



Counsel for Respondent/Applicant

Self-represented

Counsel for Appellant/Respondent

Jo! n "tompor

Judgment No. 2019-UNAT-902

' \$ ( ) \* \$

1. T!e United Nations Appeals Tri)unal 1Appeals Tri)unal2 !as )efore it an appeal against Judgment No. UN\$T/201, /030& rendered )4 t!e United Nations \$ispute Tri)unal 1UN\$T or \$ispute Tri)unal2 in Ne5 6or% on 20 June 201, & in t!e case of Nouinou v. Secretary-General of the United Nations. T!e "ecretar4-7eneral filed t!e appeal on 23 August 201, & and . s. \*8tima9:! ra Nouinou filed!er ans5er on 29; cto)er 201, .

+ !!

- 2. T! e follo5ing facts are uncontested 1
  - T! e Applicant! as ) een 5or%ing for t! e United Nations since 2001 and! as ser=ed in se=eral departments ) efore xoining ?t! e @n=estigations \$i=ision in t! e; ffice of @nternal; =ersig! t "er=ices 1@\$/; @; "2A.
  - ; n 1, Januar4 201B& t! e Applicant 5as appointed as Administrati=e Assistant& 7--&5it! t! e enspection and C=aluation \$i=ision in; e; "1DeC\$/; e; "E2& on a temporar4 appointment.; n 1F. a4 201B&s! e 5as reassigned to e\$/; e; ". T! e Applicant&s' ersonnel Action 1D' AE2 issued in connection 5it! ! er reassignment indicates t! at t! e source of funding of ! er reassignment 5as e+tra-) udgetar4 1or from t! e; e; "& Reim) ursement "upport Account 1! ereafter referred to as D; eA account E2.
  - ; n 29 ; cto)er 2018& t!e Applicant 5as granted a fi+ed-term appointment for one 4ear. ; n 29 ; cto)er 201-& !er appointment 5as rene5ed for t5o 4ears& until 2, ; cto)er 2010.
  - ; n 2B Jul4 201-&; @; " recei=ed funds for four 4ears to )e placed in t!e; @; " Trust \*und for Cn! ancing ' rofessional Capacit4 1Dt! e Trust \*undE2& to co=er t! e e+isting posts and < it 5as confirmed 5it! t!e C+ecuti=e; ffice t! at Dt! e e+isting staff mem)ers ?5ouldA get t5o-4ear appointments and t!e ne5 staff ?5ouldA get one-4ear appointmentsE.</p>
  - < @n \$ecem)er 201-& t!e ; ffice of 'rogramme 'lanning& #udget and Accounts
    1D; ''#AE2 ad=ised t!e C+ecuti=e ; ffice of ; @, "'1DC;</pre>

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Administration and @nformation; ffice of CTC\$ informed t!e Applicant t!at D?<A decisions are made )4 CTC\$6 senior management and it is ?t!e; ffice6A responsi)ilit4 to allo5 t!em to!a=e a furt!er discussion and ?t!att!e; ffice5ouldA re=ertE.

- ; n 1-; cto)er 2010&t! e Applicant filed a rel uest for management e=aluation of t! e decision of t! e U"7/; e; " to refuse Dto e+tend ?! erA t5o-4ear fi+ed-term contract for t5o mont! sKunder a 9ero-dollar incum)enc4Kto reassign ?! erA on a s! ort-term position 5it! 1<2 CTC\$ until B1 \$ecem)er 2010E.</p>
- ?; n 13; cto)er 2010& t!e Applicant 5ent on certified sic% lea=e.A; n 19; cto)er 2010& t!e Applicant filed an application for suspension of action registered under Case No. UN\$T/N6/2010/0F-. #4; rder No. 2F1 1N6/20102 issued on

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Consel uentl4&t! e UN\$T concluded t! at t! e lac% of funds in ; @A 5as not rele=ant and could not constitute a reason for t! e a) olition of ! er post.

0. T!e UN\$T found t!at . s. Nouinou !ad a legitimate e+pectation for rene5al of !er

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- . s. Nouinou& appointment 5as not terminated. Rat! er&! er appointment 5as not rene5ed&and it e+pired in accordance 5it! its terms.
- 13. T!e UN\$T erred in fact and la5 in concluding t! at it 5as unla5ful not to rene5. s. Nouinous fi+ed-term appointment for t5o mont! s so t! at s! e could ) e reassigned to CTC\$ 5! ere s! e! ad ) een selected for a s! ort-term position until B1 \$ecem) er 2010. ; @; " 5as under no o) ligation to rene5. s. Nouinous fi+ed-term appointment for t5o mont! s so t! at s! e could ) e reassigned. . s. Nouinous reassignment 5ould not! a=e ) een in accordance 5it! t!e; @; " guidelines for temporar4 >>> ) s and secondments according to 5! ic! t! e minimum duration of an assignment outside of; @; " at t! e same dut4 station must ) e si+ mont! s
- \*inall4& e=en if t! e Appeals Tri) unal 5ere to determine t! at t! e UN\$T& findings! ad not ) een made in error&t! e UN\$T erred in la5 and e+ceeded its >urisdiction in ma%ing its a5ards for loss of emplo4ment in addition to t! e amount of compensation t! at it ordered ) e paid as an alternati=e to t! e rescission of t! e contested decisions and to t! e specific performance ordered. T! e purpose of compensation is to place a staff mem) er in t! e same position in 5! ic! ! e or s! e 5ould! a=e ) een&! ad! is or! er rig! ts ) een respected. T! ere 5as no legal ) asis for t! e UN\$T to order pa4ment of additional compensation for loss of emplo4ment once it! ad set an amount of compensation to ) e paid in lieu of rescission. 6et&t! e UN\$T erroneousl4 ordered t! e pa4ment of additional amounts ) e4ond 5! at it! ad ordered in lieu of rescission.
- \*urt! er&t! e sum of U"\$ 10&000 a5arded as compensation in lieu of rescission and t! e additional compensation in t! e amount of si+ mont! si net ) ase salar4 for loss of emplo4ment e+ceeds t! e amount of net ) ase salar4 t! at . s. Nouinou 5 ould ! a=e recei=ed ! ad s! e ) een continuousl4 emplo4ed )4 t! e ; rgani9ation. T! e sum is el ui=alent to . s. Nouinou6s net ) ase salar4 for a period of more t! an eig! t mont! s. . s. Nouinou8! o5e=er&! ad ) een unemplo4ed for a period of less t! an se=en mont! s at t! e date of t! e "ecretar4-7eneral6s ans5er. T! us&t! e sum of t! ese a5ards of compensation 5 ould result in . s. Nouinou6s un>ust enric! ment. Additionall4&t! e UN\$T erroneousl4 a5arded compensation in t! e amount of 5! at 5 ould ! a=e ) een ) ot! t! e ; rgani9ation6s and . s. Nouinou6s contri) utions to t! e UNJ" \* during a period of si+ mont! s. A staff mem) er6s contri) utions to t! e UNJ" \* are deducted from t! e staff mem) er6s salar4. T! us&as . s. Nouinou ! ad ) een a5arded si+ mont! si net ) ase salar4 5it! out an4 deductions&t! e UN\$T6s a5ard of compensation in t! e amount of 5! at 5 ould ! a=e ) een . s. Nouinou6s contri) utions to t! e UNJ" \* 5 ould also result in un>ust enric! ment.

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#### Merits

- B0. #ased on t! e re=ie5 of t! e record and t! e applica) le legal instruments and aut! orities 5e! old t! at t! e UN\$T made numerous errors of fact and la5 in reac! ing t! e a) o=e conclusions and its Judgment s! ould ) e re=ersed for t! e reasons set out ) elo5.
- B1. At t! e outset& 5e note t! at t! e UN\$T made a gra=e error of la5 in terms of t! e ) asic legal position& 5! ic! defined t! e su) >ect of t! e litigation ) efore it and corresponding | 4 t! e appeal& 5! en it found t! at Dt! e legal nature of t! e contested decision is a termination since t! e a) olition of post 5 as initiated ) efore t! e e+piration of t! e contract E² and ) ased on t! is false conclusion applied t! e legal frame 5 or % for termination of a fi+ed-term appointment to t! e instant case 5! ic! concerns non-rene5al of a contract. en t! is regard & t! e UN\$T stated B
  - T!e Tri)unal considers t! at t!e Applicant 5as officiall4 notified on 3 "eptem)er 2010 of t!e decision to a)olis! !er post starting from 2, ; cto)er 2010 resulting in t!e non-rene5al of !er contract after t! is date. ; n 3 "eptem)er 2010 t!e Applicant filed a rel uest for management e=aluation of t!e decision 5! ic! 5as notified to !er on t! at date not to rene5 !er contract. T!e Tri)unal considers t! at in t!e rel uest for management e=aluation s!e clear teferred to t!e contested decision as )eing t!e decision not to rene5 !er contract 5! ic! 5as determined and t!erefore 5as t!e consel uence of t!e a)olition of !er post starting on 2, ; cto)er 2010. T! is reason of non-rene5al of t!e Applicant contract 5as confirmed in t!e management e=aluation response 5! ic! stated t! at D?<At!e decision not to rene5?t!e Applicant Appointment 5as t!e natural consel uence of t!e lac% of identification of additional funding since No=em)er 201FE and concluded t! at t!e Applicant contract D5as not rene5ed due to lac% of funds. T!e Tri) unal considers t! at it results t

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letter of appointmentE. et is a matter of record t! at t! e decisions contested )4 . s. Nouinou )efore t! e UN\$T 5ere& inter alia& t! e decisions not to rene5! er t5o-4ear fi+ed-term contract ending on 2, ; cto)er 2010& and not to rene5 t! e a)o=e contract for t5o mont!s 1until B1 \$ecem)er 20102 so t! at s! e could )e reassigned to CTC\$. T! ese 5ere also among t! e

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- -0. As pro=ided in "taff Regulation -.F1c2 and "taff Rule -.1B1c2& respecti=el4&D?aA fi+ed-term appointment does not carr4 an4 e+pectanc4& legal or ot!er5ise& of rene5al or con=ersion& irrespecti=e of t!e lengt! of ser=iceE& and D?aA fi+ed-term appointment does not carr4 an4 e+pectanc4& legal or ot!er5ise& of rene5al or con=ersion& irrespecti=e of t!e lengt! of ser=ice& e+cept as pro=ided under staff rule -.1-1)2E.
- -3. Ne=ert! eless& an administrati=e decision not to rene5 a fi+ed-term appointment can )e c! allenged on t! e grounds t! at t! e Administration ! as not acted fairl4& >ustl4 or transparentl4

  5it! t! e staff mem)er or 5as moti=ated )4 )ias& pre>udice or improper moti=e. T! e staff mem)er! as t! e )urden of pro=ing suc! factors pla4ed a role in t! e administrati=e decision.
- -, . T! e Appeals Tri) unal ! as consistent | 4 ! eld t! at 13

/!en >udging t!e =alidit4 of t!e "ecretar4-7enerals e+ercise of discretion in administrati=e matters as in t!e case of a non-rene5al decision t!e \$\) t!e \$\) tipular tipular

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Tri) unals ma4 e+amine t! e circumstances surrounding t! e a) olition of t! e staff mem) er (s post to determine 5! et! er t! e impugned decision 5 as tainted ) 4 a) use of aut! or it 4.

- F0. As stated in Obdei.n& D?aAn administrati=e decision not to rene5 ?a fi+ed-term appointmentA must not )e deemed unla5ful on t! e sole ground t! at t! e decision itself does not articulate an4 reason for t! e non-rene5al. #ut t! at does not mean t! at t! e Administration is not rel uired to disclose t! e reasons not to rene5 t! e appointment.E<sup>19</sup> DRat! er& t! e Administration ! as an o) ligation to state t! e reasons for an administrati=e decision not to rene5 an appointment to assure t! e Tri) unals&a) ilit4 to >udiciall4 re=ie5 t! e =alidit4 of t! e Administration& decision.E<sup>20</sup>
- F1. @n t!e present case& . s. Nouinou 5as ad=ised on 19 No=em)er 201F )4 t!e C+ecuti=e; fficer of; @; "& as reluested )4 t!e \$\$&@\$/; @; "/Hienna&t!at t!e @\$/; @; " 5ould ! onour!er appointment until 2, ; cto)er 2010 ) ut t! at an4 furt!er e+tensions 5ould )e su)>ect to a=aila)le funding. \*inall4&on 3 "eptem)er 2010&t!e; iC of t!e C; /; @; " and t!e \$irector of @\$/; @; " met 5it! . s. Nouinou and informed!er t!at!er fi+ed-term contract 5it! @\$/; @; " 5ould not )e e+tended and& on t!e same da4& s!e rec

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- FB. Ne=ert! eless& t! e financial difficulties; @; " 5as faced 5it! did not disappear& and t! is fact is undisputedI4 ) orne out )4 t! e document issued in tempore non suspecto )4; ' '#A 1in \$ecem) er 201-2& 5! ic! ad=ised t! e C; /; @; " t! at t! ere 5ere insufficient resources in t! e Trust \*und to fund all planned acti=ities. \*ollo5ing 5! ic! &; ' '#A issued allotment ad=ice t! at 5ould allo5 @\$/; @; " to fund . s. Nouinou& salar4 and t! at of anot! er 7eneral "er=ice staff mem) er& 5! ic! 5as funded )4 t! e same Trust \*und t! roug! B1 August 201F. T! ereafter& in . arc! 201F& @\$/; @; " identified some unused funds 5! ic! could ) e used to fund t! e t5o appointments t! roug! \$ecem) er 201F.
- F-. T! e lac% of resources in t! e; @A account 5as due to a reduction of; @; "Gacti=ities in t! e area of it pro=iding ser=ices to t! e \*unds and ' rogrammes& 5! ic! pro=ided mone4 to t! e; @A account t! roug! reception of cost reim) ursement for t! ese ser=ices. /! ereupon&. s. Nouinou 5as informed )4 t! e Administrati=e. anagement; fficer&@\$/; @; "&in t! e first place in late 201-t! at t! e; @A account D5as unli%el4 to )e a) le to continue to fund! er positionE& and t! en on 19 No=em)er 201F)4 t! e C+ecuti=e; fficer of; @; "&as rel uested)4 t! e \$\$&@\$/; @; "/Hienna& t! at @\$/; @; " D5ould! ono?uAr! er appointment until 2, ; cto)er 2010) ut t! at an4 furt! er e+tensions 5ould)e su)>ect to a=aila)le fundingE.<sup>22</sup> Ultimatel4& as of B0 June 2010& t! e; @A account 5as depleted and could no longer fund. s. Nouinou& position& 5! ic! 5as a)olis! ed and. s. Nouinou& fi+ed-term contract 5as not rene5ed)e4ond its e+piration on 2, ; cto)er 2010.
- FF. T! e "ecretar4-7eneral su) mits t! at t! e UN\$T erred in fact and la5 in concluding t! at t! e decision not to rene5. s. Nouinou& fi+ed-term appointment 5as unla5ful& since t! e reason for; @; "& decision not to rene5! er appointment 5as t! at t! e; @A account t! at! ad financed! er position! ad) een depleted& to 5it& t! e account no longer! ad sufficient resources in it to continue to finance! er position and & t! us& in accordance 5it! t! e Appeals Tri) unal & surisprudence &; @; "! ad a = alid reason for not rene5ing. s. Nouinou& fi240. 992(c) 19. 21814T19. 218811. 652(o) 17. 261(s) 18259,5

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- . s. Nouinous position 5as funded from t!e; @A account until its depletions at 5! ic! point 7TA funds 5ere e+ceptionall4 used to continue! er appointment from 1 Jul4 2010 t! roug! its date of e+piration on 2, ; cto)er 2010. Apparentl4s t!e UN\$Ts finding 5as )ased on an erroneous interpretation of an e-mail messages dated 2B Jul4 201-s from t!e Administrati=e; fficers @\$/; @; "& to t!e \$eput4 \$irectors @\$/; @; ". Clearl4s on its face t! at e-mail message discussed a four-4ear contri)ution from Nor5a4 to t!e United Nations in support of; @; "Gacti=ities. T! at contri)utions !o5e=ers 5as not related to t!e; @A accounts as t!e UN\$T incorrectl4 found and relied upon in framing its anal4sis and reac! ing its conclusions.
- OB. T! ird&as a matter of la5&t! e \$ispute Tri) unal erred t! roug! out t! e Judgment )4 failing to recogni9e& respect and a) ide )4 t! e Appeals Tri) unal& >urisprudence&as it must. "pecificall4& t! e UN\$T& findings t! at D?tA! e Tri) unal is of t! e =ie5 t! at t! e information related to t! e; @A account as ) eing t! e source of funding for t! e Applicant& post until 2010 is contradicted )4 t! e fact t! at since No=em) er 201-&; @; " used funds from t! e; @; " Trust \*und for all t! e e+isting posts in 201-E&?

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against ! er resulting in t! e non-rene5al of ! er appointment. T! e mere allegation is not a proof.

Nor ! as t! e UN\$T made an4 specific finding in t! at regard.

OF. Jo5e=er&as stated a) o=e&t! e Appeals Tri) unal& >urisprudence places t! at ) urden on t! e staff mem) er to s! o5& not on t! e Administration. Crroneousl4 s! ifting t! e ) urden to t! e Administration tainted t! e UN\$T& findings of unla5fulness. "ince t! ese findings are ) ased on an error of la5& t! e4 cannot support t! e UN\$T& ultimate conclusion t! at t! e non-rene5al decision 5as unla5ful. / e! old t! e same =ie5 5it! respect to t! e rest of t! e UN\$T& findings&in t! at ; e; "! ad t! e funds on 21 \*e) ruar4 2013 to emplo4 a ne5 temporar4 staff mem) er in a different section of ; e; " at t! e 7-le=el 5! ic! ! ad similar functions as t! e Applicant&B T! us&t! is Tri) unal finds t! at t! e UN\$T erred on a I uestion of la5 and fact resulting in a manifestl4 unreasona) le decision 5! en it concluded t! ere 5as no =alid reason for t! e non-rene5al of . s. Nouinou& appointment.

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No	legitimate	e <b>0</b> pectancy	y of	f rene*	а

0, . \*urt!ermore& t!e UN\$T !eld t!at . s. Nouinou !ad a legitimate e+pectanc4 for !er

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cannot ) e a5arded 5! en no illegalit4! as ) een esta) lis! edL it cannot ) e granted 5! en t! ere is no ) reac! of t! e staff mem) er©s rig! ts or administrati=e 5 rongdoing in need of repairE. BF

31. According 14% t!e "ecretar4-7 eneral se appeal se ould e granted and te impugned Judgment se ould e = acated.