



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

Judgment No. 2022-UNAT-1307

**Asr Ahmed Toson
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2021-1641
Date of Decision:	28 October 2022
Date of Publication:	30 December 2022
Registrar:	Juliet Johnson

Counsel for Appellant: Self-represented

Counsel for Respondent: Patricia C. Aragonés

JUDGE GRAEME COLGAN, PRESIDING.

1. Asr Ahmed Toson appeals against the interlocutory Order on Case Management of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Order No. 118 (NY/2021) dated 6 December 2021, consolidating for hearing and decision his two cases before it. For the reasons set out subsequently, we dismiss the appeal as unreceivable.

Facts and Procedure

2. Mr. Toson is a staff member of the United Nations Population Fund (UNFPA). He complained to UNFPA's Office of Audit and Investigation Services (OAI) of retaliation against him by his supervisor. On 2 March 2021, Mr. Toson filed an application challenging the decision of OAI to not provide him with a copy of its investigation report into his complaint of retaliation by his supervisor. This case was assigned case number UNDT/NY/2021/030.

3. Next, on 17 April 2021 Mr. Toson applied to the UNDT contesting the decision of the Executive Director of UNFPA taken on 16 October 2020 that there had been no retaliation against him and that his complaint had been closed. The decision nevertheless recommended that steps be taken to promote a harmonious relationship between Mr. Toson and his supervisor. Mr. Toson's case was assigned file number UNDT/NY/2021/029.

4. On 6 December 2021, the UNDT issued Order No. 188 (UNDT/2021) by which it made certain directions and related orders in preparation for the hearing of Mr. Toson's proceedings. At paragraph 6 of its Order, the UNDT directed that the two cases be henceforth consolidated. This was said to be for reasons of justice and judicial economy, both cases concerning an investigation into allegations of retaliation against his supervisor. The Dispute Tribunal also made further and consequential procedural orders relating to the consolidated cases, but these are not the subject of this appeal.

5. On 11 December 2021, Mr. Toson appealed to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) against the UNDT's Order of 6 December 2021. The Respondent filed his answer on 17 January 2022.

Submissions

Mr. Toson's Appeal

6. Mr. Toson's grounds of appeal are several, but all except one of which are merits-based. Because of the decision we have reached on his appeal's receivability, we will set out Mr. Toson's argument on what he categorises as the only jurisdictional ground advanced by him. There are three elements to what he claims is that jurisdictional ground. It is difficult to discern from his submissions (Mr. Toson is self-represented) just what is the jurisdictional error he alleges. We will, nevertheless, do our best to identify these grounds.

7. First, Mr. Toson says that the UNDT failed "to exercise [the] jurisdiction vested in it" by the Judge failing or refusing to recuse herself from hearing and deciding his case.

8. Second, he says that it was a jurisdictional error that, instead of consolidating, the UNDT Judge ought to have granted "leave of 30 days to appeal any adverse outcome of her order" thereby allowing Mr. Toson an opportunity to appeal against the consolidation direction at that time.

9. Finally in this regard, Mr. Toson contends that the UNDT exceeded its jurisdiction by the Judge "failing to declare her ethical conflict of interest, which arose by virtue of her issuing [the] order to consolidate two cases for no valid reason".

The Secretary-General's Answer

10. The Secretary-General submits that the appeal is not receivable and should be dismissed. The Respondent points out that the UNDT enjoys significant, albeit not unconstrained, powers of procedural and case managerial direction and that the exercise of these will not be interfered with lightly by the UNAT on appeal. Fair and expeditious dispensation of justice in cases at first instance is the general objective of the UNDT.

Considerations

11. Mr Toson requested an oral or in-person hearing of his appeal. We declined that request saying that we would give our reasons as part of this Judgment. This we now do.

12. The appeal is against an interlocutory order or preparatory direction that two cases involving Mr. Toson be consolidated for hearing. The remedy sought is to reverse that consolidation order so that Mr. Toson's cases are heard separately.

13. The statutory grounds for departing from the default position in practice that appeals are dealt with on the papers filed, is contained in Article 18 of the Appeals Tribunal's Rules of Procedure. It provides that an oral or in-person hearing may be directed if this will assist in the expeditious and fair disposal of the case.

14. Mr. Toson says that an oral hearing is necessary to "[d]emonstrate [the] UNDT['s] flagrant violations of due process, [his] right [to] defend[... himself], [and to] equal access to [the] same information and evidence[... as was provided to] the [Respondent]".

15. Even if an appeal is available jurisdictionally to Mr. Toson, we were not persuaded that the single question of consolidation of cases required an oral or in-person hearing to decide it expeditiously and fairly, rather than addressing this question on the papers filed by the parties in support of, and in opposition to, the appeal.

16. For the foregoing reasons, we declined Mr. Toson's application for an oral hearing of his appeal.

17. We now turn to the appeal itself. Article 2(1) of the UNAT Statute provides rights of appeal in respect of a "judgment rendered by the [UNDT]". The established jurisprudence of the UNAT is that to be receivable, an appeal must be from a substantive judgment and not a pre-trial direction or interlocutory order. Such an appeal from a pre-trial direction or interlocutory order may be receivable, however, if it is alleged that the UNDT clearly exceeded its competence or jurisdiction, or if it assumed a jurisdiction it does not have.

18. We will deal briefly with Mr. Toson's arguments on appeal as we have summarised them above and by reference to our numbered paragraphs. As to the argument set out at paragraph 7 about recusal, that is not a jurisdictional decision, that is whether there was power to do so or that any power was exceeded. There was clearly a power to consolidate related proceedings available to the UNDT. Nor is it a jurisdictional error that, as Mr. Toson claims, the order for consolidation deprived him of an appeal right in respect of the consolidation order. Such rights of appeal are available, although later.

19. Next, we respond to the argument set out at our paragraph 8 that it was a jurisdictional error that, instead of consolidating, the UNDT Judge ought to have granted “leave of 30 days to appeal any adverse outcome of her order” thereby allowing Mr. Toson an opportunity to appeal against the consolidation direction at that time. Not only was this not a jurisdictional error, but to have done what he proposes would have amounted to such an excess of jurisdiction by the UNDT by purporting to create powers where none exist. There is nothing in this argument.

20. Third is the allegation summarised at paragraph 9 above that the UNDT exceeded its jurisdiction by the Judge “failing to declare her ethical conflict of interest which arose by virtue of her issuing [the] order to consolidate two cases for no valid reason”. This is a circular and self-serving argument: without Mr. Toson explaining how this was so, the Judge did not fail to address a conflict of interest by making the consolidation order that she did.

21. The UNDT is inarguably empowered to consolidate cases for its hearing of them. Such an interlocutory direction is capable of review and rectification on appeal from the UNDT’s substantive judgment following such a direction. But that review is limited to situations in which it is subsequently decided that the UNDT erred in fact, law or procedure, or exceeded the jurisdiction vested in it, by either consolidating or declining to consolidate the cases. If the judgment is that the cases were wrongly consolidated and that this amounted to an error of law or constituted one of the other grounds upon which an appeal may be allowed, then the available remedies may include remanding the cases to the UNDT for unconsolidated hearings.

22. There is a long and consistent line of UNAT cases supporting the Secretary-General’s jurisdictional opposition to the receivability of Mr. Toson’s appeal. We cite as authority for that proposition only the most recent in that line of jurisprudence, *Ashraf Ismail abed allah Zaqqout*.¹

23. Finally, and as pointed out by the Respondent in his submissions, Mr. Toson has recently advanced unsuccessfully the same argument, albeit in respect of another case altogether.² By refusing or failing to be guided by the judgment and reasoning in that earlier

¹ *Ashraf Ismail abed allah Zaqqout v Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* 2021-UNAT-1116, paras. 21-23. Although a case involving an appeal from the UNRWA Dispute Tribunal, the principle is equally applicable to appeals from UNDT judgments.

² *Asr Ahmed Toson v Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1160. See in particular paras. 24-26.

case and persisting with precisely the same unmeritorious point in this case, Mr. Toson risks incurring an award of costs against him for vexatious and frivolous conduct of his litigation. The Secretary-General has not sought such an order on this occasion and so, while not making one, we do put Mr. Toson on notice of the risk he runs by employing such strategies in his litigation.

24. Nor can it go unremarked that in stark contrast to Mr. Toson's claim that the UNDT's order for consolidation delayed finality of his proceedings, it is rather the bringing of this unreceivable and unmeritorious appeal that has done so and to Mr. Toson's own disadvantage.

25. For these reasons, we adjudge Mr. Toson's appeal to be not receivable and it must be dismissed accordingly.

Judgment

26. Mr. Toson's appeal is dismissed and Order No. 118 (NY/2021) is affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Judgment published and entered into the Register on this 30th day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar