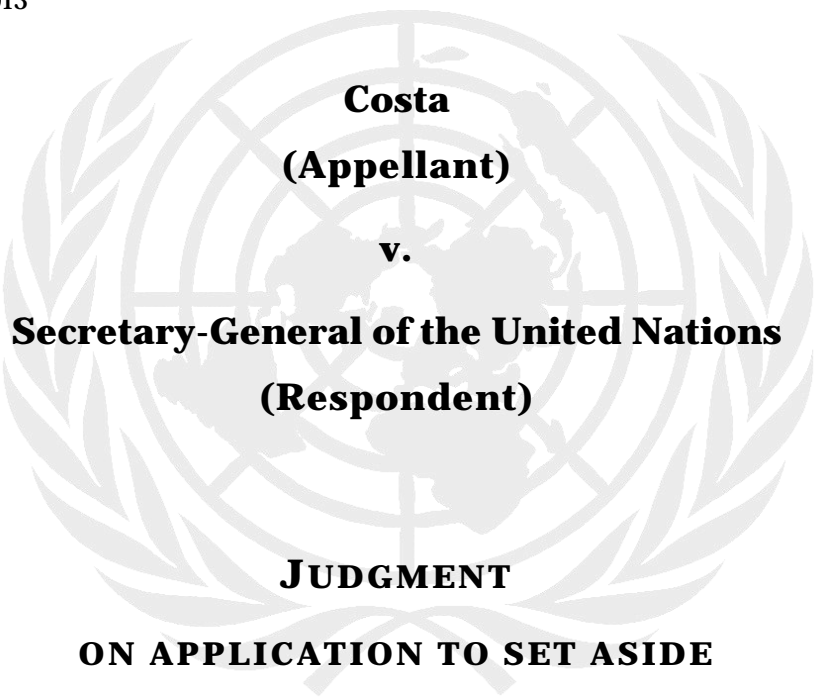




# **UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2009-013



**Costa  
(Appellant)**  
**v.**  
**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT  
ON APPLICATION TO SET ASIDE**

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Before:	Judge Mark Philip Painter, Presiding Judge Sophia Adinyira Judge Luis María Simón
Judgment No.	2010-UNAT-063
Date:	29 October 2010
Registrar:	Weicheng Lin

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Counsel for Appellant: Bart Willemsen

Counsel for Respondent: John Stompor

**JUDGE MARK P. PAINTER**, Presiding.

### **Facts and Procedure**

1. On 1 July 2010, this Tribunal issued Judgment No. 2010-UNAT-036 affirming the finding of the Dispute Tribunal (UNDT) that Costa's case was time-barred, and that the UNDT had no jurisdiction to waive the time limits for management evaluation or requests for administrative review. In that Judgment we decided to disapprove the reasoning of the UNDT Judgment in *Rosca*.<sup>1</sup>

2. On 15 September 2010, Costa, through the Office of Staff Legal Assistance, filed an Application to set aside Judgment No. 2010-UNAT-036 and remand the case to the UNDT. Costa argues that this Tribunal committed an error in law when it affirmed the UNDT judgment in *Costa* and disapproved the UNDT ruling in *Rosca*, and that such error could lead to a "miscarriage of justice", if not corrected. Costa concedes that her Application does not fall under Article 11 of the Statute of this Tribunal for revision, correction or interpretation, but she urges this Tribunal to use its inherent power to set aside its Judgment No. 2010-UNAT-036 in respect of Costa.

3. On 23 September 2010, the Secretary-General filed an Answer. In his view, there are no grounds for this Tribunal to review the present Application. He requests that we dismiss the present Application in its entirety.

### **Considerations**

4. As we stated in *Shanks*,<sup>2</sup> the authority of a final judgment - *res judicata* - cannot be so readily set aside. There are only limited grounds as enumerated in Article 11 of the Statute of the Appeals Tribunal for review of a final Judgment. An allegation of an error in law is not one of them.

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<sup>1</sup> *Rosca v. Secretary-General of the United Nations*, UNDT/2009/052 and UNDT/2009/052/Corr.1.

<sup>2</sup> *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis.

**Judgment**

5. This Tribunal dismisses Costa's Application to set aside and remand.

Dated this 29<sup>th</sup> day of October 2010 in New York, United States.

Original and authoritative version: English

*(Signed)*

Judge Painter, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on this 29<sup>th</sup> day of December 2010 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar