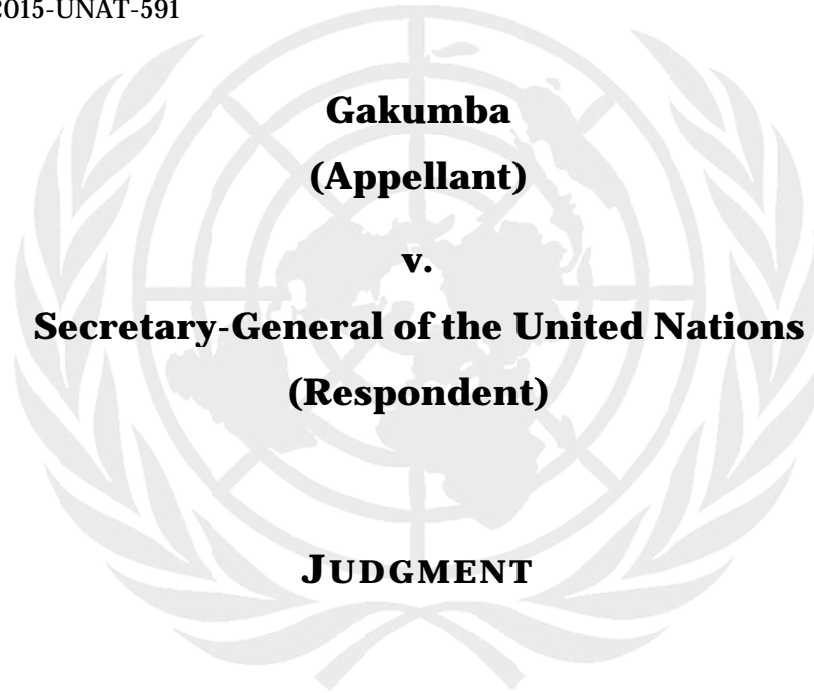




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-591



**Gakumba
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Sophia Adinyira Judge Richard Lussick
Case No.:	2015-705
Date:	30 October 2015
Registrar:	Weicheng Lin

Counsel for Mr. Gakumba: Self-represented

Counsel for Secretary-General: Anna Lo Monaco/Zarqaa Chohan

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment on Receivability No. UNDT/2015/006, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 26 January 2015, in the case of *Gakumba v. Secretary-General of the United Nations*. Mr. Nzamwita Gakumba filed his appeal on 28 January 2015, and the Secretary-General filed his answer on 8 June 2015.¹

Facts and Procedure

2. The relevant facts, as previously set forth by the Appeals Tribunal, are: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.

... Mr. Gakumba appealed his separation. In Judgment No. UNDT/2012/192, the [...] 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.

... The Secretary-General appealed. In [*Gakumba v. Secretary-General of the United Nations*,] Judgment No. 2013-UNAT-387 [(*Gakumba I*)], 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.

3. On 7 February 2014, Mr. Gakumba, proceeding *pro se*, filed an application for revision of *Gakumba I*. On 17 October 2014, in *Gakumba v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-492 (*Gakumba II*), the Appeals Tribunal dismissed the application for revision of judgment, concluding that Mr. Gakumba had failed

¹ Mr. Gakumba's appeal was erroneously entitled "Application for revision of judgment"; however, we are treating it as an appeal. As such, on 9 April 2015, the Registry forwarded Mr. Gakumba's appeal to the Respondent for an answer.

² *Gakumba v. Secretary-General of the United Nations*, Judgment on Application for Revision No. 2014-UNAT-492, paras. 2-4.

to fulfil the statutory requirements for revision of judgment set forth in Article 11 of the Appeals Tribunal Statute (Statute) and that his application was really “a disguised [...] attempt to re-open the case” on the merits.³

4. On 13 January 2015, Mr. Gakumba filed an application for revision of *Gakumba I* before the UNDT, which treated the application as an application for revision of its 2012 judgment, Judgment No. UNDT/2012/192. On 26 January 2015, the UNDT issued Summary Judgment No. UNDT/2015/006, finding the application was not receivable and dismissing it. Additionally, the UNDT awarded costs against Mr. Gakumba in the amount of USD 500 for manifestly abusing the Dispute Tribunal’s proceedings. The Dispute Tribunal instructed the Respondent to withhold USD 500 from the compensation that the Appeals Tribunal had awarded to Mr. Gakumba in *Gakumba I*.

5. On 29 January 2015, Mr. Gakumba filed the pending appeal of Judgment No. UNDT/2015/006, and the Secretary-General timely filed his answer on 8 June 2015.

6. On 24 September 2015, Mr. Gakumba filed a “Motion to seek leave to postpone consideration of [his] appeal at the fall session ... due to lack of legal representa[tion] ... by Office of the Staff Legal Assistance (OSLA)”. On 5 October 2015, the Secretary-General filed his Observations on the Motion, opposing the request and noting the Motion is merely a supplemental pleading addressing the merits of the Appellant’s claims.

Submissions

Mr. Gakumba’s Appeal

7. The Appellant complains that the Appeals Tribunal should not have rendered *Gakumba I*, but should have remanded the case to the Dispute Tribunal for revision of the remedy afforded to him since he had discovered a “decisive new fact”, which had not been known to either him or the tribunal, i.e., that he meets the requirements for a permanent appointment under 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 Appellant claims that he was not aware of this decisive new fact until

³ *Ibid.*, para. 14.

4 February 2014, since he has no access to UNDP's formal communications due to the illegal termination of his fixed-term contract.

8. The Appellant contends that the UNDP Conversion Policy entitles him to a permanent appointment with pension and other rights, which the reinstatement remedy afforded him by the Dispute Tribunal (and the Appeals Tribunal in *Gakumba I*) failed to recognize. Accordingly, the Dispute Tribunal should have granted his application for revision of judgment and reinstated him with all rights attendant to a permanent staff member. The Appellant is also entitled to additional compensation due to the UNDT's procedural delay and the breach of Article 20 of the UNDT Rules of Procedure (UNDT Rules).

The Secretary-General's Answer

9. The UNDT correctly concluded that the application for revision was not receivable for two reasons. First, as the UNDT found, an application to revise a judgment is not receivable by the Dispute Tribunal after the judgment has been appealed to, and ruled on, by the Appeals Tribunal. A judgment by the Appeals Tribunal is a final judgment or *res judicata* that cannot be easily set aside, pursuant to Article 11(1) of the Statute and the Appeals Tribunal's jurisprudence.

10. Second, the application for revision before the UNDT did not fulfill the statutory requirements for revision. Initially, the UNDP Conversion Policy is not a new and decisive fact. Rather, it has been in effect since 2010 – prior to the issuance of both the UNDT and the Appeals Tribunal judgments; thus, the Appellant could have raised the UNDP Conversion Policy before both tribunals. Moreover, the issue of the UNDP Conversion Policy was raised and fully considered by the Appeals Tribunal in *Gakumba II*; thus, the Appellant is seeking to re-litigate an issue that has already been decided.

11. The Appellant has not established any errors by the UNDT warranting a reversal of the Judgment. His argument is without merit. The Appellant does not have any entitlement to conversion to a permanent appointment. Among other things, he served less than five years with UNDP, which is a minimum eligibility requirement for conversion.

12. The Secretary-General advises the Appeals Tribunal that the compensation due to the Appellant, as ordered in *Gakumba I*, had already been paid out by the Administration before the UNDT issued the Judgment currently on appeal. Thus, it was not possible for the

Secretary-General to withhold USD 500 from the compensation as costs and the Respondent requests that the Appeals Tribunal should “overturn the UNDT’s finding that the Administration withhold the amount of USD 500 costs from [*Gakumba I*] and instead order that the Appellant pay the amount ... to the [Appeals Tribunal’s] Registry”. Additionally, the Secretary-General requests that “[i]n the event that this amount is not paid within 30 days of the issuance of the [Appeals Tribunal’s] judgment, ... the [Appeals Tribunal should] order that it will not entertain any further actions from the Appellant”.

13. The Secretary-General requests that the appeal be dismissed in its entirety and that the Appellant be ordered to pay costs in the amount of USD 500 to the Appeals Tribunal’s Registry within 30 days of the issuance of the Judgment.

Considerations

Preliminary matter

14. On 24 September 2015, Mr. Gakumba filed a “Motion to seek leave to postpone consideration of [his] appeal at the fall session ... due to lack of legal representa[tion] ... by Office of the Staff Legal Assistance ...”. On 5 October 2015, the Secretary-General filed his Observations on the Motion, opposing the request to postpone and noting that the Motion is merely a supplemental pleading addressing the merits of the Appellant’s claims.

15. Initially, the Appeals Tribunal agrees with the Secretary-General’s claim that the Motion filed by the Appellant is really an additional or supplemental pleading addressing the merits of his claims. As such, the Appellant has no right to file the pleading, without the permission of the Appeals Tribunal, under the Appeals Tribunal’s Rules of Procedure (Rules) and its jurisprudence.⁴ Under Article 10(1) of the Rules, this Tribunal will only permit the filing of an additional pleading when the appellant has shown that there are “exceptional circumstances” justifying the filing. Mr. Gakumba has not shown such “exceptional circumstances”.

16. Second, the Appellant has not shown good cause to grant his Motion to postpone consideration of his appeal. Over the years, Mr. Gakumba has shown his ability to represent himself before the UNDT and the Appeals Tribunal by filing applications and appeals while proceeding *pro se*. He has not shown that he is unable to continue to represent himself.

⁴ *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 27. See also *Utkina v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-524, para. 16.

Moreover, as we have consistently held, there is no “right to be represented by OSLA”.⁵ Thus, OSLA’s 2 February 2015 decision (as shown by the attachments to the Motion) to deny Mr. Gakumba’s request for representation is not a ground to postpone consideration of his appeal. Further, the Appellant has had more than six months to obtain counsel since OSLA’s decision not to represent him, but he has failed to do so. In light of this factor, and the Appellant’s representation that he “do[es] not have financial means to pay outside counsel”, it is unlikely that any postponement would assist the Appellant in securing counsel to represent him.

17. For all these reasons, the Appeals Tribunal finds good cause does not exist to grant the Appellant’s Motion to postpone consideration of his appeal at the 2015 fall session and his request is denied.

The appeal

18. The Dispute Tribunal found that the Appellant’s application was not receivable, stating, in part, that “the Dispute Tribunal does not have the jurisdiction to revise a judgment after the Appeals Tribunal has ruled on the same matter”.⁶

19. Article 10 of the Statute provides that “[t]he judgements of the Appeals Tribunal shall be issued in writing ... [and] shall be final and without appeal, subject to the provisions of article 11 of the present statute”. Article 11 of the Statute, in turn, provides that either party may apply to the Appeals Tribunal for revision, correction, interpretation or execution of a judgment issued by the Appeals Tribunal, provided the statutory requirements for the proposed remedy are met.

20. The UNDT Statute, on the other hand, provides, in Article 12, that a party to a dispute before the UNDT may apply to the Dispute Tribunal for revision, correction, interpretation or execution of a judgment issued by the Dispute Tribunal; it does not allow a party to apply to the UNDT for revision of a judgment issued by the Appeals Tribunal.

⁵ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-577, para. 31, citing *Worsley v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-199.

⁶ Impugned Judgment, para. 13.

21. The role of the Dispute Tribunal includes adequately interpreting and comprehending the application submitted by the moving party, whatever name the party attaches to the document.⁷ Thus, the Dispute Tribunal properly treated Mr. Gakumba's application for revision as an application for revision of the UNDT judgment issued in 2012, rather than an application for revision of *Gakumba I*.

22. The principle of *res judicata* or finality of judgments is invoked in Article 10(6) of the Statute. A judgment by the Appeals Tribunal is "a final judgment, since it [i]s a judgment of the highest tribunal in the United Nations' internal justice system".⁸ Henceforth, the case is "*res judicata*, which mean[s] that it [i]s no longer subject to appeal and [can]not be raised again, either in the Dispute Tribunal or in the Appeals Tribunal".⁹ "The party who loses can not [sic] re-litigate his or her case. There must be an end to litigation and the stability of the judicial process requires that final judgments by an appellate court be set aside only on limited grounds and for the gravest of reasons."¹⁰

23. Mr. Gakumba appealed the initial UNDT judgment to the Appeals Tribunal, which issued *Gakumba I*. He then sought revision of *Gakumba I* from the Appeals Tribunal, which denied his request in *Gakumba II*. That is the end of the judicial process available to Mr. Gakumba under the statutory scheme for review of administrative decisions. Mr. Gakumba cannot return to the Dispute Tribunal for additional review, regardless of the name of the document he files. *Res judicata* has attached to his case.¹¹ Accordingly, the UNDT correctly determined that Mr. Gakumba's application was not receivable *ratione materiae*. The Appeals Tribunal finds no error of fact or law in the Dispute Tribunal's conclusion that Mr. Gakumba's application for revision of the 2012 UNDT judgment was not receivable.¹²

⁷ *Massabni v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-238, paras. 2-3.

⁸ *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-554, para. 20.

⁹ *Ibid.*

¹⁰ *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis, para. 4. See also *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-353; *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129; and *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063.

¹¹ *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-554.

¹² Although the UNDT also found that Mr. Gakumba had not complied with the statutory requirements for seeking revision of judgment, that conclusion was superfluous and need not be addressed by the Appeals Tribunal.

24. The UNDT also found that, pursuant to Article 10(6) of the UNDT Statute, costs in the amount of USD 500 should be awarded against Mr. Gakumba, stating:¹³

Having considered the procedural history of the present case, the [Dispute] Tribunal holds [...] that this Application is most frivolous and vexatious and as already found constitutes a manifest abuse of proceedings.

As to the costs, the UNDT ordered that “[t]he Respondent shall withhold the said sum from compensation awarded to the [Appellant] in [*Gakumba I*]”.¹⁴

25. On appeal, the Appellant does not contest the award of costs against him by the UNDT. The Secretary-General, however, requests that:

the [Appeals Tribunal] overturn the UNDT’s finding that the Administration withhold the amount of USD 500 costs from [*Gakumba I*] and instead order that the Appellant pay the amount of USD 500 costs to the [Appeals Tribunal’s] Registry. In the event that this amount is not paid within 30 days of the issuance of the [Appeals Tribunal’s] judgment, [...] the [Appeals Tribunal should] order that it will not entertain any further actions from the Appellant.

26. We determine that this is not an issue raised on appeal. Rather, the Respondent should address his concerns about the manner in which the UNDT’s award of costs is collected to the Dispute Tribunal, which awarded the costs and specified the manner for collection.

Costs on appeal

27. Article 9(2) of the Statute provides that “[w]here the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party”. In his answer, the Respondent seeks costs against the Appellant in an amount of USD 500.

28. The Appeals Tribunal determines that Mr. Gakumba has manifestly abused the appeals process by bringing this frivolous appeal of an unassailable judgment by the UNDT. In particular, Mr. Gakumba merely repeats on appeal arguments that did not succeed before the Dispute Tribunal, which had awarded costs against him. The award of costs by the Dispute Tribunal should have put Mr. Gakumba on notice that his action was frivolous.

¹³ Impugned Judgment, para. 16.

¹⁴ *Ibid.*, para. 18.

Accordingly, the Appeals Tribunal awards costs in the amount of USD 500 against Mr. Gakumba.

29. Although Mr. Gakumba has been before the Appeals Tribunal on more than one occasion, and his current appeal is frivolous, the Appeals Tribunal concludes that his behavior does not warrant directing the Registry not to accept any filings from him until the costs have been paid.¹⁵ Thus, this aspect of the Secretary-General's request is denied.

Judgment

30. The appeal is denied and Judgment No. UNDT/2015/006 is affirmed.

31. Costs are awarded against Mr. Gakumba in the amount of USD 500, which he is ordered to pay to the Secretary-General within 60 days of the publication of this Judgment. Mr. Gakumba may pay these costs directly to the Registry of the Appeals Tribunal, which will forward the payment to the Respondent.

¹⁵ Cf. *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-554.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Lussick

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar