



1. On 10 September 2013, the Applicant, a former Political Affairs Officer in the United Nations Stabilization Mission in Haiti ("MINUSTAH"), filed a motion for extension of time to file an application regarding the abolition of her post and the related non-extension of her fixed-term contract in light of "ongoing settlement endeavours with the Management Evaluation Unit ("MEU"). On 13 September 2013, the Respondent consented to the request for extension of time.
2. On 16 September 2013, the Applicant filed a request for confidentiality by which she asked that an unidentified Order from 2012 as well as the Tribunal's forthcoming Order on her pending request for extension of time not be published. The Respondent filed and served his response on 17 September 2013, disagreeing with the confidentiality request in relation to the already published Order No. 51 (NY/2012) dated 19 March 2012 issued in another case of the Applicant before the Dispute Tribunal (Case No. UNDT/NY/2012/018) as it was the anticipated Order in the present case. The Respondent did not object to maintaining the nature and details of the Applicant's scheduled medical procedure confidential.
3. By Order No. 233 (NY/2013) dated 18 September 2013, the Duty Judge granted the Applicant's request for extensions of time and to maintain her medical documents confidential. The Applicant was further instructed by the Tribunal to file the application on or before 5:00 p.m. (New York time), Friday, 18 October 2013.
4. On 18 October 2013, at 1:52 p.m. (New Yo

5. On the same date, at 3:48 p.m., Order No. 260 (NY/2013), the Duty Judge ordered the Applicant to file her application within the time limit indicated in Order No. 233 (NY/2013) in a form that could be served on the Respondent or her case would be dismissed in its entirety.
6. By email of the same date, at 5:03 p.m., the Applicant stated *inter alia*, that:

... I authorize that my 18 October 2013 UNDT submission and annexes be shared with MINUSTAH ...
7. By Order No. 264 (NY/2013) dated 22 October 2013, as the case in his view was suitable for an expedited hearing on the merits, the Duty Judge instructed the Respondent to “give consideration to providing an expedited reply or, alternatively to inform the Tribunal within 7 days if this is not practicable” and, if a reply were to be received within the next 14 days, he instead that a case management discussion be held on 7 November 2013.
8. At the request of both the Respondent and the Applicant referring to ongoing settlement negotiations, by Order No. 274 (NY/2013) dated 29 October 2013, the Duty Judge extended the time limit for the Respondent to file his reply to Friday, 3 January 2014. On 23 December 2013, the parties filed a joint request for further extension of time, stating that settlement discussions were still ongoing. By Order No. 351 (NY/2013) dated 23 December 2013, the Duty Judge granted the time extension and instructed the Respondent to file his reply no later than 31 January 2014. On 29 January 2014, the parties filed a further request for extension of time, which the Duty Judge granted and instructed the Respondent to file his reply no later than 14 February 2014.
9. On 14 February 2014, the Respondent informed the Tribunal that the settlement efforts had failed and, on the same date, filed his reply together with seven annexures. Without leave from the Tribunal but diligently, the Applicant filed a response to the Respondent's reply on 17 February 2014.



15. By Order No. 328 (NY/2014) dated 2 December 2014, the parties were requested to attend a case management discussion (“CMD”) on 29 January 2015.

16. On 29 January 2015, the CMD was held which the Applicant participated via telephone and Counsel for the Respondent was present in person.

17. By Order No. 22 (NY/2015) dated 4 February 2015, the Tribunal ordered the parties as follows (emphasis in the original):

6. The Applicant is to file and serve, on or before 5 p.m. on Friday, 13 February 2015 a concise submission stating:

a. Whether any oral evidence will be adduced in the case, including the Applicant’s testimony;

b. 949 T.065requestinds t1...5(be h-.7(.n)5.7()5.)ec1...5wa(id.7()5t1...5(.58 0 4



24. By regular email dated 2 March 2015 to the New York Registry, copying the Counsel for the Respondent, the Applicant informed that “there [are] renewed settlement endeavors currently underway, whose outcome I await ...”.

25. By Order No. 42 (NY/2015 dated 12 March 2015, the Tribunal instructed the parties to inform “whether they agree that the proceedings be suspended and whether their informal discussions are being held *inter partes* or through the Office of the Ombudsman and Mediation Services” before 5:00 p.m. on Friday, 20 March 2015.

26. By joint response of 20 March 2015, the parties submitted that:

... To date, the parties have conducted *inter partes* discussions without the involvement of the Office of the Ombudsman and Mediation Services.

... The parties agree that the proceeding be suspended and that the matter be referred to the Mediation Division of the Office of the Ombudsman and Mediation Services in order that further efforts toward informal resolution may be made.

27. By Order No. 48 (NY/2015) dated 23 March 2015, taking into consideration the parties’ consent to the case being referred to mediation, and pursuant to art. 10 from the Tribunal’s Statute and art. 15 of the Tribunal’s Rules of Procedure, the case was referred to the Mediation Services of the Office of the Ombudsman and Mediation Services for consideration, and the proceedings before the Tribunal were suspended until 23 June 2015.

28. On 22 June 2015, the Tribunal received a letter from the Office of the Ombudsman and Mediation Services on behalf of both parties requesting an extension of the time to 23 July 2015 to complete the mediation efforts. On 22 July 2015, the Tribunal received a letter from the Office of the Ombudsman and Mediation Services on behalf of both parties for a further extension of time until 27

August 2015 to complete the mediation e



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41. The Tribunal considers that each person has the fundamental human right to free access to justice, which includes the right to file an application in front of an impartial tribunal, and therefore also the right to withdraw that application.

42. An application represents the materialization of an applicant's right to appeal the contested decision. This is the first procedural act by which an applicant invests the Tribunal of dealing with the appeal. The whole procedural activity will take place within its limits and the application must be filed by the person who has the right to appeal the contested decision (*ratione personae*), within the applicable time limit (*ratione temporis*) and in front of the competent Tribunal (*ratione loci*).

43. Consequently, to be legally valid, a request for the withdrawal of an application has to be formulated by the applicant and/or by her counsel and must consist of the unconditional expression of the applicant's free will to close her case before a judgment is issued.

44. An application can be withdrawn orally and/or in writing, partially or entirely. The withdrawal request can refer either to the pending application (as a procedural act) or to the right to appeal itself.

45. If an identical application is filed by the same applicant against the same party after she or he waived her or his right to appeal the matter, the exception of *res judicata* can be raised by the other party or *ex officio* by the court itself. *Res judicata* requires three cumulative elements: (i) same parties; (ii) same object; and (iii) same legal cause, and has both negative and positive effects: it is blocking the formulation of a new identical application and guarantees that it is not possible to rule differently in the same matter.

46. *Res judicata* is a reflection of the principle of legal certainty and does not prejudice the fundamental right to a fair trial since the access to justice is not absolute and can be subjected to limitations resulting from the application of the other

principles. The principle of rule of law and the principle of legal certainty, expressed also by *res judicata*, require, *inter alia*, that an irrevocable decision given by the Tribunal not to be further questioned (*bis in idem*) (see *Shanks* 2010-UNAT-026bis; *Costa* 2010-UNAT-063; *Merón* 2012-UNAT-198). As stated by the United Nations Appeals Tribunal in *Merón* that “there must be an end to litigation” in order to ensure the stability of