



**Before:** Judge Eleanor Donaldson-Honeywell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

AMANI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON CASE MANAGEMENT**

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**Counsel for the Applicant:**

Setondji Roland Adjovi

**Counsel for the Respondent:**

Romy Batrouni, AAS/ALD/OHR, UN Secretariat  
Jacob van de Velden, AAS/ALD/OHR,  
UN Secretariat

## **Introduction**

1. The Applicant was an Engineer at the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”). He held a fixed-term appointment at the P-3 level, and was based in Bamako, Mali, having previously served with the Organization since 2006.

## **Procedural History**

2. The Applicant seeks to challenge the Respondent’s 22 April 2020 decision to separate him from service on disciplinary grounds with compensation *in lieu* of notice and 25% of the termination indemnity that would ordinarily be due to him.

3. On 26 February 2021, the Respondent filed his reply to the application. The Respondent submits that the impugned decision was lawful. According to the Respondent, the Applicant’s conduct of violating certain local laws in 2007 and failing to disclose this information in 2013 when applying for a job opening at MINUSMA contravened staff rule 1.2(b) and staff regulation 1.2(b), which actions have been properly established as serious misconduct.

4. The Tribunal held a case management discussion with the parties on 14 September 2021.

## **The Discussion**

5. The Tribunal began by asking the parties if they were minded to engage in settlement discussions. The Applicant indicated that he was willing to engage in alternative methods of resolving this dispute. The Respondent took the clear position that this matter was not suitable for alternative dispute resolution, and must be concluded by litigation.

6. The parties were informed that translations have been requested. The requests thus far are as follows:

- a. The alleged Judgment document dated 2 March 2009 and the Chain of Custody document regarding the Judgment – These are attachment **Docs 56**

**and 57** to the OIOS Report which is annexed to the Respondent's reply at **R/2**.

b. The alleged Summons dated 28 July 2008 – **Annex 6** of the Applicant's application.

c. The Applicant's alleged Attorney's response letter dated 29 October 2019 to enquiries sent by the Applicant about how he came to represent him in the matter commenced by the Summons - **Annex 8** to the application.

d. Extract of the Complainant's interview on 21 March 2019 when he explain how he obtained the alleged judgment document and admits to "tipping" gendarmes and court staff - attachment **Doc 31 lines 213-217 and 241-250** to the OIOS Report which is annexed to the Respondent's reply at **R/2**.

e. Extract of the Applicant's interview on 4 July 2019 when according to the Respondent he speaks about having been notified of the Judgment by a bailiff – attachment **Doc 69 lines 80-83** to the OIOS Report which is annexed to the Respondent's reply at **R/2**.

7. Other translations that may be required arising from discussions at the CMD:

a. Extract of the Applicant's interview on 25 April/2019 when, according to the Respondent, he speaks about having been arrested outside the United Nations Operation in Côte d'Ivoire ("UNOCI") in 2008 – attachment **Doc 60 lines 553-556** to the OIOS Report which is annexed to the Respondent's Reply at **R/2**. Also see the Complainant's interview **Doc 31-lines 577-578**.

b. Extract of the Applicant's interview on 25 April 2019 when, according to the Respondent, he speaks about submitting applications to a contact in the Belgian Embassy via his friend Sylvain Omblea – R/2 attachment **Doc 60 lines 333-388**.

- c. Extract of the Applicant's interview on 25 April 21019 when, according to the Respondent, he says he personally delivered the fake passports to the Complainants – R/2 attachment **Doc 60 lines 440-453**.
- d. Extract of the Applicant's interview on 4 July 2019 when, according to the Respondent, he stated that he did not see fit to appeal the Judgment – attachment **Doc 69 lines 209-211** to the OIOS Report which is annexed to the Respondent's reply at **R/2**.
8. The Tribunal identified the issues for adjudication in this matter as follows:
- a. Whether the facts are established by clear and convincing evidence. In particular, firstly regarding the 2007-2008 interactions between the Applicant and the Complainant, was there any arrest outside UNOCI? Secondly, regarding the 2 March 2009 Judgment document, does it prove there was an indictment, fine or imprisonment? Thirdly, was there sound basis for the Respondent's finding that the Applicant's credibility was adversely affected by giving varying accounts and by inherent lack of logic in his version of events?
- b. Whether the facts amount to misconduct.
- c. Whether the Applicant's due process rights were observed during the investigation and disciplinary proceedings. In particular, to what extent did the Respondent's delay and/or motivation to retaliate for a complaint made by the Applicant lead to procedural unfairness?
- d. Was the sanction proportionate to the gravity of the offence?
- e. Is there a lack of receivability as to parts of the relief claimed by the Applicant?
9. The parties disagreed on the need for an oral hearing. The Tribunal took the view that an oral hearing will be necessary, and to that end gave directions on the filing of witness statements.

10. While it is up to the parties to decide how best to conduct their case, the Tribunal advised the Respondent that it would be useful for this inquiry to include the investigator.

11. The Tribunal requested that in Witness Statements, oral testimony at trial and submissions after trial, parties include along with other relevant matters clarifications on the following:

- a. If the proceeding against the Applicant was authentic, was it criminal in nature i.e., commenced by indictment or a civil matter?
- b. Is proof of service required for indictments in the Ivorian Justice system? If so, was the summons referred to by the Applicant an indictment and was it served on him?
- c. What is the role and authority of the Gendarmerie and Gendarmes in the Ivorian legal system?
- d. At paragraph 15 of the reply the Respondent contends that after two stages of pursuing a claim against the Applicant i.e. firstly to the Police, secondly to the Gendarmerie, up to April 2008, thereafter the Complainant further pursued the claim leading to the 2 March 2009 Judgment – How did the Complainant further pursue the Claim and what is the document that he used to pursue it? Was it the summons?
- e. Did the Applicant obtain the documents/authentication he has been awaiting from the Ivorian Court?

12. The Tribunal notes that the record is silent on the question of privileges and immunities. The Respondent is advised to make submissions on the processes that were undertaken to ensure that the Applicant's privileges and immunities were properly waived by the Secretary-General.

### **Order**

13. The Tribunal made the following ORDERS:

Case No. UNDT/NBI/2020/051

Order No. 199 (NBI/2021)

- a. The parties will file their respective witness statements by **11 October 2021**;
- b. This case will be heard on **27, 28 and 29 October 2021** on MS Teams commencing at **1400hrs** (Nairobi time);
- c. Parties are directed to provide the Registry with alternative contact details for themselves and their witnesses by **22 October 2021**.

*(Signed)*

Judge Eleanor Donaldson-Honeywell

Dated this 21<sup>st</sup> day of September 2021

Entered in the Register on this 21<sup>st</sup> day of September 2021

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi