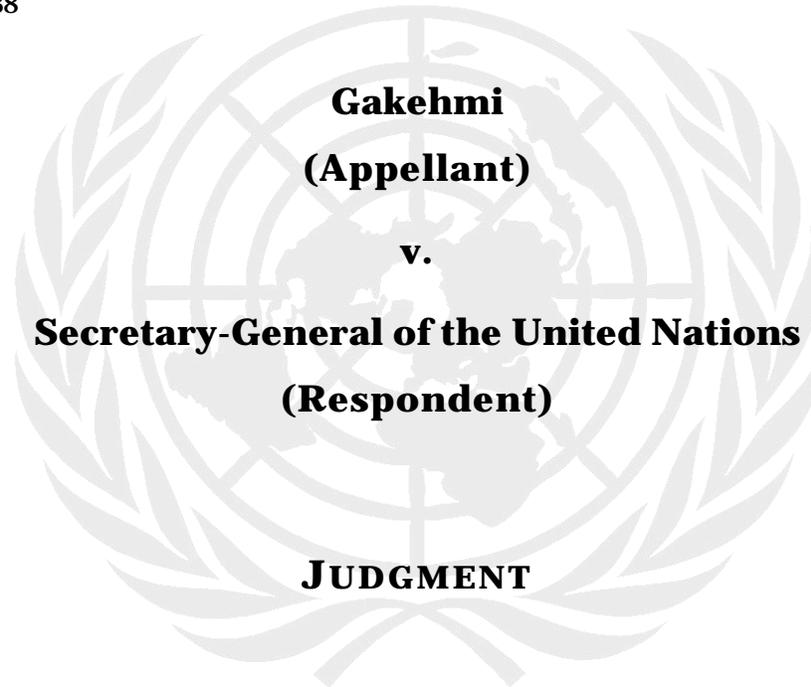




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-138



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**Before:** Judge Sophia Adinyira, Presiding  
Judge Inés Weinberg de Roca  
Judge Jean Courtial

**Judgment No.:** 2011-UNAT-166

**Date:** 21 October 2011

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** E. N. Ngwafor

**Counsel for Respondent:** Wambui Mwangi

**JUDGE SOPHIA ADINYIRA, Presiding.**

### Synopsis

1. Mr. Christopher Gakehmi requests the United Nations Appeals Tribunal (Appeals Tribunal) to revise a judgment issued by the former Administrative Tribunal. General Assembly Resolution 63/253 that provides measures for the transition from the old to the new system of administration of justice is silent on the question of revision of judgments rendered by the former Administrative Tribunal. The authority to revise its own judgments is expressly conferred upon the Appeals Tribunal by Article 11 of its Statute. The Appeals Tribunal does not have any powers beyond those conferred to it by its Statute.<sup>1</sup>
2. It follows from these considerations that the Appeals Tribunal is not competent to revise the judgment of the former Administrative Tribunal.
3. Mr. Gakehmi's application is therefore not receivable.

### Facts and Procedure

4. On 23 December 2009, the former Administrative Tribunal issued Judgment No. 1477 in the case of *Gakehmi vs. Secretary-General of the United Nations*. Mr. Gakehmi, a former staff member of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) challenged the administrative decision to summarily dismiss him for serious misconduct, based on the finding that he had, inter alia, engaged in sexual exploitation and sexual abuse of local women, including a minor, in violation of the Secretary-General's Bulletin on "Special Measures for Protection from Sexual Exploitation and Sexual Abuse" (ST/SGB/2003/13). The former Administrative Tribunal dismissed Mr. Gakehmi's appeal in its entirety, finding, upon review of the record, that Mr. Gakehmi had engaged in sexual conduct with a minor in violation of ST/SGB/2003/13 which constituted a ground for summary dismissal.
5. Pursuant to Article 12 of the Statute of the former Administrative Tribunal, Mr. Gakehmi filed a request for "revision and rectification" of the Judgment with the Appeals Tribunal.

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<sup>1</sup> *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059; *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008.

### **Submissions**

#### **Mr. Gakehmi's Application**

6. Mr. Gakehmi requests the Appeals Tribunal to revise the Judgment of the former Administrative Tribunal on the basis of a decisive fact that, he submits, he discovered on 8 June 2010 establishing an alibi, namely a Movement of Personnel Form reflecting that he had requested and received authorization to go on Occupational Recuperation Break/Annual Leave in May 2004 when the alleged incidents took place. He supports the information with pages from his United Nations passport which indicate that he returned to Kinshasa on 23 May 2004. He asserts that this fact was unknown to him and the former Administrative Tribunal at the time of the Judgment, and supports his alibi that he was not physically present in Kisangani at the material time of the alleged misconduct.

7. Mr. Gakehmi also seeks correction of the "omission" by the former Administrative Tribunal not to adjudicate on allegations regarding his acceptance of "favours, gifts and other personal benefits from third parties in exchange of performing, and promising to perform official duties".

8. Finally, Mr. Gakehmi makes submissions with respect to several conclusions and recommendations of the Joint Disciplinary Committee (JDC).

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

9. The Secretary-General contends that under the Statute of the Appeals Tribunal and in accordance with its jurisprudence, the Appeals Tribunal has no jurisdiction to undertake a revision of a judgment rendered by the former Administrative Tribunal.

10. The Secretary-General further submits that even if the Appeals Tribunal had jurisdiction to revise a judgment rendered by the former Administrative Tribunal, Mr. Gakehmi's request falls outside the scope of Article 11 of the Statute of the Appeals Tribunal. The facts that he presents as "new" facts were in Mr. Gakehmi's custody well before the former Administrative Tribunal rendered its Judgment on 23 December 2009.

11. In response to Mr. Gakehmi's request for correction of the "omission" by the former Administrative Tribunal not to judge on the allegations regarding the acceptance of "favours, gifts and other personal benefits from third parties in exchange of performing,

and promising to perform official duties”, the Secretary-General submits that in his letter to Mr. Gakehmi dated 14 November 2006, he accepted the finding by the panel that these allegations were not established. Mr. Gakehmi’s summary dismissal was therefore not based on these allegations which accordingly were not properly before the former Administrative Tribunal.

12. The Secretary-General finally contends that Mr. Gakehmi’s request for interpretation of a statement by the JDC is not receivable since the Statute of the Appeals Tribunal does not confer upon the Appeals Tribunal any power to interpret the conclusions and recommendations made by the JDC.

#### Considerations

13. Mr. Gakehmi requests the Appeals Tribunal to revise a Judgment issued by the former Administrative Tribunal.

14. The authority to revise its own judgments is expressly conferred upon the Appeals Tribunal by Article 11(1) of its Statute which provides:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

15. The Statute does not confer upon the Appeals Tribunal the power to revise judgments of the former Administrative Tribunal. Only the court that handed down the decision has the power to revise it unless a rule of law determines to transfer it to another court.<sup>2</sup> The Appeals Tribunal does not have any powers beyond those conferred upon it by its Statute.<sup>3</sup>

16. General Assembly Resolution 63/253 which provides measures for the transition from the old to the new system of administration of justice is silent on the question of revision of judgments rendered by the former Administrative Tribunal.

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<sup>2</sup> *Lesar v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT 126.

<sup>3</sup> *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059; *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008.

17. It follows from these considerations that the Appeals Tribunal is not competent to revise the Judgment of the former Administrative Tribunal. Mr. Gakehmi's application is therefore not receivable.

**Judgment**

18. The application for revision is dismissed.

Original and authoritative version: English

Dated this 21<sup>st</sup> day of October 2011 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Courtial

Entered in the Register on this 2<sup>nd</sup> day of December 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar