



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

Judgment No. 2014-UNAT-492

**Gakumba
(Applicant)**

v.

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

JUDGMENT ON APPLICATION FOR REVISION

Before: Judge Luis María Simón, Presiding
Judge Inés Weinberg de Roca
Judge Mary Faherty

Case No.: 2014-579

Date: 17 October 2014

Registrar: Weicheng Lin

Counsel for Applicant: Self-represented

Counsel for Respondent: Amy Wood

Reissued for technical reasons on 07 January 2015

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has received an application for revision of Judgment No. 2013-UNAT-387 in the case of *Gakumba v. Secretary-General of the United Nations*, rendered by the Appeals Tribunal on 17 October 2013 and released to the parties and the public on 19 December 2013. Mr. Nzamwita Gakumba filed his application for revision on 7 February 2014, and the Secretary-General filed his comments on 20 March 2014. By Order No. 194 (2014), the Appeals Tribunal denied Mr. Gakumba's subsequent motion to file additional observations to his 7 February 2014 application for revision.

Facts and Procedure

2. Mr. Gakumba joined the United Nations Development Programme (UNDP) in Rwanda in July 2002 initially on a three-month probationary appointment, which was extended first for two months, and then twice on a fixed-term appointment for one year to carry him through 31 December 2004. He was separated from service at the end of 2004.

3. Mr. Gakumba appealed his separation. In Judgment No. UNDT/2012/192, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that Mr. Gakumba's performance evaluations and his subsequent non-renewal of service were tainted by due process and procedural violations. It ordered Mr. Gakumba's reinstatement or two years' net base salary in lieu of reinstatement. In addition, the Dispute Tribunal ordered that Mr. Gakumba be paid seven months' net base salary in compensation for the due process and procedural violations.

4. The Secretary-General appealed. In Judgment No. 2013-UNAT-387, the Appeals Tribunal allowed the appeal in part by reducing the in-lieu compensation to one-year's net base salary. However, the Appeals Tribunal affirmed the UNDT's award of seven-months' net base salary for due process and procedural violations.

5. Mr. Gakumba now seeks revision of the Appeals Tribunal Judgment.

Submissions

Mr. Gakumba's Application

6. Mr. Gakumba submits the application for revision on the basis of the discovery of a "new fact/evidence", i.e., the UNDP Policy on Consideration for Conversion to a Permanent Appointment of UNDP Staff Members Eligible to be Considered as at 30 June 2009 (UNDP Conversion Policy). The UNDP Conversion Policy was dated 9 December 2010. He claims that, at the time the Appeals Tribunal Judgment was rendered on 17 October 2013, the UNDP Conversion Policy was unknown to the Appeals Tribunal and to him. He became aware of the UNDP Conversion Policy on 4 February 2014.

7. Mr. Gakumba requests that the Appeals Tribunal Judgment be revised in light of the UNDP Conversion Policy so that it would include an order for his reinstatement and the payment of all his back salaries and all due indemnities plus interest, or alternatively, an order for payment of all his monthly salaries, past and future, until his retirement.

The Secretary-General's Comments

8. Mr. Gakumba's application for revision is without merit. The UNDP Conversion Policy was issued in December 2010, nearly three years before the Appeals Tribunal rendered the Judgment at issue. He has not provided any argument to substantiate his claim that the UNDP Conversion Policy was unknown to him in October 2013.

9. Mr. Gakumba has failed to explain how the UNDP Conversion Policy is relevant, much less decisive, to his case. It was not in effect when his appointment was not renewed. It is not reasonable to request the Appeals Tribunal to review its judgment with respect to an issue not put before it in the first instance.

10. Mr. Gakumba's application for revision does not fulfil the criteria for seeking a revision as set out in Article 11 of the Statute of the Appeals Tribunal. The issue of compensation was appealed by the Secretary-General and was duly considered by the Appeals Tribunal in the Judgment at issue. Mere disagreement with the Appeals Tribunal's assessment of facts does not meet the statutory threshold for the Appeals Tribunal to review and revise its final judgment.

Considerations

11. Applications for revision of judgment are governed by Article 11 of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. By these provisions, an applicant must show or identify the decisive facts that at the time of the Appeals Tribunal's Judgment were unknown to both the Appeals Tribunal and the party applying for revision; [...] such ignorance was not due to the negligence of the applicant; and [...] the facts identified would have been decisive in reaching the decision.¹

12. As this Tribunal stated in *Costa*, "the authority of a final Judgment – *res judicata* – cannot be so readily set aside. There are only limited grounds as enumerated in Article 11 of the Statute of the Appeals Tribunal for review of a final Judgment".²

13. This Court also held in *Beaudry* that "any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfills the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal".³

14. The request filed by Mr. Gakumba does not fulfill the statutory requirements and constitutes, in fact, a disguised way to attempt to re-open the case.

15. It is manifestly inadmissible to submit that the UNDP Conversion Policy issued in 2010 could not be argued by the staff member in 2012 before the UNDT, or in 2013 before the Appeals Tribunal. Furthermore, no valid reason has been provided about the untimely submission of the application for revision.

Judgment

16. The application for revision is dismissed.

¹ *Macharia v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-128, para 7.

² *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063, para. 4, citing *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis.

³ *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129, para. 16.

Original and Authoritative Version: English

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

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

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

(Signed)

Weicheng Lin, Registrar