



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

Judgment No. 2021-UNAT-1145

**Jacques Armand
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2020-1491
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Francisca Lagos Pola

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) has before it an appeal by Jacques Armand (Mr. Armand), a staff member serving at the United Nations Support Office in Somalia (UNSOS). Mr. Armand had filed an application for suspension of action pending management evaluation with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT), in which he had requested the Administration not to proceed with a monthly deduction of his salary. On 19 November 2020, the UNDT issued Order No. 228 (NBI/2020),¹ denying his request and finding that the impugned administrative decision was lawful. For the reasons set out below, we reject Mr. Armand's appeal and affirm the UNDT Order.

Facts and Procedure

2. Mr. Armand joined service of the Organization on 11 January 2016. He currently serves as a Movement Control Assistant at UNSOS on a continuing appointment at the FS-5 level.

3. Since 2018, Mr. Armand has had proceedings in court in Florida, USA, relating to divorce with his spouse and child maintenance.

4. On 2 April 2018, a Florida court entered an order on temporary child maintenance calculated on a monthly gross salary of USD 22,125.91 and a net income of USD 15,748.99, which Mr. Armand claims is inaccurate.

5. On 31 August 2018, the Administration, pursuant to Secretary-General's Bulletin ST/SGB/1999/4 (Family and child support obligations of staff members) and Staff Rule 1.2 (b), directed Mr. Armand to comply with the Florida court's provisional order.

6. On 3 March 2020, the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, (Circuit Court) issued a Final Judgment directing Mr. Armand to pay a total of USD 5,032.33 in monthly child support.

¹ *Armand v. Secretary-General of the United Nations*, Order No. 228 (NBI/2020) dated 19 November 2020 (Impugned Order).

7. On 22 June 2020, the Organization asked Mr. Armand to submit proof of compliance with the Final Judgment issued by the Circuit Court or other documentation showing amicable resolution of the matter and that failure to do so would result in his case being referred to the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) to institute deductions from his salary in accordance with Section 2.2 (b) of ST/SGB/1999/4.

8. On 10 November 2020, the Organization informed Mr. Armand that since he had not shown compliance with the Circuit Court's Final Judgment, the USG/DMSPC had granted authorization for recoveries to be made from his salary and that monthly deductions in the sum of USD 5,032.33 would be made in compliance with the Final Judgment beginning with the November 2020 payroll (the 10 November 2020 Decision).

9. On 17 November 2020, Mr. Armand requested management evaluation of the 10 November 2020 Decision and on that same day, he filed an application for suspension of action pending management evaluation with the UNDT.

10. On 19 November 2020, the Dispute Tribunal issued Order No. 228, dismissing Mr. Armand's application.² The UNDT laid out the prerequisite to grant an application for suspension of action: an applicant must file such request in accordance with Article 2(2) of the Dispute Tribunal Statute (UNDT Statute), showing that the contested administrative decision is *prima facie* unlawful, that the matter appears to be of particular urgency and that the implementation of the decision would appear to cause irreparable damage. This, the UNDT explained Mr. Armand did not successfully establish. In rejecting his application, the Dispute Tribunal held:³

[T]he Court order in issue is authentic and final in terms of sec. 2.3 of ST/SGB/1999/4. In addition, it is not inconsistent with [S]taff [R]ule 3.18 (c)(iii) which provides for authorized deductions from salaries and other emoluments to satisfy indebtedness to third parties. The Organization is therefore, under an obligation to honour and enforce it in terms of sec. 2.1 of ST/SGB/1999/4. The impugned decision has legal basis, and is therefore, not unlawful. Since one of the three statutory conditions for a suspension of action has not been met by [Mr. Armand], the application for suspension of action pending management evaluation is rejected.

² *Ibid.*, para. 17.

³ *Ibid.*, para. 16.

11. On 22 November 2020, Mr. Armand filed an appeal against Order No. 228, and the appeal was registered with the Appeals Tribunal as Case No. 2020-1491. On 6 January 2021, the Secretary-General filed a timely answer.

Submissions

Mr. Armand's Appeal

12. Mr. Armand submits the UNDT *inter alia* committed an error when it assumed that the Circuit Court's Final Judgment was a final order. He contends the UNDT ignored the fact that he had since filed an appeal of the Circuit Court's Final Judgment to the District Court of the State of Florida, Third District.

13. Mr. Armand further asserts that the UNDT erred when it failed to recognize that the Organization had not considered all relevant matters in his case and that the Organization actually had discretionary authority pursuant to Staff Rule 3.18 (a) (iii) and Section 2.1 of ST/SGB/1999/4 in determining the amount of deductions to comply with court orders.

The Secretary-General's Answer

14. The Secretary-General submits an appeal against Order No. 228 is not receivable as the language of Article 2(2) of the UNDT Statute clearly states that an application for suspension of action shall not be subject to appeal.

15. The Secretary-General further notes that the only instance where an interlocutory appeal is receivable is when the UNDT has exceeded its competence or jurisdiction. The Secretary-General argues Mr. Armand is not presenting such a case to UNAT but instead proffers that the UNDT erred in its findings that the Circuit Court's Final Judgment was a final order. Citing *Nwuke*,⁴ the Secretary-General argues even if the UNDT erred in law or fact, as Mr. Armand alleges, this does not result in an excess of jurisdiction, which would have entitled the latter to bypass the exception to the right to appeal set out in Article 2(2) of the UNDT Statute.

⁴ *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-330, para. 22.

Considerations

16. The issue before the Appeals Tribunal is whether Mr. Armand can appeal an Order of the UNDT dismissing his application for suspension of the decision to deduct from his monthly salary a sum of USD 5,032.33.

17. Article 2(2) of the UNDT Statute provides the following:⁵

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. *The decision of the Dispute Tribunal on such an application shall not be subject to appeal.*

18. And Article 10(2) of the UNDT Statute further provides:⁶

At any time during the proceedings, the Dispute Tribunal may order an interim measure, *which is without appeal*, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

19. In *Igunda*, we summarized the jurisprudence of the Appeals Tribunal as follows:⁷

... The language of Article 2(2) of the UNDT Statute is clear that applications under that section are not subject to appeal. However, the Appeals Tribunal, in prior cases, has held consistently that it has the authority to judicially review the jurisdiction and competence of the Dispute Tribunal in making determinations under Article 2(2) and 10(2) of the UNDT Statute. Therefore, appeals from the Dispute Tribunal on suspension of action decisions as an interlocutory decision will be receivable before the Appeals Tribunal only if the Dispute Tribunal, in adjudicating such applications, clearly exceeded its competence or jurisdiction.

... Here, the Appellant does not allege that the Dispute Tribunal exceeded its jurisdiction or competence in refusing the suspension application, nor can his appeal be so interpreted. Rather, the Appellant alleges errors in the scoring of the CRP and bias (by the

⁵ Article 2(2) of the UNDT Statute (emphasis added).

⁶ Article 10(2) of the UNDT Statute (emphasis added).

⁷ *Igunda v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-979, paras. 18 – 19.

Administration) in that process and requests the Appeals Tribunal to review whether the retrenchment of his position was justified. As indicated above, the issue before us is not whether the scoring of the CRP was correct nor whether the retrenchment decision was justified nor even whether the Dispute Tribunal committed an error of law or fact relating to the application. Rather, the issue before us can only be whether the Dispute Tribunal in refusing the suspension application clearly exceeded its jurisdiction or competence.

20. The Appeals Tribunal also held in *Wamalala*:⁸

... [T]he UNDT enjoys wide powers of discretion in all matters relating to case management and [the UNAT] must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for the dispensation of justice. For this reason, and in accordance with Articles 2(2) and 10(2) of the UNDT Statute, appeals against decisions taken in the course of proceedings and relating to procedure, such as matters of proof, the production of evidence, or interim measures, are not receivable, even where the judge of first instance has committed an error of law or fact relating to the application of the conditions to which the grant of a suspension of action is subject or a procedural error.

21. The issue for consideration in the present case is whether Mr. Armand's claims fall within the parameters of our established jurisprudence, as referred to above, such as to admit his appeal.

22. Having reviewed the arguments made by both sides, we are satisfied that Mr. Armand has not established any excess of jurisdiction or competence on the part of the Dispute Tribunal; rather, his claims address the merits of the UNDT decision. Even if the UNDT erred in law or fact or committed an error of procedure, this does not instance any excess of jurisdiction or competence on its part such as would entitle Mr. Armand to bypass the exception to the right to appeal set out in Article 2(2) of the UNDT Statute.

23. As a result, we find Mr. Armand's appeal is not receivable.

⁸ *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, para. 17.

Judgment

24. The appeal is dismissed, and the UNDT Order is upheld.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 10th day of November 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar