



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/112

OrderNo.: 091 (NBI/2017)

Date: 3 May 2017

Original: English

Before: Judge Alexander W. Hunter Jr.

Registry: Nairobi

Registrar: Abena Kwakye Berko

SECRETARY GENERAL
OF THE UNITED NATIONS

ORDER ON THE APPLICANT'S
REQUEST FOR WITHDRAW

Introduction

8. On 4 November 2015, the Tribunal issued Order No. 358 (NBI/2015) partially granting the Respondent's motion. The Respondent filed a reply to the application for interim relief on 5 November 2015. The Tribunal sought the Applicant's response to the Respondent's reply, particularly on the issue of receivability. The Applicant filed his response on 6 November 2015.

9. On 9 November 2015, the Tribunal issued Order No. 365 (NBI/2015) dismissing the application for suspension of action. The Tribunal also directed service of the order on the Office of the Ombudsman and Mediation Services (OMS) to facilitate "meaningful consultations towards having this matter resolved" and informed the parties that a notice of hearing will issue shortly after the filing of the Respondent's reply.

10. On 30 November 2015, the Respondent filed a Motion for Directions. The Respondent asked the Tribunal to "allow the Parties [to] comply with the Tribunal's observations on Order No. 365 (NBI/2015)" and to "suspend proceedings to allow the Parties to make full efforts and focus at mediation for the fair and expeditious disposal of the case."

11. The Applicant responded to the Respondent's motion on 1 December 2015 and urged the Tribunal to "reject the request of the Respondent to admit into evidence any mediation documentation."

12. On 3 December 2015, the Tribunal issued Order No. 383 (NBI/2016) granting the Respondent's Motion for Suspension of Proceedings pending mediation and extended the deadline for the filing of the Respondent's reply.

13. On 11 January 2016, the Ombudsman requested (on behalf on the parties) that the suspension of proceedings be lifted. (NBI/2015/12/038 (R1)-F128-2196) 0.9981 0 0 1 119.04 169.68 Tr

15. The Applicant filed his submissions in response to the Respondent's reply on 12 February 2016.
16. On 14 April 2016, the Ethics Office concluded its investigation into the Applicant's formal complaint of harassment and abuse of authority by the Executive Secretary of UNECA pursuant to ST/SGB/2008/5.
17. On 1 July 2016, the Applicant was given notice of the Organisation's decision not to renew his contract upon its expiry. The Respondent cited the "irreversible breakdown in working relationship between him and senior management, mutual loss of trust, confidence and good faith which has made the working environment untenable."
18. On 5 July 2016, the applicant filed for protection against retaliation with the Ethics Office.
19. On 6 July 2016, the Applicant moved for a stay of the Respondent's decision not to renew his contract pursuant to art. 13 of the Rules of Procedure.
20. On 7 July 2016, the Respondent informed the Applicant that he has suspended the decision not to renew the latter's contract, thus making the application for a stay of the decision moot. The Tribunal accordingly issued Order No. 333 (NBI/2016) striking out the application for suspension of action.
21. On 4 August 2016, the parties were informed that this matter was transferred to the docket of Judge Goolam Meeran.
22. On 5 August 2016, the Tribunal issued Order No. 409 (NBI/2016) setting the matter down for a Case Management Discussion (CMD).
23. On 9 August 2016, the Ethics Office found that there was *prima facie* case of retaliation and ordered the matter transferred to the Office of Internal Oversight Services (OIOS) for investigation.

24. The CMD took place on 16 August 2016.
25. On 17 August 2016, the Tribunal issued Order No. 415 (NBI/2016) for the purposes of case management.
26. On 22 August 2016, the Applicant filed a substantive application challenging the Respondent's decision not to renew his contract with the Organisation. This application is registered in the UNDT's records as UNDT/NBI/2016/062. The new application included a motion for consolidation of UNDT/NBI/2016/062 with UNDT/NBI/2015/112.
27. On 21 September 2016, the Respondent filed his reply to UNDT/NBI/2016/062 urging the Tribunal to dismiss both the application and the motion for consolidation of the two cases.
28. Following the completion of Judge Meeran's term at the UNDT in Nairobi, this matter was transferred to the docket of Judge Hunter in December 2016.
29. On 9 January 2017, the Respondent filed a motion to have the Applicant's case in respect to the nonrenewal (2016/062) dismissed as moot on the grounds that the Acting Executive Secretary of UNECA has decided to "renew the Applicant's contract for two years."
30. On 11 January 2017, the Tribunal sought the Applicant's response to the Respondent's motion. The Applicant responded to the motion on 12 January 2017 strenuously objecting to the Respondent's motion to have case 2016/062 dismissed.
31. The Applicant however undertook to withdraw his application (2016/062) once the anticipated final settlement of the ~~case~~ dispute and contract extension ~~had~~ been reached.

32. On 23 January 2017, the Applicant filed a Motion to Withdraw Proceedings on grounds that the Respondent has reversed “its decision to separate Mr. Kelapile” and has issued a contract extension.

33. On 30 January 2017, the Tribunal issued Order No. 021 (NBI/2017) granting the Applicant’s motion and striking case UNDT/NBI/2016/062 from the Tribunal’s docket.

34. On 2 February 2017, the Tribunal issued Order No. 023 (NBI/2017) setting this matter down for a case management discussion on 7 February 2017, commencing at 1500hrs (Nairobi time).

35. The CMD took place as scheduled.

36. The parties asy 0 1 119.0c1

Order

41. The Tribunal commends the parties for their sustained efforts at having this matter resolved without recourse to further litigation.

42. The Tribunal gratefully acknowledges the constructive approach adopted by the Acting Executive Secretary of the ECA, Abdalla Hamdok, that led to this matter being successfully and definitively resolved.

43. The Tribunal hereby GRANTS the Applicant's motion and ORDERS that the matter of *Kelapile v Secretary General of the United Nations* (UNDT/NBI/2016/112) be struck from the Tribunal's docket.

(Signed)

Judge Alexander W. Hunter Jr.

Dated this 3rd day of May 2017

Entered in the Register on this 3rd day of May 2017

(Signed)

Abena Kwakye Berko, Registrar, Nairobi