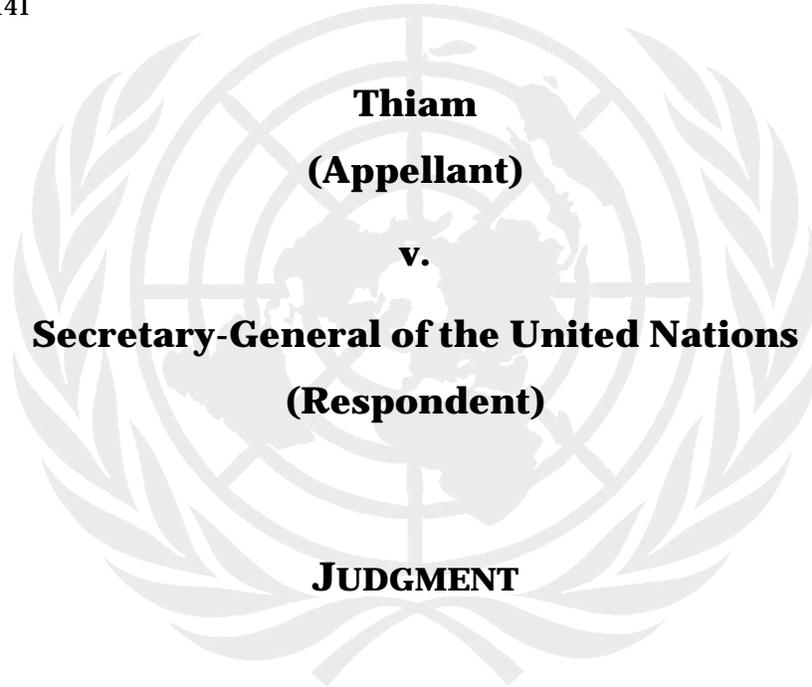




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-141



**Thiam  
(Appellant)**

**v.**

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

**JUDGMENT**

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**Before:** Judge Sophia Adinyira, Presiding  
Judge Kamaljit Singh Garewal  
Judge Mark P. Painter

**Judgment No.:** 2011-UNAT-144

**Date:** 8 July 2011

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Self-represented

**Counsel for Respondent:** John Stompor

**JUDGE SOPHIA ADINYIRA**, Presiding.

### Synopsis

1. Under Article 7(3) of the Statute of the United Nations Appeals Tribunal (Statute and Appeals Tribunal, respectively) and Article 7(2) of its Rules of Procedure (Rules), the time limit for filing an appeal may be suspended, waived, or extended, only in exceptional cases and upon a written request by an appellant to the Tribunal. The Appeals Tribunal will exercise its discretion if the request by the appellant is made *prior* to the filing of the appeal. Mohamed Thiam (Thiam) failed to seek an extension of time *prior* to filing his appeal. The submission by the Secretary-General of the United Nations that the appeal is not receivable is upheld.

### Facts and Procedure

2. Thiam joined the International Criminal Tribunal for Rwanda (ICTR) in 1998 as an Administrative Assistant at the FS-4 level in the Lawyers and Detention Facilities Management Section. In April 2001, Thiam was reassigned to the Finance and Budget Section.

3. In December 2001, the Office of Internal Oversight Services (OIOS) initiated an investigation into a report of alleged misconduct on the part of Thiam which required him to travel from Arusha, Tanzania, to The Hague, Netherlands, for an interview with OIOS. According to Thiam, it was upon the instructions of OIOS that he purchased a ticket for his return flight to Arusha and submitted a claim for reimbursement for the cost of the ticket with the ICTR.

4. From March 2002 to January 2003, Thiam was suspended from duty with pay pending the completion of disciplinary proceedings against him. Subsequently, the Joint Disciplinary Committee (JDC) concluded that Thiam had violated Staff Regulations 1.2(b) and (g). Based on the JDC's recommendation, Thiam was suspended from duty without pay from February to April 2003 and he was transferred to the Transport Unit from May 2003.

5. In February 2004, Thiam was informed that his fixed-term appointment would not be renewed due to his unsatisfactory performance, and in March 2004, he was

separated from service. The ICTR issued airline tickets on 9 March 2004, valid for one year, in order to repatriate Thiam and his family from Arusha to Nouakchott, Mauritania. However, Thiam did not use the tickets and returned them to the issuing travel agency in Nairobi, Kenya. From 2005, Thiam made several requests to the ICTR seeking a lump-sum payment in lieu of the tickets. His requests were denied.

6. By letter dated 27 June 2008, Thiam submitted a request for administrative review. After receiving the reply to his request, Thiam submitted an appeal to the Joint Appeals Board in October 2008. The appeal was transferred to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).

7. On 22 July 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/131. The Dispute Tribunal found that Thiam's claim with respect to the non-renewal of his fixed-term appointment was not receivable as he failed to comply with the two-month time limit for submitting a request for administrative review under former Staff Rule 111.2(a), and he failed to establish any special circumstances that would justify a waiver of the time limits in accordance with former Staff Rule 111.2(f).

8. The Dispute Tribunal further found that Thiam's claim relating to the reimbursement of travel costs submitted to the ICTR in December 2001 in connection with the OIOS investigation was receivable and well founded.

9. The Dispute Tribunal found that Thiam was not entitled to a lump-sum payment for his repatriation travel from Tanzania to Mauritania and shipment of personal effects. However, based on an offer made by the Secretary-General, the Dispute Tribunal ordered the ICTR to provide Thiam with tickets or an amount equal to tickets for travel between Arusha and Nairobi (Thiam's place of relocation according to an affidavit sworn by him in January 2006) and for shipment between Arusha and Nairobi for himself and his dependents.

10. The UNDT Registry sent a copy of the Judgment to the parties by e-mail dated 28 July 2010. Thiam filed an appeal against the Judgment on 30 September 2010. After receiving the appeal on 5 October 2010, the Secretary-General filed an answer to the appeal on 19 November 2010. Pursuant to Order No. 33 (2011) of the Appeals Tribunal, Thiam filed observations on the Secretary-General's answer on 19 December 2010.

### **Submissions**

#### **Thiam's Appeal**

11. Thiam alleges that the UNDT Judgment is tainted with several errors. He requests that the Appeals Tribunal award him compensation and other relief.

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

12. The Secretary-General argues that the appeal is not receivable as it was not filed within 45 days of receipt of the Judgment under Article 7(1)(c) of the Statute. With regard to the merits of the appeal, the Secretary-General submits that Thiam has failed to establish any errors by the Dispute Tribunal.

#### **Thiam's Observations**

13. Thiam requests that the Appeals Tribunal suspend, waive, or extend the time limit to file an appeal against the Judgment because of the actions of the ICTR during the 45-day appeal period regarding the enforcement of the Judgment; because he was unable to seek assistance of his counsel; and because he was denied access to the ICTR due to "open or subtle intimidation".

### **Considerations**

14. The Secretary-General raises a preliminary legal issue that the appeal is not receivable because it is time-barred. Under Article 7 of its Statute, the Appeals Tribunal is only competent to hear and pass judgment on an appeal filed against a judgment of the UNDT if the appeal is filed within 45 days of the receipt of the judgment of the UNDT.

15. The UNDT Registry has confirmed that the parties were notified of the Judgment on 28 July 2010. The 45-day time limit to appeal expired on 13 September 2010. Thiam submitted his appeal to the Registry of the Appeals Tribunal on 30 September 2010, which was 17 days outside the statutory period.

16. Under the Statute and the Rules, the time limit for filing an appeal may be suspended, waived, or extended, only in exceptional cases and upon a written request by an appellant to the Tribunal.

17. Thiam, in his additional filing (permitted by Order 33 (2011) issued by this Tribunal on 12 January 2011), requested this Court to receive his appeal on the grounds that he had no access to his counsel during the period he should have filed his appeal, and that he was blackmailed and denied access to the ICTR premises and former colleagues' offices.

18. This Court can exercise its discretion under Article 7 of the Statute upon a written application for suspension, waiver, or extension of time limit by an appellant *prior* to the filing of an appeal. But, no such written request was presented by Thiam before filing his appeal.

19. The submission by the Secretary-General that the appeal is out of time and is therefore not receivable is upheld.

**Judgment**

20. The appeal is dismissed.

Original and Authoritative Version: English

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

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Painter

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

*(Signed)*

Weicheng Lin, Registrar