



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

Judgment No. 2024-UNAT-1408

**Hydar Daniel Mlouk Majook
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Gao Xiaoli Judge Graeme Colgan
Case No.:	2023-1792
Date of Decision:	22 March 2024
Date of Publication:	8 April 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Sylvia Schaefer

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Mr. Hydar Daniel Mlouk Majook,¹ a former individual contractor and former national staff of the United Nations Mission in South Sudan (UNMISS or Mission), contested multiple decisions of UNMISS (contested Decisions).
2. By Judgment No. UNDT/2023/002, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) dismissed his application as not receivable *rationae temporis* (impugned Judgment).²
3. Mr. Majook lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms, albeit for different reasons, the impugned Judgment.

Facts and Procedure³

5. Mr. Majook is a former individual contractor and a former national staff member of UNMISS.⁴ From May to October 2009, he was engaged as an individual contractor, before serving, from October 2009 to October 2012, as a Warehouse Assistant on temporary appointment at the GL-3/1 level. Again, from October 2012 to 2017, Mr. Majook performed tasks for the Mission as an individual contractor.
6. On 10 January 2023, Mr. Majook submitted an application to the UNDT, contesting multiple decisions allegedly taken in respect of his former relationship with UNMISS.⁵ More specifically, Mr. Majook requested the UNDT to rescind the alleged administrative decisions:⁶

(a) not to pay him his fee from May 2009 to October 2009 when he was engaged by UNMISS as an individual contractor and not to pay him his salary from August 2011 to October 2011 when he served as a Warehouse Assistant, GL-3, on temporary appointment (contested non-payment decisions),

¹ The surname is also spelled “Majok” in several personnel documents.

² *Majook v. Secretary-General of the United Nations*, UNDT’s Judgment dated 11 January 2023.

³ Summarized from the application submitted by the Appellant to the UNDT together with the documents included in the case record.

⁴ Impugned Judgment, para. 1; Mr. Majook’s application before the UNDT (Annex 2 to the appeal); 27 August 2019 letter from UNMISS (Annex 7 to the appeal).

⁵ Impugned Judgment, para. 2.

⁶ Mr. Majook’s application before the UNDT (Annex 2 to the appeal).

(b) to terminate his appointment in 2012 without serving him with a letter of termination with clear reasons (contested termination decision), and
(c) not to issue him a certificate of service for the time he served as a staff member at UNMISS (contested non-certification decision).

7. Mr. Majook also requested compensation for financial expenses incurred during the period of non-payment of salary.⁷

The impugned Judgment

8. By Judgment No. UNDT/2023/002, the UNDT rejected the application as not receivable *ratione temporis*.

9. The UNDT observed that Mr. Majook submitted his application on 10 January 2023, more than three years after receipt of the contested Decisions.⁸ Therefore, in accordance with Article 8(4) of its Statute, the UNDT found his application not receivable *ratione temporis*.

Procedure before the Appeals Tribunal

10. On 10 March 2023, Mr. Majook filed an appeal of the impugned Judgment, to which the Secretary-General filed an answer on 2 June 2023.

11. On 25 July 2023, Mr. Majook filed a motion for additional pleadings. The motion was denied by Order No. 529 (2023) of 16 August 2023.

12. On 16 February 2024, Mr. Majook filed a motion for interim relief. The motion was denied by Order No. 554 (2024) of 1 March 2024.

Submissions

Appellant's Appeal

13. Mr. Majook requests this Tribunal to overturn the impugned Judgment and review the contested Decisions on the merits.

14. Mr. Majook argues that the UNDT exceeded its jurisdiction as his application was not contesting a decision, but rather was directed towards obtaining a right related to his employment.

⁷ Mr. Majook's application before the UNDT, Section IX.

⁸ Impugned Judgment, paras. 2 and 4-5.

He further contends that the UNDT made an error in fact and in law when it dismissed his application, denying his rights under the United Nations internal justice system and ignoring the decisions that affected him. He finally claims that he did not submit a timely application with the UNDT because he was not aware of that forum.⁹

The Secretary-General's Answer

15. The Secretary-General requests the Appeals Tribunal to dismiss the appeal and uphold the impugned Judgment.

16. The Secretary-General asserts that Mr. Majook, while dissatisfied with the impugned Judgment, fails to identify any error of the UNDT that warrants reversal of its finding.

17. Further, the Secretary-General submits that the UNDT correctly applied Article 8(4) of its Statute when it considered the application not receivable *ratione temporis* as the application was filed more than three years after receipt of the contested Decisions.

18. Finally, the Secretary-General holds that Mr. Majook cannot invoke ignorance of the existence of the UNDT as an excuse for failing to respect the time limits as staff members are presumed to know the regulations and rules applicable to them.

Considerations

19. Mr. Majook requested our Tribunal to hold an oral hearing to prove his case on the merits.

20. The power of the UNAT to hold oral hearings, on its own motion or on written application of a party, is recognized in Article 8 of its Statute and Article 18(1) of its Rules of Procedure.

21. In particular, Article 18(1) of the UNAT Rules of Procedure reads:

The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

⁹ Mr. Majook made further arguments related to the merits of the case, with no direct relevance to the impugned Judgment that was rendered on a question of receivability. Therefore, we find no need to reproduce all of them herein.

22. It follows that proceedings before the UNAT are normally conducted on the basis of the written record. The Statute and the Rules of Procedure of the UNAT allow, exceptionally, this Tribunal to hold oral hearings when such hearings “would assist in the expeditious and fair disposal of the case”. Therefore, when an oral hearing is requested by the appellant, he or she must convince us to depart from that default position.¹⁰

23. In the present appeal, we are not persuaded that an oral hearing would assist us in the expeditious and fair disposal of the case. The impugned Judgment was rendered on a question of receivability, while the Appellant requests an oral hearing to prove the merits of his case. Therefore, there is no reason to hold an oral hearing for this purpose. In any event, reversal of the impugned Judgment would normally result in the remand to the UNDT. In such a case, the UNDT would be the appropriate forum for the Appellant to address the merits. For this reason, the request for an oral hearing is denied.

24. We turn now to the merits of the appeal.

25. We remind first that the Appeals Tribunal is established as the second instance of the two-tier formal system of administration of justice. Article 2(1) of the UNAT Statute reads:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

26. It follows that the appeals process under the internal justice system in place is of a corrective nature. The role of this Tribunal is not to review the case *de novo*, but rather to examine the impugned Judgment for any errors of fact, of law, or of procedures that might have affected the UNDT’s decision.¹¹ It is the appellant’s burden to satisfy this Tribunal that such errors exist and, as such, the scope of the appeal is normally determined by the party who initiated the appeals process. This Tribunal does not have the power to go beyond that scope by raising other issues *sua*

¹⁰ *Faten Hatim Al Dawoud v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1402, para. 44.

¹¹ *Likukela v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-737, para. 33.

sponte. The only exception to this rule is when this Tribunal observes critical questions of jurisdiction that can be raised on its own volition.

27. In his case before the UNDT, the Appellant did not make one, but several requests. The UNDT did not pronounce on the irreceivability of Mr. Majook's application in respect of each of the contested Decisions individually. Rather, the Dispute Tribunal assessed them together through the lens of receivability *ratione temporis* and dismissed the application in its entirety on that ground.

28. Although we agree with its conclusion, we suggest that the UNDT should have applied the following methodology for determining the receivability of the application. The Appellant did not raise contentions in this respect. However, as the question pertains to jurisdiction, this Tribunal raises it on its own motion for future guidance to the UNDT in similar cases, and for preventing any confusion that may arise from the UNDT's approach in the underlying case.

29. It is established that receivability is a gateway test that, if successful, enables the Tribunal to review the case on the merits. Nevertheless, receivability is not a single test. It is a logical sequence of tests that must normally be satisfied in the following order: *ratione personae*, *ratione materiae*, and *ratione temporis*. This approach reflects the three questions of who, what, and when, and these questions should be analyzed as follows:

- (i) At the outset, the Tribunal must satisfy itself that the applicant has standing before it. Statutory requirements together with the consistent jurisprudence of this Tribunal show that only current or former staff members on permanent, fixed or temporary appointments, or, if deceased or incapacitated, persons making claims in their name, can submit applications to the United Nations Dispute and Appeals Tribunals.¹² Individual contractors are subject to a different status and their disputes are resolved in other fora.¹³

¹² Article 3(1) of the UNDT Statute and Article 2(2) of the UNAT Statute. See *Basenko v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-139, para. 9.

¹³ See Administrative Instruction ST/AI/1999/7 (Consultants and individual contractors), Section 5, para. 5.4, that provides: "Consultants shall serve in a personal capacity and not as representatives of a government or of any other authority external to the United Nations. They are neither "staff members" under the Staff Regulations of the United Nations nor "officials" for the purposes of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 (...)". ST/AI/2013/4 was replaced in 2013 by Administrative Instruction ST/AI/2013/4 (Consultants and individual contractors), that includes a similar provision under Section 5, para. 5.4, and under Annex 1, para. 1.

(ii) If the applicant has standing, the Tribunal examines whether the necessary requirements for its substantive jurisdiction are met. This means the existence of an appealable individual administrative decision, positive or implied, that was previously submitted to the Administration for management evaluation, or any other equivalent administrative remedy, where required.¹⁴

(iii) If the applicant has standing, an appealable decision exists, and was previously submitted to the Administration for management evaluation or the equivalent, where required, the Tribunal examines the temporal requirements to make sure that the application is filed within the statutory time limits.

30. Once these three elements are met, the gateway test of receivability is satisfied, and the Tribunal can turn to the merits of the application.

31. In the present case, the UNDT applied the statutory time limits to the various requests made by the Appellant, even to those arising from when he was an individual contractor with UNMISS. Hence, the UNDT might be seen to have accepted implicitly that the applicant had standing before it in all his requests and only fell short when it came to timeliness. However, as we explain below, the Appellant did not have standing before the UNDT regarding all his requests, and for those requests regarding which he had standing, the substantive legal requirements were not met.

32. Firstly, Mr. Majook did not have standing before the UNDT regarding claims made in his former capacity as an individual contractor. This was the case regarding the contested decision of non-payment of fees from May to October 2009. Therefore, this part of the application should not have been assessed through the lens of receivability *ratione temporis*, but rather through the primary lens of receivability *ratione personae*.

33. Secondly, the other claims made by Mr. Majook in his former capacity as staff member of UNMISS failed on *ratione materiae* grounds. With regard to the contested non-certification decision, we did not find an appealable administrative decision. In fact, the Appellant failed to prove that a specific request had been made to the Administration in accordance with Staff Rule 9.12 (Certification of service), in force at the relevant time of events. Absent any request,

¹⁴ Staff Rule 11.2 and the UNDT Statute, Articles 8(i)(a) and 8(i)(c).

it cannot be said that a positive or implied administrative decision existed.¹⁵ In any event, the Appellant did not request management evaluation of the non-certification decision or the other two contested decisions of non-payment and termination.¹⁶

34. We believe that analyzing the primary questions of receivability *ratione personae* and *ratione materiae* prior to examining receivability *ratione temporis* was necessary to prevent any confusion that may arise from the UNDT's assessment of receivability. At least, the UNDT could have raised the issue of receivability *ratione temporis* as a complement to receivability *ratione materiae*.

35. As to the substantive issues raised by Mr. Majook, as already said, we remind that the role of the UNAT is not to retry cases *de novo*.¹⁷ The task of the Appeals Tribunal is to verify whether the UNDT made any error in fact or in law rendering its judgment defective. It is the burden of the appellant to show that such error exists.

36. We agree with the Secretary-General that Mr. Majook, in most of the arguments presented in his appeal brief, does not state clear grounds to convince us that the UNDT erred in fact or in law in its determination. We understand that the Appellant is not satisfied with the outcome of the impugned Judgment. However, it is his burden to satisfy this Tribunal that the UNDT's Judgment is defective on any of the grounds provided for in Article 2(1) of the Statute of our Tribunal; a burden that has not been discharged herein.

37. The only clearly stated ground of appeal is the one related to Mr. Majook's ignorance of the existence of the UNDT that prevented him from filing his application timeously with that Tribunal.¹⁸ However, as previously held, Mr. Majook's application was not receivable *ratione personae* in part and not receivable *ratione materiae* in the remaining part. Therefore, his argument with regard to his ignorance of the UNDT has no relevance. In any event, the ground for appeal raised by the Appellant does not have a chance to succeed because, as per our abundant jurisprudence, "it is the staff member's responsibility to ensure that [he or] she is

¹⁵ See *Adnan-Tolon v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-970, paras. 28-29.

¹⁶ See *Yassir Ibrahim Ali Haroun v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1388, paras. 78-80.

¹⁷ *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19.

¹⁸ Appeal form, Section IV, para. 12.

aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.”¹⁹

38. In light of the foregoing, the appeal must fail.

Judgment

39. The appeal is dismissed, and Judgment No. UNDT/2023/002 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2024 in New York, United States.

Judge Sheha, Presiding

Judge Gao

Judge Colgan

Judgment published and entered into the Register on this 8th day of April 2024 in New York, United States.

Juliet E. Johnson, Registrar

¹⁹ *Christensen v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-218, para. 39 (internal citation omitted).