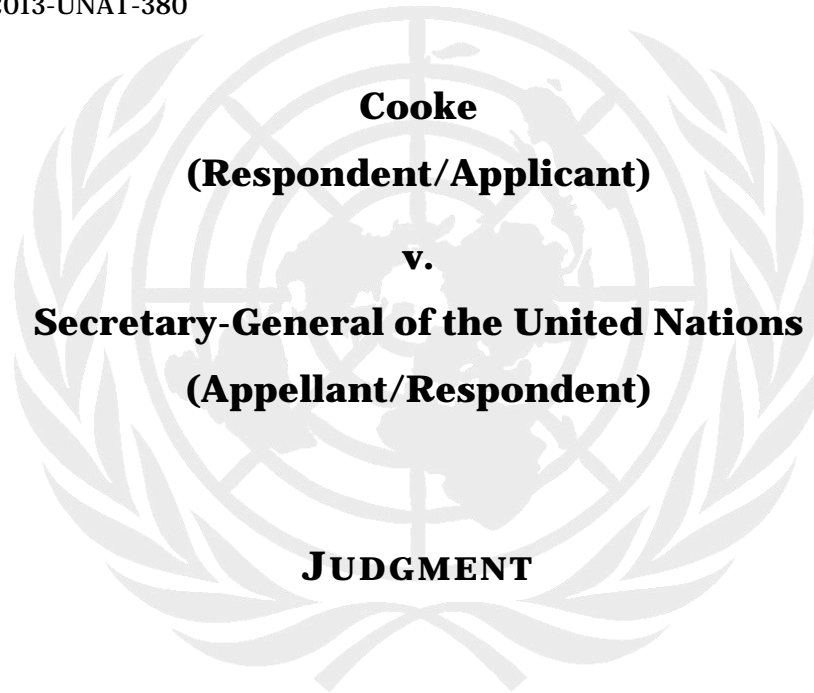




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-380



**Cooke
(Respondent/Applicant)**

v.

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

JUDGMENT

Before: Judge Rosalyn Chapman, Presiding
Judge Sophia Adinyira
Judge Richard Lussick

Case No.: 2013-432

Date: 17 October 2013

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Self-represented

Counsel for Appellant/Respondent: Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it the appeal by the Secretary-General of Judgment No. UNDT/2012/154, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 19 October 2012 in the case of *Cooke v. Secretary-General of the United Nations*.

Facts and Procedure

2. Mr. George Cooke filed an application before the UNDT challenging his summary dismissal. The Secretary-General contended that the application was untimely and not receivable. On 28 December 2011, the UNDT issued its Judgment on Receivability, Judgment No. UNDT/2011/216, in which it concluded that the application was timely and receivable. On 27 February 2012, the Secretary-General appealed the Judgment on Receivability, and Mr. Cooke filed his answer.

3. While the appeal of the Judgment on Receivability was pending before the Appeals Tribunal, the UNDT held a hearing via teleconference on the merits of Mr. Cooke's application, and on 19 October 2012, issued Judgment on Merits, Judgment No. UNDT/2012/154. Among other things, the UNDT concluded that Mr. Cooke's summary dismissal was unlawful and ordered its rescission and Mr. Cooke's reinstatement or, in lieu thereof, the payment of compensation to Mr. Cooke.

4. On 1 November 2012, this Tribunal pronounced the outcome of Judgment No. 2012-UNAT-275, in which we determined that Mr. Cooke's application was untimely and not receivable and reversed the UNDT Judgment on Receivability.

5. On 7 January 2013, the Secretary-General filed his appeal against Judgment No. UNDT/2012/154. Mr. Cooke did not file an answer to the appeal.

The Secretary-General's Appeal

6. Since the Appeals Tribunal has already determined that Mr. Cooke's application before the UNDT was not receivable, the UNDT's subsequent Judgment on the Merits "should be vacated since the latter judgment relates to matters that were found to be non-receivable".

7. The Secretary-General requests that the Appeals Tribunal "clarify whether a UNDT judgment on the merits is automatically vacated when the UNAT overturns a UNDT judgment on

receivability”. In this regard, the Secretary-General draws an analogy to the Appeals Tribunal’s rule “that a UNDT judgment on compensation is ‘automatically vacated’ when the UNAT overturns a UNDT judgment on the merits”.¹

Considerations

8. The Dispute Tribunal held a hearing on the merits of Mr. Cooke’s application while the Secretary-General’s appeal of the Judgment on Receivability was pending before the Appeals Tribunal. On the one hand, if the Judgment on Receivability were affirmed on appeal, the hearing would have afforded the parties a prompt resolution of Mr. Cooke’s challenge to his summary dismissal. On the other hand, if the Judgment on Receivability were reversed on appeal, there would have been no need for a hearing.

9. It appears to this Tribunal that the Dispute Tribunal failed to show proper consideration for judicial economy and efficiency. With full knowledge of the appeal by the Secretary-General, the UNDT chose to proceed with a hearing on the merits of Mr. Cooke’s application – ignoring the possibility that its Judgment on Receivability might be reversed (as it was).² Certainly, the better or preferred practice would have been for the Secretary General to have sought a stay of the hearing from the UNDT or for the UNDT to have stayed *sua sponte* the hearing pending the Judgment of the Appeals Tribunal.

10. The Secretary-General requests that this Tribunal “clarify whether a UNDT judgment on the merits is automatically vacated when the UNAT overturns a UNDT judgment on receivability”. In this regard, the Secretary-General draws an analogy to the Appeals Tribunal’s rule “that a UNDT judgment on compensation is ‘automatically vacated’ when the UNAT overturns a UNDT judgment on the merits”.³

11. When the Appeals Tribunal determines that the Dispute Tribunal improperly received an application and reverses or vacates a judgment on receivability, any judgment on the merits is null and void *ab initio*. That does not mean, however, that the judgment on the merits is

¹ Footnote omitted.

² Of course, the UNDT may have been concerned that the remedy afforded Mr. Cooke would be insufficient if the hearing were postponed while awaiting the Judgment of the Appeals Tribunal; but Article 10(5) of the UNDT Statute permits additional compensation in “exceptional circumstances” and the lengthy passage of time may amount to “exceptional circumstances”.

³ Footnote omitted.

automatically vacated; only the Appeals Tribunal can vacate a judgment, upon application by a party.

Judgment

12. The Appeals Tribunal grants the Secretary-General's appeal against the Judgment on the Merits, Judgment No. UNDT/2012/154, and that Judgment is vacated.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Lussick

Entered in the Register on this 19th day of December 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar