



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/070
UNDT/NBI/2020/075
Order No.: 234 (NBI/2021)
Date: 21 October 2021
Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ANTOINE
MILLAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANTS'
MOTION AND HEARING NOTICE**

Counsel for the Applicant:

Sètondji Roland Adjovi, *Etudes Vihodé*
Charles A. Adeogun-Phillips, Charles Anthony LLP

Counsel for the Respondent:

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

Background

1. The Applicants are challenging the decisions:
 - a. To place them on Administrative Leave Without Pay (“ALWOP”).
 - b. To seize their personal smartphones for the purposes of an investigation.
2. The Tribunal held a case management discussion (“CMD”) on 4 October 2021. During the CMD, the Applicants requested an oral hearing of the case and informed the Tribunal that they wished to call Mr. Ben Swanson, who was at the time of the contested decision the Director of the Investigations Division of the Office of Internal Oversight Services (“OIOS”), to be heard as a witness.
3. The Tribunal decided that it will hold a joint oral hearing at a date to be communicated by the Registry.
4. On 18 October 2021, Counsel for the Respondent informed the Registry that they intended to have two interns working in their office attend the hearing as observers.
5. On 19 October 2021, Counsel for the Applicants sent an email to the Registry objecting to the interns being allowed in as observers on the ground that this is a case where there have been leaks to the press and that whilst it is possible to hold staff members accountable, it will be more difficult to hold interns accountable once they have left the Organization.

Deliberation

6. Article 16.6 of the UNDT Rules of Procedure stipulates that where the Tribunal decides to have an oral hearing,

[t]he oral proceedings shall be held in public unless the judge hearing the case decides, at his or her own initiative or at the request of one of the parties, that exceptional circumstances require that the oral proceedings be closed. If appropriate in the circumstances, the oral hearing may be held by video link, telephone or other electronic means.

7. The Applicants have raised an issue regarding the integrity of the proceedings being compromised by leaks to the press. The notion of transparency of and access to information is very important in any Organization. It allows for openness, accountability and good governance, which indeed are the overarching principles of this Organization. Public hearings aid the aim of transparency and accountability of the internal justice system and therefore any need to hold private hearings must be grounded on legitimate grounds. In the present case, the Applicants' concerns must be weighed against the public interest of having a public hearing.

8. The Tribunal considers that the observation by interns working in the legal offices of the Respondent does not pose a threat to the integrity of the proceedings being compromised by leaks to the press or that their observation amounts to exceptional circumstances that would require the oral proceedings in these two cases to be closed. The Tribunal would, however, on the basis of the Applicants' concerns, limit the participation in these hearings to the parties, the Registry and Information Technology Support Staff, the interns and the witness only.

ORDERS

9. The Tribunal shall hold a combined virtual hearing on the merits of these two cases on 2 November 2021 at 3.00 p.m. (Nairobi Time, UTC +3).

10. Only the parties, the Registry and Information Technology Support Staff, the legal interns and the witness shall be allowed to attend the virtual hearing.

11. In accordance with art. 16.4 of the Rules of Procedure, the parties or their duly designated representatives must be present at the virtual hearing which will be held on Microsoft Teams, details of which shall be transmitted to the parties by the Registry.

12. The parties and observers are reminded that recording of courtroom proceedings is not permitted.

(Signed)

Judge Margaret Tibulya

Dated this 21st day of October 2021

Entered in the Register on this 21st day of October 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi