



**Facts**

1. By decision of 13 October 2008, the Registrar of th

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an application with the UNDT pending the outcome of her request for arbitration initiated pursuant to an agreement between the United Nations and the United Republic of Tanzania concerning the headquarters of the ICTR.

13. On 10 June 2010, the UNDT Registry in Nairobi requested the Applicant to peruse Article 3 of the UNDT Statute and indicate the capacity in which she thought she was eligible to file an application before the Tribunal.

14. In her response to the UNDT Registry dated 14 June 2010, the Applicant argued that she met the requirements to file an application with the UNDT as a former staff member of the United Nations.

15. In the light of her response, the Registry requested the Applicant, on 15 June 2010, to provide her latest offer of appointment including her UN index number.

16. In another message dated 15 June 2010, the Registry requested the Applicant to disclose her index number without further delay. On 16 June 2010, the Applicant provided the number appearing on the identification card issued to her by the UN-ICTR as Defence Counsel.

17. On 16 June 2010, in response to the request, the Applicant transmitted to the Registry a letter indicating that her appointment had ended in March 2010 with the rendering of the Appeals Chamber judgment in the Nshogoza case. She also requested a change of venue to the New York Registry of the UNDT.

18. By email dated 21 June 2010, the Registry advised the Applicant that they were not in a position to enter her application, on the ground that she did not meet the requirements set forth in Article 3 of the UNDT Statute.

19. In her reply dated 22 June 2010, the Applicant challenged the Registry's response and stated that,

“The Management Evaluation Unit’s decision of 10 March 2010 formally places the question of the court’s jurisdiction up for challenge



Secretariat. For the purpose of these Regulations, the expressions ‘United Nations Secretariat’, “staff members” or “staff” shall refer to all the staff members of the Secretariat, within the meaning of Article 97<sup>3</sup> of the Charter of the United Nations, whose employment and contractual relationship are defined by a letter of appointment subject to regulations promulgated by the General Assembly pursuant to Article 101, paragraph 1<sup>4</sup>, of the Charter. The Secretary-General, as the chief administrative officer, shall provide and enforce such staff rules consistent with these principles as he or she considers necessary”.

28. It is clear that the Charter requires that staff members be “appointed” by the Secretary-General (or those to whom this power has been delegated). The hallmark of a staff relationship is “appointment”, and this is done through a letter of appointment pursuant to staff regulation 4.1. The Staff Regulations apply to all staff members of the Secretariat, within the meaning of Article 97 of the Charter, whose employment relationship and contractual link with the Organization are through a letter of



33. In addition, pursuant to the Code of Professional Conduct for Defence Counsel<sup>9</sup>, Counsel owes a “duty of loyalty to his/her client”<sup>10</sup>. In case of misconduct resulting in a breach of the Code of Professional Conduct, the Registrar may report any misconduct of Counsel to the professional body regulating the conduct of Counsel in his or her State of admission, or in the case a professor who is not otherwise admitted to the profession, a report may be sent to the governing body of his or her university<sup>11</sup>. The Host Country Agreement between the United Nations and Tanzania<sup>12</sup> makes the Registry responsible to draft a number of legal documents necessary for the Tribunal’s judicial work, namely the directive on the assignment of Defence Counsel and provides a dispute settlement mechanism between Defence Counsel and the ICTR<sup>13</sup>.

34. From the above, it is abundantly clear that Defence Counsel do not hold the status of international civil servants. Counsel is not “appointed” by the Secretary-General. They are not subjected to the basic rights and obligations set out in the UN Secretariat Rules and Regulations. They are free to engage in any outside occupation or employment, one of the pre-requisites being that Counsel should be practising lawyers or University professors. This view is buttressed by the fact that the Applicant provided the Tribunal with a letter of assignment signed by the DCDMS, on behalf of the Registrar of the ICTR, and that pursuant to Article 10 of the Directive on the Assignment of Def 6.484572(a)1.96263(r)4.048v 21(h)6.56299( )-89.23746.56299( .99

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