



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

Case No. 2011-263

Bali
(Appellee/Applicant)

v.

United Nations Secretary-General
(Appellant/Respondent)

JUDGMENT

Before: Judge Jean Courtial, Presiding
Judge Sophia Adinyira
Judge Kamaljit Singh Garewal

Judgment No.: 2012-TANU-244

Date: 29 June 2012

UNITED NATIONS APPEALS TRIBUNAL

of the conditions did not extinguish an applicant's cause for action where an unlawful decision had been taken to his or her detriment, as was the case here. Having held that the contested decision not to transfer Mr. Bali from UNMIS to UNIMSS was unlawful, the Dispute Tribunal ordered the application for suspension to be placed on the "general cause" list of cases to be considered on the merits. It also requested Mr. Bali to file an exhaustive application on the merits within 28 days and requested the respondent to file a comprehensive reply within the 14 days following receipt of Mr. Bali's application.

Arguments of the parties

The Secretary-General

6. The Secretary-General has appealed. He asserts that the Dispute Tribunal has exceeded its competence in ordering a hearing to be held on the merits at a time when Mr. Bali has not introduced an appeal on the merits; at that time he had merely requested suspension of action on the contested decision pending completion of the management evaluation. Nothing in the Tribunal's Statute authorizes the Tribunal to convert an application for suspension into an application on the merits, and it cannot invoke its Rules of Procedure to acquire competences not conferred on it by its Statute. Once the application for suspension was dismissed, the Tribunal was no longer seized of the case until Mr. Bali filed an application on the merits. The Tribunal has to respect the mandatory nature of a management evaluation, and in requesting the parties to file conclusions on the merits (implying that the application on the merits would

Considerations

8. This tribunal has consistently held that as a general rule only appeals against judgments concerning matters of substance are receivable. Appeals against decisions taken during proceedings, however denominated by the UNDT (order, judgment, etc.), are non-receivable save in the exceptional cases where the UNDT has clearly exceeded its competence.¹

9. It has become established in the jurisprudence of the Appeals Tribunal that the UNDT clearly exceeds its competence when it takes decisions on matters outside the area of jurisdiction conferred on it by its Statute and the competence inherent in any tribunal called upon to dispense justice in a system of administration of justice governed by law and respect of the rights of those within its jurisdiction.

10. Consequently, in earlier cases where the UNDT has ordered suspension of action on an administrative decision beyond the end of the management evaluation, in violation of the limitation on its competence defined in article 2(2) of its Statute, the Appeals Tribunal has considered an appeal against such a finding receivable and founded.²

11. On the other hand, the Appeals Tribunal has considered that the UNDT enjoys wide powers of

