



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

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Judgment No. 2017-UNAT-737

**Likukela  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Richard Lussick, Presiding Judge Deborah Thomas-Felix Judge Sabine Knierim
Case No.:	2016-980
Date:	31 March 2017
Registrar:	Weicheng Lin

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Counsel for Ms. Likukela:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Dorah Namasiku Likukela against Judgment No. UNDT/2016/180 issued by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 30 September 2016. Ms. Likukela filed her appeal on 25 October 2016. The Secretary-General filed his answer on 23 January 2017.

**Facts and Procedure**

2. Ms. Likukela is a former investigator (P-3) with the United Nations Integrated Mission in Timor-Leste (UNMIT). In her application before the UNDT, she contested the decision by the Secretary-General to uphold the recommendation of the Advisory Board on Compensation Claims (ABCC) rejecting her claim for compensation under Appendix D of the Staff Rules (Appendix D) for alleged injuries incurred during the course of a medical examination conducted at UNMIT on 3 August 2011.

3. Considering that the matter involved a detailed account of Ms. Likukela's medical condition which was not of interest to the public and in order to protect her right to privacy, references to her medical condition were redacted from the published version of the UNDT Judgment and are therefore not contained in the following fact section.

4. On 3 August 2011, Ms. Likukela attended a consultation with the UNMIT Medical Services Section. On the same day, Ms. Likukela reported to the UNMIT Security Special Investigations Unit that she had been victim of an incident during this medical examination.

5. Between August 2011 and June 2013, Ms. Likukela was examined several times, undergoing, among others, ultrasound and diagnostic surgery.

6. On 15 October 2013, Ms. Likukela filed a request before the ABCC under Appendix D for compensation for injuries she claimed to have incurred during the medical examination of 3 August 2011.

7. By memorandum of 10 March 2015, Dr. R. of the Medical Services Division (MSD), New York, in consultation with the Medical Director, advised the ABCC as to whether Ms. Likukela's condition could be considered to be directly related to the medical

examination that was conducted on 3 August 2011. He stated in his report that “the Medical Director ... confirmed that there [was] no evidence of medical malpractice and, in this case, no evidence of sexual assault”. Regarding Ms. Likukela’s specific claims, Dr. R. found that:

- a) The practice used during the examination is reasonable and appropriate medical practice for a patient presenting with the symptoms that Ms. Likukela had;
- b) The pathology examination following surgery confirmed that Ms. Likukela had a developmental condition (present from birth) that was consistent with her symptoms.

8. On 12 May 2015, the ABCC, at its 483<sup>rd</sup> meeting, reviewed Ms. Likukela’s claim for compensation under Appendix D. Having considered the medical reports and the advice of the Medical Director, MSD, the ABCC recommended that “[Ms. Likukela]’s request that her injuries/illness ... be recognized as service-incurred be denied”.

9. On 5 June 2015, the Secretary-General approved the above-mentioned recommendation to deny Ms. Likukela’s claim.

10. On 1 July 2015, Ms. Likukela filed a request for management evaluation concerning the “ABCC recommendation for [her] injury compensation claim”.

11. By letter dated 6 July 2015, the Management Evaluation Unit (MEU) advised Ms. Likukela that her request was not receivable in view that the ABCC is a technical body and, therefore, no request for management evaluation was required pursuant to Staff Rule 11.2(b).

12. On 24 August 2015, Ms. Likukela filed an application before the UNDT.

13. The UNDT rendered its Judgment on 30 September 2016 rejecting the application in its entirety. The Dispute Tribunal found that it had no jurisdiction to examine the decision taken by the Secretary-General based on the recommendation of the ABCC, which, in turn was supported by the medical advice provided by the MSD to the ABCC. The UNDT noted that it cannot review “medical conclusions and opinions” and that it was “not allowed to substitute its appreciation of medical issues for that of the medical practitioner, nor would it

have the expertise to do so. The proper way for [Ms. Likukela] to request reconsideration of the conclusions reached by the [MSD] was to make use of art. 17 of Appendix D, to have the matter re-examined by a group of medical experts.”<sup>1</sup> The Dispute Tribunal further found that Ms. Likukela’s request for review of the allegedly erroneous recovery of USD 587,428.65 by the United Nations Federal Credit Union (UNFCU) as a scheme to defraud her of her benefits, fell beyond the scope of the case and would thus not be considered. Finally, the Dispute Tribunal held that there was no indication that the procedure set forth in Appendix D for determining Ms. Likukela’s claim for compensation had not been correctly followed.

### **Submissions**

#### **Ms. Likukela’s Appeal**

14. Ms. Likukela submits that the UNDT exceeded its jurisdiction and erred on a question of fact in its summary of the medical findings of the case. She further argues that since the UNDT is “not a medical expert to draw up those facts”, it erred on a question of law in its application of the relevant standard of review. Moreover, Ms. Likukela states, *inter alia*, that the involved medical experts used incorrect procedures and reached faulty medical conclusions; she asserts further that the sexual assault that allegedly occurred during the medical exam conducted on 3 August 2011 was not properly dealt with by the Administration.

15. She reiterates that the UNFCU intended to defraud her of her benefits when it “generat[ed]” a payment of approximately USD 587,000 for what she believed to be compensation for her alleged injury and then recovered part of the amount. In addition, the UNDT exceeded its jurisdiction when it separated the issue regarding the UNFCU payment from the questions of sexual assault and medical malpractice.

16. It is Ms. Likukela’s submission that “[t]he UNDT should have referred the case back to the Secretary[-]General for accountability” in accordance with Article 17 of Appendix D rather than issuing a judgment. In this regard, she notes that she was previously not aware of the procedure stipulated in Article 17 of Appendix D as she was “merely given the contested decision and advised to appeal to the MEU, who thereafter advised [her] to appeal to the UNDT”.

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<sup>1</sup> Impugned Judgment, para. 28.

17. Based on these submissions, Ms. Likukela requests, in particular, that the Appeals Tribunal reverse the UNDT Judgment and award her compensation.

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

18. The Secretary-General argues that the UNDT correctly found that the contested decision was lawfully taken. The UNDT did not err in concluding that it did not have jurisdiction to review medical findings and that such findings could only be reconsidered by a medical board convened by the Secretary-General upon the concerned staff member's request. The Dispute Tribunal correctly stated that its role merely consisted in reviewing the procedural correctness of the contested decision. It did not err in finding, after careful review of all the submitted documentation, that the matter had been properly assessed by a doctor in consultation with the Medical Director, MSD, based on the medical records submitted by Ms. Likukela, that there was no evidence of bias in the recommendations by the ABCC, and that the Secretary-General had appropriately endorsed the recommendations. Therefore, the Secretary-General submits that the UNDT did not err in concluding that the decision-making process leading up to the contested decision had complied with the procedure set out in Appendix D and in finding no procedural irregularities.

19. The Secretary-General further asserts that Ms. Likukela failed to establish any error by the UNDT warranting reversal of the Judgment. She simply repeats the arguments that she had already raised before the UNDT and therefore did not satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute. In particular, she merely "disagrees with the interpretation of the medical reports made by the medical practitioners, MSD, and simply wants the UNDT and the [Appeals Tribunal] to accept her own interpretation" disregarding the fact that the UNDT actually did not make "medical findings" based on its holding that it lacked competence to do so.

20. In addition, he argues that Ms. Likukela's claim that the UNDT should have ordered the Secretary-General to convene a medical board in accordance with Article 17 of Appendix D is without merit because the UNDT has no jurisdiction to order such reconsideration. If Ms. Likukela was unsatisfied with the medical conclusions forming the basis of the recommendations of the ABCC and ultimately the contested decision, she should have requested the Secretary-General to convene a medical board in order to review such medical conclusions in accordance with Article 17 of Appendix D and within the timeframe required by Article 17(a) of Appendix D.

21. Therefore, the Secretary-General prays the Appeals Tribunal to affirm the impugned Judgment and dismiss the appeal in its entirety.

### **Considerations**

#### *Preliminary matter: request for an oral hearing*

22. We deal first with a preliminary matter. Ms. Likukela has applied for an oral hearing. The reasons for this application, as stated in her appeal form, are “for [an] independent team of medical experts and medical health care fraud experts to refute the respondent’s medical recommendation. Further so that I confront [sic] and cross[-]examine the JP Morgan Staff, UNFCU Staff and UN payroll staff members, as well as those recipient banks, that cleared the money in question as mine, including the Respondent.”

23. Ms. Likukela is wrong in thinking that she is entitled to call evidence on appeal that she should have presented to the UNDT. The Appeals Tribunal does not have jurisdiction to hold a hearing *de novo* of her application to the UNDT. The Appeals Tribunal is the second instance of the two-tier formal system of administration of justice, with jurisdiction to hear and pass judgment on appeals filed against judgments of the UNDT.

24. Pursuant to Article 8(3) of the Appeals Tribunal Statute, it lies with the prerogative of the judges assigned to a case to decide whether to hold oral proceedings. Article 18(1) of our Rules of Procedure provides that the judges may decide to do so if such hearing would assist in the expeditious and fair disposal of the case. An oral hearing would be of no such assistance in the present case, as the facts and pleadings on record clearly define the issues for decision on appeal.

25. Ms. Likukela’s application for an oral hearing is therefore refused.

#### *The appeal*

26. Ms. Likukela applied to the UNDT to overturn a decision by the Secretary-General upholding a recommendation by the ABCC to deny her claim for compensation. The ABCC’s recommendation was based on the opinion of a doctor of the MSD in consultation with the Medical Director, MSD, after reviewing her medical history from reports submitted by Ms. Likukela. She has not challenged any of the medical findings by requesting a medical board pursuant to Article 17 of Appendix D.

27. She argued before the UNDT that these medical conclusions were wrong. Needless to say, the UNDT was not swayed by her own opinions on the medical evidence. The UNDT also correctly regarded itself as not competent to make medical findings contradicting the medical evidence.

28. The UNDT was cognizant of its obligation to determine if the Secretary-General's decision was legal, rational, procedurally correct and proportionate, but that it was not its role to consider the correctness of the choice made by the Secretary-General from amongst the various courses of action open to him, nor to substitute its own decision for that of the Secretary-General.<sup>2</sup>

29. We find that the UNDT made no error in its finding that the ABCC's recommendation had no connection with the attempted recovery of the sum of USD 587,428.65 which was allegedly paid to her by the UNFCU by mistake. The UNDT found on the evidence before it that the ABCC's recommendation was based on evidence provided by the medical reports, and that Ms. Likukela had not provided any evidence of bias.

30. The UNDT, having carefully examined the documents submitted by the parties, found that there was:<sup>3</sup>

... no indication that the procedure set forth in Appendix D for determining [Ms. Likukela's] claim for compensation was not followed. Rather, it appears that the matter was reviewed by a medical practitioner and the Medical Director of the [MSD] based on the documentation submitted by [Ms. Likukela], that the ABCC made its recommendation on the grounds of advice provided by the medical practitioners and that the Secretary-General, in turn, endorsed the ABCC recommendation, in compliance with arts. 13, 14, 15 and 16 of Appendix D.

31. We find that the UNDT was quite correct when it opined: "The proper way for [Ms. Likukela] to request reconsideration of the conclusions reached by the [MSD] was to make use of art. 17 of Appendix D, to have the matter re-examined by a group of medical experts."<sup>4</sup> This she failed to do.

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<sup>2</sup> *Ibid.*, para. 26, citing *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084.

<sup>3</sup> Impugned Judgment, para. 31.

<sup>4</sup> *Ibid.*, para. 28.

32. We find no reason to disagree with the UNDT's finding that Ms. Likukela had not pointed to any procedural irregularity which would justify overturning the contested decision. Her arguments on appeal are essentially that she disagrees with the conclusions of the medical practitioners and seeks to persuade us to accept her views, just as she did with the UNDT.

33. It is not sufficient for Ms. Likukela merely to submit that she disagrees with the UNDT decision and to repeat the arguments she put to that court. The appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.<sup>5</sup>

34. We find that Ms. Likukela has failed to demonstrate that the UNDT committed any error of fact or law in arriving at its decision.

35. The appeal must fail.

### **Judgment**

36. Judgment No. UNDT/2016/180 is affirmed and the appeal is dismissed in its entirety.

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<sup>5</sup> *Hassan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-504; *Khashan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-502.



Original and Authoritative Version: English

Dated this 31<sup>st</sup> day of March 2017 in Nairobi, Kenya.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Thomas-Felix

*(Signed)*

Judge Knierim

Entered in the Register on this 26<sup>th</sup> day of May 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar