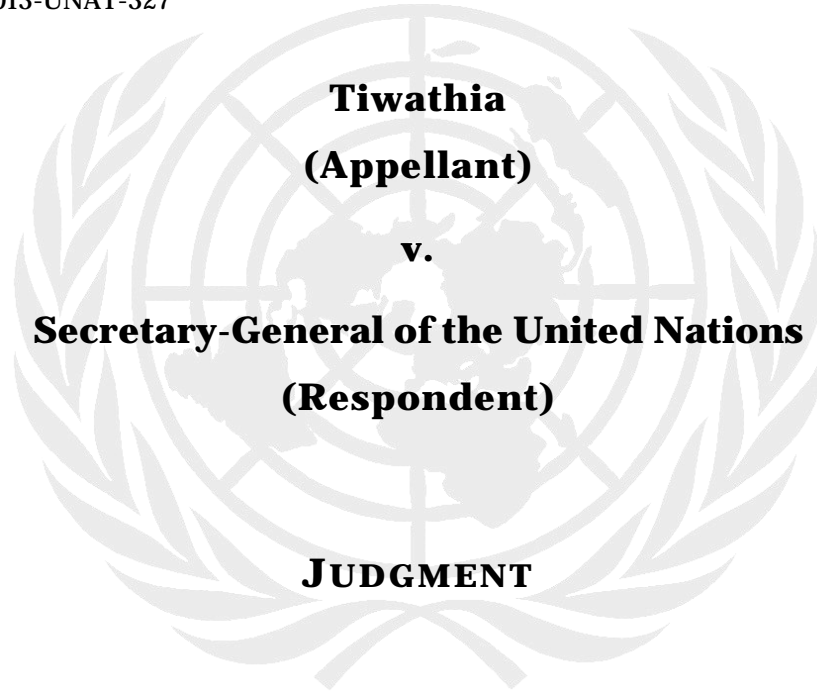




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-327



**Tiwathia
(Appellant)**

v.

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

JUDGMENT

Before: Judge Mary Faherty, Presiding
Judge Luis María Simón
Judge Inés Weinberg de Roca

Case No.: 2012-356

Date: 21 June 2013

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Zarqaa Chohan

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Adarsh Tiwathia against Judgment No. UNDT/2012/109, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 18 July 2012 in the case of *Tiwathia v. Secretary-General of the United Nations*. Ms. Tiwathia appealed on 30 July 2012, and the Secretary General answered on 28 September 2012.

Facts and Procedure

2. Ms. Tiwathia joined the Organization in 2001. She is a permanent staff member currently serving as Senior Medical Officer at the P-5 level with the Medical Services Division (MSD) in the Office of Human Resources Management (OHRM), in the Department of Management (DM) in New York.

3. On 15 December 2011, the D-1 post of Deputy Director of MSD was advertised on Inspira. Ms. Tiwathia applied for the post and was interviewed on 24 April 2012. She was advised on 9 July 2012 that she had not been selected for the post, but that she had been placed on a roster for job openings with similar functions at the same level.

4. On 11 July 2012, Ms. Tiwathia requested that the UNDT suspend the selection decision. On 12 July 2012, Ms. Tiwathia requested management evaluation of the selection decision. In Judgment No. UNDT/2012/109, the UNDT rejected Ms. Tiwathia's application for suspension of action on the ground that the selection decision had already been implemented before a judgment on suspension of action could be rendered. On 20 July 2012, Ms. Tiwathia requested revision of the UNDT Judgment, which the UNDT rejected on 31 July 2012.

5. On 30 July 2012, Ms. Tiwathia filed an appeal against Judgment No. UNDT/2012/109. On 31 July 2012, she filed a motion for interim relief requesting that the Appeals Tribunal suspend the promotion of the successful candidate. By Order No. 103 dated 24 September 2012, the Appeals Tribunal dismissed the motion on the ground that Ms. Tiwathia did not seek an interim measure consistent with the UNDT Judgment as required under Article 9(4) of the Statute of the Appeals Tribunal.

Submissions

Ms. Tiwathia's Appeal

6. Ms. Tiwathia submits that the UNDT erred in law and fact in deciding that the selection decision -- the subject-matter of her application to the UNDT for suspension of action -- had been implemented by the time of her application for relief under Article 2(2) of the UNDT Statute. Thus, she submits that the Dispute Tribunal failed to exercise its jurisdiction.

The Secretary-General's Answer

7. The Secretary-General submits that the appeal is not receivable and asserts that the Judgment rendered by the Dispute Tribunal rejecting the application to suspend the selection decision does not come within the limited circumstances in which the Appeals Tribunal will receive appeals from suspension of action decisions.

Considerations

8. Article 2 of the Statute of the Dispute Tribunal (UNDT Statute), laying out the general structure and jurisdiction of the UNDT, grants the power to suspend the implementation of an administrative decision during the pendency of management evaluation. Article 2(2) of the UNDT Statute provides as follows:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

9. Notwithstanding the jurisdictional powers afforded by Article 2(2) to the Dispute Tribunal, the jurisprudence of the Appeals Tribunal establishes that appeals from UNDT decisions on suspension of action will be receivable only if that Tribunal, in adjudicating on such applications, exceeded its competence or jurisdiction.¹

¹ See *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, para. 18, quoting *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062;

10. In *Wamalala*, we have stated, *inter alia*:

The Appeals Tribunal has held that the UNDT enjoys wide powers of discretion in all matters relating to case management and that it must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for the dispensation of justice. For this reason, and in accordance with Articles 2(2) and 10(2) of the UNDT Statute, appeals against decisions taken in the course of proceedings and relating to procedure, such as matters of proof, the production of evidence, or interim measures, are not receivable, even where the judge of first instance has committed an error of law or fact relating to the application of the conditions to which the grant of a suspension of action is subject or a procedural error.²

11. In the present case, notwithstanding Ms. Tiwathia's arguments, the Dispute Tribunal's legal and factual reasoning fall entirely within its competence and jurisdiction. Although her claims address the merits of the UNDT Judgment, they do not amount to claims that the Dispute Tribunal exceeded its competence or jurisdiction in denying her application for suspension of action pending management evaluation.

12. In all those circumstances, Ms. Tiwathia's appeal is not receivable.

Judgment

13. For the foregoing reason, the appeal is dismissed.

Kasmani v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-011; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008; *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

² *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, para. 17.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Faherty, Presiding
28 June 2013

(Signed)

Judge Simón
28 June 2013

(Signed)

Judge Weinberg de Roca
21 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar