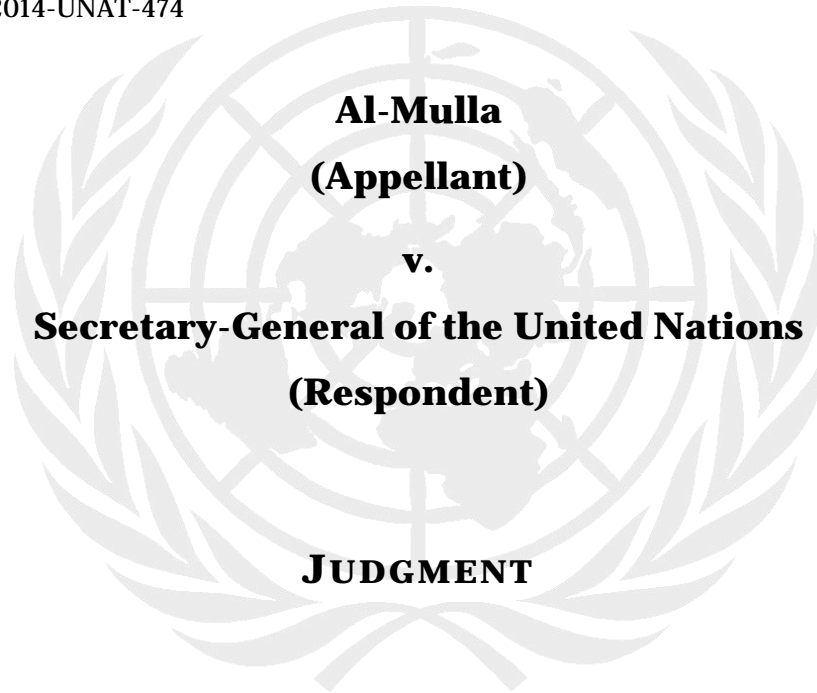




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-474



**Al-Mulla
(Appellant)**

v.

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

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Luis María Simón
Judge Mary Faherty

Case Nos.: 2013-547

Date: 17 October 2014

Registrar: Weicheng Lin

Counsel for Mr. Al-Mulla: Winston Sims

Counsel for Secretary-General: Zarqaa Chohan

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Mohamed Al-Mulla against Judgment on Application for Revision No. UNDT/2013/129, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 24 October 2013 in the case of *Al-Mulla v. Secretary-General of the United Nations*. Mr. Al-Mulla appealed on 11 December 2013, and the Secretary-General of the United Nations answered on 18 February 2014. On 28 August 2014, Mr. Al-Mulla filed a motion “for a finding of the Respondent’s dissembling”, on which the Secretary-General filed comments on 8 September 2014.

Facts and Procedure

2. Mr. Al-Mulla has filed multiple applications and appeals before the Dispute Tribunal and the Appeals Tribunal. However, for the purpose of this case, only the following judgments are relevant.

3. On 22 June 2011, the UNDT issued Judgment No. UNDT/2011/105, in which it dismissed Ms. Al-Mulla’s application challenging the decision made on 4 December 2009 to no longer reassign him laterally to the Sub-Regional Office of the United Nations Office for Drugs and Crime (UNODC) in Abu Dhabi, United Arab Emirates (UAE), as UNODC Representative to the UAE and Special Representative to all Gulf countries. The Dispute Tribunal *inter alia* found that Mr. Al-Mulla had not challenged the decision to return him to his original P-3 position in his request for management evaluation and consequently his claim on this issue was not receivable. Mr. Al-Mulla appealed this judgment to the Appeals Tribunal.

4. On 29 June 2012, the Appeals Tribunal rendered Judgment No. 2012-UNAT-226, in which it dismissed Mr. Al-Mulla’s appeal. On 29 April 2013, Mr. Al-Mulla sought revision of Judgment No. 2012-UNAT-226. The Appeals Tribunal dismissed Mr. Al-Mulla’s revision application in Judgment No. 2013-UNAT-394 rendered on 17 October 2013, on the ground that the revision application was filed more than six months beyond the statutory time limit and was therefore not receivable.

5. On 3 July 2013, Mr. Al-Mulla filed an application for revision of Judgment No. UNDT/2011/105 on the ground that subsequent to its issuance, the Secretary-General acknowledged on 24 February 2012 and 11 June 2013 that Mr. Al-Mulla had requested management evaluation of the decision to return him to his original P-3 position, and that this fact was both new and decisive.

6. On 24 October 2013, the UNDT issued Judgment No. UNDT/2013/129, dismissing Mr. Al-Mulla's application. The Dispute Tribunal found that Mr. Al-Mulla knew of the fact he relied upon, namely whether his return to his P-3 position had been the subject of a management evaluation request. Mr. Al-Mulla knew that the MEU had not addressed this fact before he filed an application with the Dispute Tribunal in May 2010. However, he failed to raise this issue at either the UNDT hearing or in subsequent submissions to the UNDT or the Appeals Tribunal, due to his own negligence. The Dispute Tribunal further found that Mr. Al-Mulla had "brought a baseless application for revision well outside the time limits for doing so and after the [Appeals Tribunal] had dismissed his appeal on the merits".¹ Nonetheless, the Dispute Tribunal rejected the Secretary-General's request for costs against Mr. Al-Mulla as it determined that "[Mr. Al-Mulla's] application borders on abuse but is not manifestly so".

7. On 11 December 2013, Mr. Al-Mulla filed an appeal of the Judgment on Application for Revision No. UNDT/2013/129.

Mr. Al-Mulla's Appeal

8. The Dispute Tribunal, like the Secretary-General, denied that Mr. Al-Mulla had requested management evaluation of the decision of 4 December 2009 to "demote" him. However, in his replies of 24 February 2012, the Secretary-General admitted for the first time that Mr. Al-Mulla had made such a request and the request had not been "properly reviewed", contradicting his own prior testimonies. The Secretary-General's admission of his false testimony had not, and could not have, been made known to Mr. Al-Mulla and the UNDT before that date.

¹ Impugned Judgment, para. 32.

9. This constitutes the decisive fact, which would have led the UNDT in 2011, had it known the fact, to a different conclusion. The Secretary-General's confession to having given false testimony before the Dispute Tribunal has fatally flawed the numerous conclusions found in the Judgment No. UNDT/2011/105.

The Secretary-General's Answer

10. The UNDT correctly dismissed Mr. Al-Mulla's revision application as not receivable *ratione temporis*. All the information which formed the "decisive facts" was previously known to Mr. Al-Mulla and formed part of the pleadings for the different proceedings before the Dispute Tribunal. Mr. Al-Mulla's claim that this information is recent and new is without merit. Moreover, Mr. Al-Mulla received Judgment No. UNDT/2011/105 on 22 June 2011, but did not file a revision application until 3 July 2013, more than two years beyond the 30-day time limit.

11. The UNDT correctly rejected the revision application as Mr. Al-Mulla failed to establish a decisive new fact. Mr. Al-Mulla knew in February 2010 upon receipt of the outcome of the management evaluation that the MEU had not addressed the issue of his return to his original P-3 post, but failed to raise the issue before the UNDT at the appropriate time.

12. The UNDT clearly rejected Mr. Al-Mulla's challenge of the claim to return him to his original P-3 post as not receivable as it had not been the subject of the management evaluation. The Dispute Tribunal made the same finding on another occasion in Judgment No. UNDT/2012/045 dated 5 April 2012. As Mr. Al-Mulla failed to timely appeal the UNDT's conclusion regarding the receivability of his claim on his return to P-3, Mr. Al-Mulla's revision application against Judgment No. UNDT/2011/105 is not the appropriate mechanism to subsequently raise this issue.

Considerations

13. As a preliminary matter, the Appeals Tribunal finds that Mr. Al-Mulla has not presented exceptional circumstances justifying his motion "for a finding of the Respondent's dissembling". Accordingly, the motion is dismissed.

14. Mr. Al-Mulla appeals against the UNDT Judgment dismissing his application for revision of Judgment No. UNDT /2011/105 on the basis of recently released admissions by the Secretary-General that he had previously provided false testimony to the UNDT.

15. Article 12(1) of the Statute of the UNDT provides that:

Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to ignorance and was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of judgement.

16. Article 24 of the UNDT Rules stipulates, in part:

1. Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of 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, always provided that such ignorance was not due to negligence.

2. An application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

17. By these provisions, an applicant must show or identify the decisive fact that, at the time of the Judgment, was unknown to both the UNDT and the party applying for revision; that such ignorance was not due to the negligence of the applicant; and that the facts identified would have been decisive in reaching the decision. The application must also be filed within 30 days of the discovery of the fact and within one year of the date of the judgment.

18. The decisive facts that Mr. Al-Mulla says he discovered were contained in pleadings filed by the Secretary-General in other cases pending before the UNDT. In these pleadings the Secretary-General admits that Mr. Al-Mulla had requested management evaluation of the issue of his return to his initial P-3 position. Mr. Al-Mulla contends that the new facts show that the Administration perjured itself in earlier applications before the UNDT.

19. The Appeals Tribunal recalls its jurisprudence that an application for revision is only receivable if it fulfills the strict and exceptional criteria established by its Statute.² This principle also applies to revision applications before the UNDT which are governed by similar provisions.

20. It seems to us that regardless of the nature of the new fact discovered by an applicant, timeliness of the filing of an application for revision is essential. Under Article 12 of the UNDT Statute, an application for revision must be filed within 30 days of the discovery of a decisive fact and within a year of the judgment.

21. We note that the UNDT adequately considered the issue and correctly came to the conclusion that:

- Mr. Al-Mulla had knowledge that he had included the issue he now relies on in his 21 December 2009 request for management evaluation and he knew that the MEU had not addressed this decisive fact before he filed his application with the UNDT on 4 May 2010.
- Neither Mr. Al-Mulla nor his counsel advising him throughout the various proceedings raised the issue with the UNDT, and this can only be attributed to their negligence.
- Even if the UNDT accepted 24 February 2012, the date the Secretary-General made submissions on the decisive fact, as the first date of discovery, the application for revision was not timely as it exceeded the time limit by one year and four months.

22. We affirm this decision.

23. The second discovery by Mr. Al-Mulla on 11 June 2013 was almost two years after the Judgment was issued. Since an application for revision has to be made within one year of the impugned judgment, Mr. Al-Mulla was out of time and thus any application for revision based on those facts was not receivable *ratione temporis*.

² *Al-Mulla v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-394, para. 14, quoting *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129.

24. We tend to agree with the Secretary-General's comment that given that Mr. Al-Mulla "failed to submit a timely appeal of the UNDT's conclusion regarding the receivability of his claim on his return to his original P-3 position, [Mr. Al-Mulla]'s Application to revise the UNDT Judgment on the Merits is not the appropriate mechanism to subsequently raise this issue".

25. In the circumstances, we affirm the decision of the UNDT that the application was well out of time and therefore not receivable.

Judgment

26. The appeal is dismissed. The Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar