



Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

ELOBAID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Martine E. Lamothe, OSLA
Aly Ahmed, OSLA

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR, UN Secretariat

Introduction

1. By Order No. 121 (NY/2024) dated 9 December 2024, the Tribunal ordered,
 - a. By 12 December 2024, the Applicant (i) to indicate what disputed facts in the consolidated list of disputed facts that (a) the documents, which he wishes the Respondent to disclose, and (b) his proposed witnesses are to either corroborate or refute, including by making specific reference to the relevant paragraph numbers in the list, and (ii) to propose dates for a potential hearing in mid-January 2025.
 - b. By 16 December 2024, the Respondent to provide his comments on the Applicant's 12 December 2024 submissions, including on possible hearing dates and the availability of his potential witnesses.
2. On 12 and 16 December 2024, respectively, the parties duly filed their submissions as per Order No. 121 (NY/2024).

Consideration

Additional written documentation

3. In the Applicant's 12 December 2024 submission, he explains why he requested certain information to be disclosed by the Respondent, namely:
 - a. “[T]he current status of the OHCHR Yemen Office's procured works by Dar Al-Amer and Lebna Architect company”;
 - b. “[T]he status of Dar Al-Amer company with the [United Nations Development Programme, “UNDP”];
 - c. “[T]he starting date of the lease contract with the Yemeni landlord for the premises for the Yemen [country office], and if the value of the rent increased since the starting date or not”.

4. In the Respondent's 16 December 2024 submission, he reiterated his previous objections from the 6 December 2024 CMD that the requested information is irrelevant although he did provide some information as per paras. 3(a) and 3(c) above.

5. The Tribunal notes that since it cannot rule out that the requested information may be relevant to the adjudication of the present case, it will order the Respondent to disclose it and, as possible, provide relevant documentation. If the information subsequently turns out to be irrelevant, the Tribunal may simply decide not to refer to it in the final judgment.

Oral evidence (witnesses)

6. In the Applicant's 12 December 2024 submission, the Applicant reiterates his request to call (a) himself and (b) MA, a former Security Coordination Officer of the OHCHR Yemen Office for direct examination. He further states that he would like to hear (a) NO, a former Administrative and Finance Associate of OHCHR Yemen, and (b) MAL, the current OHCHR Yemen Office's Administrative and Finance Officer. He sets out the themes and topics of all the respective proposed testimonies with reference to the 22 July 2024 consolidated statement of disputed facts and/or the Respondent's submissions, also explaining that NO would be "the main witness of this case". As both NO and MAL continue to work for the Organization, he requests that the Respondent be instructed to call them.

7. In the Respondent's 16 December 2024 submission, he restates his position that a hearing is not necessary in the present case, contending, *inter alia*, that:

- a. The Applicant failed to "refer to any of the disputed facts that he intends to establish or corroborate through his testimony, as directed by the Tribunal". Moreover, "the purported absence of intent, which the Applicant seeks to prove through his testimony, is also irrelevant in view of the nature of his misconduct".

b. The proposed testimonies of MA and MAL are “immaterial” to the adjudication of the case.

c. NO does not need to testify as his “involvement in the procurement process is undisputed” and “whether the Applicant or [NO] mimicked the required procurement process is irrelevant”.

8. The Tribunal observes that similar to the Applicant’s disclosure requests, the Tribunal cannot reject that any of the proposed testimonies could be relevant to the adjudication of the present case. All the Applicant’s witness requests are therefore granted, but the questioning will be strictly limited to the topics and themes set out in the Applicant’s 12 December 2024 submission. Each of the parties will, at maximum, be allowed 1 hour to hear the Applicant and NO and a half-hour to question MA and MAL.

9. As NO and MAL are apparently still staff members but the Respondent states in his 16 December 2024 submission that he “may not be compelled to adduce testimonial evidence on behalf of the Applicant”, the Tribunal will instead instruct the Respondent to assist the Applicant with making them available for the hearing.

10. The Applicant will therefore question all the witnesses in direct examination after which the Respondent will be granted the opportunity to cross-examine them. If the Respondent does not wish to cross-examine any or some of the witnesses, he may decide not to do so and, for planning purposes, the Tribunal will instruct him to advise it thereabout.

Proposed dates for a hearing

11. The Tribunal notes that the Applicant did not propose any dates for a hearing as otherwise ordered by Order No. 121 (NY/2024). The Tribunal will instead order the parties to consult with each other thereon and propose some dates in the period from 27 January to 7 February 2025. Subsequent to the hearing, the parties will be ordered to file written closing statements.

12. The Tribunal notes that no request has been made for interpretation, and if relevant, the parties should notify the Tribunal thereof as soon as possible. As interpretation is not immediately available to the Tribunal, such a request will likely delay the hearing as the Registry would need to make the necessary arrangements with other departments of the United Nations and/or outside vendors.

13. In light of the above,

IT IS ORDERED THAT:

14. By **4:00 p.m. on 13 January 2025**, the Respondent is to disclose the information requested by the Applicant (see para. 3 above) and, as possible, provide relevant documentation.

15. By **4:00 p.m. on 13 January 2025**, the parties are to propose possible dates for a one-day hearing during the period from 27 January to 7 February 2025, preferably either on a Monday or a Friday, which will be held virtually via MS Teams. The hearing will have the following tentative schedule (New York time), and the Applicant is to lead all the witnesses in direct examination after which the Respondent will have the opportunity to cross-examine them:

- a. 9:15 a.m. – 9:30 a.m.: introduction and possible preliminary matters
- b. 9:30 a.m. – 11:30 a.m.: the Applicant
- c. 11:45 a.m. – 12:45 p.m.: MA
- d. 1:30 p.m. – 3:30 p.m.: NO
- e. 3:35 p.m. – 4:45 p.m.: MAL

16. Should the Respondent already now know that he does not wish to question certain witnesses, he is to advise the Tribunal thereabout **as soon as possible**, so the tentative schedule can be amended accordingly.

(Signed)

Judge Francis Belle

Dated this 6th day of January 2025

Entered in the Register on this 6th day of January 2025

(Signed)

(For) Isaac Endeley, Registrar, New York