



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

Judgment No. 2018-UNAT-828

**Kallon
(Applicant)**

v.

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

JUDGMENT ON APPLICATION FOR EXECUTION

Before:	Judge Sabine Knierim, Presiding Judge John Murphy Judge Dimitrios Raikos
Case No.:	2017-1117
Date:	22 March 2018
Registrar:	Weicheng Lin

Counsel for Mr. Kallon:	George G. Irving
Counsel for Secretary-General:	Amy Wood

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for execution of Judgment No. 2017-UNAT-742 issued by the Appeals Tribunal on 31 March 2017. Mr. Alpha Kallon filed his application for execution of judgment on 12 October 2017 and the Secretary-General filed his comments on 13 November 2017.

Facts and Procedure

2. In July 2010, Mr. Kallon was appointed Chief Procurement Officer (CPO) at the P-4 level on a fixed-term appointment at the United Nations Stabilization Mission in Haiti (MINUSTAH). He had previously received from the Assistant Secretary-General of the Office of Central Support Services (ASG/OCSS and OCSS, respectively) the required designation to perform procurement functions as a CPO, in accordance with Secretary-General's Bulletin ST/SGB/2005/7 (Designation of staff members performing significant functions in the management of financial, human and physical resources) (designation).

3. On 17 July 2012, the Chief of Mission Support of the United Nations Interim Security Force for Abyei (UNISFA) notified the Director of Mission Support of MINUSTAH (DMS/MINUSTAH) that Mr. Kallon had been selected for reassignment to the post of CPO in UNISFA, subject to *inter alia* receiving designation under ST/SGB/2005/7 to perform procurement functions.

4. On 25 July 2012, the Headquarters Committee on Contracts (HCC), an oversight and advice body that reviews certain categories of proposed procurement actions, sent a note to the ASG/OCSS highlighting procedural and substantive concerns regarding five procurement cases from MINUSTAH between 10 May 2012 and 11 July 2012. On 5 October 2012, Mr. Kallon was informed that the ASG/OCSS had decided not to support his designation as CPO in UNISFA. On 5 December 2012, Mr. Kallon was informed of the ASG/OCSS decision to withdraw his designation as CPO/MINUSTAH. For the remainder of his appointment, he was reassigned within MINUSTAH to other positions at the P-4 level that did not require such procurement designation. He subsequently served as a P-3 Administrative Officer on a temporary appointment.

5. On 28 March 2013, Mr. Kallon filed two applications with the United Nations Dispute Tribunal (UNDT), one for each decision. By Order No. 151 (NY/2014) dated 18 June 2014, the cases were combined and consolidated. On 31 December 2015, the UNDT issued Judgment on Liability No. UNDT/2015/126 finding that the contested decisions “were flawed and that [Mr. Kallon] is entitled to be compensated”.¹ On 1 April 2016, the UNDT issued Judgment on Relief No. UNDT/2016/027 in which it ordered rescission of the contested decisions, removal of the decisions and related specific documents from Mr. Kallon’s Official Status File (OSF) and placement of its Judgment therein. The UNDT also awarded compensation for non-pecuniary damages in the amount of USD 50,000, with interest.

6. On 31 May 2016, the Secretary-General filed an appeal against both the Judgment on Liability and the Judgment on Relief. In its Judgment No. 2017-UNAT-742 issued on 31 March 2017, the Appeals Tribunal dismissed the Secretary-General’s appeal and affirmed the UNDT Judgments.

Submissions

Mr. Kallon’s Application for Execution

7. Mr. Kallon seeks the implementation of the non-monetary aspects of the Judgment. Mr. Kallon has, to date, received no written confirmation that the contested decisions have been rescinded. Consequently, even if his OSF has been modified to remove copies of some correspondence and to add the Judgment, there is no record that the decision to remove his designation has been rescinded.

8. A reasonable interpretation of the order to rescind the contested decisions is that the rescission should be communicated to Mr. Kallon in a similar fashion as the initial decisions. This request represents an important matter of principle, but it also has practical implications. Mr. Kallon was required to take a post at one level lower than his original level in order to be reassigned within the mission and he eventually was placed in a different mission at a lower level given the fact that his designation had been withdrawn. He is entitled to apply for higher level posts in his occupational group, but in the absence of any record that the original decisions have

¹ *Kallon v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/126, para. 155.

been rescinded, he has no official confirmation that the prior removal of his designation has been rescinded, rendering the UNDT judgment ineffective.

9. While the Secretary-General contends that the removal of the decisions from Mr. Kallon's OSF is all that is required for implementation, the UNDT's order on rescission was separate and distinct from the orders regarding his OSF. In addition, in cases in which the UNDT chooses to rescind the contested decision rather than to order specific performance, these decisions are implemented by creating a record and communicating it to the affected staff member. They are not implemented by placing them in the OSF. Moreover, such decisions are often widely circulated and in the absence of a clear written communication to the staff member, they remain effective.

10. Mr. Kallon requests that the Appeals Tribunal order the Secretary-General to confirm in writing his compliance with the terms of the Judgment in question including the rescission of the contested decisions as well as compliance with the orders concerning Mr. Kallon's personal records. He further requests an award of USD 3,000 in costs for the Secretary-General's abuse of process.

The Secretary-General's Comments

11. The UNDT Judgment has been executed in full. However, the Secretary-General will take steps to ensure that the additional documentation concerning the rescission of the challenged decisions is provided to Mr. Kallon as requested. To this end, the Secretary-General is working together with OCSS which has informed the Secretary-General that the requested documentation will be provided by 20 November 2017. Once the requested documentation is obtained, copies thereof will be provided to Mr. Kallon and the Appeals Tribunal will be informed accordingly.

12. Mr. Kallon's claim for an award of costs against the Secretary-General is unsubstantiated and should be rejected. Under Article 9(2) of the Appeals Tribunal's Statute, the Appeals Tribunal may award costs against a party who has manifestly abused the appeals process. In the present case, however, Mr. Kallon has provided no evidence that the Secretary-General has abused the appeals process. The Secretary-General has acted in all aspects of the case on a good faith understanding of the law and facts.

Considerations

13. On 31 March 2017, the Appeals Tribunal issued Judgment No. 2017-UNAT-742 wherein it dismissed the Secretary-General's appeal against Judgment No. UNDT/2015/126 (on Liability) and Judgment No. UNDT/2016/027 (on Relief).

14. Mr. Kallon brings the present application dated 12 October 2017 seeking execution of the non-pecuniary aspects of the Judgment of the Appeals Tribunal which, by dismissing the Secretary-General's appeal, incorporated the orders of the UNDT judgment.

15. Article 11(4) of the Appeals Tribunal's Statute provides that "[w]here 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".

16. We find that there is no need to order execution as the Judgment has been executed in full. The order of rescission did not require execution by the Secretary-General because the rescission of the contested administrative decisions took effect as the direct consequence of the Judgment. Further, there is no dispute between the parties that the adverse administrative decisions and related documents have been removed from Mr. Kallon's OSF and that the UNDT judgment has been placed therein.

17. As to Mr. Kallon's request that the Secretary-General provide a written confirmation of compliance with the Appeals Tribunal's orders, we note that the Dispute Tribunal did not order the Secretary-General to do so. Consequently, Mr. Kallon cannot request execution in this respect. Further, we have been advised that the Secretary-General provided the requested written confirmation to Mr. Kallon by letter dated 20 November 2017 (incorrectly dated 2018) thereby rendering Mr. Kallon's request moot.

18. Under the circumstances, we find no merit in Mr. Kallon's request for execution. His request for costs against the Secretary-General for abuse of process under Article 9(2) of the Appeals Tribunal's Statute is accordingly dismissed.

Judgment

19. Mr. Kallon's application for execution of Judgment is dismissed in its entirety.

Original and Authoritative Version: English

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

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

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

(Signed)

Weicheng Lin, Registrar