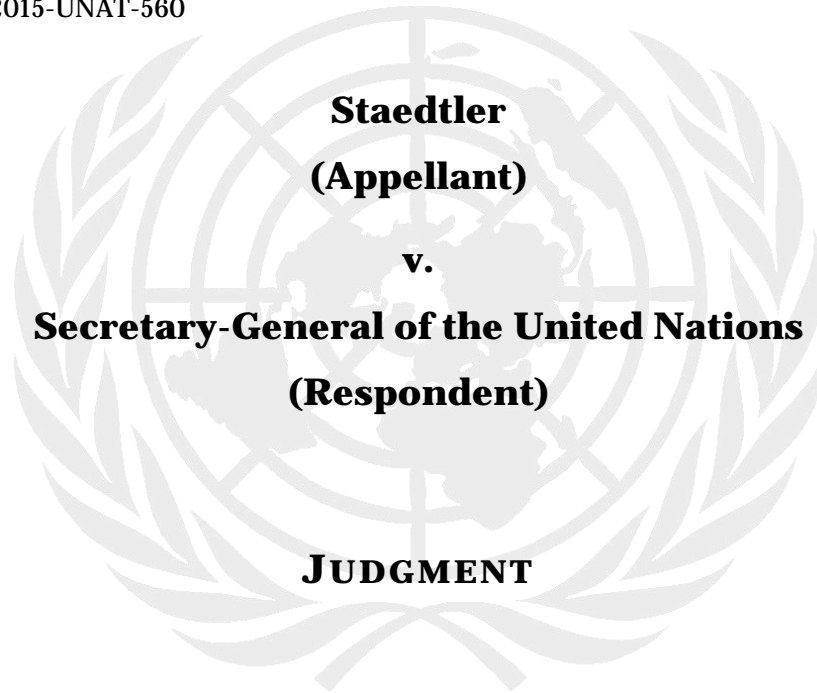




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-560



Before: Judge Rosalyn Chapman, Presiding
Judge Inés Weinberg de Roca
Judge Mary Faherty

Case No.: 2014-646

Date: 2 July 2015

Registrar: Weicheng Lin

Counsel for Mr. Staedtler: Self-represented

Counsel for Secretary-General: Noam Wiener

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it the interlocutory appeal by Mr. Marc Michael Staedtler against Order No. 116 (GVA/2014) and Order No. 126 (GVA/2014), issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 6 August 2014, and 19 August 2014, respectively, in the matter of *Staedtler v. Secretary-General of the United Nations*. Mr. Staedtler filed his interlocutory appeal on 26 August 2014, and the Secretary-General filed his answer on 22 September 2014.

Facts and Procedure

2. On 30 December 2013, Mr. Staedtler, a former staff member of the United Nations Human Settlements Program (UN-Habitat), filed an application with the UNDT contesting the decision of the Office of Staff Legal Assistance (OSLA) to decline to represent him in a case. The UNDT Registry assigned the matter Case No. UNDT/NBI/2013/098.

3. On 7 January 2014, the UNDT Registry served the application on the Administrative Law Section (ALS) of the Office of Human Resources Management (OHRM), as it had done in similar OSLA matters. However, ALS rejected service of process and advised the UNDT Registry that “the Secretary-General is represented by counsel at UN-HABITAT in cases brought by former or current staff members of UN-HABITAT”.

4. On 8 January 2014, the UNDT Registry served the application on UN-Habitat.

5. On 5 February 2014, UN-Habitat filed a Request for Direction from UNDT, seeking direction “as to who the proper Respondent should be”.

6. On 14 March 2014, the UNDT issued Order No. 049 (NBI/2014), stating that “responsibility for replying to an application which contests a decision made by OSLA lies with ALS as the Secretary-General’s legal representative in relation to contested decisions made within the Secretariat”. The UNDT thus found that the “[a]pplication was properly served” on ALS on 7 January 2014.

7. On 3 April 2014, the Secretary-General, represented by counsel with UN-Habitat, filed a reply to the application with the Dispute Tribunal.

8. On 14 April 2014, the UNDT issued Order No. 078 (NBI/2014) holding the Secretary-General's reply was "not receivable as it was filed outside the time stipulated in the rules and without [the UNDT's] permission".

9. On 15 April 2014, the Secretary-General filed a motion to reconsider Order No. 078 (NBI/2014) and for permission to take part in the proceedings and to file his reply. The Respondent apologized for the procedural error and late filing of the reply.

10. The UNDT afforded Mr. Staedtler the opportunity to respond to the Secretary-General's motion, and on 24 April 2014, Mr. Staedtler filed an opposition to the motion and requested the UNDT to strike the reply from the record.

11. On 1 July 2014, the UNDT transferred UNDT Case No. NBI/2013/098 to the Geneva Registry, which assigned the matter Case No. UNDT/GVA/2014/52.

12. On 6 August 2014, the UNDT issued Order No. 116 (GVA/2014), which, *inter alia*, granted the Secretary-General's motion to participate in the proceedings and to accept his reply of 3 April 2014 as part of the UNDT record.

13. On 8 August 2014, Mr. Staedtler filed a motion with the UNDT to reconsider Order No. 116 (GVA/2014) or, alternatively, to permit him to file a response to the reply so he could "rebut the various misleading, respectively merely false statements". On 13 August 2014, the Secretary-General filed his opposition and requested that the UNDT find Mr. Staedtler's motion to be frivolous and vexatious.

14. On 19 August 2014, the UNDT issued Order No. 126 (GVA/2014), which, *inter alia*, denied the "Applicant's motions for reconsideration and for permission to respond to the Respondent's reply". Additionally, the UNDT admonished Mr. Staedtler "to refrain from making any comments about Counsel for the Respondent in his submissions to the [Dispute] Tribunal".

15. On 26 August 2014, Mr. Staedtler filed an appeal against Orders Nos. 116 and 126 (GVA/2014). Regarding Order No. 116 (GVA/2014), Mr. Staedtler requests that the Order be rescinded, that Order No. 078 (NBI/2014) be reinstated, and that the Secretary-General's reply be stricken as untimely. Regarding Order No. 126 (GVA/2014), Mr. Staedtler requests that the portion of the Order admonishing him be rescinded and the Order not be published in its "present form". On 22 September 2014, the Secretary-General filed his answer to the appeal.

Submissions

Mr. Staedtler's Appeal

16. The Dispute Tribunal committed an error in procedure, exceeded its competence and erred on a question of fact and law in that it: (a) allowed the Secretary-General to take part in the proceedings despite his late reply; (b) accepted the late reply as part of the record; (c) denied Mr. Staedtler permission to file a response to the tardy reply; and (d) admonished Mr. Staedtler to refrain from making comments about the Secretary-General's counsel.

17. According to the jurisprudence of the Appeals Tribunal, an interlocutory appeal is receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence.¹ Regarding Order No. 116 (GVA/2014), the UNDT acted in excess of its competence under Article 10(1) of the UNDT Statute when it gave permission to the Secretary-General to file a late reply after the time limit for him to do so had lapsed; Article 10(1) limits permission to *prior* permission given before the time has passed for filing. Moreover, the reasons offered by the Secretary-General to explain the lateness of his reply are suspect and unsupported by evidence. Finally, the UNDT's reasons for allowing the Secretary-General to participate in the proceedings and to file a late reply are not proper grounds to rescind its earlier order. The UNDT showed no regard for the statutory timelines, as it must.

18. Regarding Order No. 126 (GVA/2014), the UNDT exceeded its competence when it refused to allow Mr. Staedtler to respond to the late reply and to address misstatements by the Secretary-General without any reasons. The absence of reasons violated Mr. Staedtler's right to "a fair and unbiased litigation". Similarly, ordering Mr. Staedtler to refrain from making comments about the Secretary-General's counsel, without making any findings as to whether the comments were false, shows a disparity that violates Mr. Staedtler's right to a fair and unbiased litigation.

19. Lastly, Mr. Staedtler urges the Appeals Tribunal to "consider a potential lack of impartiality by the respective UNDT-judge".

¹ Citing *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008; *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

The Secretary-General's Answer

20. The interlocutory appeals of Orders Nos. 116 and 126 (GVA/2014) are not receivable by the Appeals Tribunal because this is not an “exceptional case” where the UNDT has clearly exceeded its competence or jurisdiction in issuing these orders, as the jurisprudence of the Appeals Tribunal requires.

21. Regarding Order No. 116 (GVA/2014), the UNDT has authority under Article 10(1) of its Rules of Procedure (Rules) to grant permission to a respondent to participate in the proceedings despite filing a tardy reply. Further, under Article 35 of the Rules, the UNDT may extend a time limit fixed by the Rules, such as Article 10(1), subject to Article 8(3) of the Statute. Finally, under Article 19 of the Rules, the UNDT may issue any order appropriate for the fair and expeditious disposal of the case and to do justice to the parties. Order No. 116 (GVA/2014) is based on these provisions and, thus, was not issued in excess of the UNDT’s competence.

22. As to Order No. 126 (GVA/2014), it was properly issued under the UNDT’s authority to make case management orders, pursuant to Article 19 of the UNDT Rules. Further, the Appeals Tribunal has held that the Dispute Tribunal may properly require that parties use civil language in pleadings and refrain from personal attacks.²

23. For these reasons, the appeal is not receivable and the Appeals Tribunal should affirm the contested Orders and dismiss the appeal in its entirety.

Considerations

24. Our jurisprudence clearly provides that “generally, only appeals against final judgments will be receivable” under Article 2(1) of the Appeals Tribunal Statute.³

25. In *Wamalala*, we explained our reasons for not receiving interlocutory appeals, stating:⁴

... [C]ases before the UNDT would seldom proceed if either party were able to appeal to the Appeals Tribunal when dissatisfied with interlocutory decisions made during the course of the proceedings.

² *Mosha v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-446, para. 21.

³ *Al-Badri v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-461, para. 14, quoting *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005, para. 8. See also *Mpacko v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-314, para. 15.

⁴ *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, paras. 16-17.

... [T]he UNDT enjoys wide powers of discretion in all matters relating to case management and [the Appeals Tribunal] must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for the dispensation of justice. For this reason, and in accordance with Articles 2(2) and 10(2) of the UNDT Statute, appeals against decisions taken in the course of proceedings and relating to procedure [...] are not receivable, even where the judge of the first instance has committed an error of law or fact [...].

26. Moreover, interlocutory orders issued by the Dispute Tribunal may be subject to judicial review if the final judgment is appealed. There is no urgency to review an interlocutory order prior to the handing-down of the judgment by the UNDT, as shown in the Appellant's circumstances.

27. Nevertheless, the Appeals Tribunal has received interlocutory appeals arising from preliminary proceedings "in those exceptional cases where the Dispute Tribunal has clearly exceeded its jurisdiction or competence".⁵ A review of the interlocutory appeals we have received shows the cases address "matters touching on [jurisdiction ...] such as whether a staff member has filed a timely request for management evaluation prior to initiating formal litigation, or waiver of time limits for management evaluation".⁶

28. The Appellant contends that the Appeals Tribunal should receive his appeal because this is an exceptional case in which the UNDT exceeded its jurisdiction or competence by issuing Orders Nos. 116 and 126 (GVA/2014). There is no merit to this contention. Both Orders clearly come within the UNDT's competence to issue appropriate case management orders.⁷

29. The Dispute Tribunal had competence to issue Order No. 116 (GVA/2014) based on several of its Rules: Article 10(1) of the Rules, which allows the UNDT to permit a respondent to participate in the proceedings despite the filing of a tardy reply; Article 35 of the Rules, which allows the UNDT to extend, or even waive, the deadline for filing a document, such as a reply; and Article 19 of the Rules, which allows the UNDT to issue orders "appropriate for the fair and

⁵ *Bastet v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-423, para. 13, citing *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062; and *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

⁶ *Al-Badri v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-461, para. 17, and cites therein.

⁷ *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 22. See also *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-101 (concerning the determination of venue); *Calvani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-032 (concerning the production of documents).

expeditious disposal of the case and to do justice to the parties”. In fact, the UNDT specifically cited Article 19 to support its issuance of Order No. 116 (GVA/2014). Since the UNDT did not exceed its competence or jurisdiction in issuing Order No. 116 (GVA/2014), the Appeals Tribunal finds that the appeal of Order No. 116 (GVA/2014) is not receivable.

30. The Dispute Tribunal is equally competent to issue general orders to properly manage the proceedings before it, as set forth in Article 19. The Appeals Tribunal has held that we “will not lightly interfere with the broad discretion of the UNDT in the management of cases”.⁸ The manner in which the parties should conduct themselves during the proceedings is a routine topic for a case management order. Thus, the UNDT did not exceed its competence or jurisdiction in issuing Order No. 126 (GVA/2014), and the appeal of that order is not receivable.

Judgment

31. The interlocutory appeal is not receivable.

⁸ *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 9; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-294, para. 20; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 22.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar