



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2015/035  
UNDT/NY/2015/062  
Order No.: 6 (NY/2017)  
Date: 11 January 2017  
Original: English

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**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Hafida Lahiouel

AUDA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Alan Gutman, ALS/OHRM, UN Secretariat  
Pallavi Sekhri, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a former Principal Officer at the D-1 level in the Department of General Assembly and Conference Management (“DGACM”), has two separate but related applications registered under Cases No. UNDT/NY/2015/035 and UNDT/NY/2015/062. Both cases are assigned to the undersigned Judge. By Order No. 213 (NY/2016), dated 8 September 2016, the two cases were consolidated into a combined proceeding.

## **Case management**

2. By Order No. 225 (NY/2016), dated 28 September 2016, the Tribunal scheduled a one-day hearing on the merits for 6 October 2016 and by Order No. 233 (NY/2016), dated 5 October 2016, directed that the following witnesses would testify at the hearing: (1) Ms. Novicki; (2) Ms. Loregnard; and (3) Mr. Ssekandi. The Tribunal considered and rejected the Applicant’s request for three additional witnesses for the reasons articulated in Order No. 233 (NY/2016).

3. On 5 October 2016, the Applicant filed a “Request to the President of the Dispute Tribunal for Recusal of the Case Judge.” In view of the request, the Tribunal suspended the proceedings.

4. On 2 December 2016, by Order No. 267 (NY/2016), the President of the Tribunal dismissed the Applicant’s request for recusal.

5. On 6 December 2016, by Order No. 273 (NY/2016) the Tribunal ordered the parties to attend a hearing in both cases on Thursday 12 January 2017 and ordered that “the parties shall ensure their availability also for Friday, 13 January 2017, should a second day of hearings be necessary. The parties likewise shall ensure the availability of their witnesses on these dates.”

6. On 5 January 2017, the Applicant filed a motion requesting *inter alia* a postponement of the hearing, stating:

The Applicant has been summoned to serve as juror in the New York Supreme Court at 9:00 a.m. on Monday 9 January 2017. The Applicant is obliged to serve on the date scheduled given that the jury service has already previously been postponed twice. The Applicant may therefore not be available for the hearing on 12 January 2017. Given a previously scheduled leave through the end of the month of January 2017, the Applicant requests postponement of the hearing until Thursday 9 and Friday 10 February 2017.

7. The Applicant also requested that Ms. Struyvenburg and Mr. Gettu be called as witnesses.

8. On 9 January 2017, by way of Order No. 2 (NY/2017), the Tribunal denied the Applicant's request to call Ms. Struyvenburg as a witness, finding that her testimony would be cumulative. The Tribunal reiterated that, for reasons set forth in Order No. 233 (NY/2016), the Applicant's request to call Mr. Gettu as a witness is also denied. The Tribunal also denied the Applicant's request for postponement, stating,

17. The Tribunal recognizes that should the New York Supreme Court summon the Applicant to appear for jury duty on 12 and 13 January 2017, he will not be available to appear before the Dispute Tribunal on the same dates. However, it appears that the Applicant has been summoned to present in the New York Supreme Court for only one day, notably on Monday, 9 January 2017. To date, there is, therefore, no apparent conflict with the hearing on the merits scheduled before this Tribunal, and the Applicant's motion to postpone the hearing is denied. Should the New York Supreme Court summon the Applicant to serve as a juror on 12 and 13 January, the Tribunal will reconsider how to handle the further proceedings.

9. Order No. 2 (NY/2017) further instructed the Applicant, by 5:00 p.m. on Tuesday, 10 January 2017, to "update the Tribunal as to whether he has been

instructed to serve as a juror before the New York Supreme Court on 12 and 13 January 2017, and if so, provide substantiating documentation.”

10. On Tuesday 10 January 2017, the Applicant filed two motions, one in response to Order No. 2 (NY/2017) indicating that he will not be required to provide further jury services and a “Request to the President of the Dispute Tribunal for Recusal of the Case Judge.”

11. On 11 January 2017, in Order No. 5 (NY/2017), the President of the Tribunal rejected the motion for recusal and indicated that the hearing scheduled for Thursday, 12 January 2017 is maintained. In the Order the President stated:

while the Applicant may be in disagreement with [such] case management decisions by Judge Hunter, Jr., they are not susceptible to demonstrate any conflict of interest on behalf of the latter ... In this respect the Tribunal recalls what it stated in Order No 267 (NY/2016) namely that “[p]rocedural decisions during case management... cannot serve as an argument to contest Judge Hunter Jr.’s impartiality or independence or otherwise lead to the perception by a reasonably and impartial observer that his participation in the adjudication of the matter would be inappropriate.”

...

[T]he Tribunal wishes to underline that it was inappropriate for the Applicant to have filed the present request for recusal only on 10 January 2017, almost at close of business, while the matter had been set down for a hearing in the morning of 12 January 2017. It is noted that the matters complained of had been well known to the Applicant for some time. In the future, such conduct may be regarded as an illegitimate attempt by the Applicant to interfere with the smooth running of the Tribunal’s proceedings and of the administration of justice, and may be found to be vexatious.

## **Consideration**

12. In light of the foregoing, the Tribunal instructs the parties to attend the hearing on the merits as previously set down by Order No. 273 (NY/2016) for Thursday, 12 January 2017 and Friday, 13 January 2017, should a second day of hearing be found necessary by the Tribunal.

13. As previously instructed in Order No. 233 (NY/2016), the following witnesses shall testify at the hearing: (1) Ms. Novicki, (2) Ms. Loregnard; and (3) Mr. Ssekandi. Mr. Ssekandi is located in Uganda, which is several hours ahead of New York. To accommodate the time difference, the Tribunal instructs the Respondent to ensure that Mr. Ssekandi be ready to provide testimony first.

14. The Tribunal notes the Applicant's several requests for postponement have lacked merit. If the Applicant fails to appear at the hearing, the Tribunal will consider whether to dismiss the applications in both cases with prejudice.

IT IS ORDERED THAT:

15. As set forth in Order No. 273 (NY/2016), the parties shall attend a hearing on the merits in Cases No. UNDT/NY/2015/035 and No. UNDT/NY/2015/062 at **9:30 a.m. on Thursday, 12 January 2017**. The parties shall ensure their availability and that of their witnesses also for **Friday, 13 January 2017**, should a second day of hearing be deemed necessary by the Tribunal.

16. The following witnesses, as previously ordered, shall testify at the hearing: (1) Ms. Novicki; (2) Ms. Loregnard; and (3) Mr. Ssekandi.

17. Mr. Ssekandi will testify first as an accommodation of the time difference between New York and Uganda, from where the witness is remotely testifying.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 11<sup>th</sup> day of January 2017