



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

ELIEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON DISMISSAL FOR WANT OF
PROSECUTION**

Counsel for Applicant:

Julia Kyung Min Lee, OSLA

Counsel for Respondent:

Elizabeth Brown, UNHCR

Francisco Navarro, UNHCR

Introduction

1. The Applicant, a former staff member of the United Nations High Commissioner for Human Rights, appealed the imposition of a disciplinary sanction of dismissal.

2. The Respondent replied that the application was without merit.

3. For the reasons set out below, the application is dismissed for want of prosecution.

Procedural history

4. The case was originally filed in the Nairobi Registry of the Dispute Tribunal and transferred to the New York Registry on 20 October 2021.

5. On 29 October 2021, by Order No. 100 (NY/2021), the Tribunal directed the Applicant to submit a request for production of additional evidence by 15 November 2021.

6. On 11 November 2021, Counsel for the Applicant informed the Tribunal that she was unable to establish contact with and, therefore, obtain instructions from the Applicant. At Counsel's request, the Tribunal extended the deadline for submission of the Applicant's request for additional evidence to 29 November 2021.

7. On 29 November 2021, Counsel for the Applicant filed a submission stating that despite continued attempts, she remained unable to establish contact with the Applicant and requested a three-month suspension of the proceedings to allow her sufficient time to do so.

8. By Order No. 115 (NY/2021) of 30 November 2021, the Tribunal granted a suspension of the proceedings until 15 December 2021 whereby Counsel for the Applicant was directed to confirm whether the Applicant wished to pursue the present case. The Applicant was cautioned that in the absence of a response, the case would be closed for want of prosecution.

9. As directed by the Tribunal, on 15 December 2021, Counsel for the Applicant confirmed that despite her best efforts, she remained unable to contact the Applicant and, therefore, to receive instructions from him. Counsel for the Applicant requested that were the Tribunal to dismiss the case for want of prosecution, it would do so without prejudice, so as to afford the Applicant the opportunity to explain the loss of communication if he were ever to re-establish contact with his Counsel.

Consideration

10. The Tribunal recalls that the right to institute and pursue legal proceedings is predicated upon the condition that the person exercising this right has a legitimate interest in initiating and maintaining legal action and that access to the Dispute Tribunal has to be denied to those, who are no longer in need of judicial remedy or no longer interested in the proceedings (see, for instance, *Bimo and Bimo* UNDT/2009/061; *Saab-Mekkour* UNDT/2010/047; *Zhang-Osmancevic* UNDT/2015/034; *Duverné* UNDT/2019/157).

11. The Tribunal's practice of dismissing cases for want of prosecution has been endorsed by the Appeals Tribunal in *Mukeba Wa Mukeba* 2021-UNAT-1080, para. 34 (reference to footnote omitted):

... We do not find fault with the practice and jurisprudence of the Dispute Tribunal to dismiss an application for want of prosecution when there is sufficient reason to assume that the applicant is no longer interested in the litigation. We point out, however, that great care needs to be taken in exercising this power, and an application may not be

dismissed without evidence that an applicant has failed to meet his obligations.

12. The Tribunal notes that despite Counsel for the Applicant's best efforts, she has been unable to contact the Applicant and, therefore, is unable to explain his failure to provide instructions.

13. Absent such justification, despite having been afforded two successive suspensions of the proceedings, the Tribunal can only conclude that the Applicant is no longer interested in the pursuit and outcome of these legal proceedings, which must therefore be deemed to have been abandoned, and this matter therefore stands to be dismissed for want of prosecution.

Conclusion

14. In light of the foregoing, but without a determination of the merits of the present case, the Applicant's application is dismissed for want of prosecution.

(Signed)

Judge Joelle Adda

Dated this 17th day of December 2021

Entered in the Register on this 17th day of December 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York