



**Before:** Judge Coral Shaw  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

ANYETEI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON APPLICANT'S MOTION  
FOR EXTENSION OF TIME TO  
COMPLY WITH ORDER NO. 177  
(NBI/2016)**

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**Counsel for the Applicant:**  
Sam Okudzeto, Sam Okudzeto & Associates

**Counsel for the Respondent:**  
Federica Midiri, UNFPA

## **Introduction**

1. The Applicant challenges the decision of the Executive Director of the United Nations Population Fund (UNFPA) dated 22 January 2015 to separate her from service with compensation in lieu of notice and without termination indemnity following a disciplinary investigation.

2. The Applicant filed her claim dated 8 May 2015 through Counsel on 11 May 2015, which was assigned to Judge Vinod Boolell.

3. The Respondent filed his Reply on 15 June 2015. On 10 October 2015, and without leave, the Applicant filed a response to the Respondent's Reply. On 13 October 2015, the Respondent filed a motion seeking leave to file a response to the Applicant's response to his Reply of 15 June.

4. By Order No. 337 (NBI/2015) dated 23 October 2015, the case was transferred to the undersigned judge.

5. On 3 November 2015, the Tribunal issued Order No. 350 (NBI/2015) in which the Respondent's motion for leave to reply was granted and case management orders in preparation for the determination of the case were issued. The parties were required to comply by 16 November 2015.

6. Additionally, the Tribunal informed the parties in Order No. 350 that the presiding judge would be sitting in Nairobi during April and May 2016 and would conduct any required hearings in this case during this time. The parties were ordered to indicate their availability and that of their witnesses for an oral hearing during the months of April and May 2016.

7. The Respondent filed his response to the Applicant's submissions on his Reply on 9 November 2015.

8. The parties responded to Order No. 350 on 16 and 17 November 2015.

9. By Order No. 004 (NBI/2016) dated 13 January 2016 (Notice of Hearing and Scheduling order), the parties were informed of the Tribunal's decision to hold an oral hearing from 12 -14 April 2016.

10. On 24 March 2016, the Tribunal held a case management discussion with the Counsel for both parties concerning arrangements for the oral hearing. Counsel for the Applicant advised that he would call only the Applicant as a witness. Counsel for the Respondent advised that there would be one witness for the Respondent, Mr. Paolo Bernasconi. The Tribunal ordered the parties to submit a joint hearing bundle and signed statements of evidence for their witnesses on or before 8 April 2016.

11. On 4 April 2016, the Tribunal issued Order No. 177 (NBI/2016) which recorded the discussion and orders made orally at the case management discussion held on 24 March 2016.

12. On 7 April 2016 at 17:35 hours<sup>1</sup>, Counsel who had represented the Applicant at the case management discussion, Mr. Ken Tshribi, emailed his notice of withdrawal as counsel for the Applicant to the UNDT Nairobi Registry.

13. At approximately 21:00 hours on 7 April 2016, the Applicant's newly retained counsel, Mr. Sam Okudzeto, filed a Motion for an extension of time for two months to comply with Order No. 177.

### **Considerations**

14. Mr. Okudzeto advanced the following reasons in support of his Motion:

- a. Mr. Tshribi informed the Applicant on 5 April 2016 of the withdrawal of his services and formally notified the Tribunal on 7 April;
- b. The Applicant retained his services on 6 April;

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<sup>1</sup> The email was sent after close of business for the UNDT Nairobi Registry.

c. That specific orders of the Tribunal relating to the filing of witness statements and documents to be relied on at trial were ordered by the Tribunal on 4 April 2016; and

d. In order for him to comply with the orders of the Tribunal, he needs two months to study the brief and documentation already filed before the Tribunal.

15. The Tribunal notes that the parties were informed in November 2015 (by Order No. 350 (NBI/2015)) that the Presiding Judge would be sitting in Nairobi during April and May 2016 and would conduct any required hearings in this case during this time. If the hearing of this case does not proceed on the notified hearing dates of 12, 13 and 14 April 2016 there are no alternative hearing days available to the Presiding Judge in April and May 2016 and the case will have to be transferred to another judge for determination. The matter would then be scheduled for a hearing based on the new judge's hearing calendar, which could take up to one year.

16. Further, the Tribunal reminds the parties that its Orders regarding the filing of witness statements and the hearing bundle were in fact made orally in the presence of counsel during the case management discussion on 24 March 2016. Order No. 177 (NBI/2016) dated 4 April 2016 restated the Tribunal's oral orders of 24 March. The parties had adequate notice of both the dates of the oral hearing and of the date by which they were to submit the witness statements and hearing bundle.

17. In light of the fact that the oral hearing in this matter is scheduled to begin in less than two business days on 12 April 2016 and time is now of the essence, and taking into account the very recent change of counsel for the Applicant, the Tribunal makes the following Orders:

- a. The Motion for an extension of time for two months to comply with Order No. 177 (NBI/2016) is denied. The time for filing in accordance with that order is extended to 11 April 2016.
- b. The oral hearing will commence on 12 April 2016 as indicated in Order No. 004 (NBI/2016) dated 13 January 2016.
- c. If the Applicant is unable to comply with order (a) and/or (b) the hearing will be vacated and the management of the case will be allocated to another judge.

*(Signed)*

Judge Coral Shaw

Dated this 8<sup>th</sup> day of April 2016

Entered in the Register on this 8<sup>th</sup> day of April 2016

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi