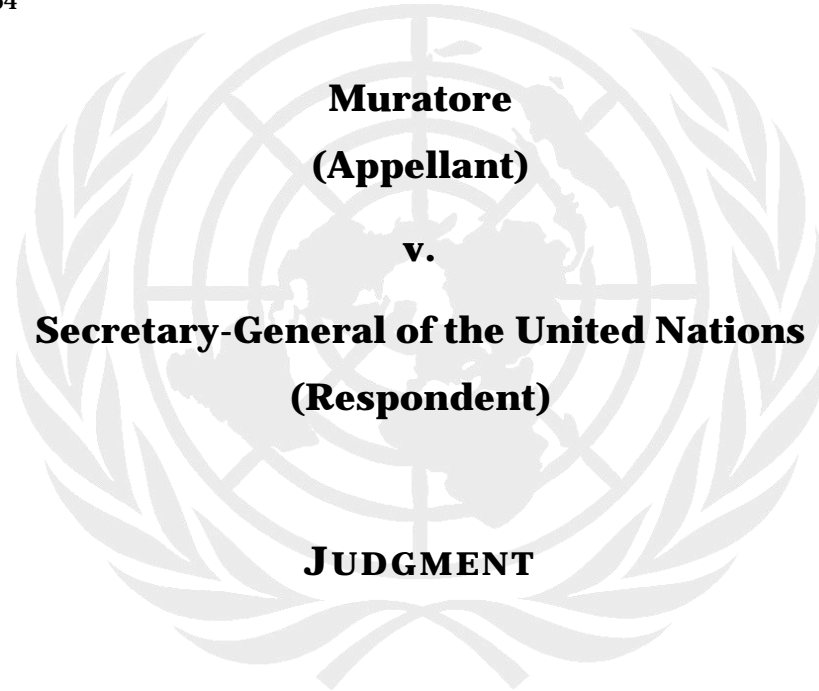




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-264



**Muratore  
(Appellant)**

**v.**

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

**JUDGMENT**

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**Before:** Judge Sophia Adinyira, Presiding  
Judge Luis María Simón  
Judge Jean Courtial

**Judgment No.:** 2012-UNAT-245

**Date:** 29 June 2012

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Self-Represented

**Counsel for Respondent:** Rupa Mitra

**JUDGE SOPHIA ADINYIRA**, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Enrico Muratore against Judgment No. UNDT/2011/129 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 14 July 2011 in the case of *Muratore v. Secretary-General of the United Nations*. Mr. Muratore appealed on 15 October 2011, and the Secretary-General answered on 5 December 2011.

### **Synopsis**

2. Mr. Muratore, a staff member of the Office of the United Nations High Commissioner for Human Rights (OHCHR), does not challenge the findings of the UNDT that the selection process for the Geneva P-4 was flawed; that the selection process for the Geneva P-3s contained substantive errors; and that the selection process for the Yaoundé P-3 was also flawed. He, however, submits that the UNDT erred in appreciating the facts and the law and therefore its compensation awarded was insufficient.

3. Mr. Muratore merely repeats arguments already considered and accepted by the Dispute Tribunal, which is not the purpose of an appeal.

4. The UNDT concluded that Mr. Muratore “suffered significant material damages, as well as a high degree of moral damage since it has been established that he was a victim of bias”. In the light of these findings, the UNDT assessed his damages at seven months’ net base salary at the rate in effect on the date of his separation from OHCHR, in addition to the financial compensation in the amount of one month’s net base salary already authorized by the Secretary-General.

5. We recall our decision in *Lutta* that this Court will generally defer to the trial court’s discretion in the award of damages as there is no set way for the trial court to set damages for loss of chance of promotion.<sup>1</sup> All that this Court would ensure is that the DT was guided by two elements. The first element is the nature of the irregularity; the second is the chance that

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<sup>1</sup> *Lutta v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-117.

the staff member would have had to be promoted or selected had the correct procedure been followed.<sup>2</sup>

6. Mr. Muratore has not met the burden of demonstrating that the UNDT erred in assessing the damages. The trial judge was in a better position to assess the damages and we find the sum adequate and the appeal therefore fails.

7. The appeal is dismissed and the Judgment of the UNDT is affirmed.

### **Facts and Procedure**

8. Mr. Muratore joined OHCHR at the P-3 level on a short-term appointment on 19 July 2004. His contract was extended on several occasions until it expired on 30 June 2006.

9. In 2005, OHCHR conducted a regularization exercise for posts advertised through Galaxy to facilitate the recruitment of staff members who held short-term contracts since 30 November 2003. During this exercise, Mr. Muratore responded to a number of OHCHR vacancy announcements, including two for Geneva (one P-4 and six P-3s) and two for Yaoundé (a P-4 and a P-3), which are the subject of the present appeal. He was asked to interview for some of the posts, though he ended up not being selected for any of them.

10. In October 2005, Mr. Muratore informed the OHCHR Staff Council that he believed that he had not been selected for the L-3 post of Desk Officer for Angola as a result of a prior complaint of harassment that he had filed.

11. On 24 May and 29 May 2006 respectively, Mr. Muratore wrote to the Secretary-General requesting administrative review of the decisions not to select him for any of the posts that he had applied for.

12. After Mr. Muratore separated from OHCHR upon expiry of his short-term contract on 30 June 2006, he submitted two appeals to the Joint Appeals Board (JAB), contesting the regularity of the selection process for the posts in question.

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<sup>2</sup> *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-220.

13. On 8 January 2008, the JAB submitted its report in respect of the Geneva P-3 posts and the two Yaoundé posts. The JAB found that the appeal regarding the two Yaoundé posts was not receivable. However, with respect to the Geneva P-3 posts, the JAB found that the selection procedure had been flawed and recommended that Mr. Muratore be placed on the roster for similar posts for one year even though he was no longer an OHCHR staff member. On 11 April 2008, the Deputy Secretary-General endorsed the findings of the JAB with regard to the two Yaoundé posts, but regarding the Geneva P-3s decided to only award Mr. Muratore one month's net base salary as compensation.<sup>3</sup>

14. On 16 June 2008 and 28 July 2008, Mr. Muratore contested before the former Administrative Tribunal the Secretary-General's decisions not to select him for any of the posts that he had applied for. Upon the implementation of the new system of justice, Mr. Muratore's applications were transferred to the Dispute Tribunal on 1 January 2010.

15. On 14 July 2011, the Dispute Tribunal issued its Judgment No. UNDT/2011/129, which is currently under appeal. The UNDT concluded that a) there were no irregularities in the Yaoundé P-4 selection process; b) the selection process for the Geneva P-4 was flawed; c) the selection process for the Geneva P-3s contained substantive errors; and d) the selection process for the Yaoundé P-3 was flawed. As a result of its findings, the Dispute Tribunal awarded Mr. Muratore seven months' net base salary at the rate in effect on the date of his separation from OHCHR, in addition to one month's net base salary already authorized by the Secretary-General.

## **Submissions**

### **Mr. Muratore's Appeal**

16. Mr. Muratore submits that the UNDT Judgment erred in fact and in law resulting in a partially wrong analysis of the harm he had suffered and therefore an insufficient award of compensation.

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<sup>3</sup> The JAB issued another report on 4 February 2008 in respect of the Geneva P-4 post. It found that the selection procedure was flawed as the wording used in Mr. Muratore's evaluation was "selective" and contained a substantial error. It recommended that Mr. Muratore be placed on the roster for similar posts for one year, though he was no longer a staff member. The Secretary-General rejected the JAB's recommendation. Mr. Muratore appealed to the UNDT, whose Judgment No. UNDT/2011/125 is subject to another appeal by Mr. Muratore (See Judgment No. 2012-UNAT-241).

17. Mr. Muratore does not contest the UNDT's analysis and findings with regards to the Yaoundé P-4 post. However, Mr. Muratore contests the UNDT's findings with regard to the other posts in contention.

18. Mr. Muratore submits that the UNDT erred in fact, and consequently in law, when it relied on the evidence provided by the interview panel for the Geneva P-4 post that the selected candidate met the educational and professional requirements for the post. More specifically, Mr. Muratore requests that the Appeals Tribunal order that the Secretary-General produce a copy of all the relevant certificates of the shortlisted candidates so that it can be demonstrated that the selected staff member did not meet the basic requirements of the post. Mr. Muratore submits that the combination of the various oversights by the UNDT in its analysis of the flawed selection process for the Geneva P-4 provoked a more extensive level of loss than originally determined and that the remedy awarded by the UNDT is not proportionate to the harm and does not adequately compensate him.

19. Mr. Muratore submits that while the UNDT correctly determined that the selection process for the Geneva P-3s was flawed, it erred in its appreciation of the applicable facts. Mr. Muratore submits that seeing that the Geneva P-3 vacancy announcement consisted of six different posts, the flaw in the selection process affected his selection chances for six posts thereby multiplying his loss by six. Mr. Muratore further submits that the UNDT erred by not taking into account the fact that as a result of his excellent past performance appraisals it would have been fair to consider that upon being selected to one of these posts he would have been able to pursue a long successful career within OHCHR.

20. Mr. Muratore submits that the same error by the UNDT is also reflected in its analysis of the Yaoundé P-3 selection process, which therefore resulted in an inadequate level of compensation.

21. Mr. Muratore requests that the Appeals Tribunal reinstate him as a Senior Human Rights Officer at the P-5 level and also award him a cumulative total of more than 14 years' net base salary, which ranges from USD 50,000 for discrimination to two years' net base salary and emoluments at the P-4 level and 12 years' net base salary and emoluments at the P-3 level for loss of career prospects.

**Secretary-General's Answer**

22. The Secretary-General submits that Mr. Muratore does not establish that the UNDT erred in its analysis of the Geneva P-4 post and merely repeats the arguments that he previously presented to the UNDT. In addition to noting that the Appeals Tribunal previously held that it is not sufficient to merely repeat prior arguments, the Secretary-General submits that he enjoys a wide discretion when assessing candidates for promotion and appointment. The Secretary-General submits that the UNDT properly examined the post selection process and that it did not need to conduct a new post selection process. Furthermore, the Secretary-General notes that as the UNDT found in Mr. Muratore's favour, Mr. Muratore is not permitted to appeal the Judgment on purely academic grounds.

23. The Secretary-General submits that similarly Mr. Muratore merely repeats the arguments regarding the Geneva P3 posts that he had presented to the UNDT without identifying any error in fact or law. The Secretary-General submits that the Appeals Tribunal previously found that the UNDT Judge hearing the case had an appreciation of the facts and evidence before it and that some degree of deference had to be accorded to the UNDT.

24. The Secretary-General submits that Mr. Muratore's analysis regarding compensation in view of six lost post selection opportunities is flawed and without merit as at any time he would only have been able to be selected for one post. The Secretary-General also submits that it is not sufficient to claim moral damages without providing any specific evidence of the actual injury. Furthermore, the Secretary-General submits that Mr. Muratore's appeal does not identify any applicable law or jurisprudence that would support his argument that the UNDT erred in its analysis of the applicable compensation to be awarded as a result of the irregularities in the contested post selection processes.

25. The Secretary-General submits that the UNDT correctly held that it could not review, nor award, compensation to Mr. Muratore in response to his submission regarding his lack of evaluation as he did not follow the applicable procedure that required him to first contact the Secretary-General in writing regarding this issue. Similarly, the Secretary-General submits that Mr. Muratore does not identify that any of his rights to a fair trial had been violated.

26. The Secretary-General submits that while the Appeals Tribunal's Statute set forth the possibility for it to request the parties to produce documents that it may find relevant, it does not grant the parties the right to request that the Appeals Tribunal order such a document production. In addition to the above, the Secretary-General submits that the Appeals Tribunal's Statute does not provide it with the power to order, as Mr. Muratore requests, the reintegration of a staff member into the Organization.

### **Considerations**

27. Mr. Muratore does not challenge the findings of the UNDT that the selection process for the Geneva P-4 post was flawed; that the selection process for the Geneva P-3 posts contained substantive errors; and that the selection process for the Yaoundé P-3 post was also flawed. He however submits that the UNDT erred in appreciating the facts and the law and therefore, its compensation awarded was insufficient.

28. Mr. Muratore also requests that we order the production of additional documents, which we reject as they are not necessary for the determination of this appeal.

29. Mr. Muratore requests this Tribunal to order his reinstatement as a Senior Human Rights Officer at the P-5 level, and also to award him a cumulative total of more than 14 years' net base salary, which ranges from USD 50,000 for discrimination to two years' net base salary and emoluments at the P-4 level and 12 years' net base salary and emoluments at the P-3 level for loss of career prospects.

30. We recall this Court's decision in *Abbassi* that some degree of deference should be given to the factual findings by the UNDT as the court of first instance.<sup>4</sup> Here Mr. Muratore is asking us to review his case in order to enhance the award. He merely repeats arguments already considered and accepted by the Tribunal, which is not the purpose of an appeal.

31. In paragraph 78 of the Judgment under appeal, the UNDT held:

It is clear from the foregoing that the Applicant has established that three of the four contested selection procedures were flawed, including one case of bias and one of flagrant substantive error. Furthermore, the [Dispute] Tribunal's belief that there was a bias against the Applicant is strengthened by the fact that during the nine months prior to

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<sup>4</sup> *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 26.

leaving OHCHR, he applied unsuccessfully for over 20 posts, including P-3s and P4s. The [Dispute] Tribunal therefore considers that the errors committed deprived the Applicant of a very real chance of obtaining continuing employment as either a P-3 or a P-4. Obtaining such employment might have increased his chances of having his contract renewed; instead, his employment with OHCHR was ended on 30 June 2006 at the expiration of his final contract.

32. The UNDT concluded that Mr. Muratore “suffered significant material damages, as well as a high degree of moral damage since it has been established that he was a victim of bias”. In light of these findings, the DT assessed his damages at seven months’ net base salary at the rate in effect on the date of his separation from OHCHR, in addition to the financial compensation in the amount of one month’s net base salary already authorized by the Secretary-General.

33. We recall our decision in *Lutta* that this Court will generally defer to the trial court’s discretion in the award of damages as there is no set way for the trial court to set damages for loss of chance of promotion.<sup>5</sup> All that this Court would ensure is that the UNDT was guided by two elements. The first element is the nature of the irregularity; the second is the chance that the staff member would have had to be promoted or selected had the correct procedure been followed.<sup>6</sup>

34. Mr. Muratore has not met the burden of demonstrating that the UNDT erred in assessing the damages. The Trial Judge was in a better position to assess the damages and we find the sum adequate. The UNDT did not err on a question of fact resulting in a manifestly unreasonable decision on this point.

### **JUDGMENT**

35. The appeal is dismissed and the Judgment of the UNDT is affirmed.

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<sup>5</sup> *Lutta v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-117.

<sup>6</sup> *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-220.



Original and Authoritative Version: English

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

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Simón

*(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