



Judgment No. 2021-UNAT-1145



Counsel for Appellant: Self-represented

Counsel for Respondent: Francisca Lagos Pola

JUDGES

7. On 22 June 2020, the Organization asked Mr. Armand to submit proof of compliance with the Final Judgment issued by the Circuit Court or other documentation showing amicable resolution of the matter and that failure to do so would result in his case being referred to the Under-Secretary-General for Management Strategy, Policy and Compliance (UUycrli e-615.2 yy4(l)0 (rg)-2.6

11. On 22 November 2020, Mr. Armand filed an appeal against Order No. 228, and the appeal was registered with the Appeals Tribunal as Case No. 2020-1491. On 6 January 2021, the Secretary-General filed a timely answer.

Submissions

Mr. Armand's Appeal

12. Mr. Armand submits the UNDT *inter alia* committed an error when it assumed that the Circuit Court's Final Judgment was a final order. He contends the UNDT ignored the fact that he had since filed an appeal of the Circuit Court's Final Judgment to the District Court of the State of Florida, Third District.

13. Mr. Armand further asserts that the UNDT erred when it failed to recognize that the Organization had not considered all relevant matters in his case and that the Organization actually had discretionary authority pursuant to Staff Rule 3.18 (a) (iii) and Section 2.1 of ST/SGB/1999/4 in determining the amount of deductions to comply with court orders.

The Secretary-General's Answer

14. The Secretary-General submits an appeal against Order No. 228 is not receivable as the language of Article 2(2) of the UNDT Statute clearly states that an application for suspension of action shall not be subject to appeal.

15. The Secretary-General further notes that the only instance where an interlocutory appeal is receivable is when the UNDT has exceeded its competence or jurisdiction. The Secretary-General argues Mr. Armand is not presenting such a case to UNAT but instead proffers that the UNDT erred in its findings that the Circuit Court's Final Judgment was a final order. Citing *Nwuke*,⁴ the Secretary-General argues even if the UNDT erred in law or fact, as Mr. Armand alleges, this does not result in an excess of jurisdiction, which would have entitled the latter to bypass the exception to the right to appeal set out in Article 2(2) of the UNDT Statute.

⁴ *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-330, para. 22.

Considerations

16. The issue before the Appeals Tribunal is whether Mr. Armand can appeal an Order of the UNDT dismissing his application for suspension of the decision to deduct from his monthly salary a sum of USD 5,032.33.

17. Article 2(2) of the UNDT Statute provides the following:⁵

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. *The decision of the Dispute Tribunal on such an application shall not be subject to appeal.*

18. And Article 10(2) of the UNDT Statute further provides:⁶

At any time during the proceedings, the Dispute Tribunal may order an interim measure, *which is without appeal*, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision,

Administration) in that process and requests the Appeals Tribunal to review whether the retrenchment of his position was justified. As indicated above, the issue before us is not whether the scoring of the CRP was correct nor whether the retrenchment decision was justified nor even whether the Dispute Tribunal committed an error of law or fact relating to the application. Rather, the issue before us can only be whether the Dispute Tribunal in refusing the suspension application clearly exceeded its jurisdiction or competence.

20. The Appeals Tribunal also held in *Wamalala*:⁸

... [T]he UNDT enjoys wide powers of discretion in all matters relating to case management and [the UNAT] must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for the dispensation of justice. For this reason, and in accordance with Articles 2(2) and 10(2) of the UNDT Statute, appeals against decisions taken in the course of mee

Judgment

24. The appeal is dismissed, and the UNDT Order is upheld.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 10th day of November 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar