



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2019-UNAT-956

**Ladu  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge Graeme Colgan Judge Jean-François Neven
Case No.:	2019-1254
Date:	25 October 2019
Registrar:	Weicheng Lin

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Counsel for Mr. Ladu:	Sètondji Roland Adjovi
Counsel for Secretary-General:	Patricia C. Aragonés

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. Mr. Scopas Ladu, a Security Assistant with the United Nations Mission in South Sudan (UNMISS), was dismissed from service for his attempt, on 2 January 2015, to remove, without authorization, building materials and household properties belonging to UNMISS. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed Mr. Ladu's application, finding that the Administration had made the case of misconduct against him by clear and convincing evidence. We affirm the UNDT's Judgment.

**Facts and Procedure**

2. The Dispute Tribunal made the following findings of fact:<sup>1</sup>

... In December 2014, the UNMISS Topping Protection of Civilians (POC) Site in which some Internally Displaced Persons (IDP) had been housed by the mission was in the process of being closed. The IDP shelters constructed with bamboos and other materials were dismantled on 2 January 2015 and removed but some broken bamboos and other materials were still left at the POC Site.

... Before the shelters were dismantled and upon being asked, [Mr.] Simon Mwinzi the international security officer in charge of the POC Site, sought permission for Mr. Parakiti, a national security guard, to take broken bamboos from the Site for personal use. The permission sought was granted by Mr. Pakala, the Relief Reintegration Protection (RRP) officer. In the presence of another international Security [O]fficer, Ms. Nelly Boit who was the Officer-in-Charge of the Guard Force Unit (GFU) and was responsible for authorizing gate passes, Mr. Pakala instructed that after the dismantling of the POC Site, Mr. Parakiti could take the broken bamboos. Ms. Boit then asked to be informed when the broken bamboos would be removed.

... When the dismantling of the shelters was going on, Mr. Pakala told Ms. Boit to send for the national security guard who wanted the broken bamboos so that [Mr. Pakala] could show [Mr. Parakiti] the bamboos he was permitted to take. Mr. Parakiti came and met Mr. Pakala who pointed the broken bamboos out to [Mr. Parakiti] and told [Mr. Parakiti] to inform the Rwanda Army Captain who was supervising the dismantling of the former IDP shelters that [Mr. Parakiti] was authorized to take broken bamboos.

... That afternoon, Mr. Parakiti went to the GFU and asked Ms. Boit for a form for





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misconduct must be established by clear and convincing evidence”, which “means that the truth of the facts asserted is highly probable”.

16. Furthermore, this Tribunal has held that in a system of administration of justice governed by law, the presumption of innocence has to be respected.<sup>6</sup>

17. It is in the context of these definitions and principles that Mr. Ladu’s appeal against the UNDT’s conclusions must be assessed.

*Clear and convincing evidence established that Mr. Ladu participated in an attempt of unauthorized taking of property belonging to the Organization*

18. Applying the above-mentioned standards and criteria to the present case, we find that the facts on which the Administration based its decision to dismiss Mr. Ladu from service were established, in full respect of his due process rights. The records show clear and convincing evidence establishing facts which amount to misconduct and these facts have not been successfully rebutted by Mr. Ladu. The UNDT



21. Regarding the material facts of the case, the UNDT made *inter alia* the following observations and findings:<sup>7</sup>

... The facts of the case were not in dispute. [Mr. Ladu] was a Security guard employed by UNMISS. At the times material to this case, he was posted to duty at the POC Site where IDPs had been housed. He patrolled the said Site with two other security guards who were attached to a private contractor retained by UNMISS to assist with security services.

... In his own sworn testimony at the [Dispute] Tribunal, [Mr. Ladu] told the Tribunal that on 2 January 2015, (the day of the incident leading to this case) another Security Assistant Mr. Parakiti came to him and told him that he had authorization or a gate pass to collect broken bamboos and broken tiles from the POC Site where shelters that formerly housed the IDP had been dismantled. [Mr. Ladu] was on security duty and was patrolling the POC Site with two security guards from a private security company, Mr. John and Ms. Nunu.

... [As per the same testimony,] Mr. Parakiti later brought a rented private truck into the POC Site with three men to help him load the broken building materials. [Mr. Ladu] told the [Dispute] Tribunal that while loading the materials into

new tiles for him, or by Mr. Parakiti's testimony that Mr. Ladu had not participated in the loading of the new tiles onto the private truck he had brought for that purpose and that he had lied to investigators when he told

findings,<sup>10</sup> and considering, in particular, that the facts of the case, as conceded by Mr. Ladu, are not in dispute, in the view of this Tribunal, the evidence against Mr. Ladu uncovered by the investigation and the hearing before the first instance Judge was so overwhelming that the only reasonable conclusion available to the UNDT was that the facts of the alleged conduct were established by clear and convincing evidence.

27. Be that as it may, before the UNDT, Mr. Ladu admitted that he had participated in loading the stolen materials. Even in his appeal, Mr. Ladu concedes that “he had helped load [items], some that he had planned to collect later” and that “he thought that he could take advantage of the opportunity to collect some items similar to those that Mr. Parakiti and his team of loaders were collecting”.

28. Mr. Ladu argues that the UNDT erred in a number of ways in upholding the Administration’s decision.

29. Firstly, he submits that the facts that the site was being dismantled, containers had been unlocked and things had been littered out for some time call into question the value of the items inside them which, he contends, corroborates that he did not attempt to take without authorization the Organization’s property because the items were “garbage”.

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37. Mr. Ladu, by his participation in an attempt of unauthorized taking of property belonging to the Organization, violated his obligation under Staff Regulation 1.2(b) to uphold the highest standard of integrity. Since the UNDT properly found that the facts amounting to misconduct were established, the Administration has shown serious misconduct on Mr. Ladu's part.

*The sanction of separation from service was proportionate to the offence*

38. The Appeals Tribunal's jurisprudence on the principle of proportionality is best described in *Sanwidi*, where we held:<sup>13</sup>

... In the present case, we are concerned with the application of the principle of proportionality by the Dispute Tribunal. In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective. This entails examining the balance struck by the decision-maker between competing considerations and priorities in deciding what action to take. However, courts also recognize that decision-makers have some latitude or margin of discretion to make

procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decisionmaker's decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker's administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.

... Keeping in mind the matters outlined above, we hold that the UNDT, in exercising judicial review, may interfere wi



Therefore, we agree with the UNDT that there was no merit in Mr. Ladu's argument that the investigation was procedurally defective. Mr. Ladu's submission to the contrary, *to wit*, that the UNDT erred by not allowing his English language reading ability to be tested during the hearing falls to be rejected as baseless.

43. Additionally, even if any violations of Mr. Ladu's due process rights had occurred due to his alleged limited understanding of the English language, they were cured during the proceedings before the UNDT, which heard the witnesses and Mr. Ladu's own testimony under oath and gave Mr. Ladu the opportunity to confront and cross-examine them. As conceded by Mr. Ladu, the UNDT Judge took extra pains and "made him repeat each set of phrases numerous times, and sometimes summed his evidence to secure accuracy".

44. Be that as it may, as to the alleged procedural irregularities during the disciplinary investigation, the kind and amount of evidence, including Mr. Ladu's own concession of the basis of the charges against him, before the UNDT, rendering clear and convincing evidence that Mr. Ladu participated in an attempt of the unauthorized taking of property belonging to the Organization, call into application our jurisprudence in *Michaud* where we stated:<sup>15</sup>

... This is also one of those cases where the so-called "no difference" principle may find application. A lack or a deficiency in due process will be no bar to a fair or reasonable administrative decision or disciplinary action should it appear at a later stage that fuller or better due process would have made no difference. The principle applies exceptionally where the ultimate outcome is an irrefutable foregone conclusion, for instance where a gross assault is widely witnessed, a theft is admitted or an employee spurns an opportunity to explain proven misconduct.

45. Finally, Mr. Ladu claims "unfairness" and "injustice" in the outcome of the UNDT Judgment, in that the UNDT "questioned the integrity of [his] counsel and this could be [...] evidence of a bias" that affected his case before the UNDT. However, there is nothing in the



“by refraining from making ridiculous and scandalous submissions”.<sup>16</sup> While a staff member has a right to be represented by counsel or another staff member pursuant to Article 12(1) of the UNDT Rules of Procedure, the UNDT has a wide discretion in matters of case management.

46. It was thus within the UNDT’s discretion to give some directions to Mr. Ladu’s legal representative in this regard, though it could have done it in a more subtle way, noting that the counsel had advanced arguments that directly contradicted what Mr. Ladu had said or had raised irrelevant matters. In the view of the Appeals Tribunal, the above UNDT’s reasoned statements alone do not reflect bias on its part against Mr. Ladu. We note, further, that Mr. Ladu has not shown, as he ought to, how this alleged “bias” affected the decision of the case.<sup>17</sup>

*Request for compensation*

47. Mr. Ladu’s claim for compensation is rejected. Since no illegality was found, there was no justification for the award of any compensation. As this Tribunal stated before, “compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member’s rights or administrative wrongdoing in need of repair”.<sup>18</sup>

48. For the foregoing reasons, we find that Mr. Ladu has failed to establish that the UNDT made any error of law or fact in its review of the disciplinary measure imposed by the Secretary-General. It fon-32.6(a( Tri m25.4at b6g1(2.5(t)-54.4( ng()Tj-5.120 -2.09(t0 Tm0 Tc( Tw()TTTTTT

**Judgment**

49. The appeal is dismissed and Judgment No. UNDT/2019/032 is hereby affirmed.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of October 2019 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Colgan

*(Signed)*

Judge Neven

Entered in the Register on this 20<sup>th</sup> day of December 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar