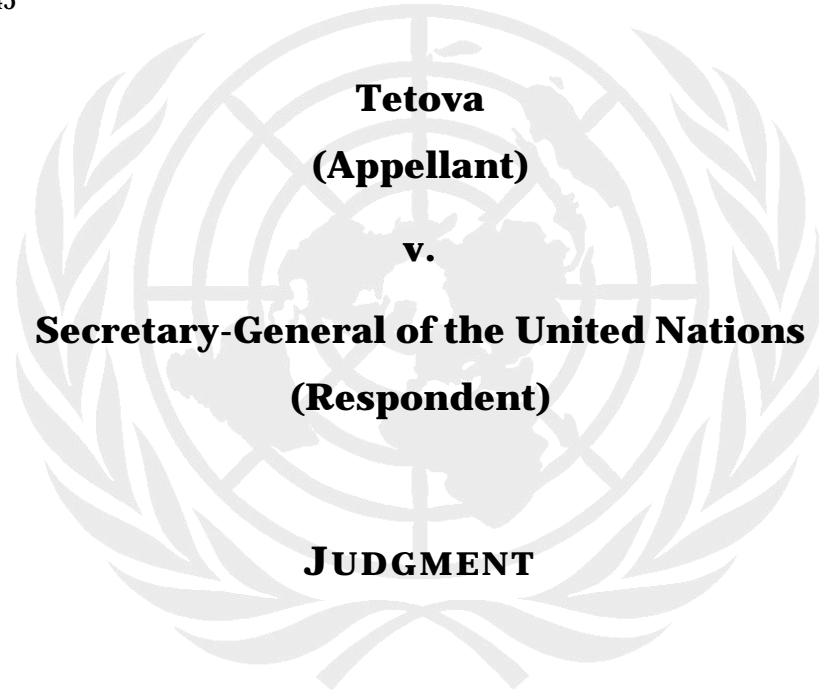




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-245



**Tetova
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Kamaljit Singh Garewal, Presiding Judge Luis María Simón Judge Jean Courtial
Judgment No.:	2012-UNAT-229
Date:	29 June 2012
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Stéphanie Cartier

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Blerim Tetova against Judgment No. UNDT/2011/119 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 30 June 2011 in the case of *Tetova v. Secretary-General of the United Nations*. Mr. Tetova appealed on 12 August 2011. The Secretary-General answered on 3 October 2011.

Synopsis

2. The Appellant received a memorandum on 9 March 2011 that his appointment would not be extended. He sought management evaluation on 23 June 2011 and filed an application before the UNDT on 27 June 2011 for suspension of action during the pendency of management evaluation. The UNDT rejected his application because the request for management evaluation was time-barred and consequently the application for suspension of action was also irreceivable as time-barred.

3. Relying on the principles laid down in *Khambatta*,¹ it is held that the UNDT did not exceed the jurisdiction vested in it or wrongly exercised its jurisdiction in rejecting the Appellant's application for suspension of action.

4. Appeal is dismissed.

Facts and Procedure

5. Mr. Tetova joined the United Nations Interim Administration Mission in Kosovo (UNMIK) in 1999 as an architect, Engineering Section, Division of Mission Support, where he served until the non-renewal of his contract in June 2011.

6. On 19 January 2011, Mr. Tetova attended a meeting where he was informed that as part of the planned downsizing of UNMIK, a number of posts within the Engineering Section would be abolished.

7. On 26 January 2011, Mr. Tetova had a meeting with the Chief of Mission Support (CMS) to discuss the upcoming downsizing. The following day, Mr. Tetova sent the CMS an e-mail in

¹ *Khambatta v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-252.

which he expressed his concerns regarding the upcoming changes in the Engineering Section and detailed his achievements over 11 years with UNMIK.

8. On 9 March 2011, Mr. Tetova was informed via e-mail that his appointment would be ending on 30 June 2011. On 23 June 2011, Mr. Tetova sent a request for management evaluation and, on 27 June 2011, he filed an application with the UNDT to suspend the non-renewal of his contract. In the Judgment under appeal, the UNDT found Mr. Tetova's suspension request not receivable as time-barred, as he had failed to submit a request for management evaluation within the mandatory time limit.

Submissions

Mr. Tetova's Appeal

9. Mr. Tetova submits that the UNDT erred in fact by not taking into consideration the communications between him and the CMS in which he was contesting the fairness of the staff reduction process and the validity of the statements that were made to him.

10. Mr. Tetova also submits that the UNDT should have taken the memorandum that the Special Representative of the Secretary-General had sent to him concerning the downsizing of UNMIK into consideration as it showed that the process was "Non-Transparent, Suspicious and Unfair".

11. Mr. Tetova further submits that the urgency with which the UNDT issued its Judgment resulted in irreparable damage to his case which was still pending before the Management Evaluation Unit.

Secretary-General's Answer

12. The Secretary-General submits that Mr. Tetova's appeal is not receivable as Article 2(2) of the UNDT Statute states that a judgment issued following a request for suspension of action, "during the pendency of the management evaluation [...] shall not be subject to appeal".

13. The Secretary-General further submits that the Dispute Tribunal acted fully within its competence in deciding not to suspend the non-renewal of his contract due to the fact that his request for management evaluation was time-barred.

14. The Secretary-General notes that Mr. Tetova did not allege that the UNDT exceeded its competence, but instead stated that the UNDT erred on a question of law by not suspending the 60-day time limit for requesting management evaluation due to the presence of exceptional circumstances. The Secretary-General submits that Article 8(3) of the UNDT Statute and the jurisprudence of the Appeals Tribunal clearly state that the Dispute Tribunal cannot waive or suspend the deadlines for management evaluation.

15. The Secretary-General also submits that the UNDT did not render its Judgment in haste, but rather acted fully within its competence considering the circumstances of the case, namely, that Mr. Tetova's contract was expiring within three days of his application for suspension of action.

Considerations

16. The Appellant has appealed against the Judgment of the UNDT dated 30 June 2011 where his application for suspension of action was rejected. The Judgment of the UNDT was passed under the following circumstances.

17. The Appellant with over 11 years of service as an architect with UNMIK was informed by the Division of Mission Support on 19 January 2011 that a number of posts in the Engineering Section would be abolished on 1 July 2011 and their functions outsourced as a cost-saving measure. Later on 9 March 2011, the Appellant received a memorandum, which advised him that his appointment would not be extended beyond 30 June 2011.

18. A request for management evaluation was presented by the Appellant on 23 June 2011 and on 27 June 2011, he filed an appeal to suspend the non-renewal of his contract. The application for suspension of action during the pendency of management evaluation was rejected by the UNDT on 30 June 2011 because "the standard required to envisage an exception to the regular sending of a request for management evaluation" had not been met. Since the Appellant exceeded the mandatory time limit for requesting management evaluation of the contested decision the application for suspension of action during the pendency of management evaluation was rightly declared irreceivable as time-barred.

19. Relying on the principles laid down in *Khambatta*,² it is held that the UNDT did not exceed the jurisdiction vested in it or wrongly exercised its jurisdiction in rejecting the Appellant's application for suspension of action.

Judgment

20. The appeal is dismissed.

² *Khambatta v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-252.

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Simón

(Signed)

Judge Courtial

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar