

Case No. 2022-1710

Samuel Bwalya

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 490 (2022)

1. On 9 May 2022, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi issued Judgment No. UNDT/2022/041 in the matter of *Bwalya v. Secretary-General of the United Nations* (the Impugned Judgment) in which the UNDT upheld the Administration's decision to separate Appellant from service.

5. Article 31(1) of the Appeals Tribunal's Rules and Section II.A.3 of the Appeals Tribunal's Practice Direction No. 1 provide that a motion to file an additional pleading may be granted if there are "exceptional circumstances justifying the motion."

6. Because what is sought to be adduced is an additional pleading, but not additional evidence, Article 2(5) of the Appeals Tribunal's Statute relating to new evidence is not applicable to this Motion.

7. I have read and analysed the UNDT's Judgment, the Appellant's and the Respondent's submissions on the substantive appeal (including in particular the Respondent's reply which is sought by the Appellant to be answered), the Appellant's Motion and submissions in support, and the Respondent's answer in opposition to the Motion.

8. Addressing each of the bases on which the Appellant supports his Motion, he says first that the Respondent has not answered all the substantive grounds of appeal in his (the Respondent's) reply to the appeal. That is not such an extraordinary circumstance that the Appellant should be allowed to address further submissions, especially when they in effect only reiterate his prior submissions in support of his substantive appeal. The appeal will be decided on the primary submissions made by each party and if, as the Appellant claims, the Respondent's reply is deficient or inadequate, then that can be taken into account by the Appeals Tribunal in deciding the case.

9. Next, the remaining six grounds relied on by the Appellant appear to be reiterations of both his case in the UNDT and, relevantly, his appeal which I understand to be based on the broad contention that the UNDT erred in fact and in law by rejecting his case as presented before it. Not only, therefore, are the circumstances not exceptional, but the Appellant should not be permitted a second opportunity to reinforce his case on appeal by the collateral mechanism of this Motion.

10. In these circumstances the Motion must fail and is denied. Nothing said in this

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