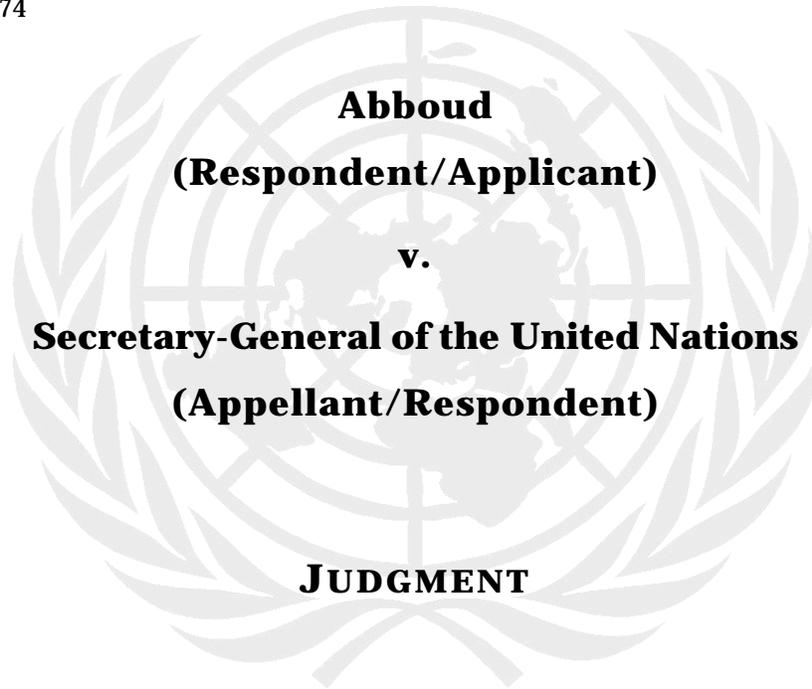




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-074



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

Judgment No.: 2011-UNAT-103

Date: 11 March 2011

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Bart Willemsen

Counsel for Appellant/Respondent: Phyllis Hwang

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. Language not necessary or relevant to the actual decision of a trial court may be disregarded as *obiter dictum* or surplusage.
2. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) has the power to, as it did, refer the matter to the Secretary-General for investigation, under Article 10(8) of its Statute. We hold that the section means exactly what it says, which is exactly what the trial court did.

Facts and Procedure

3. This case is again before this Court for resolution of the appeal against UNDT Judgment No. UNDT/2010/030 only. We issued a previous judgment in this case in December 2010, Judgment No. 2010-UNAT-100. A lengthy statement of facts is contained in that case. We see no reason to repeat those facts here.
4. In this case, we are asked to vacate the trial court's Judgment No. UNDT/2010/030, which simply refers the failure of the Under-Secretary-General (USG) to conduct the preliminary investigation and his conduct before the UNDT to the Secretary-General for investigation.
5. An initial issue is whether new information (an email that was not before the UNDT for the first judgment but perhaps was for the second) should be admitted. The first case having been affirmed last year, that issue is moot, except insofar as its existence could possibly have had some affect on the second judgment. Because of our decision today, it is also irrelevant to this decision.

Considerations

6. The central remaining issue is whether the trial court has the power to, as it did, refer the matter to the Secretary-General for investigation, under Article 10(8) of its Statute, which provides: "The Dispute Tribunal may refer appropriate cases to the Secretary-General of the United Nations or the executive heads of separately administered United Nations funds and

programmes for possible action to enforce accountability.” We hold that the section means exactly what it says, which is exactly what the trial court did.

7. On the remaining issue, the only controversy is that the Secretary-General contends that the trial court had no authority to direct the Secretary-General to do anything. The trial court’s order in the Judgment simply refers the case to the Secretary-General under Article 10(8), which is clearly proper.

8. The parties argue much about whether the trial court has the power of contempt. But that issue is obviously not before us in this case, because the trial judge neither instituted any such proceedings nor found anyone in contempt. The trial court’s musings on whether it has the power are simply that—surplusage not relevant to any order issued by the court.

9. The order itself, contained in three paragraph numbers at the end of the trial court’s decision, is affirmed in its entirety.

Judgment

10. We hold that all language in the trial court's Judgment No. UNDT/2010/030 is *obiter dictum* or surplusage, except for the order itself, which is affirmed in its entirety.

Original and Authoritative Version: English

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Painter, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Garewal

Entered in the Register on this 19th day of April 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar