



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

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Judgment No. 2022-UNAT-1287

**Yussuf Ahmed Hassan  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge John Raymond Murphy
Case No.:	2021-1636
Date of Decision:	28 October 2022
Date of Publication:	15 December 2022
Registrar:	Juliet Johnson

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Counsel for Appellant: Charles Kanjama

Counsel for Respondent: Patricia C. Aragonés

**JUDGE MARTHA HALFELD, PRESIDING.**

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2021/113 of 27 September 2021 (the impugned Judgment or UNDT Judgment) submitted by Mr. Yussuf Ahmed Hassan (Appellant).
2. Mr. Hassan is a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) who filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting his non-selection for a new position in UNHCR which he applied to after his separation.
3. In the impugned Judgment, the UNDT dismissed the application as not receivable *ratione personae*.
4. For the reasons as set out below, the Appeals Tribunal dismisses the appeal.

**Facts and Procedure**

5. The Appellant is a former staff member of UNHCR who separated from service on 31 December 2018.<sup>1</sup>
6. In an application filed with the UNDT on 23 January 2021, the Appellant contested his non-selection for the position of Resettlement Associate (G-6) with UNHCR, a position for which he applied on 13 September 2019.<sup>2</sup>

*The UNDT Judgment*

7. With reference to this Tribunal's decision in *Khan*<sup>3</sup>, the UNDT dismissed the application on the basis that it was not receivable *ratione personae*, because at the date of his filing the application, Mr. Hassan was not a staff member and the contested non-selection decision did not breach the terms of his former appointment or contract of employment.<sup>4</sup>

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<sup>1</sup> *Hassan v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/113, para. 1.

<sup>2</sup> *Ibid.*, para. 2.

<sup>3</sup> *Khan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-727.

<sup>4</sup> Impugned Judgment, paras. 8-9.

*The UNAT Appeal*

8. On 26 November 2021, Mr. Hassan submitted an appeal of the impugned Judgment.
9. On 1 February 2022, the Secretary-General submitted an answer to the appeal.

**Submissions****Mr. Hassan's Appeal**

10. Mr. Hassan submits that the UNDT erred on a question of law in finding that it was not competent to rule on the application.
11. Mr. Hassan contends that the UNDT erred on a question of law in refusing to consider the merits of the application, which he alleges is a breach of his fundamental rights, specifically the right to an effective remedy enshrined in Article 8 of the Universal Declaration of Human Rights.
12. Mr. Hassan submits that the UNDT erred on a question of law and fact, resulting in a manifestly unreasonable decision, when it found that the only issue was the receivability of the application. Mr. Hassan argues that he submitted a reply which responded to the issues on the merits and this created a "legitimate expectation" that the UNDT Judgment would address "all relevant issues of his claim"; the UNDT Judgment did not consider or rule upon the merits of the case, violating principles of natural justice; and he was not given the opportunity to demonstrate that there was a sufficient nexus between his former employment and the impugned decision.
13. Relying on UNAT jurisprudence relating to receivability and former staff members, namely *di Giacomo*<sup>5</sup>, *Khan*<sup>6</sup> and *Shkurtaj*<sup>7</sup>, Mr. Hassan submits that the UNDT ought to have first established whether there was sufficient nexus between his former employment and the impugned decision and then have considered whether the application was receivable *ratione personae*.
14. Mr. Hassan submits that the UNDT also erred on procedure by "hastily" dismissing his application on the basis it was not receivable. He states that, after receiving the Respondent's response, there was no "cogent" communication from the Dispute Tribunal or the UNDT Judge as to how the matter would progress. He maintains that he had a legitimate expectation that his case

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<sup>5</sup> *Di Giacomo v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-249.

<sup>6</sup> *Khan Judgment, op. cit.*

<sup>7</sup> *Shkurtaj v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-148.

would be determined on the merits and takes issue with the fact that, despite receiving communications that the UNDT Registry would be in touch with further directions by e-mail, he received nothing except for the impugned Judgment dismissing his application on receivability grounds.

15. Mr. Hassan claims that he suffered harm to his employment record and career prospects and that the lack of information about alleged “integrity concerns” related to his candidacy is prejudicial and has caused him stress, anxiety and reputational harm.

16. In terms of remedies, Mr. Hassan requests:

- a) the UNDT Judgment be overturned and remanded for consideration on its merits;
- b) compensation for reputational harm;
- c) rescission of the contested administrative decision or specific performance;
- d) disclosure of the details of the *ex parte* report filed by Respondent; and
- e) costs of the application.

### **The Secretary-General’s Answer**

17. The Secretary-General submits that the UNDT correctly dismissed the application as not receivable *ratione personae*, and that Mr. Hassan has not demonstrated on appeal any reversible error by the UNDT that would affect the outcome of the case. Thus, he argues that the Appeals Tribunal should dismiss the appeal and uphold the impugned Judgment.

18. The Secretary-General submits that the UNDT correctly concluded that the application was not receivable *ratione personae* as the UNDT rightly found that Mr. Hassan was not a staff member when he filed his application and that the contested decision did not breach the terms of Mr. Hassan’s former appointment or contract of employment.

19. The Secretary-General argues that, while Article 3.1(b) of the UNDT Statute allows former staff members to have access to the internal justice system if their applications meet the criteria of Article 2, Article 2.1(a) makes it clear that the UNDT is only competent to hear and pass judgment on an application that appeals an administrative decision that is alleged to be in non-compliance with the individual’s former terms of appointment.

20. The Secretary-General points out that although the Tribunals have exceptionally found jurisdiction when the facts and circumstances of the contested decision have a sufficient nexus to the former staff member's terms of appointment or contract of employment, in the present case, the UNDT was correct to find that there was insufficient nexus. The Secretary-General submits that there was nothing in the terms of Mr. Hassan's prior letter of appointment that guaranteed his reappointment to the Organisation following separation; he only had a right to be considered.

21. Relying on the case of *Khan*<sup>8</sup>, the Secretary-General submits that the contested decision did not affect any of Mr. Hassan's rights that stemmed from his prior employment so as to render his application receivable. The Secretary-General submits that Mr. Hassan's limited right to be considered eligible for an internal vacancy had not been adversely affected and was not challenged before the UNDT.

22. With reference to the Appeals Tribunal's decision in *Latimer*<sup>9</sup>, the Secretary-General submits that there was no contract or quasi-contract established nor any legitimate expectations created, given that Mr. Hassan was not extended an offer of employment.

23. The Secretary-General submits that just because the Appeals Tribunal has exceptionally found some cases by former staff members to be receivable, this does not automatically make Mr. Hassan's application receivable. Moreover, the Secretary-General states that Mr. Hassan was given an opportunity to demonstrate a sufficient nexus between his former employment and the contested decision. The Secretary-General adds that Mr. Hassan's case involves an even more tenuous nexus than existed in *Shkurtaj*<sup>10</sup> where the staff member's challenge related to facts arising from his prior employment.

24. The Secretary-General submits that Mr. Hassan's allegations about the integrity concerns raised about his candidacy after his separation are presented for the first time on appeal and are speculative, irrelevant and should be disregarded by the Appeals Tribunal.

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<sup>8</sup> *Khan* Judgment, *op. cit.*

<sup>9</sup> *Latimer v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-901.

<sup>10</sup> *Shkurtaj* Judgment, *op. cit.*

25. The Secretary-General submits that no due process rights were breached in the recruitment process, noting that the Appeals Tribunal rejected a similar “failure to be heard” due process challenge in *Arango*<sup>11</sup>.

26. On Mr. Hassan’s claim of error of procedure by the UNDT in dismissing the case, the Secretary-General submits that the UNDT enjoys considerable discretion in case management, summary judgment was an appropriate tool to deal with issues of receivability and that the UNDT was correct not to address the merits having found the application not receivable.

27. The Secretary-General states that Mr. Hassan’s submissions regarding the merits of the case and his requests for compensation and other remedies are irrelevant to the issues of receivability and fall outside of the Appeals Tribunal’s jurisdiction.

28. The Secretary-General requests that the Appeals Tribunal uphold the impugned Judgment and dismiss the appeal. Should this Tribunal find the application receivable in whole or in part, the Secretary-General requests that we remand the case for determination on the merits.

### **Considerations**

#### *Oral hearing*

29. Mr. Hassan requests an oral hearing so that he can give oral testimony to “help the Tribunal in determination of the matter”. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules).

30. The present appeal deals with the receivability of the application, which is a rather straightforward issue. If the appeal succeeds, the Appeals Tribunal will ordinarily remand the case to the UNDT for determination on the merits, in accordance with the United Nations two-tier system of administration of justice.

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<sup>11</sup> *Jose Daniel Arango v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1120.

31. Thus, the Appeals Tribunal does 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. Accordingly, the request for an oral hearing is rejected.

*Lawfulness of the UNDT summary judgment*

32. The decision by the Dispute Tribunal to dismiss Mr. Hassan’s application as irreceivable is not tainted by any of the errors set forth in Article 2(1) of the Statute, which are the only grounds of appeal at the disposal of the parties.

33. As established by Article 9 of the UNDT Rules of Procedure:<sup>12</sup>

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.

34. 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 Dispute Tribunal’s own initiative. The latter was the case here when the UNDT issued the impugned Judgment.

35. Despite Mr. Hassan’s dissatisfaction expressed in his appeal, the Appeals Tribunal has no reason to fault the procedure followed by the UNDT, as no error was made. The UNDT acted lawfully on its own initiative, and correctly assumed that the issue for consideration was a matter of law on the basis of established facts.

36. In so doing, 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.

*Merits of the appeal – the receivability of the application*

37. The issue on appeal is whether the UNDT erred when it held that Mr. Hassan’s application contesting his non-selection for the position of Resettlement Associate G-6 in UNHCR was not receivable *ratione personae*.

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<sup>12</sup> Emphasis added.

38. In reaching its decision, the UNDT observed that Mr. Hassan applied for the position when he had already been separated from the service of the Organization. Considering that his claim did not derive from possible violations of his previous terms of appointment, but rather from a subsequent decision not to select him for another post when he was no longer a staff member, the UNDT found that the provisions of Article 3.1(b) of the UNDT Statute did not apply to his case.

39. In his appeal, Mr. Hassan did not dispute the fact that the contested non-selection decision does not derive from his previous appointment. Rather, he acknowledged that he had been separated from service on 31 December 2018 and that the contested decision relates to a matter which arose a considerable time later, in September 2019 at the earliest, when he applied for the new post, or in June 2020, when he was notified that he had not been the successful candidate.

40. Article 3(1) of the UNDT Statute limits the jurisdiction *ratione personae* of the UNDT. As set forth therein, the UNDT shall be competent to hear and pass judgment on applications of staff members, former staff members or representatives of incapacitated or deceased staff members of the Organization. However, before a person may be regarded as a former staff member in terms of Article 3 there must be a sufficient nexus between the former employment and the contested decision. A sufficient nexus exists when the challenged decision has bearing on an applicant's former status as a staff member, specifically when it affects his or her prior contractual rights.<sup>13</sup> The extension of jurisdiction to former, deceased and incapacitated staff members is intended to permit resolution of disputes concerning contractual rights acquired during previous employment by staff members whose contracts have since expired. These limits on personal jurisdiction mean that ordinarily the UNDT will not have the authority to receive applications by *inter alia* job applicants alleging illegality, unfairness or discrimination in the recruitment process.<sup>14</sup>

41. It is true that a former staff member has legal standing to file an application before the UNDT in order to contest a decision that is related to his or her former terms of appointment. However, such a contested decision must affect the terms of his or her former appointment. Following the Appeals Tribunal's approach in *Ghahremani*, the UNDT properly determined

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<sup>13</sup> *Khan* Judgment, *op. cit.*; *Ghahremani v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-171; *Sims v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-154.

<sup>14</sup> *Arango* Judgment, *op. cit.*, para. 28.



that Mr. Hassan's application was not receivable *ratione personae*. In *Ghahremani*, the Appeals Tribunal held that a former staff member of the Organization who brings an application which does not allege that the contested decision was not in compliance with his prior terms of appointment does not have standing, because the application has no bearing on the individual's former status as a staff member, thus rendering the application not receivable *ratione personae*.<sup>15</sup> So too is the case here.

42. At the time of the contested non-selection decision Mr. Hassan had been separated from service for more than a year and was no longer a staff member. He was an external candidate with no standing to challenge the decision not to select him for the new post of Resettlement Associate. Moreover, there was no offer of appointment which could possibly give rise to an argument of a "quasi-contract" so as to confer jurisdiction over Mr. Hassan's claims.<sup>16</sup> The UNDT thus did not err in its determination that his application was not receivable *ratione personae*.

43. Mr. Hassan contends that the fact that the Secretary-General submitted a reply encompassing the merits of the case created a legitimate expectation for him that the UNDT Judgment would address all relevant issues of his claim. He also alleges that the UNDT's refusal to deal with the merits of the application is a denial of his fundamental rights enshrined in the Universal Declaration of Human Rights. However, Mr. Hassan's arguments are groundless, as the jurisdictional powers of the Dispute Tribunal and the Appeals Tribunal are restricted by the terms of their respective statutes. Every tribunal must comply with its own statutory rules and regulations, and not every lawsuit, be it national or international, will produce a merit-based judgment, unless its initial application is receivable, which was not the case here. The limitations in the Tribunals' respective statutes mean that jurisdictional powers cannot be extended, regardless of any conceivable argument that the parties may raise.

44. Mr. Hassan further seems to argue that there was a nexus between his former employment and the reason behind the contested decision. However, any assessment of a possible ulterior motive behind the non-selection decision would involve analysing the merits of his application, which could only be done if the jurisdictional threshold was surpassed. This was not the case here, as the application was properly dismissed on grounds of receivability.

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<sup>15</sup> *Ghahremani* Judgment, *op. cit.*, paras. 4-5.

<sup>16</sup> *Al Hallaj v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-810, paras. 38-39.

45. Mr. Hassan raises in his appeal a number of other arguments related to the merits of his case, including his being the subject of retaliation after having raised concerns in his workplace. These arguments could only have been assessed if the threshold of receivability was met. As discussed, this did not happen for reasons which this Tribunal has concluded were correct.

46. In light of the above, Mr. Hassan has failed to demonstrate that the UNDT erred in its Judgment when it found that the application was not receivable on the ground that it was not based on a violation of Mr. Hassan's terms of appointment when he was a staff member. The appeal accordingly fails.

**Judgment**

47. Mr. Hassan's appeal is dismissed, and Judgment No. UNDT/2021/113 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of October 2022 in New York, United States.

*(Signed)*

Judge Halfeld, Presiding

*(Signed)*

Judge Colgan

*(Signed)*

Judge Murphy

Judgment published and entered into the Register on this 15<sup>th</sup> day of December 2022 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar