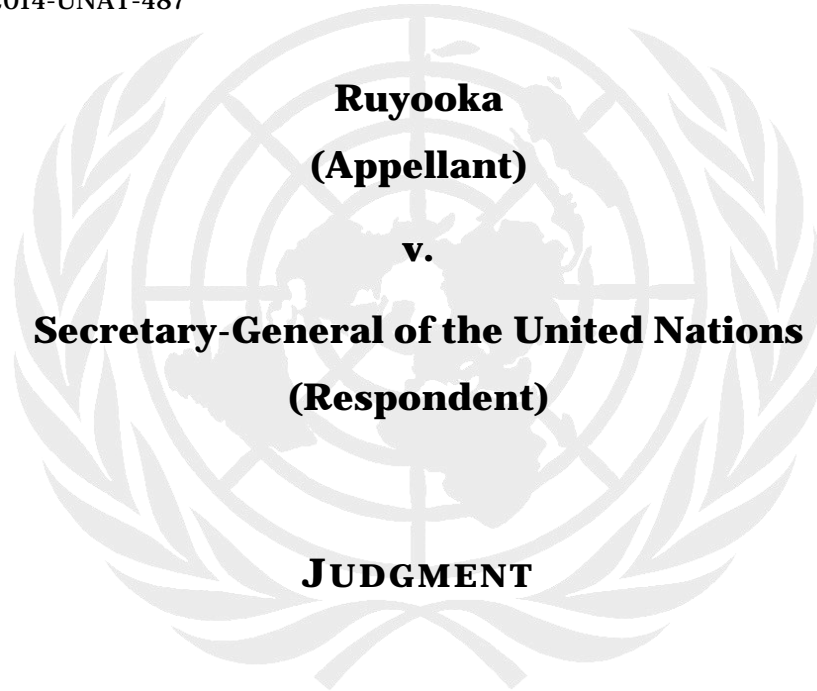




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2014-UNAT-487



**Ruyooka  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Luis María Simón, Presiding Judge Rosalyn Chapman Judge Inés Weinberg de Roca
Case No.:	2014-562
Date:	17 October 2014
Registrar:	Weicheng Lin

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Counsel for Mr. Ruyooka:	Self-represented
Counsel for Secretary-General:	Stéphanie Cartier

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Kenelm Ruyooka against Judgment No. UNDT/2013/154, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 2 December 2013. Mr. Ruyooka appealed on 20 January 2014, and the Secretary-General of the United Nations filed his answer on 28 March 2014.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... The Applicant joined the Organization in December 2006 on a six-month appointment of limited duration under the 300-series of the former Staff Rules. He was appointed as a Vehicle Technician at the FS-4 level with the United Nations Mission in Sudan (UNMIS). From 2009, the Applicant's duty station was Rumbek, in Southern Sudan. Following the contractual reforms in 2009, the Applicant was reappointed under a fixed-term appointment, effective from 1 July 2009 to 30 June 2010. His appointment was extended to 30 June 2011, and again to 30 June 2012.

... By its resolution 1978 (2011) of 27 April 2011, the Security Council extended the mandate of UNMIS up until 9 July 2011 and announced its intention to establish a mission to succeed UNMIS. By resolution 1997 (2011) of 11 July 2011, the Security Council, *inter alia*, decided to withdraw the mission effective 11 July 2011 and called upon the Secretary-General to complete the withdrawal of all uniformed and civilian UNMIS personnel other than those required for the mission's liquidation, by 31 August 2011.

... By a letter dated 18 May 2011 to the President of the UNMIS Field Staff Union (FSU), the Under-Secretary-General for Field Support ("USG/DFS") addressed the concerns earlier raised by the said President. He explained how the transition process would be undertaken by the Administration with regard to the transitioning of staff members from UNMIS to the proposed new mission in South Sudan.

... UNMIS Administration published a number of Information Circulars to inform staff members of the policies which had been put in place for the transition process. Essentially, it was clear that there were fewer posts in the new mission than in the mission which was being closed down. This meant that there was to be a system (a comparative review process) to determine those staff members who could be transitioned to the new mission since certain posts would be abolished.

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<sup>1</sup> Impugned Judgment, paras. 3-21.

... One of these Information Circulars, No. 327/2011 was issued on 26 June 2011 by the UNMIS Director of Mission Support (DMS) announcing the formation of a Comparative Review Panel (CRP) which was to review the transition of international posts in UNMIS to the new mission. The same circular also set out the criteria to be considered during the said review by the CRP.

... On 30 June 2011, Information Circular No. 334/2011 (Update to UNMIS Staff regarding the UNMIS Draw-down process) was issued. The Information Circular noted that, for those staff members who were not selected or provisionally reassigned to a position in the new missions in South Sudan, Abyei or elsewhere in the Organization, their appointments could be terminated for reasons of reduction in staff or abolishment of post in accordance with staff regulation 9.3.

[... In a letter dated 18 July 2011, Mr. Martin Ojjerro, the then Chief Civilian Officer (CCPO) for UNMIS, informed the Applicant that he had been identified for reassignment to the United Nations Mission in South Sudan (UNMISS) and that he should travel to Yambio duty station no later than 31 July 2011.][<sup>2</sup>]

... In [...] letters to the Applicant on 27 and 28 July 2011, Mr. Ojjerro informed him that they were unable to transition him to UNMISS or the United Nations Interim Force in Abyei (UNISFA)] and that the termination of his appointment would be effective 31 August 2011. He was also informed of the formalities for checking out of the Organization.

... On 22 August 2011, the Applicant wrote an email to Mr. Roberto Coling, the then Chief of the Transport Section in UNMISS (and copied to other UNMIS staff members) in which he requested for an extension of his appointment until 19 December 2011 on humanitarian grounds, namely, so that he could make it to five years with the United Nations to qualify for certain pension rights.

... His request was acceded to and, on 16 November 2011, Mr. Ojjerro informed the Applicant that he had been transitioned to UNMISS; Torit duty station until 31 December 2011 based on his request and the DMS' approval so that he could fulfil the eligibility prerequisites for the pension benefits.

... On 20 December 2011, the Applicant received completion of appointment documents in connection with the completion of his appointment on 31 December 2011.

... On several dates between 21 to 27 December 2011 and on 6, 27 and 30 January 2012, the Applicant requested for management evaluation of the decision to terminate his appointment.

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[<sup>2</sup>] At paragraph 78 of the Judgment (Considerations), the UNDT noted: "Mr. Ojjerro testified that some mistakes were made by the Human Resources Section in the process of notifying the Applicant of the deferral, by four months, of his separation from UNMISS and his provisional reassignment from Rumbek to Torit. As a result of these mistakes, on 3 November 2011, a letter dated 18 July 2011 was sent to the Applicant which incorrectly recorded his duty station as Yambio."

... On 15 March 2012, the Management Evaluation Unit (MEU) informed the Applicant that having reviewed his request for management evaluation, it had concluded that the decision of the Administration to terminate his appointment as of 31 December 2011 was in compliance with the legal rules and guidelines of the Organization and that the Secretary-General had decided to endorse the findings and recommendations of MEU.

... The Applicant filed the present Application on 4 May 2012. The Application was served on the Respondent on 14 May 2012. The Respondent filed a Reply on 12 July 2012 having been granted an extension of time to do so by the Tribunal on 12 June 2012.

... The Tribunal held a case management hearing on 10 October 2012.

... On 11 October 2012, the Applicant filed a Motion for production of documents. The document the Applicant wanted to be produced by the Respondent was a letter dated 9 July 2011 transitioning/reassigning him to UNMISS.

... On 17 October 2012, the Respondent sought and was granted leave to file additional documents, namely:

- a. The Applicant's letter of appointment for the period 1 July 2011 to 30 June 2012.
- b. An extract from the Report of the Secretary-General on the budget for UNMISS for the period 1 July 2011 to 30 June 2012.

... On 24 October 2012, the Respondent filed a response to the Applicant's Motion for production of a letter dated 9 July 2011 in which Counsel for the Respondent submitted that the said letter does not exist.

... The Tribunal heard the case on the merits on 15 and 16 January 2013 during which the Applicant testified in person. The Tribunal also received oral evidence via teleconference from Mr. Michael Munywoki, the President of the UNMIS FSU, Mr. Coling and Mr. Ojjerro.

3. The UNDT issued its Judgment on 2 December 2013, dismissing the application. The UNDT noted that Staff Regulation 9.3(a)(i) and Staff Rule 9.6(c)(i) enable the Administration to terminate an appointment if the necessities of service require abolition of the post or reduction of staff. By letter dated 15 July 2011, the USG/DFS expressly instructed the Administration of UNMISS to reduce its staffing levels by 10 per cent and specifically noted that the staffing levels in the Transport Section appeared excessive. In order to implement this instruction, the Chief of Transport (COT) applied four objective criteria for retention: all round skills, performance, competence and supervisory skills and experience. As a result,

ten staff members, including Mr. Ruyooka, were not recommended. He was not recommended because, in the view of the COT, he lacked the required supervisory skills.

4. The UNDT was satisfied that the decision to terminate his appointment was motivated by the necessities of service, which required the reduction of the number of staff members in UNMISS, and was not tainted by an improper motive. The UNDT also rejected Mr. Ruyooka's allegation that the COT had animus towards him.

### **Submissions**

#### **Mr. Ruyooka's Appeal**

5. Mr. Ruyooka contends that the UNDT failed to take into account a number of facts adduced in his application and supporting documents as proof that the Administration's decision was tainted by improper motive.

6. The MEU report, which the Secretary-General endorsed, makes reference to a letter dated 9 July 2011 by which Mr. Ruyooka was allegedly "reassigned to [UNMISS], pursuant to the post-matching and comparative review exercises". Similarly, the OHRM Nucleus report extract dated 16 October 2012 makes such reference. In response to Mr. Ruyooka's Motion for production of this letter, the Administration however stated that the said letter did not exist.<sup>3</sup>

7. The UNDT makes reference to Mr. Ruyooka's "letter of appointment for the period 1st July, 2011 – 30th June, 2012", which Mr. Ruyooka contends is "outright forgery". The UNDT ignored the fact that this letter was signed by Mr. Ojjerro only on 13 July 2012 and was never signed by Mr. Ruyooka.

8. Mr. Ruyooka contends that the COT's statements, that Mr. Ruyooka "did not have the recommended supervisory skills" and that the decision to reassign him from Rumbek to Torit was based on security, are contradicted by the evidence.

9. The Judgment reflects that Mr. Ruyooka was informed by letter dated 18 July 2011 that he was going to be reassigned to UNMISS and that he should travel to Yambio duty station no later than 31 July 2011. Mr Ruyooka, however, received this letter only on 3 November 2011 and it was further amended on 4 November 2011. Upon receipt,

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<sup>3</sup> Impugned Judgment, para. 20.

Mr. Ruyooka requested that the letter be amended to reflect Rumbek as his duty station. He explained that he had been transferred from Rumbek to Torit only “by word of mouth from the Chief Transportation Officer”. The COT however insisted that he stay in Torit.

10. The criteria used to decide whether or not a staff member should be retained were selectively applied to the disadvantage of Mr. Ruyooka. A review of the staffing table reveals that he was the only person in the Transport Section who was neither absorbed by UNMISS nor reassigned to UNISFA.

11. Mr. Ruyooka contends that the UNDT failed to examine the merits of his application and erred by relying on the Administration’s submissions which were “clearly motivated by malicious and improper motives”. He requests that the Appeals Tribunal vacate the UNDT Judgment, reinstate him to his position and award costs against the Secretary-General.

**The Secretary-General’s Answer**

12. The Appeals Tribunal held that when an organization’s restructuring is found to be necessary due to the necessities of service, the abolition of posts is proper as long as there is no clear and convincing evidence that a determining factor in abolishing or not renewing the appointment was ill-motivation or retaliation. The UNDT’s assessment of the decision to terminate Mr. Ruyooka’s appointment was fully consistent with this jurisprudence: Firstly, the UNDT’s conclusion that the abolition of post was required by the necessities of service was supported by the evidence. The Administration of UNMISS was expressly instructed by the USG/DFS to reduce its staffing levels by ten per cent in the letter of 15 July 2011. Secondly, the UNDT noted that the COT applied four objective criteria for retention to the staff members in his section. Mr. Ruyooka did not meet the retention criterion regarding supervisory skills and experience and accordingly, was not recommended.

13. The Secretary-General further contends that the UNDT correctly concluded that Mr. Ruyooka did not establish any animus against him by the COT. The UNDT applied the correct burden of proof to the case by requiring Mr. Ruyooka to establish improper motivation in accordance with the jurisprudence of the Appeals Tribunal. Furthermore, Mr. Ruyooka has not established any error by the UNDT in assessing the evidence such as to warrant a reversal of the UNDT’s conclusion that his appointment was properly terminated.

14. Turning to Mr. Ruyooka's allegations that the UNDT failed to take into account the facts that he presented at trial, the Secretary-General contends that Mr. Ruyooka had not provided any explanation as to why such errors supported his allegation of improper motive. Having reviewed written statements and heard oral evidence regarding allegations of specific incidents which in Mr. Ruyooka's view amounted to impropriety on the part of the COT, the UNDT correctly concluded that Mr. Ruyooka had not satisfied the burden of proving improper motivation on the part of the COT.

15. The Secretary-General contends that Mr. Ruyooka has not established any error by the UNDT warranting a reversal of the Judgment. Mr. Ruyooka cites several passages of the Judgment and alleges that these contain errors. However, none of these passages relate to any findings and conclusions made by the UNDT in the operative part of the Judgment entitled "Considerations". Since he has not alleged any errors in the operative part of the Judgment, he has not satisfied the burden of proving that the Judgment is defective.

16. Finally, the Secretary-General requests that the Appeals Tribunal reject several (or parts of) annexes to Mr. Ruyooka's appeal (Annexes 7, 8, 9 and 11; pages 2 to 5 of Annex 10; and handwritten notations to Annexes 3 and 6). He contends that they contain evidence which is introduced for the first time on appeal and Mr. Ruyooka has failed to demonstrate exceptional circumstances warranting the inclusion of such evidence.

17. The Secretary-General requests that the Appeals Tribunal reject the appeal in its entirety.

### **Considerations**

18. The Appeals Tribunal did not consider several annexes or parts of annexes to the appeal (Annexes 7, 8, 9 and 11; pages 2 to 5 of Annex 10; and handwritten notations to Annexes 3 and 6) because no motion seeking leave to proffer additional evidence before the Appeals Tribunal was properly introduced. In any event, Mr. Ruyooka did not demonstrate that exceptional grounds warranting production of evidence on appeal existed, as required by Article 2(5) of the Appeals Tribunal Statute.

19. This Tribunal holds that the Appellant did not succeed in establishing any error of fact or law which would warrant the reversal of the UNDT Judgment under appeal.

20. The UNDT correctly concluded that the termination of Mr. Ruyooka's appointment was firmly supported by the evidence relative to the necessities of service in the context of a downsizing exercise, and no bias or improper purpose vitiated the impugned decision.

21. We find no reasons to differ with that conclusion, since the findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute, when there has been an error resulting in a manifestly unreasonable decision, which is not the present case.

22. The Appellant merely reiterates allegations already thoroughly examined at trial or tries to introduce inadmissible new ones, neither of which is substantiated. He fails to persuade this Tribunal that the termination of his service was tainted by any improper motives on the part of the Administration.

23. The UNDT conducted an adequate review of the requirements for the adoption of such a measure and of the reasons to end the appointment due to the necessities of service, illustrated by this Tribunal's jurisprudence.

24. The Appellant did not effectively rebut the conclusions of the impugned Judgment. Thus, he did not satisfy the burden of demonstrating that it was defective such as to warrant its reversal.<sup>4</sup>

### **Judgment**

25. The appeal is dismissed and the UNDT Judgment is affirmed.

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<sup>4</sup> Cf. *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110.



Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2014 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Weinberg de Roca

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

*(Signed)*

Weicheng Lin, Registrar