



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2022/002

Order No.: 093 (NBI/2022)

Date: 29 July 2022

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LOTO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION TO SUSPEND
PROCEEDINGS PENDING THE
OUTCOME OF THE APPEAL OF
ORDER NO. 081(NBI/2022)**

Counsel for the Applicant:

Sétondji Roland Adjovi, *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 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.

3. On 15 July 2022, the Tribunal issued Order No. 081 (NBI/2022) and rejected the Applicant's 8 July 2022 motion.

4. On 25 July 2022, the Applicant appealed to the United Nations Appeals Tribunal ("UNAT") against the Order, arguing that,

the secret recording/transcript is the foundation of the Respondent's case against [him] and therefore the entire case turns heavily on the admissibility of this evidence. The makeup of the witness list, the foundation of the questions to be asked and the questioning of the witnesses are completely determined by the ruling on the admissibility of the secret recording/transcript.

He requests UNAT to reverse the UNDT decision and strike out the contested audio recording and the documents.

5. On 26 July 2022, the Applicant filed the motion seeking to suspend the proceedings in this case pending the outcome of his appeal.

6. On 27 July 2022, the Respondent filed a response to the Applicant's motion, arguing that he does not consider a stay of proceedings necessary since the outcome of the appeal of Order No. 081 (NBI/2022) has no bearing on the substantive outcome of this case.

Deliberations

7. Jurisprudence on the question of whether the hearing of the main case should be stayed under circumstances such as these is replete and settled. In *Bertucci* 2010-UNAT-062, paras. 22 and 23, UNAT held that,

under the new system of administration of justice, the Dispute Tribunal (“UNDT”) has broad discretion with respect to case management. As the court of first instance, the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties. The Appeals Tribunal will not interfere lightly with the broad discretion of the UNDT in the management of cases.

This position was affirmed in *Staedtler* 2015-UNAT-560-para. 26.

8. In *Wamalala*¹, UNAT held that only appeals against final judgments are receivable otherwise cases before the UNDT would seldom proceed if either party were able to appeal to UNAT when dissatisfied with interlocutory decisions made during the course of the proceedings.

9. In *Tadonki*² and *Villamorán*,³ UNAT emphasized that most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure and trial conduct.

10. In *Calvani*⁴, UNAT held that an appeal against an interlocutory order of the UNDT for the production of a document was not receivable because UNDT has discretionary authority in case management and the production of evidence in the interest of justice and that, should the UNDT have committed an error in ordering the production of a document and have drawn erroneous conclusions in the final judgment resulting from the failure to produce the requested document, it would be for the losing party to appeal that judgment. An interlocutory appeal is receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence.

¹ *Wamala* 2013-UNAT-300.

² *Tandoki* 2010-UNAT-005, para. 18.

³ *Villamorán* 2011-UNAT-160, para. 36.

⁴ *Calvani* 2010-UNAT-032.

11. Considering that the appealed Order No. 081 (NBI/2022) falls squarely within the case management authority of this Tribunal regarding evidence, procedure and trial conduct, and based on the appellate jurisprudence cited above, the motion for stay of proceedings must fail.

ORDER

12. The Applicant's motion to suspend proceedings pending the outcome of the appeal of Order No. 081 (NBI/2022) is rejected.

(Signed)

Judge Margaret Tibulya
Dated this 29th day of July 2022

Entered in the Register on this 29th day of July 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi