



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2009/02
UNDT/NBI/2009/06
Order No.: UNDT/NBI/O/2010/038
Date: 15 March 2010
Original: English

Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ATOGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

Counsel for applicant:

David Andati-Amwayi

Counsel for respondent:

Mr. Joerg Weich, UNON

Introduction

1. On 5 February 2010, Mr. David Andati-Amwayi, the Applicant's representative, made an application to strike out the response and for summary judgment to be entered in favor of the Applicant. He also applied for a transfer of the case to New York or Geneva on the grounds that there was a conflict of interest because the UNDT judge and the UNDT legal officer, who were initially handling the case, were present at an evening function of the Inter-Agency Security Management Network (IASMN) on 1 February 2010.

2. The application to strike out the response was based on the fact that the Applicant was not provided with "a copy of the authority given to Mr. Joerg Weich to act for the Respondent".

3. The Applicant asserted that he would not obtain justice in the UNDT, Nairobi.

4. The Applicant is mistaken in his belief that he has an entitlement to see a copy of any letter authorizing Mr. Weich to act for the Respondent.

5. Insofar as the Applicant believes that justice will not be done before the UNDT Nairobi, he does not have a rational basis to support this belief. As the judge now responsible for this case, I rejected the application on 23 February by Order No. 028.

6. Having examined the state of the pleadings and having considered it to be unsatisfactory, I issued an Order on 23 February 2010 (Order No. 028) to assist the parties and the Tribunal. I decided that it would be in the Applicant's interest to present a concise summary of the issues in the case. This would then be sent to the

Respondent for a concise response. Consideration was then to be given to holding a case management discussion on 12 March 2010. The deadline for the Applicant's compliance with the Order was 4 March 2010. The Applicant did not respond.

7. On 8 March 2010, by Order No. 034, the Applicant was ordered to show cause why his application should not be struck out for failing to comply with Order No. 028.

8. Before the deadline of 15 March 2010 expired the Tribunal was informed, on 12 March 2010, that the Applicant had filed an appeal to the United Nations Appeals Tribunal (UNAT) against Order No. 028. Since the matter was now before the UNAT the Applicant's representative stated "that the Applicant avoids discussing the matter outside the jurisdiction of UNAT New York."

9. The purpose of this Order is first to advise the Applicant and his counsel as to the procedural propriety and advisability of the course they have adopted and to stress that the duty of the Tribunal is to determine applications on the merits of the substantive issues they have raised. In order to carry out this duty it is sometimes necessary to assist the parties by drawing their attention to the need to focus on the issues. To file interlocutory appeals against such orders is misconceived and does not assist in the administration of justice before the Tribunal.

10. The Applicant's representative is labouring under the mistaken belief that the mere act of filing an appeal with the UNAT automatically entitles the Applicant to a stay of proceedings in the Tribunal. Irrespective of the outcome of the appeal, a consideration of the substantive merits of the claim will require a concise statement of the issues so that the judge and the parties can focus on what is legally relevant so that a fair hearing and fair consideration of the merits can be adjudicated upon.

11. Having explained at length, for the benefit of the Applicant, why it is important to comply with the Tribunal's Order, it is hoped that Mr. Andati-Amwayi and Mr. Atogo will reconsider the stance they have taken and comply with the Order so that a determination of the substantive merits of their claim can take place without further delay.

IN ALL THE CIRCUMSTANCES IT IS ORDERED THAT:

12. The Applicant be given a final extension of time to 5 pm (Nairobi time) on Wednesday 17 March 2010 to comply with Order No. 028.

13. The Respondent will be given until 5 pm (Nairobi time) on Monday, 22 March 2010, to provide their concise response of no more than three (3) pages as previously ordered.

14. A case management discussion will take place at 10 am on 24 March 2010, if deemed necessary.

15. The hearing on the merits of the claim will take place on 29 and 30 March 2010.

16. If the Applicant does not comply with this Order, his applications (UNDT/NBI/2009/02 and UNDT/NBI/2009/06) will be struck out in their entirety for failing to comply with an Order of the Tribunal, the primary purpose of which is to facilitate a fair hearing of the substantive issues in the claim.

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(Signed)

Judge Goolam Meeran

Dated this 15th day of March 2010

Entered in the Register on this 15th day of March 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi