



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

Judgment No. 2022-UNAT-1255

**Boubacar Dieng
(Respondent/Appellant)**

v.

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

**JUDGMENT
ON APPLICATION FOR INTERPETATION, REVISION
AND EXECUTION**

Before: Judge Dimitrios Raikos, Presiding
Judge John Raymond Murphy
Judge Sabine Knierim

Case No.: 2021-1598

Date of Decision: 1 July 2022

Date of Publication: 12 August 2022

Registrar: Weicheng Lin

Counsel for Mr. Dieng: Self-represented

Counsel for Secretary-General: Noam Wiener

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The Applicant, the Secretary-General of the United Nations, has filed an application for interpretation, revision and execution of Judgment No. 2021-UNAT-1118, seeking the assistance of the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) in effectuating the payment of the compensation awarded to Mr. Boubacar Dieng, who has refused to provide his banking information to the Administration.
2. In the Judgment, the Appeals Tribunal upheld partially Mr. Dieng's appeal and ordered the Secretary-General to pay him compensation for non-pecuniary damages equivalent to two months' net base salary, with interest accruing from the date of issuance of the Judgment until payment was made and an additional five per cent interest to be added in case of failure to pay within 60 days.
3. For the reasons set out below, we dismiss the application.

Facts and Procedure

4. On 19 August 2020, before the UNAT, Mr. Dieng appealed Judgment No. UNDT/2020/093 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in which the UNDT partially granted his application challenging the decision by the Joint Special Representative, United Nations-African Union Mission in Darfur (UNAMID) to remove him from his position of Senior Child Protection Advisor in the Child Protection Unit and to reassign him as a Senior Political Affairs Officer within UNAMID. The UNDT awarded him one-month net base salary as non-pecuniary damages.
5. Mr. Dieng appealed. On 25 June 2021, the Appeals Tribunal issued Judgment No. 2021-UNAT-1118, in which it partially granted the appeal and directed the Secretary-General to pay Mr. Dieng two months' net base salary as non-pecuniary damages. The UNAT ordered that "[t]he award of compensation be effected within 60 days of the date of issuance of this Judgment. Interest shall accrue on the compensation award from the date of issuance of this Judgment at the current US Prime Rate until payment is made. If payment is not made within the 60-day period, an additional five per cent shall be added to the US Prime Rate."¹ Furthermore, the UNAT ordered the Secretary-General to place a copy

¹ See *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No.2021-UNAT-1118, para. 92 b).

of the Judgment in Mr. Dieng's official status file within two weeks of the issuance of the Judgment.

6. The Secretary-General submits that he sought to effectuate the compensation awarded in the Judgment, and that in order to do so, he requested Mr. Dieng to provide his banking information, using a standard United Nations form F.249. However, by e-mail dated 21 July 2021, Mr. Dieng refused to provide his banking information or to accept the two months' net base salary awarded by the Appeals Tribunal. He asked, instead, that the awarded compensation be divided amongst certain officials at UNAMID "who [had] breached the UN rules" or be donated to the current Secretary-General of the United Nations, and that the Secretary-General issue a written apology. In an e-mail dated 4 August 2021 addressed to the "United Nations Leadership NY-HQ level", Mr. Dieng reiterated his request for a written apology from the Secretary-General.

7. On 17 August 2021, the Secretary-General filed an application for interpretation/revision/execution of Judgment No. 2021-UNAT-1118 with the Appeals Tribunal, to which Mr. Dieng submitted his comments on 5 September 2021.

Submissions

The Secretary-General's Application

8. The Secretary-General states that he is unable to execute the UNAT Judgment in the absence of information from Mr. Dieng as to where the funds constituting the compensation awarded by the Appeals Tribunal should be transferred. Furthermore, the Secretary-General states that he cannot accede to Mr. Dieng's demands as to whom and how payment should be made, as he is bound by the UNAT's award.

9. The Secretary-General asks that the Appeals Tribunal issue an order directing him on how to execute Judgment No. 2021-UNAT-1148 with respect to the award of compensation for non-pecuniary damages which Mr. Dieng has refused to accept.

10. The Secretary-General submits that any delay in the execution of the UNAT Judgment is not attributable to him since Mr. Dieng has refused to accept the award of compensation. Hence, the Secretary-General requests that the Appeals Tribunal waive the requirement that interest of "an additional five per cent be added to the US Prime Rate, if payment is not made

within the 60 days of the date of the issuance of the Judgment, in case the implementation of the Judgment will be carried out as originally ordered and the compensation is to be somehow paid to Mr. Dieng.

Mr. Dieng's Comments

11. Mr. Dieng maintains that he has already stated his reasons for not accepting the monetary award by the Appeals Tribunal in his e-mails of 21 July and 4 August 2021.

12. Mr. Dieng submits that “[m]oney cannot buy integrity, cannot remedy breach of integrity (an action in bad faith) and, never can restore ‘good faith’”. He again demands a written apology from the Secretary-General.

Considerations

13. In Judgment No. 2021-UNAT-1118, the Appeals Tribunal upheld the UNDT's holding that the decision by the Joint Special Representative, UNAMID to reassign Mr. Dieng was unlawful. Consequently, the Appeals Tribunal partially accepted Mr. Dieng's appeal and modified Judgment No. UNDT/2020/093 by making the following orders:²

- a) The Secretary-General is directed to pay Mr. Dieng compensation for non-pecuniary damages (moral damages) equivalent to two months' net base salary in total.
- b) The award of compensation is to be effected within 60 days of the date of issuance of this Judgment. Interest shall accrue on the compensation award from the date of issuance of this Judgment at the current US Prime Rate until payment is made. If payment is not made within the 60-day period, an additional five per cent shall be added to the US Prime Rate.
- c) The Secretary-General shall place a copy of this Judgment in Mr. Dieng's official status file within two weeks of the issuance of the Judgment.

14. The Secretary-General is seeking interpretation, revision, and execution of Judgment No. 2021-UNAT-1118, on grounds that he sought to effectuate the compensation awarded in the Judgment; that to effectuate the payment, he requested that Mr. Dieng provide his banking information, using the standard United Nations F.249 form. However, Mr. Dieng refused to fill out the form. Instead, on 21 July 2021, and then again on 4 August 2021, he addressed e-mail

² *Ibid.*, para. 92.

messages to the Administration requesting that the compensation that the UNAT had awarded him for moral damages be either divided among certain officials who had served as his supervisors at UNAMID or alternatively, be paid to the Secretary-General.

15. On this basis, the Secretary-General submits that, absent information from Mr. Dieng as to where funds constituting the compensation awarded to him by the Appeals Tribunal should be transferred, the Administration is unable to execute the Judgment as it is not in a position to simply accede to Mr. Dieng's demands as to whom and how payment should be made. Thereupon, the Secretary-General seeks an order from the Appeals Tribunal further directing the Administration on how to execute said Judgment with respect to the award of moral damages, which Mr. Dieng has refused to accept.

16. Furthermore, the Secretary-General requests that

should the circumstances be such that the implementation of the Judgment will be carried out as originally ordered in the Judgement, and the compensation is to be paid to the Appellant somehow, the Respondent requests the UNAT to waive the requirement that interest of "an additional five per cent shall be added to the US Prime Rate, that shall accrue on the award of moral damages" if payment is not made within the 60 days of the day the Judgment was issued. Given the Appellant's refusal to accept the award of compensation, any delay in the execution of the Judgement is not attributable to the Respondent".

17. Article 11(1) of the Appeals Tribunal Statute (Statute) stipulates that, subject to Article 2 of the Statute, either party may apply to the Appeals Tribunal for a revision of a judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Appeals Tribunal and to the party applying for revision, and 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 judgment.

18. On the same matter, Article 24 (Revision of Judgements) of the UNAT Rules of Procedure states that either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgment on the basis of the discovery of a decisive fact that was, at the time the judgment was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always on the condition that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a

prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.

19. Further, Article 11(3) and (4) of the Appeals Tribunal’s Statute provides that “[e]ither party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement”, and that “[w]here the judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement”.

20. Similar provisions have been established in our Rules of Procedure:

Article 25

Interpretation of judgements

Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgement on a prescribed form. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application on a prescribed form. The Appeals Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

Article 27

Execution of judgements

Where a judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement.

21. Following the Appeals Tribunal’s jurisprudence, an application for interpretation will be admitted only if the parties disagree on the meaning or scope of a judgment because it is unclear or ambiguous.³ As this Tribunal found in *Abbasi*:⁴ “[I]nterpretation is only needed to clarify the meaning of a judgment when it leaves reasonable doubts about the will of the Tribunal or the arguments leading to a decision. But if the judgment is comprehensible, whatever the opinion the parties may have about it or its reasoning, an application for interpretation is not admissible, as it happens in the present case.”

³ *Newland v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-910, para. 18; *Awe v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-827, para. 27.

⁴ *Abbasi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-315, para. 18.

22. In the present case, the Secretary-General does not point to any statement or consideration in the Appeals Tribunal Judgment which would be ambiguous or unclear, and thus in need of clarification. The Judgment is clear in its meaning. It is written in plain and unambiguous language, which leaves no reasonable doubt as to what it means. It requires no interpretation. Nor does the Secretary-General argue that he discovered a decisive fact which was unknown to the Appeals Tribunal at the time the Judgment was rendered. For the afore-mentioned reasons, this part of the Secretary-General's application, which seeks interpretation and revision of Judgment No. 2021-UNAT-1118, is not admissible and falls to be rejected.

23. Next, upon consideration of that part of the application seeking the execution of Judgment No. 2021-UNAT-1118, we are of the view that what is being requested by the Secretary-General does not fall within the ambit of Article 11(4) of our Statute. Actually, what is happening here is that, while the Administration is willing and endeavoring to execute said Judgment of the Appeals Tribunal, this is not possible due to Mr. Dieng's undisputed refusal to accept the payment and cooperate with the Administration to that effect. However, Article 11(4) of the Statute of the UNAT, per its wording, contemplates an order for execution of a judgment which has not been carried out by the Administration timely, but not an order for the non-execution of a judgment by the Administration. There is accordingly no legal basis to grant the Secretary-General's request in this regard either.

24. Nevertheless, though it does not fall within the Tribunal's competence to provide advice or guidance to the parties in terms of legal issues arising from any case, we offer the following comments in a spirit of helpfulness and for the future avoidance of similar issues.

25. There does not seem to be in place within the United Nations, nor does the Secretary-General submit otherwise, an instrument governing the specific legal situation where the creditor, i.e., the staff member to whom a payment by the Administration is due through a Tribunal order, refuses to accept it, without any reason, by providing for example that the Administration shall be released from liability by depositing the money in a specific Fund (or by the consignment of the amount due etc.), as is the case across many national legal systems.

26. In principle, the freedom of disposition grants every person the freedom to dispose of their property in any way they want including their right to forfeit a claim. Thus, the creditor cannot be forced to accept a payment and the debtor does not have the right of acceptance by the

creditor. However, if the creditor to whom a tender of payment is made refuses to accept it, or despite the debtor's willingness to perform, the creditor fails to provide the cooperation required for performance by the debtor, which is the case here where Mr. Dieng refused to accept the payment, -and still does⁵, and does not provide his banking information, using the standard United Nations form etc., then the creditor is in default of acceptance and the debtor is released from any liability, including the accompanying accrued interest due for the delay of such payment, since the debtor's inability for (or delay in) the execution of the Judgement is not attributable to the latter, in this case the Administration.

27. In light of the above, we dismiss the application for interpretation, revision and execution.

⁵ See, Mr. Dieng's comments on the application for interpretation, revision and execution of Judgment No. 2021-UNAT-1118, page 3.

Judgment

28. The Secretary-General's application for interpretation, revision and execution of Judgment No. 2021-UNAT-1118 is dismissed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.

(Signed)

Judge Raikos, Presiding
New York, United States

(Signed)

Judge Murphy
New York, United States

(Signed)

Judge Knierim
Hamburg, Germany

Judgment published and entered into the Register on this 12th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar