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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/060  
Order No.: 140 (NBI/2023)  
Date: 18 September 2023  
Original: English

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**Before:** Judge Solomon Areda Waktolla, Duty Judge

**Registry:** Nairobi

**Registrar:** Eric Muli, Officer-in-Charge

DALAL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S  
MOTION FOR SUMMARY  
JUDGMENT AND ON CASE1**

## **Introduction**

1. The Applicant is a former staff member of the United Nations High Commissioner for Refugees (“UNHCR”) in Israel, holding a Temporary Appointment as a Protection Associate at the G-6 level. On 1 August 2023, he filed an application in which he contests the decision to not select him for the position of Protection Associate/Head of Legal Unit at the UNHCR operation in Tel-Aviv, Israel.

2. Together with the application, the Applicant filed a motion for leave to exceed the 10-pages limit for applications on the grounds that “the exceptional circumstances of this case and the need to argue the facts and the law sufficiently, concisely, and clearly, justify granting leave to file an Application exceeding 10 pages in scope.”

3. The application was served to the Respondent on 1 August 2023 with a deadline to file a reply by 1 September 2023.

4. The Respondent filed a motion for summary judgment pursuant to art. 9 of the UNDT Rules of Procedure on 16 August 2023, contending that the application was without merit and should be rejected as irreceivable *rationae materiae*. He further requests an extension of the deadline to submit his reply and leave to exceed the page limit.

## **Consideration**

5. In support of his motion for summary judgment, the Respondent submits that the application is not receivable *rationae materiae* because the contested decision was rescinded by the Administration before the Applicant filed his application before the Tribunal.

6. Specifically, he argues that “the Applicant was advised of the Administration’s rescission of the non-selection decision and the resulting readvertisement of the

position” and that “[t]his readvertisement was a necessary result of the unlawfulness of the contested decision.”<sup>1</sup>

7. The Tribunal recalls that art. 19 of its Rules of Procedure provides that it may:

... issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

8. Having examined the contested decision, the Tribunal notes that the request to suspend the deadline for the reply has been justified with reference to the motion for a summary judgment and on the fact that the Applicant exceeded the 10 pages limit for an application. In *Castelli* Order No. 088 (NBI/2023), Sikwese J observed that,

9. The Tribunal notes that the request to suspend the deadline for the reply has been justified only with reference to the motion for a summary judgment.

10. Having so said, the Tribunal is the view that there is no link between the deadline to file the reply and the motion for summary judgment, as -pursuant to art. 9 of the Rules of Procedure, the decision to determine the case by a summary judgment postulates that the parties are already in the proceedings, having filed their first acts of appearance; indeed, the judge – in determining that summary judgment is appropriate - is called to assess if the material facts are undisputed (following the parties positions as definitively expressed, in the application and in the reply).

9. The Tribunal finds this reasoning to be partly applicable in the present case, i.e., “in determining that summary judgment is appropriate – [the Tribunal] is called to assess if the material facts are undisputed (following the parties’ positions as definitively expressed, in the application and in the reply).”

10. The Respondent’s motion for summary judgment in these proceedings is denied. The receivability of the application will be decided by the judge who will be assigned to the case and who will have an opportunity to review the application and reply in this case.

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<sup>1</sup> Respondent’s motion, para. 37.

*Extension of time to file a reply and leave to exceed page limit.*

11. Pursuant to paragraphs 6 and 19 of Practice Direction No. 4, both the application and the reply should not exceed 10 pages, in font Times New Roman, font size 12, line spacing of 1.5 lines. The reason for such limitation is to ensure that the parties file succinct submissions to enable the Tribunal to expeditiously dispose of cases.

12. The current application contains 35 pages in total. The Tribunal has reviewed the application and does not agree with the Applicant that there are exceptional circumstances that would justify exceeding the 10-pages limit. The facts and legal issues arising for consideration in this case are not particularly complex. The Tribunal appreciates that the Applicant is self-represented and urges him to seek legal counsel to concisely articulate his arguments within the 10-pages limit.

**IT IS ORDERED THAT:**

13.

*(Signed)*

Judge Solomon Areda Waktolla

Dated this 18<sup>th</sup> day of September 2023

Entered in the Register on this 18<sup>th</sup> day of September 2023

*(Signed)*

Eric Muli, Officer-in-Charge