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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/064  
Order No.: 065 (NBI/2023)  
Date: 28 March 2023  
Original: English

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**Before:** Judge



## Consideration

9. The Tribunal at the hearing rendered the following orders:

As to the Applicant's Motion dated 21 March 2023 to adduce as additional evidence the United Nations Ethics Office's Final Determination on the Applicant's request for protection against retaliation, considering the date of the document (20 March 2023) and the fact that the document is already in possession of the Respondent, the Tribunal determines that the motion is granted.

As per the issue concerning the position of the parties in the examination, the Tribunal is guided by the consideration of the specific topic of this dispute and the related burden of proof of the parties and their objective interests in adducing evidence to the Tribunal; therefore, the Tribunal confirms its Order No. 055 (NBI/2023).

As to the Respondent's motion of 23 March 2023 on additional evidence, having considered the objection raised by the Applicant on 24 March 2023 on their admissibility, the Tribunal notes that the motion is related to the admission of 115 documents, that the documents are not recent and that no reason was given of the very late production of them. The Tribunal is aware that the Applicant has the right to comment on these documents in a reasonable time and to produce contradicting documents weather necessary.

The Applicant is to submit her comments on the documents and any request to oppose other documents on or before Friday, 31 March 2023.

Given that the documents submitted by the Respondent cannot be used for the hearings, because their admission at this moment would interfere with the expeditious unfolding of the hearing, which would be contrary to art. 19 of the Rules of Procedures, the Respondent's motion is not granted for the moment; the was givensubm4lth /F1 12. ET Q q /F1 12.0 Tf 9latetd 1 125p-

2023 (date of the end of the deployment on site in Nairobi for this Judge) or, as an alternative solution (that can be accepted in consideration of the Counsel's personal constraints expressed to the Registry in the preliminary setting of the agenda of the hearing), having only final conclusion in writing in a longer deadline. Being proposed the choice between the two solutions to the parties, at the hearing they expressed preference for the second option and agreed on that.

11. The Registry invited the witness Ms. Yewande Odia to the hearing and received, on 27 March 2023, an email indicating: "I am on R and R " (Rest and Recuperation). Due to the non-appearance of this witness, the parties at the hearings requested to be allowed to ask questions in writing to the witness.

## **ORDERS**

12. Parties are allowed,

Entered in the Register on this 28<sup>th</sup> day of March 2023

*(Signed)*

Eric Muli, Legal Officer, for  
Abena Kwakye-Berko, Registrar, Nairobi