

Facts and Procedure

1. On 24 June 2019, the Applicant filed an application challenging his separation from service for misconduct, with compensation *in lieu* of notice and without termination indemnity.
2. The Respondent filed a reply on 26 July 2019.
3. A case management discussion (“CMD”) took place on 26 February 2021.
4. On 2 June 2021, the Counsel acting for the Applicant informed the Tribunal, by an *ex parte* filing, that they were

forgePa

7. On 13 July 2021, the Tribunal issued Order No. 137 (NBI/2021) requesting the Applicant to respond to the allegations of abuse of process

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General will be unfairly disadvantaged in being unable to use them to establish his allegations of forgery and fraud as he is entitled to as we have outlined above. So, the UNDT's Order is, in this respect, effectively irremediable. Further, this would be a manifestly unreasonable consequence of the Order for the Secretary-General. The circumstances are so rare and exceptional that it is just to allow this element of the Order to be appealed.

- c. Paragraph 22

says, further supports the conclusion that this case should be dismissed. The Respondent's Counsel stated that the relevant document supporting the motion and documents in opposition to the motion were already in the Tribunal's records and hence it was not necessary to reargue the matter and that the Tribunal should make a ruling based on the documents on the record.

16. The Applicant stated that he understood the implications of the UNAT Judgment and agreed with the Respondent's interpretation that the matter should go for another CMD to discuss further conduct of the application for purposes of a hearing on the merits. He opposed the Respondent's request to summarily dismiss the application for manifest abuse of process.

17. The Applicant further recalled that he had withdrawn his claim for moral damages through motion filed on 2 June 2021. He confirmed that he would not be pursuing the claim for moral harm the subject of the disputed documents.

Considerations

18. The Tribunal may issue a summary judgment in an application if the requirements under art. 9 of the UNDT Rules of Procedure are met. It stipulates that,

[a] party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

19. According to this rule, the requirements that must be satisfied are twofold, that the material facts are not in dispute and that the party seeking summary judgment is entitled to judgement as a matter of law. Applying these elements to the motion by the Respondent, the Tribunal finds that it fails on both requirements.

20. The material facts are in serious dispute although the Respondent tried to argue that the parties are agreed that the disputed documents are false documents. The Applicant filed a motion and repeated in his oral presentation that the documents were drafts and that he had filed them erroneously. When he realized that the

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25. Therefore, as the jurisprudence stands, the jurisdiction of a Tribunal to award costs is narrowly restricted by statute to cases in which it determines that a party has manifestly abused the proceedings before it.⁵ Further, it has been held that the threshold is high for a finding of manifest abuse of process,

... for an applicant party to attain and recent case law illustrates that such an order will be rarely made, and usually after the party has been fairly warned of that consequence if the party's abuse of process continues.⁶

26. In interpreting and applying art. 9(2) of the UNAT Statute, which is *pari materiae* to art. 10(6) of the UNDT Statute, UNAT held that if a party provides the Tribunal with decisive information that is wrong and misleading, this amounts to a manifest abuse of process of very serious nature. Such action puts the entire integrity of the judicial system at risk—it may not only lead to undue and costly delays, but also lead to straightforwardly incorrect decisions.⁷ Even in that case, whose facts are almost similar to the case at hand, there was no suggestion that the Respondent's case be dismissed summarily on the ground that he had manifestly abused process. Instead, UNAT observed that “(w)here the Appeals Tribunal determines that a party has manifestly abused the appeals process” ... “it may award costs against that party”.⁸

27. The Applicant has consistently argued that he filed the documents in error and that he had promptly withdrawn the documents so as not to mislead the Tribunal. In this regard, in *Abu Rabei*⁹, UNAT held,

... experience shows that errors are made by the most assiduous organisations and by the most conscientious staff they employ, and

⁵ *Machanguana* 2014-UNAT-476, para. 12, citing to *Bi Bea* 2013-UNAT-370; *Wasserstrom* 2014-UNAT-457; *Tadonki* 2014-UNAT-400; *Gehr* 2013-UNAT-328; *Gehr* 2013-UNAT-333; *Balogun* 2012-UNAT-278; *Mezoui* 2012-UNAT-220; *Kamunyi* 2012-UNAT-194; *Ishak* 2011-UNAT-152; *Andati-Amwayi* 2010-UNAT-058.

⁶ *Abu Rabei*, 2020-UNAT-1060, para. 30 and also see *Nouinou* UNAT Order No. 353 (2019), para. 3 citing to *Nouinou* Order No. 348 (2019), para. 7.

⁷ *Chhikara* 2020-UNAT-1014, para. 30, citing to *Chhikara* UNDT/2019/150, para. 46.

⁸ *Ibid.*, at para. 33.

⁹ *Op. Cit.*, at para. 29.

that sometimes these errors are repeated and not identified, at least in a timely manner. In cases of genuine errors made in good faith, even long ago, these should be able to be corrected where there is reliable and convincing evidence of such errors.

Conclusion

28. The penalty for a manifest abuse of process before the Dispute Tribunal can only be invoked after the Tribunal has decided that the Applicant has manifestly abused the process. The remedy is costs awarded against the party found to have manifestly abused the process.

29. Contrary to the Respondent's contentions, art. 9(2) of the UNDT Rules of Procedure is not applicable to the issues in the case at bar because there is a dispute as to the material facts of the case and the Respondent is not entitled as a matter of law to a summary judgment.

30. The Applicant has withdrawn his claim for moral damages the subject of the motion for manifest abuse of process, hence, neither the Tribunal nor the Respondent shall be misled nor shall any delays be caused trying to prove the authenticity of the documents at the hearing of these proceedings.

Order

31. The Respondent's motion to summarily dismiss the application for a manifest abuse of process is denied. The Tribunal shall proceed to hear the application on the merits. During the proceedings, issues relating to evidence shall be dealt with

