



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/071
Order No.: 114 (NY/2020)
Date: 7 July 2020
Original: English

Before: Judge Joelle Adda
Registry: New York
Registrar: Nerea Suero Fontecha

MUKEBA WA MUKEBA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Isavella Vasilogeorgi, ALD/OHR, UN Secretariat
Romy Batrouni, ALD/OHR, UN Secretariat

Introduction

1. On 31 January 2020, by way of Order No. 18 (NY/2020), the Tribunal decided to hold a hearing on the merits in this case.
2. On 3 March 2020, by way of Order No. 39 (NY/2020), having consulted with the parties on their availability, the Tribunal scheduled the hearing on 26 March 2020.
3. On 18 March 2020, by email from the Registry, the Tribunal informed the parties that due to the technical difficulties caused by the COVID-19 lockdown, the hearing was postponed until further notice.
4. Having resolved the technical difficulties, on 10 June 2020, the Registry contacted the Applicant asking him to confirm his ability to attend a hearing through Microsoft Teams. Having not received any response from the Applicant, on 15 June 2020, the Registry again emailed the Applicant seeking a response to the 10 June 2020 email. In parallel, the Registry attempted to call the Applicant on the phone number on record, without success.
5. Having received no response from the Applicant, on 18 June 2020, by way of Order No. 103 (NY/2020), the Tribunal requested the Applicant to contact the New York Registry by 4:00 p.m. on Friday, 26 June 2020 and cautioned the Applicant that his application would be dismissed for want of prosecution if he failed to do so.
6. As the Applicant did not contact the Registry within the prescribed deadline, by Judgment No. UNDT/2020/103 dated 29 June 2020, the Tribunal dismissed this case for want of prosecution.
7. On 30 June 2020, the Applicant wrote an email to the Registry asking the Tribunal to reconsider its Judgment and proceed with the hearing in his case. The Applicant did not state any reasons why he had failed to comply by the Tribunal's previous instructions.

8. On the same day, by Order No. 110 (NY/2020), the Tribunal instructed the Applicant to provide the reasons why he did not comply with the Tribunal's case management orders and provide any supporting evidence.

9. On 2 July 2020, the Applicant sent the following email to the Registry (in French):

...

Madame, par votre lettre du 10 juin 2020 dont le greffe m'a contacté pour mon dossier numéro 18/NY/2020 de pouvoir vous confirmer ma capacité à assister à une audience par le biais des équipes Microsoft sans succès, le 15 juin 2020 le même greffe recontacté toujours sans succès et il a tenté de m'atteindre au téléphone, ça n'a pas toujours été.

Le 18 juin 2020 le greffe a pris une mesure par ordonnance numéro 103/NY/ 2020, le tribunal m'a demandé de contacter le greffe de NY, avant 16h du même jour sinon la requête sera rejetée faute de poursuite.

Madame, je viens respectueusement auprès de votre haute autorité, vous rappelez qu'en date du 18 mars 2020 par le courrier électronique du greffe, le tribunal avait informé les parties qu'en raison des difficultés causées par le verrouillage du COVID-19, l'audience avait été reporté jusqu'à nouvel ordre.

Beaucoup respectant, et très soumis au verdict du tribunal, vous écrire pendant cette période apparaît comme un dérangement, c'est pourquoi je pensais attendre la fin de la pandémie covid-19 pour relancer ma requête.

Dieu ne dort pas, merci d'avance chère Madame de bien vouloir relancer mon dossier avant la fin de la pandémie, à cet effet je suis très prêt à être en contact permanent avec le tribunal pour que justice soit rendue.

...

Consideration

10. The Tribunal understands from the Applicant's submissions that he failed to respond to the Tribunal's case management instructions was because he understood, from the Tribunal's email of 18 March 2020 announcing the suspension of the hearing, that the case would continue only when the COVID-19 crisis would abate. However,

the Tribunal recalls that it informed the parties on 18 March 2020 that the suspension of the scheduled hearing was due to technical difficulties associated with the lockdown caused by the COVID-19 pandemic. The Tribunal clearly stated that it would keep the parties apprised of any further developments and would order the rescheduling of the hearing as soon as the technical difficulties would be resolved.

11. Once such difficulties were addressed and the holding of a hearing was possible, the Applicant was promptly contacted, as described above, on several occasions.

12. In his latest submissions, the Applicant does not provide any compelling reasons why he failed to respond to the Tribunal's repeated attempts to contact him even after he was warned that, should he fail to contact the Registry within the prescribed deadline, his case would be dismissed for want of prosecution. Absent any compelling reasons that prevented the Applicant from responding to the Tribunal's instructions, the Tribunal considers that the Applicant abandoned his case.

13. The Tribunal has previously stated, and it is well settled jurisprudence, that right to institute and pursue legal proceedings is predicated upon the condition that the person exercising this right has a legitimate interest in initiating and maintaining legal action and that access to the Dispute Tribunal has to be denied to those who are no longer in need of judicial remedy, or no longer interested in the proceedings (*Bimo and Bimo* UNDT/2009/061; *Saab-Mekkour* UNDT/2010/047; *Zhang-Osmancevic* UNDT/2015/034). The Applicant has failed to explain why he abandoned the prosecution of his case and failed to comply with the Tribunal's repeated instructions on case management.

14. The Tribunal finds, therefore, no reason to reconsider its Judgment No. UNDT/2020/103 of 29 June 2020.

15. In light of the above and with reference to arts. 19 and 36 of the Rules of Procedure,

IT IS ORDERED THAT:

16. The Applicant's request for reconsideration of Judgment No. UNDT/2020/103 is rejected.

(Signed)

Judge Joelle Adda

Dated this 7th day of July 2020