



**Before:** Judge Sean Wallace  
**Registry:** Nairobi  
**Registrar:** Eric Muli, Officer-in-Charge

BARAZA

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:**

Camila Nkwenti, UNEP

## **Introduction**

1. By an application filed on 26 April 2023, the Applicant contests the Administration's decision to "close her complaint filed with the Office of Internal Oversight Services alleging harassment and abuse of authority against her former Second Reporting Officer ("SRO")." The application also included a motion for oral hearing to call witnesses and a motion for production of evidence.
2. The Respondent filed his reply on 2 June 2023 submitting that the contested decision was lawful. The reply also argued that the production of documents was an improper attempt to have the Dispute Tribunal "review the facts in a bid to consider the correctness of the choice made by the Executive Director".
3. In her response to Order No. 25 (NBI/2024), filed on 27 February 2024, the Applicant expanded on her request for production of evidence made in her application.
4. On 25 March 2024, the Respondent filed a response to the Applicant's second request for production of evidence requesting the Tribunal to deny it.

## **Consideration**

5. The Tribunal recalls that art. 16(1) of the UNDT Rules of Procedure vests in it the discretion as to whether an oral hearing should be held.
6. In her application, the Applicant does not expressly state the reason why a hearing is necessary. However, her first requested remedy is a "[f]inding that the Applicant was harassed by her [SRO]". This implies that she wants the Tribunal to hear witnesses and independently find facts as to her claim of harassment.
7. She also asks the Tribunal to "refer the case back to UNEP to conduct a full and proper investigation of the facts, including interviewing the Applicant and other witnesses highlighted in this application."

8. In examining the need for a hearing, the Tribunal directed the Applicant to submit a summary of the testimony each of her witnesses would be expected to give at a hearing. The response confirms that the Applicant wishes to litigate before the Tribunal the substance of her allegations of harassment.

9. Thus, it is clear that the Applicant misunderstands the Tribunal's authority, which is simply to review the administrative decision and ascertain whether it was legal, reasonable, and procedurally fair. (*Sanwidi*, 2010-UNAT-084). It is beyond the Tribunal's authority to make independent findings, to order the Administration to conduct an investigation, or to micromanage that investigation by directing who should be interviewed.

10. There is no need for an oral hearing because the Applicant will try to persuade the Tribunal to do that which it is legally prohibited from doing. Therefore, the Applicant's request for oral hearing is denied.

11. The same is true regarding the Applicant's request for production of documents. Art. 18.2 of the UNDT Rules of Procedure vests discretion in the Tribunal to order the production of documents when it appears they are "necessary for a fair and expeditious disposal of the proceedings."

12. The documents that the Applicant seeks are all directed at attempting to support her request for the Tribunal to make a finding that the Applicant was harassed. That is not the proper role of the Tribunal in this case.

13. Further, 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.

14. Having fully considered the record, the Tribunal determines that the production of documents requested by the Applicant is unnecessary for a fair and expeditious disposal of the case.

15. In light of the above, the case needs to move to the closing stage. The parties, therefore, need to submit their closing submissions.

### **Conclusion**

16. In view of the foregoing, it is ORDERED THAT:

17. The Applicant's requests for both an oral hearing and the production of documents are denied.

18. The parties will file their respective closing submission on or before **Monday, 15 April 2024**. In their closing submissions, the parties are particularly directed to address the issue of receivability in light of UNAT's recent decision in *O'Brien*, 2023-UNAT-1313.

19. The closing submission of each party shall:

- a. Exclusively refer to evidence already on file; and
- b. Not exceed **eight pages**, using Times New Roman, font size 12 pts and 1.5 line spacing.

*(Signed)*

Judge Sean Wallace

Dated this 27<sup>th</sup> day of March 2024

Case No. UNDT/NBI/2023/039

Order No. 41 (NBI/2024)

Entered in the Register on this 27<sup>th</sup> day of March 2024

*(Signed)*

Eric Muli, Legal Officer, Officer-in-Charge, Nairobi