



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

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Case No. 2010-095

**Masri  
(Applicant)**  
**v.**  
**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT  
ON APPLICATION FOR REVISION**

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Before:	Judge Luis María Simón, Presiding Judge Kamaljit Singh Garewal Judge Jean Courtial
Judgment No.:	2011-UNAT-163
Date:	21 October 2011
Registrar:	Weicheng Lin

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Counsel for Applicant: Christopher Meyer

Counsel for Respondent: John Stompor

**JUDGE LUIS MARÍA SIMÓN**, Presiding.

### Synopsis

1. An application seeking a review of a final judgment rendered by the United Nations Appeals Tribunal (Appeals Tribunal) can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal which refer to the discovery of a decisive fact previously unknown and not due to negligence; clerical or arithmetical mistakes; or interpretation of the judgment.
2. The application submitted by Mr. Abdul Karim Masri is considered non admissible since it repeats an argument already examined and rejected by the previous judgment and its actual goal is to litigate the case de novo, an option which is not provided to the parties by the applicable law.

### Facts and Procedure

3. On 29 December 2010, the Appeals Tribunal issued Judgment No. 2010-UNAT-098 in the case of *Masri v. Secretary-General of the United Nations*. In its Judgment, the Appeals Tribunal reversed the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) Judgment No. UNDT/2010/26 and affirmed the impugned administrative decision to impose the disciplinary measure of summary dismissal against Mr. Masri.
4. On 11 April 2011, Mr. Masri filed an application for revision of Judgment No. 2010-UNAT-098 on the basis that the appeal originally filed by the Secretary-General was not filed in accordance with Article 7(1) of the Statute of the Appeals Tribunal, and that the issues that resulted in his summary dismissal were incorrectly interpreted.

### Submissions

#### Mr. Masri's Application

5. Mr. Masri submits that newly adduced evidence from the meta-data properties of the appeal filing submitted by the Secretary-General indicates that the Secretary-General's appeal was submitted on 25 May 2011. Under Article 7(1) of the

Statute of the Appeals Tribunal, an appeal has to be filed within 45 days of the receipt of the UNDT Judgment. Therefore, the Secretary-General's appeal, which was due no later than 24 May 2011, failed to comply with Article 7(1) of the Statute of the Appeals Tribunal, thereby rendering the appeal non-receivable.

6. Mr. Masri further submits that the information he recently received from the United Nations Federal Credit Union (UNFCU) indicates that Judgment No. 2010-UNAT-098 incorrectly stated that he had only reimbursed USD 1,000 out of USD2,000, whereas the whole amount of the loan had been transferred, thereby fully reimbursing the loans at issue.

7. Mr. Masri also contends that the date of the transaction between himself and Mr. Kazakos was incorrectly interpreted by the Appeals Tribunal as it occurred in May 2004. Therefore it pre-dated and was unrelated to the assistance he provided with the submission of the technical proposal in 2006.

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

8. The Secretary-General submits that Mr. Masri failed to establish new decisive facts regarding the receivability of his request. Indeed, the meta-data evidence that Mr. Masri recently "discovered" is the same information that was previously submitted by Mr. Masri as part of his answer to the Secretary-General's appeal. Furthermore, the assertion made by Mr. Masri regarding the identified meta-data is incorrect.

9. The Secretary-General contends that the failure by Mr. Masri to request a confirmation for a wire transfer he had made through UNFCU in 2002, prior to the release of the Judgment of the Appeals Tribunal on 29 December 2010, does not constitute a new decisive fact. More importantly, the Appeals Tribunal found that Mr. Masri solicited and accepted two loans from vendors, a fact that would not be affected by the assertion that he had later repaid the full amount rather than just part of it.

10. The Secretary-General submits that, while Mr. Masri should have been aware of the time lapse between the transfers he made to Mr. Kazakos, this evidence does not affect the Appeals Tribunal's findings that Mr. Masri violated the Financial and Staff Regulations when assisting Mr. Kazakos and the Matina company with their technical proposal.

**Considerations**

11. An application seeking a revision of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict criteria established by Article 11 of the Statute of the Appeals Tribunal. Namely, the discovery of a decisive fact previously unknown to the parties and not due to negligence; clerical or arithmetical mistakes; or interpretation of the judgment.

12. As this Court stated in *Shanks* and *Costa*,<sup>1</sup> the authority of a final judgment – *res judicata* – cannot be so readily set aside. There are only limited grounds, as enumerated in Article 11 of the Statute of the Appeals Tribunal, upon which one can request the revision of a final judgment. In this respect, Mr. Masri’s arguments are irrelevant if they do not meet the requirements clearly established by the Statute of the Appeals Tribunal to ensure the finality of a judgment.

13. In the present case, the application filed by Mr. Masri does not fulfil those requirements.

14. The allegation that the appeal was time-barred was raised by Mr. Masri in his answer to the Secretary-General’s appeal (paragraph 22 of Judgment No. 2010-UNAT-098) and expressly rejected by this Tribunal in its Judgment (paragraph 23 of the same) because it was inaccurate. The present application merely repeats an argument that was already considered and rejected.

15. The alleged “new” information or misinterpretation of the date of a transaction does not constitute circumstances that warrant a revision, because none of them would result in the exclusion of the main reasons stated by the Appeals Tribunal in vacating the UNDT’s Judgment and affirming the administrative decision of summary dismissal. More specifically, Judgment No. 2010-UNAT-098 states:

2. The evidence established that Masri met vendors at his home outside working hours and discussed MONUC contracts, he received the benefit of interest-free loans from two vendors, and he gave assistance to a vendor in connection with its technical proposal for a catering contract with MONUC. This conduct violated a number of the Financial and Staff Regulations, and amounted to serious misconduct....

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<sup>1</sup> *Shanks v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-026; *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

40. Thus, misconduct was established and in Masri's case, it must be considered serious. The nature and pattern of the conduct at fault, namely the personal benefits obtained from vendors, the assistance given to a vendor and the resulting overall impression of corruption arising from the procurement staff member's activities, amount to serious misconduct.

16. Moreover, the date of a particular transaction was irrelevant as the fault relied on Mr. Masri's relationship with the vendors. Similarly, the fact that Mr. Masri potentially repaid the totality of the loan is irrelevant as the fault lies with his initial action of taking out the loan. It should be noted that the Appeals Tribunal only referred to the question of the payment of the said loan in the summary of the parties' submission and did not rely on its full or partial payment in its Judgment.

17. Consequently, the application under examination is inadmissible since its actual goal is to litigate the case de novo as a result of Mr. Masri not agreeing with the final Judgment, an option which is not provided to the parties by the applicable law.

**Judgment**

18. For the foregoing reasons, the application is dismissed in its entirety.

Original and authoritative version: English

Dated this 21<sup>st</sup> day of October 2011 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Courtial

Entered in the Register on this 2<sup>nd</sup> day of December 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar