



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

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Judgment No. 2017-UNAT-775

**Onifade  
(Applicant)**

**v.**

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

**JUDGMENT ON APPLICATION FOR REVISION**

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Before:	Judge Deborah Thomas-Felix, Presiding Judge Rosalyn Chapman Judge John Murphy
Case No.:	2017-1056
Date:	14 July 2017
Registrar:	Weicheng Lin

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Counsel for Mr. Onifade:	Self-represented
Counsel for Secretary-General:	Ernesto Bondikov

**JUDGE DEBORAH THOMAS-FELIX, PRESIDING.**

1. On 30 June 2016, the United Nations Appeals Tribunal (Appeals Tribunal) rendered Judgment No. 2016-UNAT-668 in the case of *Onifade v. Secretary-General of the United Nations*. On 26 January 2017, Mr. Adebimpe Abraham Onifade filed a request for revision of judgment and on 27 February 2017, the Secretary-General filed his comments.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... The Applicant joined the Organization on 23 February 2001, at the P-3 level, on an Appointment of Limited Duration (“ALD”) with the United Nations Office of the Humanitarian Coordinator for Iraq (“UNOHCI”). He served UNOHCI until 16 November 2003, when his ALD expired. He was reappointed on 26 December 2006, at the P-3 level, to the United Nations Mission in Sudan, and served the Organization continuously and without incident from that date until 30 July 2014, when he was separated from service following the conclusion of a disciplinary process.

... On 3 November 2012, upon his promotion to the P-5 level, the Applicant commenced duties as State Coordinator of Warrap State with the United Nations Mission in the Republic of South Sudan (“UNMISS”). The Applicant was stationed in Kuajok, South Sudan.

... In his role as State Coordinator, the Applicant had the delegated authority to approve movement of personnel forms (“MOPs”), for travel of both United Nations and non-United Nations personnel on UNMISS assets.

... In March 2013, the Applicant invited Ms. M, a Civilian Police Officer with the African Union-United Nations Hybrid Mission in Darfur (“UNAMID”) to visit him because he claimed he needed support while he was suffering from some medical issues. She agreed to visit the Applicant, but was unable to complete the electronic MOP for travel to Kuajok.

... On or about 11 March 2013, the Applicant prepared an MOP for Ms. M to travel on a United Nations flight from Juba, South Sudan, to Wau, South Sudan, on 15 March 2013. On the MOP, the Applicant stated that Ms. M was travelling by virtue of her association with an organization by the name of “Peace Alliance”. In the field provided for the endorsement of the [traveller’s] head of organization, that is, Peace Alliance, the Applicant provided and signed his name.

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<sup>1</sup> Impugned Judgment, para. 3, citing *Onifade v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/101, paras. 6-20 and 22-39 (footnotes omitted).

... The Applicant also provided and signed his name as the approving officer for the MOP and stamped the form using a stamp that identified him as “State Coordinator”.

... In conjunction with the MOP, the Applicant prepared and submitted, on behalf of Ms. M, a General Release from Liability in Connection with Travel by Third Parties on UN-Provided Aircraft form (the “general release form”). This purported to release the Organization from all risks and liabilities for any loss, damage, injury, or death sustained by the traveler during the course of travel. In this document he again stated that Ms. M was affiliated with “Peace Alliance”.

... On 15 March 2013, on the basis of the MOP and general release form, Ms. M travelled on a United Nations flight from Juba to Wau. There was no security or safety incident during the flight.

... From 15 to 27 March 2013, Ms. M stayed with the Applicant in his UNMISS-provided residence. The Applicant neither requested nor obtained authorization for a temporary occupant to stay in his residence, and claims that he was unaware of the need to do so. There was no security or safety incident during Ms. M’s stay at Applicant’s accommodation.

... On or about 21 March 2013, the Applicant prepared another MOP and general release form for Ms. M to travel from Kuajok to Juba on 27 March 2013. The Applicant again stated that Ms. M was travelling by virtue of her supposed affiliation with “Peace Alliance”, endorsed the MOP as head of the traveller’s organization and approved the MOP in his capacity as approving officer.

... On 27 March 2013, the Applicant and Ms. M travelled from Kuajok to Juba on an UNMISS flight. There was no safety or security incident during the flight.

... On 9 April 2013, the Office of Internal Oversight Services (“OIOS”) received a report of possible misconduct with regard to the foregoing matter.

... On or about 22 April 2013, the Applicant, of his own accord, publicly disclosed, admitted to, and apologized for his actions during a Town Hall meeting. The Respondent alleged that according to a witness present at the meeting he made statements in an apparent attempt to excuse his behaviour.<sup>[2]</sup>

... On 5 June 2013, the matter was referred by OIOS to the Department of Field Support (DFS), UNHQ, for “appropriate action”. The letter of referral stated that upon DFS’ acknowledgment of receipt of the referral, OIOS would “consider the matter closed”.

... On 2 July 2013, DFS/UNHQ referred the matter to UNMISS. On 8 July 2013, the UNMISS Conduct and Discipline Team (“CDT”) referred the matter to the UNMISS Special Investigations Unit (“SIU”) for investigation.

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<sup>2</sup> The Dispute Tribunal ruled that this hearsay evidence was unreliable and had no probative value.

...

... The Applicant was interviewed twice by SIU investigators during the course of the investigation, on 22 July 2013 and on 24 July 2013. The SIU investigators also interviewed Ms. M and six other individuals.

... The Applicant's interviews were recorded in the form of statements which he signed as a true and accurate record of the interview. At the beginning of each of his statements it is recorded: "My name is [the Applicant], State coordinator of Warrap State. I am making this statement with no objection to the Chief of SIU Unit... In regard to an incident of possible misconduct in 2013 at UNMISS Kuajok State Headquarters".

... In his first interview, the Applicant admitted to filling out the 11 March 2013 MOP incorrectly and allowing Ms. M to stay at his UNMISS-provided residence without having sought authorization. He stated that he was not aware at the time of the rules requiring him to do so.

... The Applicant also told the investigator:

The copy of an MOP you showed me labeled (DR-1) is a true copy of the UNMISS NON-UN MOP that I prepared for Ms. M.

In part 1 of the MOP **Traveler's Details**, I inserted [Ms. M's] names, under the heading Organization: I inserted "Peace Alliance", under the heading Grade/Rank/Title: I inserted "Admin" and under the heading Purpose of Travel: I indicated "Leave" under the heading Signature: I authored the name in my handwriting [Ms. M]; this is not [Ms. M's] signature. I completed the form according to her consent.

In Part 3 of the MOP **Head of Organization Endorsement**: I affixed my name, title and signature in my handwriting and stamped it with my official office stamp. I am not the Head of Peace Alliance nor am I affiliated with them." (Emphasis in original).

... In his second interview, the Applicant explained that he had stated that Ms. M was affiliated with "Peace Alliance" at her suggestion after her first MOP, which noted her affiliation with UNAMID, had been rejected.

... During her interview by SIU investigators, Ms. M said that: (i) she was not affiliated with "Peace Alliance"; (ii) the Applicant had inserted the name "Peace Alliance" without her permission; (iii) she did not know why the Applicant had used the name "Peace Alliance"; and (iv) given her position as a police officer in her home country, she was not allowed to be affiliated with any non-governmental organization. She also told the investigator that she did not object to the Applicant signing her name on the MOP and General Release form because he was her good friend and had her permission to sign her name on "any document".

... The investigation report was completed on 10 August 2013.

... By memorandum of 18 September 2013, the Special Representative of the Secretary-General (SRSG) of UNMISS sent the SIU investigation report and CDT conclusions and recommendations to the Under-Secretary-General of DFS (USG/DFS). A copy of the report was not sent to OIOS.

... On 3 April 2014, the Chief, Human Resources Policy Service, Office of Human Resources Management (HRPS/OHRM) sent the Applicant a letter containing the formal allegations of misconduct. Specifically, it was alleged that:

- a. On or about 11 March 2013, he knowingly included false information in an MOP that he prepared on behalf of Ms. M and approved in his official capacity;
- b. On or about 21 March 2013, he knowingly included false information on an MOP that he prepared on behalf of Ms. M and approved in his official capacity;
- c. From approximately 15 to 27 March 2013, the Applicant allowed Ms. M to reside in his UNMISS-provided residence, without requesting or obtaining the required authorization.

... The Applicant was informed that, if established, his conduct would constitute a violation of staff regulations 1.2(b), which requires staff members to uphold the highest standards of efficiency, competency and integrity; and 1.2(g) which states that staff members shall not use their office...for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour....; former staff rule 1.2(h) which prohibits, inter alia, the intentional alteration or falsification of official documents entrusted to them by virtue of their functions. In addition, under paragraph 16 of UNMISS Administrative Instruction No. 008/2011, it would be in violation of his obligation as a United Nations official who approves MOPs to ensure that travel policies are complied with and paragraph 2.3 of UNMISS Administrative Instruction No. 005/2011 which requires written authorisation to have a temporary occupant in an assigned accommodation.

... The letter included the referral memorandum from the Assistant[ ] Secretary-General of DFS, dated 27 November 2013, the SIU Investigation report, the SRSG's cover memorandum to the investigation report and the Applicant's personnel action history.

... The Applicant was requested to provide any written statements or explanations in response within two weeks and was informed of his right to request more time and of the availability of the assistance of the Office of Staff Legal Assistance (OSLA).

... On 6 May 2014, the Applicant responded with a written submission concerning the alleged misconduct, citing as mitigating factors for his behaviour the severe emotional, physical, and psychological problems from which he was suffering and the medications he was taking, the difficult living and working conditions he was experiencing, and perceived racial tensions, all of which he claims may have clouded his judgment. He referred to his voluntary disclosure of his error, satisfactory performance reports, repayment of the cost of the accommodation charges of Ms. M, his readiness to repay the cost of Ms. M's air transportation, his newness on the job and lack of staff support, positive references from the Governor of Warrap State and colleagues. He also said that he had instituted more rigorous screening of MOPs. He likewise expressed remorse for his actions and requested leniency in light of his circumstances.

... By letter dated 30 July 2014, the Applicant was notified that the Under-Secretary-General for Management (USG/DM), on behalf of the Secretary-General, had concluded that the allegations against him were established by clear and convincing evidence and had decided to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity.

... The USG/DM noted that the measure for a staff member's failure to comply with the provisions of UNMISS Administrative Instruction No.005/2011 may be limited to administrative measures however his misconduct was not limited to violations of that Administrative Instruction but also staff regulations 1.2(b) and (g), former staff rule 1.2(h) and UNMISS Administrative Instruction No. 008/2011.

... The decision letter listed the established facts and the conclusion based on these facts that this conduct violated staff regulations, a former staff rule and two administrative instructions. It stated that the USG/DM on behalf of the Secretary-General had considered the past practice of the Secretary-General in similar cases, the circumstances of the Applicant's case and aggravating and mitigating factors.

... The mitigating factors included the stress that the Applicant was experiencing at the time due to the difficult working conditions of the mission, the subsequent payment of Ms. M's accommodation charges; his offer to pay for her flight costs; his cooperation with the investigation and admissions; his publically expressed remorse and his records of positive performance.

... The aggravating factors included his abuse of trust as the P-5 head of office and approving officer; that his conduct prevented the Organization from accurately determining the purposes for which air assets were being used and that his conduct involved a fundamental lapse in integrity.

3. On 10 July 2014, Mr. Onifade filed an application with the Dispute Tribunal contesting the disciplinary measure of separation from service with compensation in lieu of notice and termination indemnity.

4. On 29 October 2015, the Dispute Tribunal issued Judgment No. UNDT/2015/101, which dismissed the application in its entirety. The Dispute Tribunal rejected Mr. Onifade's claims that he was not accorded due process and procedural fairness during the investigation. The Dispute Tribunal found that the investigation was not *ultra vires* as there was no evidence of improper delegation or referral of the allegation for investigation by either OIOS or the CDT, UNMISS. Mr. Onifade's allegations that the individuals who reported his misconduct, who investigated him, and who were interviewed during the investigation were improperly motivated, were not supported by evidence. The investigation was carried out in accordance with the correct procedures.<sup>3</sup>

5. Mr. Onifade appealed. In Judgment No. 2016-UNAT-668, the Appeals Tribunal dismissed Mr. Onifade's appeal and affirmed the UNDT Judgment in its entirety. The Appeals Tribunal confirmed the UNDT's conclusions that investigation was not *ultra vires* and that Mr. Onifade's due process rights were respected during the investigation and disciplinary stages. The Appeals Tribunal determined that the UNDT correctly found that the facts were established by clear and convincing evidence, that the finding of misconduct was warranted and that the sanction was proportionate to the offence.

6. Mr. Onifade now seeks revision of the Appeals Tribunal's Judgment.

### **Submissions**

#### **Mr. Onifade's Application**

7. Mr. Onifade submits that on 1 January 2017 he had an "epiphany" that he was set up. Mr. Onifade submits that the Appeals Tribunal was not aware of the first MOP of 7 March 2013, which correctly identified Ms. M as United Nations Police officer from UNAMID and identified the purpose of travel as leave. He had forgotten about this evidence "due to depression and overwhelming circumstance of career truncation" and that this evidence was not before the UNDT or the Appeals Tribunal.

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<sup>3</sup> Impugned Judgment, para. 5.

8. Mr. Onifade submits that he accurately represented the information of Ms. M in the first MOP and he questions why the first MOP was not used. He states that he received a telephone call from Juba Movement Control (MOVCON) requesting a new MOP (the second MOP) to indicate that Ms. M is working with an NGO. Mr. Onifade submits that he complied with this request “without any question and without knowing the plan”, as he was new in the mission. Mr. Onifade states that he was further advised by MOVCON Kuajok to prepare a new MOP “using the same information” for the return trip of Ms. M, which he did. He states that these requests form part of the set-up because he was later terminated due to the misrepresentations on the MOPs. Mr. Onifade further advances several arguments about his former colleagues colluding against him on racial grounds.

9. Mr. Onifade states that the first MOP was concealed by the Administration. There was no mention of the first MOP in the first report to OIOS, the SIU investigation, nor was it considered by the person who signed his separation letter on behalf of the Assistant Secretary-General, Office of Human Resources Management.

10. Furthermore, Mr. Onifade submits that paragraph 38 of the impugned Judgment clearly conveys the fact that the proper process was not followed during the investigation. He states that the concealment of the first MOP “exacerbated the abuse of process” and that the Appeals Tribunal used a “Code Cable” and “not a source of law” to cover the incorrect procedure.

11. Mr. Onifade requests that the Appeals Tribunal revise its Judgment “to set the records straight, expose racism in the system and few overzealous [United Nations] officers using the power of their office maliciously”.

### **The Secretary-General’s Answer**

12. The Secretary-General submits that Mr. Onifade fails to meet the strict requirements for revision of an Appeals Tribunal judgment provided for in Article 11 of the Appeals Tribunal Statute (Statute), Article 24 of the Appeals Tribunal Rules of Procedure (Rules), and by well-settled jurisprudence.

13. The Secretary-General submits that Mr. Onifade has failed to demonstrate that the existence of the first MOP was unknown at the time the Judgment was rendered. Mr. Onifade claims that only when he had his recent “epiphany” did he realize he had



forgotten that the first MOP was correct. However, this is contradicted by the record. During Mr. Onifade's second interview on 24 July 2013, Mr. Onifade advised investigators that the first MOP had been "refused because the traveler [Ms. M] was from UNAMID". The first MOP also contains Mr. Onifade's official stamps, as well as his name, title, and signature. Additionally, Mr. Onifade has failed to provide any explanation of when and how the first MOP came into his possession. These documents were available and known to Mr. Onifade.

14. The first MOP does not contain a decisive fact that would affect the outcome of the case. If anything, the first MOP supports the case against Mr. Onifade, as it states Ms. M's true affiliation with UNAMID. Mr. Onifade proceeded to change the affiliation to "Peace Alliance" on the next two sets of MOP and release forms for Ms. M's travel, thereby knowingly and deliberately providing false information.

15. The Secretary-General requests that the Appeals Tribunal reject Mr. Onifade's application for revision in its entirety as manifestly inadmissible *ratione materiae*.

### **Considerations**

16. Mr. Onifade seeks revision of an Appeals Tribunal Judgment in accordance with the provisions of Article 11 of the Statute and Article 24 of the Rules. There is no evidence before us to support this application for revision.

17. Mr. Onifade has failed to show that the first MOP was unknown to him at the time the Judgment was rendered and he has presented no decisive fact which was, at the time the Judgment was rendered, unknown to him and the Appeals Tribunal within the meaning of Article 11(1) of the Statute.

18. Moreover, even if the first MOP were allowed as evidence, it would be of no assistance and would not support his case.

19. As such, this application does not meet the criteria established under Article 11(1) of the Statute and Article 24 of the Rules. We find it to be without merit.

**Judgment**

20. The application for revision of Judgment No. 2016-UNAT-668 is dismissed.

Original and Authoritative Version: English

Dated this 14<sup>th</sup> day of July 2017 in Vienna, Austria.

*(Signed)*

Judge Thomas-Felix,  
Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Murphy

Entered in the Register on this 5<sup>th</sup> day of September 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar