



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

Case No. 2023-1883

**Mohamed Ben Madi**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**Order No. 548 (2024)**

1. On 15 December 2023, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York issued Order No. 145 (NY/2023) (the impugned Order) in the matter of *Mohamed Ben Madi v. Secretary-General of the United Nations*, in which it denied Mr. Mohamed Ben Madi's application for suspension of action. Mr. Ben Madi had applied for suspension of a decision by the United Nations Populations Fund (UNFPA) not to renew his fixed-term appointment beyond 31 December 2023. The UNDT dismissed his application because it found that the lack of funds in the UNFPA Libya Country Office where Mr. Ben Madi worked, was a justifiable basis for non-renewal and therefore the non-renewal decision was *prima facie* lawful.

2. On 21 December 2023, Mr. Ben Madi filed a Motion for Interim Measures with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) in relation to the impugned Order. In the Motion, Mr. Ben Madi requests (i) a suspension of the non-renewal decision, and (ii) a reinstatement to his previous position, until his appeal has been decided.

3. On 5 January 2024, the Secretary-General filed his comments to the Motion. The Secretary-General submits that the Motion is not receivable because it is effectively an interlocutory appeal against the UNDT's decision on suspension of action. Further, the Secretary-General submits that Mr. Ben Madi's request for interim measures is premature and does not satisfy the requirements of temporary relief set out in Article 9(4) of the Statute of the Appeals Tribunal (UNAT Statute).

4. Article 2(2) of the Statute of the Dispute Tribunal (UNDT Statute) states:

The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

5. In addition, Article 10(2) of the UNDT Statute gives the Dispute Tribunal discretion to:

order interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

6. The Appeals Tribunal has held that an appeal of the Dispute Tribunal's decisions on applications under Articles 2(2) and 10(2) of the UNDT Statute can only be receivable if the Dispute Tribunal, in the course of making the determination, has clearly exceeded its jurisdiction.<sup>1</sup>

7. Here, Mr. Ben Madi's Motion is analogous to the Appeals Tribunal's decision in *Igunda*, in which the applicant appealed against the UNDT's decision that dismissed his application for suspension of action regarding the non-renewal of his fixed-term appointment. The UNAT held that (i) the applicant did not allege that the Dispute Tribunal had exceeded its jurisdiction or competence in refusing the suspension application, and (ii) it was entirely within the Dispute Tribunal's competence and jurisdiction to review the requirements in Article 2(2) of the UNDT Statute and consider whether the impugned decision appeared to be *prima facie* unlawful.<sup>2</sup> Because Article 2(2) of the UNDT Statute precludes an appeal if the Dispute Tribunal acts within its jurisdiction or competence, the UNAT dismissed his appeal.

---

<sup>1</sup> *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT 330.

<sup>2</sup> *Igunda v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-979, para. 21.

8. I find that the same rationale applies to Mr. Ben Madi's Motion. Mr. Ben Madi's Motion is not receivable because the impugned Order was not appealable under Article 2(2) of the UNDT Statute, and the UNDT acted within its competence and jurisdiction in finding that the non-renewal decision was *prima facie* lawful.

9. In addition, Article 9(4) of the Statute of the Appeals Tribunal (UNAT Statute) provides that "[a]t any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgment of the Dispute Tribunal". Notably, in this case, there is no final judgment on the merits of Mr. Ben Madi's claims. Indeed, he has not yet filed an application on the non-renewal decision before the UNDT because the management evaluation process is still pending.

10. The Appeals Tribunal has consistently held that "an interim measure of relief is subject to very strict requirements; such relief is available to protect a litigant from the likelihood of irreparable harm, who the Dispute Tribunal believes is likely to succeed at trial or the Appeals Tribunal believes is likely to succeed on appeal."<sup>3</sup>

11. Moreover, the Appeals Tribunal has previously held that Article 9(4) requires "in effect, that any interim order will maintain the *status quo* established by the UNDT's Judgment."<sup>4</sup>

12. I find that, in the present case, Mr. Ben Madi's request for reinstatement to his previous position cannot be considered as "temporary relief to prevent irreparable harm". It is instead an interlocutory appeal of the denial of the suspension of action which is not permitted. Nor would granting his request maintain consistency with the UNDT Judgment, which has not yet been rendered.

13. For these reasons, the Motion must be dismissed.

---

<sup>3</sup> *Nadine Kaddoura v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 409 (2021), para. 6.

<sup>4</sup> *Leopold Camille Yodjeu Ntemde v. Secretary-General of the United Nations*, Order No. 487 (2022), para.5.

**IT IS HEREBY ORDERED** that Mr. Mohamed Ben Madi's Motion for Interim Measures is **DENIED**.

Original and Authoritative Version: English

Decision dated this 11<sup>th</sup> day of January 2024  
in Beijing, China.

*(Signed)*  
Judge Gao Xiaoli,  
President

Order published and entered in the Register on this  
11<sup>th</sup> day of January 2024 in New York, United States.

*(Signed)*  
Juliet E. Johnson,  
Registrar