



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

KISUMIRO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Sètondji Roland Adjovi, *Études Vihodé*
Antony K. Wilson, *Études Vihodé*

Counsel for Respondent:

Jacob van de Velden, DAS/ALD/OHR, UN Secretariat
Maria Romanova, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 78 (NBI/2024), issued on 27 June 2024, the Tribunal directed the Respondent to file, *ex parte*, a copy of the “Closure report on Medical Insurance Fraud by Staff Members at the United Nations Stabilization Mission in the Democratic Republic of the Congo, Investigation Division Case No. 0955/18, Report No. 30/20, 26 February 2020” (“OIOS Closure Report”).

2. On 15 July 2024, the Respondent complied with the above Order by filing *ex parte* the OIOS Closure Report and an audio file of the Applicant’s interview on 23 April 2019. The Respondent did not, however, file the annexes to the OIOS Closure Report.

3. On the same day and together with the above submission, the Respondent filed, also *ex-parte*, a document he termed as “Respondent’s submission in compliance with paragraph 5(c)(ii) of Order No. 78 (NBI/2024)”. This submission (“introductory motion”) introduces the filing of the OIOS Closure Report and the above-mentioned audio file.

4. On 4 August 2024, the Applicant filed a motion for additional information and to call another witness, namely Mr. Raphael K. Byemba. The Applicant requested the Tribunal to order Mr. Byemba to appear as a witness. In the alternative, the Applicant avers that the Respondent should be in a position to locate Mr. Byemba if he is still employed by the Organization.

5. On 6 August 2024, the Respondent submitted a response to the Applicant’s submission of 30 May 2024, where the Applicant provided a list of his witnesses. The Respondent states:

On 1 August 2024, OIOS confirmed to the Respondent that Mr. Paul Harty, Chief of Section at OIOS who oversaw the investigation, would be available to testify, including on any due process issue, which is a divisional responsibility within OIOS. Considering the submission of OIOS, should the Tribunal call an OIOS representative to testify, the Respondent respectfully requests it to call Mr. Harty.

6. On the same day, the Applicant submitted a request for leave to respond to the Respondent's request to call Mr. Harty as a witness.

Consideration

7. As the above matters that the parties raised are related, the Tribunal, in the interest of judicial economy, will address them all in a single Order.

8. Regarding the OIOS Closure Report, the Tribunal notes the need for the Respondent to fully comply with its Order No. 78 (NBI/2024) by submitting the entire case file (including all its annexes) *ex parte* for the Tribunal's examination *in camera* to determine their relevance to the Applicant's case, if any.

9. The Tribunal further notes that the Respondent's 15 July 2024 introductory motion (see para. 3 above) contains no confidential information. The Tribunal sees no ground to keep this document *ex parte*.

10. On calling Mr. Byemba, the Tribunal underlines that it is for the Applicant to personally make efforts to present his witnesses to the Tribunal at the hearing. If Mr. Byemba is not a staff member, then the Tribunal is in no better position than the Applicant to locate and produce him as a witness.

Conclusion

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

a. By **Thursday, 8 August 2024**, the Respondent shall file *ex parte* all the annexes/attachments to the OIOS Closure Report for the Tribunal's *in camera* examination;

b. In anticipation of the Tribunal's possible decision to disclose to the Applicant some or all of the annexes to the OIOS Closure Report, the Respondent shall prepare, by **Wednesday, 14 August 2024**, redacted versions of said annexes and have them ready for filing if the Tribunal so instructs him;

- c. The Respondent's 15 July 2024 introductory motion shall be disclosed to the Applicant by removing the *ex parte* confidentiality setting of this document in the Tribunal's Court Case Management System;
- d. The Applicant is personally responsible for ensuring the appearance of his witnesses at the hearing;
- e. The Applicant may call the OIOS investigator, Mr. Halidu Illo, as indicated in his submission filed on 30 May 2024. The Respondent, if he so wishes, may also call Mr. Harty as a witness.
- f. The Tribunal will determine, upon a timely objection raised at the hearing, the relevance and admissibility of any testimony from either witness.

(Signed)

Judge Sean Wallace

Dated this 7th day of August 2024

Entered in the Register on this 7th day of August 2024

(Signed)

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