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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/056  
Judgment No.: UNDT/2021/092  
Date: 29 July 2021  
Original: English

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**Before:** Judge Francis Belle

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NIGAM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

Self-represented

**Counsel for Respondent:**

Angela Arroyo, UNDP



8. The Respondent and the Applicant filed submissions on 19 and 21 May 2021, respectively.

### **Facts and Submissions**

#### **Applicant**

9. The Applicant has characterised the basis of his allegation as negligence on the part of UNDP in launching an investigation against him. He submits that the investigation was based on a malicious report by two UNDP staff members and

15. The Applicant then came to the crux of his case which is that there is little protection offered for the subject of the investigation. He did not accept that being absolved of the charges obviates the duty of the UNDP to provide the evidence upon which the charges were based. The Applicant submits that by failing to supply the evidence, OAI failed to proceed with objectivity, competence and fairness.

16. It seems that the conduct which was investigated related to something said; which the Applicant says had to do with him making a point to express the wishes of a donor. The concerns of the donor he was expressing were not new; the then UNDP Deputy Director was well aware of the concerns regarding the venue selected by the two staff members. Even the UNDP Administrator was well aware that the request to change the venue came from the donor. Impliedly, the Applicant is arguing that due diligence would have avoided the investigation.

17. The Applicant was also of the view that the UNDP has not shown that the two staff members acted in good faith.

#### Respondent

18. A staff member has a right to confront evidence against him in an investigation report. However, this applies only when there has been a finding of misconduct and some disciplinary action is being considered.

19. The subject of an investigation has no right to see an investigation report where the investigation is closed as unsubstantiated. Indeed, this is so even where detrimental action is taken which is not disciplinary action. In this case, the Applicant was told that he was exonerated entirely. This meant that UNDP acted consistent with its policy.

20. Allowing the Applicant to speak to the complainants about their complaint  
on confidentiality:

Confidentiality is required for the investigative process to be effective in cases of alleged misconduct. Confidentiality is in the interest of the Organization, the investigation participants and the subject of the investigation. The requirement of confidentiality extends equally to all UNDP personnel including investigators,

management staff members and non-staff personnel and to third parties involved in the investigation.

21. The Guidelines further state that:

Information will only be disclosed as required by the legitimate needs of the investigation.

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not been disclosed to him. There was therefore no management evaluation of the allegation of negligence. That allegation is therefore not receivable.

32. The application is accordingly dismissed.

(Signed)

Judge Francis Belle

Dated this 29<sup>th</sup> day of July 2021

Entered in the Register on this 29<sup>th</sup> day of July 2021

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko., Registrar, Nairobi