

# 002 (NBI/2024), Francis Fultang

## UNAT Held or UNDT Pronouncements

1. The Tribunal noted that the Applicant had previously raised the same issue before both the Dispute Tribunal (*Fultang* UNDT/2022/102) and the Appeals Tribunal (*Fultang* UNAT-2023-1403). The Dispute Tribunal had found the documents in question admissible. The Appeals Tribunal affirmed this finding.
2. The Tribunal, therefore, held that since the issue had been fully litigated by the parties previously, it was subject to the doctrine of *res judicata*. Thus, the subject documents were deemed admissible in the proceedings.
3. The Tribunal further concluded that even if the issue had not previously been adjudicated, the documents would still be deemed non-privileged and admissible because no privilege attaches to communications with MEU. The MEU is part of the Administration and the management evaluation process is an administrative review of administrative decisions. As such it is not akin to a mediation or settlement process to which some privileges attach.
4. Accordingly, the Tribunal decided that the receipts in question were admissible and the Applicant's objection to those receipts was overruled.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the admissibility of receipts produced in the course of discussions before the Management Evaluation Unit (MEU).

## Legal Principle(s)

1. Pursuant to the settled jurisprudence, a matter that has been fully litigated by the parties previously is subject to the doctrine of *res judicata*.
2. No privilege attaches to communications with the Management Evaluation Unit.

## Outcome

Other motion denied

## Outcome Extra Text

## Full order

[Full order](#)

## Individual Party

Francis Fultang

## Entity

UNISFA

## Case Number(s)

UNDT/NBI/2023/010

## Tribunal

UNDT

## Registry

Nairobi

## Date of Order

11 Jan 2024

## Duty Judge

Wallace

## Language of Order

English

## Issuance Type

Order

## Categories/Subcategories

Other

## Applicable Law

UNDT RoP

- Article 18.1