



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NB/2009/047
Order No.: UNDT/NBI/O/2010/012
Date: 04 February 2010
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

LIYANARACHCHIGE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON A MOTION TO INTERVENE
IN THE PROCEEDINGS IN THE CASE OF
LIYANARACHCHIGE FILED BY MR. X
ON 27 JANUARY 2010**

Counsel for the Applicant in the present motion:

Mr. Bart Willemsen, OSLA

Counsel for applicant Liyanarachchige:

Ms. Rose Dennis, OSLA

Counsel for respondent:

Ms. Susan Maddox, ALU

Introduction

1. The present application is related to the case of Liyanarachchige *v. the Secretary-General of the United Nations*. The Applicant Liyanarachchige was summarily dismissed for serious misconduct on 8 May 2009 for having engaged in sexual exploitation and abuse and transporting unauthorized

any and all references to him which affect his rights struck from the public record”.

5. Counsel further argues that the Tribunal is competent to grant the request for intervention. Pursuant to Article 2.4 of the Statute read in conjunction with Article 22 of the UNDT Rules of Procedure, the contractual rights of his client would be adversely affected if statements are made in public proceedings to which he is not a party and which refer to confidential charges of serious misconduct against him which remain unresolved.

Tribunal’s Review

6. On the issue of intervention by persons not party to a case, the relevant articles are Article 2.4 of the Statute that provides, *The Dispthe u*

arising out of his terms of appointment or contract of employment to vindicate.

9. That a staff member in the situation of the Applicant has concerns about his terms of appointment and contract of employment following or pending an investigation relative to him is legitimate. The results of the investigation may well have serious and far reaching consequences on his employment or terms of appointment.
10. The Article which allows an Applicant to intervene in a matter before the Tribunal refers to a right that may be affected. That right in the view of the Tribunal can only relate to a right linked to or arising out of the right referred to in Article 2.1 (a) of the Statute.
11. The Applicant is requesting to be allowed to intervene in the present matter in order to ensure that all references to him made in the course of the proceedings in the matter relative to Applicant Liyanarachchige be struck from the public record inasmuch as the initial investigation concerning him is “personal, highly sensitive and confidential”.
12. When a staff member is investigated there is initially a report which is confidential. Depending on the facts elicited in the course of the investigation the case may end up with that initial investigation or be pursued further. If the Secretary-General takes an action which adversely affects a staff member’s terms of appointment or contract of employment, the latter can appeal to the UNDT. If there is an appeal and a hearing is held, it is always open to parties to request that any matter that may be prejudicial to them remain confidential pursuant to Article 18.2 of the Rules. This would cover both matters elicited through oral testimony and documentary evidence.

13. There may be situations, as in the present matter, where owing to the circumstances of an investigation more than one staff member may be involved as the facts of the investigation may be common to all of them. In such a case, if one of the staff members is disciplined and appeals to the UNDT, evidence may be provided that refers to the staff member whose case is pending. It is the view of the Tribunal that any relevant evidence that refers to a staff member in the situation of the Applicant should be admitted subject to the caveat that the status of the staff member should not be disclosed.

14. However, given the confidentiality of the initial investigation, the Tribunal has a duty to ensure that no matter that may affect the integrity of a staff member whose case is closed or is pending with the Secretary-General, is disclosed pursuant to Article 11.6 of the Statute and Article 26 of the Rules of Procedure. The Tribunal also takes the view that it is the duty of counsel appearing in the case to draw the attention of the Tribunal to any matter requiring confidentiality.

15. The Tribunal concludes therefore that there is no right of the Applicant that may be affected as it is understood in Article 2.1 (a) of the UNDT Statute and read with Article 22 of the Rules of Procedure on intervention. The Tribunal will ensure that the identity of the Applicant will in no manner be disclosed either into official record of the proceedings or in any ruling or judgment.

