instance Judgment.

5. On 29 August 2014, the United Nations Appeals Tribunal (UNAT) rendered Judgment No. 2014-UNAT-443 remanding the judgment of the UNDT "for a hearing *de novo* before a different judge".

6. On 28 April 2015, the Tribunal issued Order No. 137 (NBI/2015) setting this matter down for a case management hearing.

7. On 7 May 2015, the Tribunal held the case management hearing. The Tribunal informed the Parties that, having perused the file as it was then constituted, that is, containing motions related also to other proceedings involving the Parties and their multiple supplements, freshly articulated pleadings should be filed to ensure efficient and effective litigation in this case. Counsel for both Parties agreed.

8. On the same day, the Tribunal issued Order No. 152 (NBI/2015) setting deadlines for the filing of Parties' pleadings.

9. The Applicant filed her Application on 18 June 2015.
10. The Respondent filed his Reply on 20 July 2015.
11. On 4 August 2016, the Tribunal issued Order No. 408 (NBI/2016) setting this matter down for a case management discussion (CMD). The Parties were required to come with their respective client's instructions on their willingness to have this matter mediated or otherwise settled informally.
12. The CMD took place on 20 September 2016. Both Parties were represented by Counsel. The Applicant was also present and participated in the discussion.
13. The CMD began with preliminary submissions by Counsel for the Respondent on UNHCR's position with regard to representation. Counsel considered herself conflicted in these proceedings given her previous discussions with the Applicant in respect of the dispute currently being litigated. Likewise, the Respondent's lawyer based in Nairobi is also conflicted given his previous association with the Office of Staff Legal Assistance, during which time he had opportunity to be directly involved in preparations to represent the Applicant in this matter.
14. Counsel informed the Tribunal that UNHCR is waiting for the arrival of a new legal counsel on 3 October 2016. It is the Respondent's position that he will be best placed to represent the Respondent in this matter going forward.
15. Be that as it may, Ms. Brown also informed the Court that for present purposes she was sufficiently instructed in respect of the possibility of mediation, as raised in Order No. 408 (NBI/2016). Counsel submitted that UNHCR is amenable to having this matter settled by means of alternative dispute resolution.
16. The Applicant and her Counsel told the Court that the Applicant would also be amenable to this matter being informally resolved.

## Considerations and Order

17. The Tribunal continues to take the view that mediation or informal resolution of this dispute would be in the best interest of the Parties and in the interest of the efficient use of the Tribunal's resources and the expeditious conduct of proceedings.

18. The Tribunal is also mindful of paragraph 27 of General Assembly resolution 69/203 (Administration of justice at the United Nations) in which the courts are exhorted to proactively promote the "successful settlement of disputes."<sup>1</sup>

19. Therefore, pursuant to arts. 10.3 of its Statute and 15.1 of the Rules of Procedure, the Tribunal firmly urges the Parties to undertake settlement discussions in good faith for a meaningful and effect resolution to be achieved.

20. The Tribunal hereby **DIRECTS** the Parties to jointly advise the Registry by **27 October 2016** on:

- a) The likelihood of this matter being settled informally *inter partes*; OR
- b) If an order formally referring the matter for Mediation by the Office of the Ombudsman and Mediation Services is necessary.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart  
Dated this 21<sup>st</sup> day of September 2016

Entered in the Register on this 21<sup>st</sup> day of September 2016

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>1</sup> Paragraph 27 states: "Recalls the emphasis placed by the General Assembly on the resolution of disputes, and requests the Secretary-General to report on the practice of proactive case management by the judges of the United Nations Dispute Tribunal in the promotion and successful settlement of disputes within the formal system in his next report;"