



# UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

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Judgment No. 2024-UNAT-1508

**Adolphe Irambona  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

## **JUDGMENT**

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Before:	Judge Nassib G. Ziadé, Presiding Judge Gao Xiaoli Judge Kanwaldeep Sandhu
Case No.:	2023-1881
Date of Decision:	25 October 2024
Date of Publication:	27 December 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Noam Wiener

**JUDGE NASSIB G. ZIADÉ, PRESIDING.**

1. Mr. Adolphe Irambona, a former staff member of the former Office of the Special Envoy of the Secretary-General for Burundi (OSESG-B), contested several decisions:
  - (a) an implied decision to refer the allegation of theft, of which he was accused, to Burundian national authorities (first contested decision);
  - (b) an implied decision to waive his immunity in relation to the theft case (second contested decision); and
  - (c) a decision to retain monies paid by him to the United Nations in connection with the theft allegation (third contested decision).<sup>1</sup>
2. By Judgment No. UNDT/2023/114 (impugned Judgment),<sup>2</sup> the United Nations Dispute Tribunal (UNDT) dismissed the application as not receivable.
3. Mr. Irambona lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure<sup>3</sup>**

5. Mr. Irambona served at the OSESG-B as Administrative Assistant at the G-6/X level with responsibility for payments to local vendors from cash that was stored in a safe in the OSESG-B compound.<sup>4</sup>
6. According to Office protocol, access to the safe required two sets of keys.<sup>5</sup> Mr. Irambona kept one set of keys while the other set was kept in the Office of the Chief of Mission Support (CMS).

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<sup>1</sup> Mr. Irambona's challenge to a fourth decision not to pay his last month's salary and separation entitlements was withdrawn as moot (impugned Judgment, footnote 15) and is not before us on appeal.

<sup>2</sup> *Irambona v. Secretary-General of the United Nations*, Judgment dated 12 October 2023.

<sup>3</sup> Summarized from the impugned Judgment as relevant to the appeal.

<sup>4</sup> Impugned Judgment, para. 5.

<sup>5</sup> *Ibid.*, para. 6.

7. The OSESG-B closed on 31 May 2021.<sup>6</sup>

8. Mr. Irambona, having received the second set of keys either on Friday, 18 June 2021 or Monday, 21 June 2021, returned it to the CMS in the evening of 22 June 2021.<sup>7</sup> The same evening, the CMS also collected the first set of keys from him. The next morning, the CMS and other OSESG-B personnel gathered to open the safe but were not able to. Upon the CMS's request, the safe was broken into. Upon opening the safe, the CMS, Mr. Irambona, and other OSESG-B personnel established that Burundian francs (BIF) 16,672,117<sup>8</sup> and USD 12,000 in cash were missing from the safe. The CMS and Mr. Irambona were interviewed regarding the circumstances surrounding the missing money. Eventually that day, he wrote and signed the following statement:

I, Adolphe Irambona, accept that I lost the money that were in the safe while I was with all the keys for the cashier office (12,000\$ and 17,900,500 BIF). I accept to do my best to pay the lost funds by tomorrow 24/06/2021 before 12 hours. Fail to which police action should be taken against me. The funds are for the OSESG-Burundi. I am an administrative assistant.

9. The next day, 24 June 2021, Mr. Irambona made a payment to the OSESG-B of BIF 10,500,000.00.<sup>9</sup> On the same day, having been unsuccessful in collecting the entire sum, he wrote and signed a second statement:

I, Adolphe Irambona, I am handing over ten million and five hundred thousand (10,500,000.00 BIF) to [a Security Officer (SO)] as part of the payment of the lost money from the Impact Funds. The remaining amount will be paid by tomorrow 25/06/2021. According to the management, this is the last additional day and if I fail to this agreement[,] police action should be taken against me.

10. As Mr. Irambona did not pay the balance, on 25 June 2021, a criminal complaint was filed with the police and he was handed over to the local authorities—he was taken by United Nations security personnel to the Burundian police and placed into custody—and he was interrogated by the local police regarding the theft.<sup>10</sup>

<sup>6</sup> *Ibid.*, para. 20.

<sup>7</sup> *Ibid.*, paras. 7-17.

<sup>8</sup> The actual amount of missing Burundian francs might have been BIF 17,900,500 (appeal brief, para. 6; answer brief, para. 7). According to Mr. Irambona, the exact amount of money that was missing remains unknown.

<sup>9</sup> Impugned Judgment, paras. 18 and 59.

<sup>10</sup> *Ibid.*, paras. 19 and 42.

11. Due to the closure of the OSESG-B, he was separated from service effective 1 July 2021.<sup>11</sup>
12. On 6 July 2021, the Investigations Division of the Office of Internal Oversight Services (OIOS) received from the CMS a report of possible unsatisfactory conduct implicating Mr. Irambona.<sup>12</sup> On 11 August 2021, OIOS advised the Under-Secretary-General (USG), Department of Political and Peacebuilding Affairs (DPPA), that after initial assessment, OIOS considered that this matter would best be handled by the Office of the USG and referred it accordingly.
13. On 14 July 2021, Mr. Irambona deposited BIF 15,000,000 in a United Nations account at the Interbank Burundi.<sup>13</sup>
14. On 15 July 2021, he was released from the custody of the Burundian authorities.<sup>14</sup>
15. On 18 October 2021, Mr. Irambona's counsel wrote to the United Nations Department of Safety and Security (UNDSS) in Burundi to ask, among other questions, whether there had been a decision to waive immunity in his case and whether there was an ongoing investigation.<sup>15</sup>
16. On 2 December 2021, Mr. Irambona filed a request for management evaluation (MER) of the contested decisions.<sup>16</sup>
17. On 10 February 2022, DPPA informed OIOS that the Administration had decided not to go forward with a disciplinary process against Mr. Irambona for reasons of efficiency and economy.<sup>17</sup>
18. The Management Evaluation Unit (MEU) replied to Mr. Irambona's MER on 14 April 2022.<sup>18</sup> It found that his MER was not receivable, as it was time-barred regarding the first and second contested decisions, and the third was not a decision attributable to the Administration.<sup>19</sup>
19. On 14 April 2022, Mr. Irambona filed his application with the UNDT.<sup>20</sup>

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<sup>11</sup> *Ibid.*, para. 20.

<sup>12</sup> 11 August 2021 e-mail from OIOS.

<sup>13</sup> Impugned Judgment, para. 21.

<sup>14</sup> *Ibid.*, para. 22.

<sup>15</sup> *Ibid.*, para. 24.

<sup>16</sup> *Ibid.*, para. 25.

<sup>17</sup> *Ibid.*, para. 26.

<sup>18</sup> *Ibid.*, para. 27.

<sup>19</sup> 14 April 2022 letter from the MEU.

<sup>20</sup> Impugned Judgment, para. 1.

20. On 25 April 2022, the Organization processed payment of all entitlements due to Mr. Irambona, except for the pension fund which was to be processed separately.<sup>21</sup>

*The impugned Judgment*

21. By Judgment No. UNDT/2023/114 dated 12 October 2023, the UNDT dismissed the application.

22. With regard to the receivability of the application in respect of the first and second contested decisions, the UNDT found that since the decisions were “implied”, their exact date could not be ascertained.<sup>22</sup> Mr. Irambona knew about the implied decision to refer the theft allegation to the Burundian national authorities and should reasonably have known about the related implied decision to waive immunity in relation to those allegations on 25 June 2021. Although he claims that he received the criminal complaint from the prosecutor on 1 November 2021, he did not testify to this, and there is no evidence to support his claim. Thus, the deadline for requesting management evaluation was 23 September 2021. Mr. Irambona’s MER would have been overdue even if the Tribunal were to toll the time for requesting management evaluation for the period when he was in custody.

23. The UNDT held that although Mr. Irambona had testified that he had filed the MER in early September 2021, there was nothing in the record to support this testimony, and it was not credible.<sup>23</sup> The record reflects that the MER was not filed until 2 December 2021. The letter of 18 October 2021 from Mr. Irambona’s counsel asking whether there was a decision to waive immunity cannot reset the clock.

24. Turning to the third contested decision, the UNDT termed it an “implied decision not to return the money” and found that the analysis was similar.<sup>24</sup> According to Mr. Irambona’s testimony, and the two written statements that he signed, he was directed by the Organization to pay these monies and did so. A direction to pay money implies that the money will not be returned. Thus, he knew or should have known, at the time he paid the money, that the money would not be returned to him. The final payment was made by him on 14 July 2021. Therefore, the deadline for

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<sup>21</sup> *Ibid.*, para. 29.

<sup>22</sup> *Ibid.*, paras. 41-43.

<sup>23</sup> *Ibid.*, paras. 44-45.

<sup>24</sup> *Ibid.*, paras. 47-49.

requesting management evaluation was 12 October 2021 (or perhaps 13 October 2021 if the period was tolled for the additional day when he was in custody).

25. The UNDT disagreed with Mr. Irambona's view that the third contested decision was one of continuous implementation.<sup>25</sup> The implied decision not to return the money was commenced and implemented simultaneously, at the time that the Administration received the money from him.

26. The UNDT added that even if Mr. Irambona's third challenge were receivable, it would fail on the merits.<sup>26</sup> On their face, the documents indicate that the money belongs to the Organization. On the points that are inconsistent with the testimonies of other witnesses, his testimony is not credible.<sup>27</sup> The evidence does not support that either of Mr. Irambona's signed statements was the result of duress from the Administration. His testimony that he had understood that the money would be returned to him after an investigation is not credible.<sup>28</sup> He has failed to sustain his burden of proving by clear and convincing evidence that the decision not to return the money was irrational, unreasonable, or unfair in any manner.<sup>29</sup>

#### *Procedure before the Appeals Tribunal*

27. On 11 December 2023, Mr. Irambona filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General filed an answer on 19 February 2024.

### **Submissions**

#### **Mr. Irambona's Appeal**

28. Mr. Irambona requests the Appeals Tribunal to review the impugned Judgment and to grant the requested remedies, order that the United Nations withdraw the complaint made to the Burundian authorities and that all monies paid by him to the United Nations in connection with

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<sup>25</sup> *Ibid.*, paras. 51-56.

<sup>26</sup> *Ibid.*, paras. 58-93.

<sup>27</sup> The UNDT noted that the SO and the Chief Security Adviser (CSA) for UNDSS in Burundi had testified that Mr. Irambona had volunteered to pay the money in order for the matter not to go any further beyond the office level and their testimony seemed more plausible and credible than his (impugned Judgment, para. 74).

<sup>28</sup> The UNDT noted that Mr. Irambona's testimony on that point was contradicted by his contemporaneous statements, which made no mention of a possibility of returning the money, the testimonies of the SO, the CSA and the CMS, and his lack of enquiry into or pursuit of any investigation which would clear him of liability (impugned Judgment, paras. 86-88).

<sup>29</sup> *Ibid.*, para. 93.

the alleged theft be returned to him with interest at the US Prime Rate, and order compensation for moral harm<sup>30</sup> in the amount of two years' net base salary.

29. Introducing a “decision to restrain [him] in a prefab container and in a military camp for two days and two nights” and referring also to the decision not to pay his last month's salary, separation entitlements and the decision not to process his separation, Mr. Irambona submits that the UNDT's errors led to a manifestly unreasonable resolution of sustaining all five administrative decisions. In addition, the Administration's decision not to go forward with a disciplinary process confirms that an investigation was planned. As this investigation did not charge him with misconduct, the contested decisions are wrong. He made the payment only with the understanding that the monies would be held pending the investigation and returned to him when the results of the investigation clear him of the theft allegation.

30. Mr. Irambona disputes the facts of the impugned Judgment. The amount of Burundian francs the UNDT understood to have been missing was different from the amount stated in the complaint to the prosecutor (BIF 17,900,500) and the amount the Administration forced him to sign for as misplaced (BIF 17,436,037). The UNDT was lost and did not make a correct analysis of the contradictions in the Secretary-General's statements. This led to an illogical conclusion. Furthermore, the UNDT misunderstood his testimony. The UNDT has also failed in its analysis of the situation of coercion. The testimonies of the SO and the CSA confirm that he was confined in a hot container.

31. Turning to receivability, Mr. Irambona argues that the UNDT erred on a question of law in its reasoning by not considering that the decision not to pay his last month's salary and separation entitlements had been communicated to him on 1 November 2021 and therefore his MER was timely.

32. Mr. Irambona contends that the UNDT exceeded its jurisdiction by not condemning the way the Administration had taken measures against him which it did not have the power to do. The UNDT did not take into account that since he had not been informed of the implied contested decisions, the Administration could not and may not argue that his MER was untimely. Furthermore, in the alternative, the time limit for requesting management evaluation should run

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<sup>30</sup> Mr. Irambona refers to the deprivation of his liberty from 23 to 25 June 2021 by United Nations staff and by the Burundian military and from 25 June to 15 July 2021 by the Burundian authorities, including solitary confinement for 11 days.

from 1 November 2021 when he received from the prosecutor the criminal complaint filed against him.

33. Mr. Irambona maintains that the UNDT did not consider that the third contested decision was a decision of continuous implementation. In the alternative, since the Administration has failed to inform him of any details regarding how long and on what conditions these monies may be retained, such decision is implied which allows the approach that the challenge was not untimely.

34. On the merits of his application, Mr. Irambona submits that the contested decisions are unlawful and that the witnesses apparently attempted to “extort monies” from him, and he refers to the statements of the CMS, the SO and the CSA. He was verbally promised that the investigation would be carried out and the money returned to him if cleared of the allegations of theft. By failing to condemn his confinement in a container for two days and to take action against the submission, *ultra vires*, of the criminal complaint by the CMS to the local authorities on behalf of the United Nations, the UNDT exceeded its jurisdiction and erred in law. The witness statements the UNDT relied on had contradictions and discrepancies.

35. Lastly, Mr. Irambona argues that the UNDT failed to exercise jurisdiction vested in it as it took no action in relation to the failure of the Administration to comply with the obligation to report his detention to the United Nations Headquarters.

### **The Secretary-General’s Answer**

36. The Secretary-General requests the Appeals Tribunal to dismiss the appeal.

37. The Secretary-General argues that the UNDT correctly held that Mr. Irambona did not timely request management evaluation of the contested decisions.

38. The Secretary-General submits that the implied decisions to report Mr. Irambona to the local authorities and to waive immunity are not administrative decisions reviewable by the Tribunals as they do not relate to his terms of employment and therefore any argument that he filed on time is irrelevant. Similarly, reporting suspicions that a crime has taken place is not a reviewable administrative decision as it also addresses the relationship between the Organization and the Member State, and not the employment relationship between a staff member and the Organization.



39. The Secretary-General states that even if the implied decisions constituted contestable administrative decisions, the UNDT was well within its competence when it determined that Mr. Irambona was aware of the first and second contested decisions when he was arrested and interrogated by the local authorities.

40. With regard to the third contested decision, the Secretary-General submits that there was no such administrative decision, as Mr. Irambona decided to remit funds to the Organization and, therefore, he has no cause of action from the outset. However, even if such an administrative decision had been taken, the UNDT correctly held that the application was not receivable as it would have taken place on 24 June and 14 July 2021. The third contested decision was no more a continuing action than any other administrative decision. After careful review of the evidence and after hearing him and the other witnesses over three days of oral hearings, the UNDT found that he had known he was remitting funds to compensate the Organization for the money that had been stolen from the safe.

41. The Secretary-General argues that the appeal should also be denied on the ground that Mr. Irambona's challenge of the fourth decision not to pay his last month's salary and separation benefits is moot since before the impugned Judgment was issued. The payment of his last month's salary and any other payments, including separation benefits, was effectuated on 25 April 2022.

### Considerations

42. This appeal raises an important question regarding the receivability of an application challenging a waiver of immunity which, while not ultimately dispositive for the reasons discussed below, must be addressed in the first instance.

43. Mr. Irambona challenges the Organization's decision to file a criminal complaint and hand him over to local authorities for detention, investigation, and possible prosecution. Mr. Irambona contends that these actions violated the immunity provided to him as a staff member of the United Nations.<sup>31</sup> The Secretary-General contends that such actions are not administrative decisions but instead fall squarely within the unreviewable discretionary

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<sup>31</sup> See Charter of the United Nations (Charter), Article 105(2); Convention on the Privileges and Immunities of the United Nations (United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1)), Article V, Section 18; Staff Regulation 1.1(f) (ST/SGB/2018/1/Rev.1).

authority of the Secretary-General as executive or policy decisions outside the ambit of review by this Tribunal.

44. We do not accept the Secretary-General's categorical contention regarding receivability.

45. The UNDT Statute provides that the Dispute Tribunal is competent to pass judgment on administrative decisions that are alleged to be in non-compliance with the terms of appointment or contract of employment of a staff member.<sup>32</sup> Staff Regulations acknowledge that staff members are "conferred" the privileges and immunities set forth in Article 105 of the UN Charter, subject to waiver by the Secretary-General.<sup>33</sup>

46. The issue presented is thus whether a staff member may ever challenge a decision to waive immunity or whether, as the Secretary-General contends, even implicit or informal waivers of immunity are beyond review. We recall that in *Kozul-Wright* the Appeals Tribunal has held that decisions to formally waive immunity for actions which do not directly involve the employment relationship are non-reviewable executive or policy decisions.<sup>34</sup> In that matter, a private lease dispute had arisen between the staff member and his landlord, in which the staff member sought, and was denied, a formal extension of immunity from pre-existing domestic legal proceedings. The Tribunal in that matter determined that the decision not to intervene in a pre-existing legal proceeding involving a staff member was not reviewable by an adjudicatory tribunal in light of the political factors which the Secretary-General necessarily must take into account in making such a decision.<sup>35</sup>

47. Mr. Irambona's case is fundamentally different. The underlying facts involve Mr. Irambona's conduct as a United Nations staff member towards his employer. The OSESG-B initiated a preliminary investigation into Mr. Irambona, reached agreements with him regarding repayment, and then sought initiation of criminal proceedings by filing a criminal complaint and delivering Mr. Irambona to the local police. These actions do not invoke the same concerns of politics and comity which were crucial to the Tribunal's decision in *Kozul-Wright*. Accordingly, we do not hold that the challenged submission of the criminal complaint and associated actions were themselves not receivable *ratione materiae*. Rather, the particular factual context of this matter—involving the request by the Organization to initiate proceedings

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<sup>32</sup> UNDT Statute, Article 2(1).

<sup>33</sup> Staff Regulation 1.1(f).

<sup>34</sup> *Kozul-Wright v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-843, para. 62.

<sup>35</sup> *Ibid.*, paras. 62-63.

against a staff member based on conduct in his capacity as a staff member—taken together with the underlying internal justice regime which affords staff members the right to seek independent review of actions potentially violative of their terms and conditions of employment, leads us to conclude that if Mr. Irambona’s application had been timely filed, the UNDT should have been competent to review the application on the merits.

48. However, we do not reach the merits of the issue, because we conclude that the UNDT was correct in finding that Mr. Irambona failed to request management evaluation in a timely manner.

49. Mr. Irambona challenges three decisions by OSESG-B: (a) referring the allegation of theft to Burundian authorities; (b) waiving his immunity in connection with that referral; and (c) retaining funds he had paid to the United Nations. The referral and claimed waiver of immunity both occurred no later than 25 June 2021, when the criminal complaint was filed, and Mr. Irambona was taken by United Nations personnel to the local police. The last date on which Mr. Irambona transmitted funds to the United Nations account was 14 July 2021, as a belated fulfillment of his written commitment of 24 June 2021.

50. An application to the UNDT is “receivable if (...) [a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”.<sup>36</sup> Assuming, *arguendo*, that the contested decisions were, as a matter of law, administrative decisions, Mr. Irambona was required by the Staff Rules to first submit a request for management evaluation within 60 calendar days from the date on which he knew of each decision.<sup>37</sup> This applies to both explicit and implied administrative decisions.<sup>38</sup>

51. Mr. Irambona submitted his request for management evaluation on 2 December 2021, which was well beyond the 60-day limit to make such a request for any of the three contested decisions (made, at the latest, in June and July 2021). Accordingly, the UNDT was correct to hold that Mr. Irambona’s application was not receivable.<sup>39</sup>

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<sup>36</sup> UNDT Statute, Article 8(1)(c).

<sup>37</sup> Staff Rule 11.2 (ST/SGB/2018/1/Rev.1). Although reaching the same ultimate conclusion, the UNDT appears to have erroneously applied a 90-day time limit in its analysis, *see, e.g.*, impugned Judgment, paras. 42, 43 and 49.

<sup>38</sup> *Awan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-588, para. 18.

<sup>39</sup> *Kissila v. Secretary-General of the United Nations*, 2014-UNAT-470, para. 23.

52. Mr. Irambona contends, with respect to receivability, that he only formally learned of the Administration's actions with respect to the criminal proceedings on 1 November 2021, when, he says, he first received the criminal complaint filed against him. He further contends that the challenged refusal to return funds to him is a continuing violation, rendering his request for management evaluation timely. We address each of these contentions in turn.

53. With respect to the criminal proceedings, Mr. Irambona signed statements on 23 and 24 June 2021 affirming that if he failed to return the lost funds, "police action should be taken against [him]".<sup>40</sup> On 25 June 2021, after failing to make full repayment, he was taken by United Nations staff to the local authorities, and imprisoned.<sup>41</sup> In light of this objective reality, the date on which Mr. Irambona received the text of the formal criminal complaint is immaterial to the question of receivability. In late June 2021, Mr. Irambona knew, without doubt, that the Organization had reported him to the local authorities with allegations of financial misconduct, and that he was being detained. The later formality of viewing the complaint did not extend or re-start the time for him to request management evaluation. The Appeals Tribunal has consistently held that the date of an explicit and an implied administrative decision is based on objective elements that both parties can accurately determine.<sup>42</sup>

54. Mr. Irambona separately claims that the retention of the funds he deposited on 24 June 2021 and 14 July 2021, is a "decision of continuous implementation" which may be challenged at any time.<sup>43</sup> This contention lacks merit. The Organization demanded repayment of the lost funds, Mr. Irambona promised in June 2021 to repay the missing funds and fulfilled that obligation by 14 July 2021. The subsequent retention of these funds was nothing more than a carrying out of the initial decision to demand and accept repayment, which did not extend the deadline to request management evaluation.<sup>44</sup>

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<sup>40</sup> Impugned Judgment, paras. 17-18.

<sup>41</sup> *Ibid.*, paras. 19 and 22.

<sup>42</sup> *Adnan-Tolon v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-970, para. 29; *Awan* Judgment, *op. cit.*, para. 19.

<sup>43</sup> Appeal brief, para. 26.

<sup>44</sup> *Adnan-Tolon* Judgment, *op. cit.*, para. 32.

**Judgment**

55. Mr. Irambona's appeal is dismissed, and Judgment No. UNDT/2023/114 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25<sup>th</sup> day of October 2024 in New York, United States.

*(Signed)*

Judge Ziadé, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Sandhu

Judgment published and entered into the Register on this 27<sup>th</sup> day of December 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar