

Case Nos.: UNDT/NBI/2022/097 -
UNDT/NBI/2022/107
Order No.: 154 (NBI/2022)

- g. UNDT/NBI/2022/103 *Bisimwa*.
- h. UNDT/NBI/2022/104 *Mukwamba*.
- i. UNDT/NBI/2022/105 *Kawende*.
- j. UNDT/NBI/2022/106 *Amisi*.
- k. UNDT/NBI/2022/107 *Kabila*.

Case Nos.: UNDT/NBI/2022/097 -
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survive. Their pension benefits and final entitlements are being withheld indefinitely in violation of ST/AI/155/Rev. 2 (Personnel payroll clearance action) and staff rule 3.5 even though the investigation has not established indebtedness.

2014-UNAT-410 by General Assembly resolution 69/203, adopted on 18 December 2014.

c. Instead, the Applicants could have requested expedited hearings of the appeals, like the Respondent did. To date, the Applicants have not filed responses to the appeals. UNAT is therefore unable to urgently rule.

d. The issue of execution is moot. MONUSCO has already been instructed and confirmed the processing of the Applicants' P.35 forms on 11 October 2022, based on new information received from OIOS on 10 October 2022 on the estimated losses caused by the Applicants' alleged medical insurance fraud. The associated PF.4 notifications to the UNJSPF were to be sent by 21 October 2022, following the resolution of practical issues. The MEU confirmed that its recommendations on the matters were to be submitted for approval on the week ending 21 October 2022.

e. The Applicants' suggestion that the Respondent has been idle, is far from the truth. The Respondent has been working tirelessly and in good faith to safeguard the interests of the Applicants and the Organization and has updated the Applicants' Counsel accordingly.

f. In response to the Tribunal's ~~decision~~ ~~000009/F1rT/F1 12 Tf1 0 0 1 490.66 616.42 7~~

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. **The decision of the Dispute Tribunal on such an application shall not be subject to appeal**

Article 11.3

The judgements **and orders** of the Dispute Tribunal shall be binding upon the parties, but **are subject to appeal** in accordance with the statute of the United Nations Appeals Tribunal. In the absence of such appeal, **they shall be executable following the expiry of the time provided for appeal** in the statute of the Appeals Tribunal. **Case management orders or directives shall be executable immediately.**

UNAT Statute

Article 2

1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed **against a judgement** rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- a. Exceeded its jurisdiction or competence

Article 7

1. An appeal shall be receivable if:

(a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2, paragraph 1, of the present statute;

... and

(c) The appeal is filed within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or **within 30 calendar days of the receipt of the interlocutory order** of the Dispute Tribunal...

5. The filing of appeals shall have the effect of suspending the execution of the judgement **or order** contested. [emphasis added]

14. It is clear from the foregoing that although art. 2.1 of the UNAT Statute does not specifically mention Orders as being appealable, all other relevant provisions of both the UNAT and UNDT statutes make clear by specific references to “Orders” that they can be subject to appeals to UNAT. In considering the apparent lacuna at art. 2.1, UNAT opined as follows in *Nadeau*²,

This provision does not clarify whether the Appeals Tribunal may only hear an appeal from a final judgment of the Dispute Tribunal or whether an interlocutory or interim decision made during the course of the Dispute Tribunal’s proceedings may also be considered a judgment subject to appeal. However, our Tribunal has consistently decided that “[a]n interlocutory appeal is only receivable in cases where the Dispute Tribunal has clearly exceeded its jurisdiction or competence.

15. It is clear based on the foregoing that some UNDT Orders may be appealed. On the other hand, the regulatory framework exempts certain types of Orders from being subject to appeals. In the instant cases, the Applicants cite art. 2.2 of the UNDT Statute in contending that appeals ought never to have been filed by the Respondent as they are not receivable by UNAT. The UNDT reserves comment on this point as it is currently the subject matter of appeals rightly or wrongly filed by the Respondent.

15. itcn 16 In addition to the regulatory framework, the Applicants rely on the s

those cases. In those cases, there is no longer any aspect of the SOA Orders to be enforced. Accordingly, those motions are moot and will be dismissed for that reason.

21. The sole remaining motion where the SOA has not been enforced will be dismissed as it is not receivable by the Tribunal at this time there being a pending appeal.

ORDER

22. The motions are dismissed.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 24th day of October 2022

Entered in the Register on this 24th day of October 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi