



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/052  
UNDT/NBI/2020/053  
Order No.: 143 (NBI/2020)  
Date: 23 July 2020  
Original: English

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**Before:** Judge Joelle Adda, President

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MILLAN  
ANTOINE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON A MOTION FOR RECUSAL  
OF JUDGE RACHEL SIKWESE IN CASE  
NOS. UNDT/NBI/2020/052 AND  
UNDT/NBI/2020/053**

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**Counsel for the Applicant:**

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**Counsel for the Respondent:**

AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. By motion dated 20 July 2020, the Applicant requested the Judge President of the United Nations Dispute Tribunal (“UNDT”) to order that the Dispute Tribunal Judge assigned to the present cases, namely Judge Sikwese, be recused from adjudicating them. The Applicants contend that Judge Sikwese is biased against them and/or their Counsel.

2. By email of 21 July 2020, the Judge President denied that motion for recusal, informing the Applicants that reasons were to follow. This present Order contains these reasons.

## **Submissions**

3. The Applicants contend that Judge Sikwese should be recused from handling the present cases, because by Order Nos. 136 and 137 (NBI/2020) dated 20 July 2020, she rejected the Applicants’ motions for filing responses to the Respondent’s replies in their cases on suspension of action pursuant to art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure.

4. The Applicants submit that Judge Sikwese motivated her decision as follows: “Having reviewed the parties’ submissions, the Tribunal, in accordance with art. 19 of its Rules of Procedure, does not consider it necessary to receive any further submissions for a fair and expeditious disposal of the case and to do justice to the parties”.

5. The Applicants, in essence, contend that Judge Sikwese’s decisions are “totally inconsistent with [her] rulings in previous cases and with other Judges’ decisions in other cases on a motion of similar nature”, and that “[t]his inconsistency can only be grounded in a bias against the Applicants and/or their Counsel”.

### **The legal framework for requesting a recusal of a Dispute Tribunal judge**

6. Article 28.2 of the Rules of Procedure of the Dispute Tribunal sets out the procedure by which an applicant can request the recusal of a judge assigned to her/his case(s) as relevant to the present case:

... A party may make a reasoned request for the recusal of a judge on the grounds of a conflict of interest to the President of the Dispute Tribunal, who, after seeking comments from the judge, shall decide on the request and shall inform the party of the decision in writing ...

7. The Code of Conduct for Judges of the Dispute and Appeals Tribunals adds that “Judges must recuse themselves from a case if: (i) They have a conflict of interest; (ii) It may reasonably appear to a properly informed person that they have a conflict of interest; (iii) They have personal knowledge of disputed evidentiary facts concerning the proceedings” (see, para 2(b)).

8. The notion of “conflict interest” is defined in art. 27.1 of the Rules of Procedure as “any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her”.

9. Under art. 27.2 of the Rules of Procedure, such a conflict of interest arises where a case assigned to a judge involves any of the following:

(a) A person with whom the judge has a personal, familiar or professional relationship;

(b) A matter in which the judge has previously served in another capacity, including as an adviser, counsel, expert or witness;

(c) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge’s participation in the adjudication of the matter would be inappropriate.

10. While the Code of Conduct does not specifically define what is meant by a conflict of interests, it provides that “Judges must uphold the independence and integrity of the internal justice system of the United Nations and must act

independently in the performance of their duties, free of any inappropriate influences, inducements, pressures or threats from any party or quarter” (see, para. 1(a)). If a Judge inappropriately holds bias against any of the parties, this would therefore constitute a conflict of interest.

### **Considerations**

11. The Judge President notes that according to art. 19 of the Rules of Procedure of the Dispute Tribunal, “[t]he Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. Each case before the Dispute Tribunal turns on its own circumstances, and an order made in one case has, in principle, no binding effect on another case. It is therefore for the Judge assigned to a particular case to decide whether a response to a reply is necessary in a given case, and not the Judge President in the context of a recusal request. If a party disagrees with the assigned Judge’s management of her/his case, the option is to appeal the determination of that case to the Appeals Tribunal if the relevant requirements are met.

12. Regarding bias, the Judge President further observes that the Appeals Tribunal has consistently held that a party who claims any such ulterior motive must be able to substantiate her/his claim to be successful (see, for instance, *Parker* 2010-UNAT-012 and *Ross* 2019-UNAT-944).

13. In the present cases, the only circumstance that the Applicants set forth to show that Judge Sikwese is biased against them and their counsel is that she and other Dispute Tribunal Judges in other cases concerning suspension of action—unlike in the present cases—have allowed applicants to file responses to replies. The reason provided by Judge Sikwese in the present cases was that she did not “consider it necessary to receive any further submissions for a fair and expeditious disposal of the case and to do justice to the parties”. Or, in other words, that the cases were fully

informed for her to proceed with determining the cases. By itself, the Judge President sees no indication of bias therein.

14. Accordingly, the Judge President finds that the Applicants' motion is unfounded, and in light of the above,

IT IS ORDERED THAT:

15. The Applicants' motion for the recusal of Judge Sikwese is rejected.

*(Signed)*

Judge Joelle Adda, President

Dated this 23<sup>rd</sup> day of July 2020

Entered in the Register on this 23<sup>rd</sup> day of July 2020

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi