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Case No.: UNDT/NY/2010/070  
Judgment No.: UNDT/2013/075  
Date: 3 May 2013

## Introduction

1. On 17 May 2010, the Applicant, a former Learning Specialist at the P-4 level in the Organizational Learning and Development Section (“OLDS”), United Nations Children’s Fund (“UNICEF”), filed an application with the Dispute Tribunal contesting the 22 December 2009 decision of the Director, Division of Human Resources (“the Director”), UNICEF, to dismiss her complaint against the Chief of OLDS (“the Chief”) for harassment and a



they may be couched in other terms, *res judicata*, which means that the applicant does not have the right to bring the same complaint again.

7. Once a matter has been determined with finality, parties should not be able to re-litigate the same issue. An issue, broadly speaking, is a matter of fact or question of law in a dispute between two or more parties which a court is called upon to decide and pronounce itself on in its judgment. Article 2.1 of the Tribunal's Statute states that the Tribunal "shall be competent to hear and pass judgment on an application filed by an individual", as provided for in art. 3.1 of the Statute. Generally, a judgment involves a final determination of the proceedings or of a particular issue in those proceedings. The object of the *res judicata* rule is that "there must be an end to litigation" in order "to ensure the stability of the judicial process" (*Meron* 2012-UNAT-198) and that a litigant should not have to answer the same cause twice.

8. Therefore, a determination on a technical interlocutory matter is not a final disposal of a case, and an order for withdrawal is not always decisive of the issues raised in a case. In *Monagas* UNDT/2010/074, the Tribunal dealt with a withdrawal by the applicant on the grounds that he intended to commence proceedings against the Organization in the national courts of Venezuela. The Tribunal enquired of the applicant's counsel whether the applicant was aware of the status of the United Nations before national courts, the fact that the United Nations retained discretion regarding its own immunity, and therefore the hurdles the applicant might face seeking relief in such a manner. Furthermore, notwithstanding that the matter had not been canvassed on the merits, it would be unlikely for it to be reinstated once disve of t-71 D .00einstielioninstielioninuch2 TD 0 Tc .245

a general principle of procedural law that the right to institute legal proceedings is predicated upon the condition that the person using this right has a legitimate interest in initiating and maintaining legal action. Access to the court has been denied to those who are no longer interested in the proceedings instituted.

9. In the instant case, the Tribunal finds that the aforesaid request by the Applicant is an unequivocal withdrawal of the application with informed consent, and premised on a full and final settlement of any claims whatsoever and howsoever arising from this cause of action, without liberty to reinstate or appeal.

10. The Applicant having confirmed that she is indeed withdrawing the matter fully, finally and entirely, including on the merits, without right of reinstatement or appeal, dismissal of the case with a view to finality of proceedings is the most appropriate course of action.

11. In view of the nature of the claim in dispute and the costs already incurred, as well as potential costs of subsequent litigation, the Tribunal commends both parties and their Counsel for their efforts in resolving the case amicably. The Tribunal notes that such efforts should be encouraged as amicable resolution of cases saves the valuable resources of staff and the Organization and contributes to the harmonious working relationship between the parties.

12. The Tribunal further observes that the Applicant has requested that her name be withheld from any judgment or order published in her case. This request was motivated on the fact that "she is currently employed by another [United Nations] entity under a contract subject to renewal and due to the sensitive nature of the issues

## Conclusion

13. The Applicant has withdrawn the matter fully, finally and entirely, including on the merits, with the intention of resolving the dispute between the parties in finality. There no longer being any determination to make, this application is dismissed in its entirety without liberty to reinstate or appeal.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 3<sup>rd</sup> day of May 2013

Entered in the Register on this 3<sup>rd</sup> day of May 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York