



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

CHIMSORO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION FOR PRODUCTION OF
EVIDENCE**

Counsel for Applicant:

Rodney Mkweza
Ron Mponda

Counsel for Respondent:

Elizabeth Brown, UNHCR
Louis Lapicerella, UNHCR

Introduction

1. Following a case management discussion on 7 November 2024, the Tribunal issued order No. 149 (NBI/2024) scheduling a hearing in this case for “two days between 13 and 16 January 2025, as will be agreed between the parties after consultation with their witnesses.”

2. The Respondent had made an oral request during the case management discussion that the hearing be held *in camera* and that protective measures be implemented for the Complainant. The Tribunal directed Respondent to file a written motion addressing these requests.

3. Pursuant to that direction, the Respondent filed a Motion for Protective Measures and Additional Evidence, and the Applicant filed a Response thereto on 24 November 2024.

4. After considering these submissions, the Tribunal issued Order No. 165 (NBI/2024) on 17 December 2024, directing that:

- a. The hearing in this case will take place on 15 and 16 January 2024.
- b. The hearing will be held *in camera*.
- c. The Registry will ensure that the Applicant will not be visible or audible to the Complainant during her testimony.
- d. The request for the specific person proposed to be present to provide emotional support to the Complainant during the hearing was denied. The Complainant was allowed to have another person of her choosing present to provide emotional support, as long it was neither the proposed person nor someone who was expected to testify regarding the facts at issue.
- e. The Respondent’s motion for anonymity of the Complainant and witnesses was granted.

- f. The Respondent was granted leave to call a witness with personal knowledge of the Closed-Circuit Television (“CCTV”) footage mentioned in the Order.
 - g. The Applicant was also granted leave to call an expert witness to testify regarding the CCTV issues in this case.
 - h. Both parties were required to name the appropriate witness, and provide a summary of their testimony, on or before 31 December 2024.
5. On 20 December 2024, the Applicant filed a motion for production of evidence requesting:
 - a. A scaled map of the UNHCR Compound in Mogadishu showing the locations of CCTV cameras and movement sensor lights.
 - b. Technical specifications of the CCTV cameras including the manufacturer(s) name and the specifications of network and computing infrastructure supporting the CCTV camera.
 - c. Security log books maintained by the security guards for recording and monitoring staff movements when leaving or entering the UNHCR Mogadishu staff compound.
6. In said motion, the Applicant states that the requested evidence about the CCTV system is to enable the Applicant’s expert witness to prepare his expert opinion. He also states that the security log books are relevant to the Applicant’s testimony.
7. On 30 December 2024, the Respondent filed a response to Order No. 165 in which he states that:
 - a. He wishes to call the Senior IT Services Delivery Management Officer at the Mogadishu compound to testify to the state of the CCTV system on 27-28 January 2023;

b. He wishes to introduce contemporaneous email exchanges documenting ongoing problems with the CCTV system, the need to rebuild the server, the consequent unavailability of the CCTV system during the rebuild process, and the loss of all CCTV records during the period in question;

Regarding the Applicant's 20 December 2024 request for production of evidence, the Respondent states that this information is not material to the case given the loss of all CCTV records; that the requested documents are confidential in that they detail highly sensitive security measures in an "E" duty station where the risks of attack are rated "high" by UNDSS; and that the request for the security logbooks is unspecific and inadequately explained or supported by the Applicant.

8. On 31 December 2024 the Applicant sent an email to the Registry which states in relevant part that:

On behalf of the Applicant, we are rather surprised at this definitive scheduling (which of course had previously been agreed but was overtaken by certain events). The primary event was the Applicant's Motion for the Disclosure of evidence which is still pending.

Today we were further surprised by the contents of a Filing done by the Respondent, apparently declining to produce the evidence as requested and characterising such evidence as "not being necessary for a fair and expeditious disposal of [the] proceedings".

The email further states that "Counsel for the Applicant awaits the Tribunal's Order on the Request for certain evidence to be produced..."

Consideration

9. Article 18.2 of the UNDT Rules of Procedure stipulates that "[t]he Dispute Tribunal may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceeding."

10. The Tribunal notes that, beyond mere expressions of surprise, the Applicant presents no argument contesting either the law or facts of the Respondent's response to his request for production of evidence.

11. In his original request for production, the Applicant merely claims that "the requested evidence ... is to enable the Applicant's Expert Witness to prepare his Expert Opinion... [or] is relevant to the Applicant's testimony. However, the Applicant has not named any expert witness nor filed a summary of their testimony by 31 December 2024 as directed by Order No. 165.

12. As a result, the Tribunal cannot find that the requested evidence about the details of the CCTV system is relevant. This is particularly so given the uncontested evidence that the CCTV system was inoperable during the period at issue.

13. In addition, the Tribunal acknowledges the legitimate security issues implicated in the request, especially in light of the Applicant's bald claim that an unidentified expert wishes these documents to develop or support an undisclosed opinion.

14. Similarly, the broad request for security log books monitoring staff movements at the compound does not seem to be relevant to the fair or expeditious resolution of the case. First, the request does not indicate whose movements the Applicant wishes to document with these log books. Thus, the request appears to be a mere "fishing expedition".

15. Second, the Applicant conceded that both he and the Complainant were present together during the alleged incident. (See, Application para. VIII.3.), so clearly the security log books cannot be used to establish some type of alibi. However, it is not the Tribunal's responsibility to speculate about how the security log books might be relevant to the Applicant's testimony. It is the moving party's obligation to demonstrate the relevance of the requested information, and the Applicant has not done so here.

16. Third, it is noted that the request was made just 14 working days before the scheduled hearing. There is no explanation given for this eleventh-hour request for

production of evidence. Indeed, granting the request at this late time would require a postponement of the hearing, contrary to the purpose of Rule 18.2.

17. In sum, the Tribunal finds that the requested information is not necessary for a fair and expeditious disposal of the proceeding.

Conclusion

18. In view of the foregoing, it is ORDERED THAT the Applicant's 20 December 2024 motion for production of evidence is refused.

(Signed)

Judge Sean Wallace

Dated this 8th day of January 2025

Entered in the Register on this 8th day of January 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi