



**THE UNITED NATIONS APPEALS TRIBUNAL**

to fulfil the statutory requirements for revision of judgment set forth in Article 11 of the Appeals Tribunal Statute (Statute) and that his application was really “a disguised [...] attempt to re-open the case” on the merits.<sup>3</sup>

4. On 13 January 2015, Mr. Gakumba filed an application for revision of Gakumba I before the UNDT, which treated the application as an application for revision of its 2012 judgment, Judgment No. UNDT/2012/192. On 26 January 2015, the UNDT issued Summary Judgment No. UNDT/2015/006, finding the application was not receivable and dismissing it. Additionally, the UNDT awarded costs against Mr. Gakumba in the amount of USD 500 for manifestly abusing the Dispute Tribunal’s proceedings. The Dispute Tribunal instructed the Respondent to withhold USD 500 from the compensation that the Appeals Tribunal had awarded to Mr. Gakumba in Gakumba I.

5. On 29 January 2015, Mr. Gakumba filed the pending appeal of Judgment No. UNDT/2015/006, and the Secretary-General timely filed his answer on 8 June 2015.

6. On 24 September 2015, Mr. Gakumba filed a “Motion to seek leave to postpone consideration of [his] appeal at the fall session ... due to lack of legal representa[tion] ... by Office of the Staff Legal Assistance (OSLA)”. On 5 October 2015, the Secretary-General filed his Observations on the Motion, opposing the request and noting the Motion is merely a supplemental pleading addressing the merits of the Appellant’s claims.

### **Submissions**

#### **Mr. Gakumba’s Appeal**

7. The Appellant complains that the Appeals Tribunal should not have rendered Gakumba I, but should have remanded the case to the Dispute Tribunal for revision of the remedy afforded to him since he had discovered a “decisive new fact”, which had not been known to either him or the tribunal, i.e., that he meets the requirements for a permanent appointment under the UNDP Policy on consideration for conversion to a permanent appointment of UNDP staff members eligible to be considered as at 30 June 2009 (UNDP Conversion Policy). The Appellant claims that he was not aware of this decisive new fact until

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<sup>3</sup> Ibid., para. 14.

4 February 2014, since he has no access to UNDP's formal communications due to the illegal termination of his fixed-term contract.

8. The Appellant contends that the UNDP Conversion Policy entitles him to a permanent appointment with pension and other rights, which the reinstatement remedy afforded him by the Dispute Tribunal (and the Appeals Tribunal in



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21. The role of the Dispute Tribunal includes adequately interpreting and comprehending the application submitted by the moving party, whatever name the party attaches to the document.<sup>7</sup> Thus, the Dispute Tribunal properly treated Mr. Gakumba's application for revision as an application for revision of the UNDT judgment issued in 2012, rather than an application for revision of Gakumba I.

22. The principle of *res judicata* or finality of judgments is invoked in Article 10(6) of the Statute. A judgment by the Appeals Tribunal is "a final judgment, since it [i]s a judgment of the highest tribunal in the United Nations' internal justice system".<sup>8</sup> Henceforth, the case is "*res judicata*, which mean[s] that it [i]s no longer subject to appeal and [can]not be raised again, either in the Dispute Tribunal or in the Appeals Tribunal".<sup>9</sup> "The party who loses can not [sic] re-litigate his or her case. There must be an end to litigation and the stability of the judicial process requires that final judgments by an appellate court be set aside only on limited grounds and for the gravest of reasons."<sup>10</sup>

23. Mr. Gakumba appealed the initial UNDT judgment to the Appeals Tribunal, which issued Gakumba I. He then sought revision of Gakumba I from the Appeals Tribunal, which denied his request in Gakumba II. That is the end of the judicial process available to Mr. Gakumba under the statutory scheme for review of administrative decisions. Mr. Gakumba cannot return to the Dispute Tribunal for additional review, regardless of the name of the document he files. *Res judicata* has attached to his case.<sup>11</sup> Accordingly, the UNDT correctly determined that Mr. Gakumba's application was not receivable *ratione materiae*. The Appeals Tribunal finds no error of fact or law in the Dispute Tribunal's conclusion that Mr. Gakumba's application for revision of the 2012 UNDT judgment was not receivable.<sup>12</sup>

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<sup>7</sup> *Massabni v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-238, paras. 2-3.

<sup>8</sup> *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-554, para. 20.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis, para. 4. See also *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-353; *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129; and *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063.

<sup>11</sup> *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-554.

<sup>12</sup> Although the UNDT also found that Mr. Gakumba had not complied with the statutory requirements for seeking revision of judgment, that conclusion was superfluous and need not be addressed by the Appeals Tribunal.

24. The UNDT also found that, pursuant to Article 10(6) of the UNDT Statute, costs in the amount of USD 500 should be awarded against Mr. Gakumba, stating:<sup>13</sup>

Having considered the procedural history of the present case, the [Dispute] Tribunal holds [...] that this Application is most frivolous and vexatious and as already found constitutes a manifest abuse of proceedings.

As to the costs, the UNDT ordered that “[t]he Respondent shall withhold the said sum from compensation awarded to the [Appellant] in [Gakumba I]”.<sup>14</sup>

25. On appeal, the Appellant does not contest the award of costs against him by the UNDT. The Secretary-General, however, requests that:

the [Appeals Tribunal] overturn the UNDT’s finding that the Administration withhold the amount of USD 500 costs from [Gakumba I] and instead order that the Appellant pay the amount of USD 500 costs to the [Appeals Tribunal’s] Registry. In the event that this amount is not paid within 30 days of the issuance of the [Appeals Tribunal’s] judgment, [...] the [Appeals Tribunal should] order that it will not entertain any further actions from the Appellant.

26. We determine that this is not an issue raised on appeal. Rather, the Respondent should address his concerns about the manner in which the UNDT’s award of costs is collected to the Dispute Tribunal, which awarded the costs and specified the manner for collection.

Costs on appeal

27. Article 9(2) of the Statute provides that “[w]here the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party”. In his answer, the Respondent seeks costs against the Appellant in an amount of USD 500.

28. The Appeals Tribunal determines that Mr. Gakumba has manifestly abused the appeals process by bringing this frivolous appeal of an unassailable judgment by the UNDT. In particular, Mr. Gakumba merely repeats on appeal arguments that did not succeed before the Dispute Tribunal, which had awarded costs against him. The award of costs by the Dispute Tribunal should have put Mr. Gakumba on notice that his action was frivolous.

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<sup>13</sup> Impugned Judgment, para. 16.

<sup>14</sup> *Ibid.*, para. 18.



Accordingly, the Appeals Tribunal awards costs in the amount of USD 500 against Mr. Gakumba.

29. Although Mr. Gakumba has been before the Appeals Tribunal on more than one occasion, and his current appeal is frivolous, the Appeals Tribunal concludes that his behavior does not warrant directing the Registry not to accept any filings from him until the costs have been paid.<sup>15</sup> Thus, this aspect of the Secretary-General's request is denied.

### **Judgment**

30. The appeal is denied and Judgment No. UNDT/2015/006 is affirmed.

31. Costs are awarded against Mr. Gakumba in the amount of USD 500, which he is ordered to pay to the Secretary-General within 60 days of the publication of this Judgment. Mr. Gakumba may pay these costs directly to the Registry of the Appeals Tribunal, which will forward the payment to the Respondent.

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<sup>15</sup> Cf.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Lussick

Entered in the Register on this 18<sup>th</sup> day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar