



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/022

Order No.: 024 (NBI/2022)

Date: 22 February 2022

Original: English

**Before:** Judge Rachel Sophie Sikwese

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MANCINELLI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE RESPONDENT'S  
MOTION TO EXCLUDE THE  
APPLICANT'S CLOSING SUBMISSION**

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**Counsel for the Applicant:**

Julia Kyung Min Lee, OSLA  
Endah Ayuningsih Indini, OSLA

**Counsel for the Respondent:**

Yun Hwa Ko, UNFPA  
André Luiz Pereira de Oliveira, UNFPA

## **Background**

1. By an application filed on 18 March 2020, the Applicant contests the Administration's finding of misconduct and imposition of a disciplinary sanction against her.
2. The Respondent filed a reply on 20 May 2020.
3. The Applicant filed a rejoinder to the reply on 13 January 2021.
4. The Tribunal held virtual hearings of the case on its merits from 26-27 August 2021 and from 1-2 February 2022. Following the end of the oral hearing on 2 February 2022, the Tribunal ordered the parties to file closing submissions by 16 February 2022.
5. The Registry's Court Case Management System ("CCMS") records the Respondent having filed closing submissions on 16 February 2022 at 4.52 p.m. (Nairobi time). CCMS records the Applicant's closing submissions having been filed at 1.01 a.m. (Nairobi time) on 17 February 2022.

### *Respondent's submissions*

6. On 17 February 2022, the Respondent filed a motion requesting the Tribunal to exclude from the case records the Applicant's closing submission of 17 February 2022 on the following grounds.
  - a. The principle of legal certainty requires that deadlines must be respected.
  - b. Pursuant to art. 8(3) of the UNDT Statute, the Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases.

c. Article 35 of the UNDT Rules of Procedure establishes that the President, or the judge or panel hearing a case, may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require.

d. In accordance with the United Nations Appeals Tribunal (“UNAT”) jurisprudence, the Dispute Tribunal has the authority to exercise its discretion under art. 8(3) of the UNDT Statute upon a written request for suspension, waiver, or extension of the time limit when the motion requesting the extension has been filed before the statutory time had lapsed.

e. UNAT has also held that whether a deadline is missed by several minutes, several hours or several days is irrelevant. A waiver of time can be justified under art. 8(3) of the UNDT Statute only if the Applicant shows that exceptional circumstances beyond his or her control prevented him or her from acting within the statutory time limits.

*Applicant’s submissions*

7. In response, the Applicant makes the following submissions:

a. The closing submission was inadvertently filed approximately one hour after the deadline due to an oversight by the Applicant’s Counsel caused by the difference of time zones.

b. Contrary to the Respondent’s assertion, the enforcement of statutory time limit expressed in art. 8(3) of the UNDT Statute only applies in cases where an application is filed to open a case before the UNDT. Article 8(3) of the UNDT Statute does not apply in the case of a non-statutory deadline for filing a closing submission pursuant to the Tribunal’s direction in an ongoing case. The UNAT jurisprudence relied on by the Respondent are inapposite as they all relate to cases where an application was filed after the 90-day

statutory deadline to open a case before the UNDT pursuant to art. 8(3) of the UNDT Statute.

c. The Tribunal has complete discretion in case management for a fair and expeditious disposal of the case and to do justice to the parties pursuant to art. 19 of the UNDT Rules of Procedure.

d. UNAT jurisprudence indicates that the UNDT's discretion should be guided by balancing the parties' rights and interests. UNAT has ruled that the UNDT's exercise of discretion should be in favour of the Applicant where there is nothing to suggest, nor could it be suggested seriously, that the Respondent would have been prejudiced by the delay.

e. The Respondent has not shown any prejudice caused by the one-hour delay in the filing of the Applicant's closing submission.

f. At this stage of the proceedings, where the hearing of all witnesses has been concluded and all evidence has been adduced by the parties, it would be in the interest of justice for the Tribunal to accept the Applicant's closing submissions for a fair and expeditious disposal of the case pursuant to art. 19 of the UNDT Rules of Procedure.

## **Deliberations**

8. The timelines for filing closing submissions are not provided for in neither the UNDT Statute nor in the Rules of Procedure. To answer the question whether it can waive the deadline for filing closing submissions, the Tribunal is guided by art. 7 of the UNDT Statute and arts. 19 and 36 of the UNDT Rules of Procedure. The applicable provision of art. 7 of the UNDT Statute stipulates that,

1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules of procedure of the Dispute Tribunal shall include provisions concerning:

(a) Organization of work;

(b) *Presentation of submissions and the procedure to be followed in respect thereto ... [Emphasis added].*

Article 36 of the UNDT Rules of Procedure stipulates that,

1. All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

2. The Dispute Tribunal may issue practice directions related to the implementation of the rules of procedure.

Article 19 of the UNDT Rules of Procedure stipulates that,

The 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.

9. Applying the foregoing legal principles to the facts in the present case, the legal test in determining whether the Tribunal can waive the deadline for filing late closing submissions is whether such waiver would “be appropriate for the fair and expeditious disposal of the case” and “do justice to the parties”.

10. The Tribunal is convinced by Applicant’s submissions, which do not appear to be contradicted by those of the Respondent, that,

The Respondent has not shown any prejudice caused by the one-hour delay in the filing of the Applicant’s closing submission.

and,

At this stage of the proceedings, where the hearing of all witnesses has been concluded and all evidence has been adduced by the parties, it would be in the interest of justice for the Tribunal to accept the Applicant’s closing submissions for a fair and expeditious disposal of the case pursuant to art. 19 of the UNDT Rules of Procedure.

The Tribunal holds and finds that a waiver of the time limit for the Applicant's closing submissions is appropriate for the fair and expeditious disposal of the case and does justice to the parties.

**ORDER**

11. The Respondent's motion requesting the Tribunal to exclude from the case records the Applicant's closing submission of 17 February 2022 is refused.

*(Signed)*

Judge Rachel Sophie Sikwese

Dated this 22<sup>nd</sup> day of February 2022

Entered in the Register on this 22<sup>nd</sup> day of February 2022

*(Signed)*

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi