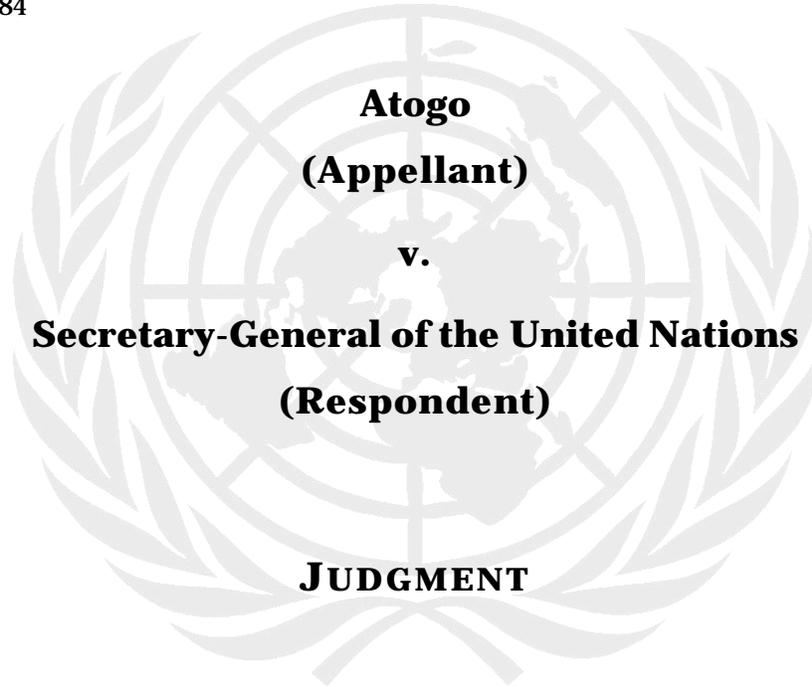




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-084



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Before:	Judge Inés Weinberg de Roca, Presiding Judge Kamaljit Singh Garewal Judge Rose Boyko
Judgment No.:	2010-UNAT-086
Date:	27 October 2010
Registrar:	Weicheng Lin

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Counsel for Appellant:	David Andati-Amwayi
Counsel for Respondent:	Melanie Shannon

**JUDGE INÉS WEINBERG DE ROCA, Presiding.**

### **Synopsis**

1. This is the second appeal brought by Jones Angwenyi Atogo (Atogo) before the Appeals Tribunal in this case. On 1 July 2010, this Tribunal affirmed the decision of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) not to strike out the response of the Secretary-General and not to transfer the case from Nairobi.

2. The second appeal by Atogo, from the UNDT's Judgment striking out his claim, is allowed. Atogo is ordered to file a concise statement with the UNDT identifying the precise nature of his claim within 15 days from the date of issuance of this Judgment to the parties.

### **Facts and Procedure**

3. Atogo is a Security Lieutenant at the G-6 level with the United Nations Office in Nairobi (UNON). Atogo commenced two appeals before the Joint Appeals Board (JAB) asserting that he received less favourable treatment than his colleagues and abuse of power by senior management, and challenging his non-promotion to security inspector at the G-7 level. Following the introduction of the new internal justice system, Atogo's appeals were transferred to the Dispute Tribunal and assigned two case numbers, UNDT/NBI/2009/02 and 06.

4. On 5 February 2010, Atogo made an application in both cases to strike out the response of the Secretary-General and for summary judgment (strike-out application). He also applied for a transfer of the case to New York or Geneva on the grounds of conflict of interest which allegedly arose due to the following circumstances: (1) Boolell, J. and a Legal Officer of the UNDT Nairobi Registry who then had the conduct of the case attended a function hosted by the Department of Security and Safety Service on 1 February 2010; (2) the representative of the Secretary-General was one of the human resources officers directly involved in the matter which was before the Dispute Tribunal; (3) the UNDT Nairobi failed to provide Atogo with a copy of the authority given to the Secretary-General's representative to act as counsel; and (4) the UNDT Nairobi was unable to dispense justice independently, professionally or impartially.

5. By Order dated 23 February 2010 (Order No. 28), Meeran, J. of the Dispute Tribunal refused the application to strike out the response and found that there was no conflict of interest. The parties were ordered to state if they were minded to explore alternative resolution, and if not, Atogo was ordered to file a concise statement identifying the precise nature of the claim by 4 March 2010. On 1 March 2010, Atogo filed an appeal against Order No. 28 with the Appeals Tribunal. Alternative resolution was not pursued and Atogo did not file a concise statement of his claim.

6. By Order dated 8 March 2010 (Order No. 34), both of Atogo's claims were consolidated and Atogo was ordered to show cause, by 15 March 2010, as to why his application should not be struck out for failing to comply with Order No. 28, and that failure to do so would result in both claims being struck out without further order.

7. On 12 March 2010, Atogo filed a "Reply to the Order for Show Cause" informing the Dispute Tribunal that he had filed an appeal with the Appeals Tribunal against Order No. 28 and that he "avoids discussing the matter outside the jurisdiction of UNAT New York".

8. By Order dated 15 March 2010 (Order No. 38), Atogo was granted a final extension of time to 17 March 2010 to comply with Order No. 28. Atogo was informed that failure to comply with Order No. 38 would result in both of his applications being struck out in their entirety. The Dispute Tribunal noted that the purpose of Order No. 28 was to facilitate a fair hearing of the substantive issues in the claim. Further, counsel for Atogo was "labouring under the mistaken belief that the mere act of filing an appeal with the UNAT automatically entitles [Atogo] to a stay of proceedings in the Tribunal."

9. On 17 March 2010, Atogo filed an "Application to Set Aside Order" in which he submitted, inter alia, that he was prevented from complying with any orders issued after Order No. 28 pending the determination of his appeal from that Order to the Appeals Tribunal.

10. By Order dated 22 March 2010 (Order No. 49), the Dispute Tribunal rejected Atogo's application and extended the deadline for compliance with Order No. 28 to 25 March 2010. Atogo was informed that failure to comply with the Order would result in the consolidated claim being struck out without further order. The Order noted that Atogo could preserve his rights pending the appeal to the Appeals Tribunal by complying with Order No. 28 and,

having done so, asking for leave to stay the proceedings pending the determination of his appeal.

11. On 25 March 2010, Atogo filed an “Objection to Order Number UNDT/NBI/O/2010/049”, which again argued that he was prevented from complying with any order issued after Order No. 28 pending his appeal to the Appeals Tribunal. Atogo made a number of assertions regarding the conduct of the case before the Dispute Tribunal.

12. On 30 March 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/048. The Dispute Tribunal found that Atogo was given several opportunities to comply with Order No. 28 and ordered that the consolidated claim (in applications UNDT/NBI/2009/02 and 06) be struck out in its entirety.

13. Atogo filed an appeal against the Dispute Tribunal’s Judgment on 20 April 2010. After receiving the appeal on 22 April 2010, the Secretary-General filed an answer to the appeal on 7 June 2010.

14. On 1 July 2010, the Appeals Tribunal dismissed Atogo’s appeal against Order No. 28.<sup>1</sup> This Tribunal held that the appeal from an interlocutory decision of the UNDT was not receivable.

### **Submissions**

#### **Atogo’s Appeal**

15. Atogo submits that the Secretary-General “failed to challenge” Order Nos. 34 and 38 and his filings in the Dispute Tribunal objecting to these Orders. Atogo contends that, whereas the Appeals Tribunal requires the appellant and respondent to file their respective powers of attorney, UNDT Nairobi only requires the applicant’s counsel to file a power of attorney. This practice is illegal and discriminatory, and the UNDT is not impartial, independent or professional. Atogo also contends that Joerg Weich has no power to represent the Secretary-General in the proceedings before the Dispute Tribunal.

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<sup>1</sup> *Atogo v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-054.

16. Atogo argues that the UNDT Nairobi has dealt with cases inconsistently, in particular the *Attandi* case,<sup>2</sup> and this case. Atogo also contends that a number of conflicts of interest have arisen in this case on the part of Judges of the UNDT and Legal Officers of the UNDT Registry.

17. Atogo submits that Meeran, J. erred, in particular by: (1) purporting to act as counsel for the Secretary-General; (2) “[o]ver-protecting the [Secretary-General] for his own personal self-interest”; (3) issuing ultra vires orders; and (4) “[d]eliberately distorting and/or concealing facts”.

18. Atogo requests that the Appeals Tribunal, inter alia, quash the Judgment of the Dispute Tribunal; allow the strike-out application; declare that the Orders issued by Meeran, J. and the Judgment are “null and void for prejudice”; and the costs of the appeal be borne by the Secretary-General.

#### **Secretary-General’s Answer**

19. The Secretary-General submits that the Dispute Tribunal correctly dismissed Atogo’s applications for failure to present a concise statement identifying the precise nature of the claim and the issues to be determined by the Dispute Tribunal, and refers to Article 19 of the Rules of Procedure of the Dispute Tribunal (UNDT Rules) concerning case management. Atogo did not comply with Order No. 28 and was given three further opportunities to do so by Order Nos. 34, 38 and 49. The Secretary-General also argues that the former Administrative Tribunal dismissed claims that it considered to be unclear and vague.

20. The Secretary-General contends that Atogo has not identified any errors by the Dispute Tribunal that would warrant a reversal of its decision to dismiss the applications. The Dispute Tribunal did not err on a question of law by issuing the Orders in the absence of a response or challenge by the Secretary-General. Meeran, J. properly concluded in Order No. 28 that there was no conflict of interest on the part of Boolell, J. and the Legal Officer of the UNDT Registry. Nevertheless, the Dispute Tribunal sought to dispel any concerns by transferring the conduct of the case to Meeran, J. and another Legal Officer.

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<sup>2</sup> See *Attandi v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/038 and Judgment No. 2010-UNAT-047.

21. The Secretary-General argues that the Dispute Tribunal properly considered Atogo's claims regarding the authority of counsel to appear on behalf of the Secretary-General. Further, Atogo's submission that the UNDT Nairobi engages in discriminatory and illegal practices by requiring only the applicant to file a power of attorney is misconceived and irrelevant. Atogo's additional submissions, which are either unsubstantiated or irrelevant, do not identify any errors by the Dispute Tribunal that would warrant a reversal of its Judgment.

22. The Secretary-General requests that the Appeals Tribunal make a number of findings, affirm the Judgment and dismiss the appeal in its entirety.

### **Considerations**

23. This is the second appeal brought by Atogo before this Tribunal in this case. Atogo's first appeal concerned Order No. 28 issued by the UNDT. On 1 July 2010, this Tribunal upheld the decision of the UNDT Nairobi not to transfer the case from Nairobi and not to strike out the response of the Secretary-General. We held that Atogo's appeal from an interlocutory decision of the UNDT was not receivable.

24. Atogo has evidently been under the impression that his appeal from Order No. 28 to the Appeals Tribunal stayed the proceedings before the UNDT. Taking into account that neither the UNDT nor this Tribunal have been presented with any submission on the merits of the case, we order Atogo to file a concise statement identifying the precise nature of his claim within 15 days from the issuance of the Judgment of the Appeals Tribunal.

**Judgment**

25. For the foregoing reasons, the appeal is allowed and the Judgment of the UNDT is set aside.
26. This Tribunal orders Atogo to file a concise statement identifying the precise nature of his claim within 15 days from the date of issuance of this Judgment to the parties.

Dated this 27<sup>th</sup> day of October 2010 in New York, United States.

Original and authoritative version: English

*(Signed)*

Judge Weinberg de Roca,  
Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Boyko

Entered in the Register on this 29<sup>th</sup> day of December 2010 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar