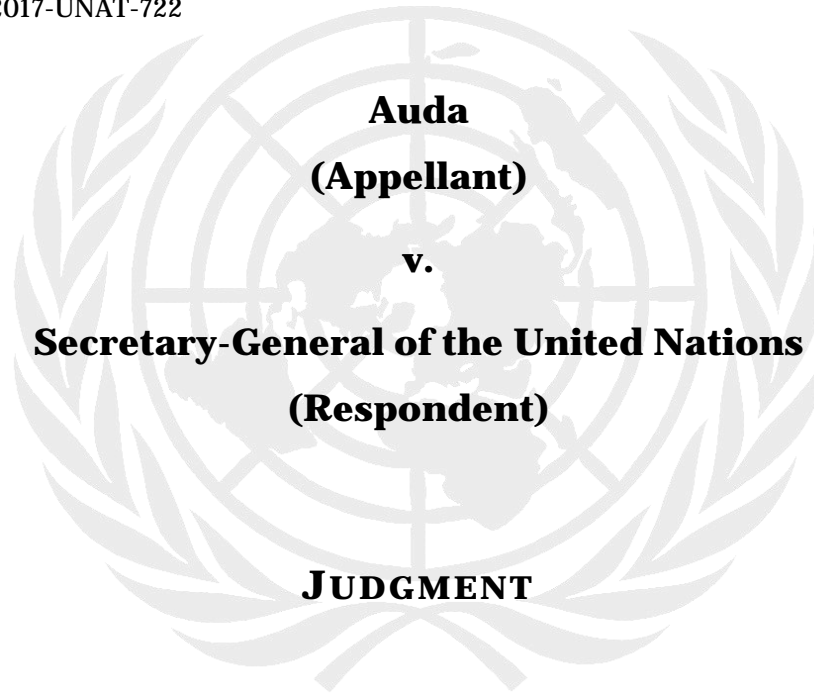




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-722



Auda

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge John Murphy, Presiding Judge Richard Lussick Judge Martha Halfeld
Case No.:	2016-959
Date:	31 March 2017
Registrar:	Weicheng Lin

Counsel for Mr. Auda:	Self-represented
Counsel for Secretary-General:	Ernesto Bondikov

JUDGE JOHN MURPHY, PRESIDING.

1. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York issued a Summary Judgment on Receivability No. UNDT/2016/106 on 4 August 2016 in the case of *Auda v. Secretary-General of the United Nations*. The UNDT subsequently issued two corrigenda, respectively as UNDT/2016/106/Corr.1 (issued on 8 August 2016) and UNDT/2016/106/Corr.2 (dated 22 August 2016).

2. Mr. Hersham A. Auda filed an appeal against UNDT/2016/106/Corr.1 on 15 August 2016. After the UNDT issued UNDT/2016/106/Corr.2, Mr. Auda filed an amended appeal on 31 August 2016. The Secretary-General filed his “observations” on 16 September 2016.

The Factual Background

3. Mr. Auda is a former staff member with the Department for General Assembly and Conference Management (DGACM). He separated from the Organization on 31 December 2015.

4. On 23 June 2016, Mr. Auda filed an application on the merits before the UNDT (Case No. UNDT/NY/2016/028) to contest a decision to appoint a candidate for the position of Chief of Service, Strategic Information and Communication Technology Management, Office of Information and Communications Technology (OICT), for which he had not applied (contested decision). This vacant position was first circulated under Job Opening (JO) No. 38496 in February 2015 and was subsequently re-circulated under JO No. 41653. On 23 June 2016, Mr. Auda also filed an application for interim measures in terms of Article 10(2) of the UNDT Statute.

5. Mr. Auda was rostered for the vacant position, but did not apply after the post was recirculated under JO No. 41653, because he was of the opinion that the post is defunct and the JO invalid. However, he had applied for the vacant position at an earlier time, but under a different JO. He was informed on 15 June 2016, via e-mail, that he had not been selected for the position. The selected candidate was offered a one-year fixed term appointment which he accepted on 28 June 2016, and he still encumbers the post.

6. Pursuant to the General Assembly resolution 70/247, a new organizational structure and post distribution were established in OICT with effect from 1 January 2016, which involved the proposed establishment of five new posts, the inward redeployment of 42 posts from other

offices of the Department of Management and an increase in the number of senior-level staff through the upward reclassification of six posts. Mr. Auda maintained that the post advertised in JO No. 41653, forming one of the posts in the now “defunct Strategic Management Service” have been “consumed” into the new structure through internal redeployment. The new post structure and positions at the D-2 and D-1 level, he submitted, are all reclassified posts and can only be encumbered pursuant to their own job openings.

7. In view of that, Mr. Auda believes that both the decision not to cancel JO No. 41653 for the position of Chief of Service and the selection and appointment of a candidate to the post are unlawful and in contravention of GA Resolution 70/247. He stated in paragraph 3 of his application on the merits that he was not contesting his non-selection for the post, or for that matter, the selection of any other person for the post; rather, she contests the making of the selection pursuant to an invalid JO for a defunct position, which he sees as depriving him of a career opportunity with the Organization, and fair and adequate consideration for a position he will be rostered for when the post is reclassified and reposted. Therefore, he requested the UNDT to cancel JO No. 41653, to rescind the selection decision made pursuant to the JO and to compensate him for the violation of his due process rights.

8. The present appeal is not concerned with the determination of the merits of the application (Case No. UNDT/NY/2016/028), or the validity of the JO and the selection made pursuant to it. This appeal relates solely to the application for interim measures in respect of the contested decision filed by Mr. Auda in terms of Article 10(2) of the UNDT Statute on 23 June 2016, the same day he filed the application on the merits. He appeals against the rejection of his application for interim measures by the UNDT and seeks to review certain conduct by the UNDT and its Registrar in relation to that decision.

9. Article 10(2) of the UNDT Statute provides:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested decision, except in cases of appointment, promotion or termination.

10. In paragraph 1 of the application for interim relief, Mr. Auda sought “suspension of the implementation of the decision of the Under-Secretary General, [Department of Management (DM)] not to cancel then make a selection pursuant to an invalid Job Opening ... for the defunct position of Chief of Service (D1), Strategic Information and Communication Technology Management, OICT”. He stated:

The Applicant is not contesting that he has not been selected, or, for that matter the selection of any one, to fill the vacant position, but rather the making of a selection pursuant to an invalid Job Opening for a defunct position. The case is therefore not a case of appointment within the meaning of Article 10.2 (see UNAT Judgment No. 2016-UNAT-609 (*Siri*)). The Applicant’s case is extremely urgent because if the implementation of the contested decision is not suspended during the Tribunal’s proceedings, the post will be unlawfully encumbered, which will deprive him from a career opportunity with the United Nations, and fair and adequate consideration for a position he is rostered for currently and will be subsequently when it is reclassified and reposted. The Applicant’s only choice to protect himself from irreparable damage is therefore to request interim relief in view of the imminent implementation of the decision on 1 July 2016, so that the case could be heard on the merits and decided.

11. Later on 23 June 2016, not long after Mr. Auda had filed the applications, the UNDT Registry acknowledged receipt of both the application on the merits and his application for interim relief.

12. On 24 June 2016, Mr. Auda sent an e-mail to the UNDT Registry following up on the two applications he had submitted on the previous day, specifically mentioning his application for interim relief. He pointed out that when he logged into his eFiling account he found only the application on the merits. He requested confirmation that the UNDT Registry had received and processed the application for interim relief and a corresponding case number. Later that day he received via e-mail a copy of the UNDT Registry’s transmittal to the Respondent of his application on the merits, for which the UNDT Registry assigned Case No. UNDT/NY/2016/028. He also received, five minutes later, via e-mail from the UNDT Registry, a request to re-file his application for interim relief under the newly assigned Case No. UNDT/NY/2016/028. Mr. Auda complied with that instruction on the same day. Thereafter, he received an automated notification acknowledging that Mr. Auda had filed an application for interim relief under Case No. UNDT/NY/2016/028.

13. On 27 June 2016, Mr. Auda received a copy of an e-mail that the UNDT Registry sent to parties acknowledging receipt of Mr. Auda's application for interim relief that was "filed ... on 24 June 2016" and instructing the Respondent to file his reply thereto by 29 June 2016. Later that day Mr. Auda addressed an e-mail to the UNDT Registry for the attention of Judge Greceanu. The e-mail read:

Reference is made to the email below which sets the date of the filing of the motion for interim measures by the Applicant to 24 June 2016 at 6:26 pm through the eFiling portal[.]

The application for interim measures has been filed through the eFiling portal on 23 June 2016 immediately following the filing of an application on [the] merits for the present case. The submissions were properly made in accordance with the rules of procedure of the UNDT and duly acknowledged by emails from the New York Registry on 23 June 2016 at 4:49 pm and 4:53 pm, respectively.

On 24 June 2016 at 3:30 pm the Applicant inquired about the status of the applications filed. At 4:03 pm, the Applicant received an email from the Registry which acknowledged the filing of the application on merits but requested the Applicant to re-file the motion for interim measures under Case No. UNDT/NY/2016/028, which was done instantly. Afterwards, the Applicant received at 5:58 pm a confirmation that the Registry received, on 23 June 2016 an application which has been assigned Case No. UNDT/NY/2016/028, and at 6:26 pm an automatically generated notification that the Applicant has made a filing (type: Motion for interim measures) to Case No. UNDT/NY/2016/28.

Noting the time elapsed since the initial filings, it follows from the above that the date of filing of the motion for interim measures should be 23 June 2016, as it is not up to the Applicant to determine under which case a motion should be submitted or where it should be supposedly filed, all of which are technical tasks fulfilled by the Registry concerned.

14. The UNDT Registry replied to the e-mail on 29 June 2016 and informed Mr. Auda as follows:

As instructed by Judge Greceanu, the Registry confirms that the application on the merits, given case number UNDT/NY/2016/028, was filed on 23 June 2016. The document entitled "application for interim relief", filed in a separate case eventually rejected, was also received on 23 June 2016. In accordance with article 14 of the Rules of Procedure, a motion for suspension of action during the proceedings must be filed within the substantive case and thus you were requested by the Registry to refile the motion in case number UNDT/NY/2016/028. We appreciate your diligence in refiling the motion on 24 June 2016.

In order to clarify the acknowledgement sent on 27 June 2016, the [Dispute] Tribunal confirms that both the application on the merits and the “application for interim relief” were received on 23 June 2016 in two separate cases.

15. By Order No. 156 (NY/2016) dated 30 June 2016, the UNDT (Judge Greceanu) rejected Mr. Auda’s application for interim relief on the grounds that the application concerned a case of appointment and hence in terms of Article 10(2) of its Statute, the UNDT was not competent to order interim relief. The UNDT rejected Mr. Auda’s reliance on *Siri*¹ as that case was distinguishable in that it was concerned not with an appointment but with an erroneous calculation of Mr. Siri’s retirement age. In the present matter, the evidence established that the selection process for the post of Chief of Service, Strategic Information and Communication Technology Management, OICT, for which Mr. Auda had previously applied under a different JO, was finalized on 14 June 2016 when the selected candidate was informed of his selection to the post, and to which he was appointed on 28 June 2016. The UNDT therefore held that the contested decision was directly related to a new appointment and was thus a clear “case of appointment” as contemplated in Article 10(2) of its Statute and hence the UNDT was not competent to grant interim relief. Mr. Auda has not challenged that finding, but has raised other grounds of review.

16. On 22 July 2016, Mr. Auda submitted a request for management evaluation of what he described to be the “arbitrary and baseless decision” of the New York Registry of the UNDT (not the order of the UNDT itself) to “reject [his] application for interim relief without informing him”. In the management evaluation request he identified the Registrar of the UNDT as the decision-maker.

17. In a letter dated 25 July 2016, Mr. Marco Madriz, the Officer-in-Charge (OIC) of the Management Evaluation Unit (MEU), informed Mr. Auda that the MEU had decided his request was not receivable for various reasons. The OIC drew an important distinction, which in subsequent events has been the source of some confusion. He stated:

The MEU further noted that, according to the documentation provided by you, the UNDT New York Registry did not reject your application for interim relief but rather requested you to refile it under a different case number.

¹ *Siri v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-609.

18. Later in the e-mail, Mr. Madriz added:²

Finally, to the extent that your request may be construed as contesting the decision of the UNDT New York Registry to request you to refile your motion in a different case file, the MEU noted that, pursuant to Article 21 of the UNDT Rules of Procedure, “[the] Registrars shall discharge the duties set out in the rules of procedure and shall support the work of the Dispute Tribunal **at the direction of the President or the judge at each location**”. ... The MEU further noted that, pursuant to ST/SGB/2010/3, para. 5.3:

“Under the authority of the Principal Registrar, without prejudice to the authority of the judges of the United Nations Dispute Tribunal in relation to judicial matters, each Registrar is responsible for the management and proper functioning of the tribunal in the relevant duty station.”

19. As regards the decision to reject or dismiss the application for interim measures, Mr. Madriz said:

On 30 June 2016, the UNDT rejected your request for interim measures. The MEU noted that, pursuant to Staff Rule 11.2, only a decision taken by the Administration may be subject to a management evaluation. The MEU considered that the decision to reject your motion for interim measures was taken by the UNDT and not by the Administration and that your request was further not receivable on this basis.

20. Mr. Madriz concluded the letter as follows:

The MEU considered that the contested actions of the UNDT Registry in this specific instance related to judicial matters and fell under the authority of the judges. The MEU considered that such actions could not be imputed to the Administration and that to do so, given that the Secretary-General was the Respondent in the underlying UNDT case, would constitute improper interference in the independence of the judiciary.

21. In response to this, two days later, on 27 July 2016, Mr. Auda filed an application with the UNDT contesting “the arbitrary and baseless decision” of the New York Registry of the UNDT “to reject [his] application for interim relief without informing him”. He identified Ms. Hafida Lahiouel, Registrar, New York Registry of the UNDT, as the official who made the contested decision and argued in the application that the decisions and actions of the Registrar are subject to administrative review.

² Both bold and italics in original.

22. In the body of the application, Mr. Auda evinced a measure of confusion in relation to the decision he sought to review. In paragraph 12 of the application, he stated:

As per its email dated 27 June 2016, the New York Registry has admittedly rejected the application for interim relief submitted on 23 June 2016 without informing the Applicant, and tried to cover its tracks by pretending that the motion was filed on 24 June 2016 instead of 23 June 2016, except for the Applicant's pursuit and the UNDT Judge's instructions. The United Nations Appeal Tribunal (UNAT) has held ... that the failure of notification by the Administration of its decision on a timely matter of great interest to a staff is a lapse which may be sufficiently compensated with an award of damages. In the present case, this was not merely a lapse, but rather a conscious decision on the part of the Registry.

23. From this it is difficult to identify Mr. Auda's cause of action precisely. There is more than one possibility. The formulation of the complaint is ambiguous and it is conceivable that he was aggrieved by one or more of four actions, namely: i) the rejection of his application for interim relief on the grounds of the UNDT lacking competence under Article 10(2) of its Statute; ii) the rejection of the application for interim relief without being properly informed thereof; iii) the rejection of the application for interim relief by the Registrar rather than the UNDT, being the appropriate body with jurisdiction; or iv) he was prejudiced in some way by being required to re-file the application for interim relief on 24 June 2016.

24. The main thrust of the application is directed at the fourth possible cause of action, the decision of the Registry directing him to re-file the application for interim relief. His true grievance is spelt out in paragraphs 14-16 of his application as follows:

[I]t is not up to the Applicant to determine under which case a motion should be submitted or where it should be supposedly filed, all of which are technical tasks fulfilled by the Registry concerned. Indeed determining under which case a motion should be submitted, or where it should be supposedly filed, is a technical task and a component of the core functions the New York Registry is mandated to perform. Often, and if needed, the Registry has filed applications into the eFiling portal on behalf of applicants who had difficulty on their own. ... Further, the Applicant recalls that he had in the past submitted an application on merits followed by an application for interim relief in two separate cases. ... The application for interim relief was not rejected, nor was the Applicant requested to refile it under any pretext. Thus, the decision of the New York Registry is not only baseless, but also arbitrary. ... The UNDT ... has asserted that, by their nature, interim relief proceedings require urgent attention. In the still pending Case No. UNDT/NY/2015/066, the application for interim relief was serviced to the Respondent instantly, who was given two [2] full days to respond. ... This has always been

the norm even when not all necessary documents and forms were filed initially. ... Applying the same standards in the present case, the Respondent would have been serviced on 23 June 2016 and instructed to file a response by the close of business on 27 June 2016. The action by the New York Registry in the present case was not only baseless and arbitrary, but also unfairly extended the time period for addressing the Applicant's motion by one and one-half days, thereby allowing the Respondent to file a belated response and bring as evidence signed documents dated 28 June 2016, which worked to the advantage of the Respondent.

25. With this narrative, Mr. Auda then introduced a fifth possible cause of action, namely, that the *dies induciae* afforded to the Respondent were unfairly generous. He requested the UNDT to order compensation for the violation of his due process rights, abuse of process and moral and other damages resulting from it.

26. What is notable about the complaint is that Mr. Auda did not specify any prejudice he suffered as a consequence of his being requested to refile the application for interim measures on 24 June 2016, and pointed only to the opportunity that the Respondent was given to submit contemporaneous documentation. He did not identify the document, address its relevance or indicate how its admission prejudiced him. It is possible, though it is not clear, that Mr. Auda laboured under the incorrect impression that his application for interim relief was rejected on account of the misfiling. This is incorrect. His application for interim relief was rejected because the UNDT lacked jurisdiction to grant interim relief, as is spelt out unambiguously in Order No. 156 (NY/2016). The clear terms of the Order leave no doubt as to its reasons.

27. On 4 August 2016, the UNDT issued Summary Judgment No. UNDT/2016/106, without instructing, or waiting for, the Respondent to file a reply, and rejected Mr. Auda's application as not receivable *ratione materiae*.

28. The impugned Judgment identified the contested decision as being the alleged decision of the Registrar of the United Nations Dispute Tribunal in New York to "reject his application for interim relief without informing him" – thus the second possible cause of action described above and not the fourth. The Judge then went on to determine the third and fourth causes of action. At paragraph 9 of the Judgment, he considered the 29 June 2016 e-mail sent by the UNDT Registry to Mr. Auda and concluded that the decision not to open a separate case for the application for interim relief had been taken by Judge Greceanu and not the Registrar. The *ratio decidendi* in paragraph 10 of the Judgment reads:

From the Registry's 29 June 2016 email, it follows without question that the rejection of creating a "separate case" for the Applicant's motion for interim relief in Case No. UNDT/NY/2016/028 was done pursuant to the instructions of Judge Greceanu. The contested decision not to open a separate case for this motion was made by Judge Greceanu and not the Registrar, whose role was merely to communicate this decision to the Applicant.

29. The UNDT then rightly stated that the competent entity to review and adjudicate on appeals against decisions of the UNDT was this Tribunal and accordingly held that the UNDT therefore did not have jurisdiction and was not competent to assess and determine whether the UNDT erred or not when declining to open a separate case for the motion for interim measures and requesting Mr. Auda to instead file the said motion under "the correlated substantive case". Mr. Auda's application was thus rejected as not receivable *ratione materiae*. It is important to stress that the UNDT did not decide whether the UNDT correctly rejected the application for interim measures for want of jurisdiction under Article 10(2) of its Statute because the underlying case was one of appointment. Nor, despite its characterization of the issue in paragraph 1 of the Judgment, did it determine whether Mr. Auda had been properly informed of the decision.

30. On 8 August 2016, the UNDT re-issued its Judgment No. UNDT/2016/106 as No. UNDT/2016/106/Corr.1, which corrected a typographical error in paragraph 2 of the original Judgment. This correction is uncontroversial. However, on 22 August 2016, the UNDT issued another correction, Corrigendum No. UNDT/2016/106/Corr.2. This correction has prompted an objection from Mr. Auda. The corrections change the original Judgment substantially by altering certain factual findings. Thus, all references to Judge Greceanu, the Registrar and the Legal Assistant of the UNDT in paragraphs 2, 5 and 10 of the original Judgment were deleted. The most significant change was that to paragraph 10 of the Judgment, cited above. The amended paragraph 10 now reads:

From the Registry's 29 June 2016 email, it follows without question that the rejection of creating a "separate case" for the Applicant's motion for interim relief was decided in Case No. UNDT/NY/2016/028.

31. What is significantly different between the two different versions of paragraph 10 of the Judgment, comprising the *ratio decidendi*, is that it no longer contains the finding that the relevant action was done pursuant to the instructions of Judge Greceanu, or that the contested decision not to open a separate case for the motion was made by Judge Greceanu and not the Registrar, who in the earlier version was held to have merely communicated the decision to the

Applicant. There is no explanation on record accounting for the Judge's decision to make this change. The Judge merely ordered the changes after noting paragraphs 1 to 7 of Order No. 156 (NY/2016) issued on 30 June 2016, and relying on the provisions of Article 12(2) of the UNDT Statute and Articles 28 and 31 of the UNDT Rules of Procedure.

32. As noted above, Mr. Auda filed an amended appeal on 31 August 2016 and the Secretary-General filed his "observations" on 16 September 2016. On 22 November 2016, Mr. Auda filed a motion to submit documentary evidence, seeking to introduce Order No. 256 (NY/2016) that Judge Greceanu issued on 4 November 2016 as evidence in support of an inference that, contrary to Judgment No. UNDT/2016/106/Corr.1 and Corr.2, Judge Greceanu did not take the decision not to open a separate case for Mr. Auda's application for interim relief. On 2 December 2016, the Secretary-General informed the Appeals Tribunal that he had "no observations" to make with respect to Mr. Auda's 22 November 2016 motion.

Submissions

33. In the original appeal filed on 15 August 2016, Mr. Auda averred that the UNDT in its Summary Judgment had erred on a question of fact in finding that the administrative decision "to reject [his] Application for interim relief without informing him" had been made by Judge Greceanu, rather than by the New York Registry and that it was not competent for the UNDT to review the decision. The error, he maintained, resulted in a manifestly unreasonable decision, and thus this Tribunal was competent to hear his appeal in terms of Article 2(1) of its Statute.

34. The basis upon which Mr. Auda believed that the decision was made by the Registrar rather than the UNDT is set out in paragraph 7 of his appeal dated 15 August 2016. There he states:

The reasoning of the Dispute Tribunal is flawed. As the email dated 29 June 2016 clearly stated, the request by the New York Registry for the Applicant to resubmit the Application for interim relief was made pursuant to the rejection of the initial submission made. Given that the request by the Registry was made in its email dated 24 June 2014 at 6:04 pm, Judge Greceanu could *not* have made a decision on 29 June 2016 at 11:07 am that had already been implemented on 24 June 2016 at 6:04 pm. It follows that the conclusion of the Dispute Tribunal that Judge Greceanu made the impugned decision is unquestionably unsound.

35. In his amended appeal, Mr Auda complained that the corrections introduced in Corrigendum No. UNDT/2016/106/Corr.2 fell outside the scope of allowable corrections permitted under the UNDT Statute and the Rules of Procedure.

36. Article 12 of the UNDT Statute reads:

1. 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.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties.

37. As the UNDT acted on its own motion to amend the Summary Judgment, it indisputably acted under Article 12(2) which is repeated in almost identical terms in Article 31 of the Rules of Procedure. Mr. Auda submitted that the corrections brought about in Corrigendum Two are not of a clerical or arithmetical type, nor do they appear to be made to correct an accidental slip or omission. The sentences removed were substantial and constituted all the references to Judge Greceanu and an amendment of the *ratio decidendi*. By removing the text in paragraph 2 and paragraph 10 from the Judgment, he contended, the UNDT essentially annulled its basis and vacated its own Judgment. The corrected Judgment failed to specify who made the decision not to open a separate case for Mr. Auda's application for interim relief, and where and in what manner. He therefore requested that this Tribunal vacate the impugned Judgment as amended by Corrigendum No. UNDT/2016/106/Corr.2, and to remand his case to the UNDT outside New York for reconsideration.

38. The Secretary-General made limited submissions. He merely observed that the decision taken by the UNDT under appeal was a discretionary judicial decision in respect of case management. As it was not a decision taken by the Administration, it did not constitute an administrative decision issued under the authority of the Secretary-General. It was therefore not subject to appeal. Hence, this Tribunal should reject the appeal and affirm the Judgment of the UNDT.

Considerations

39. Mr. Auda's criticisms of the UNDT's decision to amend its own Judgment are well founded. The corrections in question went beyond clerical mistakes or errors arising from any accidental slips or omissions. They were unexplained corrections that altered the main findings of the Judgment. As such, they were impermissible, irregular and in violation of the *functus officio* doctrine. That said though, the irregular corrections were of no prejudicial consequence. The reason for that is the issues in this appeal are of such a nature that the decision sought will have no practical effect or result and the appeal should be dismissed on this ground alone.

40. As stated, Mr. Auda's complaint comprises various causes of action which he has raised inconsistently throughout the process. He is not legally represented and it will be in the interests of justice not to hold him formalistically and technically to what he may or may not have pleaded.

41. The first possible ground of appeal relates to the rejection of his application for interim relief on the ground that the UNDT lacked competence under Article 10(2) of its Statute. The reasoning of the UNDT in Order No. 156 (NY/2016) is beyond reproach. Quite obviously, the contested decision was directly related to a new appointment and was thus a clear "case of appointment" as contemplated in Article 10(2) of the UNDT Statute. Hence, the UNDT was not competent to grant interim relief. That, strictly speaking, should be the end of the matter, as there is no practical reason to remit an application back to the UNDT in respect of which it has no jurisdiction. Mr. Auda, as mentioned, did not directly challenge that finding, but raised other grounds of review.

42. The second possibility was that he was prejudiced in some way by the rejection of the application of interim relief without his being properly informed thereof. The evidence does not support a finding of that nature. He filed the application for interim measures on 23 June 2016, re-filed it on 24 June 2016, and was told in the e-mail of 29 June 2016, albeit obliquely, that the application had been rejected. Order No. 156 (NY/2016) is a fully reasoned judgment of 11 pages explaining the UNDT's lack of jurisdiction. It is dated 30 June 2016, being the day following the e-mail. There is no evidence about when Mr. Auda received Order No. 156 (NY/2016), but it may be safely assumed that he got it not long after it was written. Therefore, his application was received, considered and dispatched in a matter of seven days. Admittedly, the manner in which he came to learn of the rejection of the

application in the e-mail of 29 June 2016 leaves something to be desired. But we see no prejudice flowing from that. The UNDT had no jurisdiction and has explained fully and correctly why that is so.

43. The third possibility is that the decision to reject the application for interim relief was taken irregularly by the Registrar rather than the UNDT, being the appropriate body with competence to take such a decision. There is scant evidence for such a conclusion, but the imprudent, unexplained and irregular correction of the Judgment to remove all reference to Judge Greceanu gives some pause for thought. Even had such an irregularity occurred, the fact remains that such irregularity has been cured by Order No. 156 (NY/2016) and the objective reality that the UNDT in law and in fact had no jurisdiction to grant Mr. Auda the interim relief he sought. Any irregularity that occurred caused Mr. Auda no prejudice. The fact that the Registrar irregularly might have decided that the UNDT had no jurisdiction (and we make no such finding), is neither here nor there if the UNDT in fact had no jurisdiction. Mr. Auda was put in no worse position than that which the law and circumstances objectively mandated. There is accordingly no basis for any claim for moral damages or remittal to the UNDT.

44. Likewise, there is nothing to show that Mr. Auda was prejudiced in any way by being required to re-file the application for interim relief on 24 June 2016. His reasoning in paragraph 7 of his original appeal, cited above, is illogical. The request by the New York Registry for him to resubmit the application for interim relief was not made pursuant to the rejection of the initial submission made, as he says. The e-mail of 29 June 2016 does not say that. What it says is that the application for interim measures had been submitted on 23 June 2016, and again properly on 24 June 2016, and had thereafter been rejected (by whom it is not stated). Be that as it may, and whoever was involved in whatever, the fact remains that the UNDT correctly declined jurisdiction for the reasons stated in Order No. 156 (NY/2016), and hence there was no prejudice. In the premises there are no valid grounds or practical reasons for remitting this matter to the UNDT for reconsideration.

Judgment

45. The appeal is dismissed and Judgment No. UNDT/2016/106 is hereby upheld.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Halfeld

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar