



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/070
Order No.: 139 (NBI/2023)
Date: 18 September 2023
Original: English

Before: Judge Solomon Areda Waktolla, Duty Judge

Registry: Nairobi

Registrar: Eric Muli, Officer-in-Charge

OCOKORU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION FOR INTERIM MEASURES**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former National Professional Officer in the Civil Affairs Division at the United Nations Mission in South Sudan based in Abyei. On 30 August 2023, using the UNDT Registry's corporate e-mail account and, on 1 September 2023, through the Court Case Management's e-filing portal, she filed an application contesting three decisions which she identifies as:

- i. the decision of the Secretary-General to close investigations into her rape complaint;
- ii. the non-implementation of UNDT Judgment No: UNDT/2015/004; and
- iii. the decision to "underpay compensation ordered by UNDT and refusal to pay Applicant's medical bills and withheld salary and refusal to properly and conclusively separate the Applicant."

2. Annexed to her application on the merits, the Applicant filed a motion for interim measures under art. 10(2) of the Tribunal's Statute seeking the following reliefs:

- i. An order that the Secretary-General immediately re-opens the Applicant's personnel files and avails to her the certified copied of her handover reports, check-out and any authorization letters or forms;
- ii. An order that the Secretary-General immediately re-opens her United Nations e-mail account;
- iii. An order that the Secretary-General avails to the certified copies of all records of investigations into her rape case; and
- iv. An order that the Secretary-General immediately pays her withheld salary for the months of February – August 2012 and reimbursement of her medical bills and expenses.

3. The motion was served on the Respondent on 11 September 2023. The Respondent filed a response to said motion on 15 September 2023. In his response, the Respondent submits that the motion is not receivable *ratione materiae* and should be dismissed because: (i) it does not contest a reviewable administrative decision; (ii) it seeks measures that are not interim in nature; and (iii) relates to matters that are either *res judicata* or time barred.

Considerations

4. Pursuant to art. 10(2) of the Tribunal's Statute which is similarly worded as art 14(1) of the Tribunal's Rules of Procedure:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

5. For the Tribunal to order an interim measure: (i) the contested decision(s) must appear to be *prima facie* unlawful; (ii) it must be a case of particular urgency; and (iii) implementation of the contested decision(s) would cause irreparable damage. The Tribunal will apply this tripartite test to the present case. Where one prong of the test is not met, the motion for temporary relief must be denied.¹

i. The decision of the Secretary-General to close investigations into her rape complaint.

6. As correctly argued by the Respondent, the Applicant's claim on the non-investigation of her sexual assault claims was considered in UNDT/2015/004. At subparagraphs 14(i), (k) and (l) of said Judgment, the Applicant's testimony was

¹ See for example, *Chawla* Order No. 179 (NBI/2021); *Al-Bakry* Order No. 114 (NBI/2020); *Mancinelli* Order No. 218 (NBI/2019); *Toure* Order No. 135 (NBI/2018); and *Almou* Order No. 103 (NBI/2017).

summarized as follows:

i. The Camp Manager gave her another key to a different accommodation which failed to work. She spoke on the phone with an internationally recruited Security Officer of the Juba duty station, “X”, who promised to take her to the Camp Manager’s residence to sort things out as offices were already closed at the time. She was driven by friends to X’s accommodation and found him talking on the phone. X later sexually assaulted her, threw some bedding at her and told her to leave.

k. She was hospitalized a few days later in Juba and then reported to Dianne De Guzman, Senior Civil Affairs Officer, what had happened. However, during this time, X had reported that she had stolen a ring, a watch and beddings from him. At Ms. De Guzman’s request, she handed the watch and ring over to Ms. De Guzman and made a written report of the sexual assault.

l. Despite her report and being questioned by both the Office of Internal Oversight Services (OIOS) and the Conduct and Discipline Unit (CDU), *there has been no outcome apart from her being referred by Ms. De Guzman for counselling* (emphasis added).

7. The above quotation shows that as of 29 July 2014 (when the Tribunal held a hearing of Case No. UNDT/NBI/2012/074 which culminated in Judgment No. UNDT/2015/004),² the Applicant was already aware of the non-investigation decision but did not timely request for management evaluation of the non-investigation decision. As correctly argued by the Respondent, the “Applicant’s request for management evaluation ten years later is untimely. The Dispute Tribunal has no discretion to waive the deadline.”

8. Thus, the Applicant’s motion for interim measures which challenges the Secretary-General’s decision to close investigations into the Applicant’s rape complaint is not receivable.

² At paragraph 13.

(ii) *The non-implementation of UNDT Judgment No: UNDT/2015/004 and*
(iii) *the decision to “underpay compensation ordered by UNDT and refusal to pay Applicant’s medical bills and withheld salary and refusal to properly and conclusively separate the Applicant.”*

9. The legal framework on execution of judgments is outlined at arts. 11(3) and 12(4) of the UNDT Statute and art. 32(2) of the UNDT Rules of Procedure. Article 11(3) of the UNDT Statute provides that:

The judgements and orders of the Dispute Tribunal shall be binding upon the parties but are subject to appeal in accordance with the statute of the United Nations Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal. Case management orders or directives shall be executable immediately.

10. Article 12(4) of the UNDT Statute is similar in wording to art. 32(2) of the UNDT Rules of Procedure and stipulates that:

Once a judgment is executable under article 11, paragraph 3 of the present statute, any party may apply to the Dispute Tribunal for an order for execution of the judgment if the judgment requires execution within a certain period of time and such execution has not been carried out.

11. On 28 November 2019, the Applicant filed an application for execution of Judgment No. UNDT/2015/004. The application was registered as Case No. UNDT/NBI/2019/168. In that case, she requested for: (a) compensation and damages for the time since she separated from the Organization; (b) salary arrears from 1 August 2012; (c) interest of 15% paid on the compensation and the claimed salary arrears; and (d) reimbursement of expenses she incurred on medical bills. These are the same claims she is making in the present case.

12. On 27 March 2020, the Tribunal issued Judgment No. UNDT/2020/045 where it ordered the Respondent as follows:

19. The Respondent shall calculate and pay the Applicant the difference between any interest previously paid and the outstanding compounded

interest on the compensation awarded by Judgment No. UNDT/2015/004, taking as basis the prime US rate from 18 March 2015 until 17 May 2015 and with additional 5% counted from 18 May 2015 until the day of payment.

20. The application is rejected on all other grounds.

13. In view of the foregoing, the Applicant's challenge of these decisions are therefore barred by the doctrine of *res judicata* and are not receivable.

14. The Applicant's motion for interim measures, which contests the non-implementation of UNDT Judgment No: UNDT/2015/004, the underpayment of compensation ordered by UNDT, the refusal to pay the Applicant's medical bills and withheld salary, and the failure to properly and conclusively separate the Applicant, is not receivable. Likewise, the Applicant's motion for interim measures, which challenges the Secretary-General's decision to close the investigation of the Applicant's rape complaint, is not receivable.

15. Applying the tripartite test in art. 10(2) to the present case, the first prong of *prima facie* illegality is not met since the Tribunal has found that the contested decisions are not receivable. Having found that there is not a clear connection between the application on the merits and the motion for interim measures, the Tribunal concludes that the motion is not receivable and consequently, it will not proceed to examine whether the other cumulative conditions to grant interim relief have been met.

Conclusion

16. In view of the foregoing, the motion for interim measures pending proceedings is rejected.

(Signed)

Judge Solomon Areda Waktolla

Dated this 18th day of September 2023

Entered in the Register on this 18th day of September 2023

(Signed)

Eric Muli, Officer-in-Charge, Nairobi