



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

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Judgment No. 2023-UNAT-1388

**Yassir Ibrahim Ali Haroun  
(Appellant)**

**v.**

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

**JUDGMENT**

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| Before:              | Judge Graeme Colgan, Presiding<br>Judge Leslie F. Forbang<br>Judge Abdelmohsen Sheha |
| Case Nos.:           | 2022-1746, 2023-1775   |
| Date of Decision:    | 27 October 2023  |
| Date of Publication: | 27 November 2023   |
| Registrar:           | Juliet E. Johnson  |

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Counsel for Appellant: Norbert Okumu

Counsel for Respondent: Amanda Stoltz

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Yassir Ibrahim Ali Haroun (Mr. Haroun), a former staff member with the United Nations African Union Hybrid Operation in Darfur (UNAMID) appeals against three determinations of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). The first is an interlocutory Order<sup>1</sup> requiring him to file an amended application in his substantive proceedings within less than one working day, but which he failed to do. The second is an interlocutory Order<sup>2</sup> in which the UNDT determined, among other things, that the case would proceed without Mr. Haroun's amended application and without an oral hearing. The third is against Judgment on receivability No. UNDT/2022/124 (impugned Judgment) issued on 17 November 2022 in which the Dispute Tribunal rejected his substantive proceedings as unreceivable for reasons of both lateness in time and for failure to meet the minimum jurisdictional criteria.<sup>3</sup>

2. Mr. Haroun lodged with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) two separate appeals against, first, Orders Nos. 157 (NBI/2022) and 158 (NBI/2022) and, second, against the impugned Judgment. The Appeals Tribunal consolidated the two appeals.

3. For the reasons set out below, the Appeals Tribunal dismisses the appeals and affirms the impugned Orders and Judgment.

**Facts and Procedure**

4. We address first the background facts leading to the litigation. Mr. Haroun is a former Associate Human Resources Officer, having joined UNAMID in 2007. His tenure came to an end with the expiry of his fixed-term appointment on 10 November 2021.

5. In February 2016, after a revised national salary scale was established, the salaries of UNAMID staff members were increased retroactively and staff members were given the option of receiving their future remuneration either in Sudanese pounds (SDG) or in United States dollars (USD). The UNAMID National Staff Association (Staff Association) advised the Agency that UNAMID staff members requested to be paid in USD.

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<sup>1</sup> *Haroun v. Secretary-General of the United Nations*, Order No. 157 (NBI/2022).

<sup>2</sup> *Haroun v. Secretary-General of the United Nations*, Order No. 158 (NBI/2022).

<sup>3</sup> *Haroun v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/124.

6. Subsequently, on 9 March 2016, the Staff Association requested UNAMID to agree to a proposal to have past payments of salaries paid retroactively in USD after they had been repaid by the UNAMID staff members to the Agency in the original SDG currency in which they had previously been paid.

7. After consideration, this request was declined by letter by UNAMID on 17 June 2016 and this led, in July and August 2016, to a strike by Staff Association members whose previous request had then become a demand.

8. In August 2016, a proposal was put by UNAMID to the Staff Association to pay in USD some of the UNAMID staff members' salaries that had previously been paid in SDG. This was to pay one month's salaries (those for February 2016) out of the six months claimed by staff members.

9. The dispute then widened to include not only what was to happen to the balance of the six-month period claimed for retrospective payment, but also included claims about calculations for Mission contributions, Medical Insurance Plan contributions, entitlements of UNAMID staff members, contract status affecting staff members of more than five years' service, a review of salary payment methodology, taxation refund issues, end-of-service allowance payments and collective as well as individual cases that were pending.<sup>4</sup> On 19 August 2021, the Staff Association sent a letter to UNAMID in which it raised this cornucopia of issues.

10. On 28 August 2021, UNAMID replied to the Staff Association by letter rejecting the Staff Association's claims and providing "an outcome and rationale for each issue raised".<sup>5</sup>

11. On 21 October 2021, one UNAMID staff member, whom we will refer to as Mr. A.A., requested management evaluation (ME), for himself and purportedly on behalf of some 2,700 other current and former UNAMID staff members, of the Agency's decision not to reimburse the staff assessments deducted from their salaries and the decision not to pay them the full six months of retrospective salaries in USD. On 16 December 2021, the Management Evaluation Unit (MEU) refused Mr. A.A.'s request for ME on the ground of non-receivability.

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<sup>4</sup> Impugned Judgment, para. 25.

<sup>5</sup> *Ibid.*, para. 26.

12. On 16 February 2022, Mr. Haroun personally, and not either represented by or accompanied by Mr. A.A., filed an application before the UNDT which he described as being “8 outstanding claims for 4 000 former UNAMID national staff members [of] claims refuted by UNAMID management on 28 August 2021”.<sup>6</sup>

*Impugned Orders Nos. 157 (NBI/2022) and 158 (NBI/2022)*

13. We address first the relevant events leading to the two challenged interlocutory Orders of the UNDT. Except for the following, it is unnecessary to summarise other interlocutory maneuvers in the litigation before the UNDT.

14. On 5 October 2022, the previously unrepresented Mr. Haroun advised the UNDT that he would henceforth be represented by counsel.

15. On 6 October 2022, the UNDT held a case management discussion (CMD) during which the parties agreed, among other things, that an oral hearing was not required for the substantive case. Mr. Haroun was, by then, represented and his counsel participated in the CMD including by agreeing to the directions made at its conclusion.

16. On 7 October 2022, the UNDT allowed Mr. Haroun the period of three weeks to file an amended application, that is by 5:00 p.m. (Nairobi time) on 28 October 2022.<sup>7</sup> On that latter date, Mr. Haroun sought an extension of the time for doing so. A Legal Officer of the UNDT Registry granted that motion allowing an extension to the same hour on 31 October 2022. Mr. Haroun did not meet this deadline.

17. On the next day, 1 November 2022, Mr. Haroun’s counsel took issue with the fact that a Judge had not made the Order formally extending time. Accordingly, on 1 November 2022, impugned Order No. 157 (NBI/2022) was re-issued by a Judge. There is no record of what time that Order was conveyed to Mr. Haroun’s counsel or how, but it was not complied with by its deadline, 5:00 p.m. (Nairobi time) on the same day, 1 November 2022. Contrary to the previous agreement that the case would be dealt with on the papers filed, on that same day, 1 November 2022, Mr. Haroun’s counsel filed a motion requesting an oral hearing of his case.

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<sup>6</sup> *Ibid.*, para. 1.

<sup>7</sup> *Haroun v. Secretary-General of the United Nations*, Order No. 146 (NBI/2022).

18. On 4 November 2022, having heard from the Secretary-General's counsel, the UNDT issued impugned Order No. 158 (NBI/2022), deciding that the case would proceed without Mr. Haroun's amended application and without an oral hearing. Steps for filing final submissions were also timetabled. Mr. Haroun complied with those steps.

### *Impugned Judgment*

19. The impugned Judgment was issued on 17 November 2022. The UNDT determined that Mr. Haroun had failed in several respects to meet the statutory receivability grounds necessary to have his application considered on its merits. It held that there was no evidence that Mr. Haroun had sought ME of his claims, an essential jurisdictional prerequisite to their consideration by the UNDT under Staff Rule 11.2(c).<sup>8</sup> Mr. A.A. had done so in October 2021 and Mr. Haroun claimed that this ME referral was made on his behalf as one of the affected UNAMID current or former staff members represented by Mr. A.A. However, the Dispute Tribunal ruled that it was the significant time lapse (more than four years) between the notification of the contested administrative decision to the Staff Association and the referral to ME, which delay counted against the proceeding's receivability. Significant in the UNDT's reasoning were also the facts that at the time of notification of the administrative decision to the Staff Association, Mr. Haroun was a member thereof, and that he had taken part in the strike action in July and August 2016 protesting against the administrative decision. The UNDT held that Mr. Haroun ought reasonably to have been aware of the Administration's decision, even if, as he claimed, there had been no response until 28 August 2021 to the Staff Association's demand that the Agency reverse its decision not to make refund payments. Indeed, the Dispute Tribunal found that when Mr. Haroun received his July 2016 pay slip and subsequent editions of this with no references to a refund, this demonstrated the Agency's decision refusing the Staff Association's demand.<sup>9</sup>

20. It was deemed immaterial that the contested administrative decision was reiterated on 28 August 2021 in response to the Staff Association's correspondence dated 19 August 2021. A reiteration of an earlier decision, made and communicated, did not reset the period for an application for ME of that original decision. Accordingly, the UNDT held that there had been no timely ME request. On this ground alone, Mr. Haroun's proceeding was unreceivable.<sup>10</sup>

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<sup>8</sup> Secretary-General's Bulletin ST/SGB/2018/1 (Staff Regulations and Rules of the United Nations).

<sup>9</sup> Impugned Judgment, paras. 32-36.

<sup>10</sup> *Ibid.*, para. 35.

21. Further, the UNDT held that no individualised administrative decision had been identified by Mr. Haroun. It held that, in addition to a challengeable decision being non-compliant with the terms of appointment or the staff member's contract of employment and unilaterally issued, such a decision also had to be "of individual application" and carry "direct legal consequences" for that individual. However, in the present case, the UNDT found that the application was not in the form of an individual claim and was not even referable to Mr. Haroun by name. Rather, the claim purported to have been made in a representative capacity on behalf of multiple Staff Association members. Therefore, following *Faye*,<sup>11</sup> the UNDT concluded that it was not empowered to determine representative claims and found that in these circumstances also, the case was not receivable.<sup>12</sup>

22. Additionally, the UNDT found that the application did not identify an administrative decision and, more specifically, how the contested decision was non-compliant with Mr. Haroun's own terms of appointment or contract of employment in an individual way.<sup>13</sup> It also concluded that there was no evidence of adverse impact on Mr. Haroun himself of the decision rejecting the Staff Association's claims. For this additional reason too, the proceeding was held to be not receivable.<sup>14</sup>

23. Finally, in its comprehensive rejection of the proceeding, the UNDT held that the application before it was filed more than three years after Mr. Haroun's receipt of the contested decision made, and made known to him, in 2016. Therefore, the UNDT concluded that Mr. Haroun's application was, pursuant to Article 8(4) of the Dispute Tribunal Statute, not receivable as having been made in breach of another time limitation.<sup>15</sup> His application was dismissed by the UNDT.

#### *Procedures before the Appeals Tribunal*

24. On 5 November 2022, Mr. Haroun filed an appeal against impugned Orders Nos. 157 (NBI/2022) and 158 (NBI/2022), to which the Secretary-General responded on 15 December 2022.

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<sup>11</sup> *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-657, paras. 32-35.

<sup>12</sup> Impugned Judgment, paras. 37-39.

<sup>13</sup> *Argyrou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-969, para. 32.

<sup>14</sup> Impugned Judgment, paras. 40-41.

<sup>15</sup> *Ibid.*, paras. 42-43.

25. On 15 January 2023, Mr. Haroun filed an appeal against the impugned Judgment, to which the Secretary-General responded on 13 March 2023.

26. On 26 June 2023, the Appeals Tribunal consolidated the two appeals.<sup>16</sup>

### **Submissions**

#### ***Case No. 2022-1746***

#### **Mr. Haroun's Appeal**

27. Mr. Haroun requests the Appeals Tribunal to rescind Orders Nos. 157 (NBI/2022) and 158 (NBI/2022). He also requests the Appeals Tribunal to issue “an [o]rder directing that the case pending before the (...) UNDT be considered by a different Judge”, pursuant to Article 2(9) of the Appeals Tribunal Statute (Statute).

28. First, with regard to Order No. 157 (NBI/2022), Mr. Haroun submits that the UNDT erred in procedure, so as to affect the decision of the case, when it purported “to vest in a legal officer in the [UNDT] Registry the power to determine a motion for extension of a deadline”. He argues that pursuant to Article 35 of the Dispute Tribunal Rules of Procedure, extending a deadline falls within the functions of a judge, not a legal officer.

29. Second, Mr. Haroun submits that the UNDT erred in fact, resulting in an “unrealistic” decision, when it issued Order No. 157 (NBI/2022) on 1 November 2022 at 1:19 p.m. (Nairobi time) requiring him to file his amended application by the same day at 5:00 p.m. (Nairobi time). He further contends that this deadline was “unachievable” given the “magnitude of the case”, and particularly because his counsel was representing approximately 4,000 other UNAMID staff members who were not in the same geographical location as he was.

30. Third, with regard to Order No. 158 (NBI/2022), Mr. Haroun contends that, pursuant to Article 16 of the Dispute Tribunal Rules of Procedure, the UNDT failed to exercise jurisdiction vested in it by finding that an oral hearing was not necessary. Indeed, Mr. Haroun argues that the “justice of the matter”, involving 4,000 former UNAMID staff members, as well as the necessity to have expert witnesses testify before the UNDT, demanded an oral hearing.

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<sup>16</sup> *Yassir Haroun v. Secretary-General of the United Nations*, Order No. 521 (2023).

31. Last, Mr. Haroun argues that the UNDT erred on a question of law in issuing Order No. 158 (NBI/2022) less than 24 hours after the Secretary-General had submitted his comments in response to his motion requesting an oral hearing, thus denying his right to respond to those comments.

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

32. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

33. First, the Secretary-General submits that Mr. Haroun's appeal is not receivable because it has become moot following the issuance of the impugned Judgment. The Secretary-General further observes that Mr. Haroun is able to raise any alleged UNDT procedural errors in the appeal filed against the impugned Judgment.

34. Second, relying on Appeals Tribunal jurisprudence, the Secretary-General recalls that "[a]n interlocutory appeal is only receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence".<sup>17</sup> In the present case, the Secretary-General submits that Mr. Haroun's appeal is also not receivable because he failed to demonstrate (or even to assert) that the UNDT clearly exceeded its jurisdiction or competence with regard to impugned Order Nos. 157 (NBI/2022) and 158 (NBI/2022).

35. However, even if Mr. Haroun had asserted that the UNDT clearly exceeded its jurisdiction or competence, the Secretary-General contends that such assertion would still be unsustainable. Indeed, the Secretary-General recalls that the Dispute Tribunal has broad discretion with respect to its case management and that the Appeals Tribunal "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 dispensation of justice".<sup>18</sup>

36. The Secretary-General submits that, pursuant to Article 35 of the Dispute Tribunal Rules of Procedure, the UNDT acted within its competence when it decided, after having

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<sup>17</sup> *Al-Badri v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-461, para. 21; *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160, para. 36.

<sup>18</sup> *Khambatta v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-252, para. 15.



granted Mr. Haroun two extensions of time, that the case could proceed without his amended application.

37. Moreover, the Secretary-General contends that, in accordance with Articles 16(1) and (2), 17(6) and 18(5) of the Dispute Tribunal Rules of Procedure, it was also within the UNDT's discretion to hold an oral hearing. The Secretary-General notes that Mr. Haroun "agreed during the CMD that the case would be decided based on the parties' written submissions and is therefore estopped from raising this claim on appeal".

38. Last, the Secretary-General submits that the UNDT acted within its competence and in accordance with Article 19 of the Dispute Tribunal Rules of Procedure when it rejected Mr. Haroun's motion for an oral hearing without giving him an opportunity to respond to the Secretary-General's comments.

***Case No. 2023-1775***

**Mr. Haroun's Appeal**

39. Mr. Haroun requests the Appeals Tribunal to reverse the impugned Judgment and to issue an "[o]rder directing for a fresh trial before the (...) UNDT by a different [j]udge", pursuant to Article 2(6) of the Statute. He also requests the Appeals Tribunal to issue an "[o]rder that the fresh hearing before the UNDT be conducted by way of oral evidence", pursuant to Article 17 of the Dispute Tribunal Rules of Procedure.

40. With regard to the impugned Judgment, Mr. Haroun submits that the Dispute Tribunal committed several errors in procedure, fact and law in dismissing his application.

41. First, Mr. Haroun contends that the UNDT erred in procedure and exceeded its jurisdiction and competence in delivering the impugned Judgment during the pendency of Case No. 2022-1746 before the Appeals Tribunal. Indeed, Mr. Haroun submits that, pursuant to Article 7(5) of the Statute and Article 8(6) of the Appeals Tribunal Rules of Procedure (Rules), orders issued by the Dispute Tribunal are automatically suspended once an appeal is filed.

42. Second, Mr. Haroun submits that the UNDT erred in fact, resulting in a manifestly unreasonable decision, when it found that the contested administrative decision was dated

June 2016 instead of 28 August 2021.<sup>19</sup> Indeed, Mr. Haroun argues there was no evidence, other than “conjectures and rumours”, that the 17 June 2016 letter had been communicated to the Staff Association or to individual UNAMID staff members.

43. Third, Mr. Haroun argues that the UNDT also erred in fact when it found that his application was not receivable because the request for ME “was not individualized as to mention [his name] specifically”. Mr. Haroun further observes that the UNDT erroneously applied “double standards” because it relied on the June 2016 decision, which had not been proven to be “individualized as to personally address each staff member”.

44. Fourth, Mr. Haroun submits that the UNDT erred in law in adopting a restrictive interpretation of Article 2(1) of the Dispute Tribunal Statute when it had the “jurisdiction to hear a [r]epresentative [a]pplication”. Indeed, Mr. Haroun submits that the term “individual” should have been interpreted broadly to allow a party to file an application “on their own behalf and on behalf of other parties with similar or common interests or claims”.

45. Fifth, Mr. Haroun reiterates that the nature of the case required that an oral hearing be conducted.

46. Last, in support of his request to remand the case to a different UNDT judge, Mr. Haroun submits that the UNDT Judge was “manifestly harsh, hostile and biased against [him]”. He further presents similar arguments to the ones he had made before the UNDT, i.e. that: i) the UNDT “endorsed an illegality” when it extended Mr. Haroun’s deadline to file his amended application in Order No. 157 (NBI/2022) because this Order was initially issued by a Legal Officer instead of a UNDT judge; ii) the deadline fixed in Order No. 157 (NBI/2022) was “unrealistic”; and iii) the “hurried manner” in which Order No. 158 (NBI/2022) was issued raised “suspicion that the outcome (...) was pre-determined”.

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

47. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

48. First, the Secretary-General submits that Mr. Haroun failed to establish that the UNDT erred in procedure or exceeded its jurisdiction and competence in delivering the impugned

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<sup>19</sup> Mr. Haroun refers the Appeals Tribunal to a decision dated 21 August 2021, but it seems to be a typographical error.

Judgment during the pendency of Case No. 2022-1746 before the Appeals Tribunal. Indeed, the Secretary-General observes that pursuant to Article 11(3) of the Dispute Tribunal Statute and Appeals Tribunal jurisprudence,<sup>20</sup> appeals against a case management order have no suspensory effect.

49. Second, the Secretary-General contends that Mr. Haroun failed to discharge his burden to establish that the UNDT erred in finding that his application was not receivable. Indeed, the Secretary-General observes that Mr. Haroun's arguments are largely a repetition of the ones that he made before the Dispute Tribunal. Relying on Appeals Tribunal jurisprudence,<sup>21</sup> the Secretary-General recalls that it is not sufficient for Mr. Haroun to indicate that he disagrees with the impugned Judgment and that the appeals procedure is not an opportunity for a party to reargue the case.

50. In any event, the Secretary-General contends that Mr. Haroun's arguments in support of his claim that the impugned Judgment is defective are also meritless. Indeed, the Secretary-General argues that the UNDT correctly determined that the contested decision was dated 17 June 2016 because the 28 August 2021 letter was only reiterating the 17 June 2016 decision and that Appeals Tribunal jurisprudence has consistently held that the "reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines".<sup>22</sup>

51. With regard to Mr. Haroun's argument that the UNDT erred in fact and applied "double standards" when it found that his application was not receivable because the request for ME was not individualized, the Secretary-General submits that Mr. Haroun misunderstood the UNDT's findings. Indeed, the Secretary-General observes that the UNDT did not make any finding with regard to the fact that the request for ME was not receivable because it had been made by another staff member, Mr. A.A. The Secretary-General further notes that Mr. Haroun's argument in this regard ignores the fact that the 28 August 2021 letter also did not make any reference to him and that it was his responsibility to "clearly identify an individualized administrative decision and to

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<sup>20</sup> *Abdalla Mohammed Abdalla v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1191, para. 29; *Yves P. Nadeau v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1072, paras. 32-34.

<sup>21</sup> *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22; *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30; *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-096, para. 21;

<sup>22</sup> *Mbok v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-824, para. 42.

demonstrate that the decision had a direct impact on his terms of appointment or contract of employment”.

52. Moreover, the Secretary-General contends that the UNDT’s interpretation of Article 2(1) of the Dispute Tribunal Statute was consistent with the established jurisprudence which states that “the UNDT does not have jurisdiction to hear representative claims filed on behalf of other staff members and that the right to challenge an administrative decision in the UNDT is an individual right”.<sup>23</sup>

53. Third, the Secretary-General submits that Mr. Haroun failed to establish that the UNDT was biased against him or that there was any basis for remanding the case to a different UNDT judge. Indeed, observing that Mr. Haroun’s arguments in this regard are also the subject of his appeal in Case No. 2022-1746, the Secretary-General notes that his submissions will supplement “the arguments set in detail in [his] [a]nswer to [Mr. Haroun]’s [i]nterlocutory [a]ppeal”. The Secretary-General further submits that the UNDT did not fix an “unrealistic” deadline or committed an “illegality” in issuing Order No. 157 (NBI/2022). The Secretary-General also contends that the decision to grant a very short extension of time was a decision that fell “wholly within the discretion of the UNDT”.

54. Last, the Secretary-General argues the Mr. Haroun had no “right” to an oral hearing. On the contrary, in the present case, the Secretary-General contends that the UNDT provided adequate reasons for denying his motion for an oral hearing.

### **Considerations**

55. We eventually conclude that the UNDT correctly dismissed Mr. Haroun’s proceedings as unreceivable. Therefore, it is strictly unnecessary to determine those grounds of appeal against the two interlocutory Orders made by the Dispute Tribunal at preliminary stages of the proceeding.<sup>24</sup> However, in deference to the parties’ submissions on these and the UNDT’s decision of them, and to assist them and others in future similar cases, we will nevertheless address several of those issues as if they were not moot.

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<sup>23</sup> *Faye Judgment, op. cit.*, paras. 32-35.

<sup>24</sup> *Haroun v. Secretary-General of the United Nations*, Order No. 157 (NBI/2022); *Haroun v. Secretary-General of the United Nations*, Order No. 158 (NBI/2022).

56. Mr. Haroun's appeal against the two impugned interlocutory Orders must be dismissed as being without jurisdiction. The impugned Orders were not made in excess of the UNDT's jurisdiction to do so. Nor were they irremediable and thereby effectively final: see our Judgments in *Loto*<sup>25</sup> and *Okwakol*.<sup>26</sup> Appeals against the two interlocutory Orders of the UNDT with which Mr. Haroun was dissatisfied could have waited until the UNDT delivered its substantive impugned Judgment. This would still have given him a right of appeal if he was dissatisfied with the outcome, as he now is. As he is entitled to do, Mr. Haroun has, nevertheless, also made these interlocutory directions a part of his appeal against the substantive impugned Judgment. We must therefore consider them on their merits, although not in the same order as Mr. Haroun has set them out in his submissions summarised above.

57. Mr. Haroun complains that the first decision of the UNDT to extend a deadline was not exercised by a judge. If that was an error, it was promptly rectified by the Judge in the replacement Order No. 157 (NBI/2022).<sup>27</sup> The validity of the first Order purportedly made by someone other than a judge thus became moot.

58. Next, Mr. Haroun argues that the UNDT erred in law in issuing Order No. 158 (NBI/2022) less than 24 hours after the Secretary-General had submitted his comments in response to the motion for an oral hearing. He says this denied his right to respond to those comments. We do not accept that this was an error of law. Mr. Haroun, through counsel, had made his case for an oral hearing. The Secretary-General had opposed this. There was no right of reply available to Mr. Haroun, especially as the question had been decided previously by consent in the CMD on 6 October 2022. The Secretary-General's opposition to the motion did not include any new material that Mr. Haroun had not had an opportunity to address. This ground of appeal would not have succeeded.

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<sup>25</sup> *Richard Loto v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1362, paras. 81-83.

<sup>26</sup> *James Okwakol v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1354, paras. 85-88.

<sup>27</sup> We do not decide whether this was an error because we do not have sufficient information to do so and, in any event, we do not need to do so. We do note, however, that the extension of periods given to abide by the Dispute Tribunal's directions is one of the aspects of case management. Case management is a judicial power attributed to a judge, that cannot be delegated or otherwise exercised by a Registry legal officer. Article 19 of UNDT Rules of Procedure reads: "The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties."

59. Mr. Haroun contends that the UNDT failed to exercise jurisdiction vested in it by concluding that there should be no oral hearing of his case. We disagree. The UNDT did exercise a power or jurisdiction vested in it, that of making orders and directions for the conduct of the case before it. Mr. Haroun complains about the outcome of the exercise in practice of that power, but that is not either a failure to exercise a power or to make an order in excess of its jurisdiction. Irrespective of whether the case before the UNDT involved some 4,000 applicants and required expert evidence as he contends, or even if it was his alone, such a decision is moot if the application was not receivable from its outset. As we have concluded, Mr. Haroun's application was not receivable by the UNDT because of its lateness. This means that there could not, in law, have been either an oral hearing of the merits of the case or its consideration on the papers. We will address subsequently Mr. Haroun's claims to represent numerous other UNAMID staff members. This ground of appeal is, nevertheless, moot.

60. If Mr. Haroun's case had been receivable by the UNDT, there would appear to have been some more substance to his final ground of appeal. Indeed, he claims that in requiring him to file his amended application within a period of less than four hours after Order No. 157 (NBI/2022) was issued by the Judge, the UNDT erred in fact by acting unrealistically. We would categorise such an error as one of law, rather than one of fact, as it was expressed by him, but nothing turns on that description.

61. As happens frequently when an unrepresented litigant engages counsel after having filed pleadings without the benefits of advice and representation, counsel will seek to change the detail, and sometimes even the nature, of the previous pleadings. That is often beneficial to everyone, not only to the staff member but also to the Tribunal and the Secretary-General which will be able to understand and address the claims more easily. The loss of a relatively short time in the litigation process by allowing an amendment will often be outweighed by these benefits.

62. It is also an important principle that if a party is entitled to an extension of a time limit, the duration of that extension should be sufficient to enable the implementation of the changes for which it was granted. That does not mean that the party granted the indulgence of extended time should have an overly generous or certainly an open-ended period. However, the time allowed should be realistic in all the circumstances and especially in this jurisdiction where staff members are often located in the field, counsels in other countries, the UNDT Registries in yet other countries and, potentially, all these people and locations in different time zones.

63. We consider that in all the circumstances, the Dispute Tribunal erred in law by imposing an unreasonably, indeed perhaps even an impossibly, short period for compliance with its direction. Relevant factors in the exercise of that discretion that do not appear to have been allowed for by the UNDT include the following: i) Mr. Haroun had recently engaged counsel and was entitled to the benefit of that appointment including a re-consideration and re-drafting of his pleadings; and ii) Mr. Haroun's counsel was located in a different time zone to that of the UNDT Registry in which the time for amendment was to expire later the same day as Order No. 157 (2022/NBI) was made. This illustrates the risk that the Order may not even have been known to Mr. Haroun's counsel before the time expired.

64. We agree that it was not only an unreasonably and extraordinarily brief period allowed to counsel located in a different country and time zone, but we can also discern no urgency having attached to its finalisation that would make such a brief period necessary. The time allowed for compliance with Order No. 157 (2022/NBI) was inadequate. However, be that as it may, the proceeding having been unreceivable by the UNDT as it concluded and we confirm, then this finding will not assist Mr. Haroun.

65. We turn now to Mr. Haroun's substantive submissions that the UNDT erred in fact and in law by determining, on the several grounds as it did, that the substantive proceeding before it was not receivable.

66. We deal first with Mr. Haroun's contention that the UNDT erred in delivering the impugned Judgment during the pendency of Case No. 2022-1746 before the Appeals Tribunal. Contrary to Mr. Haroun's pleadings, this was not a case of breach of Article 7(5) of the Statute or Article 8(6) of the Rules and those Articles do not provide that orders made by the UNDT are automatically suspended by the filing of an appeal before the UNAT. Case law and Article 11(3) of the Dispute Tribunal Statute, which provides that "[c]ase management orders or directives shall be executable immediately", support this conclusion. Indeed, in *Nadeau*, the UNAT said of those Articles:<sup>28</sup>

... The UNDT did not exceed its jurisdiction by applying Article 11(3) of its own Statute and confirming, in accordance with that provision, that an appeal against a case management order has no suspending effect.

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<sup>28</sup> *Yves P. Nadeau Judgment, op. cit.*, paras. 33-35 (internal citations omitted).

... Furthermore, (...), there is no conflict between Article 7(5) of our Statute, which is a general rule, and Article 11(3) of the UNDT Statute. This provision is a more specific one that was amended to reflect of jurisprudence that an appeal against orders is only possible in very exceptional circumstances. It clarifies that if the filing of appeals shall have the effect of suspending the execution of the contested judgment or order, '[c]ase management orders or directives shall be executable immediately'. This exception refers to our jurisprudence that appeals will not be receivable against 'decisions on matters of evidence, procedure, and trial conduct'.

... Consequently, the UNDT did not exceed its jurisdiction by rejecting the Appellant's submission (...) that Article 7(5) of the Statute of the Appeals Tribunal has the effect of suspending the execution of Order No. 184 (NY/2019) and issuing a Judgment on the merits while Mr. Nadeau's appeal against the contested order was still pending with the Appeals Tribunal.

67. The appeal filed by Mr. Haroun against the interlocutory Orders of the UNDT was, for reasons we have already set out above, unreceivable. There was, in law, no appeal which might have triggered the suspending process and, therefore, there is nothing in this ground of appeal.

68. We move next to the proposition relied on by the UNDT that appeals such as Mr. Haroun sought to bring in his case are only receivable if they are against administrative decisions affecting identified current or former individual staff members.

69. The UNDT Statute, setting its jurisdictional parameters, makes no express references to representative proceedings, or even to multiple staff members being able to bring proceedings. Can the relevant Articles be interpreted to allow this? We think not for several reasons. First, the UNDT Statute uses individualised language in its relevant Articles. For example, in Article 2(1) and (2), it uses the phrase "an application filed by an individual" in relation to what may be subject to adjudication. Moreover, Article 2(4) expressly empowers the Dispute Tribunal to "permit any individual who is entitled to appeal the same administrative decision (...) to intervene in a matter brought by another staff member". What might be included within a representative regime is thereby expressly encompassed by a separate intervention process, thus militating against an interpretation of individuals' entitlements that allows representative or multiple staff members' proceedings about the same subject matter.

70. Article 3 uses the same language of singularity ("[a]ny staff member") also tending to limit applications to a single person, or at least not to permit representative proceedings of, as



in this case, potentially thousands of staff members or former staff members. There is a danger that some or even many of these other staff members may be unaware that a proceeding has been initiated on their behalf or may even have wished to oppose this course of action.

71. Article 8(1)(c) likewise appears to refer to individualised proceedings where it makes it a condition of filing that “[a]n applicant has previously submitted the contested administrative decision for [ME]”. That contemplates that the same individual who attempts to bring a proceeding before the UNDT has previously sought ME of the same issue.

72. Article 8(1)(d)(i) reinforces this interpretation by use of the phrase “the applicant’s receipt of the response by management to his or her submission”.

73. There are other similar references elsewhere in the UNDT Statute which we will not refer to specifically. However, we do not consider that it can be interpreted to apply to other than individualised proceedings and, in particular, not to representative or class actions.

74. There is also confirmatory case authority which is against Mr. Haroun’s submission that the UNDT erred in law in deciding this issue as it did. In *Faye*, the Appeals Tribunal said:<sup>29</sup>

... A staff representative acting on behalf of staff members does not have standing to bring an application in the UNDT challenging an administrative decision. The UNDT Statute is quite clear that the right to challenge an administrative decision in the UNDT is an individual right.

...

... There is no statutory provision or other law which gives the UNDT jurisdiction to entertain an application by a staff representative on behalf of staff members. The only recognition given to a staff association in the UNDT Statute is contained in Article 2(3), which provides: ‘The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association’.

75. The exclusion from standing of a staff association must apply, at least equally, if not more strongly, against the representative involvement of one staff member purporting to represent other staff members. A friend-of-court brief has a quite different purpose and role to that of a representative party. A friend-of-court is an interested person or party who is

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<sup>29</sup> *Faye* Judgment, *op. cit.*, paras. 32 and 35.

permitted to assist the Dispute Tribunal with a brief of submissions to ensure that wider interests than those of the immediate parties alone are identified and can be addressed.

76. Next, we address the other ground on which the UNDT concluded that it could not receive Mr. Haroun's application because it had not previously been the subject of timely request for ME. We cannot fault the UNDT's analysis of the several grounds on which it concluded that the proceedings filed by Mr. Haroun were not receivable.

77. Staff Rule 11.2(a) and (c) required that Mr. Haroun's request for ME be lodged within 60 calendar days of his notification of the administrative decision to be contested. The UNDT was right to conclude that the time began to run in June 2016 when the Staff Association of which Mr. Haroun was a member received notice of the Administration's refusal to pay its members as demanded of it. Mr. Haroun was aware of the decision at the time it was conveyed to his Association, and he participated in strike action during the following two months, i.e., in July and August 2016, protesting the decision.

78. The UNDT was also correct to conclude that Mr. Haroun would also have been aware, at least indirectly, of the decision to refuse his salary payment and other demands. This was by his regular and timely receipt of payslips during June, July, and August 2016, illustrating that outcome. Therefore, together these factors reinforced the UNDT's conclusion of knowledge and thereby receipt by Mr. Haroun of the decision he subsequently sought to contest.

79. Even if the request for ME made in the name of Mr. A.A. included Mr. Haroun, it was not made until more than four years later, in October 2021. The Secretary-General did not consent to extending the time for seeking ME, as Staff Rule 11.2(c) allows at his discretion. The reiteration of the request by the Staff Association and the Secretary-General's reiteration of his refusal of it less than 60 days before ME was sought did not reset the clock to make the application receivable by the UNDT.

80. The necessary prerequisite step for ME was a timely request for the reconsideration of the administrative decision by the Organization. The UNDT was consequently right to conclude that there had been no timely request for ME in the present case.

81. There was a second time limit breach identified by the UNDT which, if correct, independently makes the proceeding unreceivable. Article 8(4) of the UNDT Statute provides

that no application is receivable “if it is filed more than three years after the applicant’s receipt of the contested administrative decision”. For the reasons just set out, the UNDT was right to have identified the date of its receipt by Mr. Haroun as being in June 2016. Therefore, even if Mr. Haroun had submitted a timely request for ME, his filing of the application more than five years after he had received notification of the contested decision also made it unreceivable. In so concluding, the UNDT committed no error of fact or law.

82. Mr. Haroun’s next argument is that the UNDT wrongly refused to conduct an oral hearing of his case. We have already dealt with this argument at paragraphs 58 and 59 of the Judgment in relation to his appeal against the interlocutory Order on which it featured, so we will only add this. We can discern no error of law in that direction. A hearing on papers was agreed to by Mr. Haroun, albeit at a time prior to his change of mind and his subsequent motion for an oral hearing that the Dispute Tribunal refused. It was the correct course of action in a case in which Mr. Haroun’s claims pleaded were unreceivable from the outset. Had they been considered on their merits at an oral hearing, this would have wasted the time, energy and resources of all concerned. Again, although moot, we find nothing in this ground of appeal.

83. Finally, we address briefly Mr. Haroun’s request that the UNAT reverses the impugned Judgment and directs for a “fresh trial” by a different judge. Such an order is beyond this Tribunal’s jurisdiction. The power which Mr. Haroun seeks to invoke under Article 2(9) of the Statute is only exercisable remedially when an appeal properly before the UNAT is allowed. That is not the case here.

**Judgment**

84. Mr. Haroun's appeal in Case No. 2022-1746 against Orders No. 157 (NBI/2022) and No. 158 (NBI/2022) is dismissed as being without jurisdiction and unreceivable. Mr. Haroun's appeal in Case No. 2023-1775 is dismissed and Judgment No. UNDT/2022/124 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27<sup>th</sup> day of October 2023 in New York, United States.

*(Signed)*

Judge Colgan, Presiding

*(Signed)*

Judge Forbang

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 27<sup>th</sup> day of November 2023 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar