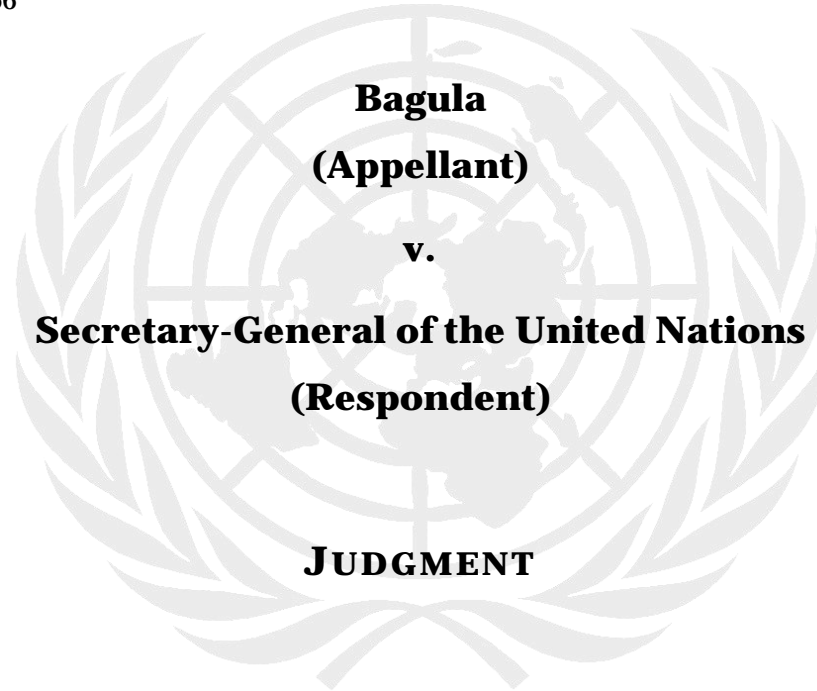




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-256



**Bagula  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Kamaljit Singh Garewal, Presiding Judge Inés Weinberg de Roca Judge Jean Courtial
Judgment No.:	2012-UNAT-237
Date:	29 June 2012
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-Represented

Counsel for Respondent: John Stompor

**JUDGE KAMALJIT SINGH GAREWAL**, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Norbert Bagula against Judgment No. UNDT/2011/138 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 2 August 2011 in the case of *Norbert Bagula v. Secretary-General of the United Nations*. Mr. Bagula appealed on 3 September 2011, and the Secretary-General answered on 5 December 2011.

### **Synopsis**

2. The Appellant was charged with improperly soliciting and receiving money from local citizens in exchange for their initial recruitment and continued service as United Nations staff in the Democratic Republic of Congo (DRC). He received fair treatment in the proceedings before the Joint Disciplinary Committee (JDC).

3. After the JDC report was accepted by the Secretary-General and he was separated from service under Staff Rule 110.3(a)(vii), the Appellant challenged this decision before the UNDT where witnesses were called and he received the full opportunity to cross-examine them. The UNDT found that the case against the Appellant stood substantiated and corroborated and that the evidence sufficiently supported the charges. We find no reason to disagree. The appeal is dismissed.

### **Facts and Procedure**

4. Mr. Bagula joined the United Nations Observation Mission in the Democratic Republic of Congo (MONUC) in Bukavu in February 2002 as a Casual Daily Worker. In September 2004, Mr. Bagula was appointed as a Warehouse Worker at the G-2 level.

5. On 12 November 2007, Mr. Bagula was charged with improperly soliciting and receiving monies from local citizens in exchange for their initial recruitment and continued service in the Organization.

6. On 27 June 2008, the Assistant Secretary-General for Human Resources Management formally referred Mr. Bagula's case to the JDC. On 9 October 2008, the JDC issued its report wherein it found that Mr. Bagula had more likely than not engaged in taking payment from local

citizens in exchange for, or with the promise of, securing them jobs. The JDC unanimously recommended that Mr. Bagula be summarily dismissed.

7. On 6 November 2008, the Deputy Secretary-General transmitted a copy of the JDC report to Mr. Bagula and informed him of the Secretary-General's decision to separate him from service without notice or compensation in lieu thereof.

8. Mr. Bagula appealed to the former Administrative Tribunal. His case was subsequently transferred to the UNDT in Nairobi. In Judgment No. UNDT/2011/138 dated 2 August 2011, the UNDT found the evidence credible, truthful and properly acted upon. It also found that the evidence sufficiently supported the charges against Mr. Bagula. The UNDT rejected Mr. Bagula's application and awarded costs against him by recommending that the Administration withhold all final entitlements due to Mr. Bagula for the purpose of satisfying his legally established obligations.

### **Submissions**

#### **Mr. Bagula's Appeal**

9. Mr. Bagula submits that the UNDT erred in fact and in law by not respecting his due process rights. Mr. Bagula submits that the UNDT failed to consider the evidence that some witnesses had been suspended by him for their involvement in theft and thus had motive to make false allegations against him.

10. Mr. Bagula submits that the UNDT did not provide him with access to the investigation report or to the witnesses who lied about the relevant issues and facts of the case. Mr. Bagula also submits that the Organization had decided to separate him from service prior to the issuance of the findings of the JDC and that the Secretary-General abused his discretion by separating him from service prior to the conclusion of the UNDT proceedings.

11. Mr. Bagula contends that the content of his performance appraisal report created prejudicial effect on the UNDT proceedings, and that the UNDT relied on conjecture and opinion in its Judgment and did not provide any explanation as to the reasoning of some of its conclusions.

12. Mr. Bagula requests that the Appeals Tribunal correct the UNDT Judgment and award him his final entitlements.

**Secretary-General's Answer**

13. The Secretary-General submits that the Dispute Tribunal applied the appropriate standard of review for disciplinary cases as articulated in *Madhi*<sup>1</sup> in reaching its decision, and that the Organization had not breached any rules or Mr. Bagula's rights when it decided to separate him from service without notice or compensation, including his final entitlements.

14. The Secretary-General submits that all the facts in the case as well as the evidence that was presented, including that of the witness testimonies, provide sufficient evidence to support a reasonable inference that Mr. Bagula had committed misconduct. Furthermore, the Secretary-General submits that the Dispute Tribunal took into consideration the nature of the misconduct and whether the disciplinary measure that was imposed on Mr. Bagula was proportionate.

15. The Secretary-General submits that Mr. Bagula's argument regarding a potential conspiracy against him lacks any foundation. Nevertheless, the Secretary-General notes that both the JDC and the UNDT reviewed the evidence provided and rejected that argument.

16. The Secretary-General submits that Mr. Bagula merely attempts to resubmit arguments that were previously raised, but rejected by the UNDT. Furthermore, the Secretary-General submits that Mr. Bagula's argument regarding the breach of his due process rights lacks merit as he presents arguments that had been never submitted to the UNDT.

**Considerations**

17. The complaints against Mr. Bagula were very serious, which no employer could tolerate. The complaints made in 2005-2006 related to Mr. Bagula promising jobs to the complainants if money was paid to him. Quite simply it was a "money for jobs" scam.

18. The Appellant was a Warehouse Worker under a 300-Series contract at the G-2 level with MONUC in Bukavu as from September 2004. He had earlier been a casual daily worker for more

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<sup>1</sup> *Madhi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-018.

than two and a half years. The complainants who had paid Mr. Bagula money in exchange for jobs were all casual daily workers like the Appellant.

19. Investigations were ordered into the complaints and led to the issuance of a report dated 5 June 2006 recommending action against the Appellant and other MONUC staff members. A second investigation report dated 12 July 2006 was also filed recommending action solely against the Appellant.

20. The Appellant was subsequently charged with improperly soliciting and receiving money from local citizens in exchange for their initial recruitment and continued service as United Nations staff. He was also charged with violation of Staff Regulation 1.2 and Staff Rule 301.3.

21. A JDC panel was set up to conduct disciplinary proceedings. Before the JDC, the Appellant denied the allegations and contended that he was a victim of a plot by other casual daily workers, who had invented the story to hide the fact that they had been selling MONUC equipment. The Appellant also submitted that he was not responsible for hiring the complainants. Some of the witnesses had been involved in stealing MONUC cement. He pointed out that he could not have possibly asked for \$ 100 from a casual daily worker because this was close to one month's salary, and that one of the witnesses had loaned money to a credit cooperative, which explained why that person was designated to collect money from the Appellant.

22. The JDC examined seven witnesses. Their testimonies were analyzed in great detail. The Appellant was also heard and his defense was considered. The JDC reached the conclusion that the preponderance of evidence showed that the staff member had more likely than not engaged in taking payment from local citizens in exchange for, or with the promise of, securing them jobs.

23. The Secretary-General accepted the JDC's findings and recommendations and decided to separate the Appellant from service.

24. Before the UNDT, eight witnesses testified against the Appellant. They were cross-examined by the Appellant. The Dispute Tribunal held that the evidence of the witnesses was credible, truthful and was properly acted upon. The Dispute Tribunal had observed the demeanour of the witnesses, examined and analyzed their evidence and was therefore in the best position to judge their truthfulness. The Dispute Tribunal concluded that the case against the

Appellant stood substantiated and corroborated and the evidence sufficiently supported the charge of improperly soliciting and receiving money from local people in exchange for their recruitment and service as United Nations staff. We find no reason to disagree.

25. As regards the Appellant's character, the less said the better. During the teleconference the Appellant produced two impostors (Buroko and Rubangiza) as witnesses, who testified that they had lied to the investigators and also made false allegations against the Appellant. Later during a hearing at Kinshasa, the UNDT asked the real Buroko and Rubangiza whether they were the same persons who had testified via teleconference. They denied ever having done so. The Appellant was unable to provide any explanation. The Dispute Tribunal also received testimonies from Mirindi and Mulolo to the effect that the Appellant had tried to bring impostors to appear before a UNDT hearing in Kinshasa.

26. The credible and reliable evidence of the witnesses and the contemptuous conduct of the Appellant can lead to only one conclusion that the Appellant was guilty of the charge of soliciting and accepting bribes.

### **Judgment**

27. This appeal is without merit and is therefore dismissed.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Courtial

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

*(Signed)*

Weicheng Lin, Registrar