



Before: Judge Eleanor Donaldson-Honeywell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

AMANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE RESPONDENT'S
INTERLOCUTORY MOTIONS**

Counsel for the Applicant:

Setondji Roland Adjovi

Counsel for the Respondent:

Romy Batrouni, AAS/ALD/OHR, UN Secretariat

Jacob van de Velden, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant was an Engineer at the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”). He held a fixed-term appointment at the P-3 level, and was based in Bamako, Mali, having previously served with the Organization since 2006.

Procedural History

2. The Applicant seeks to challenge the Respondent’s 22 April 2020 decision to separate him from service on disciplinary grounds with compensation *in lieu* of notice and 25% of the termination indemnity that would ordinarily be due to him.

3. On 26 February 2021, the Respondent filed his reply to the application. The Respondent submits that the impugned decision was lawful. According to the Respondent, the Applicant’s conduct of violating certain local laws in 2007 and failing to disclose this information in 2013 when applying for a job opening at MINUSMA contravened staff rule 1.2(b) and staff regulation 1.2(b), which actions have been properly established as serious misconduct.

4. The Tribunal held a case management discussion (“CMD”) with the parties on 14 September 2021.

5. On 21 September 2021, the Tribunal issued Order No. 199 (NBI/2021) recording the contents of the CMD and setting in writing the orders given during the course of the discussion.

6. On 27 September 2021, the Applicant disclosed a number of documents to opposing counsel and the Tribunal. Among those documents is the request before the court of first instance in Abidjan, Cote d’Ivoire, for interpretation and rectification of the judgment rendered against him on 2 March 2009.

7. On 28 September 2021, in response to the Applicant’s disclosures, the Respondent moved the Tribunal to dismiss the case with costs on grounds that those

disclosures show that the Applicant has misrepresented facts before the Tribunal; namely the fact of having sought review of the judgment rendered against him.

8. There were additional emailed and filed requests by the Respondent including a submission filed without leave on 5 October 2021. This submission sought revision of the Tribunal's CMD Order.

9. On 8 October 2021, the Applicant responded to the Respondent's motion filed on 28 September 2021.

10. On 11 October 2021, the Respondent filed submissions in response to the Applicant's submissions. This was done without leave of the Tribunal.

11. On 11 October 2021, *both parties* filed their respective witness statements in accordance with the deadline ordered by the Tribunal.

12. On the same day, the Respondent filed another motion for dismissal of the proceedings with costs; this time on grounds that the Applicant had failed to adhere to the deadline set for the filing of witness statements. The Respondent also moved the Tribunal to draw adverse inference from this alleged failure, and to proceed to adjudicate on this matter without an oral hearing.

Deliberations

13. The Tribunal will begin by reminding Counsel for the Respondent that his incessant and intemperate filing of motions and requests is not acceptable. Counsel, as an officer of the court, should know better and is best advised to be mindful of the tone and tenor of his submissions.

14. The Tribunal has nevertheless considered the contents of all the submissions before it and states its position as follows.

15. The Tribunal agrees that additional translations of the documents on the record are necessary, but does not consider it necessary (nor is it feasible) to have the entire record translated. To this end, the Tribunal has sought translation of other portions of the record.

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16. All requests for proceedings to be dismissed with costs, and without an oral hearing are refused.

17. The motion to dismiss for failure to comply with the order on the filing of witness statements was premature as the Applicant did somewhat comply. He has attached a detailed statement of the evidence he plans to give. As to the other witnesses mentioned by Counsel for the Applicant, a very brief statement of what they may testify to is provided. The brief statement is not what the Tribunal had in mind when it ordered the filing of statements. Therefore, Counsel is advised to take note that their testimony at the hearing will be limited to testifying on information already on record for the Applicant i.e., as his corroborating witnesses. No surprise new information will be permitted from these witnesses at trial.

18. The parties will be limited at trial to giving evidence based on the filed documents.

19. Parties may submit at trial on the adverse inferences and costs implications arising from the witness evidence content information filed by the Applicant.

Order

20. The hearing in the matter of *Amani v Secretary General of the United Nations* will proceed, in open session, as previously directed, on **27, 28 and 29 October 2021** on MS Teams commencing at **1400hrs** (Nairobi time).

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 13th day of October 2021

Entered in the Register on this 13th day of October 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi