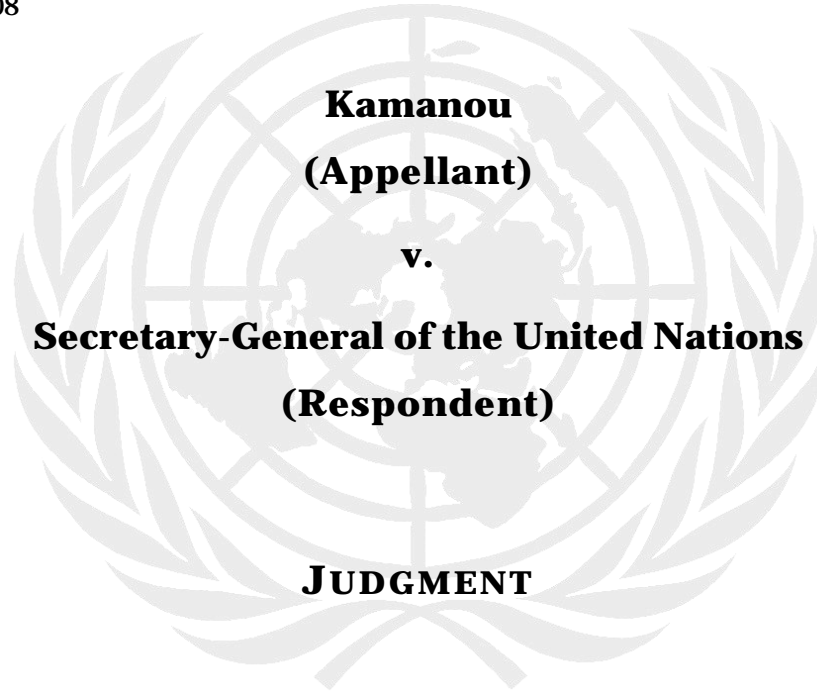




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-108



**Kamanou
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Jean Courtial Judge Mark P. Painter
Judgment No.:	2011-UNAT-113
Date:	11 March 2011
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: John Stompor

JUDGE LUIS MARIA SIMÓN, Presiding.

Synopsis

1. In this case, the application submitted before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) involved a general claim of discrimination and harassment, which allegedly led to non-promotion and non-attribution of credits in a publication, and which also constituted grounds for compensation from the point of view of the claimant.
2. Normally, a party's submission cannot be divided in sections to be decided separately when issues are interrelated and arguments or propositions are included as a whole as the platform for certain petitions, and it is not possible to divide them without affecting the right of the claimant to be heard properly before a decision is taken.
3. The Statute of the Dispute Tribunal (UNDT Statute) does not allow the trial Judge to divorce parts of a case that are ready to be decided from the other parts of the case that should go on trial, if the division would violate due process of law.
4. We find that the appeal is receivable at this point, because the Dispute Tribunal committed "an error in procedure, such as to affect the decision of the case" under Article 2(1)(d) of the Statute of the Appeals Tribunal (Statute).
5. We thus decide in favour of Gisele Kamanou (Kamanou), annul the Judgment under appeal and remand the case to be tried on all issues *de novo*.

Facts and Procedure

6. Kamanou is a statistician at the P-3 level with the Statistics Division (UNSD) of the Department of Economic and Social Affairs (DESA). In 2004 and 2005, she became involved in the organization of events and designing of documents in relation to the preparation of a regional publication on poverty statistics in the Economic Community of West African States (ECOWAS) called the ECOWAS Poverty Profile.
7. In January 2006, the ECOWAS Commission approved the terms of reference of the ECOWAS Poverty Profile. It was agreed that UNSD would assist ECOWAS in the technical preparation of the publication as the latter did not have the necessary technical expertise. Three regional consultants were subsequently identified and hired to produce input for the

ECOWAS Poverty Profile. Kamanou interacted closely with the ECOWAS Secretariat, provided the necessary leadership for the advancement of the project and gave guidance to the regional consultants in their work.

8. But from 27 June 2006 through 28 July 2006, Kamanou went on medical leave. According to the Respondent, she went on medical leave again for more than ten months from 23 August 2006 through 9 July 2007.

9. In response to the request of the ECOWAS Steering Committee to complete the Poverty Profile by March 2007, UNSD hired a consultant to complete the work in Kamanou's absence.

10. The initial drafts of the ECOWAS Poverty Profile included attributions to a long list of names including Kamanou. But the President of the ECOWAS Commission found the mentioning of many names to be confusing when he saw the third draft. ECOWAS then decided that only those who had contributed to the implementation and not those who had only been involved in the initial preparatory work should be included for attribution. Consequently the names of Kamanou and Services Chief were removed.

11. In November 2007, the ECOWAS Poverty Profile was published by the ECOWAS Secretariat. The front page of the Profile acknowledged that the publication was prepared by the ECOWAS Commission and UNSD. It showed the emblem of ECOWAS, but not that of the United Nations. The second page of the publication contained the following notation: "Copyright @Economic Community of West African States Commission ... Printed by the United Nations New York."

12. On 13 November 2008, Kamanou wrote to the Secretary-General requesting administrative review of the decision not to attribute credit to her in the ECOWAS Poverty Profile, the decision not to select her for either of the two posts (P-4) in the Statistical Planning and Development Section of DESA, and her claim of harassment/discrimination. She was informed that there was no appealable decision in respect of non-attribution and that the selection decisions were properly taken.

13. Kamanou filed an appeal with the Joint Appeals Board (JAB). But the JAB did not have an opportunity to review her appeal before it was abolished on 30 June 2009. The case was subsequently transferred to the UNDT in New York.

14. On 14 May 2010, the UNDT issued Judgment No. UNDT/2010/093. Adams, J., decided to focus only on the decision of non-attribution and leave the issues of non-promotion and harassment/discrimination to be separately reviewed, for two reasons. One was that Kamanou had only recently expanded the evidence that she wished to adduce on those two issues. The other was that the case would not be ready for adjudication before the end of his tenure as a UNDT Judge on 30 June 2010. In the view of the Judge, the issue of non-attribution was capable of being evaluated separately from the other issues of the case.

15. Judge Adams dismissed Kamanou's application on the issue of non-attribution. He found evidence showing that it was ECOWAS and not the Secretary-General or anyone under his authority or the authority of the United Nations that took the decision not to attribute Kamanou for her contributions to the Poverty Profile. "This decision is therefore not a decision in respect of which the respondent, ie, the Secretary-General as the Chief Administrative Office[r] of the United Nations, has any responsibility." He also found a preponderance of evidence showing that the copyright was intended to be held by ECOWAS rather than the United Nations. He further found that it was reasonable for UNSD to accept the legitimacy of the decision by ECOWAS as to attribution of any contribution, as it was made by ECOWAS at the highest level and UNSD was not in a position to change or challenge it. Judge Adams concluded that the decision not to attribute credit to Kamanou did not constitute an administrative decision within the meaning of Article 2(1) of the UNDT Statute. He also concluded that the decision of UNSD to comply with the criterion imposed by ECOWAS caused no breach of any contractual obligation owed to Kamanou.

16. On 28 June 2010, Kamanou filed an appeal against the UNDT Judgment on non-attribution. On 13 August 2010, the Secretary-General filed an answer.

Submissions

Kamanou's Appeal

17. The UNDT committed a procedural error by adjudicating the issue of non-attribution separately from her central claims of non-promotion, discrimination and harassment, without good cause, when the non-attribution was related to her non-promotion and was the result of years of discrimination and harassment.

18. By separating the issue of non-attribution from the other issues of non-promotion, discrimination and harassment, the UNDT failed to evaluate facts and evidence that were related to the non-promotion, discrimination and harassment and had an impact on the issue of non-attribution.

19. Kamanou requests that this Tribunal reverse the UNDT Judgment, award her an unspecified amount of monetary compensation equivalent to the loss in salary increase due to non-promotion and compensation for destruction of her career, emotional distress, among others.

Secretary-General's Answer

20. Contrary to Kamanou's assertion, the UNDT Judge did provide reasons for reviewing the issue of non-attribution separately from the other issues that she had raised in her application.

Considerations

21. This Tribunal holds that the trial court erred in deciding to review the issue addressed as "non attribution" of credits separately from the other issues that Kamanou raised, despite her lawful protest.

22. The application submitted before the UNDT involved a general claim of discrimination and harassment, which allegedly led to non-promotion and non-attribution of credits in a publication, and which also constituted grounds for compensation from the point of view of Kamanou.

23. Whether such a claim should be granted or not depends on the complete analysis of the facts and law of the case. Normally, a party's submission cannot be divided in sections to be decided separately when issues are interrelated and arguments or propositions are included as a whole as the platform for certain petitions, and it is not possible to divide them without affecting the right of the claimant to be heard properly before a decision is taken.

24. The UNDT Statute does not allow the trial Judge to divorce parts of a case that are ready to be decided from the other parts of the case that should go on trial, if the division

would violate due process of law. This could happen if, as is often the case, the resolution of some issues separately would prejudice the decisions on other issues.

25. We hold that the appeal is receivable at this point, because the UNDT has committed “an error in procedure, such as to affect the decision of the case” under Article 2 (1)(d) of the Statute. Despite the “practical reasons” given to support the separation, that measure can not be taken to divide the trial, resulting in separate judgments on the different issues involved in the merits of the present case.

26. We thus decide to annul the Judgment under appeal and remand the case to be tried *de novo* despite Kamanou’s objection to this course of action, because this Tribunal cannot decide on the remedies that she is seeking without a decision by the UNDT on all the issues involved in the merits of the case.

27. In light of our decision above, it is not necessary to examine the other issues raised in the appeal, at this moment.

Judgment

28. We annul the Judgment under appeal and remand the case to the UNDT for a *de novo* review.

Original and Authoritative Version: English

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

(Signed)

Judge Simón, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Painter

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

(Signed)

Weicheng Lin, Registrar