



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

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Judgment No. 2017-UNAT-735

**Awe  
(Applicant)**

**v.**

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

**JUDGMENT ON APPLICATION FOR REVISION**

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| Before:    | Judge Richard Lussick, Presiding<br>Judge John Murphy<br>Judge Dimitrios Raikos |
| Case No.:  | 2016-978  |
| Date:      | 31 March 2017   |
| Registrar: | Weicheng Lin  |

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| Counsel for Mr. Awe:           | Self-represented  |
| Counsel for Secretary-General: | Nathalie Defrasne |

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. On 30 June 2016, the United Nations Appeals Tribunal (Appeals Tribunal) rendered Judgment No. 2016-UNAT-667 in the case of *Awe v. Secretary-General of the United Nations*. On 26 October 2016, Mr. Ekundayo Olukayode Awe filed a request for revision of judgment and on 9 December 2016, the Secretary-General filed his comments.

**Facts and Procedure**

2. Mr. Awe is a Resident Auditor with the Audit Unit of the United Nations Assistance Mission for Iraq (UNAMI) at the P-4 level. He arrived in Baghdad on 10 November 2012. On 14 November 2012, Mr. Awe was informed of the decision to reassign and/or relocate him and the Audit Unit from Baghdad to Kuwait. He left Baghdad for Kuwait on 19 November 2012. By memorandum dated 14 February 2013, the Officer-in-Charge (OiC) of the Office of the Chief of Staff of UNAMI (COS, UNAMI) confirmed Mr. Awe's change in duty station from Baghdad to Kuwait, effective 1 March 2013. Mr. Awe applied for Daily Substance Allowance (DSA) for the days he had been in Kuwait up until 28 February 2013. By memorandum dated 16 June 2013, the COS, UNAMI indicated that Ms. Awe's duty station was retroactively changed from Baghdad to Kuwait effective 19 November 2012.

3. Mr. Awe filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) against the decision of 16 June 2013 which reversed the original decision to change his duty station effective 1 March 2013. In Judgment No. UNDT/2015/099, the UNDT found that the decision to relocate Mr. Awe from Baghdad to Kuwait was lawful and the reassignment was a proper exercise of the Secretary-General's discretion and not tainted with improper motives. In addition, it stated that Mr. Awe had the opportunity of expressing his views as to the relocation but did not do so and he "acquiesced in the reassignment by signing all the relevant documents". The UNDT further held that Mr. Awe was only entitled to DSA and/or hardship allowances for the days he actually spent in Baghdad.

4. Mr. Awe appealed. In Judgment No. 2016-UNAT-667, the Appeals Tribunal dismissed Mr. Awe's appeal and affirmed the UNDT Judgment in its entirety. The Appeals Tribunal confirmed the UNDT's conclusions that the relocation decision was entirely within the Secretary-General's discretion and did not violate Mr. Awe's rights.

5. Mr. Awe now seeks revision of the Appeals Tribunal's Judgment.

6. On 5 March 2017, Mr. Awe filed a “Motion for Appellant to File Additional Comments”. The Secretary-General filed his response to the motion on 13 March 2017.

### **Submissions**

#### **Mr. Awe’s Application**

7. Mr. Awe submits that a report of a fact-finding panel (FFP) dated 18 February 2015 which was disclosed to him on 27 September 2016 in another case he brought before the UNDT, contains decisive new facts allowing for a revision of the Appeals Tribunal’s Judgment. He argues that the report of the FFP established under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) in order to investigate Mr. Awe’s complaint of prohibited conduct against the COS, UNAMI and the Chief of Mission Support (CMS), UNAMI found a “causal relationship” between the complaint dealt with in the report and the decision at issue in the present case.

8. It is his submission that the report shows a “lack of proper communication” and “ambiguities” in the communication of the decision at issue which made it impossible for Mr. Awe to fully understand the implications of the decision including for his entitlements, working conditions and his family members. In particular, it was not clearly communicated from the outset that Mr. Awe would be subject to a permanent reassignment rather than a mere temporary relocation. He further argues that it was established by the FFP that the original relocation decision was “illegally hijacked” by the Chief of Administrative Services of UNAMI (CAS, UNAMI), who “manipulated it to a reassignment decision with a seven months retroactive effect”. According to Mr. Awe, the panel also made the finding that the CAS, UNAMI illegally “resisted and challenged” corrective measures proposed by the COS, UNAMI.

9. Mr. Awe asserts that the procedural irregularities allegedly found by the FFP were sufficient to void the decision in question irrespective of any discretionary powers of the Administration. In this regard, he states that “when discretionary decisions do not follow proper procedures[,] are ill-motivated or otherwise tainted, they should be reviewed”. He concludes that the outcome of the UNDT and Appeals Tribunal Judgments would have been different, had the findings of the FFP, which “further revealed” the relevant facts, been taken into account.

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

10. The Secretary-General submits that, contrary to Mr. Awe's assertion, the FFP did not make any findings regarding any improper conduct of the CAS, UNAMI in relation to the decision at issue since Mr. Awe had not named the CAS, UNAMI in his complaint as having engaged in prohibited conduct and her actions were thus outside the scope of the panel's mandate. The references in the report that Mr. Awe mentions are in fact elements of context and not findings of improper motives or procedural violations. Mr. Awe is essentially "drawing his own conclusions and putting forward unsubstantiated claims" which do not qualify as "decisive new facts" in accordance with Article 11(1) of the Appeals Tribunal Statute.

11. The Secretary-General further alleges that Mr. Awe is merely "using th[e] fact finding panel's report as an opportunity to reiterate ... claims he had already submitted before the UNDT and [the Appeals Tribunal]" and that he expresses "[m]ere disagreement" in order to reopen a final judgment without meeting the criteria for seeking revision of such judgment set out in Article 11(1) of the Appeals Tribunal Statute.

12. The Secretary-General therefore respectfully requests the Appeals Tribunal to dismiss Mr. Awe's application in its entirety.

### **Considerations**

13. We deal first with Mr. Awe's "Motion for Appellant to File Additional Comments". The Appeals Tribunal notes that there is no provision under its Rules of Procedure (Rules) allowing for the submission of additional pleadings after the submission of comments to an application for revision of judgment. The Appeals Tribunal has repeatedly held, in the context of appeals, that under Article 31(1) of the Rules, it may accept additional pleadings based on the existence of exceptional circumstances.<sup>1</sup> However, the additional submission that Mr. Awe seeks to file is merely a reiteration of his request for revision and does not demonstrate the existence of exceptional circumstances. His motion is accordingly dismissed.

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<sup>1</sup> *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 27; *Gakumba v. Secretary-General of the United Nations*, Order No. 194 (2014), paras. 3-5.

14. Mr. Awe's application for revision of Appeals Tribunal Judgment No. 2016-UNAT-667 is based on his claim to have discovered decisive new facts. To establish this, he relies on the report of a FFP which considered his complaints of abuse of authority and harassment against the COS, UNAMI and the CMS, UNAMI.

15. Notwithstanding that Mr. Awe did not name the CAS, UNAMI, in those complaints, he claims that: "The findings of the investigative panel provide abundant evidence of the illegal role played by [the CAS, UNAMI]; the ambiguity in communication; procedural irregularity; absence of good faith; and failure to consider relevant facts. The outcome of the decision of the tribunal would have been different if this was taken into account." He alleges that additional facts contained in the report of the FFP show the illegality of the CAS, UNAMI, in "hijacking the process" which led to the decision to change his duty station from Baghdad to Kuwait effective 19 November 2012 (Contested Decision).

16. An application for revision of judgment is governed by Article 11(1) of the Appeals Tribunal Statute and Article 24 of the Appeals Tribunal Rules of Procedure. 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; that such ignorance was not due to the negligence of the applicant; and that the facts identified would have been decisive in reaching the decision.

17. Article 11(1) of the Appeals Tribunal Statute provides:

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.

18. Rules for the implementation of this statutory provision are provided by Article 24 of the Appeals Tribunal Rules of Procedure, which states:

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of the discovery of a decisive fact that 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 for revision will be sent to the other party, who has 30 days to submit comments to the

Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

19. An application seeking revision of a final judgment of the Appeals Tribunal can only succeed if it fulfils the strict and exceptional criteria established under Article 11 of the Statute.<sup>2</sup>

20. 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 Appeals Tribunal Statute, for review of a final judgment. As held by the Appeals Tribunal in *Shanks*, “[t]here 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”.<sup>3</sup>

21. After carefully perusing the report of the FFP, we are satisfied that it did not make any findings regarding the conduct of the CAS, UNAMI in relation to the Contested Decision. The arguments put forward by Mr. Awe in relation to this decision are not new facts and are speculative and unconvincing. Further, he once again adduces arguments that he had made to the UNDT and the Appeals Tribunal regarding the alleged unlawfulness of the Contested Decision.

22. This Tribunal has stated that an application for revision is not a substitute for an appeal; and no party may seek revision of a judgment merely because he or she is dissatisfied with it and “wants to have a second round of litigation”.<sup>4</sup> A revision of a final judgment is an exceptional procedure and not an additional opportunity for a party to re-litigate arguments that failed at trial or on appeal.<sup>5</sup>

23. We are not persuaded that Mr. Awe has produced a decisive new fact justifying a revision of the Appeals Tribunal Judgment.

24. His application must be refused.

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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; *Masri v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-163, para. 12.

<sup>3</sup> *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026bis, para. 4.

<sup>4</sup> *Maghari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-392, para. 19.

<sup>5</sup> *Ibid.*

**Judgment**

25. The application for revision of Judgment No. 2016-UNAT-667 is dismissed.

Original and Authoritative Version: English

Dated this 31<sup>st</sup> day of March 2017 in Nairobi, Kenya.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Raikos

Entered in the Register on this 26<sup>th</sup> day of May 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar