



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/047
Order No.: 138 (NBI/2024)
Date: 4 October 2024
Original: English

Before: Judge Solomon Areda Waktolla

Registry: Nairobi

Registrar: Wanda L. Carter

KIINGI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION TO CONCEAL THE IDENTITY
OF WITNESS AND STAFF MEMBERS**

Counsel for the Applicant:
Ron Mponda

Counsel for the Respondent:
Charlotte Servant-L'Heureux, UNHCR
Rebecca Britnell, UNHCR

Introduction

1. The Applicant used to serve as a G-6 Programme Associate with the Office of the United Nations High Commissioner for Refugees (“UNHCR”). She was based in Yumbe, Uganda.

Procedural History and Submissions

2. On 30 May 2023, the Applicant filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s decision to separate her from service of the Organization in accordance with staff rule 10.2(a)(ix). This disciplinary measure was imposed on her following a finding of misconduct. It is the Applicant’s case that the facts on which the sanction is based have not been established to the required standard in that the evidence was both weak and improperly evaluated.

3. On 30 June 2023, the Respondent replied to the application.

4. Following assignment of this matter to the undersigned Judge, and a case management discussion with the parties, the presiding Judge decided that there should be an oral hearing in this matter.

5. On 16 October 2023, the Tribunal issued Order No. 160 (NBI/2023) setting this matter down for oral hearing.

6. The hearing took place, as scheduled, from 24-26 October 2023. The Applicant testified. The Applicant and Respondent together called seven witnesses including the Applicant and the investigator whose findings formed the basis of the impugned decision.

7. Having heard the parties in oral proceedings and reviewed the written record, the Tribunal rendered judgment on 4 September 2024 (UNDT/2024/057). The Judgment was served on the parties and published on 6 September 2024.

8. On 13 September 2024, the Registry received an email from counsel for the Respondent. Counsel wrote:

9. Dear Registrar,

We refer to judgment no. UNDT/2024/057 in case no. UNDT/NBI/2023/047 (*Kiingi*) and take note that judgment refers to the names of witnesses and other staff members.

Pursuant to Article 11.6 of the Tribunal’s Statute, which provides that “judgments of the Dispute Tribunal shall be published, while protecting personal data [...]”, as well as the practice of the Dispute Tribunal, we respectfully request the anonymisation of witnesses and other staff members in the judgment.

In this respect, we refer to the recent judgment of the Dispute tribunal, *Soum* UNDT/2024/059, at para. 20:

With respect to the anonymisation of witnesses and other staff members, it is already a well-established practice of the Dispute Tribunal to protect the privacy and identity of witnesses and others in its judgments. In this context, the Tribunal confirms that, except for the Applicant’s name, all parties mentioned herein will not be named.

We hope this request will be considered favourably.

10. On 18 September 2024, the Respondent filed the subject motion of this Order. The Respondent moves the Tribunal to redact or “otherwise anonymise” the “names and personal data” of three specific individuals, all of whom are staff members of the Organisation, and one of whom testified as a witness for the Respondent.

11. The Presiding Judge directed the Registry to serve the motion on the Applicant for her response. The Applicant responded to the motion on 24 September 2024.

Consideration

12. The Tribunal must maintain the highest standards of formality and integrity in its operations, avoiding reliance on informal or *ex parte* communications, such as the aforementioned email from the Respondent’s counsel referenced in this case. In alignment with the procedural norms governing all judicial bodies, the Tribunal is

bound to act solely on the basis of properly filed motions that are duly served on all parties involved, alongside orders that are formally endorsed by a sitting judge. In the absence of such duly filed motions, the Registry is not to undertake any action.

13. The Tribunal has carefully considered the Respondent's motion and the Applicant's submission in response.

14. The Tribunal's consideration and determination of this motion must begin with a finding on whether the motion has been properly (procedurally and substantively) brought before it.

15. While the motion filed on 24 September 2024 exhorts "urgent action" by the Tribunal, the motion itself was filed 18 days after the judgment in question was served on the parties and published on the website. Indeed, these concerns were only raised one week after the publication of the judgment while the filing of motion came still later.

16. Counsel had ample opportunity to seek the measures now being requested, and moved as urgent, during the course of these proceedings. The oral hearing in this matter was held entirely in public session, and the names of these individuals were repeatedly mentioned during the hearing. One of these individuals also testified in open session.

17. The concerns now being canvassed in the motion for their anonymity was not raised at any stage of the proceedings. The Tribunal is in effect being asked to close the stable doors after the horse has bolted.

18. The request for anonymisation should have been addressed during case management discussions, hearings, or prior to the delivery of the judgment. Procedural fairness and judicial finality necessitate those concerns be raised at the appropriate stages of the proceedings.

19. As the case has concluded, it is procedurally unacceptable to introduce new concerns at this stage. Parties are expected to present all pertinent issues at the appropriate time within the judicial process to ensure fairness and finality.

20. Procedurally, the Respondent should have considered the protections it deemed necessary much earlier in the process, and certainly before the rendering of the judgment, and asked for it. Substantively, there is little value to redacting the judgment this long after its publication.

21. The Tribunal finds, therefore, that on the basis of timing alone, this motion falls to be dismissed.

22. Be that as it may, the Tribunal considers it necessary to address some of the Respondent's submissions on its merits.

23. In the realm of United Nations operations and judicial processes, striking an equilibrium between transparency and accountability on one hand, and the safeguarding of privacy and personal data on the other, is of paramount importance. This challenge is particularly pronounced when contemplating the anonymisation of witnesses and staff members while maintaining organizational transparency and accountability.

24. Transparency and accountability are essential for fostering trust, ethical conduct, and institutional integrity. They ensure organizations and their personnel are answerable for their actions and open to scrutiny, deterring misconduct and bolstering public confidence. In judicial settings, transparency is crucial for ensuring that justice is manifestly seen to be done, thereby reinforcing public trust.

25. Nevertheless, it is imperative to balance these principles with the need to protect privacy and personal data. The rise of digital information flows increases concerns about privacy, as personal data can be accessed, shared, and potentially misused. Anonymisation often becomes central to protecting individuals, particularly in sensitive cases, to encourage candid participation without fear of harm, harassment, or

retaliation. While protecting personal data is important, transparency remains a core judicial principle.

26. Article 11(6) of the Statute of the Dispute Tribunal and art. 26(2) of the Rules of Procedure requires the Tribunal to publish judgments “while protecting personal data.” This provision is mirrored in art. 10(9) of the Statute of the Appeals Tribunal.

27. In *Buff* 2016-UNAT-639, the Appeals Tribunal held as follows:

[T]he judgments of the Appeals Tribunal are published and made available to the Organization’s staff and the general public. Public dissemination of the appellate judgments helps to assure there is transparency in the operations of the Appeals Tribunal. It also means, sometimes fortunately and other times unfortunately, that the conduct of individuals who are identified in the published decisions, whether they are parties or not, becomes part of the public purview.

28. While the Respondent has referred the Tribunal to the appellate judgment in *AAE* 2023-UNAT-1332, which considers the anonymisation of a *party* to proceedings, this Tribunal finds that it is better advised by the reasoning advanced in *Monasebian* 2024-UNAT-1476, where the Appeals Tribunal appears to have considered anonymisation more broadly. The Appeals Tribunal stated:

We recognize that there have been increasing calls for greater privacy protections for individuals and parties in judgments in many jurisdictions, including in the UNDT and UNAT, given increased access to judgments online and that requests for anonymity must be balanced against the interests of transparency and accountability. We have previously found that personal embarrassment and discomfort are not sufficient grounds for redaction, with redaction only to occur in the most sensitive of cases. What is required is that an individual put up sufficient material to show that there is a need for anonymisation which justifies a departure from the ordinary rule.

29. While recognising that a decision on anonymity entails “balancing competing factors,” the Appeals Tribunal went on to hold that “included in the factors to be considered are [...] the impact of the decision on transparency, general deterrence, future and past conduct, *both of the staff member and others*; and other such factors.” [Emphasis added]

30. The Respondent submits that staff members have “expressed fears of potential reprisals for their cooperation with the administration following the publication of the judgment” and argues that he has “has legitimate concerns about the repercussions of identifying staff members in judgments, which could deter them from reporting suspected misconduct and from cooperating during investigations and judicial proceedings.”

31. The assertion that staff members have expressed fears of reprisals following the publication of judgments remains largely speculative. The Respondent’s apprehensions about potential reprisals are unsubstantiated. The judicial process is fundamentally based on decisions supported by evidence, not on speculative possibilities.

32. Furthermore, the concern that identifying staff members could deter them from reporting misconduct is a misinterpretation of the legal and organizational framework within the United Nations.

33. This line of argument is both curious and surprising given the framework governing the conduct and obligations of staff members.

34. The obligation on staff members of the United Nations to report misconduct and cooperate with investigative and judicial processes is mandatory rather than optional.

35. Staff rule 1.2 (a) requires staff members to “follow the directions and instructions properly issued by the Secretary-General and by their supervisors.” The rule goes further and states in paragraph (c) that

Staff members have the duty to report any breach of the Organization’s regulations and rules to the officials whose responsibility it is to take appropriate action and to cooperate with duly authorized audits and investigations. Staff members shall not be retaliated against for complying with these duties.

36. Staff rule 10.1 provides, in no uncertain terms, that

(a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and

Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

37. The Respondent's concern that identifying staff members could deter them from reporting misconduct is not supported by the legal and organizational framework within the United Nations.

38. In the realm of data protection, simply disclosing a name alone does not inherently breach privacy norms unless linked with additional sensitive information that could result in harm or discrimination.

39. The Respondent's claim that naming witnesses and staff members in the judgment infringes on sensitive personal data and privacy is inadequately substantiated. It relies on speculative assertions without providing concrete evidence of how merely disclosing names causes harm or invades privacy.

40. Therefore, the request for anonymity based solely on naming is insufficient, especially given the importance of transparency in upholding accountability and public trust. Judicial integrity should prioritize openness while addressing genuine privacy concerns.

41. The Tribunal is, therefore, not persuaded that the "potential repercussions" alluded to by the Respondent are cogent or credible enough to warrant the anonymisation being sought.

ORDERS

42. The motion is DISMISSED.

(Signed)

Judge Solomon Areda Waktolla

Dated this 4th day of October 2024

Entered in the Register on this 4th day of October 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi