



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

Judgment No. 2018-UNAT-826

**Ocokoru
(Applicant)**

v.

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

JUDGMENT ON APPLICATION FOR EXECUTION

Before:	Judge Richard Lussick, Presiding Judge Deborah Thomas-Felix Judge Martha Halfeld
Case No.:	2017-1115
Date:	22 March 2018
Registrar:	Weicheng Lin

Counsel for Ms. Ocokoru: Self-represented

Counsel for Secretary-General: Francisca Lagos Pola

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for execution of judgment filed by Ms. Jane Patience Ocoru on 28 August 2017. Ms. Ocoru seeks execution of Judgment No. 2015-UNAT-604 *Ocoru v. Secretary-General of the United Nations* rendered by the Appeals Tribunal on 30 October 2015. On 20 October 2017, the Secretary-General filed his comments.

Facts and Procedure

2. On 6 April 2015, the Secretary-General appealed Judgment No. UNDT/2015/004, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). In its Judgment, the UNDT ordered rescission of the administrative decision to separate Ms. Ocoru from service and ordered her reinstatement. In the alternative, the UNDT awarded compensation equivalent to two years' net base salary. The UNDT further awarded three months' net base salary as compensation for procedural irregularity and three months' net base salary for substantive irregularity relating to her complaint of misconduct. The UNDT ordered that the total sum of compensation be paid to Ms. Ocoru within 60 days of the date of execution of the Judgment, during which period the U.S. Prime Rate applicable on that date, shall apply.¹

3. The Appeals Tribunal held that the Secretary-General's appeal was filed out of time and therefore dismissed his appeal as not receivable.

4. On 28 August 2017, Ms. Ocoru filed the above-mentioned application and on 20 October 2017, the Secretary-General filed his comments.

Submissions

Ms. Ocoru's Application

5. The Appeals Tribunal's form for applications for execution of judgments Section III (Grounds for the Application) instructs applicants to "show [...] a judgment issued by the Appeals Tribunal that requires execution within a certain period of time, but on which no such execution has been carried out". In her application, Ms. Ocoru states the following:

¹ *Ocoru v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/004, paras. 130-134.

1. Full Re-instatement on my Job with all the Terminal Benefits as contained in [Judgment No. UNDT/2015/004] and (...) [Judgment No. 2015-UNAT-604].
2. As a bonafide Employee of the United Nations, Court should help me in my getting paid the following:
 - a) Compensation/Damages for the time I have spent when I was forced out of my Office.
 - b) Salary arrears should be paid in total including Pension Contributions from 2009 July when I Checked - In as a UN Employee up to date.
 - c) There must be Interest of 15% paid on (a) and (b) above from the time I have been out of my Office to the time of full payment.
3. [Reimbursement of her] medical bills [...].
- ...
5. Alleged Separation Date:
 - a) I never Separated and I never Checked - Out on purported date of 31st July 2012 to imply that I separated from [United Nations Mission in South Sudan] UNMISS/United Nation Organization neither directly nor indirectly. This is a false allegation by UNMISS.
 - b) In United Nations Organization nobody Checks - In or Out any staff unless expressly Authorized by a particular staff and I didn't authorize anybody to Check me - Out. So I remain a bonafide United Nation staff to date.
 - c) Neither has UNMISS/UN formally Checked me - Out nor have I voluntarily retired/resigned from United Nations Organization.
6. UNMISS illegally threw the so called Final Pay of 600 United State Dollars (2,030.01 South Sudanese Pounds) in my UNMISS Kenya Commercial Bank (KCB) Account in Juba, South Sudan in March 2013.
7. The illegal Pension Calculation was in contravention of the [Appeals Tribunal] [...] Judgment.

The Secretary-General's Comments

6. The Secretary-General urges the Appeals Tribunal to dismiss Ms. Ocokoru's requests for remedies beyond what was ordered in the UNDT Judgment as Ms. Ocokoru is not entitled to remedies beyond what the UNDT has ordered and because an application for execution of judgment is not an appropriate vehicle to request additional remedies.

7. Regarding Ms. Ocokoru's request to be paid the award ordered, the Secretary-General submits that the Organization paid Ms. Ocokoru USD 95,387.13 on 3 March 2016, which corresponds to 30 months' net base salary. The Secretary-General, however, observes that this payment may be inconsistent with the UNDT's award in two respects. First, the UNDT ordered this compensation to be paid at the rate in effect on 15 January 2015 (the date of the UNDT

Judgment) and not 30 July 2012 (the date of her separation). The difference in dates may render Ms. Ocokoru entitled to additional compensation. Second, the UNDT ordered payment of interest, which appears to have not been paid to Ms. Ocokoru. The Secretary-General submits that the Organization will ensure that the UNDT Judgment is executed in full by promptly paying Ms. Ocokoru the difference in salaries at the 2015 and 2012 rates, and with interest.

Considerations

8. In Judgment No. UNDT/2015/004 (UNDT Judgment), the UNDT ordered the rescission of the administrative decision to separate Ms. Ocokoru from service and her reinstatement or, in the alternative, compensation equivalent to two years' net base salary. It further awarded three months' net base salary as compensation for the procedural irregularity and three months' net base salary for the substantive irregularity.

9. The Secretary-General appealed the UNDT Judgment. The Appeals Tribunal, in its Judgment No. 2015-UNAT-604 (Appeals Tribunal Judgment), decided that the Secretary-General's appeal was filed out of time and was not receivable.

10. Ms. Ocokoru now applies to the Appeals Tribunal for an order for execution of the Appeals Tribunal Judgment, in which the Appeals Tribunal did not make any order affecting the UNDT Judgment, but simply decided that the Secretary-General's appeal was not receivable. The Appeals Tribunal Judgment is, therefore, not an executable judgment.

11. Since the Appeals Tribunal did not receive the appeal, the case does not fall within the jurisdiction of the Appeals Tribunal. It follows that the UNDT Judgment remains in force. Nothing in the Appeals Tribunal Judgment interferes with the validity of the UNDT Judgment.

12. The UNDT Judgment remains within the jurisdiction of the Dispute Tribunal and became executable following the expiry of the time provided for appeal in the Statute of the Appeals Tribunal. An application for its execution is governed by Article 11(3) of the UNDT Statute and Article 32 of the UNDT Rules of Procedure.

13. Article 11(3) of the UNDT Statute provides:

... The judgements and orders of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with the statute of the United Nations

Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal. Case management orders or directives shall be executable immediately.

14. Article 32 of the UNDT Rules of Procedure provides:

... Judgements of the Dispute Tribunal shall be binding on the parties, but are subject to appeal in accordance with the statute of the Appeals Tribunal. In the absence of such appeal, it shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

... Once a judgement is executable under Article 11.3 of the Statute of the Dispute Tribunal, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

15. Ms. Ocokoru is therefore in error in applying to the Appeals Tribunal for execution of a valid judgment of the Dispute Tribunal. The Appeals Tribunal is not competent to grant the application since there is no judgment of the Appeals Tribunal capable of being executed.

16. Lastly, we make the observation that although the Secretary-General succeeds in his opposition to Ms. Ocokoru's application, he is mistaken in his submission that the applicable law in this case is Article 27 of the Appeals Tribunal's Rules of Procedure. Article 27 states: "Where a judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement." Contrary to what the Secretary-General apparently believes, this Rule does not give the Appeals Tribunal any jurisdiction to order execution of a UNDT judgment which is properly within the jurisdiction of the Dispute Tribunal. Article 27, when read together with its empowering legislation, which is Article 11(4) of the Appeals Tribunal's Statute, leaves no doubt that the judgment referred to in the legislation is a judgment by the Appeals Tribunal. Indeed, Part III of the application for execution of judgment form requires the applicant to show that he or she has a judgment "issued by the Appeals Tribunal that requires execution". Article 11(4) of the Appeals Tribunal's Statute provides for the execution of an Appeals Tribunal judgment thus: "Where the judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement." In the present case, an executable judgment by the Appeals Tribunal did not exist and Article 27 of the Appeals Tribunal's Rules of Procedure did not apply.

17. For the above reasons, we hold that the Appeals Tribunal is not competent to hear and pass judgment on the present application.

Judgment

18. The application for execution of judgment is not receivable.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Halfeld

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar