



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

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Judgment No. 2025-UNAT-1578

**Zekriat Swaidan**  
**(Appellant)**

**v.**

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

## **JUDGMENT**

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| Before:              | Judge Kanwaldeep Sandhu, Presiding<br>Judge Nassib G. Ziadé<br>Judge Katharine Mary Savage |
| Case No.:            | 2024-1963                                                                                  |
| Date of Decision:    | 27 June 2025                                                                               |
| Date of Publication: | 3 September 2025                                                                           |
| Registrar:           | Juliet E. Johnson                                                                          |

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|-------------------------|----------------------|
| Counsel for Appellant:  | Self-represented     |
| Counsel for Respondent: | Francisca Lagos Pola |

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Ms. Zekriat Swaidan, a staff member of the United Nations High Commissioner for Refugees (UNHCR) in Beirut, Lebanon, contested one or more non-selection decisions.
2. In Judgment No. UNDT/2024/058 (impugned Judgment),<sup>1</sup> the United Nations Dispute Tribunal (UNDT) dismissed the application. Ms. Swaidan appeals to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
3. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure<sup>2</sup>**

4. Ms. Swaidan joined UNHCR in 1996. In 2016, she was promoted to the post of Senior Regional Human Resources Officer, at P-4, at the South Africa Regional Office in Pretoria, South Africa.<sup>3</sup> She held an indefinite appointment. From 16 February 2020, she was on assignment as Senior Human Resources Officer, at P-4, in Beirut, Lebanon.<sup>4</sup>
5. In 2019, Ms. Swaidan applied to the post of Senior Human Resources Partner, P-5, at the South Africa Regional Office in Pretoria, South Africa (Pretoria Post). She was not shortlisted, meaning that she was not selected (First Non-Selection Decision). On 7 August 2019, she submitted a request for management evaluation (MER) of the First Non-Selection Decision. In the response letter dated 20 December 2019, the Deputy High Commissioner noted that there had been a procedural irregularity at the shortlisting stage but upheld the First Non-Selection Decision.<sup>5</sup>
6. On 21 December 2022, UNHCR advertised the vacancy for a Senior Human Resources Officer in the Regional Bureau for the Middle East and Northern Africa (RBMENA) in Amman, Jordan (Amman Post). Ms. Swaidan applied and was shortlisted with two other internal

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<sup>1</sup> *Swaidan v. Secretary-General of the United Nations*, Judgment dated 11 September 2024.

<sup>2</sup> Summarized from the impugned Judgment as relevant to the appeal.

<sup>3</sup> Impugned Judgment, para. 2. The South Africa Regional Office would later be incorporated into the Regional Bureau for Southern Africa.

<sup>4</sup> Summary Fact Sheet for Ms. Swaidan.

<sup>5</sup> 20 December 2019 response to Ms. Swaidan's MER.

candidates. The three shortlisted candidates, including Ms. Swaidan, were interviewed on 6 March 2023.<sup>6</sup>

7. The interview panel drew up an “interview questions and competency” sheet to rank the interviewed candidates. The competencies were: 1. Motivation, 2. Change capability and adaptability, 3. Managerial competency, 4. Strategic vision, and 5. Teamwork. The interview panel asked questions about these competencies.<sup>7</sup>

8. The interview panel did not recommend Ms. Swaidan for the Post because of her low scores, which were said to reflect her failure to address specifically the interview questions and demonstrate appropriate skills and competencies. The Joint Review Board (JRB) endorsed the interview panel’s recommendation at its meeting between 29 to 31 March 2023.<sup>8</sup>

9. On 6 April 2023, the selection of the selected candidate (Selected Candidate) was announced, implying the decision not to select Ms. Swaidan for the Amman Post (Second Non-Selection Decision).<sup>9</sup>

10. On 7 May 2023, Ms. Swaidan requested management evaluation of the Second Non-Selection Decision. By letter dated 16 June 2023, the Deputy High Commissioner responded to the MER, upholding the Second Non-Selection Decision.<sup>10</sup>

11. On 10 September 2023, Ms. Swaidan filed the application with the UNDT, identifying the contested decision as the Second Non-Selection Decision. However, in the summary of the facts, she raised various matters including a reference to the First Non-Selection Decision.

12. On 17 April 2024, Ms. Swaidan applied to the post of Senior Human Resources Partner in the Regional Bureau of the East and Horn of Africa and the Great Lakes in Nairobi, Kenya (Nairobi Post). On 7 June 2024, the selection of the selected candidate was announced, implying the decision not to select Ms. Swaidan for the Nairobi Post (Third Non-Selection Decision).<sup>11</sup> On 19 June 2024, she requested management evaluation of the Third Non-Selection Decision.<sup>12</sup>

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<sup>6</sup> Impugned Judgment, paras. 3-4.

<sup>7</sup> *Ibid.*, para. 5.

<sup>8</sup> *Ibid.*, paras. 6-7.

<sup>9</sup> *Ibid.*, para. 7.

<sup>10</sup> *Ibid.*, paras. 8-9.

<sup>11</sup> Ms. Swaidan’s Closing Submission before the UNDT, para. 2.1.

<sup>12</sup> 2 August 2024 response to Ms. Swaidan’s MER.

13. In her Closing Submission of 25 June 2024 before the UNDT, when the response to her MER was still pending, Ms. Swaidan made submissions in respect of the Third Non-Selection Decision.

14. By letter dated 2 August 2024, the Deputy High Commissioner responded to the MER, upholding the Third Non-Selection Decision.<sup>13</sup>

*The impugned Judgment*

15. The UNDT dismissed the application.

16. The UNDT found that some of Ms. Swaidan's claims were not receivable because they had not been the subject of a MER,<sup>14</sup> her request in respect of the First Non-Selection Decision was not receivable as it was out of time, and her later submission requesting judicial review of the Third Non-Selection Decision was not receivable on the basis that it was premature.<sup>15</sup>

17. Turning to the Second Non-Selection Decision, the UNDT noted that the interview panel had described their observations on and assessment of Ms. Swaidan. They found her replies to be "somewhat unfocused", "rather long and distracted from the subject of the question", and that she "failed to address the specific points of the question".<sup>16</sup>

18. The UNDT found no merit to Ms. Swaidan's claim of bias by the then Head of Human Resources Staff Service (HRSS). The Head of HRSS retired from the Organization in June 2022 and thus could not have been involved in the disputed recruitment which began six months later. Ms. Swaidan has presented no evidence to the contrary. Second, there is no evidence that her pointing out an error in calculating security evacuation allowances in 2020 somehow biased the hiring manager against her in 2023. Third, an objective analysis of the circumstances surrounding the decision also does not lead to establishing unconscious bias or unconscious prejudice. There is no evidence that the panel deviated from its planned questions, asked Ms. Swaidan different questions from those asked of the other candidates, or recorded her answers

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<sup>13</sup> *Ibid.*

<sup>14</sup> The UNDT referred to Ms. Swaidan's request to release her for an emergency roster in July 2015, a calibration exercise in 2014/2015 and payment of the security evacuation allowance after August 2020.

<sup>15</sup> Impugned Judgment, paras. 19-20.

<sup>16</sup> *Ibid.*, paras. 28-29.

inaccurately. In sum, she has failed to meet the burden of showing that bias or improper motive played any role in the Second Non-Selection Decision.<sup>17</sup>

19. The UNDT found that the records indicated that Ms. Swaidan's past performance ratings had not been the cause of her non-selection and, therefore, even assuming that the annexed professional summary printout was used in the recruitment, any irregularity in it showing only four, rather than five, years of performance evaluations had been immaterial. Her claim of a pre-arranged outcome is not supported by any evidence in the record. Her claim that by recommending only one candidate, the hiring manager deprived the Joint Review Board of an opportunity to select her has no merit. The lone fact that the Selected Candidate scored dramatically better than the other shortlisted candidates would justify not sending the other two names to the Joint Review Board.<sup>18</sup>

20. The UNDT concluded that Ms. Swaidan had been given fair and adequate consideration during the selection process and there had not been any discrimination or bias or any material procedural irregularities in the recruitment process leading to her non-selection for the Amman Post.<sup>19</sup>

## **Submissions**

### **Ms. Swaidan's Appeal**

21. Ms. Swaidan requests that the Appeals Tribunal reverse the impugned Judgment and rescind the Second and Third Non-Selection Decisions or order compensation. She requests the Appeals Tribunal to seek information from the Secretary-General concerning various questions, including the restructuring of the Division of Human Resources (DHR) and the reduction of Human Resources staff, the mission of the RBMENA to Lebanon, access to Workday training, and the professional summary for the Joint Review Board provided in the recruitment exercise for the Amman Post.

22. Ms. Swaidan argues that the UNDT failed to exercise jurisdiction vested in it, erred in law and fact and committed an error in procedure, such as to affect the decision of the case.

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<sup>17</sup> *Ibid.*, paras. 28-34.

<sup>18</sup> *Ibid.*, para. 37-40.

<sup>19</sup> *Ibid.*, para. 41.

23. She submits that the UNDT erred in law by not reviewing all the non-selection decisions as a whole. It ignored the substance of the dispute and the similarities in the circumstances of the First and Third Non-Selection Decisions. Further to the issue of receivability, the UNDT failed to exercise jurisdiction vested in it by not requesting the Secretary-General to produce information and documents related to “realignment within the Division of Human Resources”. The UNDT failed to identify the contested decisions, which hindered its ability to draw fair inferences.

24. Ms. Swaidan submits that the UNDT erred on a question of law, namely the standard of proof, by not recognizing all the circumstances giving rise to the application of the principles of good faith and fullest regard in the Second Non-Selection Decision. In the absence of additional information, it was not possible for the UNDT to draw the conclusion that the Secretary-General had minimally shown Ms. Swaidan having been given fair consideration and that there had been no discrimination, bias or material procedural irregularities. Extraneous factors related to a “transitional period” in the Division of Human Resources and parameters of review by the Joint Review Board tainted the outcome of all three recruitment exercises. The UNDT erred when it required evidence of bias to the clear and convincing standard.

25. Ms. Swaidan contends that the UNDT failed to request from the Secretary-General information and documents on the reasons for not issuing an administrative instruction governing the “transitional period”. By failing to address the absence of such administrative instruction, as well as information on the parameters of review of the recruitment exercises leading to the Second and Third Non-Selection Decisions and the plan to terminate the contracts of a considerable number of P-4 Senior Human Resources Officials, the UNDT failed to fulfil its mandate. The UNDT also failed to request from the Secretary-General information and records on the reasons for deploying the mission of the RBMENA to Lebanon in May 2021 and to consider its reputational repercussions, as well as clarification on the issuance of an appropriate information circular and training within the Human Resources community. The UNDT should have determined whether there had been any misrepresentation of the candidates’ records before the Joint Review Board.

26. Lastly, Ms. Swaidan submits that the UNDT failed to consider, ignored and mischaracterized important facts.<sup>20</sup>

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<sup>20</sup> Ms. Swaidan also notes that on 4 June 2024, she was informed of administrative details in relation to the end of her assignment, change on status to staff-in-between assignments effective 1 July 2024, and placement on special leave with pay for nine months, followed by special leave without pay pending assignment or separation.

**The Secretary-General's Answer**

27. The Secretary-General requests the Appeals Tribunal to affirm the impugned Judgment and dismiss the appeal.

28. The Secretary-General submits that the UNDT correctly found that Ms. Swaidan's claims in respect of the First and Third Non-Selection Decisions and other claims unrelated to the contested decision were not receivable. She filed the application several years after receiving the response to her MER regarding the First Non-Selection Decision. As concerns the Third Non-Selection Decision, the UNDT is only competent to hear and pass judgment on administrative decisions challenged in an application, not in closing submissions. Also, her challenge against the Third Non-Selection Decision was not ripe for adjudication on 25 June 2024. There is no evidence on the record that she submitted a MER regarding any of her other claims.

29. The Secretary-General submits that the UNDT correctly found that the Second Non-Selection Decision was lawful. She did not put forward any clear and convincing evidence rebutting the presumption of regularity.

30. The Secretary-General argues that Ms. Swaidan has not demonstrated that the UNDT made any errors warranting reversal of the impugned Judgment. The fact that there had been a procedural irregularity in the first recruitment exercise, and it was acknowledged by the Administration in the response to her MER challenging the First Non-Selection Decision, is not an indication of the Administration's bad faith but of transparency and good faith. The UNDT did not err in finding that there was no evidence of discrimination. There is no indication that irrelevant considerations were considered by the panel members, the hiring manager, the Division of Human Resources, the Joint Review Board or the High Commissioner.

31. The Secretary-General submits that Ms. Swaidan's submission that the UNDT should have requested the production of documents and information on certain matters is disingenuous. The UNDT was under no such obligation.

32. The Secretary-General contends that the other arguments advanced by Ms. Swaidan should also be dismissed. A potential decision to place her on special leave, referred to in the appeal, has not been challenged before the UNDT and falls outside of the purview of these proceedings.

### Considerations

33. Article 2(1) of the Appeals Tribunal Statute (Statute) provides that the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the Dispute Tribunal in which it is asserted that the Dispute Tribunal has: (a) exceeded its jurisdiction or competence; (b) failed to exercise the jurisdiction vested in it; (c) erred on a question of law; (d) committed an error of procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

34. It is well settled that the appeals procedure is of a corrective nature and not an opportunity for a dissatisfied party to reargue his or her case. As the Appeals Tribunal has held in *Kule Kongba*:<sup>21</sup>

A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.

35. In her appeal, Ms. Swaidan restates much of the arguments which were unsuccessful before the UNDT rather than demonstrating that the UNDT committed errors in arriving at its decision. For example, in her appeal, Ms. Swaidan reargues that it “doesn’t serve judicial economy and consistency to, separately, appeal each MER [decision]”, that the UNDT should request related documents from the Administration on vacancies related to a “DHR restructuring/realignment process”, and that she was not given fair and full consideration of her candidacy, including for reasons of alleged bias and discrimination.

36. We find that Ms. Swaidan has not met her burden of showing that the impugned Judgment is defective as required in Article 2(1) of the Statute. Moreover, having reviewed the impugned Judgment, we find that the UNDT did not err in arriving at its decisions for the reasons set out below.

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<sup>21</sup> *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19 (internal citations omitted).



*Receivability*

37. The UNDT found that Ms. Swaidan's application in respect of the First and Third Selection Decisions was not receivable on the basis that the first was out of time and the third was premature. Ms. Swaidan says that her challenges on all claims should be reviewed as a whole due to similarities and a common set of facts. However, the UNDT was correct in dismissing this argument.

38. The First Non-Selection Decision was a stand-alone administrative decision from 2019. There is no evidence that there were "similarities" or a "common set of facts" with this decision and the rest of her claims, other than that they were selection decisions. She had applied for vacancies of different posts, at different times, with different selection processes, and was not selected for different reasons. The UNDT correctly decided that each of these decisions is separate and there was no evidence that they are related.

39. Ms. Swaidan relies on three UNDT cases that do not support her appeal. For example, she cites *Stepanovic* which the UNDT found was "completely inapplicable to the facts of this case".<sup>22</sup> In *Stepanovic*, the claim was that a supervisor stripped the applicant of almost all his functions via a series of decisions and incidents. Here, Ms. Swaidan complains about her non-selections for at least three different vacancies from 2019 to 2024. As for the Judgment in *Torkornoo*, the UNDT granted the applicant's request to consolidate two applications.<sup>23</sup> This is similar to what Ms. Swaidan is attempting to do here with regard to the First Non-Selection Decision. However, in *Torkornoo*, the UNDT found that it could not "ignore" issues of receivability and proceeded to separately review the receivability of different contested decisions.<sup>24</sup>

40. Turning to the decisions before us, the application contesting the First Non-Selection Decision made in 2019 is clearly out of time. Article 8(1)(d)(i) of the UNDT Statute requires that a challenge to an administrative decision be filed within 90 days of receipt of the outcome of management evaluation of the contested decision. The management evaluation response was issued on 20 December 2019. Ms. Swaidan did not file an application to the UNDT until 2023 albeit the application identified the Second Non-Selection Decision as the contested decision. As a result, any application challenging the First Non-Selection Decision is clearly not receivable as out of time or *ratione temporis*.

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<sup>22</sup> *Stepanovic v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/075.

<sup>23</sup> *Torkornoo v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/094.

<sup>24</sup> *Ibid.*, para. 17.

41. As for the Third Non-Selection Decision from 2024, Ms. Swaidan first mentions this decision in her closing submissions before the UNDT. She acknowledged that at the time of the impugned Judgment, management evaluation of this decision was still pending. Therefore, the UNDT correctly found that this challenge was not receivable because it was premature and separate from the Second Non-Selection Decision that was identified as the contested decision in her application to the UNDT. Her challenge against the Third Non-Selection Decision is also therefore not receivable.

*The Second Non-Selection Decision*

42. In the impugned Judgment, the UNDT found that Ms. Swaidan had been given fair and adequate consideration during the selection process underlying the Second Non-Selection Decision.

43. The jurisprudence of this Tribunal in matters of staff selection or promotion is well settled:<sup>25</sup>

The Dispute Tribunal possesses jurisdiction to rescind a selection or promotion process, but may do so only under extremely rare circumstances. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the Dispute Tribunal shall uphold the selection/promotion.

44. Ms. Swaidan says that the UNDT failed to exercise the jurisdiction vested in it by not requesting documents from the Administration relating to the transitional period in the DHR. She seeks that the Appeals Tribunal request from the Administration information on “DHR (...) decisions on realignment and impacted positions”, on “anticipate[d] discontinuation and phasing out, in a gradual manner, [of a] large number of Senior HR Officer positions at P4 Level”, a list of the “number of P4 HR positions that were discontinued”, and “how (...) impacted staff know, during implementation phase, about their rights”.

45. There is no requirement on the UNDT or UNAT to request documents from parties in these circumstances. The onus is on each party to present relevant evidence in support of their case. If there is relevant evidence in the possession of the other party, a party can apply to the Dispute Tribunal to order its production.

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<sup>25</sup> *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para. 20.

46. Similarly, there is no obligation on the Appeals Tribunal to seek evidence. Pursuant to Article 10 of the Rules of Procedure of the Appeals Tribunal, the Appeals Tribunal may only receive new or additional evidence in exceptional circumstances. On its own volition, the Tribunal may order the production of evidence if it is in the interest of justice and the efficient and expeditious resolution of the case, provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal. None of these criteria are met in this instance. There are no exceptional circumstances and there is no indication that the evidence cited by Ms. Swaidan is relevant to the issue of whether she was given fair and adequate consideration in the process leading to the Second Non-Selection Decision. If so, it should have been presented to the Dispute Tribunal or an order that it be produced sought at that time.

47. We reiterate the standard of judicial review as stated in *Savadogo*:<sup>26</sup>

In reviewing administrative decisions regarding appointments and promotions, the factors to be considered are: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; (2) whether the staff member was given fair and adequate consideration, and (3) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration.

48. Ms. Swaidan argues that the UNDT failed to apply the correct standard of proof regarding her allegation of bias and discrimination when it required evidence of bias to the clear and convincing standard.

49. However, the Appeals Tribunal has previously held in *Toson* that:<sup>27</sup>

[T]here is a “presumption of regularity” that official acts have been regularly performed. This presumption arises if the management can minimally show that staff member's candidature was given (...) full and fair consideration. Thereafter the burden of proof shifts to the staff member who must show through “clear and convincing evidence” they have been denied a fair chance of promotion or selection.

50. There is no question that the Administration minimally showed that Ms. Swaidan's candidature was given full and fair consideration. The basis for the selection of the

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<sup>26</sup> *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 40 (internal citations omitted).

<sup>27</sup> *Asr Ahmed Toson v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1249, para. 29 (internal citation omitted).

Selected Candidate, rather than Ms. Swaidan, was reasonable and supported by the record. The UNDT reviewed the record of the interview panel and the scoring and ranking of the candidates and found that the Selected Candidate had been consistently scored far above Ms. Swaidan and the other candidate based on the scoring and observations and assessment of the answers to questions. The Administration followed the procedure laid down in UNHCR Policy UNHCR/HCP/2022/07 (Recruitment and Assignments Policy) and was able to minimally show that Ms. Swaidan's candidature had been given full and fair consideration.

51. The onus then shifted to Ms. Swaidan to provide clear and convincing evidence that she had been denied a fair chance of selection. The UNDT, having reviewed her allegations of bias (both conscious and unconscious) and discrimination, correctly found that these allegations were unsupported by clear and convincing evidence. Her claim of bias by a previous HRSS is irrelevant as the HRSS had retired from the Organization prior to the selection process. Further, there was no evidence that a manager involved in security evacuation allowances in 2020 had somehow been biased against Ms. Swaidan despite obviously cordial e-mail communications between them. There is also no evidence of procedural irregularities in the selection process, no evidence that the panel deviated from planned questions or inaccurately recorded Ms. Swaidan's answers nor evidence that her past performance ratings was the cause of her non-selection. Further, her allegation that there was "leakage of information" for a "pre-arranged outcome" is expressly refuted by an uncontradicted sworn statement from the hiring manager that there was no pre-arranged outcome or "leakage".

52. In conclusion, the UNDT did not err in finding that the Second Non-Selection Decision was lawful. Ms. Swaidan's candidature for that vacancy was given full and fair consideration and she failed to show that the selection process had been unfair or tainted by bias, discrimination, or improper motive.

53. As a result, the appeal must fail.

**Judgment**

54. Ms. Swaidan's appeal is dismissed, and Judgment No. UNDT/2024/058 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2025 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Ziadé

*(Signed)*

Judge Savage

Judgment published and entered into the Register on this 3<sup>rd</sup> day of September 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson,  
Registrar