

2012-UNAT-230, Nwuke

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal of Order No. 081 (NBI/2011) and two appeals by Mr Nwuke against UNDT Order No. 101 (NBI/2011) and judgment No. UNDT/2012/002. The Secretary-General asserted that UNDT exceeded its jurisdiction in ordering the suspension of a contested decision without making a finding as to whether the requirements for suspension of action under Article 2(2) of the UNDT Statute had been met. UNAT held that UNDT did not respect the limit of five working days, as set forth in Villamoran (2011-UNAT-160), when it extended the suspension until 17 August 2011 when the oral hearing was to be held. UNAT held that this ruling was outside UNDT's jurisdictional power and consequently held that UNDT exceeded its competence. UNAT held that the appeal against Order No. 081 (NBI/2011) was receivable and well-founded. UNAT allowed the appeal and rescinded Order No. 081 to the extent that it granted the suspension of the implementation of the contested administrative decision beyond 5 July 2011, rendering moot Mr Nwuke's appeals from Order No. 101 and judgment No. UNDT/2012/002.

Decision Contested or Judgment/Order Appealed

Mr Nwuke contested the decision to appoint another individual as Director of the Regional Integration, Infrastructure and Trade Division (RIITD). In Order No. 081, UNDT ordered the suspension until 17 August 2011 until when the oral hearing of the case was due to be held. In Order No. 101, UNDT dismissed Mr Nwuke's application for suspension of action, as UNDT did not find that the contested decision was unlawful. In judgment No. UNDT/2012/002, UNDT dismissed the application for suspension of action on the basis that it could not conclude that the appointment exercise was unlawful.

Legal Principle(s)

Generally, only appeals against final judgments are receivable. Appeals against interlocutory decisions, however, they may be named by UNDT, will not be receivable save in exceptional cases where UNDT has clearly exceeded its jurisdiction or competence. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of the UNDT RoP have elapsed, and where UNDT is not in a position to make a decision under Article 2(2) of the UNDT statute, i. e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension for action for these five days.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nwuke

Entity

ECA

Case Number(s)

2011-246

2011-248

2012-289

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2012

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Interlocutory or interim appeal / Appeal of UNDT order to UNAT

Receivability

Suspension of action

Jurisdiction / receivability (UNAT)

Appeal

Interlocutory appeal

Manifest excess of jurisdiction

Jurisdiction / receivability (UNDT or first instance)

Manifest excess of jurisdiction

Applicable Law

UNDT RoP

- Article 13.3

UNDT Statute

- Article 2.2

Related Judgments and Orders

UNDT/2012/002

2010-UNAT-062

2012-UNAT-244

2011-UNAT-160