



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

SAADEH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT STRIKING OUT THE
APPLICATION**

Counsel for Applicant:
Andre Sirois

Counsel for Respondent:
Steven Dietrich, ALU/OHRM

1. **FACTS**

1.1 The Applicant is a former staff member of the International Criminal Tribunal for Rwanda (ICTR). On 5 May 2008, the Applicant addressed a letter to the Secretary-General requesting for administrative review of a decision taken on 11 March 2008 by the Chief, Division of Administrative Services of ICTR (“Chief, DAS”), stipulating the restructuring of the Electronic Data Processing Unit of which he was the Chief.

1.2 On 14 July 2008, the Administrative Law Unit, Office of Human Resource Management (ALU/OHRM) responded to the Applicant’s request for review and transmitted to him a copy of a memorandum dated 30 May 2008 from the Chief, DAS, in which she provided comments on the issues raised by the Applicant in his request for review. ALU/OHRM also informed the Applicant that they had reviewed the comments and that they considered that the comments appropriately addressed the issues raised by the Applicant in his request for review. On 12 August 2008, the Applicant subsequently filed a Statement of Appeal with the now defunct New York Joint Appeals Board (JAB) contesting the administrative decision.

1.3 The Respondent’s Counsel filed a Reply to the said Appeal on 20 October 2008. The Respondent’s Reply was transmitted to the Applicant on 12 November 2008. This Application was transferred to the Nairobi UNDT in accordance with ST/SGB/2009/11: *Transitional Measures Related to the Introduction of the New System of Administration of Justice* by Order dated 5 August 2009.

1.4 On 2 November 2009, the Registrar of the Nairobi UNDT invited the Parties to a status conference scheduled to take place on 12 November 2009. The Registrar informed the Parties that the general objectives of the status conference were to look into and attend to all issues having a bearing on the readiness of the case for consideration and determination by the Tribunal and to come up with a timeline for the processing of the case.

1.5 On 6 November 2009, the Applicant’s Counsel informed the UNDT Registry that,

“...I am in receipt of the message dated 12 November 2009.

Unfortunately, there is nothing I can do at such short notice. I have to contact my client for advice.

He is in Africa. And I am on mission in Asia until the middle of December. And we had filed the case in New York for practical reasons and the transfer to Nairobi renders the whole process totally impractical and prohibitively expensive for my client.

I have to consult with him, but communications are near impossible (sic) from here, especially that (sic) I have not my file with me here.

Hence, I am bound to request a postponement and, for a more reasonable notice next time.”

1.6 In a separate communication on the same date, the Applicant’s Counsel informed the UNDT Registry, inter alia,

“I am sorry for the typo about the date and I stand corrected....As for the rest, I believed that my letter was clear enough: I am on mission in Asia until the middle of December 2009 and I do not have access to my file, or to my client for that matter; beside, I have meetings here and could not possibly have time for such a teleconference.”

1.7 On 18 January 2010, the UNDT Registry addressed an email to the Parties in this case in the following terms:

“... [w]e refer to the [Applicant’s] case currently before the Tribunal. The Judge responsible for the case requires that you respond to the queries set out in the attached guideline by or before COB 2 February 2010. If the Tribunal deems a Hearing to be necessary, you shall be served a Hearing Notice in due course.”

1.8 On 19 January 2010, the Applicant’s Counsel informed the UNDT Registry,

“In spite of my best efforts, I am unable to contact my client to take directives from him. I note that you have sent him an email; could you please tell me if it has reached him or would you have an address or a telephone number for him?If not, I will have to ask you to give me some time to try and get this information from the administration, if possible. I shall be able to do this while I am in New York next week.”

1.9 On 2 February 2010, the UNDT Registry transmitted an email to the Applicant's Counsel informing him to,

“[p]lease note that the Tribunal is required, under its Statute and Rules, to expeditiously dispose of cases. Please note that your response to the queries, as per the email communication below, are required by close of business today.”

The Applicant's Counsel responded to the email on the same date and informed the Tribunal as follows:

“... [a]s I have clearly said in my previous messages, I am unable to contact my client to get instructions. And, so far I have not been able to get the cooperation of the administration in this regard. You could help in telling me if you have been able to contact him or by requesting the administration to help you contact him. (I know he is still with UN, somewhere in the Middle East if I am not wrong.) Without breaching confidentiality, the administration could easily, and should, transmit some message to him. I was hoping to search with intranet if I was in New York this week, but my meeting has been delayed.”

2. CONSIDERATIONS

2.1 In view of the foregoing, the Tribunal considers that the Applicant's failure to pursue his claim is inordinate and inexcusable. The Tribunal is not convinced by the casual explanation for the delay provided by the Applicant's Counsel. The Tribunal notes that its Statute and Rules require an expeditious disposal of cases. The Tribunal cannot allow the Applicant's claim to continue to “hang like the sword of Damocles” over the efficient operations of the Organization¹. The Tribunal also recalls Judgment No. 69, *Ghosn* (2009) and notes specifically:

- (i) That the Applicant had failed to give instructions to his Counsel in respect of his Application contesting the restructuring of the ICTR Electronic Data Processing Unit.

¹ See for example UNAT Judgement No. 579, *Tarjouman* (1992), para. XVII.

- (ii) That the Applicant and his Counsel had been informed about the Status Conference and that the Applicant had failed to make an appearance or to contact the Tribunal to give reasons. The Applicant's Counsel's responses show disregard for the directions from the Tribunal.
- (iii) That the Applicant has not actively or diligently pursued his case.

3. DECISION

3.1 In view of the foregoing, the Tribunal hereby strikes out the present Application on the merits.

(Signed)

Judge Vinod Boolell

Dated this 4th day of February 2010

Entered in the Register on this 4th day of February 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi