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TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2011-244

Igunda
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Inés Weinberg de Roca Judge Richard Lussick
Judgment No.:	2012-UNAT-255
Date:	1 November 2012
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant: Katya Melliush

Counsel for Appellant/Respondent: Wambui Mwangi

JUDGE LUIS M

is not for a party to decide about those issues. Proper observance must be given to judicial orders. The absence of compliance may merit contempt procedures.

Facts and Procedure

7. Mr. Igunda is a Supply Clerk at the GL-3 level with the United Nations Organization Stabilization Mission in the Democratic Republic of Congo. On 31 May 2011, the Chief Civilian Personnel Officer advised Mr. Igunda that his contract would not be extended beyond 30 June 2011 based on his performance ratings. His appointment was later extended for one month, to 31 July 2011, to enable the rebuttal process to be completed. On 15 July 2011, Mr. Igunda was advised that the rebuttal panel had agreed that his performance rating should remain the same. On 27 July 2011, Mr. Igunda filed an application for a suspension of action of the decision not to renew his appointment.

8. On 29 July 2011, the Dispute Tribunal held a hearing to “ascertain the facts of the case and further details of [Mr. Igunda’s] submissions”. During the hearing, the UNDT noted that Mr. Igunda was unable to further elucidate his claim and expressed concerns about his access to justice. A legal officer from the Office of Staff Legal Assistance (OSLA) joined the proceedings and informed the Dispute Tribunal that he would be willing to assist Mr. Igunda in re-filing his application, as an officer of the Tribunal. The UNDT therefore ordered the suspension of the non-renewal decision until 5 August 2011 when a further hearing would be held. On 5 August 2011, following an oral hearing on Mr. Igunda’s redrafted application, the UNDT suspended the contested decision until 12 August 2011, “until the Tribunal issues a reasoned and written decision based on all the evidence and all the submissions made by the parties on or by that date”. Mr. Igunda’s appointment was further extended until that date.

Submissions

Secretary-General’ Appeal

9. The Secretary-General submits that the appeal is receivable. The UNDT exceeded its jurisdiction in ordering the suspension of the implementation of the non-renewal decision without making a finding on whether the requirements for a suspension of action under Article 2(2) of the UNDT Statute were satisfied.

17. Mr. Igunda submits that the appeal against an order rendered by the UNDT should not entitle the Secretary-General to refrain from executing it, if he appeals the order on the basis that the UNDT exceeded its jurisdiction in issuing it. To find otherwise would render the ability of the UNDT to suspend the implementation of administrative decisions a “worthless” exercise.

Considerations

18. This Court holds that the appeal against Order No. 082 rendered by the Dispute Tribunal is not receivable, since that Tribunal did not exceed its jurisdiction in issuing it.

19. Quoting many precedents of this Tribunal, we stated in *Villamoran*:²

The Appeals Tribunal has consistently emphasized that appeals against most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure, and trial conduct. An interlocutory appeal is only receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence.

20. The quoted Judgment also reads:

Under Article 2(2) of the UNDT Statute and Article 13(1) of the UNDT Rules, the Dispute Tribunal shall order a suspension of action 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.

21. Article 13(3) of the UNDT’s Rules of Procedure establishes that in such cases the Dispute Tribunal shall consider the application within five working days of the service of the submission on the respondent.

22. In *Onana*,³ the Appeals Tribunal held:

In order to give full effect to paragraph 28 of General Assembly resolution 63/253, when dealing with an appeal against a jurisdictional decision of the Dispute Tribunal rendered on the basis of article 2(2) of its Statute and article 13 of its Rules of Procedure, the

² *Ibid*, para. 1.

³ *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008, para. 21.

29. Turning to the analysis of the legality of Order NO. 083, which extended the suspension of action until 12 August 2011, as this was done in breach of the five working day restrictive period to render the decision, this Court concludes that the Dispute Tribunal erred in law and exceeded its jurisdiction. Then, the appeal becomes receivable and will be upheld vacating this Order.

30. With this outcome, further submissions made by the Secretary-General (i.e. the issues related to OSLA representation of Mr. Igunda) are not essential to the case and do not need to be examined in the present Judgment.

31. Finally, this Tribunal reiterates its jurisprudence in *Villamorán*⁴ as follows:

Article 8(6) of the Rules of Procedure of the Appeals Tribunal provides that “[t]he filing of an appeal shall suspend the execution of the judgment contested”. This provision however does not apply to interlocutory appeals. It falls to the Appeals Tribunal to decide whether the UNDT exceeded its jurisdiction and the Administration cannot refrain from executing an order by filing an appeal against it on the basis that the UNDT exceeded its jurisdiction.

32. This Court emphasizes that a party is not allowed to refuse the execution of an order issued by the Dispute Tribunal under the pretext that it is unlawful or was rendered in excess of that body’s jurisdiction, because it is not for a party to decide about those issues. Proper observance must be given to judicial orders. The absence of compliance may merit contempt procedures.

⁴ *Villamorán*, 2011-UNAT-160, para. 48.

Judgment

33. The appeal against Order No. 082 is dismissed and that Order is affirmed.
34. The appeal against Order No. 083 is allowed and that Order is vacated.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Lussick

Entered in the Register on this 18th of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar