

# 2021-UNAT-1160, Asr Ahmed Toson

## UNAT Held or UNDT Pronouncements

On the request for the oral hearing, UNAT held that the matter could be considered just as well on written submissions and that it was not persuaded that an oral hearing was necessary in the interests of justice. UNAT held that the Appellant's complaints were about the content of the orders made, not about whether UNDT was empowered to make such orders, and as such, his appeal was not receivable and had to be dismissed. Noting that the case would be dismissed, UNAT made the following observations on the merits of the appeal: (1) UNDT was entitled to determine issues of receivability in priority to certain interlocutory issues and there was nothing in the UNDT's procedure by which it dealt with the motions that was erroneous in law or otherwise can be criticised; (2) as to the outcomes of the motions, there was no error on the part of UNDT; (3) UNDT did not exceed its competence by refusing to order the preservation of a potentially large volume of inadequately defined e-mails in a "drift-net fishing expedition" by the Appellant; (4) UNDT did not exceed its competence by identifying that if the Appellant sought to discover a document evidencing a promise to renew or extend his fixed-term appointment, this could not assist him in circumventing the statutory prohibition upon legitimate expectations of such contract extensions; and (5) UNDT was competent to refuse the attendance at the hearing of the Ombudsman and to admit into evidence the emails exploring genuine possibilities for settlement in the case. UNAT observed that it would have concluded that the Appellant's motions were correctly decided by UNDT and there was nothing to support his appeal against the Order. UNAT dismissed the appeal and affirmed the UNDT Order.

## Decision Contested or Judgment/Order Appealed

Mr. Toson contests Order No. 226 (NBI/2020) in relation to the case registered as UNDT/NBI/2019/163. The Order denied Mr. Toson's request for an order directing the preservation and production of e-mails, rejected his request for production of investigation and ethics reports, and granted his request for a hearing in part (rejecting two witnesses).

## Legal Principle(s)

An applicant for an oral hearing must establish that the hearing is required. Only in a narrow range of cases can a party appeal an interlocutory order, and only on grounds that UNDT exceeded its jurisdiction or competence. Appeals against interlocutory orders affecting such matters as evidence, procedure and trial conduct are not receivable, at least not until they may form part of an appeal against the UNDT's substantive judgment.

## Outcome

Appeal dismissed on merits

Outcome Extra Text

N/A

Full judgment

[Full judgment](#)

Applicants/Appellants

Asr Ahmed Toson

Entity

UNFPA

Case Number(s)

2020-1494

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2021

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Interlocutory or interim appeal / Appeal of UNDT order to UNAT

Receivability

Jurisdiction / receivability (UNAT)

Interlocutory appeal

Applicable Law

UNAT Statute

- Article 2
- Article 8.2

UNDT RoP

- Article 15.7

UNDT Statute

- Article 9

Related Judgments and Orders

2011-UNAT-160

2020-UNAT-1058

2020-UNAT-979