

Before: Judge Nkemdilim Izuako

Respondent: Nairobi

Respondent: Abena Kwakye-Berko

WOODSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON RESPONDENT'S
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL INFORMATION
AND SUBMISSIONS**

Counsel for the Applicant:

Michelle Hastie, OSLA

Rishabh Gulati, OSLA Affiliated Counsel

Counsel for the Respondent:

Susan Maddox, ALS/OHRM

Cristiano Papile, ALS/OHRM

that respect, the Respondent seeks to adduce into evidence Annex R13, which is the decision notifying the Applicant that her salary would be restored to her for the said period.

- c. The Application is moot in its entirety there being no issues left for the Tribunal to adjudicate. In particular given that all salary withheld from the Applicant during her period of ALWOP is being restored to her, her claim for financial loss is moot.
- d. As concerns the Applicant's claim for moral damages, the Applicant provided no evidence in support of this claim. There is

9. With respect to the claim for moral damages, naturally, the full extent of those moral damages will not be measureable until her income has been

- i. Reputational loss.
- ii. Emotional turmoil.
- iii. Loss of opportunity.
- iv. Financial loss caused by her being placed on ALWOP since April 2014.

13. A close reading of the remedies sought by the Applicant makes it immediately apparent that the Respondent's latest submissions do not address all the legal issues arising for determination in this case. In seeking the dismissal of the substantive Application, the Respondent is effectively asking for judgment in his favour. As correctly argued by the Applicant, the Respondent is in fact requesting the Tribunal to issue a summary judgment.

14. Article 9 of the Tribunal's Rules of Procedure states that,

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

In accordance with art. 9, in order to successfully move for summary judgment, a party must be able to show that: (i) there is no dispute as to the material facts of the case and (ii) that the party is entitled to judgment as a matter of law.

15. In the present case, the Applicant submits that the Administration has not alleged or proven that all pay withheld has been restored to the Applicant. The Applicant further submits that with respect to her claim for moral damages, the full extent of those moral damages will not be measureable until her income has been restored and that she expects to adduce evidence of the consequential harm she has suffered. The Applicant also expects to argue that her placement on ALWOP was a fundamental breach of her contract of employment.

16. The present case is not a case where the factual matters, let alone the legal issues, are straightforward or clearly in favour of the Respondent. Ultimately it is for the Tribunal to consider the facts and the law to determine the outcome of the

case so as to do justice in all the circumstances of the case. The Respondent's Motion, insofar as it covertly aims to have this matter disposed of by way of summary judgment, is therefore dismissed.

Conclusion

17. The Respondent's request for dismissal of the Application is rejected.

(Signed)

Judge Nkemdilim Izuako

Dated this 28th day of January 2015

Entered in the Register on this 28th day of January 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi