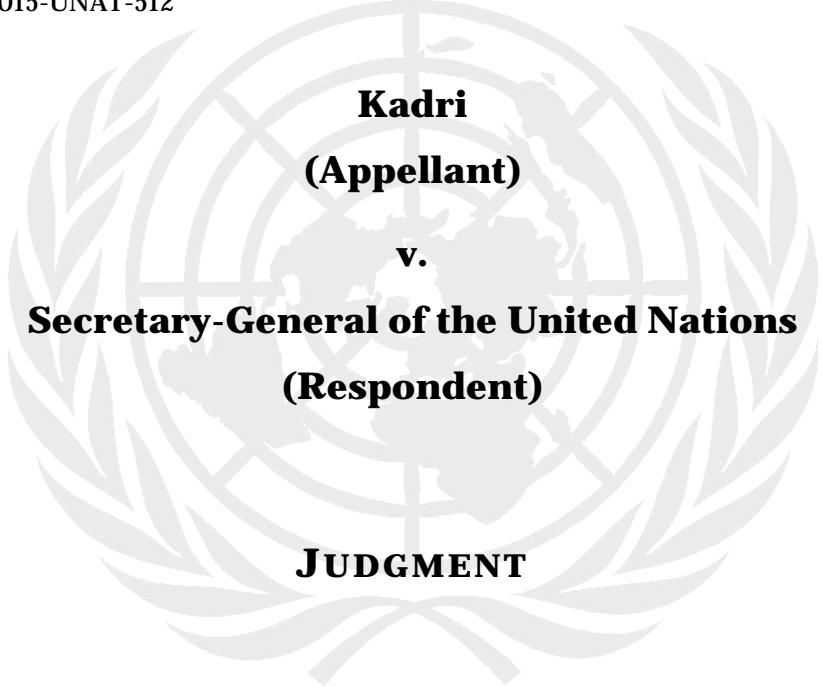




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-512



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

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Sophia Adinyira
Judge Mary Faherty

Case No.: 2014-584

Date: 26 February 2015

Registrar: Weicheng Lin

Counsel for Mr. Kadri: Robert Appleton

Counsel for Secretary-General: Amy Wood

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Ali Kadri against Judgment No. UNDT/2013/177, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 23 December 2013 in the case of *Applicant v. Secretary-General of the United Nations*.¹ On 19 February 2014, Mr. Kadri filed a motion for a 30-day extension of time to appeal the above-referenced UNDT Judgment. On 25 February 2014, this Tribunal rejected Mr. Kadri's motion, but exceptionally granted him five additional working days to file his appeal. Mr. Kadri filed an appeal on 3 March 2014, and the Secretary-General of the United Nations answered on 5 May 2014.

Facts and Procedure

2. Mr. Kadri was a staff member of the United Nations Economic and Social Commission for Western Asia (ESCWA) from 24 August 2002 until 24 August 2012.

3. In March 2010, he filed an application with the Dispute Tribunal in Geneva (Case No. UNDT/GVA/2010/079).

4. On 24 April 2010, Mr. Kadri entered into a Settlement Agreement with the Executive Secretary of ESCWA. Paragraph 17 of the Settlement Agreement signed by Mr. Kadri provided:

17. This Settlement Agreement is signed by Ali Kadri and [Mr. B] (On behalf of the Secretary-General of the United Nations) of their own free will and without any duress and takes effect on date of the execution of the Settlement Agreement.

5. On 27 April 2010, Mr. Kadri requested the UNDT Geneva Registry that his case, Case No. UNDT/GVA/2010/079, be closed as it had been satisfactorily resolved through mediation. On 3 May 2010, by Judgment No. UNDT/2010/079, the Dispute Tribunal closed Mr. Kadri's case.

6. On 15, 16 and 17 August 2012, Mr. Kadri requested management evaluation with respect to alleged breaches of the Settlement Agreement and continued harassment and discrimination by the ESCWA management, in particular in connection with the selection

¹ Mr. Kadri did not seek confidentiality of his name in proceedings before the Appeals Tribunal.

process for the position of Director, Economic Development and Globalization Division (EDGD). On 10 October 2012, the Under-Secretary-General for Management dismissed Mr. Kadri's request as non-receivable, with the exception of the non-selection decision, which he upheld.

7. On 7 January 2013, Mr. Kadri filed an application with the Dispute Tribunal alleging that he had signed the Settlement Agreement under duress, that ESCWA had rejected his application for the position of Director, EDGD, for which he had previously been rostered, and that the ESCWA Administration continued to harass and discriminate against him.

8. In Judgment No. UNDT/2013/177, the Dispute Tribunal restricted itself to the question of whether Mr. Kadri's case was receivable in view of the Settlement Agreement between him and the Executive Secretary of ESCWA. The UNDT found that Mr. Kadri's acceptance of the implementation of the Settlement Agreement, his failure to raise the allegations of duress until well after two years after the entry into effect of the Settlement Agreement and his failure to proffer any evidence to support his claim of duress could only lead to the conclusion that his claim of duress was devoid of any merit.

Submissions

Mr. Kadri's Appeal

9. While the jurisprudence excludes claims that have been the subject of a Settlement Agreement, it does not exclude claims arising from the failure to abide by the terms of such an agreement, which is the case here.

10. The Dispute Tribunal's rejection of Mr. Kadri's claims runs contrary to the concession made by the Administration that his claim to enforce the Settlement Agreement was receivable.

11. The UNDT did not exercise jurisdiction vested in it by failing to enforce the Settlement Agreement in two ways: i) failing to enable Mr. Kadri to continue to seek employment with ESCWA; and ii) allowing the Administration to retain adverse information in his personnel file in breach of the requirement in the Settlement Agreement that it not provide negative information to prospective employers.

12. Mr. Kadri seeks unspecified moral damages for the Administration's breach of an essential term of the Settlement Agreement by barring him from being considered for further posts within the Organization, and also for its failure to remove negative information from his personnel file, thereby significantly heightening the risk for such negative information to be passed on to prospective employers.

The Secretary-General's Answer

13. The UNDT properly found Mr. Kadri's application not receivable. That finding is consistent with the well-established maxim that "there must be an end to litigation" to ensure the stability and efficiency of the judicial process. To allow Mr. Kadri to re-open issues and claims that were the subject of the duly executed Settlement Agreement would clearly contravene this rule.

14. Mr. Kadri's application before the Dispute Tribunal was not receivable, since it raises issues that had been resolved by the Settlement Agreement and he waived his right to bring future claims of harassment or discrimination against ESCWA as a term and condition of the Settlement Agreement. The filing of the UNDT application breached the clear terms and conditions of the Settlement Agreement.

15. Mr. Kadri failed to provide any evidence to show that the Administration had breached any of the terms and conditions of the Settlement Agreement. On the contrary, he accepted and benefitted from the full implementation of the Settlement Agreement.

16. There is nothing in the Settlement Agreement that obligates the Organization to remove any document or any other information from Mr. Kadri's official status file. Mr. Kadri did not provide any evidence that the Organization provided negative information to any prospective employer in breach of paragraph 14 of the Settlement Agreement.

17. Mr. Kadri's claim regarding his non-selection for the 2011 post is not receivable. Moreover, even if it were receivable, it would be without merit.

18. Mr. Kadri's allegation that he signed the Settlement Agreement under duress is inconsistent with the evidence. The Administration was justified in relying on his statement that he had signed the Settlement Agreement of his own free will. He should not be allowed to now claim otherwise.

19. Mr. Kadri is not entitled to compensation as he has not provided any evidence beyond mere assertions that the Organization failed to meet its obligations or that he suffered harm. Moreover, his request that this Tribunal order the ESCWA Administration to remove unspecified “adverse” information from his official status file should be rejected.

Considerations

20. We agree with the Secretary-General’s submission that the nature of the contested decision was not readily apparent from the face of Mr. Kadri’s application to the UNDT.

21. Part V of the application form required him to provide details of the contested decision by briefly describing what the decision was about. Mr. Kadri was not brief. He stated his case as follows:

“CONTINUED HARASSMENT AND DISCRIMINATION.

I, herewith, wish to appeal the decision of the Secretary General in which he accepted the non-receivability of my continued harassment, discrimination case as per the recommendation of the [Management Evaluation Unit (MEU)]”.

22. He then set out at length the case he had submitted to the MEU. That case included allegations that he signed the Settlement Agreement under “undue pressure and duress”, and that failing to interview him for a post for which he had applied constituted “continued harassment and discrimination” against him.

23. Part VII of the UNDT application form required Mr. Kadri to state the facts of the case or facts relied upon as concisely as possible. Mr. Kadri’s answer to this requirement was anything but concise. He simply set out five pages of facts and arguments that he had presented to the MEU. Amongst that information was a claim by him that in May 2011, he applied for a post in the United Nations to which he had been previously rostered, but was not even given an interview. He claimed that this was a violation of the Settlement Agreement and “yet another act of discrimination” and that “mine is a case of harassment and discrimination”.

24. In considering Mr. Kadri’s application, the UNDT restricted itself to the question of whether Mr. Kadri’s case was receivable in view of the Settlement Agreement reached between Mr. Kadri and the Executive Secretary of ESCWA. The UNDT identified Mr. Kadri’s case as being that “ESCWA forced him to sign an agreement that is both harsh

and prejudicial and that the agreement is unreasonable because it was imposed upon him under duress and threat”.

25. In considering that case, the UNDT was cognizant of Article 8(2) of the UNDT Statute, which provides:

An application shall not be receivable if the dispute arising from the contested administrative decision has been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

26. The UNDT noted that at paragraph 17 of the Settlement Agreement, Mr. Kadri had acknowledged that he had signed the agreement of his own free will and without any duress, and that he had subsequently informed the Dispute Tribunal and the Ethics Office that his case had been satisfactorily resolved through mediation.

27. The UNDT found that although Mr. Kadri had now returned to the UNDT to allege that the Settlement Agreement was imposed upon him by duress and threats, he had not adduced any evidence in support of his claim and therefore the claim must fail. We do not find any error of law or fact in that decision and we affirm the Judgment of the UNDT in that regard.

28. However, that was not the only issue to be decided. Mr. Kadri made allegations in his application of continued harassment and discrimination. The UNDT noted as much in paragraph 1 of its Judgment, where it refers to Mr. Kadri’s claims that: “ESCWA rejected his application for the position of Director, Economic Development and Globalization Division (EDGD), a position for which he had previously been rostered for; and ESCWA Administration continued to harass and discriminate against him by systematically obstructing his work.”

29. Notwithstanding this, the UNDT restricted its decision to the issue of whether Mr. Kadri had been forced to sign the Settlement Agreement under duress. For whatever reason, the UNDT failed to deal with his claim of continued harassment and discrimination.

30. Mr. Kadri's right to due process entitled him to a fair hearing and a fully reasoned judgment of his application. We hold that the UNDT's omission to adjudge the whole of Mr. Kadri's application was a violation of his due process rights and constituted a procedural error such as to affect the decision of the case.² Such error necessitates the remand of the case to the UNDT for completion of the hearing.

Judgment

31. The appeal is allowed in part and the case is remanded to the UNDT to complete the hearing of Mr. Kadri's application.

² Article 2(1)(d) of the Statute of the Appeals Tribunal.

Original and Authoritative Version: English

Dated this 26th day of February 2015 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar