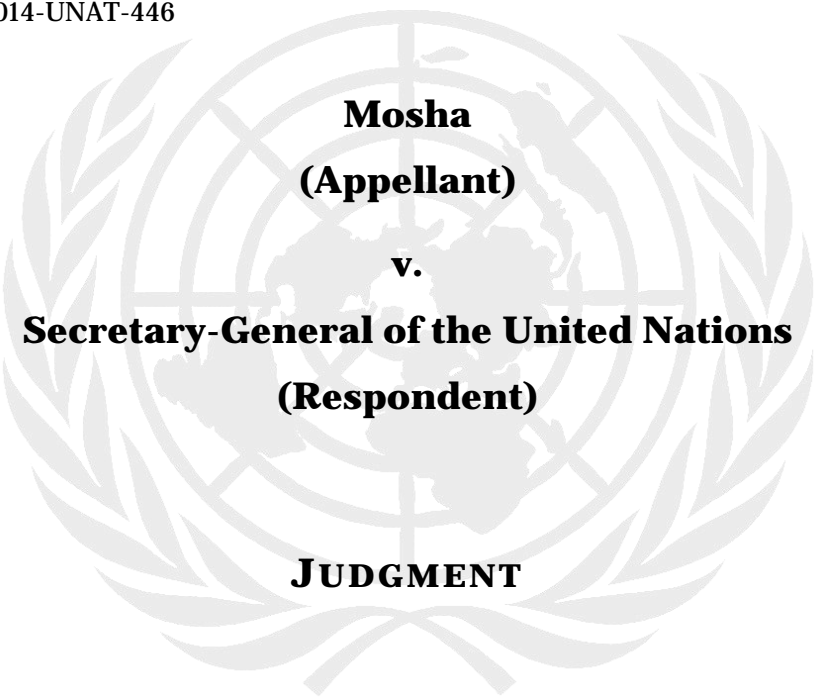




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2014-UNAT-446



Mosha
(Appellant)
v.
Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Inés Weinberg de Roca
Judge Rosalyn Chapman

Case No.: 2013-515

Date: 27 June 2014

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Paul Oertly

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Levina Raymond Mosha against Judgment on Receivability No. UNDT/2013/088, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 19 June 2013 in the case of *Mosha v. Secretary-General of the United Nations*. Ms. Mosha filed a non-conforming appeal on 19 August 2013, which she subsequently perfected. The Secretary-General filed an answer on 13 September 2013.

Facts and Procedure

2. Ms. Mosha was a library clerk on a fixed-term appointment at the G-4 level with the International Criminal Tribunal for Rwanda (ICTR) until her resignation effective 30 June 2011.

3. After she tendered her resignation on 30 May 2011, a check-out process was initiated. On 7 June 2011, the then President of the ICTR Staff Association refused to complete Ms. Mosha's check-out on the grounds of ongoing investigations into the finances of the ICTR Staff Association, particularly the Executive Committee of the Staff Association, on which Ms. Mosha had served. That resulted in delays in the processing of Ms. Mosha's final emoluments and in submitting her pension forms to the United Nations Joint Staff Pension Fund (UNJSPF).

4. Ms. Mosha protested, first to the former President of the ICTR Staff Association, and then to various officials up to the ICTR Registrar.

5. On 26 March 2012, Ms. Mosha was paid her final emoluments and on 28 March 2012, the ICTR sent notice of Ms. Mosha's separation to the UNJSPF.

6. On 25 May 2012, Ms. Mosha filed an application with the Dispute Tribunal contesting the decision to withhold her final emoluments and the delay in notifying the UNJSPF of her separation. She did not request management evaluation before applying to the UNDT. The Secretary-General filed a motion for leave to have receivability considered as a preliminary issue.

7. In Judgment on Receivability No. UNDT/2013/088, the Dispute Tribunal dismissed Ms. Moshá's application as non-receivable on the grounds that she had failed to seek management evaluation. The Dispute Tribunal, moreover, ordered Ms. Moshá to pay USD 600 for having filed a "vexatious and frivolous" application.

8. Ms. Moshá appeals the UNDT Judgment.

Ms. Moshá's Appeal

9. Ms. Moshá submits that the UNDT erred in fact when it declared her application vexatious and frivolous, as it failed to review the facts that she had presented. In her view, it is not fair for her as a victim of malpractice to be ordered to pay USD 600.

10. Ms. Moshá also submits that the UNDT erred in procedure by not considering the substance of her case, but instead declaring that it lacked jurisdiction for rendering such a decision on the basis of the legal technicalities of Staff Rule 11.2(a). In her view, the lack of management evaluation was not fatal to her case. Procedural technicalities should not be used to thwart substantive justice.

11. Ms. Moshá further submits that the UNDT erred in law by not ordering a preliminary investigation into her allegations of excessive abuse of discretionary power on the part of the ICTR Administration.

12. Ms. Moshá accuses the UNDT Judge of "negligence", of "act[ing] in a narcissistic way", and of "thinking primarily of themselves, and their needs and wants".

13. Ms. Moshá seeks the quashing of the UNDT Judgment, compensation for the "loss and damages" resulting from the nine months' delay in effecting her final emoluments, two years' net base salary for moral damage and other unspecified damages that the Appeals Tribunal deems fit to order.

The Secretary-General's Answer

14. The Secretary-General submits that Ms. Moshá has not shown any error in the UNDT's rejection of her application as non-receivable, because she intentionally did not seek management evaluation before applying to the Dispute Tribunal, and also because the

26 March 2012 payment of her final emoluments rendered her subsequent UNDT application moot.

15. The Secretary-General further submits that Ms. Mosha has not shown any error in the UNDT's characterization of her application as an abuse of process or in its award of costs against her. In his view, the UNDT's decision is consistent with the emerging jurisprudence of the Appeals Tribunal on abuse of process.

16. The Secretary-General requests that the Appeals Tribunal dismiss Ms. Mosha's appeal in its entirety.

Considerations

17. The impugned Judgment correctly concluded that the claim was not receivable. The UNDT committed no error in finding that, in the absence of the required management evaluation pursuant to Staff Rule 11.2(a), the application was not receivable. This has been the consistent jurisprudence of both the Appeals Tribunal and Dispute Tribunal.

18. Upon our review of the UNDT Judgment, it is evident that Ms. Mosha knew of the process of management evaluation at the time of the impugned administrative decision. She chose to protest to the former President of the ICTR Staff Association and the various other officials up to the ICTR Registrar. We therefore consider that there are no grounds for bringing this present appeal. The appeal has no merit and cannot succeed.

19. The other ground of appeal worth considering is the claim that the UNDT erred in fact when it declared her application vexatious and frivolous, and ordered her to pay USD 600 costs to the Secretary-General.

20. From the facts of the case and the posture of Ms. Mosha, her failure to apply for management evaluation was deliberate and thus her application was frivolous and vexatious. We note that as there was no ground whatsoever for bringing this appeal, this is also an abuse of the appeal process. The UNDT therefore exercised its discretion correctly to award costs against her for abuse of the judicial process. In the circumstances, we affirm the USD 600 awarded as costs against Ms. Mosha.

21. We note that Ms Moshu used colourful and even pejorative language to criticize personally the UNDT Judge. Even though the Secretary-General did not express a position on that, this Tribunal wishes to remind Ms. Moshu in particular and the parties in general, of the need to refrain from personal attacks on the Judges of the UNDT and the Appeals Tribunal.

Judgment

22. The appeal is dismissed. The UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Chapman

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar