
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/041

Order No.: 031 (NBI/2020)

Date: 6 February 2020

Original: English

Background

1. On 10 December 2019, the Tribunal issued Order No. 213 (NBI/2019).
2. On 10 January 2020, the Applicant filed a Motion for reconsideration of Order No. 213 (NBI/2019). In said Motion, the Applicant advances two arguments for the reconsideration. The first is related to the factual circumstances leading to the hearing while the second one derives from the publication of Order No. 213 (NBI/2019).
3. On 14 January 2020 the Tribunal issued Order No. 005 (NBI/2020) which required:
 - a. Counsel for the Respondent to submit a response to the Motion by 20 January 2020;
 - b. the Registry to consider the Motion with respect to the issues raised concerning the Tribunal's practice on communication, consultation, dissemination and publication of its Orders by 27 January 2020

8. At the CMD, Counsel for the Respondent appeared in person and the Registry contacted Counsel for the Applicant on the mobile number provided. Counsel for the Applicant was, however, in a moving vehicle at the time of the CMD. The Tribunal suggested to Counsel to stop the vehicle, hold the CMD, conclude and resume his trip but he refused to consider the suggestion. The combination of loud interference and poor connection from being in a moving vehicle, compelled the Tribunal to adjourn the proceedings.

9. The Applicant's Counsel explained his circumstances at the time of the CMD by suggesting that it was because the Registry had failed to consult him when setting the date for the CMD.

10. After the Judge had adjourned the CMD on 9 December 2019, the Registry's Legal Officer and Counsel representing the parties had a brief discussion about possible dates for the rescheduled CMD. A tentative date of 7 January 2020 was proposed. The Registry's Legal Officer informed Counsel that the tentative date would be subject to agreement from the Presiding Judge. After consulting the Judge, the Registry's Legal Officer was informed that a more suitable date would be 13 January 2020.

11. On 10 December 2019, the Registry's Legal Officer sent an email to the Counsel informing them that the new date for the CMD would be 13 January 2020 and asked them to confirm their availability. An automated response was received from Counsel for the Respondent indicating her absence from the office. Another response, however, was received from the generic email address for the Appeals and Accountability Section on 10 December 2019 stating that Counsel for the Respondent would be available on 13 January 2020.

12. On 10 December 2019, the Tribunal issued Order No. 213 (NBI/2019) rescheduling the CMD for 13 January 2020.

13. In a follow-up email dated 11 December 2019, Counsel for the Respondent herself confirmed her availability for the CMD on 13 January 2020.

14. On 4 December 2019, Mr. René Vargas, Registrar, UNDT Registry in Geneva, informed all UNDT Registry Staff of an instruction from the Principal Registrar that all orders issued by the UNDT are to be published on the UNDT website unless a UNDT Judge expressly advises the Registry not to publish.

15. Order No. 181 (NBI/2019) was issued on 7 November 2019. Order No. 196 (NBI/2019) was issued on 20 November 2019. These two Orders were not published on the UNDT website.

16. Order No. 213 (NBI/2019) was issued on 10 December 2019. It was published as per the Principal Registrar's directive.

17. The dates of CMDs are determined by the Judge presiding over a case based on her/his judicial diary. The Registry notifies the parties at least ~~seven days~~ ^{seven days} before the scheduled date. The dates will tend to be more inflexible when half-time Judges are involved. It has always been the practice in the UNDT that parties to a proceeding are at liberty to file a motion or simply send an email to the Registry seeking a rescheduling of the matter due to circumstances whiNDTdtanst

21. The request for reconsideration has already explained the reasons why no change to the schedule for 9 December 2019 was sought.

22. The negative view expressed by the Registry in paragraph 14 of its response does not fall within the scope of the submissions required from the Registry. Counsel for the Applicant was muting his connection anytime he was not speaking while at the time of the communication there was no traffic around. Once Counsel for the Applicant was reached for the hearing there was no issue about the connection until the Judge was also remotely connected. Indeed, after the hearing, the parties were able to exchange further on their availability for the rescheduling. One needs to balance the interest of the Applicant for a timely outcome vis-à-vis these plausible technical inconveniences and the Applicant made his choice.

23. On 9 December 2019, the consultation took place at the end of the CMD, and it seems that the parties and the Registry were able to hear each other without any difficulty. Then the Registry sent an email on 10 December 2019 suggesting a different date and asking the parties for their availability. On the same date, before any party had responded, Order No. 213 (NBI/2019) was issued. Counsel for the Applicant later made the necessary arrangements to be available and comply with the Order. The Order having been issued, it is difficult to see the value of any response on the request for availability, especially when Counsel has taken steps to be available.

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even in light of the General Assembly resolution on the issue of case backlog in the UNDT.

35. The Motion to reconsider Order No. 213 (NBI/2019) is without legal basis and it is accordingly denied and dismissed.

ORDER

36. The Registrar is directed to reassign the application to a different Judge to ensure that the matter proceeds with no perception of ill will on account of these proceedings.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 6th day of February 2020

Entered in the Register on this 6th day of February 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi