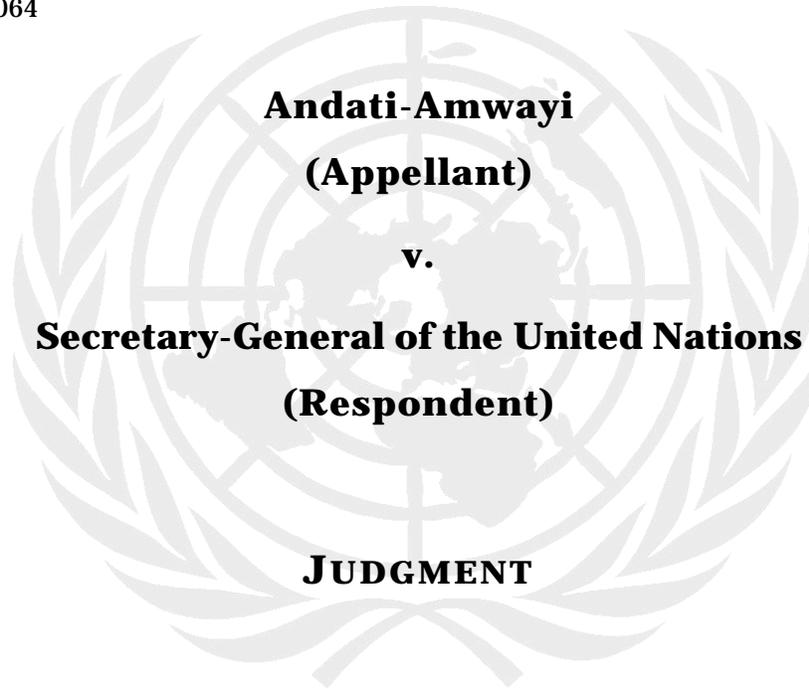




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-064



**Andati-Amwayi
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Inés Weinberg de Roca Judge Jean Courtial
Judgment No.:	2010-UNAT-058
Date:	1 July 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: John Stompor

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. David Andati-Amwayi (Andati-Amwayi), a staff member of the United Nations Human Settlements Programme (UN-HABITAT) in the position of Clerk at the GS-2 level, was refused medical services at a Nairobi hospital while awaiting a contract extension. This refusal was based on administrative instructions from the Organization to hospitals in Kenya not to provide medical services on credit to any staff member who produced an expired Medical Insurance Plan (MIP) card or United Nations Grounds Pass. His application was rejected by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on the ground that there was no administrative decision taken by the Administration within the meaning of Article 2 of the statute of the UNDT (UNDT statute). This Court affirms the UNDT decision.

Facts and Procedure

2. Andati-Amwayi joined UN-HABITAT in April 1992 as a Messenger at the GS-1 level. He was promoted to the position of Clerk at the GS-2 level in October 1998. It appears from the case file that Andati-Amwayi's contract extensions were delayed from time to time, and one delay led to a gap in his contractual status after his contract expired on 31 December 2008. According to Andati-Amwayi, on 9 January 2009, while he was awaiting a contract extension, he went to the Mater Hospital in Nairobi for a cardiac assessment. But the hospital refused to recognize Andati-Amwayi's expired MIP card and his expired Grounds Pass, citing instructions that the United Nations had given to the hospital not to provide medical services on credit to any staff member who produced an expired MIP card or Grounds Pass.

3. In a memorandum dated 14 January 2009 addressed to the Secretary-General, Andati-Amwayi requested review of the "decision of instructing hospitals in Kenya not to provide any medical services to any staff member who produced expired MIP Card and Grounds Pass".

4. In a letter dated 20 March 2009, the Administrative Law Unit informed Andati-Amwayi that an appealable administrative decision did not exist within the meaning of Staff Regulation 11.1 and Staff Rule 111.2, then in force, and that the United Nations Office at Nairobi (UNON) had not taken a unilateral decision against him that created legal consequences for the terms of his employment.

5. On 21 April 2009, Andati-Amwayi filed an incomplete statement of appeal with the Nairobi Joint Appeals Board (JAB), challenging the “denial of medical services on 9 January 2009”. Subsequently, he made several requests for extension of the time limit for filing a complete statement of appeal. His appeal was transferred to the UNDT in Nairobi in July 2009. Andati-Amwayi filed a complete application to the UNDT on 13 November 2009.

6. In Judgment No. UNDT/2010/010, dated 25 January 2010, the UNDT noted:

There is nothing on record to show that the administration gave specific instructions to the hospitals in Kenya not to provide medical services to [Andati-Amwayi]. On the contrary it was [Andati-Amwayi] himself who by a systematic course of conduct put himself outside the purview of the facilities to which he would have been entitled by neglecting or deliberately refusing to collect his MIP card.

7. Consequently, in the view of the UNDT, “there was no administrative decision taken by the administration within the meaning of Article 2 of the UNDT Statute”. The UNDT rejected Andati-Amwayi’s application and ordered him to pay USD 100 as costs because he “has made an abuse of the process of the Tribunal”.

8. On 10 March 2010, Andati-Amwayi appealed against the UNDT Judgment. After receiving a copy of the appeal on 24 March 2010, the Secretary-General filed an answer to the appeal on 10 May 2010.

Submissions

Andati-Amwayi’s Appeal

9. Andati-Amwayi submits that the UNDT erred in fact concerning numerous matters including his contract extensions, his appeal chronology, the relationship between a valid contract and access to medical services in Kenya, and the hardship and inconvenience caused by the delay in his contract extensions.

10. Andati-Amwayi contends that the UNDT made a number of errors in law when it found that there was no appealable decision and ordered him to pay USD 100 as costs. Judge Boolell improperly failed to recuse himself and a legal officer in the UNDT registry due to conflicts of interest: the judge and a staff member who worked with Andati-Amwayi were of the same nationality, and the previous position held by the legal officer gave rise to a conflict. Further, the UNDT failed to give a consideration or hearing notice, failed to follow a case management notice by bringing on the case early for hearing, admitted and considered matters already *sub judice* before the UNDT, failed to appreciate all of his arguments, considered unsubstantiated allegations made by the Secretary-General, and blamed Andati-Amwayi for the delay caused by the Secretary-General in his contract extensions.

Secretary-General's Answer

11. The Secretary-General submits that Andati-Amwayi fails to identify the legal basis of any of the five grounds for appeal set out in Article 2(1) of the Statute of the Appeals Tribunal (Statute). The UNDT correctly held that Andati-Amwayi was not contesting an administrative decision within the meaning of the jurisdictional provisions of the UNDT statute.

12. The Secretary-General submits that the requirements for UNON staff members to access medical services in Kenya were of general application concerning the effective administration of the Organization's staff medical insurance plan and did not constitute a decision taken by the Administration in a precise individual case. Moreover, they did not produce a direct legal consequence for Andati-Amwayi's terms of employment.

13. The Secretary-General also submits that Andati-Amwayi has failed to specify before the UNDT how UNON's instructions to hospitals in Kenya were not in compliance with the relevant regulations, rules, and administrative issuances governing the medical insurance plan.

14. The Secretary-General further submits that Andati-Amwayi has failed to identify any error of law, fact or procedure that would require a reversal of the UNDT's findings in its Judgment.

Considerations

15. We do not find any merit in the argument that Judge Boolell improperly failed to recuse himself and a legal officer from the case due to a conflict of interest. Andati-Amwayi ought to have first raised this objection at the Dispute Tribunal hearing for the consideration by the Judge. His mere allegations that the Judge and a staff member of UN-HABITAT are of the same nationality, and that a legal officer of the UNDT Registry should not be involved in the case, are insufficient evidence of bias or real likelihood of bias by the Judge in the case.

16. The issue for determination is whether the UNDT correctly held that Andati-Amwayi was not contesting an administrative decision within the meaning of the jurisdictional provisions of the UNDT Statute. Article 2(1)(a) of the UNDT statute provides as follows:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

17. What is an appealable or contestable administrative decision, taking into account the variety and different contexts of administrative decisions? In terms of appointments, promotions, and disciplinary measures, it is straightforward to determine what constitutes a contestable administrative decision as these decisions have a direct impact on the terms of appointment or contract of employment of the individual staff member.

18. In other instances, administrative decisions might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.

19. What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

20. Andati-Amwayi's application to the Dispute Tribunal challenged UNON's instructions to hospitals in Kenya not to provide medical services to any staff member who produced an expired MIP card or Grounds Pass.

21. These instructions were based on an information circular, dated 22 April 2002, informing staff members that the UNON had agreed with hospitals that, in an effort to improve the control of and to protect MIP benefits, MIP-covered individuals seeking treatment without making an up-front payment for services were required to produce a valid United Nations identity card in addition to a letter from the Joint Medical Service (JMS), as from 1 June 2002.

22. On 6 January 2004, the UNON's Division of Administrative Services informed staff members that MIP cards were being issued and that these cards would become the approved form of identification for staff members to access credit facilities for medical care from hospitals in Kenya.

23. We take note that the requirement for UNON staff members to possess MIP cards or a Grounds Pass in order to access medical services on credit was for the overall effective administration of the Organization's staff medical insurance plan. The requirement was of general application to all staff and cannot be deemed to affect the terms of appointment or contract of employment of any one staff member.

24. In the instant case, due to a delay in the extension of his contract, Andati-Amwayi's MIP card and Grounds Pass expired and he was thereby deprived of the ability to be provided medical services on credit at the Mater Hospital in Nairobi. In his appeal, Andati-Amwayi has not provided any cogent arguments to persuade this Tribunal that the administrative instructions infringed the terms of his appointment or his contract of employment.

25. We accordingly affirm the decision of the Dispute Tribunal that “there was no administrative decision taken by the administration within the meaning of Article 2 of the UNDT Statute”. We also affirm the award of costs of USD 100.

Judgment

26. The UNDT Judgment is affirmed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Courtial

Entered in the Register on this 16th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal