



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: Wanda L. Carter

WAMARA TIBENDERANA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON THE APPLICANT'S MOTION FOR
THE TRIBUNAL TO CALL THE CASE
INVESTIGATOR TO TESTIFY**

Counsel for Applicant:

Sètondji Roland ADJOVI
Anthony Kreil WILSON

Counsel for Respondent:

Jacob B. van de Velden, DAS/ALD/OHR, UN Secretariat
Seungyoun Seo, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former Movement Control Assistant at the United Nations Mission in the Democratic Republic of Congo. On 10 March 2024, he filed an application contesting the 19 December 2023 decision to impose on him the disciplinary measure of separation from service with compensation *in lieu* of notice and without termination indemnity pursuant to staff rule 10.2(a)(viii), and to enter his name in the UN ClearCheck database.
2. Further to the Tribunal's directions in Order No. 127 (NBI/2024), the Applicant filed a motion for leave to call the investigator from the Office of Internal Oversight Services (OIOS) to testify.
3. The Respondent filed his response, in which he strongly objects to the calling of this witness and moved the Tribunal to dismiss the motion.

Considerations

4. The Tribunal recalls that it heard counsel for the Applicant on his intention to call the investigator to testify, observed that it was not going to permit "a fishing expedition", and thus gave clear directions on the issue. Specifically, the Applicant was directed to clearly indicate "the specific areas of inquiry for which the investigator is being called."
5. The Tribunal finds that the Applicant has not complied with this direction. Instead, his submission makes the broad claim that "the Applicant shall ask Mr. Harty questions regarding the investigation report and the issues already raised in Annex 07 of the application."
6. The issues raised in Annex 7 amount to challenges on the credibility of some witnesses, vouching for the credibility of other witnesses, and disagreeing with the investigator's assessment of the credibility of those interviewed as part of the investigative process.

7. The Applicant should rest assured that the Tribunal will assess the credibility of those who testify before it to determine if Respondent has met its burden to prove the facts by clear and convincing evidence.

8. To the extent that Counsel is correct, and the investigator's credibility assessments were wrong, that will be determined based on testimony from those witnesses and the evidence in the record. As Applicant notes, he may cross-examine the Canadian Armed Forces witnesses and others in an attempt to show that they were "economical with the truth" or "manufactured evidence".

9. Examining the investigator about why he did not ask such questions or why he deemed any particular witness to be credible or not, will not add anything useful to the hearing. Any probative value of such testimony from the investigator will be substantially outweighed by considerations of undue delay and the presentation of cumulative but unnecessary evidence.

Conclusion

10. The motion for the OIOS Investigator to testify in these proceedings is therefore dismissed.

(Signed)

Judge Sean Wallace

Dated this 30th day of September 2024

Entered in the Register on this 30th day of September 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi