



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

NCUBE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE RESPONDENT'S
MOTION TO WITHDRAW A WITNESS
AND CONSEQUENTIAL ORDER ON
CASE MANAGEMENT**

Counsel for the Applicant:

Daniel Trup, OSLA

Alexandre Tavadian, OSLA

Counsel for the Respondent:

Stephen Margetts, ALS/OHRM

Nicole Wynn, ALS/OHRM

Introduction and Procedural History

1. The Applicant joined the Office for Coordination of Humanitarian Affairs (OCHA) as a National Professional Officer in Zimbabwe in 2007. On 11 July 2010, OCHA deployed him to Afghanistan on a one-year fixed-term appointment as a Humanitarian Affairs Officer at the P3 level. His appointment was extended through 20 March 2012, and not renewed thereafter.
2. On 11 May 2012, the Applicant filed the present Application with the United Nations Dispute Tribunal (UNDT) in New York challenging OCHA's decision to separate him from service on grounds of unsatisfactory performance.
3. On 18 June 2012, the Respondent filed his Reply to the Application.
4. The UNDT in New York issued Order No. 281 (NY/2013) transferring this case to the UNDT in Nairobi.
5. On 28 November 2013, the UNDT in Nairobi issued Order No. 258 (NBI/2013) advising the Applicant that representation by counsel would assist him and the Tribunal in the conduct and management of this case. To this end, the Tribunal directed the Registry to serve the Order on the Office of Staff Legal Assistance (OSLA) to facilitate the process.
6. On 3 December 2013, the Applicant formally enlisted the services of OSLA.
7. On 13 December 2013, counsel for the Applicant filed a motion for leave to amend the Application.
8. The Respondent filed his submissions in response to the Motion on 23 December 2013.

9. On 15 January 2014, the Tribunal issued Order No. 005 (NBI/2014) allowing the Applicant to amend his Application and adjusting the timeline for the Respondent to file his reply.

10. The Applicant filed his amended Application on 16 January 2014.

11. The Respondent replied to the amended Application on 26 February 2014.

12. On 4 November 2014, the Tribunal issued Order No. 244 (NBI/2014) directing counsel for both Parties to agree and file joint submissions on the facts and issues in this case, and to indicate their position on the need for an oral hearing.

13. On 2 December 2014, the Parties filed their joint submissions.

14. Both Parties indicated that an oral hearing is necessary in this case.

15. Three hearing days were scheduled covering 2-5 February 2015, and trial commenced as scheduled.

16. It became apparent the three afternoons scheduled for the matter to be heard was insufficient and that a further six hearing days was necessary for the testimony of the Respondent's three remaining witnesses.

17. On 6 February 2015, the Registry wrote to the Parties setting the continuation of this trial down for 14-16 April and 21-23 April 2015.

18. On 8 April 2015, counsel for the Respondent filed a motion seeking a rescheduling of the continuation of this trial because of the absence of his "spouse from New York" and the "consequent change in the allocation of family responsibilities."

19. Counsel for the Applicant responded to the Respondent's request indicating that he did not object to the matter being rescheduled.

20. On 8 April 2015, the Tribunal issued Order No. 113 (NBI/2015) denying the Respondent's motion to have the hearing rescheduled and directed the Respondent to make the necessary arrangements for the matter to proceed as scheduled.

21. On 9 April 2015, the Respondent filed a Response to Order No. 113 (NBI/2015) seeking a postponement of the hearing for one day to allow the newly assigned co-counsel time to prepare for the hearing.

22. On 10 April 2015, the Tribunal issued Order No. 114 (NBI/2015) allowing the Respondent's request.

23. The hearing resumed on 15 April 2015. Co-counsel for the Respondent sought the court's indulgence to have the three remaining witnesses testify over a three day period, which request was also granted.

24. On the morning of 21 April 2015, the Registry wrote to the Respondent asking for the contact details of Mr Aidan O'Leary who was to testify later that afternoon.

25. Counsel responded saying she had written to Mr O'Leary and would revert as soon as she heard from him.

26. Later that morning, counsel wrote to the Registry:

I have located a note indicating that Mr. O'Leary might be reached at +92 345 500 3644. I have tried the number, but there currently is no response. You might want to test the number closer to the hearing time. I will let you know if Mr. O'Leary responds to my message of today with a different contact number.

27. The hearing commenced as scheduled at 1400hrs that afternoon, and the witness remained uncontactable.

28. Later that afternoon, the Respondent filed the subject Motion of the present decision seeking to withdraw the witness and close his case given the “oral testimony presented to the Tribunal and the written evidence on record”.

DELIBERATIONS

29. The Tribunal urges the Parties to treat the Court’s time and resources with the required care and respect.

30. The Tribunal has in previous orders noted its concern as to the conduct of counsel for the Respondent in this matter. The levity with which he has conducted himself in this case will, if not corrected, eventually compromise the Secretary-General’s defence in cases before the Tribunal.

31. The Respondent’s Motion to withdraw the witness and close his case is hereby **GRANTED**.

32. Parties are **DIRECTED** to file their respective closing submissions by **15 May 2015**.

Case No. UNDT/NBI/2013/074

Order No.: 122 (NBI/2015)

(Signed)

Judge Vinod Boolell

Dated this 24th day of April 2015

Entered in the Register on this 24th day of April 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi