



**Before:** Judge Margaret Tibulya  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

LOTO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE APPLICANT'S  
MOTION TO STRIKE OUT AN AUDIO  
RECORDING, PARAGRAPH 26 OF  
THE RESPONDENT'S REPLY AND  
ANNEX 7 OF THE REPLY**

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**Counsel for the Applicant:**

Sétondji Roland Adjvi, *Etudes Vihodé*

**Counsel for the Respondent:**

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

## **Introduction**

1. On 8 July 2022, the Tribunal held a case management discussion (“CMD”) in this case. Following the CMD, the Applicant filed a motion to strike out what he termed as the secret recording (audio and transcription), paragraph 26 of the Respondent’s reply and annex 7 of the reply.

2. On 12 July 2022, the Respondent filed his submissions in response to the Applicant’s 8 July 2022 motion to strike.

3. On 13 July 2022, the Applicant filed a motion for leave to file a rejoinder to the Respondent’s 12 July 2022 submissions. In the rejoinder, the Applicant requests the Tribunal to issue an order to schedule a hearing where the evidentiary admissibility issues raised in the 8 July 2022 motion could be further argued orally for a ruling prior to any hearing on the merits of the case.

## **Deliberations**

4. The contents of paragraph 26 of the Respondent’s reply and annex 7 to the reply are mere submissions and/or proposed evidence at best. Objections to such materials can only amount to mere disagreements with the opposite party’s submissions and proposed evidence which is natural. Such disagreements do not constitute a ground for a motion to strike out the contested materials.

5. As the Appeals Tribunal has held in *Bezziccheri*<sup>1</sup>, it is not up to a party to request that the Tribunal strike out each and every argument they do not agree with, since it is natural that the parties may dispute certain issues or matters at stake.

6. The objection to the reception of the audio and transcript is premature and would be best raised during the main hearing and in closing submissions and addressed by the Tribunal as part of the final judgment preparation process.

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<sup>1</sup> *Bezziccheri* 2019-UNAT-948/Corr. 1, para34. See also *Russo-Got*, 2021-UNAT-1100, para.44.

7. It is the role of the Dispute Tribunal to determine the admissibility of evidence and the weight to be attached to it.<sup>2</sup> This should be done in the final judgment preparation process rather than being done in the piecemeal manner proposed by the Applicant. The suggestion that there should be a hearing to determine the admissibility of specified pieces of evidence if granted would lead to an unhealthy situation where the Tribunal would conduct mini hearings and draft a multiplicity of micro judgments before the main hearing and final judgment, which would be detrimental to judicial economy.

### **ORDER**

8. The Applicant's motion to strike out the audio recording and the transcript, paragraph 26 of the Respondent's reply and annex 7 of the reply, is rejected in its entirety.

*(Signed)*

Judge Margaret Tibulya  
Dated this 15<sup>th</sup> day of July 2022

Entered in the Register on this 15<sup>th</sup> day of July 2022

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>2</sup> *Messinger*, 2011-UNAT-123, Para 33.