



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/100

Order No.: 119 (NBI/2022)

Date: 26 August 2022

Original: English

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**Before:** Judge Margaret Tibulya

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

KAZAZI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE APPLICANT'S  
MOTION FOR CALLING  
ADDITIONAL WITNESSES**

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**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 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.
2. 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.
3. On 11 August 2022, at the close of the hearing of the five listed witnesses, the Applicant submitted a motion to call an additional three witnesses, including Mr. Raif Kryezie, Mr. Saif Ullah Malik and Mr. Ben Swanson.
4. By Order No. 113 (NBI/2022), issued on 12 August 2022, the Tribunal granted the Applicant's motion. The three requested witnesses testified on 22 August 2022.
5. On 23 August 2022, the Applicant filed yet another motion seeking to call additional witnesses including: recalling Mr. Mark Waine who had testified on 11 August 2022; Mr. Abbas Koura and Mr. Kies Ghazouani.
6. The motion was served on the Respondent on 23 August 2022, and he filed his submissions on 25 August 2022. The Respondent opposed the motion.
7. On 26 August 2022, the Applicant filed a motion for leave to respond to the Respondent's submission on additional documents and calling of additional witnesses.

## Deliberations

8. In *Bertucci* 2010-UNAT-062, paras. 22 and 23, the United Nations Appeals Tribunal (“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.

9. Further, in *Wu*<sup>1</sup> 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.

10. The Tribunal notes that the main reason the Applicant seeks to recall Mr. Waine is for him to clarify where he was operating from during the investigation of this case, i.e in South Sudan, Sudan or Canada. The Tribunal further, notes that both Mr. Abbas Koura and Mr. Kies Ghazouani were not included on the Applicant’s initial witness list which was filed on 12 July 2022. In addition, the Applicant has not fully demonstrated the probative value of their testimony.

11. In view of the above and considering that the Applicant’s motion falls squarely within the case management authority of this Tribunal regarding evidence, procedure and trial conduct, and based on the progress of this case, which is at the closing submission stage, the motion is denied.

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<sup>1</sup> *Wu* 2015-UNAT-597, para. 34.

**ORDER**

12. The Applicant's motion for calling of additional witnesses is rejected.

*(Signed)*

Judge Margaret Tibulya

Dated this 26<sup>th</sup> day of August 2022

Entered in the Register on this 26<sup>th</sup> day of August 2022

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi