



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/031

Order No.: 011 (NBI/2022)

Date: 7 February 2022

Original: English

Before: Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

VAN DE GRAAF

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:

Ana Giulia Stella, OSLA

Counsel for the Respondent:

Matthias Schuster, UNICEF

Alister Cummings, UNICEF

Introduction

1. At the time of the application, the Applicant served as the Supply and Logistics Manager, on a continuing appointment, at the Regional Office of the United Nations Children’s Fund (“UNICEF”) in Nairobi, Kenya.
2. On 3 May 2021, he filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s finding of misconduct and decision to separate him from service of the Organization with compensation *in lieu* of notice and termination indemnity.
3. The Respondent filed his reply to the application on 7 June 2021.

Considerations

4. The Tribunal notes that the contested decision was based on the following allegations:
 - a. that the Applicant engaged in a verbal and physical altercation with members of the public, at a house in Nairobi, Kenya; and
 - b. that the Applicant sought to influence Ms. AS, his neighbour, in relation to the content of her report to the Department of Safety and Security (“DSS”), United Nations Office in Nairobi, and in particular, requested her to include content that he knew to be incorrect.
5. The Respondent’s case is that the Applicant’s conduct amounted to misconduct in violation of violation of UN Staff Regulations 1.2(b) and (f), and United Nations staff rule 1.2(g).

The Hearing

6. Following an examination of the parties’ submissions and pursuant to art. 16 para. 2 of its Rules of Procedure, the Tribunal considers it appropriate to conduct a hearing on the merits in the present case.
7. The hearing will be held at the Nairobi Courtroom and is scheduled

tentatively to take place from **8 to 17 March 2022**.

8. For the purpose of the hearing, the Tribunal has preliminarily identified the following witnesses, to be called by the Respondent: (a) Ms. Karago; (b) Mr. Alberta; (c) Ms. Sobczac; (d) Ms. Griet; € Mr. Okumu; (f) Mr. Kagio; (g) Mr. Nyongesa; and (h) Ms. Adam. The Applicant is welcome to testify in his own case.

9. No Case Management Discussion will be held, but the parties are allowed to request in writing additional evidence, if any, on specific issues to be evaluated.

10. In particular, the Tribunal find it useful to hear, if possible, from the other guests attending the meeting when the events at stake occurred (such as the recorder of the videos and others) and invites the parties to verify if these persons consent to appear as witnesses before the Tribunal.

11. The Tribunal will assess the relevance of the testimony to be provided by the proposed witnesses, if any, for the determination of the merits of the case. The Tribunal reserves the right not to call some of the proposed witnesses if it deems that their testimonies are not relevant.

12. Unless exceptional circumstances arise, witnesses based in Nairobi or within commuting distance of Nairobi are expected to give their testimony physically present in the Nairobi Courtroom, in full respect of the applicable preventive sanitary measures and security rules.

13. For the scheduling of the hearing, the parties are instructed to inform the Tribunal about the availability of their witnesses and about the attendance to the hearing (by them and by their witnesses) in person or remotely.

Order

14. In view of the foregoing, the Tribunal makes the following **DIRECTIONS**: By Friday, **11 February 2022**, the parties will provide the Tribunal with their requests, if any, as specified in paras. 9 and 10 and with the information required in para. 13.

Case No. UNDT/NBI/2021/031

Order No. 011 (NBI/2022)

(Signed)

Francesco Buffa

Dated this 7th day of February 2022

Entered in the Register on this 7th day of February 2022

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi