



Before: Judge Joelle Adda, Judge President

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TOSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION FOR RECUSAL**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Katrina Waiters, UNFPA

Introduction

1. By motion dated 26 October 2020, the Applicant requested the Judge President of the United Nations Dispute Tribunal (“UNDT/Dispute Tribunal”) to order that the Dispute Tribunal Judge assigned to the present case, namely Judge Tibulya, be recused. The Applicant contends, in essence, that Judge Tibulya is in a conflict of interest and biased against him because she has previously rejected his applications in two other, but different, cases as not receivable (Case Nos. UNDT/NBI/2019/008 and UNDT/NBI/2019/051) and disregarded certain of his motions in the present case.

2. In accordance with art. 28 of the Rules of Procedure of the Dispute Tribunal on recusal, Judge Tibulya provided her comments on the Applicant’s recusal motion on 30 October 2020, wherein she essentially contends that she is not in any conflict of interest or biased against the Applicant.

Considerations

The relevant legal framework

3. 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 [...]

4. 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”.¹

5. The notion of “conflict interest” is defined in art. 27.1 of the UNDT 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”.

6. 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.

7. While the Code of Conduct does not specifically define what is meant by a conflict of interest, 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.

Judge Tibulya’s previous rejection of the Applicant’s applications in Case Nos. UNDT/NBI/2019/008 and UNDT/NBI/2019/051

8. The sole circumstance that a Dispute Tribunal Judge has ruled against an applicant in a previous case before the Dispute Tribunal does not automatically render the said Judge incompetent to adjudicate any future case of the applicant. In this regard, the Applicant’s reference to art. 27.2(b) of the Rules of Procedure is misguided as the provision refers to a Dispute Tribunal Judge serving in

¹ See para. 2(b).

“another capacity” aside from being a Judge at the Dispute Tribunal. In fact, prior to Case Nos. UNDT/NBI/2019/008 and UNDT/NBI/2019/051 and the present case, it has occurred many times that the same Dispute Tribunal Judge has adjudicated different cases of a specific applicant, and found against her/his. This practice has never led to criticism from any of the entities charged with mandating, overseeing and/or assessing the functions of the Dispute Tribunal, such as the General Assembly, the Appeals Tribunal and/or the Internal Justice Council.

9. The Applicant’s contention that Judge Tibulya’s rejection of his applications in Case Nos. UNDT/NBI/2019/008 and UNDT/NBI/2019/051 as not receivable placed her in a conflict of interest is therefore rejected.

Judge Tibulya’s alleged disregard of certain of the Applicant’s motions in the present case

10. 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”.

11. It is therefore for the Judge assigned to a particular case to decide on how to handle certain motions in this 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, including by allegedly disregarding certain motions, the option is to appeal the determination of that case to the Appeals Tribunal if the relevant requirements are met.

12. The Applicant’s contention that by allegedly disregarding certain of the Applicant’s motions, Judge Tibulya placed herself in a conflict of interest is therefore rejected.

Judge Tibulya's alleged bias against the Applicant

13. 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).

14. In the present case, the Applicant has not pointed to a circumstance that would imply that Judge Tibulya would be biased against him. The Applicant's contention that Judge Tibulya is biased against him is therefore rejected.

Conclusion

15. Accordingly, the Judge President finds that the Applicant's motion is unfounded, and in light of the above,

IT IS ORDERED THAT:

16. The Applicant's motion for the recusal of Judge Tibulya is rejected.

(Signed)

Judge Joelle Adda

Judge President, United Nations Dispute Tribunal

Dated this 3rd day of November 2020

Entered in the Register on this 3rd day of November 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi