



**Before:** Judge Francesco Buffa.

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MILLAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE PARTIES' MOTIONS  
ON EVIDENCE**

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**Counsel for the Applicant:**

Sétondji Roland Adjovi, *Etudes Vihodé*.

Charles A. Adeogun-Phillips, *Charles Anthony LLP*

**Counsel for the Respondent:**

Jacob van de Velden, DAS/ALD/OHR, UN Secretariat

Andrea Ernst, DAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a former Security Officer at the FS-5 level, in the Office of the Deputy Chief Mission Support, in the United Nations Truce Supervision Organization (“UNTSO”), based in Jerusalem, Israel. He filed an application with the United Nations Dispute Tribunal (“UNDT/the Tribunal”) in Nairobi on 10 July 2022 to contest the decision to impose on him a disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii).<sup>1</sup>

2. The Respondent filed a reply on 5 September 2022 and requests the Tribunal to reject the application.

3. The Tribunal notes that in his reply, at paragraphs 5, 6 and 7, the Respondent, recalling art. 18 of the UNDT Rules of Procedure, requests the Tribunal to not admit documents already found inadmissible in one of the Applicant’s other cases as directed in Judgment *Millan* UNDT/2021/152. He further requests the Tribunal to hold the Applicant and his Counsel in contempt of the Court.

4. In paragraph 36 of his application, the Applicant requests for an oral hearing. In paragraph 38, he requests the Tribunal to direct the Respondent to produce the 11 April 2022 sanction letter issued to one Mr. Juan C. Cunillera.

5. The case was assigned to the undersigned Judge on 12 January 2023, for his deployment starting on 6 February 2023.

## **Considerations**

6. Given that in the UNDT’s Rules of Procedure, there is no prohibition to admit and use in trial documents allegedly confidential and allegedly unlawfully acquired (without prejudice to the possible responsibility, in different proceedings, of the person

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<sup>1</sup> Reply, annex 5 (Sanction letter)

who collected them); the Tribunal finds it useful to admit the documents referred to in para. 6 of the Respondent's reply, whose evidentiary value will be evaluated with the other collected evidence. The Respondent's motion on this matter is, therefore, dismissed.

7. Further, given that a sanction imposed on Mr. Cunillera, if any, may be relevant for the adjudication of the present case, the Tribunal invites the Respondent to specify if a sanction was imposed on the mentioned staff member and, in the positive, orders the Respondent to produce a copy of the sanction letter by **28 February 2023**.

8. As to the Applicant's request for a hearing, the Tribunal notes that on one hand the Applicant did not specify the reasons for hearing the witnesses he asked for and that the hearing cannot be a way to allow fishing expeditions on purported due process violations or unspecified facts. It further considers on the other hand that, for example Mr. Benjamin Swanson already testified on the same issues and matters were determined in *Millan* UNDT/2021/152 (between the same parties) and his evidence is already on the record (annex 7 of the reply). Accordingly, it is not necessary to hear him again. Finally, the Tribunal is of the view that it is not useful to call for testimonies of persons not directly informed on the material facts at stake. These include staff members and other persons listed at para. 36 of the application.

9. The Tribunal has further reviewed the parties' submissions and, having in mind arts. 16.1 and 2 of the Rules of Procedure of the UNDT, takes the view that the relevant facts in the present case are clear and there is no need to conduct a hearing on the merits as the matter can be determined on the basis of the documents on record.

## **Conclusion**

10. In view of the above, the Tribunal decides that:
- a. by **28 February 2023**, the Respondent shall specify if a sanction was imposed on the mentioned staff member and, in the positive, submit the sanction letter issued to Mr. Juan C. Cunillera;

- b. by the same date, **28 February 2023**, the parties may also file any motions for documents or evidence they wish the Tribunal to rule on prior to the filing of their closing submissions.
- c. the Respondent's request not to admit documents and to hold the Applicant and his Counsel in contempt is rejected; and
- d. the Applicant's motion to call witnesses is rejected as well.

11. The parties are directed to file their closing submissions on or before **31 March 2023**. The submissions shall not exceed 10 pages, in font Times New Roman, font size 12 and line spacing of 1.5 lines.

*(Signed)*

Judge Francesco Buffa

Dated this 16<sup>th</sup> day of February 2023

Entered in the Register on this 16<sup>th</sup> day of February 2023

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi