



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/044/T
Order No.: 115 (NY/2021)
Date: 30 November 2021
Original: English

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

ELIEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Julia Kyung Min Lee, OSLA

Counsel for Respondent:
Elizabeth Brown, UNHCR
Francisco Navarro, UNHCR

Introduction

1. By Order No. 100 (NY/2021) of 29 October 2021, the Tribunal directed the Applicant to submit his request for production of additional evidence by 15 November 2021.

2. On 12 November 2021, Counsel for the Applicant informed the Tribunal that she was unable to establish contact with and, therefore, obtain instructions from the Applicant. At Counsel's request, the Tribunal extended the deadline for submission of the Applicant's request for additional evidence to 29 November 2021.

3. On 29 November 2021, Counsel for the Applicant filed a submission stating that despite continued attempts, she had been unable to establish a contact with the Applicant and requested a three-month suspension of the proceedings to allow her sufficient time to do so.

Consideration

4. Counsel for the Applicant explains that despite numerous attempts to contact the Applicant via the email address and phone numbers previously used, she has been unable to reach him since the issuance of Order No. 100 (NY/2021).

5. Counsel for the Applicant requests the suspension of the proceedings for three months during which she will continue to try to establish a contact with the Applicant. Counsel will inform the Tribunal as soon as contact is made and then provide reasons for the loss of communication.

6. Counsel for the Applicant submits that it is unusual not to be able to reach the Applicant and that it would be in the interest of justice to suspend the proceedings to provide the Applicant the opportunity to proceed with his case.

7. The Tribunal recalls that the 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 (see, for instance, *Bimo and Bimo* UNDT/2009/061; *Saab-Mekkour* UNDT/2010/047; *Zhang-Osmancevic* UNDT/2015/034; *Duverné* UNDT/2019/157).

8. The Tribunal's practice of dismissing cases for want of prosecution has been endorsed by the Appeals Tribunal in *Mukeba Wa Mukeba* 2021-UNAT-1080 in para. 34 (reference to footnote omitted):

... We do not find fault with the practice and jurisprudence of the Dispute Tribunal to dismiss an application for want of prosecution when there is sufficient reason to assume that the applicant is no longer interested in the litigation. We point out, however, that great care needs to be taken in exercising this power, and an application may not be dismissed without evidence that an applicant has failed to meet his obligations.

9. The Tribunal notes that no justification has been offered to explain the Applicant's failure to provide instructions to his Counsel. As the Applicant bears the responsibility to maintain the legal action, the Tribunal finds that the requested three-month suspension is unjustified.

10. Absent such justification and considering that the deadline set in Order No. 100 has already been suspended once due to the Applicant's failure to contact his Counsel, the Tribunal finds that two additional weeks is a reasonable deadline to allow Counsel to make contact with her client.

11. In light of the above,

IT IS ORDERED THAT:

12. **By 4:00 p.m. on Wednesday, 15 December 2021**, the Applicant, through his Counsel, shall contact the Registry of the Dispute Tribunal to confirm whether he wishes to pursue the present case;

13. In the event that the Applicant fails to respond to this Order, his application will be dismissed for want of prosecution in its entirety.

(Signed)

Judge Joelle Adda

Dated this 30th day of November 2021