



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/049
Order No.: 069 (NBI/2018)
Date: 25 April 2018
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MOHAMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S EX
PARTE FILINGS**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
ALS/OHRM

Introduction

1. The Applicant is the Chief Conference Management and Translation Unit at the African Union/United Nations Hybrid operation in Darfur (UNAMID). On 17 April 2018, he filed an application with the United Nations Dispute Tribunal (UNDT) contesting the UNAMID Administration's decision not to grant him a special post allowance.

2. In his filing using the UNDT's Court Case Management System (CCMS), the Applicant filed all his documents *ex parte* with the following justification.

Reason / Description

Confidentiality by my mission's HR is never guaranteed as leaks happen all the time. Also, Ex parte filing will to prevent retaliatory actions against me. I would like to apply Ex parte to all of the supporting documents i am providing in this case.

Deliberation

3. When submitting documents through the eFiling portal, parties have the option of requesting that the submission be treated as an *ex parte* filing or that the filing be made under seal. The final decision as to whether the submission is to be treated as an *ex parte* or under seal filing is reserved for the Dispute Tribunal. In the context of the Dispute Tribunal, filing a document *ex parte* means that non-filing parties to the proceedings do not receive a copy of the filing except upon order or instruction from the Judge. When such a filing is made, notice will be sent to the non-filing parties to the proceedings, but the document filed *ex parte* will be accessible only to the Tribunal, the filing party, and any other party to whom access was granted by the Tribunal.¹ An *ex parte* filing goes contrary to the principles of adversarial dispute and equality of arms. As such, it is to be applied on exceptional basis, where necessitated by a vital public or private interest.

¹ United Nations Dispute Tribunal Guidelines on the filing of submissions through the eFiling portal - 30 August 2012, paras. 15 – 17, <http://www.un.org/en/oaj/dispute/practical.shtml>, retrieved on 25 April 2018

4. In the present case, the Tribunal, having reviewed all the documents filed by the Applicant, finds no basis to allow the documents as *ex parte* filings. First, general allegations raised by the Applicant about not respecting confidentiality by the Mission's Human Resources component are entirely unsubstantiated. Second, filings done before the Tribunal are not being transmitted to the human resources component of the Mission. Third, information that the Applicant seeks to protect from the Respondent is either readily in a public domain, these being reports, budget documents, vacancy announcements, staffing tables, or is contained in email exchanges between the Applicant and various personnel at the Office of Human Resources Management, as such already available to Human Resources *sensu largo*; moreover, it *prima facie* does not disclose any confidential character. Similarly, his allegation of risk of retaliation is entirely unsupported. If the Applicant has basis to believe that there is a possible likelihood of retaliation against him for filing of the present case then he ought to pursue the appropriate measures as stipulated in the Staff Regulations and Rules.

ORDERS

5. The Applicant's request to have the documents in his case file treated as *ex parte* filings is refused.

6. The Applicant shall inform the Tribunal within three working days whether, in light of this ruling, he wishes to withdraw the filings whereupon the application will be treated as incomplete. Otherwise, the Registry is directed to serve on the Respondent the application, including the documents filed *ex parte*, without further delay.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 25th day of April 2018

Entered in the Register on this 25th day of April 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi