



Before: Judge Alessandra Greceanu
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

ODUSOTE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON WITHDRAWAL

Counsel for Applicant:
Self-represented

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

Introduction

1. On 13 September 2017, the Applicant, an Information and Communications Technology Auditor at the P-4 level, step 9, with the Office of Internal Oversight Services (“OIOS”) in New York, in which he challenges the alleged “[u]nfair and inappropriate application of recruitment rules and regulation regarding mobility and unlawful withdrawal of his application [by the Office of Human Resources Management, “OHRM”]” for the post, “P-5 Chief of [Information and Communications Technology] Audit Section (17-AUD-OIOS-73526-R-NEW YORK (R) I.E., -JO 73526) ... in the Internal Audit Division of OIOS”.

2. On the same date (13 September 2017), the Registry acknowledged receipt of the application and, in accordance art. 8.4 of the Rules of Procedure, transmitted it to the Respondent, instructing him to file a reply by 13 October 2017 and the case was assigned to the undersigned Judge.

3. On 14 September 2017, the Respondent informed the Registry that Mr. Alan Gutman had been assigned as Counsel to the case.

4. By submission dated 27 September 2017, Applicant informed that (emphasis in original):

... Following satisfactory action by OHRM to: (a) acknowledge that I have indeed met the lateral move requirements in consideration of my P5 application of 16 February 2017. For the P5 post of Chief of [Information and Communications Technology] Audit Section (17-AUD-OIOS-7[3]526-R-New York (R)), IAD [presumably, the Internal Audit Division]/OIOS; and (b) release the said application to the hiring manager for consideration. I will like to **WITHDRAW** my application to the United Nations Dispute Tribunal (Case: UNDT-NY-2017-90) dated 12 September 2017.

... This withdrawal shall by no means prejudice any future application from myself to [the Dispute Tribunal] on the subject of mobility.

Consideration

5. The Tribunal commends the Applicant for withdrawing the application in the present case under the given circumstances. This saves valuable resources and contributes to a harmonious working relationship between the parties.

6. The Tribunal considers that each person has the fundamental human right to free access to justice, which includes the right to file an application in front of an impartial tribunal, and therefore also the right to withdraw that application.

7. An application represents the materialization of an applicant's right to appeal the contested decision. This is the first procedural act by which an applicant invests the Tribunal of dealing with the appeal. The whole procedural activity will take place within its limits and the application must be filed by the person who has the right to appeal the contested decision (*ratione personae*), within the applicable time limit (*ratione temporis*) and in front of the competent Tribunal (*ratione loci*).

8. Consequently, to be legally valid, a request for the withdrawal of an application has to be formulated by the applicant and/or by her/his counsel and must consist of the unconditional expression of the applicant's free will to close the case before a judgment is issued.

9. An application can be withdrawn orally and/or in writing, partially or entirely. The withdrawal request can refer either to the pending application (as a procedural act) or to the right to appeal itself.

10. If an identical application is filed by the same applicant against the same party after she or he waived her or his right to appeal the matter, the exception of *res judicata* can be raised by the other party or *ex officio* by the court itself. *Res judicata* requires three cumulative elements: (i) same parties; (ii) same object; and (iii) same legal cause, and has both negative and positive effects: it is blocking the formulation of a new identical application and guarantees that it is not possible to rule differently in the same matter.

11. *Res judicata* is a reflection of the principle of legal certainty and does not prejudice the fundamental right to a fair trial since the access to justice is not absolute and can be subjected to limitations resulting from the application of the other principles. The principle of rule of law and the principle of legal certainty, expressed also by *res judicata*, require, *inter alia*, that an irrevocable decision given by the Tribunal not to be further questioned (*non bis in idem*) (see *Shanks* 2010-UNAT-026bis; *Costa* 2010-UNAT-063; *Meron* 2012-UNAT-198). As stated by the United Nations Appeals Tribunal in *Meron* that “there must be an end to litigation” in order to ensure the stability of the judicial process.

12. The Applicant clearly expressed, in the withdrawal request of 27 September 2017, his free will to fully withdraw his application and thereby end the pending litigation.

13. In conclusion, the object of the withdrawal request is the right to appeal itself and represents the Applicant’s free will to end the litigation. Since the Applicant has withdrawn his application, the Tribunal no longer needs to make a determination on the merits and takes note of the withdrawal.

14. In light of the foregoing,

IT IS ORDERED THAT:

15. The Applicant has withdrawn the matter in finality, including on the merits. There being no matter for adjudication by the Dispute Tribunal, Case No. UNDT/NY/2017/090 is hereby closed without liberty to reinstate.

(Signed)

Judge Alessandra Greceanu

Dated this 3rd day of October 2017