



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

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Case No. 2009-019

**Luvai  
(Appellant)**

**v.**

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

**JUDGMENT ON APPLICATION FOR REVISION**

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Before:	Judge Mark P. Painter, Presiding Judge Inés Weinberg de Roca Judge Jean Courtial
Judgment No.:	2011-UNAT-127
Date:	8 July 2011
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Phyllis Hwang

**JUDGE MARK P. PAINTER**, Presiding.

### Synopsis

1. The fact that the Legal Officer of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) who was assigned to this case before the UNDT was a Facebook “friend” of a judge of the Dispute Tribunal and of a few other people who could have been tangentially involved in the issues of the underlying dispute is not a ground for revision of a decision made by *another* UNDT judge and affirmed by this Court.

### Facts and Procedure

2. Moses Jaika Luvai (Luvai) requests a revision of Judgment No. 2010-UNAT-014 issued by this Tribunal on 30 March 2010 in his case.

3. Luvai challenged before the Dispute Tribunal the fact that a vacancy announcement had not indicated the number of posts under recruitment, even though he had not applied to the vacancy announcement. He also made a number of allegations of corruption, fraud, and favouritism. The Dispute Tribunal, in Judgment No. UNDT/2009/74, found that no rights of Luvai had been breached by the vacancy announcement, and that he failed to prove his other allegations. It concluded that the application failed and that Luvai was not entitled to any relief.

4. In its Judgment,<sup>1</sup> this Court affirmed the UNDT Judgment and held that any minor errors in the recruitment process did not prejudice anyone’s rights. The United Nations Appeals Tribunal (Appeals Tribunal) also agreed with the UNDT that Luvai had presented no evidence to support his allegations of corruption and favouritism and affirmed the UNDT’s holding that Luvai was not entitled to any relief.

5. Luvai now seeks, under Article 11(1) of the Statute of the Appeals Tribunal, a revision of the Appeals Tribunal’s Judgment.

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<sup>1</sup> *Luvai v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-014.

### **Submissions**

#### **Luvai's Application for Revision**

6. Luvai seeks a revision Of Judgment No. 2010-UNAT-014 based on his allegation of a “personal friendship of Legal Officer Christel Adamou [Adamou] and Judge Vinod Boolell [Judge Boolell] of [the] UNDT Nairobi and UNON’s Chief Security Officer Peter Marshall [Marshall]”. He contends that their friendship existed before, during, and after the hearing of his case by the UNDT and the Appeals Tribunal. To support his allegations, he attaches pages from Marshall’s Facebook account, which indicate that Marshall, Boolell, and Adamou were listed as “friends” on Facebook. Adamou was present during the hearing without disclosing their personal friendship. Judge Boolell was the President of the UNDT and therefore “should be perceived to have prevailed upon Judge Nkemdilim Izuako [Judge Izuako], the presiding judge of the matter”. Luvai mentions other staff members who were “involved”. Luvai claims that the alleged “conflict of interest situation now explains” several procedural decisions taken by Judge Izuako.

7. Luvai concludes that he was not accorded a fair hearing by the UNDT which “misdirected UNAT to affirm the same wrong decision on appeal”.

#### **Secretary-General's Answer**

8. The Secretary-General responds that Luvai presents no evidence to support his serious allegations regarding the judicial integrity of Judge Boolell and Judge Izuako. He merely speculates that Judge Boolell may have abused his authority as President of the UNDT to prevail upon Judge Izuako to improperly reject Luvai’s evidence. The Secretary-General contends that, in this regard, Marshall’s Facebook pages submitted by Luvai do not constitute evidence, let alone sufficient evidence to support such serious allegations.

**Considerations**

9. Article 11(1) of the Statute of the Appeals Tribunal allows for an application for revision:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals 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.

10. The underlying Judgment held, in the synopsis:

Appellant Moses Jaika Luvai (Luvai) appeals from a decision of the United Nations Dispute Tribunal (UNDT). Luvai alleges that the Administration's failure to include in a vacancy announcement the correct number of vacancies available is grounds to give him an appointment to one of the positions. Luvai claims that, had he known the correct number of positions available, he might have applied for one; he did not apply at all. He also made a number of allegations of corruption, fraud, and favouritism, for which he presented no proof. The UNDT received evidence and wrote a comprehensive decision, which we affirm.

11. What Luvai alleges here is that the Legal Officer who was assigned to this case before the UNDT is a Facebook "friend" of Judge Boolell, then UNDT President, and of a few other people who could have been tangentially involved in the issues of the underlying dispute. From this Luvai leaps to the conclusion that Judge Boolell somehow influenced the judge in this case to rule improperly.

12. As in the original case, Luvai offers not a shred of proof of anything improper. Instead, he simply throws around unsupported and fanciful corruption allegations. There was no case in the underlying case. There is certainly no reason to revise it.

**Judgment**

13. The application for revision is denied.

Original and Authoritative Version: English

Dated this 8<sup>th</sup> day of July 2011 in Geneva, Switzerland.

*(Signed)*

Judge Painter, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Courtial

Entered in the Register on this 29<sup>th</sup> day of August 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar