

UNITED NATIONS APPEALS TRIBUNAL T

Judgment No. 2022-UNAT-1191



Counsel for Applicant: Ron Mponda

Counsel for Respondent: André Luiz Pereira de Oliveira

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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

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 2020.¹

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

¹ Impugned UNAT Judgment, para. 5.

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(n)1834m(7n)-13.3 (Bdc -0.004 A13.3.7jEMC /P 4t.05 lD2 Tm9 (i)19)-16.8 (a)-q1

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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 f 82.1 (y)31.1 (i)31.i (t)-2g (2.4 (e)3.9 ())-0 fa .2.07il(g)2.9.5 (e)9TJ-0.020 Tw 12 -09EMC /L

Judgment

31. The application is dismissed.

Original and Authoritative Version: English

Dated this 18th 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 5th day of April 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar