



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/012

Judgment no.: UNDT/2010/038

Date: 03 March 2010

Original: English

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**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

ATTANDI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**  
David Andati-Amwayi

**Counsel for respondent:**  
HRMS/UNON

## **The facts**

1. The Applicant joined the Information and Communication Technology Services (ICTS) at the United Nations Office at Nairobi (UNON) on 12 September 2001 as a Programming Assistant on a fixed-term appointment and served in this capacity for seven years.
2. On 8 December 2008, the Applicant was informed that his fixed-term appointment with ICTS/UNON would not be renewed beyond 31 December 2008.
3. On 23 December 2008, the Applicant wrote to the Secretary-General to request administrative review of the decision not to renew his fixed-term contract beyond 31 December 2008.
4. On the same day, the Applicant filed a request for suspension of action of the same decision with the Joint Appeals Board (JAB) in Nairobi.
5. On 1 January 2009, the Applicant's contract was extended through 31 January 2009 in order to allow the JAB to consider the request for suspension of action of the decision not to renew his contract.
6. On 29 January 2009, the JAB recommended that the Secretary-General rejects the Applicant's request for suspension of action. On 30 January 2009, the Applicant was informed that the Secretary-General decided to follow the JAB's recommendation.
7. In its review of 9 March 2009, the Administrative Law Unit (ALU) upheld ICTS/UNON's decision not to renew the Applicant's contract, arguing that it was a proper exercise of discretionary authority on the part of management.

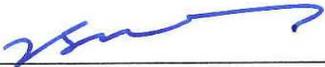
8. On 10 April 2009, the Applicant filed an incomplete statement of appeal with the JAB to challenge the non-renewal of his fixed-term appointment. The Applicant was granted one month to file his statement of appeal pursuant to the then applicable JAB rules of procedure.
9. On 1 May 2009, the Applicant filed an appeal with the United Nations Administrative Tribunal (UNAT) to contest the Secretary-General's decision of 30 January 2009 to uphold the decision not to suspend the non-renewal of his contract.
10. By letter dated 18 May 2009, the Applicant requested an extension of time to file his statement of appeal. On 2 June 2009, the JAB Presiding Officer granted him an extension up to 20 June 2009.
11. By letter dated 10 June 2009 to the Acting Secretary of the JAB, the Applicant requested a stay of proceedings "pending the final determination of the Applicant's application for judicial review by the UNAT of the Suspension of Action decisions of the JAB and the Secretary-General", dated 29 and 30 January 2009 respectively.
12. On 16 June 2009, the JAB Acting Secretary advised the Applicant that, pursuant to rule 111.2 (c) (iii), the decision of the Secretary-General in respect of suspension of action is not subject to appeal before the UNAT and, consequently, the filing of an appeal against such decision could not operate as a stay of proceedings in any appeal. The Applicant was also informed that the pending JAB case would be transferred to the United Nations Dispute Tribunal (UNDT) as of 1 July 2009.
13. On 1 July 2009, the incomplete appeal was transferred to the UNDT pursuant to ST/SGB/2009/11 and registered as case no. UNDT/NBI/2009/012.

14. By email dated 5 January 2010, the Registrar of the UNDT in Nairobi advised the Applicant that his appeal was still incomplete and that a proper application needed to be filed. On 6 January 2010, the Applicant replied that he had requested a stay of proceedings before the JAB “pending the outcome of his Application for Review by the UNAT”. Applicant further submitted that, “In order to avoid any prejudice at this stage, the Applicant [was] serious about pursuing the substantive application after the UNAT ha[d] delivered its decision”.
  
15. By email dated 6 January 2010, the Registrar of the UNDT in Nairobi requested the Applicant to provide evidence that he had been granted a stay of proceedings before the JAB while his case was under review by the UNAT. The UN email tracking system shows that the Applicant was in receipt of that email on 11 January 2010. However there was no reply from the Applicant.
  
16. In view of the failure of the Applicant to respond to the Registrar’s request to file a proper application, the Tribunal issued an Order on 22 January 2010 clearly directing the Applicant to file his matter by 15 February 2010, and that failure to comply with this order would result in the case being struck out. On 25 January 2010, the email tracking system shows that the Applicant was in receipt of the email of 6 January 2010 serving the Order. To date, there has been no application filed nor any reply from the Applicant.

### **Considerations**

17. The Tribunal takes note that the Applicant has failed to file his application within the deadline given to him in the Tribunal’s Order of 22 January 2010 and even beyond. It also notes that the Applicant has not provided any reasonable explanation as to why he did not comply with the Order of the Tribunal.

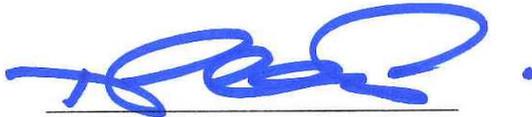
18. By his behaviour and attitude the Applicant has displayed a singular blatant ignorance of a court order. His conduct is one of contempt of the Tribunal. This attitude does not befit persons who like the Applicant come to seek justice and a vindication of their rights before the Tribunal.
19. In the light of the foregoing, the Tribunal ORDERS that the matter of *Attandi v. Secretary-General of the United Nations*, registered as case no. UNDT/NBI/2009/012, should be **struck out**.



Judge Vinod Boolell

Dated this 03<sup>rd</sup> day of March 2010

Entered in the Register on this 03<sup>rd</sup> day of March 2010



Jean-Pelé Fomété, Registrar, UNDT, Nairobi