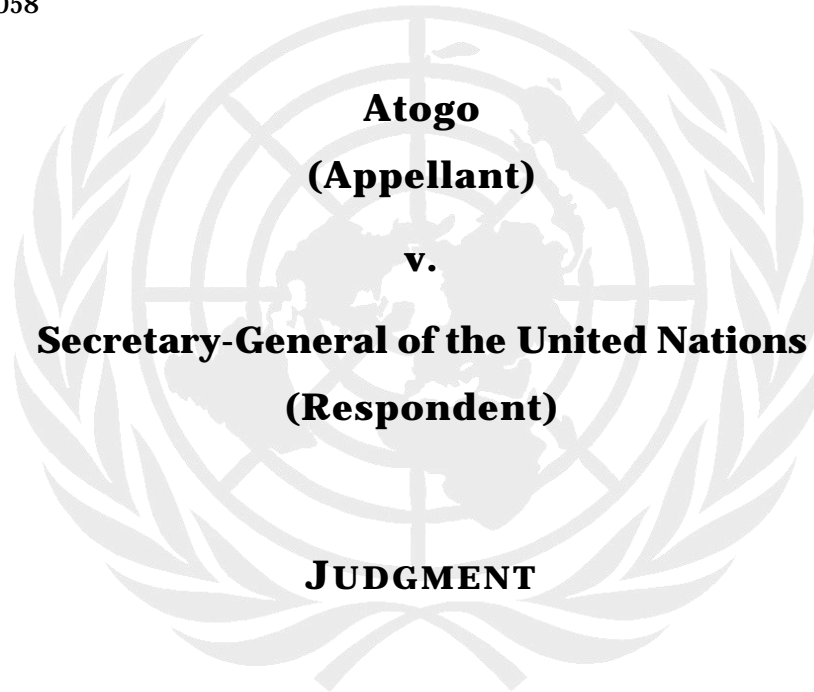




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-058



Before:	Judge Inés Weinberg de Roca, Presiding Judge Jean Courtial Judge Rose Boyko
Judgment No.:	2010-UNAT-054
Date:	1 July 2010
Registrar:	Weicheng Lin

Counsel for Appellant: David Andati-Amwayi

Counsel for Respondent: John Stompor

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. Jones Angwenyi Atogo (Atogo) requests the transfer of his case from the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi to the UNDT in Geneva or New York. He further requests that the Secretary-General's response be struck out. The Appeals Tribunal affirms the decision of the UNDT.

Facts and Procedure

2. In a submission dated 5 February 2010, Atogo requested the UNDT to strike out the the Secretary-General's response to his application and to enter a summary judgment in favour of Atogo. In the alternative, he requested the transfer of his case to the UNDT in Geneva or New York. By Order No. 028, dated 23 February 2010, the UNDT refused the application to strike out the Secretary-General's response. Finding that there was no conflict of interest, it also refused the application to transfer the case and proceeded to set out case management directions.

3. Atogo filed an appeal on 26 February 2010. The complete appeal was received by the Secretary-General on 10 March 2010. The Secretary-General filed an answer to the appeal on 26 April 2010.

Submissions

Atogo's Appeal

4. Atogo submits that the UNDT erred in fact and law "by failing to [o]rder on whether Mr. Joerg Weich can in law maintain a defence on behalf of the [Secretary-General] without producing a duly signed authority..."; by failing to address Atogo's arguments; by failing to note that the Secretary-General did not enter any defence to the applications; and by issuing case management orders. Atogo also submits that the UNDT erred by ordering that there was no conflict of interest and by failing to strike out the response of the Secretary-General,

and enter a summary judgment in his favour; or, alternatively, by failing to transfer his case to the UNDT in Geneva or in New York.

5. Atogo requests that the Order of the UNDT be reversed or quashed, that the applications be allowed, and that costs be awarded to Atogo.

Secretary-General's Answer

6. The Secretary-General responds that Joerg Weich is a staff member of the United Nations Office at Nairobi in the Human Resources Management Service. As part of his duties and responsibilities, Weich represents the Secretary-General before the UNDT. Atogo has no right to challenge the Secretary-General's choice of counsel.

7. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

Considerations

8. As a preliminary matter, the Appeals Tribunal rejects Atogo's request for an oral hearing because there is no need for further clarification.

9. This is an appeal from an interlocutory decision of the UNDT to deny Atogo's motion to strike out the defence of the Secretary-General and enter a summary judgment, or to transfer the matter from Nairobi to Geneva or New York. The UNDT also made case management directions. In *Bertucci*,¹ the Appeals Tribunal held that, as a general rule, only appeals against final judgments are receivable. In this case, the Appeals Tribunal sees no reason to depart from the general rule and finds that the appeal is not receivable.

¹ *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062.

Judgment

10. For the foregoing reasons, the appeal is dismissed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Courtial

(Signed)

Judge Boyko

Entered in the Register on this 17th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal