



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/056

Order No.: 81 (NBI/2010)

Date: 13 May 2010

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

BEKELE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION FOR LEAVE TO ADD A
WITNESS**

Counsel for Applicant:

Adolph Bishanga

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat.

1. Introduction

1.1 On 10 March 2010, the Tribunal ordered the parties to confirm the witnesses they intended to call by or before 31 March 2010. On 26 April 2010, the Applicant filed his list of witnesses and summaries of evidence.

1.2 On 28 April 2010, the Tribunal ordered that the hearing of this case be adjourned until 12 May 2010.

1.3 On 3 May 2010, the Respondent filed a Motion requesting a further adjournment of the case to 19 May 2010 which the Tribunal granted on 7 May 2010.

1.4 By this Motion, the Respondent requests to add a witness, Mr. Ourgie, a UNECA Security Officer, to address additional allegations set out in the Applicant's summaries of evidence. The Respondent avers that Mr. Ourgie attended at an Addis Ababa sub-city police station on 17 April 2006 and assisted in procuring the Applicant's release from custody. The Respondent avers that Mr. Ourgie is able to provide relevant and probative evidence in relation to the issues in this proceeding and that it is in the interests of justice that he appears as a witness at the hearing.

2. Considerations

2.1 Pursuant to Article 7 of the Statute of the UNDT and Article 36 (1) of the UNDT Rules of Procedure, the Tribunal adopts the following test in determining the Respondent's Motion:

- (i) The timeliness of the Respondent's disclosure of his witness to allow the Applicant to prepare his response and to conduct an effective cross-examination;
- (ii) Whether the addition of the witness will infringe on the Applicant's right to have his case disposed of without undue delay; and
- (iii) The relevance of the witness' testimony to the issues in this case.

2.2 Having applied the above-stated test to the facts in this case, the Tribunal concludes that it would be in the interests of justice to hear Mr. Ourgie's testimony in this case.

FOR THESE REASONS, the Tribunal,

GRANTS the Respondent's Motion to add Mr. Ourgie to the Respondent's Witness List.

(Signed)

Judge Nkemdilim Izuako

Dated this 13th day of May 2010

Entered in the Register on this 13th day of May 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi