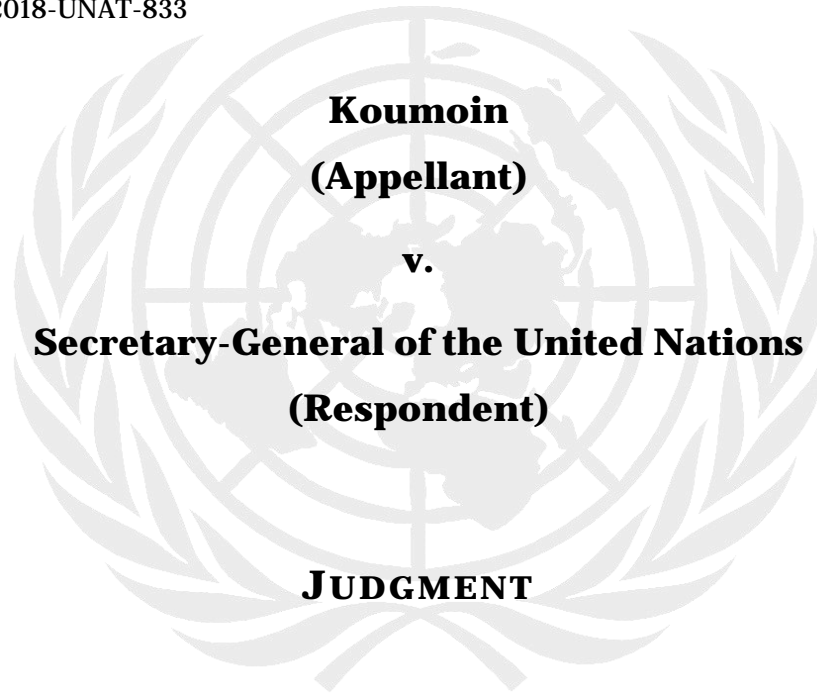




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-833



**Koumoin
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge John Murphy Judge Richard Lussick
Case No.:	2017-1122
Date:	22 March 2018
Registrar:	Weicheng Lin

Counsel for Mr. Koumoin:	Self-represented
Counsel for Secretary-General:	Francisca Lagos Pola

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2017/083, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 24 October 2017, in the case of *Koumoin v. Secretary-General of the United Nations*. Mr. Mathieu-Credo Koumoin filed the appeal on 25 October 2017, and the Secretary-General filed an answer on 29 November 2017.

Facts and Procedure

2. Mr. Koumoin is a former staff member of the United Nations Development Programme (UNDP). During the material time, he was a Regional Coordinator for West and Central Africa, with the Global Environmental Facility (GEF), Bureau of Development Policy, under the 200-Series of the Staff Rules (project personnel).

3. At the end of March 2006, Mr. Koumoin filed a request for administrative review of the decision not to renew his appointment on the grounds of non-performance. In June 2008, the former Joint Appeals Board (JAB) issued a report, in which it made no recommendation in support of Mr. Koumoin's appeal. The Secretary-General endorsed the JAB's position. Mr. Koumoin thereafter appealed to the former Administrative Tribunal. His case was subsequently transferred to the newly established Dispute Tribunal.

4. In Judgment No. UNDT/2010/105 dated 7 June 2010, the Dispute Tribunal dismissed Mr. Koumoin's application that he had filed on 31 August 2009 challenging UNDP's decision not to renew his appointment. In terms of procedure, the UNDT Judge recalled that two days after he had issued an Order dated 14 December 2009, finding that the Secretary-General was technically no longer part of the UNDT proceedings related to Mr. Koumoin's case as the Secretary-General had not filed a reply within the prescribed time limits. The Secretary-General then filed a motion requesting the Dispute Tribunal's permission to participate in the proceedings. The Dispute Tribunal granted the motion, gave the Secretary-General a copy of Mr. Koumoin's application of 31 August 2009 and set 25 January 2010 as the deadline for the Secretary-General's reply. The Secretary-General filed his reply on 25 January 2010. On the merits, the UNDT concluded that the non-renewal of Mr. Koumoin's appointment was a legitimate and proper exercise of the Organization's discretion; that the UNDP had correctly

followed the performance appraisal procedures; and that Mr. Koumoin's rights to whistle-blower protection had not been violated.

5. Mr. Koumoin appealed. By Judgment No. 2011-UNAT-119 dated 11 March 2011, the Appeals Tribunal affirmed the UNDT's decision.

6. More than six years later, on 16 October 2017, Mr. Koumoin filed another application with the Dispute Tribunal, seeking an order for execution of a "Default Judgment" said to be issued by UNDT on 14 December 2009 and an order for enforcement of a "Mediation Agreement" dated 24 May 2010.

7. On 24 October 2017, the Dispute Tribunal issued Judgment on Receivability No. UNDT/2017/083, without having transmitted Mr. Koumoin's application of 16 October 2017 to the Secretary-General so as to "spare court expenses".¹ The Dispute Tribunal rejected Mr. Koumoin's application of 16 October 2017 as "manifestly inadmissible".² It noted that, on 14 December 2009, the Dispute Tribunal did not issue any "default judgment"³ in respect of Mr. Koumoin's case. On that day, the UNDT issued an order directing the Secretary-General to apply to re-enter the proceedings if he wished to be part of the proceedings in respect of Mr. Koumoin's application of 31 August 2009. As for the "Mediation Agreement", the Dispute Tribunal noted that Mr. Koumoin was referring to a letter dated 24 May 2010 from the First Advisor of the Permanent Mission of Côte d'Ivoire to the United Nations (Côte d'Ivoire Mission) addressed to the Administrator of UNDP, in which the First Advisor voiced his support for Mr. Koumoin in the UNDT proceedings and for his reintegration and promotion to the D-2 level position of Executive Director of GEF within the UNDP based in New York. In the view of the Dispute Tribunal, this letter was no mediation agreement; it was merely the "expression of a position on the subject of the ongoing UNDT proceedings from an entity not being a party to the proceedings (a [United Nations] Member State)".⁴

8. On 25 October 2017, the day after its issuance, Mr. Koumoin filed an appeal against the UNDT's Judgment on Receivability. The Secretary-General filed an answer to the appeal on 29 November 2017.

¹ Impugned Judgment, para. 20.

² *Ibid.*, para. 21.

³ *Ibid.*, para. 18.

⁴ *Ibid.*, para. 19.

9. On 30 November 2017, Mr. Koumoin filed a motion seeking leave to file additional pleadings, to which the Secretary-General filed his response opposing the motion.

10. In Order No. 305 (2017) dated 26 December 2017, the Appeals Tribunal denied Mr. Koumoin's motion to file additional pleadings and ordered that the Registrar shall not include Mr. Koumoin's motion and annex thereto as well as the Secretary-General's response to the motion in the case file. The Order was transmitted to the parties on 26 December 2017.

11. Between 2 and 5 January 2018, Mr. Koumoin filed three motions, seeking permission to adduce several documents and requesting that the Appeals Tribunal issue a summary judgment to dispose of his appeal. In Order No. 308 (2018) dated 15 February 2018, the Appeals Tribunal rejected all of Mr. Koumoin's motions as "manifestly groundless, frivolous and unreasonable", finding his conduct approximating a manifest abuse of the appeals process.

Submissions

Mr. Koumoin's Appeal

12. Mr. Koumoin contends that, by failing to serve his application on the Secretary-General, the UNDT exceeded its jurisdiction and failed to exercise jurisdiction vested in it.

13. Mr. Koumoin also contends that the Dispute Tribunal erred in fact by omitting "critical Case Management Audio and Transcript evidence" and oversimplified the case by truncating the real facts.

14. Mr. Koumoin further contends that the Dispute Tribunal erred in law by misinterpreting its "Default Judgment" of 14 December 2009 and by incompletely and misleadingly reading the "Mediation Settlement Agreement" of 24 May 2010 signed by the First Advisor of the Côte d'Ivoire Mission. Mr. Koumoin insists that the UNDT Order of 14 December 2009 is a "Default Judgment" and can be construed as an order for payment of interim relief salaries. Judgment No. UNDT/2010/105 of 7 June 2010, on the other hand, was issued to preserve the confidentiality of the mediation settlement agreement.

15. Mr. Koumoin requests that the Appeals Tribunal reverse the impugned Judgment and order execution of the UNDT's "Default Judgment" of 14 December 2009 and that the UNDT award unspecified compensation and specific performance. In addition, Mr. Koumoin requests

that the Appeals Tribunal order enforcement of the 24 May 2010 “Mediation Settlement Agreement” and specific performance including his immediate appointment as the UNDP-GEF Executive Director/Coordinator at Headquarters in New York at the D-2 level.

The Secretary-General’s Answer

16. The Secretary-General contends that the Dispute Tribunal correctly dismissed Mr. Koumoin’s application as moot and not receivable, as far as the execution of a default judgment and the enforcement of a mediation agreement were concerned, as there was no default judgment or mediation agreement. Mr. Koumoin’s pleas relating to the non-renewal of his appointment should be set aside and cannot be re-litigated, as they have already been reviewed and rejected by both the Dispute Tribunal and Appeals Tribunal.

17. Mr. Koumoin’s reference to the grounds of appeal without substantiating why the impugned Judgment was defective is not sufficient to reverse that Judgment. He has failed to contest any aspect of the impugned Judgment or to refute the Dispute Tribunal’s finding that his application was moot and not receivable. By repeating his UNDT submissions before the Appeals Tribunal, Mr. Koumoin is essentially rearguing his case and requesting the Appeals Tribunal to consider his original UNDT submissions *de novo* and to come to a different conclusion.

18. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Koumoin’s appeal in its entirety and affirm the impugned Judgment.

Considerations

Preliminary issue

Oral hearing

19. Mr. Koumoin requests an oral hearing so that he can “provide further information” to the Appeals Tribunal. Oral hearings are governed by Article 8(3) of the Appeals Tribunal’s Statute (Statute) and Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules). We do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

Lawfulness of the UNDT summary judgment

20. The decision by the Dispute Tribunal to dismiss Mr. Koumoin’s application as “manifestly inadmissible” is not tainted by any of the errors set forth in Article 2(1) of our Statute, which are the only grounds of appeal at the disposal of the parties.

21. As established by Article 9 of the UNDT Rules of Procedure:⁵

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, *on its own initiative*, that summary judgement is appropriate.

22. Thus, a summary judgment may be issued by the UNDT when there is no dispute concerning the facts and the moving party is entitled to judgment as a matter of law. It can be issued either in response to a party’s request or on the Tribunal’s own initiative. The latter was the case when the UNDT issued the impugned Judgment.

23. One could argue that the UNDT violated the adversarial principle by not transmitting Mr. Koumoin’s application to the Secretary-General for an answer, and therefore there was no assessment of any possible dispute about the facts. It is true, however, that the UNDT acted on its own initiative and that the issue for consideration was a matter of law, on the basis of the documentary evidence.

24. In this way, the UNDT acted not only in accordance with the principles of judicial economy and efficiency, but also in the interest of expeditious disposal of the case.

The UNDT “Default Judgment” and “Mediation Settlement Agreement”

25. We agree with the UNDT that its 14 December 2009 Order entitled “Order on the Respondent’s motion requesting clarification dated 20 November 2009” cannot be seen as a “Default Judgment” and also that a letter from the Côte d’Ivoire Mission of 24 May 2010 cannot be regarded as a “Mediation Settlement Agreement”.

⁵ Emphasis added.

26. In the initial proceedings, the UNDT issued Judgment No. UNDT/2010/105, dismissing Mr. Koumoin's application, and the Appeals Tribunal affirmed the UNDT's decision in 2011.

27. More than six years later, Mr. Koumoin came again before the UNDT, this time to ask for execution of an alleged default judgment issued by the first instance court in the previous proceedings, and also for enforcement of a non-existent mediation agreement.

28. The UNDT Order of 14 December 2009 issued in the initial proceedings held that the Secretary-General was no longer part of its proceedings, as he had not filed a reply within the prescribed time limits. Mr. Koumoin considers that Order to be a "Default Judgment". However, that Order was superseded by the UNDT's subsequent decision to permit the Secretary-General to participate in its proceedings. Therefore, the initial Order of 14 December 2009 no longer exists, and as a result, the Secretary-General later filed his reply in the proceedings.

29. Secondly, as found by the UNDT, the letter from the First Advisor of the mission of a Member State is not an agreement binding on any party before the UNDT; it was merely the expression of a unilateral position from an entity external to the proceedings.

30. However, as already noted in *Krioutchkov*⁶ and *Aliko*⁷, the Appeals Tribunal is not an instance for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous.

⁶ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

⁷ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30.

Judgment

31. The appeal is dismissed and Judgment on Receivability No. UNDT/2017/083 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Lussick

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar