



Case Nos. 2011-246, 2011-248 & 2012-289



Counsel for Appellant/Respondent: Self-represented

Counsels for Respondent/Appellant: Rupa Mitra/Amy Wood/Stéphanie Cartier

JUDGE SOPHIA ADINYIRA , Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by the Secretary-General of the United Nations against Order No. 081 (NBI/2011) and two appeals filed by Mr. Kasirim Nwuke against Order No. 101 (NBI/2011) Judgment No. UNDT/2012/002.

Synopsis

2. Under Article 2(2) of the Statute of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), decisions of the UNDT on applications to suspend the implementation of administrative decisions are not subject to appeal.

3. The Secretary-General has however filed such an appeal and submits that the appeal is receivable as the UNDT exceeded its jurisdiction in issuing Order No. 081.

4. This Court has consistently held that generally only appeals against final judgments are receivable. Appeals against interlocutory decisions, however they may be named by the Dispute Tribunal, will not be receivable save in exceptional cases where the Dispute Tribunal has clearly exceeded its jurisdiction or competence.<sup>1</sup>

5. The Secretary-General appeals a suspension order of an administrative decision, and submits that the appeal is receivable as the UNDT exceeded its jurisdiction when it ordered suspension of a contested decision without making a finding as to whether the requirements for suspension action under Article 2(2) of the UNDT Statute have been met. The Secretary-General further submits that the Dispute Tribunal may not suspend an administrative decision in order to determine, at a later stage, whether the requirements for such suspension were satisfied.

6. We think otherwise, as in *Villamorán* this Court ruled:

would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.<sup>2</sup>

7. In the present case, the Dispute Tribunal extended the suspension until 17 August 2011 when the oral hearing was to be held. This was in excess of the period of five working days during which, in accordance with Article 13(3) of its Rules of Procedure, the Dispute Tribunal must consider an application for suspension of action.

8. The Dispute Tribunal clearly exceeded its competence and, therefore, the appeal against the impugned Order No. 081 is receivable and well founded.

9. The Order No. 081 is rescinded to the extent that it grants the suspension of the implementation of the contested administrative decision beyond 5 July 2011. Following upon that, the appeals against Order No. 101 and Judgment No. UNDT/2012/002 are rendered moot.

#### Facts and Procedure

10. Mr. Nwuke joined the Organization in 2001 and was at the material time Chief of Section at the P-5 level in the Office of Strategic Planning and Programme Management (OPM), Economic Commission for Africa (ECA), in Addis Ababa.

11. In February 2010, Mr. Nwuke applied for the D-1 post of Director, Regional Integration, Infrastructure and Trade Division (RIITD) (2010 RIITD post), ECA, but he was not selected. Mr. Nwuke requested management evaluation contesting his non-selection for the 2010 RIITD post. Not satisfied with the Secretary-General's response to his request for management evaluation, Mr. Nwuke filed a case with the UNDT, which is still pending.

12. In May 2011, the ECA Executive Secretary appointed Mr. Stephen Karingi as Officer-in-Charge for RIITD, following the redeployment of the incumbent. On 9 June 2011, ECA advertised the post of Director RIITD (2011 RIITD post), with a closing date of 8 August 2011.

13. On 13 July 2011, the ECA Executive Secretary announced that he had selected a roster candidate, Mr. Karingi, to fill the 2011 RIITD post, in compliance with Section 9.4 of ST/AI/2010/3 (Staff selection system). Mr. Karingi had applied for the 2010 RIITD post; he was

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<sup>2</sup> *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160, para. 2.

not selected, but was rostered. Mr. Karingi was notified of the promotion decision and accepted the offer of appointment to the 2011 RIITD post on 13 July 2011.

14. On 27 July 2011, the ECA Executive Secretary announced to the ECA staff the appointment of Mr. Karingi to the 2011 RIITD post, effective 1 August 2011.

15. Also on 27 July 2011, in addition to a request for management evaluation contesting the decision to appoint Mr. Karingi as Director of RIITD, Mr. Nwuke filed an application with the UNDT for suspension of action on the implementation of the contested decision.

16. In Order No. 081 issued on 29 July 2011, the UNDT ordered that the contested decision be suspended “until 17 August 2011 when the oral hearing of the case will be held”, as it concluded that “there are many issues, both factual and legal required for a proper determination of the case”. The Secretary-General appealed that order on 15 August 2011. Mr. Nwuke answered on 7 September 2011. This is Case No. 2011-246.

17. In Order No. 101 issued on 17 August 2011 after a hearing of the parties, the UNDT rejected Mr. Nwuke’s application for suspension of action, as it “[did] not find that the contested decision appear[ed] to be unlawful”. Mr. Nwuke appealed on 18 August 2011. The Secretary-General answered on 14 September 2011. This is Case No. 2011-248.

18. In Judgment No. UNDT/2012/002 issued on 6 January 2012, the UNDT dismissed Mr. Nwuke’s application for suspension of action. The UNDT found it unfair that, while administrative instruction ST/AI/2010/3 imposed an obligation to advertise a job opening, it at the same time allowed the head of department to select a rostered candidate to fill the vacant position before the expiry of the deadline of the vacancy announcement. But the UNDT could not conclude that the exercise was unlawful. On 22 January 2012, Mr. Nwuke appealed. The Secretary-General answered on 9 March 2012. This is Case No. 2012-289.

#### Submissions

Case No. 2011-246

Secretary-General’s Appeal

19. The Secretary-General submits that his appeal of UNDT’s Order No. 081 is receivable, because the UNDT exceeded its jurisdiction in issuing the said Order to suspend the decision to

appoint Mr. Karingi without stating the reasons, facts and law on which the Order was based, or making any findings as to whether the requirements

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30. In *Bali*,<sup>4</sup> the Appeals Tribunal restated its position:

It emerges from its jurisprudence that, in the view of the Appeals Tribunal, the Dispute Tribunal clearly exceeds its competence when it takes decisions that are outside of the jurisdictional power vested in it by its Statute and by the inherent jurisdiction of any Tribunal adjudicating cases in a system of administration of justice consistent with the principles of rule of law and due process.

Thus, in precedents in which the Dispute Tribunal ordered suspension of the implementation of an administrative decision beyond the date of its decision, the Appeals Tribunal has consistently found that such a suspension is not justified. (See, e.g., *UNAT/2012/1*, para. 4.6, 7(n m)-5.7( -)(N

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Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*