
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/086

Order No.: 174 (NBI/2021)

Date: 26 August 2021

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MARUSCHAK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON CASE MANAGEMENT AND
MISCELLANEOUS MOTIONS**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Jacob B. van de Velden, AAS/ALD/OHR, UN Secretariat

Isavella Vasilogeorgi, AAS/ALD/OHR, UN Secretariat

Facts and Procedure

1. On 24 June 2019, the Applicant filed an application challenging his separation from service for misconduct, with compensation in lieu of notice and without termination indemnity.
2. The Respondent filed a reply on 26 July 2019.
3. A case management discussion took place on 26 February 2021.
4. On 2 June 2021, the Counsel acting for the Applicant informed the Tribunal, by an *ex parte* filing, that they were withdrawing as Counsel for the Applicant.
5. between 9 June and 3 August 2021, the parties filed miscellaneous motions as follows.
 - a. 9 June 2021
est abuse of process by forgery and an *ex parte* filing of evidence of manifest abuse of process.
 - b. 12 June 2021 - of
a foreign language interpreter/translator.
 - c. 12 June 2021 - to call witnesses.
 - d. 14 June 2021 - Responden otion regarding dismissal of
 - e. 24 June 2021 -
witnesses by the Tribunal.
 - f. 28 June 2021 -
statements.
 - g. 26 July 2021 - on services of Counsel.

- h. 26 July 2021 -
June 2021 on abuse of process and costs.
- i. 3 August 2021 motion in response to the
26 July 2021 submission.

Motion to find Applicant abused process and order for costs

6. In the 14 June 2021 motion, the Respondent requested the Tribunal to reject both motions filed by the Applicant on 12 June 2021 because if motion of 9 June 2021 is granted, the application will be dismissed and the proceedings would motions being required. Accordingly, the Respondent requested the Tribunal first to on abuse of process.

7. On 13 July 2021, the Tribunal issued Order No. 137 (NBI/2021) requesting the Applicant to respond to the allegations of abuse of process which he did on 27 July 2021. In his response, the Applicant submitted that,

[o]n 15 March, under request of his Counsel, the Applicant sent copies of multiple requested documents. All copies were unfolding the

not related to the facts under discussion in the Case UNDT/NBI/2019/086. On that day the Applicant was on humanitarian mission to Yemen with NGO and he sent the copies by titles of the documents, without checking content and while working in the field in Yemen he accidentally picked up and filed the wrong draft copies rather than intended real official documents the Applicant actually

9. The Tribunal convened a second CMD on 20 August 2021 where all motions were discussed and resolved:

Deliberation

10. The Tribunal has considered the nature of the allegation and agrees that it is grave and would potentially undermine the justice system. The Tribunal has also considered that the Applicant on his own motion applied to withdraw the offensive documents, the Tribunal has taken into account that at the time of withdrawing the documents, it had not made any decision in reliance of those documents and the Applicant regretted his action, furthermore the documents once withdrawn had no , the

Tribunal rejects the Responde

against the Applicant for manifest abuse of process, instead, the Tribunal orders that the offensive documents be expunged from the record.

ORDERS

11. The Tribunal orders the expungement from the case record the submissions on an amended remedy of 15 March 2021 and 6 May 2021 and the attached Annexes 22 27.

12. The Registry shall transmit to the Applicant materials and documents filed by the Respondent pursuant to a case management Order of 4 March 2021 (on the motion for disclosure dated 19 January 2021) and the Applicant shall file a response if necessary within two weeks of this order.

Oral hearing

