



**Before:** Judge Solomon Areda Waktolla

**Registry:** Nairobi

**Registrar:** René M. Vargas M., Officer-in-Charge

BANGAMBILA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE APPLICANT'S MOTION  
FOR PRODUCTION OF WITNESSES**

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**Counsel for the Applicant:**

Martine Lamothe, Office of Staff Legal Assistance  
Aly Ahmed, Office of Staff Legal Assistance

**Counsel for the Respondent:**

Isavella Vasilogeorgi, DAS/ALD/OHR, UN Secretariat  
Andrea Ernst, DAS/ALD/OHR, UN Secretariat

## **Background**

1. The Applicant used to serve as an Associate Judicial Affairs Officer (National), on a fixed-term appointment with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”). She was based in Kinshasa.
2. On 15 May 2023, she filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s decision to separate her from service with compensation *in lieu* of notice and termination indemnity. This disciplinary measure was imposed on her following a finding of misconduct. It is the Applicant’s case that: (a) the facts on which the sanction is based have not been established; (b) her conduct does not amount to misconduct; and (c) and that the disciplinary measure was disproportionate.
3. On 15 June 2023, the Respondent replied to the application.
4. Following assignment of this matter to the undersigned Judge, the Registry notified the parties that the presiding Judge wished to set it down for an oral hearing.
5. The Tribunal issued Order No. 157 (NBI/2023) to this end and heard the Applicant and her two witnesses on 17 and 18 October 2023.
6. Following their testimony, the Tribunal adjourned proceedings to consider whether there was sufficient evidence on the record for adjudication of this matter.
7. On 19 October 2023, the Applicant filed a motion for additional witnesses to be called. Specifically, the Applicant submitted:

The Applicant respectfully requests that the Tribunal issue an order directing the Respondent to identify three (3) individuals who possess the requisite knowledge and experience in relation to the process of approving and granting dependency allowances and in the UMOJA system. Furthermore, it is requested that the Respondent be instructed

to promptly apprise this esteemed Tribunal of the prospective expert's availability for testimony. The Tribunal shall then exercise its discretion in selecting a qualified expert from amongst these candidates to testify on the aforementioned technical matters.

8. The Respondent responded to the Motion and objected to it being granted. The Respondent's position is that

It is neither relevant nor material how the UN human resources management tool Umoja works. The crux of the matter is that the Applicant applied for a benefit for which she was not entitled due to her ineligibility under the applicable rules. Any expert witness on the functionality of Umoja would not be suitable for determining the Applicant's eligibility or lack thereof, and consequently for the substantiation of any defense that could possibly make a difference to the outcome of this case.

... Moreover, this motion is an unsubstantiated and impermissible fishing expedition. The Applicant does not provide a precise fact which she wants to establish with the additional evidence. The reference to "*obtaining a comprehensive understanding*" reveals that the motion is not directed to providing evidence on a material fact. This should be rejected.

### **Consideration**

9. On 21 August 2023, the Respondent took the position that "the record before the Tribunal is complete and accurate," so that this case may be adjudicated on the basis of the parties' written submissions and the documentary evidence on file. Should an oral hearing be deemed necessary by the Tribunal, the Respondent moved the court to allow "a meaningful opportunity to cross-examine" the Applicant and witnesses brought by her.

10. The Respondent has variously submitted that

the Applicant conflates two separate processes: the declaration of the birth of Yoan Garba, with the claiming of a dependency benefit for Yoan Garba. As a parent of a new child, the Applicant was allowed to register the birth of her son with the Organization. Mr. Garba was equally allowed to register the birth of his son with the Organization.

However, registering a child's birth is independent from submitting a request for a dependency benefit for the child. The Applicant's reliance on Umoja's manual is misguided: the manual does not form part of the Organization's legal framework (footnote omitted) and, in particular, it does not supersede the eligibility criteria for the claiming and receiving of a child dependency benefit, as set out in ST/AI/2018/6.

It is the Applicant's deliberate request for and receipt of a benefit contrary to the eligibility criteria set out in Section 1.6 of ST/AI/2018/6, which qualified her actions as misconduct.

11. The Tribunal must therefore *inter alia* determine whether the facts of this case clearly and convincingly show that the Applicant "failed to show the requisite truthfulness and honesty in a matter affecting her status, and to exercise reasonable care for the assets of the Organization" in violation of staff regulation 1.2(b) and staff rule 1.7.

12. Having heard the testimony of the Applicant, and the witnesses called by her, the Tribunal finds that additional evidence on the relevant human resources processes at issue in this case is necessary for the Tribunal's understanding of the dispute being adjudicated. The Tribunal is also interested in the process leading up to the Applicant being investigated and the investigation itself.

### **Order**

13. The Respondent is hereby **DIRECTED** to produce a witness with the requisite human resources and UMOJA expertise on dependency benefits, as well as a witness with direct knowledge of the processing of the Applicant's claim for dependency benefit.

14. The Respondent is also **DIRECTED** to call the Investigator of the Office of Internal Oversight Services whose report formed the basis of the impugned decision.

15. The Tribunal intends to hear these witnesses on 7 and 8 November 2023. Proceedings will commence at 1.30 p.m. (Nairobi time) on both days.

16. Given the finite duration of the undersigned Judge's deployment, parties are requested to take note that these dates are not variable.

*(Signed)*

Judge Solomon Areda Waktolla

Dated this 30<sup>th</sup> day of October 2023

Entered in the Register on this 30<sup>th</sup> day of October 2023

*(Signed)*

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