



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/021

Order No.: 089 (NBI/2019)

Date: 2 July 2019

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ABOU HANNA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
AMENDED MOTION FOR
EXTENSION OF TIME TO COMPLY
WITH ORDER NO. 016 (NBI/2019)**

Counsel for the Applicant:

Evelyn Kamau, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Nusrat Chagtai, AAS/ALD/OHR

Introduction

1. The Applicant is currently serving as a Security Assistant at the G-3/Step 9 level with the United Nations Office of the Special Coordinator for Lebanon (UNSCOL) in Beirut, Lebanon. He filed an application on 13 February 2018 with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi contesting the decision to cancel job opening 73064 (JO) for the position of GS-4 Security Assistant (Position) with UNSCOL.

2. The Respondent filed a Reply to the application on 15 March 2018 in which he asserted, *inter alia*, that the application is not receivable *rationae materiae*.

3. On 14 February 2019, the Tribunal directed the Applicant, by its Order No. 016 (NBI/2019) to provide a concise response to the receivability issue by 1 March 2019. The UNDT Registry in Nairobi served the Order on the parties on 14 February 2019.

4. The Applicant did not provide the required response to the Tribunal by 1 March 2019 as ordered.

5. Counsel for the Applicant filed a motion on 20 June 2019 praying for an extension of time 8 July 2019 to comply with Order No. 016.

6. The Tribunal, being dissatisfied with the reasons advanced by Counsel for the Applicant in support of the 20 June 2019 motion, issued Order No. 077 (NBI/2019) on 21 June 2019 directing Counsel to file, on or before 25 June, an amended motion properly explaining: (i) how it came about that the Applicant only learned of Order No. 016 (NBI/2019) on 18 June 2019; and (ii) why the Applicant was unable to comply with the Order within the required time.

Considerations

7. The Tribunal finds worrisome Counsel's submissions at paragraphs 3, 5, 7, and 11 because they include gray areas, unanswered questions and what appear to be contradictions and subterfuge. The paragraphs are peppered with the phrase

“administrative oversight” but the Tribunal still has no appreciation for what this jargon means. Most troubling is the way this so-called “administrative oversight” is consistently attributed to an amorphous, unidentified and unnamed entity.

8. Counsel states in her motion that OSLA effected a change of counsel in the case without informing the Tribunal. Counsel was herself appointed by OSLA to have carriage of this case since 2018 but did not bother to diligently find out the status of the case or to acquaint herself with it when it was allocated to her, leading to her not taking any notice of the Tribunal’s orders and therefore not acting timeously to respond to the said orders in this case.

9. There is no doubt that Counsel had a duty to communicate the change in counsel to the Tribunal either by herself or through OSLA’s administrative staff as soon as this case was assigned to her but failed to do so. The result of this failure is that she was unaware of the Tribunal’s Order and did not actively and timeously prosecute this case.

10. Also worrisome is the fact that Counsel first stated that the same Order No. 016 (NBI/2019) to which OSLA as the legal representative of the Applicant did not respond within the stipulated time was served on “the Chief of OSLA and OSLA administrative staff.” Later in the same motion, she stated that it was served on “OSLA through an email accessed by the administrative staff”.

11. While the Tribunal is aware that the said Order was served on the Chief of OSLA, it is unimpressed by Counsel’s somersaults on this issue. Since the Order was also served on the Chief of OSLA, the question arises as to what responsibility the Chief of OSLA has for ensuring that OSLA counsel are abreast of issuances and deadlines in their cases? What responsibility do the OSLA administrative staff have vis-à-vis issuances sent to their email address? These questions beg for answers that OSLA needs to urgently consider.

12. Counsel is reminded that once an applicant identifies his/her legal representative to the Tribunal and its Registries, that legal representative becomes the applicant’s agent. In other words, the Registries will serve the Tribunal’s issuances on the legal representative and not also on the applicant.

13. The proper course for a legal representative who is out of time and who brings a motion to seek the Tribunal's indulgence to file their submissions out of time is to show remorse and commitment by attaching or annexing the already prepared submissions and filing them before the Tribunal while also serving the opposing party and then urging the Tribunal to deem them as properly filed and served. Such an action on the part of Counsel additionally connotes respect for the Tribunal, the opposing party and the entire judicial process.

14. In the Tribunal's considered view, Counsel for the Applicant has had ample time to prepare her submissions on the issue of receivability.

15. Thus, there is no need for the Tribunal to grant an extension of time to 12 July 2019.

IT IS ORDERED THAT:

16. **On or before 5 July 2019**, OSLA shall comply with Order No. 016 (NBI/2019).

(Signed)

Judge Nkemdilim Izuako

Dated this 2nd day of July 2019

Entered in the Register on this 2nd day of July 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi