

Case No.: UNDT/NBI/2022/123
Order No.: 72 (NBI/2024)

8. Specifically, the Respondent states that, in August 2023, Counsel for the parties agreed to attempt settlement through direct discussion. As to mediation with the Office of the Ombudsman, the Respondent says he never refused mediation. “It was counsel for the Applicant who subsequently refused the possibility of suspending the proceedings pending informal dispute resolution”. The Respondent further states that “there is no reasonable prospect of an informal resolution” and thus he “does not consent to a referral for mediation at this stage of the proceedings”.

9. The Respondent also registers concern about misrepresentations by the Applicant’s Counsel and that he deems the Applicant’s motion to be a waiver of the confidentiality accorded to settlement discussions.

10. Rather than wade into the thicket of confidentiality, waiver, and assessment of the credibility of Counsel, the Tribunal will treat the vast difference in representations by Counsel as a matter of miscommunication. Instead it will address the legal merits of the Applicant’s request.

11. Article 15 provides that the Dispute Tribunal may propose mediation to the parties and where “the parties consent to mediation, the Dispute Tribunal shall send the case to the Mediation Division of the Office of the Ombudsman for consideration”. It further provides that proceedings before the Tribunal will be suspended while mediation takes place.

12. Referral to mediation requires the consent of the parties. Since the Respondent does not consent to mediation, the Tribunal may not make the referral. Furthermore, the Tribunal finds that mediation is unlikely to be productive under these circumstances.

13. Nonetheless, the Tribunal notes that, since the Applicant’s closing submission was filed in French (as is her right), it has been sent for translation into English for consideration by the undersigned judge. The Tribunal has been advised that this

translation will take two months at a minimum. Thus, the Tribunal will not be ruling on this case until at least August.

14. The Tribunal always encourages settlement of claims if possible. Although the Respondent indicates that settlement is unlikely, if the parties wish to engage in direct settlement discussions while the Applicant's closing submission is being translated, they are free to do so.

15. If a settlement is reached, the parties are to advise the Tribunal immediately so that the time and money involved in translation, judicial consideration and judgment drafting may be avoided.

The Applicant's 15 June 2024 motion

16. In this motion, the Applicant requests the translation to French of the Respondent's 30 May 2024 closing submission and his 12 June 2024 comments on the Applicant's 30 May 2024 motion.

17. The Tribunal will grant the Applicant's motion and will make the translations available through its Court Case Management System upon their receipt.

Conclusion

18. In light of the foregoing, it is ORDERED that:

- a. The Applicant's 30 May 2024 motion is denied; and
- b. The Applicant's 15 June 2024 motion is granted.

(Signed)

Judge Sean Wallace

Dated this 20th day of June 2024

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Entered in the Register on this 20th day of June 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi