



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

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Judgment No. 2013-UNAT-393

**Applicant  
(Applicant)**

**v.**

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

**JUDGMENT ON APPLICATION FOR REVISION**

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**Before:** Judge Luis María Simón, Presiding  
Judge Inés Weinberg de Roca  
Judge Sophia Adinyira

**Case No.:** 2013-472

**Date:** 17 October 2013

**Registrar:** Weicheng Lin

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**Counsel for Applicant:** Edward Patrick Flaherty

**Counsel for Respondent:** Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for “reconsideration and review” of Judgment No. 2012-UNAT-209, issued by the Appeals Tribunal on 7 May 2012 in the case of *Applicant v. Secretary-General of the United Nations*. The Applicant filed his application on 29 April 2013, and the Secretary-General filed his comments on 5 June 2013.

### **Facts and Procedure**

2. On 16 March 2011, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi issued its Judgment on the Merits in the case of *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/054. It found that the Applicant’s summary dismissal was unlawful and rescinded it. The UNDT also ordered that the names of the Applicant and the complainants not to be published, and that the issues of compensation be adjourned for agreement between the parties or, failing that, for a hearing and final decision by the UNDT.

3. On 20 July 2011, the UNDT issued its Judgment on Compensation, Judgment No. UNDT/2011/131. The UNDT ordered the rescission of the contested decision or, in lieu thereof, compensation in the amount of two years’ and two months’ net base salary. The UNDT also awarded moral damages in the amount of three months’ net base salary as of the date of the Applicant’s dismissal.

4. The Secretary-General appealed the Judgment on the Merits and both parties appealed the Judgment on Compensation. On 7 May 2013, the Appeals Tribunal issued Judgment No. 2012-UNAT-209. The Appeals Tribunal reversed the UNDT Judgment on the Merits, finding that the decision to summarily dismiss the Applicant had been properly made. The Appeals Tribunal therefore concluded that the appeal against the Judgment on Compensation had become moot.

### **Submissions**

#### **The Applicant’s Application**

5. The Applicant requests “reconsideration and review” of the Appeals Tribunal’s Judgment on the grounds that it is inconsistent with the Appeals Tribunal’s judgment in the *Cabrera*<sup>1</sup> case and contradicts the jurisprudence of the former United Nations

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<sup>1</sup> *Cabrera v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-215.

Administrative Tribunal. The Applicant also alleges that the Appeals Tribunal erred in fact by ignoring certain evidence and considering evidence that was incorrect.

6. The Applicant requests that the Appeals Tribunal reconsider and review the Judgment *en banc* and that it annul the Judgment and remand the case to the UNDT for further adjudication of “claims which have not been dealt with by the Dispute Tribunal”.

### **The Secretary-General’s Comments**

7. The Secretary-General contends that the Applicant has not established the existence of new decisive facts that he was unaware of or could not have otherwise discovered at the time the Judgment was rendered. Even if the Appeals Tribunal Judgment in the *Cabrera* case could be deemed as a “new fact”, the application would be time-barred since the Applicant failed to file his application within 30 days of the discovery of this “new fact”.

8. The remaining errors of fact are based on proceedings that preceded the stage of the Applicant’s submission to the Appeals Tribunal and these facts were therefore known to him at that time.

9. The Secretary-General requests that the Appeals Tribunal dismiss the application in its entirety.

### **Considerations**

10. First, it must be pointed out that the parties have no standing to request that the case be decided by a full bench. Only the President of the Appeals Tribunal or any two Judges sitting on a case have the authority to cause the handling of the case *en banc*, under the provisions of Article 10(2) of the Statute and Article 4(2) of the Rules of Procedure of the Appeals Tribunal.

11. Certainly, the present case raises no exceptional issues as to justify a decision coming from other than the regular assignment of a case to a three-Judge panel.

12. Applications for revision of judgment are governed by Article 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must show or identify the decisive facts that, at the time of the Appeals Tribunal’s Judgment, were unknown to both the Appeals Tribunal and the party applying for revision; that such

ignorance was not due to the negligence of the applicant; and that the facts identified would have been decisive in reaching the decision.<sup>2</sup>

13. As this Tribunal stated in *Shanks* and *Costa*, “the authority of a final Judgment – *res judicata* – cannot be so readily set aside. There are only limited grounds, as enumerated in Article 11 of the Statute of the Appeals Tribunal, for review of a final judgment”.<sup>3</sup>

14. This Court also held in *Beaudry* that “any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfills the strict and exceptional criteria established by Article 11 of the Statute”.<sup>4</sup>

15. The request filed by the Applicant constitutes, in fact, a disguised way to criticize the Judgment or to expose grounds to disagree with it, a recourse against a final judgment that is not provided for in the Statute of this Court.

16. The issuance of this Tribunal’s Judgment in *Cabrera*, during the same session at which the Applicant’s case was decided, does not constitute a “new fact”, eventually apt to support a revision under the quoted statutory regulations. It constitutes law and no possibility for a revision based on law is provided for in the above-mentioned rules.

17. Furthermore, the application for reconsideration is submitted almost one year after the issuance of the Judgment, after the expiry of the 30-calendar day time limit stipulated in Article 11(1) of the Statute. Hence, the petition is time-barred as well.

18. For the foregoing reasons, the submission is considered manifestly inadmissible and will not be granted.

### **Judgment**

19. The application is dismissed.

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<sup>2</sup> *Macharia v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-128, para. 7.

<sup>3</sup> *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063, para. 4, citing *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis, para. 4.

<sup>4</sup> *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129, para. 16.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Adinyira

Entered in the Register on this 19<sup>th</sup> day of December 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar