



Case No.: UNDT/NBI/2011/023

Background and Procedural History

1. On 13 August 2012, the Tribunal issued Order No. 108 requiring the appearance of the Executive Director of UN-HABITAT. The Executive Director was called to respond to the Tribunal's queries as to his role in the separation from service of the Applicant following the issuance of Order No. 033 (NBI/2011) prohibiting the separation pending a final determination of the case.¹

2. Efforts were made by the Tribunal to conform to the schedule of the Executive Director, so the hearing was set down for 9 October 2012.

3.

matter down for hearing on 25 October 2012 for the testimony of the Executive Director of UN-HABITAT.³

7. On 22 October 2012, the Registry wrote to the Respondent informing him that it was still waiting to be advised on counsel representing him in this matter.

8. On the same evening, the Respondent filed his Request for an Adjournment of the Hearing Scheduled for 25 October 2012, following an appeal filed by the Respondent against UNDT Order Numbers 127 (NBI/2012) and 132 (NBI/2012).

9. The Motion, filed and signed by Mr N'Dow, sought to “inform the Tribunal that [the Respondent was yet to] finalise the necessary arrangements for designating Counsel to represent the Respondent in the contempt proceedings.”

10. The Motion went on to submit that the “[R]espondent has, however, since filed an Appeal” against Orders No. 127 and 132, and moved the UNDT to “adjourn the proceedings pending the Appeal Tribunal’s determination of the appeal.”

DELIBERATIONS

11. The Respondent’s Motion raises two issues for the Tribunal: a) the propriety of Mr N'Dow continuing to act as counsel for the Respondent in respect of the matter of contempt and b) whether the filing of an appeal against an interlocutory order should properly result in a matter being stayed.

Representation of the Respondent

12. This is not the first time the Respondent has sought to have a hearing on the matter of contempt adjourned on grounds of inadequate representation. On 31 October 2011, the Respondent filed a motion for the adjournment of a hearing which had been set down for 2 November 2011.

³ See Order No 108 (NBI/2012) of 13 August 2012; Order No 109 (NBI/2012) of 16 August 2012.

13. The Tribunal recalls its finding in the Decision on the Respondent's Motion for Adjournment.

The Tribunal finds it firstly necessary to comment on the timeliness of the Respondent's Motion. That a Motion for adjournment is filed two weeks after the Order was issued and barely two days before the hearing smacks of the dilatory conduct the Tribunal has previously remarked upon.

The length of time that has passed between the Applicant filing his motion for the institution of contempt proceedings, the issuance of Orders 110, 112, 117 and 128, makes the Respondent's submissions on the need for an adjournment both weak and implausible.

The Respondent has had ample time and notice to arrange for adequate representation[...]

For the purposes of this court, the names of several counsel are on record as being the designated representatives of the Secretary-General as the Respondent in proceedings before the United Nations Dispute Tribunal.

While adequate legal representation is advisable for the fair conduct of proceedings, and should be available to a party who chooses to be represented, it is entirely inappropriate for a party to attempt to hold the proceedings to hostage for reasons such as those adduced in the present Motion.

Given the gravity of the matter at hand, which the Respondent readily acknowledges, the Tribunal finds the tactics being employed by the Respondent both unfortunate and curious.

Be that as it may, and given the lateness of the hour, the Tribunal will grant the Motion for Adjournment to **Tuesday, 8 November 2011.**

The Respondent is directed to make the necessary arrangements for his representation. The Tribunal warns that failure to attend court may result in further consequential orders as appropriate. [Emphasis added]

14. The Tribunal is highly concerned that the Respondent continues to engage in tactics it has previously employed and been warned against.

15. Given the gravity of the allegations against him, the Tribunal expected better judgment and due diligence on the part of the Respondent in making the necessary arrangements for representation.

16. The Tribunal finds the Respondent's motion on this issue to be frivolous and an abuse of process.

Adjournment Pending Determination of an Appeal

17. On 8 October 2012 the Respondent was directed to make proper arrangements to be legally represented. The Respondent requested the Tribunal for additional time to make appropriate arrangements. The Respondent also indicated to the Tribunal that the Executive Director was available for his appearance between 22 and 25 October 2012. Giving due consideration to the schedule of the Executive Director, and counsel for the Applicant, the matter was set for hearing at 1400hrs on 25 October 2012.

18. Instead of complying with his own undertaking, the Respondent has chosen to move for yet another adjournment on ground that the Orders 127 and 132 of 8 and 16 October 2012, respectively, have been appealed.

19. The UN Appeals Tribunal (UNAT) has clearly held that "only appeals against final judgments will be receivable. Otherwise, cases could seldom proceed if either party was dissatisfied with a procedural ruling." 725 TD20004 Tc.0596 Tw16October 1.6(t fic)-5.th.

Most interlocutory matters will not be receivable—for instance, matters of evidence, procedure, and trial conduct. Only when it is clear that the UNDT has exceeded its jurisdiction will a preliminary matter be receivable.

20. This principle was reiterated in the matter of Villamorán

The Appeals Tribunal has consistently emphasised that appeals against most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure, and trial conduct. An interlocutory appeal is only receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence.

[...]

Article 8(6) of the Rules of Procedure of the Appeals Tribunal provides that “[t]he filing of an appeal shall suspend the execution of the judgement contested”. This provision however does not apply to interlocutory appeals. It falls to the Appeals Tribunal to decide whether the UNDT exceeded its jurisdiction and the Administration cannot refrain from executing an order by filing an appeal against it on the basis that the UNDT exceeded its jurisdiction. [Emphasis added]

21. The Respondent’s application to have the hearing adjourned pending determination of the appeal can only be described as misconceived and erroneous in law.

CONCLUSION

22. The Respondent’s motion is **DISMISSED**.

23. The Notice of Hearing issued in

(Signed)

Judge Boolell

Dated this 24th day of October 2012

Entered in the Register on this 24th day of October 2012

(Signed)

Legal Officer for

Jean-Pelé Fomété, Registrar, UNDT, Nairobi