

UNDT/2013/024, Igbinedion

UNAT Held or UNDT Pronouncements

For courts such as the UNDT and UNAT to be effective in the exercise of their respective jurisdictions, it is imperative that their decisions, however unpalatable they appear to a losing party, are obeyed and complied with, pending any judicial avenues for a remedy if the situation so warrants. The Tribunal holds that although the Statute is silent in as far as contempt provisions are concerned, the power to adjudicate on contempt is inherent in the jurisdiction afforded to the Tribunal by the Statute. The function of the Tribunal necessarily requires that its orders would be obeyed and not jettisoned overboard. Suspension of action during the pendency of the management evaluation applies to actions brought under Article 13. Article 14 does not provide for such a time limit. Rather it affords the court the authority to provide injunctive relief at any stage of the proceedings. An order under Article 14 of the Rules of Procedure and Article 10.2 of the Statute does not depend on management evaluation and the only limitation is that interim relief under Article 14 of the Rules and under Article 10.2 of the Statute cannot be made in cases of appointment, promotion and termination.

The Court found that a) the appeal of an order on suspension of action does not suspend the obligation of the Respondent to obey that order; b) that it has the power to pass judgment on contempt; c) that the Office of Legal Affairs showed contempt of the authority of the Tribunal; d) the Respondent and his counsel must bear responsibility for the disobedience of the court; e) referral to the Secretary General pursuant to Art 10.8 of the Statute is warranted.

Accountability referral: The Tribunal recommends that Mr N'Dow be subsequently reported to the Bar association of his national jurisdiction, if he is a registered member of a Bar, for engaging in conduct not befitting an officer of the court. For this same reason, and for the duration of the accountability processes, the Tribunal further recommends that the Respondent consider seeking counsel elsewhere than in Mr N'Dow for matters within the purview of this Tribunal. The Tribunal also recommends the referral of the Office of Legal Affairs to the Secretary-General under

the same accountability provisions. The cloak and dagger manner in which the Respondent has sought to shield the identities of those involved in this case makes it difficult for the Tribunal to refer any particular officer. The Tribunal therefore leaves it up to the Secretary-General to enquire into the identities of those involved and take the action he deems appropriate.

Decision Contested or Judgment/Order Appealed

This case stems from the Respondent's decision to separate the Applicant in violation of Order 033 (NBI/2011), which was issued by the Tribunal on 12 May 2011.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Igbinedion

Entity

UN-Habitat

Case Number(s)

UNDT/NBI/2011/023

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

18 Feb 2013

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Suspension of action / interim measures

Referral for accountability

Applicable Law

UNDT RoP

- Article 13.4
- Article 14
- Article 36

UNDT Statute

- Article 10.2
- Article 2.2
- Article 7.1
- Article 7.2

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

UNDT/2010/166

UNDT/2011/110

2011-UNAT-160

2012-UNAT-255