

2022-UNAT-1307, ASR AHMED TOSON

UNAT Held or UNDT Pronouncements

The UNAT dismissed the interlocutory appeal as not receivable on grounds that the UNDT had not clearly exceeded its competence or jurisdiction or assumed a jurisdiction it did not have when it consolidated Mr. Toson's cases. The UNAT also agreed with the Secretary-General that Mr. Toson had advanced similar unsuccessful arguments in an earlier UNAT case that he brought, but Mr. Toson refused to be guided by that judgment prior to pursuing the present appeal. The UNAT put Mr. Toson on notice that he risks incurring an award of costs for vexatious litigation if he persists in pursuing the same unmeritorious points. The UNAT also rejected Mr. Toson's claim that the UNDT consolidation order had the effect of delaying his proceedings, noting that actually it was Mr. Toson's bringing of an unmeritorious appeal that created delay.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Toson, a UNFPA staff member, filed two separate applications, the first challenging the decision by OAIIS not to provide him with a copy of its investigation report into his complaint of retaliation by his supervisor; and the second challenging the decision of the Executive Director of UNFPA that there had been no retaliation against Mr. Toson and that his complaint had been closed. By Order No. 188 (UNDT/2021), the UNDT made certain directions/orders in preparation for the hearing of Mr. Toson's proceedings, including an order that the two cases be consolidated. Mr. Toson appealed the UNDT's Order of 6 December 2021 to consolidate the two cases.

Legal Principle(s)

Article 2(1) of the UNAT Statute provides rights of appeal in respect of a "judgment rendered by the [UNDT]". The established jurisprudence of the UNAT is that to be

receivable, an appeal must be from a substantive judgment and not a pre-trial direction or interlocutory order. Such an appeal from a pre-trial direction or interlocutory order may be receivable, however, if it is alleged that the UNDT clearly exceeded its competence or jurisdiction, or if it assumed a jurisdiction it does not have. The UNDT is inarguably empowered to consolidate cases for its hearing of them. Such an interlocutory direction is capable of review and rectification on appeal from the UNDT's substantive judgment following such a direction. But that review is limited to situations in which it is subsequently decided that the UNDT erred in fact, law or procedure, or exceeded the jurisdiction vested in it, by either consolidating or declining to consolidate the cases. If the judgment is that the cases were wrongly consolidated and that this amounted to an error of law or constituted one of the other grounds upon which an appeal may be allowed, then the available remedies may include remanding the cases to the UNDT for unconsolidated hearings.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

ASR AHMED TOSON

Entity

UNFPA

Case Number(s)

2021-1641

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Dec 2022

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Receivability

Interlocutory appeal

Case management

Costs

Interlocutory or interim appeal / Appeal of UNDT order to UNAT

Jurisdiction / receivability (UNAT)

Procedure (first instance and UNAT)

Abuse of process before UNDT/UNAT

Applicable Law

UNAT RoP

- Article 18

UNAT Statute

- Article 2.1

Related Judgments and Orders

2021-UNAT-1116

2021-UNAT-1160