



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

TESIO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON THE APPLICANT'S MOTION TO
FILE AN *AMICUS CURIAE* BRIEF

Counsel for Applicant:

Ludovica Moro

Counsel for Respondent:

Jerome Blanchard, UNOG

Introduction

1. At the time of the application, the Applicant served on a fixed-term appointment as an Asset Management Officer at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Nairobi, Kenya.

Procedural History

2. On 15 October 2023, the Applicant filed an application with the United Nations Dispute Tribunal (“UNDT”) sitting in Nairobi to challenge the actions of the Respondent in respect of a disciplinary process that found her to be a victim of sexual harassment. The outcome of the process was communicated to the Applicant in a letter dated 18 April 2023. The Applicant submits that

[t]he letter does not provide any remedy to her as a victim of established harassment, notwithstanding the well documented damages to her health, it does not specify the measure imposed on the offender, and therefore it does not reassure her and other victims that they will not come across their harasser in their career within the UN system.

3. The Respondent filed his reply to the application on 16 November 2023. He challenges the receivability of parts of the application and, on the merits, moves the Tribunal to dismiss the application in its entirety.

4. The Applicant filed a motion for leave to respond to the reply on 19 December 2023. Attached to the motion was the proposed response itself. On the instruction of the presiding Judge, the Applicant’s response has been added to the record.

5. On 15 February 2024, the Applicant filed the motion that is the subject of the present Order. In addition to submissions on receivability, the Applicant submits as follows:

Considering that this is an issue of general interest for staff employed at the UN, select Staff Councils and Associations of the UN, which *inter alia* represent the interests of victims of harassment, would potentially have an interest in filing an *amicus curiae* brief pursuant to UNDT Statute Art. 2, para. 3: “The Dispute Tribunal

shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association”.

The Applicant therefore respectfully requests the Tribunal to permit leave for one or more staff associations to file a friend-of-the-court brief.

Consideration

6. This Order is limited to the Applicant’s request for one or more staff associations to file a friend-of-the-court (*amicus*) brief.

7. The filing of an *amicus* brief is governed by art. 2(3) of the Statute of the Dispute Tribunal, and art. 24 of its Rules of Procedure.

8. Article 2(3) of the Statute affords the Tribunal with power to “permit or deny leave to an application to file a friend-of-the-court brief *by* a staff association” (emphasis added).

9. The operative article in the Tribunal’s Rules of Procedure provides as follows (emphasis added):

Article 24 Friend-of-the-court briefs

1. A staff association may submit a signed application to file a friend-of-the-court brief on a form to be prescribed by the Registrar, which may be transmitted electronically. The Registrar shall forward a copy of the application to the parties, who shall have three days to file any objections, which shall be submitted on a prescribed form.

2. The President or the judge hearing the case may grant the application if it considers that the filing of the brief would assist the Dispute Tribunal in its deliberations. The decision will be communicated to the applicant and the parties by the Registrar.

10. Both the UNDT Statute and its Rules therefore provide for the filing a friend-of-the-court brief *by* a staff association, with leave from the presiding Judge where the Judge considers that “the filing of the brief would assist the Dispute Tribunal in its deliberations”.

11. Leave must therefore be sought by the prospective “friend” rather than the applicant whose case it is. Those seeking leave to appear as *amicus* must seek leave to do so individually. The Tribunal will not grant an open-ended motion “for one or more staff associations to file a friend-of-the-court brief”.

12. Moreover, at this stage it is mere speculation as to which, if any, staff association will wish to file an *amicus* brief, when such brief(s) would be filed, and how the brief(s) would assist the Tribunal in its deliberations.

Conclusion

13. In view of the foregoing, it is ORDERED THAT the Applicant’s motion in respect of the filing of a friend-of-the-court brief(s) is DENIED, without prejudice to consider a proper motion filed by a staff association in accordance with the UNDT Statute and its Rules of Procedure.

(Signed)

Judge Sean Wallace

Dated this 8th day of July 2024

Entered in the Register on this 8th day of July 2024

(Signed)

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