Before: President Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

OBINO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON A REQUEST FOR RECUSAL

Counsel for applicant:
Katya Melluish, OSLA
Bart Willemsen, OSLA

Counsel for respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The present Order disposes of the respondent's request for recusal in Case No. UNDT/NBI/2010/057, *Obino v. Secretary-General*.

Facts

2. On 15 June 2010, the applicant filed an application with the Nairobi Registry of the Dispute Tribunal against "[t]he decision of the Secretary-General to implement a decision by the Chairman of the International Civil Service Commission ('ICSC') to reclassify Nairobi and Addis Ababa duty stations from category 'C' to 'B'".

3. On 18 June 2010, the respondent filed with the Nairobi Registry a "motion to change venue". More specifically, the respondent explained that:

> Pursuant to article 4.9 of thecat(to)--.0al3(of)]TJ3(s) 7 t7.6(3(themticle)8.5(v5.6g-7.3l)56(

7. By letter dated 8 September 2010, the President of the Dispute Tribunal requested clarifications from the respondent on the nature of his motion, noting that:

> - While the motion is titled "Motion to change venue" and seeks the transfer of the matter "to a Dispute Tribunal venue outside of the Nairobi duty station", it also requests, pursuant to article 9 of the UNDT statute and article 28.2 of the rules of procedure, the recusal of "the judges serving in Nairobi … on the grounds that a conflict of interest exists for [said] judges";
>
> - Pursuant to article 6.2 of the rules of procedure, a party may apply for a change of venue. The decision on such an application is normally taken by the judge who has been assigned to the case, i.e. in the present case, this would be Judge Boolell;
>
> - Pursuant to article 4.9 of the statute and article 28.2 [of the rules of procedure], a request for recusal should be addressed to the President, currently Judge Laker in Geneva, who must decide after seeking comments from the judge(s) concerned. The above-mentioned motion, however, has not been addressed to the President, but to the Nairobi Registry and judges.
>
> … If the respondent is seeking the recusal of a judge, he should identify by name the judge(s) concerned, as it should be pointed out that half-time judges also serve in Nairobi from time to time, as does Judge Coral Shaw at present.

8. On 14 September 2010, the respondent clarified that he was seeking the recusal of the judges serving in Nairobi on the grounds of a conflict of interest, and more specifically that of Judge Boolell, as the judge to whom the case had

Parties' contentions

12. The respondent's main arguments are as follows:

a. A change in the classification of a duty station impacts upon the allowances and entitlements of United Nations personnel serving in that duty station and entitled to receive such allowances and entitlements;

b. In his application, even though the applicant is assigned to Addis Ababa, he challenges "an alleged decision to 'reclassify Nairobi and Addis Ababa'". Accordingly, a decision in this matter would impact upon the classification of both the applicant's duty station, Addis Ababa, and Nairobi. A conflict of interest arises from the fact that the judges of the Tribunal serving in Nairobi fall within the category of individuals who would be directly affected by the outcome of the case.

13. The applicant states that he contests the decision to reclassify Addis Ababa only and that the respondent's request for recusal is therefore without legal basis.

Considerations

14. Article 4.9 of the Dispute Tribunal's statute stipulates:

> … Where a party requests [the] recusal [of a judge], the decision shall be taken by the President of the Dispute Tribunal.

15. Article 28.2 of the rules of procedures further requires that:

judge and therefore may only be decided on a case by case basis. Hence, it is not possible to request the recusal of all "members of the judiciary who serve in the Nairobi duty station". It is a party's obligation to identify the judge or judges whose recusal is requested. According to the respondent's submission dated 14 September 2010, his motion should be read as a motion to recuse Judge Boolell.

17. Article 27 of the Tribunal's rules of procedure defines "conflict of interest" as follows:

> 1. The term "conflict of interest" means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her.
> 2. A conflict of interest arises where a case assigned to a judge involves any of the following:
> (*a*) A person with whom the judge has a personal, familiar or professional relationship;
> (*b*) A matter in which the judge has previously served in another capacity, including as an adviser, counsel, expert or witness;
> (*c*) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge's participation in the adjudication of the matter would be inappropriate.

18. Obviously, the situations described in subparagraphs (a) and (b) of the above-quoted article 27.2 do not arise in the present case.

19. With respect to the more general and unspecific "other circumstances" that would make it appear to a reasonable and impartial observer that a judge's participation in the adjudication of a case would be inappropriate, as mentioned in article 27.2 (c) above, the only circumstance to be discussed in the present case is the respondent's allegation that Judge Boolell would be directly affected by the outcome of the decision on the application of 15 June 2010, whereby the applicant contested the "decision of the Secretary-General to implement a decision by the Chairman of the International Civil Service Commission ('ICSC') to reclassify

Conclusion

24. In view of the foregoing:

The request for recusal is rejected.

(*Signed*)

President Thomas Laker

Dated this 28th day of September 2010

Entered in the Register on this 28th day of September 2010

(*Signed*)