



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

Judgment No. 2015-UNAT-604

**Ocokoru
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Rosalyn Chapman Judge Luis María Simón
Case No.:	2015-703
Date:	30 October 2015
Registrar:	Weicheng Lin

Counsel for Ms. Ocokoru:

Mbuthi Gathenji/Boniface Njiru

Counsel for Secretary-General:

Zarqaa Chohan

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2015/004, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 15 January 2015 in the case of *Ocokoru v. Secretary-General of the United Nations*. On 6 April 2015, the Secretary-General filed an appeal, and on 25 June 2015, Ms. Jane Patience Juma Ocokoru filed her answer.

Facts and Procedure

2. On 16 July 2009, Ms. Ocokoru joined the United Nations Mission in Sudan (UNMIS) as a National Professional Officer (NPO), Grade NO-B/2, with the Civil Affairs Division (CAD). While she was initially hired against a civil affairs post in Abyei, she was informally deployed to Bor. In August 2010, she was redeployed to Wau in South Sudan, on the same grade and level.

3. In July 2010, Ms. Ocokoru alleged that she had been sexually assaulted by an international security officer in Juba when she was transiting to the region of Bor. Subsequently, she filed a complaint with the UNMIS Conduct and Discipline Unit (CDU) and thereafter was questioned by the Office of Internal Oversight Services (OIOS) as part of its investigation into the incident.

4. On 9 July 2011, UNMIS' mandate expired, and the General Assembly approved the 2011/2012 budget for the new United Nations Mission in the Republic of South Sudan (UNMISS). Ms. Ocokoru was provisionally reassigned to UNMISS and remained at the same duty station which was included in UNMISS' transition budget. She was issued a one-year fixed-term appointment effective 30 June 2011 until 30 June 2012.

5. By e-mail dated 23 January 2012, the CAD director notified Ms. Ocokoru that her post in Wau would not be continued under the new UNMISS Staffing Table.

6. By letter dated 20 June 2012, the Chief Civilian Personnel Officer informed Ms. Ocokoru that her assignment with UNMISS would end on 30 June 2012. Ms. Ocokoru was then temporarily placed against a vacant NPO post in the CAD borrowed from the Rumbek duty station, from 1 July 2012 to 31 July 2012.

7. On 9 and 12 August 2012, Ms. Ocokoru filed a request for management evaluation of the decision of 20 June 2012 to abolish her post with UNMISS. By letter dated 24 September 2012, she was informed that the Secretary-General decided to uphold the contested decision. On 21 December 2012, Ms. Ocokoru filed an application with the Dispute Tribunal which she amended on 18 April 2013, contesting the administrative decision not to renew her fixed-term appointment due to the abolition of her post.

8. On 15 January 2015, the UNDT rendered its Judgment. The UNDT found that bias existed against Ms. Ocokoru on the part of the UNMISS Administration and that such bias was so strong that the responsible CDU, Special Investigations Unit (SIU), and OIOS officers at UNMISS all defied the procedures provided for by Administrative Instruction ST/AI/371 (Revised disciplinary measures and procedures) for dealing with reports of misconduct. The UNDT found that Ms. Ocokoru was denied “meaningful closure having made a serious claim of being the victim of sexual assault” and that the “highly irregular alternative comparative review process” following the abolition of Ms. Ocokoru’s post was tainted both by procedural and substantive irregularities.¹

9. Accordingly, the UNDT ordered the rescission of the administrative decision to separate Ms. Ocokoru from service and her reinstatement. In the alternative, the UNDT awarded compensation equivalent to two years’ net base salary. It further awarded three months’ net base salary as compensation for the procedural irregularity and three months’ net base salary for the substantive irregularity.

10. On 6 April 2015, the Secretary-General filed his appeal against the UNDT Judgment. On 11 June 2015, the Appeals Tribunal issued Order No. 221 (2015), granting Ms. Ocokoru’s request for an extension of time to file her answer to the Secretary-General’s appeal and ordering that Ms. Ocokoru should file her answer, if any, no later than 25 June 2015. Ms. Ocokoru filed her answer on 25 June 2015.

11. On 16 October 2015, Ms. Ocokoru filed a motion for interim measures.

¹ Impugned Judgment, para. 129.

Submissions

The Secretary-General's Appeal

12. The UNDT erred in concluding that Ms. Ocokoru had discharged her burden of proof in showing that the decision not to renew her appointment was motivated by extraneous motives and improper factors. In making its finding, the UNDT failed to consider the preponderance of evidence and improperly relied upon Ms. Ocokoru's version of the events without requiring her to provide any corroborating evidence.

13. The UNDT erred in considering the complaint of sexual assault in relation to the decision not to renew Ms. Ocokoru's appointment. The complaint of sexual assault was not part of Ms. Ocokoru's request for management evaluation and was therefore not before the UNDT.

14. The UNDT erred in fact in inferring general bias on the part of the UNMISS Administration from its finding that there was "increased animosity" between Ms. Ocokoru and her supervisors and in connecting this finding to the decision not to renew her appointment. The actions of separate individuals over a three-year period cannot reasonably support a finding that there was general bias on the part of the UNMISS Administration against Ms. Ocokoru.

15. The UNDT erred in linking the allegation of sexual assault to its finding of bias. Contrary to the UNDT's findings, the facts clearly support the conclusion that there was no bias against Ms. Ocokoru. Her complaint of sexual assault was fully investigated by OIOS. Her appointment was renewed three times following her complaint of sexual assault which demonstrates that the UNMISS Administration did not change its behaviour towards her as a result of the complaint. Moreover, the UNDT's finding of bias concerned entities, such as the CDU, the SIU and OIOS which had no involvement in the decision-making process regarding the renewal of Ms. Ocokoru's appointment.

16. The UNDT appeared to have based its finding of bias upon the fact that the Administration had failed to respond to, or submit any evidence relating to, the investigation and instead relied solely on Ms. Ocokoru's version of the events. However, the Secretary-General had denied the allegation of sexual assault in his revised reply, and objected to the admission of documents regarding the alleged sexual assault in his closing submissions and during the oral hearing. The UNDT denied the Secretary-General the opportunity to provide evidence

concerning the incident. Such evidence would have resulted in the opposite finding of fact, namely that Ms. Ocokoru had received closure regarding her complaint of sexual assault.

17. The UNDT erred in ordering Ms. Ocokoru's reinstatement and, in the alternative, more than two years' net base salary. This award was excessive and not in line with the jurisprudence of the Appeals Tribunal. The UNDT further erred in law and fact in awarding six months' net base salary for procedural and substantive irregularities when the UNDT made no finding that Ms. Ocokoru suffered a direct loss as a consequence of the procedural error or that the procedural error was so fundamental in nature such as that it could have been considered as a substantive error.

18. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety.

Ms. Ocokoru's Answer

19. The Judgment was transmitted to both parties on 16 January 2015 and accordingly any appeal had to be filed no later than 16 March 2015. The Secretary-General only filed his appeal on 6 April 2015 and is therefore out of time. In his appeal, the Secretary-General claims that he received the UNDT Judgment on 3 February 2015. He however provides no evidence in support of his claim nor did he ask for an extension or waiver of the time limit to appeal. Therefore, the appeal is not receivable *ratione temporis*. Moreover, the appeal is not receivable as the Secretary-General made no claims on any of the grounds of appeal provided for in Article 2(a) to (e) of the Appeals Tribunal Statute.

20. Contrary to the Secretary-General's contention, the UNDT did not err in concluding that Ms. Ocokoru had discharged the burden of proof to demonstrate that her non-renewal had been motivated by extraneous factors and improper motives. The UNDT considered the relevant principles and criteria set out by the Appeals Tribunal in its jurisprudence and considered sufficient oral and documentary evidence to reach its conclusion. It identified extraneous factors and improper motives as a "series of events", including the Administration's failure to ensure that a Comparative Review Panel was set up to conduct a comparative review process, as well as the failure to provide an investigation report in relation to Ms. Ocokoru's sexual assault claims.

21. Ms. Ocokoru accepts that the UNDT has discretion in awarding damages taking into account the circumstances of each case. The UNDT has not erred in exercising its discretion in ordering her reinstatement or, in the alternative, two years' net base salary; as well as six months' net base salary for procedural and substantive irregularities.
22. Ms. Ocokoru requests that the Appeals Tribunal dismiss the appeal with costs.
23. Ms. Ocokoru requests that the Appeals Tribunal hold an oral hearing.

Considerations

Preliminary issue - Request for an oral hearing

24. Ms. Ocokoru requests an oral hearing for the purpose of submitting additional evidence. The Appeals Tribunal does not find that an oral hearing is necessary in this case within the meaning of Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of its Rules of Procedure (Rules). Accordingly, the request for an oral hearing is denied.

Preliminary issue - Is the Secretary-General's appeal receivable?

25. On 6 April 2015, the Secretary-General filed his appeal in respect of Judgment No. UNDT/2015/004, challenging the UNDT's finding that the non-renewal of Ms. Ocokoru's appointment was motivated by extraneous factors and improper motives and the UNDT's consequent award of compensation to Ms. Ocokoro. In the course of his submissions, the Secretary-General states that he received the UNDT Judgment "[o]n 3 February 2015" and that "[t]he deadline for filing the present [a]ppeal ... is therefore 6 April 2015".

26. Ms. Ocokoru raises a preliminary legal issue that the Secretary-General's appeal is not receivable as it is filed out of time and without the Appeals Tribunal having granted an extension of time contrary to Article 7(1)(c) of the Statute and Article 7(1)(a) of the Rules. She submits that the question of "whether the [a]ppeal was timeously filed is a crucial matter in [these] proceeding[s] which should be preliminarily determined before consideration of the merit[s] of the [a]ppeal". Ms. Ocokoru takes issue with the Secretary-General's assertion that he received the UNDT Judgment on 3 February 2015, and submits that "[i]n fact the [UNDT] Judgment was transmitted to both parties on 16th January 2015 and therefore the [a]ppeal had to be filed by 16th March 2015", and that the appeal "was filed 82 days from the date of judgment".

27. A perusal of e-mail correspondence, furnished by the Secretary-General following the Appeals Tribunal's request for documentary proof as to when Judgment No. UNDT/2015/004 was received by the Secretary-General, establishes the following chain of events: On 16 January 2015, with reference to "Case No. UNDT/NBI/2012/74 (Ookoru)-Transmittal of Judgment", the UNDT Registry in Nairobi issued the following e-mail:²

Dear Applicant,

Dear Respondent,

Due to technical difficulties we are transmitting Judgment No. UNDT/2015/004 in the above referenced case via lotus notes.

Please note that the Judgment has been uploaded on **Judgments folder** on CCMS.

This Judgment is subject to appeal before the United Nations Appeals Tribunal in accordance with art 11.3 of the Statute of the Dispute Tribunal and art 7.1 (c) of the Statute of the Appeals Tribunal.

Kindly acknowledge receipt.

28. Among the cited addressees of the e-mail were Ms. Ookoru and the Administrative Law Unit (ALU) of the Office of Human Resources Management (OHRM).

29. On 30 January 2015, a staff member within the ALU/OHRM sent an e-mail to a Legal Assistant in the Office of Legal Affairs (OLA) in the following terms:

Hi ...,

Just got your voicemail. As requested, we were served on 16/01/15 as you can see below.

Our NBI colleagues were working on the brief to you (in OLA) this week (consulting with ...) - we then had complete service interruption to our shared drive early yesterday and have not had any access which could have resulted in the delay of the briefing to you.

Nevertheless, I hope this helps. For substantive Q's on UNAT appeal recommen[d]ations I've copied-in our NBI colleagues who are assigned to the case; ...

... [C]ould you please advise ... if OLA will be briefed on this Judgement next week.

...

² Emphasis in original.

30. The above e-mail was met with the following response from OLA to ALU/OHRM on 30 January 2015:

Dear ...,

Thank you for your prompt reply. We will look for the briefing in the coming days.

Our primary concern, however, was that we did not receive a transmittal e-mail of the judgment from the UNDT Registry in our “Secretary-General-AOJ” mailbox. We only discovered today that it had been issued by checking the UNDT website.

We will attempt to contact someone in [the Office of the Administration of Justice (OAJ)], as we have done in the past, to correct this.

31. On 2 February 2015, OLA e-mailed the OAJ Director:³

I am writing to bring the following matter to your attention and would be grateful for your assistance.

On 15 January 2015, the UNDT issued a judgment in the case of Ms. Ocoru, UNDT Judgment No. 2015/004. This judgment is currently on the UNDT website. To date, however, this judgment has not been sent to the Secretary-General at the e-mail address established for the transmission of UNDT judgments -**Secretary-General-AOJ@un.org**.

I would be grateful if you could arrange for the judgment to be sent to the Secretary-General’s email, particularly as an appeal is contemplated for the judgment. Accordingly, we would need a date of service from which to count the deadline for appeal.

32. The OAJ Director responded on 3 February 2015 advising that she had “heard from the UNDT Registry in Nairobi. There was an error at their end with the transmission that has been corrected.”

33. The issue which falls to be determined from the foregoing sequence of events is when did time start running for the purposes of filing an appeal by the Secretary-General of the UNDT Judgment. We determine that the relevant date for the purposes of compliance with the Statute is 16 January 2015. We are satisfied from the chain of correspondence referred to above that, as of 16 January 2015 ALU/OHRM, the Secretary-General’s legal representative before the UNDT, received Judgment No. UNDT/2015/004 in its capacity as the legal representative of the Secretary-General before the UNDT in respect of Ms. Ocoru’s application. Thus, as of 16 January 2015, the Secretary-General had legal and actual

³ Emphasis in original.

knowledge of the issuing of the UNDT Judgment and its contents. Indeed, it is apparent from the contents of the e-mail of 30 January 2015 from ALU/OHRM to OLA, that prior to that communication, ALU/OHRM had already started work on preparing a brief for OLA and had assigned staff members to this task. By virtue of all of the foregoing, the Secretary-General's assertion that he received the UNDT Judgment on 3 February 2015 is not legally or factually sustainable.

34. It may well be the case that there exists a practice within the UNDT whereby it issues its judgments to OLA as a matter of course. However, in the absence of any published UNDT rule or practice direction which decrees that transmission of the UNDT's judgments to OLA is the relevant transmission for the purposes of receipt by the Secretary-General, and in the circumstances of this case, where the UNDT Judgment in respect of Ms. Ocororu's case was transmitted to ALU/OHRM on 16 January 2015 (as acknowledged in its e-mail of 30 January 2015 to OLA), it is not permissible for the Secretary-General to seek to rely on an elected date of 3 February 2015, being the date when, apparently, the Judgment was transmitted to the e-mail address "Secretary-General-AOJ@un.org".

35. Article 7(1)(c) of the Statute provides that an appeal must be filed "within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal". Pursuant to Article 7(3) of the Statute, "[t]he Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases".

36. Similarly, the relevant part of Article 7 of the Rules provides:

1. Appeals instituting proceedings shall be submitted to the Appeals Tribunal through the Registrar within:

(a) 60 calendar days of the receipt by a party appealing a judgement of the Dispute Tribunal;

(b) ...; or

(c) A time limit fixed by the Appeals Tribunal under article 7.2 of the rules of procedure.

2. In exceptional cases, an appellant may submit a written request to the Appeals Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1. The

written request shall succinctly set out the exceptional reasons that, in the view of the appellant, justify the request. The written request shall not exceed two pages.

3. In accordance with article 7.4 of the statute of the Appeals Tribunal, no application shall be receivable if filed more than one year after the judgement of the Dispute Tribunal.

37. Applying the provisions of the Statute and the Rules to the facts of the present case, we determine that the Secretary-General's appeal should have been filed by 17 March 2015. Consequently, the Secretary-General's appeal was not filed in a timely manner.

38. As no application in writing was received from the Secretary-General for suspension, waiver or extension of time, the Appeals Tribunal need not consider whether the failure to file an appeal within the prescribed 60 days constituted an "exceptional case" as provided for by Article 7(3) of its Statute and Article 7(2) of its Rules of Procedure.

39. In *Thiam*, we stated:⁴

... The Secretary-General raises a preliminary legal issue that the appeal is not receivable because it is time-barred. Under Article 7 of its Statute, the Appeals Tribunal is only competent to hear and pass judgment on an appeal filed against a judgment of the UNDT if the appeal is filed within 45 days of the receipt of the judgment of the UNDT.^[5]

... The UNDT Registry has confirmed that the parties were notified of the Judgment on 28 July 2010. The 45-day time limit to appeal expired on 13 September 2010. Thiam submitted his appeal to the Registry of the Appeals Tribunal on 30 September 2010, which was 17 days outside the statutory period.

... Under the Statute and the Rules, the time limit for filing an appeal may be suspended, waived, or extended, only in exceptional cases and upon a written request by an appellant to the Tribunal.

⁴ *Thiam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-144, paras. 14-18.

^[5] The 45-day time limit was subsequently extended by the General Assembly to 60 calendar days (General Assembly resolution 66/237 of 24 December 2011).

40. The Appeals Tribunal's approach in *Romman* was expressed as follows:⁶

... The Appeals Tribunal has repeatedly held that it "has been strictly enforcing, and will continue to strictly enforce, the various time limits".

... In the instant case, a recommendation was made by the JAB prior to the establishment of the UNRWA Dispute Tribunal and the decision made by the Commissioner-General was notified to Mr. Romman on 11 December 2009. On 21 September 2010, Mr. Romman received a letter ... advising him that he should file an appeal against the Commissioner-General's decision with the United Nations Appeals Tribunal within 90 days of the receipt of the letter, if he wished to do so.

... Mr. Romman's appeal was, therefore, due on 20 December 2010. However, Mr. Romman filed his appeal on 28 January 2011, after the 90-day time limit had elapsed. Absent a request for waiver or extension of the time limits as well as any factors that would qualify as exceptional circumstances, Mr. Romman's appeal is time-barred.

41. In all the circumstances of the present case, we find that the Secretary-General's appeal is not receivable.

Ms. Ocokoru's Motion of 16 October 2015

42. On 16 October 2015, Ms. Ocokoru filed a motion before the Appeals Tribunal requesting, *inter alia*, the suspension of her contested separation from the Organization pending the hearing of the appeal and seeking relief from the Appeals Tribunal in respect of: the alleged withholding of her salary; the alleged denial by the Administration of access by her to her United Nations Lotus Notes e-mail account and to the Organization's facilities; and requesting the Appeals Tribunal to order the Secretary-General to provide her with "financial facilitation for herself and her [t]wo [l]egal [c]ounsel".

43. As the Appeals Tribunal has determined that the Secretary-General's appeal is not receivable, Ms. Ocokoru's motion is moot.

⁶ *Romman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-308, paras. 16-18 (footnote omitted), citing *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043, para. 21; *Ibrahim v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-069; *Harding v. Secretary-General of the United Nations*, Order No. 44 (2011); *Meron v. Secretary-General of the United Nations*, Order No. 42 (2011); and *Islam v. Secretary-General of the United Nations*, Order No. 7 (2010).

Judgment

44. The appeal is not receivable.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Simón

Entered in the Register on this 30th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar