



**Before:** Judge Francis Belle

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NIGAM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE APPLICANT'S MOTION  
FOR SUSPENSION OF PROCEEDINGS  
PENDING APPEAL**

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**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. On 23 July 2020, the Applicant filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s decision to not disclose the report of the investigation into his conduct, in which he was exonerated, but which he contends was conducted on the basis of malicious complaints by two staff members.

3. On 29 July 2021, the Tribunal issued Judgment No. UNDT/2021/092 in which it found that the application was not receivable.

4. The Applicant appealed said Judgment to the United Nations Appeals Tribunal (“UNAT”) and, on 1 July 2020, UNAT allowed the appeal in part. The UNDT’s finding of irreceivability as contained in Judgment No. UNDT/2021/092 was set aside and the case was remanded to the UNDT for a decision on its merits.

5. By motion dated 10 May 2023, the Applicant requested the Judge President of the UNDT to order that the present Judge be recused on several grounds.

6. On 25 May 2023, the Judge President issued Order No. 092 (NBI/2023) in which the motion for recusal was refused.

7. On 8 June 2023, the Registry informed the parties that the Tribunal proposed to convene a case management discussion on 12 June 2023.

8. On 9 June 2023, the Applicant filed a motion in which he informed the Tribunal that he intends to appeal Order No. 092 (NBI/2023) and requests that he be “allowed the statutory period of Appeal i.e., 60 calendar days from the date of receipt

of the UNDT Order ... under Article 7.1(c) of the Statute of UNAT.” The Respondent did not file a response to the motion.

9. The Tribunal interprets the Applicant’s motion to mean that the Applicant is requesting to have the proceedings in the present matter suspended while he appeals Order No. 092 (NBI/2023).

### **Considerations**

10. The UNDT Rules of Procedure do not contain an express provision allowing for the suspension of proceedings while a party appeals an interlocutory ruling. However, such a situation is envisaged in *Tadonki* where UNAT held,

... [t]he UNAT Statute does not clarify whether UNAT may review only a judgment on merits, or whether an interlocutory decision may also be considered a judgment subject to appeal. But one goal of our new system is timely judgments. This Court holds that generally, only appeals against final judgments will be receivable. Otherwise, cases could seldom proceed if either party was dissatisfied with a procedural ruling.

...

But as we state in *Kasmani*[<sup>1</sup>] and *Onana*[<sup>1</sup>], the prohibitions on appeals in Articles 2(2) and 10(2) of the UNDT Statute cannot apply where the UNDT issues orders that purport to be based on these articles but in fact exceed its authority. For instance, if UNDT were to award punitive damages as an “interim measure”, this judgment could be appealed before UNAT, because such a judgment would exceed the authority of UNDT.<sup>1</sup>

11. In the present case, the Tribunal finds that to the extent that the appeal relates to the recusal of the present Judge, the interests of judicial economy would best be served by suspending the proceedings. To continue the proceedings could turn out to be a duplication of litigation and be against the interests of judicial economy if the appeal is granted by UNAT. The case would then need to be assigned to a new Judge who would have to manage the case as they deem fit.

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<sup>1</sup> 2010-UNAT-005.

**ORDERS**

12. The motion for suspension of proceedings is granted.

13. The proceedings in the matter of *Nigam v Secretary-General of the United Nations* (UNDT/NBI/2020/056/R1) are suspended until the Applicant's appeal to UNAT of Order No. 092 (NBI/2023) is resolved and a decision rendered.

*(Signed)*

Judge Francis Belle

Dated this 23<sup>rd</sup> day of June 2023

Entered in the Register on this 23<sup>rd</sup> day of June 2023

*(Signed)*

Eric Muli, Legal Officer, for  
Abena Kwakye-Berko, Registrar, Nairobi