



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/042
OrderNo.: 088 (NBI/2023)
Date: 23 May 2023
Original: English

Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CASTELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION TO SUSPEND THE DEADLINE
TO FILE A REPLY PENDING A RULING
ON THE RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Yehuda Goor, AS/ALD/OHR, UN Secretariat

Background

1. On 1 May 2023, the Applicant filed an application with the United Nations Dispute Tribunal in Nairobi challenging the decision not to convene a Fact-Finding Panel to investigate the allegations in his 23 September 2023 complaint of prohibited conduct.

2. The application was served on the Respondent and the deadline for the filing of his reply was set at 2 June 2023.

3. On 11 May 2023, the Respondent filed a motion to summarily dismiss the application pursuant to art. 9 of the Dispute Tribunal's Rules of Procedure and suspend the Respondent's deadline to file a reply pending the Tribunal's determination of this motion on grounds that the application is moot under art. 8 of the Dispute Tribunal's Statute.

4. On 15 May 2023, before the Tribunal could invite his comments on the motion, the Applicant submitted his response to the Respondent's motion, and, on 17 May 2023, the Respondent filed a submission in further support of his motion for summary judgment.

5. On 17 May 2023, the Respondent filed further submissions indicating that the Fact-Finding Panel has now been established and the Applicant informed as much.

6. On 19 May 2023, the Applicant confirmed that he has been informed of the establishment of the Fact-Finding Panel.

7. The Tribunal preliminarily notes that parties may file replies to counterparties' motions and observations only if each filing is firstly allowed. Having so said, the Tribunal allows the filings lodged with the Tribunal till this moment, although no previous permission was given.

8. This Judge is called to act as duty judge solely for the purpose of a determination of the Respondent's request for suspension of the deadline to file a reply, while the motion for summary judgment will be determined once the case is assigned to a judge.

9. The Tribunal notes that the request to suspend the deadline for the reply has been justified only with reference to the motion for a summary judgment.

10. Having so said, the Tribunal is the view that there is no link between the deadline to file the reply and the motion for summary judgment, as -pursuant to art. 9 of the Rules of Procedure, the decision to determine the case by a summary judgment postulates that the parties are already in the proceedings, having filed their first acts of appearance; indeed, the judge – in determining that summary judgment is appropriate - is called to assess if the material facts are undisputed (following the parties positions as definitively expressed, in the application and in the reply).

11. Therefore, there is no reason to suspend the deadline for the reply.

Order

12. The Tribunal dismisses the request for suspension of the deadline for the filing of the reply.

13. The motion for summary judgment will be determined once the case is assigned to a judge.

(signed)

Judge Francesco Buffa

Dated this 23rd day of May 2023

Entered in the Register on this 23rd day of May 2023

(signed)

Abena Kwakye-Berko, Registrar, Nairobi