



**Before:** Judge Goolam Meeran

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

ATOGO

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:**  
Joerg Weich, UNON

## **Introduction**

1. The Applicant, a Security Lieutenant at the G-6 level, brought two claims with the former Joint Appeals Board (JAB) raising a series of allegations of less favourable treatment regarding what may be considered as an abuse of power on the part of senior management as well as non-promotion to the grade of security inspector at the G-7 level.

## **UNDT Proceedings**

2. In accordance with ST/SGB/2009/11 on Transitional Measures Related to the Introduction of the New System of Administration of Justice, the JAB transferred its pending cases to the United Nations Dispute Tribunal (UNDT) on 1 July 2009. The Applicant's cases were transferred to the UNDT in Nairobi and were assigned case numbers UNDT/NBI/2009/02 and UNDT/NBI/2009/06.

3. By a letter dated 26 January 2010, the Tribunal instructed the parties to respond to queries set out in a document entitled "Guidelines to Parties" (Guidelines) by 9 February 2010.

4. By a letter dated 1 February 2010, the Applicant's representative requested a copy of the authority given to the Respondent's representative to act as counsel and/or co-counsel for the Respondent. By an email dated 2 February 2010, the UNDT Registry informed Applicant's representative that the Tribunal "considers that a party to a case has an absolute right to be represented by counsel of his/her choice".

5. On 5 February 2010, the Applicant's representative made an application to strike out the response and for summary judgment to be entered in favor of the Applicant. He also applied for a transfer of the case to New York or Geneva on the grounds that there was a conflict of interest because:

- i. The UNDT judge and the UNDT legal officer, who had conduct of the case at that time, were present at an evening function of the Inter-Agency Security Management Network (IASMN), hosted by UNON's Security and Safety Service (SSS), on 1 February 2010.
- ii. The representative of the Respondent is one of the Human Resources Officers who is directly involved in the problems within SSS/UNON, including matters that are presently before the UNDT Nairobi.
- iii. UNDT Nairobi failed to provide the Applicant with a copy of the authority given to the Respondent's representative to act as counsel and/or co-counsel for the Respondent.
- iv. UNDT Nairobi's inability to dispense justice with the requisite independence, professionalism and impartiality in view of the factors mentioned immediTw -4-1(dig(00)er Nct00

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No. 028 and that since the matter was now before the UNAT; the Applicant “avoids discussing the matter outside the jurisdiction of UNAT New York”.

## **Assessment**

13. Parties to proceedings before the Tribunal have a right to fair consideration of their respective claims within a reasonable time. They are also entitled to receive, if the Judge so considers, guidance in relation to the conduct of the case.

14. Article 19 of the UNDT Rules of Procedure provide for case management orders to be made for the fair and expeditious disposal of cases and to do justice to the parties. Such orders, as was explained to the Applicant by Order Nos. 038 of 15 March 2010 and 049 of 22 March 2010, were intended to be of assistance to all concerned.

15. A party to proceedings has a duty to comply with an Order of the Tribunal and particularly, an interlocutory case management order pursuant to Article 19. To persist in disobeying such orders despite full explanations being provided as to their purpose will risk the claim or the response, as the case may be, being struck out.

## **Conclusion**

16. The Applicant was given several opportunities to comply with Order No. 028 by simply presenting a concise statement identifying the precise nature of the claim and issues that he wants the Tribunal to determine. The Tribunal hoped that the Applicant and his representative would reconsider the stance they had taken so that a determination of the substantive merits of the Applicant's claims could take place without further delay. I am satisfied that the Tribunal has made every effort possible to ensure that justice is done in this case.

17. The efforts of the Tribunal notwithstanding, the Applicant and his representative have steadfastly refused to comply with the Order.

18. For the reasons given above, I order that the consolidated claim (in applications UNDT/NBI/2009/02 and UNDT/NBI/2009/06) be struck out in its entirety.

