



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

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Judgment No. 2017-UNAT-808

**Likukela  
(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 Sabine Knierim Judge Martha Halfeld
Case No.:	2017-1094
Date:	27 October 2017
Registrar:	Weicheng Lin

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Counsel for Ms. Likukela:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

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

1. On 31 March 2017, the United Nations Appeals Tribunal (Appeals Tribunal) rendered Judgment No. 2017-UNAT-737 in the case of *Likukela v. Secretary-General of the United Nations*. On 26 June 2017, Ms. Dorah Namasiku Likukela filed an application for revision of judgment, and on 3 August 2017, the Secretary-General filed his comments.

**Facts and Procedure**

2. In its Judgment, the Appeals Tribunal cited the following facts as uncontested:<sup>1</sup>

... Ms. Likukela is a former investigator (P-3) with the United Nations Integrated Mission in Timor-Leste (UNMIT). In her application before the [United Nations Dispute Tribunal (UNDT)], she contested the decision by the Secretary-General to uphold the recommendation of the Advisory Board on Compensation Claims (ABCC) rejecting her claim for compensation under Appendix D of the Staff Rules (Appendix D) for alleged injuries incurred during the course of a medical examination conducted at UNMIT on 3 August 2011.

... Considering that the matter involved a detailed account of Ms. Likukela's medical condition which was not of interest to the public and in order to protect her right to privacy, references to her medical condition were redacted from the published version of the UNDT Judgment and [were] therefore not contained [therein].

... On 3 August 2011, Ms. Likukela attended a consultation with the UNMIT Medical Services Section. On the same day, Ms. Likukela reported to the UNMIT Security Special Investigations Unit that she had been victim of an incident during this medical examination.

... Between August 2011 and June 2013, Ms. Likukela was examined several times, undergoing, among others, ultrasound and diagnostic surgery.

... On 15 October 2013, Ms. Likukela filed a request before the ABCC under Appendix D for compensation for injuries she claimed to have incurred during the medical examination of 3 August 2011.

... By memorandum of 10 March 2015, Dr. R. of the Medical Services Division (MSD), New York, in consultation with the Medical Director, advised the ABCC as to whether Ms. Likukela's condition could be considered to be directly related to the medical examination that was conducted on 3 August 2011. He stated in his report that "the Medical Director ... confirmed that there [was] no evidence of medical

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<sup>1</sup> Impugned Judgment paras. 2-13 (footnotes omitted), involving *Likukela v. Secretary-General of the United Nations*, Judgment No. UNDT/2016/180, issued by the UNDT in Geneva on 30 September 2016.

malpractice and, in this case, no evidence of sexual assault”. Regarding Ms. Likukela’s specific claims, Dr. R. found that:

... The practice used during the examination is reasonable and appropriate medical practice for a patient presenting with the symptoms that Ms. Likukela had;

... The pathology examination following surgery confirmed that Ms. Likukela had a developmental condition (present from birth) that was consistent with her symptoms.

... On 12 May 2015, the ABCC, at its 483<sup>rd</sup> meeting, reviewed Ms. Likukela’s claim for compensation under Appendix D. Having considered the medical reports and the advice of the Medical Director, MSD, the ABCC recommended that “[Ms. Likukela]’s request that her injuries/illness ... be recognized as service-incurred be denied”.

... On 5 June 2015, the Secretary-General approved the above-mentioned recommendation to deny Ms. Likukela’s claim.

... On 1 July 2015, Ms. Likukela filed a request for management evaluation concerning the “ABCC recommendation for [her] injury compensation claim”.

... By letter dated 6 July 2015, the Management Evaluation Unit (MEU) advised Ms. Likukela that her request was not receivable in view that the ABCC is a technical body and, therefore, no request for management evaluation was required pursuant to Staff Rule 11.2(b).

... On 24 August 2015, Ms. Likukela filed an application before the UNDT.

... The UNDT rendered its Judgment on 30 September 2016 rejecting the application in its entirety. The [UNDT] found that it had no jurisdiction to examine the decision taken by the Secretary-General based on the recommendation of the ABCC, which, in turn was supported by the medical advice provided by the MSD to the ABCC. The UNDT noted that it cannot review “medical conclusions and opinions” and that it was “not allowed to substitute its appreciation of medical issues for that of the medical practitioner, nor would it have the expertise to do so. The proper way for [Ms. Likukela] to request reconsideration of the conclusions reached by the [MSD] was to make use of art. 17 of Appendix D, to have the matter re-examined by a group of medical experts.” The Dispute Tribunal further found that Ms. Likukela’s request for review of the allegedly erroneous recovery of USD 587,428.65 by the United Nations Federal Credit Union (UNFCU) as a scheme to defraud her of her benefits, fell beyond the scope of the case and would thus not be considered. Finally, the [UNDT] held that there was no indication that the procedure set forth in Appendix D for determining Ms. Likukela’s claim for compensation had not been correctly followed.

3. On 25 October 2016, Ms. Likukela filed an appeal against Judgment No. UNDT/2016/180, issued by the Dispute Tribunal in Geneva on 30 September 2016. The Secretary-General filed his answer on 23 January 2017.

4. On 31 March 2017, the Appeals Tribunal rendered Judgment No. 2017-UNAT-737 affirming the UNDT Judgment and dismissing the appeal in its entirety. As a preliminary matter, the Appeals Tribunal refused Ms. Likukela's request for an oral hearing as Ms. Likukela intended at the hearing to call evidence that she should have presented to the UNDT and an oral hearing would not be of assistance to the Appeals Tribunal. On the merits, the Appeals Tribunal found: (i) the UNDT correctly held itself not competent to make medical findings contradicting the medical evidence adduced by the ABCC; (ii) the UNDT did not err in concluding that the ABCC's recommendation had no connection with the attempted recovery of the monies allegedly paid to her by the UNFCU by mistake; and (iii) the UNDT was correct in finding the proper way for Ms. Likukela to request reconsideration of the medical findings was for her to request, pursuant to Article 17 of Appendix D, that her matter be re-examined by a group of medical experts, which she had failed to do.

5. As noted above, on 26 June 2017, Ms. Likukela filed an application for revision of judgment and on 3 August 2017, the Secretary-General filed his comments.

6. On 24 August 2017, Ms. Likukela filed a motion to file additional pleadings. On 7 September 2017, the Secretary-General filed his response to the motion.

### **Submissions**

#### **Ms. Likukela's Application**

7. Ms. Likukela requests revision on the grounds that the Judgment has indications of bias and manipulation to cover up bank and wire fraud by the UNFCU. The medical recommendations by the MSD are part of such fraud, and any decision made on their fraud is thus null and void and ought to be vacated and set aside. The MSD followed the incorrect procedure as it did not independently corroborate her pathology results.

8. Ms. Likukela asserts there is a money laundering scheme to defraud her of her United Nations benefit entitlements for which various United Nations staff members are criminal suspects. The matter ought to be referred to the Secretary-General and as such paragraphs 7-9

of the Judgment cannot stand and paragraph 18-21 should be reviewed. The UNFCU failed to inspect documents which led to their error and mistaken payment of USD 587,000.

9. Ms. Likukela asserts she was denied a fair hearing and argues that she would like to request a second medical opinion but she only became aware of Article 17 of Appendix D when it was mentioned in the Judgment since it was not part of the Staff Rules on the website. Also, the MEU did not advise her of it.

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

10. Ms. Likukela fails to identify the discovery of any decisive facts, which were unknown to her and to the Appeals Tribunal, at the time the Judgment was rendered as is required by Article 11(1) of the Appeals Tribunal's Statute (Statute) and Article 24 of the Appeals Tribunal's Rules of Procedure (Rules) for an application for revision to succeed. Contrary to Ms. Likukela's claim that she was unaware of the procedure set forth in Appendix D, the Staff Rules contain Appendix D which were readily available to her. Ignorance of the law is no excuse. Ms. Likukela's argument that the Judgment indicates bias and "colonial manipulation" to cover up bank wire fraud does not constitute the discovery of a new decisive fact; rather Ms. Likukela is rearguing her case on matters that were deemed by the UNDT and the Appeals Tribunal to have no connection to the contested decision to uphold the ABCC's recommendation. Lastly, Ms. Likukela has levied unfounded slanderous allegations against staff of the MSD, the Secretary-General's counsel, and the former Secretary-General. The application is merely an attempt by Ms. Likukela to re-open a final judgment without fulfilling the criteria under the Appeals Tribunal's Statute and Rules.

### **Considerations**

11. As a preliminary matter, Ms. Likukela has applied for leave to file additional pleadings. There is no provision under the Statute and Rules for additional pleadings to be submitted by parties, except in exceptional circumstances.<sup>2</sup> Ms. Likukela has not provided this Tribunal with any cogent or compelling argument to support any contention that there were exceptional

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<sup>2</sup> Under Article 31(1) of the Rules and Section II.A.3 of the Appeals Tribunal's Practice Direction No. 1, the Appeals Tribunal may allow a motion requesting leave to file additional pleadings after the filing of the answer to an appeal if there are exceptional circumstances justifying the motion. See *Rangel v. International Court of Justice*, Judgment No. 2015-UNAT-531, para. 14; *Utkina v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-524, para 16.

circumstances which warranted the additional filing. Under such circumstances, the motion to supply additional filings is denied.

12. Ms. Likukela requests revision of Judgment No. 2017-UNAT-737. This request is governed by Article 11(1) of the Statute and Article 24 of the Rules. In order for Ms. Likukela to succeed with her application, she must show or identify a decisive fact that was unknown to her and to the Appeals Tribunal at the time the Judgment was rendered. This review procedure is corrective in nature and is not an opportunity for Ms. Likukela to reargue her case.<sup>3</sup>

13. As stated in *Ghahremani*:<sup>4</sup>

... Applications for revision of judgment are governed by Article 11(1) of the Statute and Article 24 of the Rules of Procedure of the Appeals Tribunal. 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.

14. Ms. Likukela has presented no new and/or no decisive fact which at the time the Judgment was rendered was unknown within the meaning of Article 11(1) of the Statute.

15. In the circumstances, the application for revision is dismissed.

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<sup>3</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>4</sup> *Ghahremani v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-351, para. 9. See also *Onifade v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-775 and *Saeed v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-719.

**Judgment**

16. The application for revision is dismissed and Judgment No. 2017-UNAT-737 is affirmed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of October 2017 in New York, United States.

*(Signed)*

Judge Thomas-Felix, Presiding

*(Signed)*

Judge Knierim

*(Signed)*

Judge Halfeld

Entered in the Register on this 8<sup>th</sup> day of December 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar