



Before: Duty Judge
Registry: Nairobi
Registrar: Wanda L. Carter

TUSUMBA OPENGE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
INTERLOCUTORY MOTIONS
WITHIN THE APPLICATION AND
THE RESPONDENT'S *EX PARTE*
COMMUNICATION WITH THE
REGISTRY**

Counsel for Applicant:

Roland Adjovi
Anthony Wilson

Counsel for Respondent:

Wei Zhuang, DAS/ALD/OHR, UN Secretariat
Cynthia Kimaro, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 13 November 2025, the Applicant, a former Deputy Protocol Officer at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), filed a “Requete” challenging his dismissal for misappropriating United Nations equipment.
2. The “Requete” was filed in French and was 30 pages in length. As part of the “Requete,” the Applicant included a request for an oral hearing to hear witnesses, a request for production of evidence, a request to exceed the page limit, and a request to conduct the proceedings in French.
3. The “Requete” was served on the Respondent on 18 November 2025 with a notice that, pursuant to Article 10 of the Tribunal’s Rules of Procedure, a reply shall be filed by 18 December 2025.
4. On 24 November 2025, the Respondent filed a Response to the Applicant’s Requests to Exceed the Page Limit and Conduct the Proceedings in French.
5. On 26 November 2025, the Applicant filed a “Requete Visant A Obtenir L’Authorisation de Repondre a La Requete du Defendeur.”
6. On 4 December 2025, the file was sent to the undersigned as Duty Judge to address the pending matters.

Considerations

7. As an initial matter, it seems incumbent on the Tribunal to remind counsel of their obligations under the Code of Conduct for legal representatives and litigants in person which was approved by the United Nations General Assembly in A/RES/71/266.

8. Article 8.2 of that Code provides that

Legal representatives and litigants in person shall be diligent in complying with the statutes, rules of procedure, practice directions and orders, rulings or directions that may be issued by the Tribunals.

9. Article 4 of the Code also provides, *inter alia*, that “[l]egal representatives...shall act ...efficiently and shall avoid unnecessary delay in the conduct of proceedings.”

10. It seems that counsel for both parties, who have previously appeared before the Tribunal in numerous other cases, have apparently forgotten these obligations and the statutes, rules and practice directions of the Tribunal from the very outset of this case. Indeed, the Tribunal was compelled in a different case to verbally reprimand Applicant’s counsel, and a different Respondent’s counsel, to act like adults and experienced counsel in dealing with each other and the Tribunal. Unfortunately, this case is headed in the same, improper direction and, if future problems occur, sanctions might be imposed. The Tribunal hopes this will be the last time that such admonitions are required.

11. First, regarding the Applicant’s “Requete”, Practice Direction No. 4 (on Filing of Applications and Replies) provides in para. 7 that:

[A]n application on the merits ...should include the following information:

a. A succinct statement of the facts, matters and things relied on to prove the decision did not comply with the terms of appointment or contract of employment; ...

12. In keeping with the instruction to be “succinct,” para. 6 of Practice Direction No. 4 provides that “**The application should not exceed 10 pages**, in font Times New Roman, font size 12, line spacing of 1.5 lines. The cover page and the page containing the list of annexes and signatures shall not be included in counting the number of pages.” (emphasis added)

13. In this case, the application was three times the approved page limit. Even when the cover page and the page containing the list of annexes and signatures are not counted, it is 28 pages long. It seems that no effort was made to comply with the prescribed page limits.

14. The inclusion of motions (a request for an oral hearing to hear witnesses, a request for production of evidence, a request to exceed the page limit, and a request to conduct the proceedings in French) in the application is not contemplated by the Practice Direction. Instead, as set forth in para. 4 of Practice Direction No. 5 (on Filing of Motions and Responses):

All requests to the Tribunal for orders, directions, interim measures and other interlocutory determinations shall be made by motion stating the grounds relied on for the determination sought unless otherwise provided in the Statute or Rules of Procedure of the Tribunal. (Emphasis in original)

15. The purpose of distinguishing applications from motions is to assist the Tribunal by segregating various filings so they can be dealt with appropriately. Applications and motions have different response deadlines, and motions may be determined by interlocutory orders while applications are determined by judgments which end the case.

16. When motions are included in an application, it is more difficult to parse them out for proper adjudication. As the Tribunal recently noted, “A request buried in the midst of a pleading is not a motion and therefore not in accord with the Practice Direction. In the future, such requests run the risk of being overlooked or worse, denied for non-compliance.” *Pajtic* Order No. 153 (NBI/2025), para. 4, n.1.

17. Thus, it was improper to include requests/motions in the application, and their inclusion does not justify an exception to the prescribed page limits. Indeed, even if these motions were not counted, the application is still more than 2.5 times the page limit.

18. Exceptionally, in the interests of judicial economy, the Tribunal will consider the request to exceed the page limits as if it had been properly filed as a motion. The others must be properly filed for them to be considered by the Tribunal.

19. On the merits of the request, it does not appear that the Applicant made any effort to comply with the directions to be concise and succinct.

20. For example, his “Summary of the facts” is three full pages long and contains lengthy quotes from annexed documents. This is unnecessary when a simple referral to the annex would suffice. The same is true for his “Grounds for challenging the administrative decision,” which includes pages of lengthy quotes from annexes and legal references. The Applicant even included pictures of two charts from the OIOS investigations manual. Additionally, much of the application is repetitive, restating the same thing two, three, or more times.

21. In sum, having reviewed the entire application, there is no valid reason to exceed the page limits. Thus, the Applicant’s request to do so is denied.

22. The Tribunal also notes that the Respondent communicated, *ex parte*, with the registry by email dated 4 December 2025. Unfortunately, the use of emails is a practice in which parties, particularly the Respondent, seem to continually engage.

23. The prevalence of this practice caused the Tribunal to amend Practice Direction No. 5 last year to make clear that it was not acceptable. Hence, that Practice Direction now explicates that:

All requests to the Tribunal for orders, directions, interim measures and other interlocutory determinations shall be made by motion.... Any such requests made by other means, including but not limited to telephone calls and emails, will be rejected by the Registry and not considered by the Dispute Tribunal. *Id.* paras.4 and 5. (emphasis in original).

24. Although it should not need to be said, the UN Dispute Tribunal is a court of record, which was created by the General Assembly to be “transparent.” Emails and telephone calls, particularly those which are submitted *ex parte*, fly in the face of transparency. As such, and in accordance with Practice Direction No. 5, those are

rejected by the Registry and not considered by the Tribunal, except as herein mentioned.

25. First, in the interest of transparency, a copy of the email will be transmitted to Applicant's counsel by the Registry.

26. Second, the email also violates Practice Direction No. 2 (on Legal Representation) which states that:

[W]hen a party chooses to be represented by more than one counsel, a lead counsel shall be designated and that lead counsel shall correspond with the Tribunal through the Registry and shall conduct the case and make all written and oral submissions unless the judge decides otherwise on good cause shown.

27. The email in question was from a generic email address and bore a generic signature from "Critical Incident Response Section Administrative Law Division, Office of Human Resources Management Strategy, Policy and Compliance, United Nations." It is not made by a designated lead counsel representing the Respondent in this case and therefore not in compliance with Practice Direction No. 2 either.

CONCLUSION

28. For the foregoing reasons, the Tribunal orders that

- a. The Applicant's motion to exceed page limits is denied;
- b. The Applicant shall file a proper application, within the prescribed page limits, by 15 December 2025;
- c. The Respondent shall file his reply within thirty days of receipt of the revised application;
- d. The remaining improper requests contained in the original application, and the Respondent's improper email, shall be rejected by the Registry and not considered by the Tribunal;

- e. The Registry shall transmit a copy of the Respondent's *ex parte* email to Applicant's counsel immediately.

(Signed)

Sean Wallace (Duty Judge)

Dated this 9th day of December 2025

Entered in the Register on this 9th day of December 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi