



Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Jean-Pelé Fomété

KAMUNYI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORAL ORDER ON THE RESPONDENT'S
APPLICATION FOR A CLOSED SESSION
PURSUANT TO ARTICLE 16(6) OF THE**

Introduction

1. At the commencement of today's hearing, a special hearing to take evidence of two witnesses in advance of the main hearing because those witnesses will be absent on the date of the main hearing, an application has been made by the respondent that the entire proceedings of this case should be closed.

2. The application is made pursuant to Article 16, sub-section 6 of the Rules of Procedure of the Tribunal, which reads,

The oral proceedings shall be held in public unless the judge hearing the case decides, at his or her own initiative or at the request of one of the parties, that exceptional circumstances require that the oral proceedings be closed".

3. The basis of the application presented by counsel for the respondent is that there are ongoing investigations which have not been concluded, respecting a threat to a senior member of UNON some years ago and that because those proceedings have not been finalized, it may prejudice the ongoing investigation if these proceedings before the Tribunal were open to the public.

4. When asked whether the application was in respect of the entire proceedings or only part of it counsel advised that in view of the sens

hearings and that there should be exceptional circumstances for it to not be open. He pointed out that the investigation referred to by counsel for the respondent has in fact been concluded and he referred to two letters to support that contention.

6. Counsel for the applicant also said in reply that this case concerns five issues, which have to do with the placement of the applicant on suspension and special leave, his incarceration by the police, the decision to reprimand him and the decision to transfer him to another section of UNON, none of which, he says, have anything to do with security and that this is not a matter where the exceptional circumstances have been made out.

Ruling

7. I have spent some time in preparation for this case and in doing so I read virtually all, if not all, of the relevant documents including the correspondence which was alluded to by counsel.

8. Undoubtedly, this is a case which concerns security at UNON and the reason for this is that the applicant was a security officer, his senior supervisors were security officers and the incidents which led to the facts of this case, arose out of the performance of security duties. But there seems to me little, if anything, that has to do with delving into the darkest secrets of the United Nations Security Service and I cannot accept, with respect to the submissions of counsel for the respondent, to say that it is impossible to tease out what might be confidential and what is confidential.

9. Two main events occurred which led to the initial suspension of the applicant. One of those was a private matter that had to do with the applicant and evidence will reveal that. The second was a death threat to a senior member of staff. In my view, that second matter comprises a small part of the evidence.

(Signed)

Judge Coral Shaw

Dated this 6th day of October 2010

Entered in the Register on this 6th day of October 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi