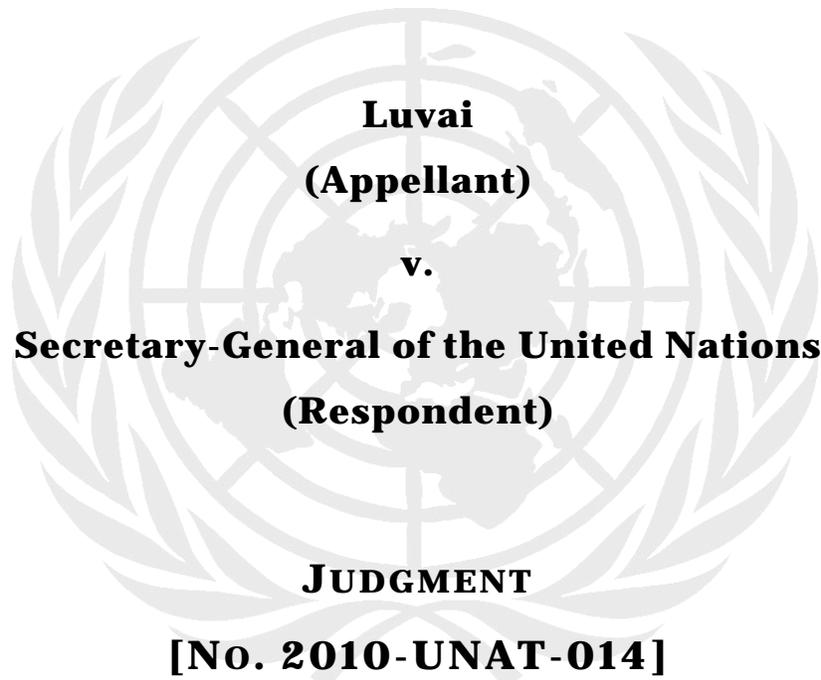




UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES

---

A large, faded version of the United Nations logo is centered in the background of the title section.

**Luvai**  
**(Appellant)**  
**v.**  
**Secretary-General of the United Nations**  
**(Respondent)**  
**JUDGMENT**  
**[No. 2010-UNAT-014]**

---

Before: Judge Mark P. Painter, Presiding  
Judge Inés Weinberg de Roca  
Judge Jean Courtial

Case No.: 2009-019

Date: 30 March 2010

Registrar: Weicheng Lin

---

Counsel for Appellant: David Andati-Amwayi

Counsel for Respondent: Cristian Gimenez Corte

---

**JUDGE MARK P. PAINTER**, Presiding.

### **Synopsis**

1. Appellant Moses Jaika Luvai (Luvai) appeals from a decision of the United Nations Dispute Tribunal (UNDT). Luvai alleges that the Administration's failure to include in a vacancy announcement the correct number of vacancies available is grounds to give him an appointment to one of the positions. Luvai claims that, had he known the correct number of positions available, he might have applied for one; he did not apply at all. He also made a number of allegations of corruption, fraud, and favouritism, for which he presented no proof. The UNDT received evidence and wrote a comprehensive decision, which we affirm.

### **Facts and Procedure**

2. Luvai joined the United Nations in 1996, as a Security Guard at the General Service (GS) level 3. In 2004, he was promoted to the GS-5 level as a Security Sergeant.

3. On 19 December 2006, a vacancy announcement No. VA 06-SEC-UNON-412200-R-Nairobi for the position of GS-6 - Security Lieutenant, was advertised with a deadline for applications on 18 January 2007.

4. On 22 February 2007, another vacancy announcement No. VA 07-SEC-UNON-412367-R-Nairobi for the position of GS-7 - Security Inspector, was published in *Galaxy* with a deadline for applications on 24 March 2007.

5. On 23 March 2007, the Chief of Security and Safety Services issued a memorandum entitled "Criteria for Promotion" providing guidelines for promotion to the GS-5, GS-6, and GS-7 positions. On 27 April 2007, a meeting was held of supervisors and staff from the Department of Security and Safety (DSS) at the United Nations Office in Nairobi (UNON) and Human Resources Officers. The staffing and recruitment procedures were discussed at that meeting. Luvai and some other staff members raised certain concerns about the vacancy announcements.

6. On 11 June 2007, Luvai sent a memorandum to the Director-General of UNON in which he informed her that he had written earlier to the Chief of Human Resources Management Services (HRMS) and that a copy had been sent to the Chief of DSS to contest the recruitment and promotion exercise.

7. In response to the memorandum, the Director-General of UNON directed the setting up of a panel to review the promotions exercise in the light of the allegations of impropriety made by Luvai and another staff member. Luvai was requested on 21 February 2008 to provide to the review panel documentation in support of his allegations.

8. On 27 June 2008, the Chief of DSS issued a memorandum in which he announced the reassignments of Security and Safety Personnel effective from 1 July 2008.

9. On 26 August 2008, Luvai and two other staff members of the DSS wrote to the Secretary-General of the United Nations requesting administrative review of the new reassignments within the DSS that were based on the promotions exercise about which Luvai had complained.

10. The Administrative Law Unit (ALU) replied to Luvai's request for administrative review in a letter in October 2008, stating that the records showed that Luvai did not apply for either one of the posts advertised in *Galaxy* in accordance with ST/AI/2006/3 (Staff Selection System) and that as a result the selection process that resulted in the contested decisions did not create direct legal consequences on his terms of employment.

11. On 1 December 2008, Luvai submitted an incomplete statement of appeal to the Nairobi Joint Appeals Board (JAB) in which he contested the advertisement of the GS7-Security Inspector post and followed it up on 31 December 2008 with his complete statement of appeal.

12. In reply to the complete statement of appeal on 9 March 2009, the Administration denied the allegations of Luvai relating to the promotion exercise.

13. The UNDT having begun operation on 1 July 2009, its Registry advised the parties that the appeal then pending before the Nairobi JAB was transferred to the UNDT.

14. The UNDT received evidence and wrote a comprehensive decision, finding that no rights of Luvai were breached by the vacancy announcements—the subject of this entire controversy; and that the allegations of fraud, forgery, corruption, and favouritism were not proved. It concluded that the application failed and that Luvai was not entitled to any relief.

### Submissions

#### Luvai's Appeal

15. Luvai basically repeats in his appeal what he alleged in his application to the UNDT—that there was corruption in the process of the promotions of Security Personnel at UNON that started in December 2006 and that there was an error of omission which amounted to “taking a gamble” on his career prospects. He also claims that the UNDT erred by holding a “pre-trial” hearing, because this case is not criminal, and further erred by referring to a “pre-trial” hearing or meeting when it obviously meant a “case management” meeting.

16. He also alleges a lack of respect for the rule of law, disdain and impunity, blatant abuse of authority and blatant favouritism by the Administration. And he claims that his rights were injured because of certain illegal actions by the Administration during the promotion exercise. He claims the illegal actions consisted in the advertisement of VA No. 06-SEC-UNON-412200-R-NAIROBI, which showed one vacant Security Lieutenant position while the actual number of vacant posts for Security Lieutenant was seven.

17. Similarly, only one Security Inspector post was advertised under VA No. 07-SEC-UNON-412367-R-NAIROBI when there were actually two vacant posts. While the Administration later re-advertised the posts of Security Inspectors, those of Lieutenants were not re-advertised. As a result, Luvai alleges that he did not have a fair chance of participating in the process.

18. Luvai additionally alleges that the re-advertised post of Security Inspector was a deception and forgery against him while the posts were earmarked for others.

19. Luvai also claims that four staff members within the Security Services were granted Special Post Allowance improperly. Also, seven staff members who did not apply for the vacancies were illegally promoted. He says that these actions were to settle personal scores against him.

20. It is also Luvai's case that he protested the illegal promotion exercise to the Director-General of UNON on 11 June 2007 but received no response. Instead, a Panel, which he describes as moribund, was set up in response to his allegations. The establishment, composition, and mandate of the Panel were never disclosed to him.

21. Luvai seeks the following remedies:

- i. payment of salary to him at the rank of Security Lieutenant from 27 June 2008 at level G-6/II;
- ii. An order that he be promoted to level GS-7 - Security Inspector for which he applied on 24 September 2008 under VA No. 08-SEC-UNON-419417 and paid salary at that level from 27 June 2008.

Alternatively, he asks for compensation in the sum of:

- i. 30, 000 USD for mental anguish and suffering;
- ii. KSH 396, 670, 512 for lost opportunities, including employment, education, and social benefits; and
- iii. USD 15, 000 for moral damage.

#### **Secretary-General's Answer**

22. The Secretary-General states that due to a technical glitch the vacancy announcements for the posts of Security Lieutenant and Security Inspector did not show that there were two Security Inspectors posts and six Security Lieutenants posts to be filled. This is the basis of this whole case.

23. The HRMS of UNON followed the staff selection procedure as provided for under ST/AI/2002/4 and ST/AI/2006/3. The Secretary-General denies that Luvai's rights were injured and states that Luvai could suffer no injury, as he did not apply for any of the advertised positions. He submits that the original application itself was not receivable.

24. The decision to advertise the post was taken by the Administration with the intent to fill two positions at the Inspector level (GS-7) and six positions at the Lieutenant level (GS-6). This is evident from the *Galaxy* records and was communicated to the Security Staff, Luvai included, on a number of occasions before the advertisement. It is therefore incorrect for Luvai to claim that he had not applied because there was only one position advertised in both vacancy announcements.

25. Luvai has not provided any evidence to show how the advertised vacancy announcements influenced his decision not to apply. Clearly, ST/AI/2006/3, Section 6.1 requires that if a staff member is interested in a position, then he/she must submit a written application for consideration.

26. With respect to the allegations of abuse of authority raised by Luvai, the Director-General of UNON convened a panel to review the recruitment exercise. That panel

concluded that, although there were some minor technical errors, there was no abuse of authority to either invalidate the process or to initiate a formal fact-finding investigation.

### **Considerations**

27. Luvai requested an oral hearing "to give evidence as deemed necessary by the United Nations Dispute Tribunal". This being an appellate court, we see no need for further evidence, so overrule the request.

28. This Court holds that (1) the minor errors in the promotion process prejudiced no one's rights, especially in that, while it is surely much better practice to do so, Luvai has cited no authority requiring the listing of the exact number of positions available; (2) we affirm the findings of fact by the UNDT, including that Luvai well knew the numbers of vacancies, and there was no individual prejudice to him in the process; (3) we also affirm the UNDT's finding that Luvai presented no evidence to support any of his charges of corruption or favouritism; and (4) we fail to see why it matters whether a hearing is called a "pre-trial" or "pre-hearing" or "case management" meeting.

29. Because in this case the result is the same either way, we save for another day the question of whether the original application was receivable. We neither affirm nor reverse UNDT's finding on that issue. But we caution that someone who did not even apply for a position has a heavy burden to contest the result of the process.

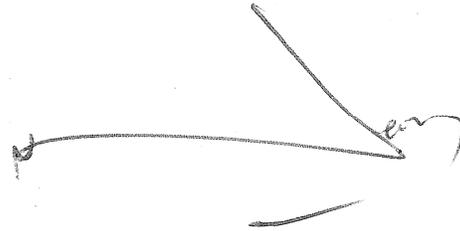
**Judgment**

30. This Court affirms the judgment of the UNDT insofar as Luvai is entitled to no relief.



---

Judge Painter, Presiding



---

Judge Weinberg de Roca



---

Judge Courtial

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



---

Weicheng Lin, Registrar, UNAT