



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES



Abassa R(Appellant)

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2014-UNAT-484

7. On 28 March 2012, the Secretary-General filed a “Reply Limited to Receivability and

9. On 30 June 2012, Mr. Abassa filed with the Dispute Tribunal an application for revision of Judgment No. UNDT/2012/086, on the grounds that he did not receive the Dispute Tribunal's e-mail correspondence seeking his comments on the Respondent's Reply on Receivability.

10. In Judgment on an Application for Revision No. UNDT/2013/145, the Dispute Tribunal rejected Mr. Abassa's revision application. In its view, Article 12(1) of the UNDT Statute permitted an application for revision of "an executable judgement". However, "[a] judgment on receivability is based on a procedural issue. ... It was therefore *not* an executable judgment within the meaning [of] article 12.1 of the [UNDT] Statute."² Consequently, Mr. Abassa's revision application was not receivable as the underlying Judgment was not an executable judgment.

Mr. Abassa's Appeal

11. The Dispute Tribunal failed to consider the "root cause" of his failure to observe the time limits. The UNDT committed an error in procedure as it used a wrong e-mail address to transmit to him the Respondent's Reply limited to receivability as a preliminary issue. The fact that the UNDT was "procedurally estopped" from considering the substantive issues

14. The filing of a revision application was not an appropriate mechanism for raising issues about the UNDT Judgment on Receivability. If he had wished to challenge any procedural errors, he would have needed to file an appeal with the Appeals Tribunal. He never appealed the UNDT Judgment on Receivability.

15. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Abassa's revision application in its entirety.

Considerations

16. In his appeal papers, Mr. Abassa does not 15.

20. It is contended by the Secretary-General that Mr. Abassa's "inability to access his UN e-mail was neither a new fact that was unknown to him at the time the judgment was rendered nor was it of a decisive nature affecting the UNDT's considerations on the receivability of his Application on the Merits".

21. The Secretary-General further argues that the UNDT's ruling³ that Mr. Abassa's challenge to his non-appointment was not receivable *ratione temporis* was based on the fact that he had submitted his application seven months after attempts at mediation had concluded in July 2011 and some ten months after the extension of his deadline to file an application with the Dispute Tribunal had expired. His claim that he had not received the UNDT's request for his comments on receivability issues does not establish any new fact which was relevant to the UNDT's conclusion in the Judgment on Receivability.

22. Furthermore, the Secretary-General argues that Mr. Abassa's complaint of alleged procedural errors on the part of the UNDT is not properly before the Appeals Tribunal in this appeal of the UNDT Revision Judgment. He submits that Mr. Abassa's remedy lay in an appeal to the Appeals Tribunal within sixty days of Judgment No. UNDT/2012/086 having been rendered, a course Mr. Abassa did not take.

23. Having reviewed the UNDT Judgment under appeal in this case, it falls to the Appeals Tribunal, in the first instance, to decide whether the UNDT erred in law in not receiving Mr. Abassa's application for revision of Judgment No. UNDT/2012/086.

24. Reviewing Mr. Abassa's application for revision of its Judgment on Receivability (Judgment No. UNDT/ 2012/086), the Dispute Tribunal stated:⁴

... A judgment on receivability is not an executable judgment. It is not a judgment on the merits of the case where all the issues have been adjudicated upon. An executable judgment is one in which the court determines on the substantive issues

Mr. Abassa's application for revision. Thus, the Appeals Tribunal finds that Mr. Abassa's application for revision was receivable by the Dispute Tribunal.

30. Turning now to the merits of the application for revision: the Appeals Tribunal sees no reason to remand this issue to the Dispute Tribunal, being satisfied that there is sufficient information on the record for the Appeals Tribunal to determine whether Mr. Abassa's application for revision met the requirements set out in Article 12(1) of the UNDT Statute.

31. That article provides as follows:

Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

32. Central to the question of whether a UNDT Judgment should be open to revision is the discovery of a decisive fact, "*unknown to the Dispute Tribunal and to the party applying for revision*".⁵

33. The Appeals Tribunal's jurisprudence on the issue of revision applications which come before it emphasises that an application is receivable if it fulfils the strict and exceptional criteria set down in its Statute.⁶ This principle also applies to revision cases before the Dispute Tribunal, in light of the similarity of its statutory provisions on revision to those of the Appeals Tribunal.

34. Having given due consideration to the parties' submissions in this case (5(d)-4.939344cludgive 164.8

issue of receivability was unknown to the Dispute Tribunal, although it may have been unknown to Mr. Abassa.

35. In light of the above, Mr. Abassa has not satisfied the strict requirements of Article 12(1) of the UNDT Statute.

36. With regard to Mr. Abassa's submission in this appeal claiming procedural error on the part of the UNDT, the Appeals Tribunal will not embark on a consideration of the latter complaint because the Appeals Tribunal is not competent to do so, in the absence of Mr. Abassa having sought a timely appeal of Judgment No. UNDT/2012/086. Mr. Abassa cannot use his appeal against the rejection of the application for revision to litigate this issue.

37. In all the circumstances, we find no merit in the application for revision and, accordingly, Mr. Abassa's appeal against Judgment No. UNDT/2013/145 is dismissed, save to the extent that the Appeals Tribunal finds that the Dispute Tribunal should have received the revision application.

Judgment

38. Mr. Abassa's application for revision is receivable, but dismissed on its merits.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Adinyira

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar