



Before: Judge Margaret Tibulya.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MASWISWI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

**ON DISMISSAL FOR
ABANDONMENT OF PROCEEDINGS**

Counsel for the Applicant:

Ron Mponda

Counsel for the Respondent:

Elizabeth Brown, UNHCR

Background and Procedural History

1. The Applicant was a Supply Associate at the United Nations High Commissioner for Refugees (UNHCR) office in Harare, Zimbabwe. She served at the G-6 level on a fixed-term appointment.
2. On 13 April 2018, the Applicant filed an application with the United Nations Dispute Tribunal (UNDT) in Nairobi. The Applicant is challenging the disciplinary measure that was imposed on her, as well as the Respondent's decision to abolish her post and separate her from service of the Organisation.
3. On 18 May 2018, the Respondent filed his reply to the application.
4. The Applicant responded to the reply on 14 June 2018.
5. On 25 November 2019, the Tribunal issued Order No. 200 (NBI/2019) setting this matter down for a case management discussion on 3 December 2019. The Order was served on the Counsel on record for the Applicant and the Respondent.
6. The Registry followed up on the Order by writing to the Applicant using the email address provided on the application on 26 and 27 November 2019. Neither the Order nor the emails elicited a response.
7. The Registry also attempted to get in touch with Counsel acting for the Applicant, to no avail. The emails to the Applicant, were followed-up with phone calls to the phone numbers provided by the Applicant. One phone call to the UNHCR Office number provided was answered by a staff member who informed the Registry that Mr. Mponda, Counsel on record, had left the duty station over a year ago. The Office did not have current contact details for Mr. Mponda.
8. On 2 December 2019, the Registry wrote to the Applicant again asking her to get in touch.

9. Neither the Applicant, nor Counsel acting on her behalf, have made contact to-date.

Judgment

10. Article 9 of the UNDT rules of procedure affords the Tribunal the power to determine, on its own initiative, that summary judgment is appropriate. This may happen when there is no dispute as to the material facts of the case and judgment is restricted to a matter of law. The abandonment of proceedings exemplified in this case is such a matter of law, and the material facts relevant to determine this particular issue are not disputed.

11. In the absence of specific provisions in the Tribunal's rules of procedure, the Tribunal invokes article 36 which stipulates that "[a]ll matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal ... by virtue of the powers conferred on it by article 7 of its statute".

12. In *Bimo & Bimo*, Laker J held:

The Tribunal has previously held that the right to institute legal proceedings is a general principle of procedural law predicated upon the condition that the person using it has a legitimate interest in initiating and maintaining legal action. Access to the court has to be denied to those who are not in need of judicial remedy, as well as to those who are obviously no longer interested in the proceedings they instituted.¹

13. The Registry of the Tribunal has, in this case, tried to get in touch with the Applicant and her Counsel on record to no avail. While the Applicant has not expressly indicated a desire to abandon proceedings, the Tribunal is in a position where it simply cannot find the Applicant or Counsel acting on her behalf and so, can only assume that she is no longer interested in pursuing this matter any further.

14. This application therefore stands dismissed, without determination of its merits

¹ *Bimo, I. & Bimo, M.* UNDT/2009/061. See also *Zhang-Osmancevic* UNDT/2015/034; *Gouin* UNDT/2019/140.

and without prejudice, for abandonment of proceedings.

(Signed)

Judge Margaret Tibulya

Dated this 11th day of December 2019

Entered in the Register on this 11th day of December 2019

(Signed)

Eric Muli, Legal Officer, for,
Abena Kwakye-Berko, Registrar, Nairobi