



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

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Judgment No. 2016-UNAT-680

**James  
(Applicant)**

**v.**

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

**JUDGMENT ON APPLICATION FOR REVISION**

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Before:	Judge Sophia Adinyira, Presiding Judge Rosalyn Chapman Judge Richard Lussick
Case No.:	2015-887
Date:	30 June 2016
Registrar:	Weicheng Lin

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Counsel for Mr. James: Self-represented

Counsel for Secretary-General: Amy Wood

**JUDGE SOPHIA ADINYIRA, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application filed by Mr. Mike James for revision of Judgment No. 2015-UNAT-600, rendered by the Appeals Tribunal on 30 October 2015, in the case of *James v. Secretary-General of the United Nations*. Mr. James filed his application on 12 January 2016, and the Secretary-General submitted his comments on 22 February 2016.

**Facts and Procedure**

2. In July 2012, Mr. James was a Civil Affairs Officer with the United Nations Mission in Liberia (UNMIL). On 23 July 2012, he filed a claim for compensation under Appendix D of the Staff Rules with the Advisory Board on Compensation Claims (ABCC) for the loss of one eye and diminishing vision in the other eye.

3. On 11 June 2013, the ABCC recommended that Mr. James' claim for compensation under Appendix D be rejected, finding that his injury was not service-incurred. On 16 July 2013, the Controller, on behalf of the Secretary-General, approved the ABCC's recommendation. However, the Controller's decision was not communicated to Mr. James.

4. In August 2013, Mr. James filed an application with the United Nations Dispute Tribunal (UNDT) challenging the decision to reject his Appendix D claim and UNMIL's alleged negligence in referring him to a sub-standard medical facility for cataract surgery, which caused injury to his eyes.

5. On 19 November 2014, the UNDT issued Judgment on Receivability No. UNDT/2014/135, dismissing Mr. James' application. The Dispute Tribunal found Mr. James' negligence claim not receivable as he had failed to request management evaluation of this claim. It also dismissed Mr. James' claim for separation on health grounds as not receivable for the same reason of failure to request management evaluation. In respect of the decision of 16 July 2013 not to recognize Mr. James' eye injury as service incurred, the Dispute Tribunal noted that the decision had not been communicated to Mr. James. So as to exhaust the Appendix D procedure, the Dispute Tribunal ordered that the Secretary-General formally notify Mr. James of that decision and that Mr. James seek reconsideration of his Appendix D claim with 30 days of notice of the decision, if he wished to do so.

6. Mr. James appealed the UNDT Judgment to the Appeals Tribunal. In its Judgment No. 2015-UNAT-600, the Appeals Tribunal dismissed Mr. James' appeal and affirmed the UNDT Judgment. Mr. James now applies for revision of Judgment No. 2015-UNAT-600.

### **Submissions**

#### **Mr. James' Application for Revision**

7. The Appeals Tribunal prematurely closed the case without identifying and addressing the key issues and rendered a judgment inconsistent with the facts of the case.

8. The Appeals Tribunal's reliance on *Wamalala*<sup>1</sup> was misplaced as the claimant in that case filed a "gross negligence" claim as a separate claim against the Administration. Mr. James' claim for gross negligence, in contrast, is not a separate claim but rather the basis of his claim for compensation.

9. The Appeals Tribunal erred in declaring Mr. James' application not receivable for failing to request a management evaluation. The decision conveyed to him by e-mail of 27 January 2013 was made by two technical bodies, namely the ABCC and the Medical Services Division, in collaboration with the Medical Board. Therefore, there was no requirement for a management evaluation request before appealing to the UNDT.

#### **The Secretary-General's Comments**

10. Mr. James' application for revision of judgment should be dismissed for failing to meet the criteria necessary to seek a revision.

11. The Appeals Tribunal's Judgment in *Wamalala* is not a decisive fact that was unknown to the Appeals Tribunal and Mr. James at the time the Judgment was rendered. Similarly, the assertion by Mr. James that the Appeals Tribunal erred in its analysis of his case is not a "fact" within the meaning of the Statute of the Appeals Tribunal (Statute). Rather, Mr. James seeks a review of the Judgment because he disagrees with the Appeals Tribunal's analysis of his claims.

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<sup>1</sup> *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, para. 27.

**Considerations**

12. Article 11(1) of the Statute provides that:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

13. Accordingly, an application for revision of judgment is only receivable if it fulfils the strict and exceptional criteria established under Article 11 of the Statute<sup>2</sup> (discovery of a decisive fact previously unknown not due to negligence, clerical or arithmetical mistakes, and interpretation of the meaning and scope of the judgment).

14. Mr. James seeks a review because he disagrees with the Appeals Tribunal's analysis of his claims and this does not fulfil the strict and exceptional criteria set forth in Article 11 of the Statute.

**Judgment**

15. The application is dismissed.

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<sup>2</sup> *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-497, para. 19, citing *Al-Mulla v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-394, para. 14.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of June 2016 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Lussick

Entered in the Register on this 24<sup>th</sup> day of August 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar