	UNITED NATIONS DISPUTE TRIBUNAL	Case No.:	UNDT/NBI/2023/010
		Order No.:	29 (NBI/2024)
		Date:	28 February 2024
		Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: René M. Vargas M., Officer-in-Charge

FULTANG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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**ORDER ON
CASE MANAGEMENT**

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Counsel for the Applicant:
Sètondji Roland Adjovi, *Etudes Vihodé*

Counsel for the Respondent:
Jacob van de Velden, DAS/ALD/OHR, UN Secretariat
Andrea Ernst, DAS/ALD/OHR, UN Secretariat

Introduction

1.   In his submissions in response to Order No. 24 (NBI/2024), filed on 26 February 2024, the Applicant indicates that he intends to call 14 witnesses to prove his case.

2.   In his submissions, in response to the same Order, the Respondent submits that he will not call witnesses as the record before the Tribunal is complete, accurate and sufficient to sustain the contested decision.

3.   The Respondent further submits that the Applicant's request to hear all his listed witnesses should be denied because, among others, the Applicant has not provided an adequate explanation on which disputed fact(s) these persons' oral testimony is relevant and material for the decision of the Tribunal.

Consideration

4.   In *Bertucci* 2010-UNAT-062, paras. 22 and 23, the United Nations Appeals Tribunal ("UNAT") held that,

> [u]nder the new system of administration of justice, the 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.

5.   Ruling on the Applicant's request to call 14 witnesses falls squarely within the case management authority of this Tribunal regarding evidence, procedure and trial conduct. The Tribunal determines that some of the Applicant's proposed witnesses are not necessary or appropriate to testify. For example, the Applicant proposes to call both the Under-Secretary General ("USG") for Management Strategy, Policy and Compliance and the official "responsible for Delegation of Authority implementation" to testify that the USG "does not have delegated authority to instruct the United Nations Interim Security Force in Abyei ("UNISFA") how monies can be recovered". That is a legal issue and not a factual dispute, and the proposed testimony is not required.

6.   The Applicant also proposes to call both the investigator of the Office of Internal Oversight Services ("OIOS") assigned to this case and the Director of OIOS to testify that the investigator was biased. The Applicant may call the investigator, but the testimony from the Director of OIOS is not necessary.

7.   The Applicant also seeks to call two witnesses, including the Chief of Human Resources of UNISFA, to testify about a fact that he admits is established by the documents on record. Again, this testimony is unnecessary.

8.   Some witnesses were interviewed during the investigation. In the interest of fairly and expeditiously disposing of the case, the interview records of most of the proposed witnesses will suffice. The Tribunal finds that eight of the 14 proposed witnesses will assist it in the determination of all the issues in the case.

9.   The Tribunal also notes that the Applicant proposes to call his prior attorney, Mr. Robbie Leighton, from the Office of Staff Legal Assistance, to testify regarding their interaction with respect to settlement negotiations in a prior case. He may call Mr. Leighton but doing so will be deemed a waiver of any attorney-client privilege.

Conclusion

10.   In view of the foregoing, the Tribunal determines that only the following witnesses will testify:

   a.   The Applicant;

   b.   The World Health Organization official, on condition that the Applicant will name that official and what he or she will testify about;

   c.   Mr. Joseph Brown;

   d.   Mr. Jackson Nambadi;

   e.   Mr. Felix Ogwang;

   f.   Mr. Seaman Ambaki;

g.   Mr. Robbie Leighton; and

h.   Mr. Mark Waine.

(Signed)

Judge Sean Wallace

Dated this 28th day of February 2024

Entered in the Register on this 28th day of February 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi