
UNITED NATIONS DISPUTE TRIBUNAL

Case No: UNDT/NE/2021/100
Order No: 119(NBI/2022)
Date: 26 August 2022
Original: English

Before **Judge Margaret Tibulya**

Registry: **Nairobi**

Registrar:

Introduction

1 On 12 July 2022, the Applicant submitted a list of 14 witnesses including the victims, officers of the Conduct and Discipline Team, investigators from the Office of Internal Oversight Services and other persons that may have witnessed the events leading up to this case

2 On 27 July 2022, by Order No. 080 (NEI/2022), the Tribunal allowed the Applicant to call only five witnesses. The Tribunal determined that since most of the Applicant's proposed witnesses were interviewed during the investigations, in the interest of fairly and expeditiously disposing of the case, the interview records of most of the proposed witnesses would suffice. The Tribunal found that only five of the proposed witnesses would be interviewed. Order No. 080 (NEI/2022) allowed only five witnesses to be interviewed.

Deliberations

8 In *Bertucci 2010 UNAT-082*, paras 22 and 23, the United Nations Appeals Tribunal (“UNAT”) held that

under the new system of administration of justice, the Dispute Tribunal (“UNDT”) has broad discretion with respect to case management. As the court of first instance, the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties

9 Further, in *W1*¹ UNAT emphasized that

Firstly, Article 9(2) of the UNDT Statute and Article 17(6) of the UNDT Rules of Procedure (UNDT Rules) grant the UNDT the discretion to “decide whether the personal appearance of a witness or expert is required at oral proceedings”. Article 18(5) of the UNDT Rules also provides “The Dispute Tribunal may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate.” Further, Article 19 of the UNDT Rules grants the UNDT broad discretion in relation to case management; pursuant to Article 19 the UNDT may issue any order or give any direction which appears to the judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties

10 The Tribunal notes that the main reason the Applicant seeks to recall Mr. Waine is for him to testify where he was operating from during the investigation of this case, i.e. in South Sudan, Sudan or Canada. The Tribunal further notes that both Mr. Abbas Kouaard and Mr. Kies Ghazouari were not included on the Applicant’s initial witness list which was filed on 12 July 2022. In addition, the Applicant has not fully demonstrated the probative value of their testimony.

11 In view of the above and considering that the Applicant’s motion falls squarely within the case management authority of this Tribunal regarding evidence, procedure and trial conduct, and based on the progress of this case, which is at the closing submission stage, the motion is denied.

¹ *W1* 2015 UNAT-597, para 34

ORDER

12 The Applicant's motion for calling of additional witnesses is rejected

(Signed)

Judge Margaret Tibulya

Dated this 26th day of August 2022

Entered in the Register on this 26th day of August 2022

(Signed)

Abera Kwalye Berko, Registrar, Nairobi