



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2021/100

Order No.: 099 (NBI/2022)

Date: 3 August 2022

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KAZAZI

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. 090 (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 Tribunal held a case management discussion (“CMD”) in this matter. During the CMD, the Tribunal requested the Applicant to submit his proposed list of witnesses.

2. On 12 July 2022, the Applicant submitted a list of 14 witnesses including the victims, officers of the Conduct and Discipline Team, investigators from the Office of Internal Oversight Services and other persons that may have witnessed the events leading up to this case.

3. On 27 July 2022, by Order No. 090 (NBI/2022), the Tribunal allowed the Applicant to call only five witnesses. The Tribunal determined that since most of the Applicant’s proposed witnesses were interviewed during the investigations, in the interest of fairly and expeditiously disposing of the case, the interview records of most of the proposed witnesses would suffice. The Tribunal found that only five of the proposed witnesses would assist it in the determination of all the issues in the case.

4. On 28 July 2022, the Applicant appealed to the United Nations Appeals Tribunal (“UNAT”) against Order No. 090 (NBI/2022).

5. On 29 July 2022, the Applicant filed a motion seeking to suspend the proceedings in this case pending the outcome of his appeal against Order No. 090 (NBI/2022).

6. On 2 August 2022, the Respondent filed a response to the Applicant’s motion, arguing that he does not consider a stay of proceedings necessary. He argues that the order falls squarely within the case management authority of the Tribunal regarding evidence.

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 *Wu*² UNAT emphasized that:

Firstly, Article 9(2) of the UNDT Statute and Article 17(6) of the UNDT Rules of Procedure (UNDT Rules) grant the UNDT the discretion to “decide whether the personal appearance of a witness or expert is required at oral proceedings”. Article 18(5) of the UNDT Rules also provides: “The Dispute Tribunal may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate.” Further, Article 19 of the UNDT Rules grants the UNDT broad discretion in relation to case management; pursuant to Article 19, the UNDT may issue any order or give any direction which appears to the judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties. Our jurisprudence has consistently held that the Appeals Tribunal will not interfere lightly with the broad discretion of the UNDT in the management of its cases.

¹ *Wamala* 2013-UNAT-300.

² *Wu* 2015-UNAT-597, para. 34.

10. In *Uwais*,³ UNAT reiterated its position and held that:

Ms. Uwais' submission that the UNRWA Dispute Tribunal made an error of procedure by not calling the 16 witnesses identified by her in her complaints to give evidence before the Tribunal also has no merit. As set out in our Judgment in *Wu*, this Tribunal has established a general principle that case management issues, including the question of whether to call a certain person to give evidence, remains within the discretion of the Tribunal of first instance, and we will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence. We do not accept Ms. Uwais' argument that this threshold has been met. Also, we have consistently affirmed that a Tribunal of first instance does not have competence to conduct a *de novo* investigation of complaints of harassment or other forms of prohibited conduct.

11. Considering that the appealed Order No. 090 (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. 090 (NBI/2022) is rejected.

(Signed)

Judge Margaret Tibulya
Dated this 3rd day of August 2022

³ *Uwais* 2016-UNAT-675, para. 27.

Entered in the Register on this 3rd day of August 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi