
UNITED NATIONS DISPUTE TRIBUNAL

Case Nos: UNDT/NE/2022/002
Order No: 081 (NE/2022)
Date: 15 July 2022
Original: English

Introduction

1 On 8 July 2022, the Tribunal held a case management discussion (“CMD”) in this case. Following the CMD, the Applicant filed a motion to strike out what he termed as the secret recording (audio and transcription), paragraph 26 of the Respondent’s reply and annex 7 of the reply.

2 On 12 July 2022, the Respondent filed his submissions in response to the Applicant’s 8 July 2022 motion to strike.

3 On 13 July 2022, the Applicant filed a motion for leave to file a rejoinder to the Respondent’s 12 July 2022 submissions. In the rejoinder, the Applicant requests the Tribunal to issue an order to schedule a hearing where the evidentiary admissibility issues raised in the 8 July 2022 motion could be further argued orally for a ruling prior to any hearing on the merits of the case.

Deliberations

4 The contents of paragraph 26 of the Respondent’s reply and annex 7 to the reply are new submissions and/or proposed evidence at best. Objections to such materials can only amount to new disagreements with the opposite party’s submissions and proposed evidence which is natural. Such disagreements do not constitute a ground for a motion to strike out the contested materials.

5 As the Appeals Tribunal has held in *Beziichai*¹, it is not up to a party to request that the Tribunal strike out each and every argument they do not agree with, since it is natural that the parties may dispute certain issues or matters at stake.

6 The objection to the reception of the audio and transcript is premature and would best be raised during the main hearing and in closing submissions and addressed by the Tribunal as part of the final judgment preparation process.

¹ *Beziichai* 2019 UNAT 918 Cor. 1, para 34. See also *Russo Got* 2021 UNAT 1100 para 44.

7 It is the role of the Dispute Tribunal to determine the admissibility of evidence and the weight to be attached to it². This should be done in the final judgment preparation process rather than being done in the piecemeal manner proposed by the Applicant. The suggestion that there should be a hearing to determine the admissibility of specified pieces of evidence if granted would lead to an unhealthy situation where the Tribunal would conduct mini hearings and draft a multiplicity of micro judgments before the main hearing and final judgment, which would be detrimental to judicial economy.

ORDER

8 The Applicant's motion to strike out the audio recording and the transcript, paragraph 26 of the Respondent's reply and annex 7 of the reply, is rejected in its entirety.

(Signed)

Judge Margaret Tibulya
Dated this 15th day of July 2022

Entered in the Register on this 15th day of July 2022

(Signed)

Abera Kwalye Berko, Registrar, Nairobi

² Messinger, 2011-UNAT-123 Para 33