



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

Case No. 2009-020

**Macharia
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT ON APPLICATION FOR REVISION

Before:	Judge Sophia Adinyira, Presiding Judge Kamaljit Singh Garewal Judge Mary Faherty
Judgment Number:	2011-UNAT-128
Date:	8 July 2011
Registrar:	Weicheng Lin

Counsel for Appellant: Teresa Muigai

Counsel for Respondent: Phyllis Hwang

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Jane Macharia (Macharia) applies for a revision of Judgment No. 2010-UNAT-015 of the United Nations Appeals Tribunal (Appeals Tribunal) based on the allegation that the President of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) should be perceived to have prevailed on the judge who presided over her case at the Dispute Tribunal. This allegation was based on Facebook pages from the account of Chief Security Officer of the United Nations Office at Nairobi (UNON), which lists the legal officer of the UNDT Registry assigned to the case, the President of the UNDT, and other UNON staff members, as his friends.
2. We find the allegations insufficient evidence of bias or real likelihood of bias of the Judge in the case.
3. The application for revision is dismissed.

Facts and Procedure

4. On 30 March 2010, this Tribunal dismissed Macharia's appeal from Judgment No. UNDT/2009/081. Macharia had expressed her intention to appeal the decision to summarily dismiss her from service to the UNDT, but requested an extension of the time limit for filing her application. She was granted an extension of 21 days, but at the end of the extended deadline, Macharia filed another request for a one-year extension. This time the UNDT issued a judgment, in which Judge Izuako rejected Macharia's new extension request, calling it "an abuse of the process", and struck out the entire case without prejudice. The Appeals Tribunal affirmed UNDT's judgment in Judgment No. 2010-UNAT-015.
5. On 19 December 2010, Macharia filed an application for revision of the Appeals Tribunal's Judgment. She claims to have obtained, on 22 November 2010 or thereabout, certain pages from Facebook showing some UNDT Registry staff, Judge Vinod Boolell and the Director of the Administrative Services of UNON among the friends of the Chief Security Officer of UNON. Macharia complains that the legal officer of the UNDT Registry did not disclose her friendship with those representatives of the UNON

Administration when she was assigned Macharia's case. Macharia also complains that Judge Boolell, as the President of the UNDT, "should be perceived to have prevailed upon Judge Nkemdilim Izuako", author of the impugned UNDT Judgment. Macharia further claims that she found, on 22 November 2010 or thereabout, a memorandum dated 8 July 2009 from Angela Kane, Under-Secretary-General for Management, to all heads of department and offices, on the website of the Management Evaluation Unit (MEU), announcing the establishment of the MEU responsible for conducting management evaluation as the mandatory first step in the new system of internal justice and asking all heads of department and offices to share her memorandum with all their staff. Macharia complains that the UNON Administration never shared that memorandum. She maintains that "[b]ecause of the above-mentioned reasons, the Appellant was not accorded a fair hearing before the UNDT, which misdirected [the Appeals Tribunal] to affirm the same wrong decision on appeal".

6. On 2 February 2011, the Secretary-General filed an answer. He maintains that there is no basis to grant Macharia's application for revision. The Secretary-General submits that the serious allegations about the integrity of both Judges Boolell and Izuako remain "mere allegations", and that the Facebook pages submitted by Macharia do not constitute evidence to support such allegations. The Secretary-General rejects Macharia's allegation that the UNON Administration and the Office of Legal Affairs "deliberately refused to share" the information about the MEU with her. In the view of the Secretary-General, the information about the MEU was not relevant to Macharia's challenge of her summary dismissal because she may appeal the summary dismissal directly to the UNDT without first seeking management evaluation.

Considerations

7. Applications for revision of judgments are governed by Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must show or identify the decisive facts that at the time of the Appeals Tribunal's Judgment were unknown to both the Appeals Tribunal and the party applying for the revision; that such ignorance was not due to the negligence of the applicant; and that the facts identified would have been decisive in reaching the decision.

8. The decisive facts that Macharia claimed to have discovered on 22 November 2010, after the Appeals Tribunal's Judgment was issued, were as follows:

(a) Personal friendship on Facebook's social network between some UNDT Nairobi staff members including a judge and the Respondent (through his agents and/or servants), before, during, and after the hearing of Case No. UNDT/2009/043.

(b) Deliberate refusal by the UNON Administration to share the necessary information about the establishment of the MEU with UNON staff.

9. In respect of the first facts identified, Macharia submits that there was an actual and perceived conflict of interest from the personal friendship between the legal officer Christel Adamou (Adamou), UNDT Nairobi, Judge Vinod Boolell (Judge Boolell), UNDT Nairobi, Peter Marshall (Marshall), UNON's Chief Security Officer, and Alexander Barabanov, UNON's Director of Administrative Services before, during, and after the hearing of Case No. UNDT/2009/043.

10. Macharia submits that Adamou did not disclose this friendship when she was assigned the case. She further submits that Judge Boolell, as President of the UNDT, should be perceived to have prevailed upon Judge Izuako, the Presiding Judge of her UNDT case, to strike out her case without due regard to the fact that the parties were trying to negotiate the matter.

11. Macharia concludes that she was not accorded a fair hearing before the UNDT which misdirected the Appeals Tribunal to affirm a wrong decision.

12. The Secretary-General submits that the serious allegations about the integrity of the two UNDT Judges remain mere allegations and are therefore insufficient to warrant a revision of the Appeals Tribunal's Judgment.

13. There is a plethora of authorities in respect of the rules of natural justice providing the minimum standards of fair decision-making by all adjudicating bodies. These include the principles that parties should be given prior notice and an opportunity to be heard, the requirement to act fairly and reasonably and an entitlement to an unbiased decision maker.

14. We therefore need to review carefully the evidence which has been put forward by Macharia in support of her allegation of bias against Judge Izuako, to determine whether there is or is not under the circumstances a real likelihood of bias.

15. The evidence proffered by Macharia relates to extracts of pages from Marshall's Facebook account. Though the annexes show that Judge Boolell and Adamou socialised with the said UNON officials on the social network, there is not a shred of evidence that the trial judge, Judge Izuako, was among that group. Had Judge Boolell handled the case personally, it would have been reasonable to presume that by the circumstances of his association with the Respondent or agents of the Respondent, there was a real likelihood of bias.

16. A charge of bias or likelihood of bias has to be established on the balance of probability by the person alleging same. Macharia has offered no evidence upon which we could infer that it was likely that Judge Izuako was prevailed upon.

17. As much as this Tribunal upholds the maxim that justice must not only be done but must manifestly be seen to be done, we are unable to rely on mere speculations to revise the reasoned decision of the UNDT Judge, which we affirmed in our earlier Judgment on the case. A conjecture may be plausible but is of no legal value, for its essence is that it is a mere guess.

18. With respect to Adamou, there is also no evidence for us to draw the conclusion that she influenced the proceedings or the UNDT Judge in her decision.

19. The Appeals Tribunal has considered the grounds for revision and we note that Macharia does not offer any evidence in support of these bare assertions casting serious doubt on the integrity of both Judges Boolell and Izuako.

20. With regard to the information about the MEU, we readily dismiss Macharia's argument, which is evidently ill-founded and irrelevant.

21. From the foregoing, we dismiss this application for revision.

Judgment

22. The application for revision is dismissed.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Faherty

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar