



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

GUSAROVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER SUSPENDING
PROCEEDINGS PENDING AN
ATTEMPT AT MEDIATION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Bart Willemsen, UNICEF

Chinonyelum Esther Uwazie, UNICEF

Introduction

1. At the time of application, the Applicant was serving as a Human Resource Manager at the UNICEF East-South Africa Regional Office (ESARO) in Nairobi, Kenya.
2. On 25 July 2018, the Applicant filed an application contesting the decision of the Management Evaluation Unit (MEU) to uphold the decision of the Office of Internal Audit and Investigations (OIAI) to dismiss her claim of abuse of authority and harassment.
3. The Respondent replied to the application on 7 September 2018. As a preliminary issue, the Respondent challenged the receivability of the application.
4. The Applicant filed her submissions in response on 25 February 2019.
5. On 15 November 2019, the Tribunal issued Judgment No. UNDT/2019/162 in which it held this matter to be receivable.
6. On 29 November 2019, the Tribunal issued Order No. 203 (NBI/2019) setting this matter down for a case management discussion on 5 December 2019. The Tribunal also advised the Applicant that her interests would be better served if she retained to the services of counsel. To that end, the Tribunal served a copy of the Order on the Office of Staff Legal Assistance (OSLA).

The Discussion

7. The case management discussion took place as scheduled on 5 December 2019. The Applicant was present in person and without counsel to represent her.
8. The Tribunal sought the Applicant's views on representation, and both parties' views on their willingness to see this matter resolved amicably and without recourse to litigation.

9. Counsel for the Respondent informed the Tribunal that while she had no express instructions from her client on informal resolution, she believes that they would be open to this matter being settled that way.

10. The Applicant emphasised quite strongly that while she was willing to engage in *inter partes* discussions, she did not want this matter delayed any further. She also informed the Tribunal that the First Reporting Officer, who was the main source of her grievances and complaint, has since left the Organisation and that that will have an effect on the conduct of her case. She told the Tribunal that she will get in touch with OSLA..

Directions and Orders

10. The Tribunal continues to take the view that the services of counsel will assist the Applicant and the Tribunal in the management and conduct of this case. The Applicant will also be better represented in mediation with the assistance of counsel.

11. The Tribunal strongly believes that the Parties should engage in meaningful consultations towards having this matter resolved. In the interests of efficient use of the Tribunal's resources and the expeditious conduct of proceedings, the Tribunal, pursuant to arts. 10.3 of the UNDT Statute and 15.1 of the Rules of Procedure, firmly urges the Parties in this matter to consult and deliberate in good faith, with the assistance of the Ombudsman, towards having this matter informally resolved.

12. The Tribunal therefore makes the following **ORDERS**:

- i. The Registry is **DIRECTED** to serve a copy of this Order on OSLA;
- ii. The Registry is **DIRECTED** to serve a copy of this Order on the Office of the Ombudsman and Mediation Services (OMS);
- iii. The Applicant and/or counsel acting on behalf of the Applicant should advise the Tribunal on representation by **17 January 2020**;

- iv. The Parties and/or OMS should advise the Tribunal on the status of mediation by **28 February 2020**;
- v. The proceedings in the matter of *Gusarova v Secretary General of the United Nations* (UNDT/NBI/2018/078) are hereby suspended pending mediation.

(Signed)

Judge Margaret Tibulya.

Dated this 6th day of December 2019

Entered in the Register on this 6th day of December 2019

(Signed)

Eric Muli, Legal Officer, for,
Abena Kwakye-Berko, Registrar, Nairobi