



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

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Judgment No. 2022-UNAT-1191

**Abdalla Mohammed Abdalla  
(Applicant)**

**v.**

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

**JUDGMENT  
ON APPLICATION FOR REVISION AND INTERPRETATION**

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Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge Dimitrios Raikos
Case No.:	2021-1562
Date:	18 March 2022
Registrar:	Weicheng Lin

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Counsel for Applicant: Ron Mponda

Counsel for Respondent: André Luiz Pereira de Oliveira

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Mr. Abdalla Mohammed Abdalla has filed an application for revision and interpretation of Judgment No. 2021-UNAT-1078 rendered by the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) on 19 March 2021. In Judgment No. 2021-UNAT-1078, the Appeals Tribunal found moot and dismissed as not receivable the Secretary-General's appeal against Order No. 103 (NBI/2020) of 28 May 2020, by which the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) had granted Mr. Abdalla's motion for an extension of the time limit for filing an application.
2. For the reasons set out below, we dismiss the application.

**Facts and Procedure**

3. Mr. Abdalla is a former staff member of the United Nations, having served as Assistant Protection Officer with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Khartoum, Sudan. On 4 February 2020, Mr. Abdalla was notified by the UNHCR Division of Human Resources of the High Commissioner's decision to dismiss him from the service of the Organization for serious misconduct.
4. On 22 May 2020, Mr. Abdalla filed a motion for extension of time to start an application at the UNDT.
5. By Order No. 103 (NBI/2020) of 28 May 2020, the UNDT extended the time for filing an application to 24 July 2020.
6. On 29 June 2020, the Secretary-General filed an appeal contesting the Order.
7. On 2 September 2020, the UNDT issued Order No. 169 (NBI/2020) (Order to Dispose), in which the UNDT noted that Mr. Abdalla had not filed an application within the extended time limit and therefore authorized the Registry to record the case as disposed without application.
8. On 19 September 2020, Mr. Abdalla filed his application before the UNDT. That same day, he also filed a motion to reopen the proceedings and to allow him to file a late application subject to the outcome of the Secretary-General's appeal. According to Mr. Abdalla, the Nairobi Registry declined to register the motion on the ground that the case had been closed.

9. On 19 March 2021, the Appeals Tribunal issued Judgment No. 2021-UNAT-1078, in which it dismissed the appeal as moot and irreceivable on grounds that Mr. Abdalla had not filed the application within the extended time limit and the case had thus been disposed of without application by means of Order No. 169 (NBI/2020) issued on 2 September 2020, which was after the filing of the appeal.

10. On 4 June 2021, Mr. Abdalla filed an application for interpretation and revision of judgment and on 12 July 2021, the Secretary-General filed his comments.

### **Submissions**

#### **Mr. Abdalla's Application for Interpretation and Revision of Judgment**

11. Mr. Abdalla became aware of the fact that an appeal had been filed on 29 June 2020 through a communication from the UNAT Registrar. He became aware of the Order to Dispose on 2 September 2020 through a communication from the UNDT Nairobi Registry.

12. Mr. Abdalla submits that the filing of the Secretary-General's appeal, in this case, should have been interpreted "as having a suspensive effect on the ongoing proceedings" in the UNDT. Consequently, the UNDT Order to Dispose "was ill-advised, procedurally incorrect and therefore of no legal effect as it was rendered during a period when the proceedings before that Tribunal were suspended".

13. The UNAT Decision of 19 March 2021 in this case finding that the matter before it had become moot, relied on the UNDT's Order irregularly made on 2 September 2020 during the pendency of the appeal. The effect of the UNDT's Order to Dispose during the pendency of the appeal is: (a) To allow the incidence of simultaneous trials in the same matter before UNAT and the UNDT; (b) To introduce an element of confusion to litigants before the Tribunals; (c) To irreversibly deny a party to have his case heard on merits; and (d) To seriously prejudice an applicant's case as would happen in this case if the case was not remanded to the UNDT to be heard on merits as requested by Mr. Abdalla in his answer to the appeal.

14. UNAT's decision also dwelt on the applicable law and found that on this basis, the appeal was not receivable. Having rejected the appeal, UNAT should have remitted the case to the UNDT for disposal/further case management, based on Mr. Abdalla's submission on the suspensive effect of the filing of an appeal as happened in this case. The UNDT's Order of

2 September 2020 could not render the appeal moot unless that Order had been issued before the filing of the appeal.

### **Secretary-General's' Comments**

15. There are no reasons to set aside the UNAT Judgment. First, in his application for interpretation, Mr. Abdalla has not pointed to any sentence in the Judgment which, in his view, was unclear to him and therefore should be clarified. Instead, in its Judgment, the Appeals Tribunal stated in clear words the reasons it considered when it found the Secretary-General's appeal moot and, therefore, not receivable. In so ruling, the Appeals Tribunal ultimately ruled in Mr. Abdalla's favour.

16. Second, it is indisputable that Mr. Abdalla did not file his application before the UNDT within the deadline of 90 calendar days set out in Staff Rule 11.4(a). Instead, he only challenged the contested decision on 19 September 2020, i.e., around seven months after he conceded he had been made aware of the contested decision.

17. Third, Mr. Abdalla's contention that the Appeals Tribunal should have determined the suspension of the UNDT proceedings constitutes a fresh claim and should not be considered by the Appeals Tribunal. Mr. Abdalla did not raise it before the Appeals Tribunal in his answer to the appeal. Moreover, he has not appealed the UNDT Order to Dispose of his case. Therefore, by saying that the UNAT Judgment needs to be interpreted, Mr. Abdalla is trying to start new litigation in respect of the UNDT Order to Dispose.

18. In sum, Mr. Abdalla is merely unsatisfied with the UNAT Judgment and is looking for a new avenue to litigate a matter that is *res judicata*. The Secretary-General asks that the Appeals Tribunal reject the application for interpretation in its entirety.

### Considerations

19. The impugned Appeals Tribunal Judgment dated 19 March 2021 found in Mr. Abdalla's favour. Then, the Secretary-General was the appellant party and the appeal, filed on 29 June 2020, aimed to contest the UNDT's Order which extended the time limit for Mr. Abdalla to file an application. The Secretary-General's appeal was dismissed as non-receivable, on the basis that: i) according to the Appeals Tribunal's jurisprudence, interlocutory appeals on matters of evidence, procedure and trial conduct are generally not receivable, unless it is clear and manifest that the UNDT has exceeded its jurisdiction or competence, which was not the case at hand; and ii) the Appeals Tribunal found that Mr. Abdalla had not filed an application within the extended time limit, which led to the disposal of the case without application after the filing of the appeal by the Order to Dispose dated 2 September 2020.

20. Mr. Abdalla did not contest the Order to Dispose. Nor did he challenge the contested decision before the UNDT until 19 September 2020, well after the extended time limit granted by the UNDT had lapsed on 24 July 2020.<sup>1</sup>

21. Mr. Abdalla has now filed this application for revision and interpretation of judgment, claiming that the filing of the Secretary-General's appeal had a suspensive effect on the ongoing proceedings in the UNDT, which rendered the UNDT Order to dispose of the case ill-advised and procedurally incorrect. Mr. Abdalla also maintains that the Appeals Tribunal's Judgment relied on an incorrect UNDT order issued during the proceedings at the Appeals Tribunal, leading to confusion, simultaneous trials and denial of having his case heard on its merits. Mr. Abdalla further contends that, once the Appeals Tribunal rejected the appeal, it should have remanded the case to the UNDT for disposal.

22. Mr. Abdalla's seems to contend that, by considering that the original proceedings before the UNDT were suspended, the extended time limit to file an application would not have elapsed and thus his ultimate application should be received. This reasoning is, however, unsustainable.

23. Article 11(1) of the Appeals Tribunal Statute stipulates that, subject to Article 2 of the Statute, either party may apply to the Appeals Tribunal for a revision of a judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Appeals Tribunal and to the party applying for revision, and always provided

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<sup>1</sup> Impugned UNAT Judgment, para. 5.

that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.

24. On the same matter, Article 24 of the UNAT Rules of Procedure (Revision of Judgements) states that either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgment on the basis of the discovery of a decisive fact that was, at the time the judgment was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always on the condition that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.

25. Furthermore, Article 11(3) of the Appeals Tribunal Statute provides that either party may apply to the Appeals Tribunal for an interpretation of “the meaning or scope” of a judgment. Article 25 of the Rules of Procedure of the Appeals Tribunal requires the Appeals Tribunal to decide if any such application for interpretation is admissible and if so, to issue its interpretation. Following the Appeals Tribunal jurisprudence, an application for interpretation will be admitted only if the meaning or scope of a judgment is unclear or ambiguous.

26. As recently found in *Fairweather*:<sup>2</sup>

... A final decision of this Tribunal cannot be readily set aside based on the principle of *res judicata*. Article 10(6) of the Statute provides that judgments of the Appeals Tribunal “shall be final and without appeal, subject to provisions of article 11” of the Statute. Article 11 sets out the limited grounds for review or revision of a final judgment.

*Application for Interpretation*

... Article 11(3) of the Statute provides that “[e]ither party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgment.” Article 25 of the Rules provides that the Appeals Tribunal “will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.”

... This Tribunal found in *Abbasi* that:

[I]nterpretation is only needed to clarify the meaning of a judgment when it leaves reasonable doubts about the will of the Tribunal or the arguments leading to a decision. But

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<sup>2</sup> *Dianne Fairweather v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1128, paras. 25 to 28 and 30 to 36 (internal footnotes omitted).

if the judgment is comprehensible, whatever the opinion the parties may have about it or its reasoning, an application for interpretation is not admissible, as it happens in the present case.

... In the present case, the majority Judgment is clear and unambiguous in its meaning. There is no confusion or reasonable doubt about the conclusions or reasons of the Tribunal. The Applicant incorrectly quotes paragraph 38 in an attempt to point out an alleged inconsistency with paragraph 43 of the Judgment. Paragraph 38 clearly summarizes the Applicant's submissions and allegations on appeal. Paragraph 43, on the other hand, clearly sets out the conclusion of the majority of the Appeals Tribunal that it "did not agree with the Appellant's reasoning". There is no inconsistency.

...

... The majority Judgment does not need interpretation or clarification as it leaves no reasonable doubt as to what it means. Rather, we find the application "constitutes a disguised way to criticize the Judgment or to disagree with it." Therefore, we deny the application for interpretation.

*Application for Revision*

... Article 11 (1) of the Statute provides that a party may apply for revision "on the basis of the discovery of a decisive fact which was, at the time of the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence."

... Therefore, in an application for revision, an applicant must show or identify: (i) fact(s) that, at the time of the Appeals Tribunal's judgment, were unknown to both the Appeals Tribunal and the party applying for revision, (ii) that such ignorance was not due to the negligence of the applicant, and (iii) that the facts identified would have been decisive in reaching the decision.

... The Applicant does not identify a decisive fact unknown at the time of the Judgment. She says that she has unsuccessfully written to the Administration, after discerning that irrespective of the Judgment, she is still entitled to the long-service step benefit as per the Staff Rules, which would also impact her pension benefit. However, this is not a fact that is relevant to the issues before the Appeals Tribunal, as this relates to events subsequent to the Judgment. As such, this cannot be "decisive" to the majority decision on the issues.

... The Applicant makes several submissions and allegations of how the Appeals Tribunal erred, or misunderstood, or misinterpreted matters in its Judgment. However, she does not identify a decisive fact, that at the time of the Judgment, was unknown and would have been decisive in reaching the decision.

... As stated by the Appeals Tribunal previously, an application seeking revision of a final judgment of the Appeals Tribunal can only succeed if it fulfils the strict and exceptional criteria established under Article 11 of the Statute.

... The Applicant has failed to meet the “strict and exceptional criteria” required by Article 11 of the Statute. Instead, the Applicant attempts to use the present application as an additional opportunity to re-litigate arguments that failed at trial or on appeal. For these reasons, the application for revision must fail.

27. In the present case, Mr. Abdalla does not point to any statement or consideration in the Appeals Tribunal Judgment which would be ambiguous or unclear, and thus in need of clarification. Nor does he argue that he discovered a decisive fact which was unknown to the Appeals Tribunal at the time the Judgment was rendered. All he seeks is to appeal against the Judgment on the grounds that the Appeals Tribunal allegedly erred when it did not remand the case for further adjudication when it rejected the Secretary-General’s appeal. Nonetheless, the present application is not a means of appeal against the previous decision, which is final and binding on both parties. Article 10(6) of the Appeals Tribunal Statute provides that the judgments of the Appeals Tribunal shall be final and without appeal. The order of the Tribunal is decisive. There is accordingly no legal basis to revisit the issue in this case.

28. Moreover, it is clear from the Appeals Tribunal Judgment that there was no need to remand, as the case had been disposed of without application.<sup>3</sup> To remand a case for further actions without an application would have been without purpose. There was no longer a case to be dealt with, since the UNDT Order disposed of the case due to a lack of application, despite the motion of extension of time having been granted.<sup>4</sup>

29. On the other hand, Mr. Abdalla’s argument that the Secretary-General’s appeal suspended the proceedings before the UNDT is baseless. Mr. Abdalla’s contention that the Appeals Tribunal should have determined the suspension of the UNDT proceedings does not justify an interpretation of judgment, as there is no such provision for this in law. Nor was there such determination by the Tribunals, nor any request by Mr. Abdalla in this regard. The previous Appeals Tribunal decision was in Mr. Abdalla’s favour, since it dismissed the Secretary-General’s appeal as non-receivable, when in fact Mr. Abdalla had not challenged the contested decision within the new deadline established by the UNDT. Nor did he contest the UNDT’s Order to Dispose on the grounds that no application had been filed. Incidentally, the Appeals Tribunal finds that the present application for revision seems to be non-receivable

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<sup>3</sup> Impugned UNAT Judgment, para. 23.

<sup>4</sup> Order to Dispose.



*ratione temporis*, as it was not filed within 30 days of discovery of any alleged new facts. As discussed, here there appear to be no new facts.

30. In light of the aforementioned, the Appeals Tribunal's Judgment stands and Mr. Abdalla's application for revision and interpretation of the Judgment must accordingly fail.

**Judgment**

31. The application is dismissed.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022.

*(Signed)*

Judge Halfeld, Presiding  
Juiz de Fora, Brazil

*(Signed)*

Judge Colgan  
Auckland, New Zealand

*(Signed)*

Judge Raikos  
Athens, Greece

Entered in the Register on this 5<sup>th</sup> day of April 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar