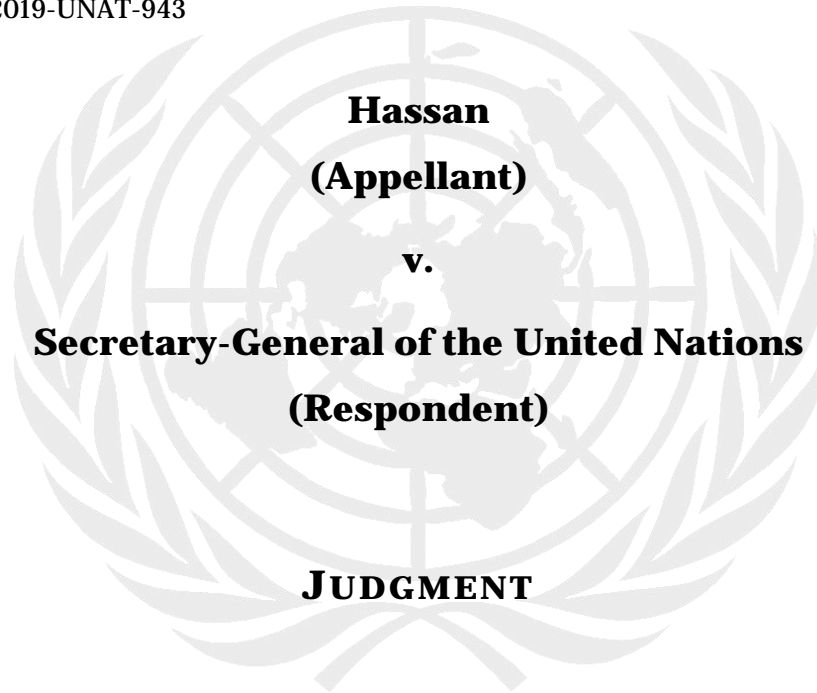




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2019-UNAT-943



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**Before:** Judge Martha Halfeld, Presiding  
Judge Deborah Thomas-Felix  
Judge John Raymond Murphy

**Case No.:** 2018-1241

**Date:** 28 June 2019

**Registrar:** Weicheng Lin

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**Counsel for Ms. Hassan:** Self-represented

**Counsel for Secretary-General:** Wambui Mwangi

**JUDGE MARTHA HALFELD, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Order No. 003 (UNDT/NBI/2019), rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 9 January 2019, in the case of *Hassan v. Secretary-General of the United Nations*. Ms. Zamzam Ahmed Hassan filed the appeal on 9 March 2019 and the Secretary-General filed his answer on 15 April 2019.

**Facts and Procedure**

2. On 3 July 2014, Ms. Hassan joined the United Nations Population Fund (UNFPA) as an Administrative/Finance Associate at the G-7 level in the UNFPA Office in Somalia.

3. On 24 April 2018, Ms. Hassan filed a request for management evaluation.<sup>1</sup> By letter dated 5 June 2018, the Executive Director, UNFPA informed Ms. Hassan that her request had failed to specify the contested administrative decisions, but that it appeared that she was contesting the decisions not to grant her certified sick leave between 23 November 2016 and 12 February 2017 and between 10 March 2017 and 29 April 2017, and to pay her daily subsistence allowance (DSA) for 23 to 29 November 2016 only. The Executive Director found no basis to set aside the contested decisions, considering that the leave of absence Ms. Hassan had taken during the contested period had not been approved as certified sick leave by the Medical Services Division (MSD) and that she had not received DSA since she had not been considered to be on medical evacuation travel status during the contested period.

4. On 31 August 2018, Ms. Hassan filed an application with the UNDT. On 3 September 2018, the UNDT Registry informed Ms. Hassan that she ought to have filed an application on the merits rather than an application for suspension of action since the management evaluation had already been completed. She was instructed to complete the proper application form by 5 September 2018. On 10 September 2018, the Registry contacted Ms. Hassan again requesting her to complete the proper application form. She was informed that her application would not be served on the Secretary-General for a reply until she complied with the UNDT's instructions. At the time of the contested UNDT Order, Ms. Hassan had not yet submitted the proper application form.

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<sup>1</sup> The letter was dated 9 April 2018.

5. On 9 January 2019, the UNDT in Nairobi issued Order No. 003 (NBI/2019). The UNDT found that Ms. Hassan had failed to articulate her application properly and had failed to identify in clear terms the administrative decision of which she was seeking review. The UNDT concluded that there was therefore no proper application before it for determination and ordered that Ms. Hassan's case be struck out.

### **Submissions**

#### **Ms. Hassan's Appeal**

6. Ms. Hassan requests that the Appeals Tribunal grant her denied entitlements to DSA and sick leave during her medical evacuation.

7. Ms. Hassan contends that she only realized that the UNDT Registry had sent her communications notifying her that she had used the wrong form for her application after the impugned Order had been issued. She had not received the Registry's communications because they had been sent to the wrong e-mail address.

8. Ms. Hassan contends that the first period of her requested sick leave was not approved because she had failed to submit it within the time limits stipulated in an interoffice memorandum entitled "Strengthen sick leave management" issued on 25 March 2013.<sup>2</sup> She had only become aware of this issuance after her sick leave had been rejected when the MSD shared it with her. It had not been shared with her before for her "awareness" as required by the interoffice memorandum.

9. Two weeks after Ms. Hassan had been evacuated, she received an e-mail from the MSD requesting medical reports. Ms. Hassan consulted the United Nations medical doctors in Kenya who were managing her case. These doctors assured her that they would take care of the required paper work and share the medical reports with the MSD; however, they submitted the reports late.

10. Finally, due to the nature of Ms. Hassan's "rare disease", it was not possible to obtain the reports within 20 days in accordance with the above interoffice memorandum since she had been referred from one doctor to the next.

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<sup>2</sup> This is according to Ms. Hassan. She did not attach that document to her appeal.

11. Ms. Hassan recounts the chronology of the events and provides arguments on the merits of her case.

**The Secretary-General's Answer**

12. The appeal is not receivable and should be rejected. The Appeals Tribunal has consistently held that an appeal of an interlocutory order may be receivable only when it is clear or manifest that the UNDT has exceeded its jurisdiction or competence.

13. In the present case, Ms. Hassan received the response to her request for management evaluation on 5 June 2018 and on 31 August 2018, she proceeded to file an application for suspension of action pending management evaluation under Article 2(2) of the UNDT Statute. However, pursuant to Article 2(2) of the UNDT Statute, the UNDT is only competent to hear and pass judgment on an application for suspension of the implementation of a contested administrative decision that is the subject of an ongoing management evaluation. Article 2(1) and Article 8 of the UNDT Statute detail the procedure for applications on the merits.

14. Once Ms. Hassan received the decision on her request for management evaluation on 5 June 2018, it was her responsibility to file an application on the merits pursuant to Article 2(1) of the UNDT Statute on a timely basis, as opposed to a request for suspension of action pending management evaluation under Article 2(2) of the UNDT Statute. It is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice and ignorance cannot be invoked as an excuse.

15. Accordingly, Ms. Hassan has failed to demonstrate a clear and manifest excess of jurisdiction or competence on the part of the UNDT in striking out the matter. For the foregoing reasons, the appeal is not receivable and should be dismissed.

**Considerations**

16. Article 2(1) of the Appeals Tribunal Statute provides that an appeal may be filed against a judgment of the UNDT, *inter alia*, where that Tribunal has "[e]xceeded its jurisdiction or competence".

17. In accordance with the Appeals Tribunal's consistent jurisprudence, we stated in *Villamorán*:<sup>3</sup> "The Appeals Tribunal has consistently emphasized that appeals against most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure, and trial conduct. An interlocutory appeal is only receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence."

18. In accordance with this jurisprudence, an interlocutory order by the UNDT is only appealable when the UNDT has clearly exceeded its jurisdiction or competence.

19. In the case at hand, the Order issued by the UNDT is an interlocutory decision, because it struck out the matter, meaning that, because Ms. Hassan had not properly identified the administrative decision she was challenging, the UNDT did not consider her application. The UNDT also based its conclusion on the fact that, since it was not in dispute that the management evaluation had already been completed, it was Ms. Hassan's responsibility to file an application on the merits to the UNDT, instead of applying for suspension of action pending a management evaluation that was no longer pending.

20. The Order to strike the matter out does not, however, mean that the UNDT dismissed the application. This conclusion is even more relevant in light of the fact that Ms. Hassan had not received the communications of the UNDT Registry requesting that she cure her application, because they had been sent, through no fault of her own, to the wrong e-mail address.

21. In the premises, while we note that the records in the Court Case Management System indicate that, following the striking of the application by the UNDT, the case was closed, it is the finding of the Appeals Tribunal that Ms. Hassan is not barred from supplementing her application which was filed in compliance with the deadlines prescribed in Article 8(d)(i) of the UNDT Statute.

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<sup>3</sup> *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160, para. 36 (internal footnote omitted), quoting *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062; *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008; *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

**Judgment**

22. The appeal is dismissed as not receivable. Ms. Hassan may supplement her application with the UNDT within 90 days of the date of the publication of the present Judgment.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of June 2019 in New York, United States.

*(Signed)*

Judge Halfeld, Presiding

*(Signed)*

Judge Thomas-Felix

*(Signed)*

Judge Murphy

Entered in the Register on this 19<sup>th</sup> day of August 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar