



Before: Judge Agnieszka Klonowiecka-Milart, Judge President

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NIGAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S MOTION
FOR RECUSAL**

Counsel for the Applicant:

Patolla Niroop

Counsel for the Respondent:

Angela Arroyo, UNDP

Introduction

1. The Applicant was a staff member of the United Nations Development Programme (“UNDP”). He served at the D-1 level on a fixed-term appointment and was the Resident Coordinator and Resident Representative in Riyadh, Saudi Arabia, at the time of the application.

2. By motion dated 10 May 2023, the Applicant requests the Judge President of the United Nations Dispute Tribunal to order that the Dispute Tribunal Judge assigned to the present case, namely Judge Francis Belle, be recused for the following reasons:

a. Judge Belle gave a negative judgment against the Applicant (Judgment No. UNDT/2021/092) which was set aside by the United Nations Appeals Tribunal (“UNAT”).

b. The matter should go before a “neutral judge”, and not one who has already expressed his opinion in negative, for it would be against the “cannons of law, and more so principles of natural justice.”

3. In accordance with art. 28 of the Rules of Procedure of the Dispute Tribunal, Judge Belle provided his comments on the Applicant’s recusal motion on 23 May 2023, stating that:

a. There is no basis for his recusal on the conflict-of-interest prongs of art. 2 of the Judges Code of Conduct or on the basis that he was aware of the evidentiary facts in the case prior to his assignment to hear the case.

b. The issue that arises is based on the third prong of the said article, that is, whether he has committed himself to a view of the matter which is unchangeable.

c. In light of the reasons for remanding the case to the UNDT by UNAT, there is no basis for accepting a motion for recusal. It is left to him to follow UNAT's guidance in the circumstances and produce a just decision thereafter.

Considerations

4. In accordance with art. 4.9 of the UNDT Statute, art. 28.2 of the Rules of Procedure sets out the procedure by which an applicant can request the recusal of a judge:

A party may make a reasoned request for the recusal of a judge on the grounds of a conflict of interest to the President of the Dispute Tribunal, who, after seeking comments from the judge, shall decide on the request and shall inform the party of the decision in writing. A request for recusal of the President shall be referred to a three-judge panel for decision.

5. Article 27.2 the Rules of Procedure defines that,

A conflict of interest arises where a case assigned to a judge involves any of the following:

- (a) A person with whom the judge has a personal, familiar or professional relationship;
- (b) A matter in which the judge has previously served in another capacity, including as an adviser, counsel, expert or witness;
- (c) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge's participation in the adjudication of the matter would be inappropriate.

6. Finally, paragraph 2(b) of the Code of Conduct for Judges of the Dispute and Appeals Tribunals provides that "Judges must recuse themselves from a case if: (i) They have a conflict of interest; (ii) It may reasonably appear to a properly informed person that they have a conflict of interest; (iii) They have personal knowledge of disputed evidentiary facts concerning the proceedings".

7. In the present case, the grounds stated as the conflict of interest are that Judge Belle handed down a negative judgment against the Applicant and that judgment was set aside by UNAT. Having reviewed Judgement Nos. UNDT/2021/092 and 2022-

UNAT-1269, I find that the Applicant's case had been dismissed in the first instance because Judge Belle had found the application not receivable. The Appeals Tribunal applied a different interpretation of the application and remanded the case for consideration of the merits. I note that in Judgment No. UNDT/2021/092, Judge Belle has not expressed any views on the merits, neither has the Appeals Tribunal directed that the case be heard by a different UNDT judge.

8. Based on the foregoing, there is no basis for the recusal.

IT IS ORDERED THAT:

9. The motion for the recusal of Judge Belle is refused.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 25th day of May 2023

Entered in the Register on this 25th day of May 2023

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi