



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/086
Order No.: 174 (NBI/2021)
Date: 26 August 2021
Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MARUSCHAK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON CASE MANAGEMENT AND
MISCELLANEOUS MOTIONS**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Jacob B. van de Velden, AAS/ALD/OHR, UN Secretariat

Isavella Vasilogeorgi, AAS/ALD/OHR, UN Secretariat

Facts and Procedure

1. On 24 June 2019, the Applicant filed an application challenging his separation from service for misconduct, with compensation in lieu of notice and without termination indemnity.
2. The Respondent filed a reply on 26 July 2019.
3. A case management discussion (“CMD”) took place on 26 February 2021.
4. On 2 June 2021, the Counsel acting for the Applicant informed the Tribunal, by an *ex parte* filing, that they were withdrawing as Counsel for the Applicant.
5. Subsequent to Counsel’s withdrawal, between 9 June and 3 August 2021, the parties filed miscellaneous motions as follows.
 - a. 9 June 2021 – Respondent’s motion for dismissal and cost award for the Applicant’s manifest abuse of process by forgery and an *ex parte* filing of evidence of manifest abuse of process.
 - b. 12 June 2021 - Applicant’s motion for authorizing and appointment of a foreign language interpreter/translator.
 - c. 12 June 2021 - Applicant’s motion to call witnesses.
 - d. 14 June 2021 - Respondent’s motion regarding dismissal of Applicant’s 12 June 2021 submissions.
 - e. 24 June 2021 - Applicant’s motion for subpoena for examination of witnesses by the Tribunal.
 - f. 28 June 2021 - Applicant’s motion for presenting of witnesses’ statements.
 - g. 26 July 2021 - Applicant’s motion on services of Counsel.

- h. 26 July 2021 - Applicant's response to the Respondent's motion of 9 June 2021 on abuse of process and costs.
- i. 3 August 2021 – Respondent's motion in response to the Applicant's 26 July 2021 submission.

Motion to find Applicant abused process and order for costs

6. In the 14 June 2021 motion, the Respondent requested the Tribunal to reject both motions filed by the Applicant on 12 June 2021 because if the Respondent's motion of 9 June 2021 is granted, the application will be dismissed and the proceedings would terminate, without a ruling on the Applicant's 12 June 2021 motions being required. Accordingly, the Respondent requested the Tribunal first to rule on the Respondent's 9 June 2021 motion on abuse of process.

7. On 13 July 2021, the Tribunal issued Order No. 137 (NBI/2021) requesting the Applicant to respond to the allegations of abuse of process which he did on 27 July 2021. In his response, the Applicant submitted that,

[o]n 15 March, under request of his Counsel, the Applicant sent copies of multiple requested documents. All copies were unfolding the Applicant's private life after he left United Nations service and were not related to the facts under discussion in the Case UNDT/NBI/2019/086. On that day the Applicant was on humanitarian mission to Yemen with NGO and he sent the copies by titles of the documents, without checking content and while working in the field in Yemen he accidentally picked up and filed the wrong draft copies rather than intended real official documents the Applicant actually wanted to file with the Counsel. There was a mistake of fact. It was not an intentional act as the Applicant presented wrong copies by mistake without the requisite intent to file a false document and of knowing that he sent wrong copies.

8. On 3 August 2021, the Respondent filed a "Motion regarding Applicant's 27 July 2021 submission". In the said motion, the Respondent reiterated his request that the Tribunal find that the Applicant manifestly abused process and award full costs to the Respondent.

9. The Tribunal convened a second CMD on 20 August 2021 where all motions were discussed and resolved:

Deliberation

10. The Tribunal has considered the nature of the allegation and agrees that it is grave and would potentially undermine the justice system. The Tribunal has also considered that the Applicant on his own motion applied to withdraw the offensive documents, the Tribunal has taken into account that at the time of withdrawing the documents, it had not made any decision in reliance of those documents and the Applicant regretted his action, furthermore the documents once withdrawn had no prejudicial effect on the Respondent's case. Based on these considerations, the Tribunal rejects the Respondent's motion to dismiss the application and order costs against the Applicant for manifest abuse of process, instead, the Tribunal orders that the offensive documents be expunged from the record.

ORDERS

11. The Tribunal orders the expungement from the case record the Applicant's submissions on an amended remedy of 15 March 2021 and 6 May 2021 and the attached Annexes 22 – 27.

12. The Registry shall transmit to the Applicant materials and documents filed by the Respondent pursuant to a case management Order of 4 March 2021 (on the Applicant's motion for disclosure dated 19 January 2021) and the Applicant shall file a response if necessary within two weeks of this order.

Oral hearing

13. The parties could not agree on whether the application should go for oral hearing. The Tribunal finds that due to the contentious nature of the issues in the case and in accordance with arts 16(1) and (2) of the UNDT Rules of Procedure, an oral

hearing is necessary for the fair and expeditious disposal of the case and to do justice to the parties.

Motion to call witnesses

14. The Applicant's motion to call 14 witnesses is partially granted. The witnesses to testify before the Tribunal shall be restricted to only those witnesses who were interviewed and gave statements to the Special Investigations Unit investigators and their investigation statements appear in the investigation report. These are:

- a. Mr. Ivan Trubin;
- b. Mr. Siarhei Rubanik;
- c. Mr. Andrei Hurynovich;
- d. Ms. Anna Yuschenko;
- e. Mr. Felix Majura;
- f. Mr. Sakhom Sathavorasit, and
- g. Mr. Ali Kerdi.

15. The Respondent shall facilitate the attendance of the witnesses under his authority at the trial.

Motion for interpreters

16. The Registry is directed to ensure the availability of Russian interpreters for the witnesses testifying in Russian.

Disclosure of "Note to the Case File"

17. The Applicant shall file, if necessary, a response to the Respondent's motion regarding the Applicant's request for disclosure of all materials related to the creation

of the “Note to the Case File”, filed as Annex R/4 to the Respondent’s reply, dated 24 March 2021, by 5.00 p.m. (Nairobi time) on 8 September 2021.

Witnesses’ statements

18. The Applicant shall file with the Registry, signed and dated witnesses’ (referred to above in para. 14) statements in which each deponent must make the following declaration on his/her statement:

I, the undersigned, confirm that this statement signed by me is true and is recorded in a language that I fully understand.

The witness statements shall be filed by 5.00 p.m. (Nairobi time), three weeks from date of this Order, on 16 September 2021.

Cross examination

19. The Respondent shall indicate whether and which witnesses he wishes to cross examine and highlight the paragraphs they are to be cross examined on.

20. The parties shall file a joint trial bundle by 5.00 p.m. (Nairobi time) on 30 September 2021.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 26th day of August 2021

Entered in the Register on this 26th day of August 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi