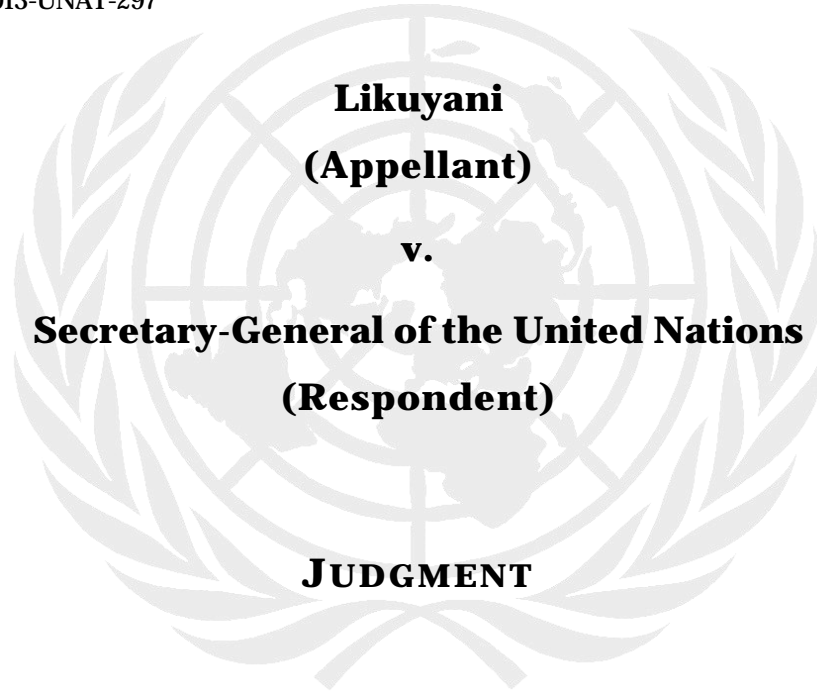




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-297



**Likuyani
(Appellant)**

v.

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

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Luis María Simón
Judge Sophia Adinyira

Case No.: 2012-329

Date: 28 March 2013

Registrar: Weicheng Lin

Counsel for Appellant: Jason Okemwa

Counsel for Respondent: Simon Thomas

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Aineah Likuyani against Judgment No. UNDT/2012/040, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 28 March 2012 in the case of *Likuyani v. Secretary-General of the United Nations*.

Facts and Procedure

2. Mr. Likuyani joined the Organization in February 1986 with the United Nations Centre for Human Settlements (UNCHS) in Nairobi, Kenya, as an Assembler/Hand Collator. He was separated from service without notice effective 28 October 1998, after he was found to have filed false claims for reimbursement of medical bills and to have made personal international phone calls from an official line without authorization.

3. Mr. Likuyani appealed. In Judgment No. 976 dated 17 November 2000, the former United Nations Administrative Tribunal (former Administrative Tribunal) rejected Mr. Likuyani's application.

4. On 11 July 2001, Mr. Likuyani applied to the former Administrative Tribunal for revision of Judgment No. 976. His application was returned for correction and resubmission. Mr. Likuyani thereafter made several extension requests. According to the case file, Mr. Likuyani's case was transferred to the UNDT in Nairobi in August 2010.

5. On 20 September 2010, Mr. Likuyani filed an application with the Dispute Tribunal for revision of Judgment No. 976. In Judgment No. UNDT/2012/040, the Dispute Tribunal declared Mr. Likuyani's application not receivable. In the view of the UNDT, Mr. Likuyani's revision application failed to satisfy Article 29 of the UNDT Rules of Procedure, which requires "the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision".

6. Mr. Likuyani appealed on 19 May 2012, and the Secretary-General answered on 27 July 2012. On 8 October 2012, Mr. Likuyani filed a motion for discovery of certain documents, including his submissions in his own case before the Dispute Tribunal. In Order No. 120 (2012) dated 24 January 2013, the Duty Judge denied Mr. Likuyani's motion. On 25 March 2013, Mr. Likuyani filed "supplementary submissions".

Submissions

Mr. Likuyani's Appeal

7. Mr. Likuyani maintains that the UNDT failed to exercise jurisdiction vested in it when it declared his case not receivable. He submits that the UNDT disregarded the factual issues that he had raised in his application and rendered a manifestly unfair and erroneous decision.

8. Mr. Likuyani asserts that the UNDT failed to note that his case fell in the transition from the old system of internal justice to the new one, and that the Executive Secretary of the former Administrative Tribunal, on behalf of the President, had granted him an extension from 7 September 2001 onwards. His case was pending before the former Administrative Tribunal at the time of its abolition, and was transferred to the UNDT.

9. Mr. Likuyani requests that the Appeals Tribunal re-examine his case on the merits or, in the alternative, that it declare his case receivable and remand it to the UNDT for determination of facts by a different judge at a duty station other than Nairobi. He further requests that the costs of the appeal be borne by the Secretary-General.

Secretary-General's Answer

10. The Secretary-General submits that the UNDT correctly concluded that Mr. Likuyani's application for revision of a judgment of the former Administrative Tribunal was not receivable. This conclusion was consistent with the prevailing jurisprudence of the Appeals Tribunal that neither the UNDT nor the Appeals Tribunal, being courts of limited jurisdiction, is competent to revise a judgment of the former Administrative Tribunal.

11. The Secretary-General maintains that Mr. Likuyani's case was not pending before the former Administrative Tribunal at the time of its abolition. Consequently, it was not transferred from the former Administrative Tribunal to the UNDT, within the meaning of paragraph 45 of General Assembly resolution 63/253. Mr. Likuyani filed a new case with the UNDT.

12. In the alternative, the Secretary-General submits that Mr. Likuyani has failed to establish a decisive fact warranting a revision.

Considerations

13. As a preliminary matter, the Appeals Tribunal rejects Mr. Likuyanio's additional submissions. Absent a motion seeking leave to file additional pleadings and absent any showing of exceptional circumstances justifying additional pleadings, the submissions have not been added to the case file.

14. In *Lesar*, the Appeals Tribunal held as follows:

10. The authority to revise its own decisions, which is expressly conferred on the Appeals Tribunal by article 11 of its Statute, is a power generally recognized as inherent to, and reserved for, courts of final instance. While it is important to proper administration of justice that there be an endpoint to a trial, it is equally important that supreme courts not be irrevocably bound by *per incuriam* rulings.

11. However, only the court that handed down the decision has the power to revise it, unless a rule of law determines to transfer it to another court.

12. General Assembly resolution 63/253 provides for certain measures to facilitate the transition from the old to the new system of administration of justice, but it is completely silent on the question of revision of judgments handed down by the former Administrative Tribunal during the period prior to its abolishment. That omission, regrettable as it may be, does not constitute a denial of the right to an effective remedy as provided for in article 8 of the Universal Declaration of Human Rights, since a tribunal has already dispensed justice.

13. It follows from these considerations that this Court is not competent to revise the judgment of the former Administrative Tribunal, and that, consequently, [the] appeal is not receivable.¹

15. Neither Article 11 of the Statute of the Appeals Tribunal nor Article 2(7)(b) of the Statute of the Dispute Tribunal confer any jurisdiction to hear an application for revision of a judgment of the former Administrative Tribunal. It is for this reason that the Appeals Tribunal has consistently held that it has no competence to revise the judgments of the former Administrative Tribunal.²

¹ *Lesar v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-126.

² *Ibid.*, para. 13; see also *Gakehmi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-166 and *Piskolti v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-106.

16. The application before the UNDT was not receivable because the UNDT had no jurisdiction to hear the application. While we accordingly confirm the UNDT's conclusion, we find that the UNDT, in reaching this conclusion, relied on the wrong reasons and failed to follow the binding jurisprudence of the Appeals Tribunal.

Judgment

17. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Adinyira

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar