



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

JENNINGS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON REQUEST FOR DIRECTIONS**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 9 December 2010, the Dispute Tribunal rendered its decision in the present case—*Jennings* UNDT/2010/213—finding that the decision not to renew the Applicant’s contract was lawful, but that there was an unreasonable delay in the rebuttal process relating to the Applicant’s performance evaluation report, for which she should be compensated. The Tribunal ordered:

The Respondent shall pay the Applicant USD6,000 as compensation for [the] emotional distress. This sum is to be paid within 60 days after the present Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

2. On 11 January 2011, the Applicant appealed the Dispute Tribunal’s finding that the decision not to renew her contract was lawful. However, no appeal was filed by either party with respect to the award of USD6,000 for the delay in the completion of the rebuttal process.

3. The United Nations Appeals Tribunal dismissed the Applicant’s appeal by judgment rendered on 21 October 2011 and published on 2 December 2011 (see *Jennings* 2011-UNAT-184).

## **Secretary-General’s submission**

4. On 27 March 2012, the Respondent filed a submission entitled “Request for Directions”. The Respondent states that the Administration has been unable to effect payment of the sum ordered in *Jennings* UNDT/2010/213 “for the reason that [the Applicant] has failed to provide her bank account details to the Administration”. The Respondent also states that “[s]ince January 2011 the Applicant has not contacted the Administration and she has ceased to respond to efforts made by the

Administration to contact her”, there being no further details provided of any efforts other than emails and telephone calls to her address. The Respondent requests the Tribunal to give “directions ... as to any additional steps [the Administration] should take to effect payment” of the amount ordered and “any other order(s) the Tribunal may deem appropriate in the circumstances”.

### **Consideration**

5. The first matter to consider is whether I am competent to entertain the Respondent’s request, final judgment having been pronounced on 9 December 2010. The pronouncement of a final judgment by a judge does not render her *functus officio* in respect of matters accessory or consequential upon such judgment, such as, for example, interest and costs. The Tribunal must have the power to regulate procedures with a view to the exigencies and just requirements of a matter, and to entertain matters ancillary or consequential upon a judgment. Whether the Respondent’s request is such a matter is doubtful for the following reasons.

6. A judgment remains effective and executable until it is satisfied, by payment of the sum ordered, or by compliance with the terms of the judgment. In many legal traditions, once a judgment becomes superannuated or stale it cannot be executed. The Statute and the Rules of Procedure of the Dispute Tribunal do not contain any provisions for the superannuation of judgments, and the judgment in favour of the Applicant remains effective and executable until it is satisfied.

7. While there may be several options available to the Respondent in locating the Applicant, it would be inappropriate for the Dispute Tribunal to effectively take over the Administration’s responsibility in administering the payment of the judgment sum. Furthermore, there is no application, nor any provision in the Tribunal’s Statute or Rules of Procedure, for edictal citation or other means for substituted

service, although such matters may well arise consequent upon a judgment the enforcement of which may be troublesome.

8. The Tribunal also notes art. 12.4 of its Statute, which states:

Once a judgement is executable under article 11, paragraph 3, of the present statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

9. As the outstanding amount is owed to the Applicant, it would appear that, under art. 12.4 of the Tribunal's Statute, the appropriate party to file an application is the Applicant as the party in whose favour the judgment was issued. However, no application for an order for execution of *Jennings* UNDT/2010/213 has been filed. Accordingly, at the present time there is no outstanding application requiring consideration by the Tribunal.

### **Observation**

10. As stated above, the Respondent did not appeal the award of USD6,000 to the Applicant for the delay in the completion of the rebuttal process. Accordingly, pursuant to art. 11.3 of the Statute of the Dispute Tribunal, that amount became executable at the expiration of the 45-day time limit (applicable at the time) for the filing of an appeal, i.e., after 23 January 2011 (see *Cohen* Order No. 27 (UNAT/2010), dated 24 November 2010). It would have been appropriate for the Respondent to make payment of the said sum of USD6,000 upon that portion of the Judgment having become executable. However, no payment was made at the time and it appears that no attempts to execute that portion of the Judgment were made until July 2011, approximately seven months after it became executable. It is likely that, had the Respondent acted timeously, the present situation would have been avoided.

IT IS ORDERED THAT:

11. The request for directions is dismissed.

12. In the event of a dispute arising between the Applicant and the Respondent regarding the payment of the judgment sum and any related interest, the matter will be dealt with by the Tribunal upon the filing of a proper application by the Applicant at the material time.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 23<sup>rd</sup> day of May 2012