



**Before:** Judge Ebrahim-Carstens, Presiding  
Judge Meeran  
Judge Shaw

**Registry:** New York

**Registrar:** Hafida Lahiouel

KODRE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON WITHDRAWAL OF  
APPLICATION**

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**Counsel for Applicant:**

Brian Gorlick, OSLA  
Daniel Trup, OSLA

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 15 June 2010, the Applican

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12. At the case management hearing held on 23 February 2011, the Respondent withdrew the motion for joinder of the present case with that of *Obino*, having conceded that, in light of Judge Boolell's Order No. 16 (NBI/2011), the motion was moot.

13. Following the said case management hearing held on 23 February 2011, the Tribunal issued Order No. 71 (NY/2011), identifying tentatively the issues in the case and directing the parties to make further submissions.

14. On 23 March 2011, the Applicant requested an extension of time to comply with Order No. 71 (NY/2011). The extension was granted. The parties' submissions in response to Order No. 71 (NY/2011) were duly filed in May and June 2011.

15. On 24 June 2011, Judge Laker, then President of the Dispute Tribunal, issued Order No. 107 (GVA/2011), appointing Judge Shaw (half-time Judge), as a panel member to replace Judge Kaman, whose term expired on 30 June 2011, there being only one Judge (full-time),



between the same persons, involving the same cause of action, may not be adjudicated twice (see *Shanks* 2010-UNAT-026bis, *Costa* 2010-UNAT-063, *El-Khatib* 2010-UNAT-066, *Beaudry* 2011-UNAT-129). As stated in *Bangoura* UNDT/2011/202, matters that stem from the same cause of action, though they may be couched in other terms, are *res judicata*, which means that the applicant does not have the right to bring the same complaint again.

24. The object of the *res judicata* rule is that “there must be an end to litigation” in order “to ensure the stability of the judicial process” (*Meron* 2012-UNAT-198) and that a party should not have to answer the same cause twice. Once a matter has been resolved, a party should not be able to re-litigate the same issue. An issue, broadly speaking, is a matter of fact or question of law in a dispute between two or more parties which a court is called upon to decide and pronounce itself on in its judgment. Of course, a determination on a technical or interlocutory matter does not result in the final disposal of a case, and an order for withdrawal is not always decisive of the issues raised in a case. An unequivocal withdrawal means that the matter will be disposed of such that it cannot be reopened or litigated again. In regard to the doctrine of *res judicata*, the International Labour Organization Administrative Tribunal (“ILOAT”) in Judgment No. 3106 (2012) stated at para. 4:

The argument that the internal appeal was irreceivable is made by reference to the principle of *res judicata*. In this regard, it is argued that the issues raised in the internal appeal were determined by [ILOAT] Judgment 2538. As explained in [ILOAT] Judgment 2316, under 11:

*Res judicata* operates to bar a subsequent proceeding if the issue submitted for decision in that proceeding has already been the subject of a final and binding decision as to the rights and liabilities of the parties in that regard.

A decision as to the “rights and liabilities of the parties” necessarily involves a judgment on the merits of the case. Where, as here, a complaint is dismissed as irreceivable, there is no judgment on

the merits and, thus, no “final and binding decision as to the rights and