



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

Judgment No. 2020-UNAT-1026/Corr.1

**Sambala Diallo
(Applicant)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Jean-François Neven Judge Kanwaldeep Sandhu
Case No.:	2019-1333
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Applicant:	Amadou Ongoiba, Abdramane Kanoute
Counsel for Respondent:	Maryam Kamali

JUDGE GRAEME COLGAN, PRESIDING.

1. Sambala Diallo applies to the United Nations Appeals Tribunal (Appeals Tribunal) for the “correction” of its Judgment No. 2019-UNAT-936, which we will call “the 2019 Judgment”.
2. For reasons set out below, we conclude that Mr. Diallo has not established the statutory grounds necessary to do so and his application must be, and is, dismissed.

Events Relevant to this Application

3. Mr. Diallo formerly held a permanent appointment as a Logistics Assistant with the United Nations Population Fund (UNFPA) based in Mali. The UNFPA assessed his performance to be unsatisfactory and recommended termination of his appointment. Mr. Diallo contested that decision by proceedings filed in the United Nations Dispute Tribunal (UNDT). The UNDT dismissed his application as not receivable as Mr. Diallo had not sought management evaluation of the Respondent’s decision, a necessary precondition to the making of such an application.¹
4. Mr. Diallo appealed that UNDT Judgment but, on 28 June 2019, this Tribunal dismissed that appeal.
5. On 22 November 2019 Mr. Diallo filed an application with the Appeals Tribunal to correct its 2019 Judgment and referring to Article 11(2) of the Appeals Tribunal’s Statute. Following the Secretary-General’s Comments on the application in which the Respondent submitted that Mr. Diallo’s application was in fact an application for revision of the 2019 Judgment, the Applicant, on 30 December 2019, filed a “motion”.
6. This motion claimed that the Respondent had not complied with the Appeals Tribunal’s procedures because the Secretary-General had reclassified his request. He also claimed that the UNFPA Division for Human Resources was “a technical body whose opinion was required for his termination”.

¹ *Diallo v. Secretary-General of the United Nations*, Judgment No. 2019/UNDT/002.

The Appeals Tribunal's 2019 Judgment

7. The 2019 Judgment rejected Mr. Diallo's appeal of the UNDT's Judgment No. 2019/UNDT/002, which had dismissed his application to it as not receivable. Mr. Diallo had not taken the required step of seeking management evaluation before bringing his application to the UNDT. We reaffirmed that the UNDT was not empowered to consider the merits of his application in the absence of an prior request for management evaluation.

8. That brief description apart, the 2019 Judgment is recent, well-known to the parties and readily available to anyone wishing to have further information about the events that led to it. We do not propose to reiterate its detail. Rather, the 2019 Judgment should be read in conjunction with this Judgment.

Submissions

Mr. Diallo's Application and Motion:

9. These say that his application is one for correction of this Tribunal's 2019 Judgment pursuant to Article 11(2) of the Appeals Tribunal's Statute, and not, as the Respondent asserts, one for revision under Article 11(1). As already noted, he says that the Respondent both re-framed and re-classified his application.

10. The Applicant points out that the Respondent exceeded the 2-page limit in his comments to the Applicant's application.

11. The Applicant says that the Respondent has no ability in law to "change, amend or re-classify" another party's submission to the Appeals Tribunal.

12. The Applicant identifies as a decisive fact in this Tribunal's 2019 Judgement, that it failed to take account of Mr. Diallo's reference to the Division of Human Resources of the UNFPA as "a technical body" whose advice was required before his employment could be terminated. He says that his employment was terminated by the Respondent, as evidenced by the fact that he was paid in lieu of serving out his notice period.

13. Mr. Diallo submits that this disciplinary measure applied to him under Staff Rule 10.2 (a)(viii) (separation with compensation in lieu of notice) did not follow a "disciplinary process", as required by Staff Rule 10.1(c). He says that the imposition of a disciplinary sanction

(termination with compensation in lieu of notice) effected by the Director of the Human Resources Division of the UNFPA by letter of 12 January 2018, was ineffectual because he, contested and refused to sign it.

14. The Applicant says that the 2019 Judgment contains clerical errors, so that it is in order for him to apply for its correction under Article 11(2) of the Appeals Tribunal's Statute.

The Secretary-General's Comments:

15. The Respondent addresses first the Applicant's motion to the effect that the Secretary-General was not entitled to reclassify the nature of Mr. Diallo's current claim to the Appeals Tribunal, from being one to "correct" the Judgment to one to "revise" it.

16. Second, the Respondent submits that it is impermissible for the Applicant to re-argue that the UNFPA Human Resources' Division (which dealt with his performance and termination issues) was a technical body whose opinion was required for his termination, but which status obviated the need for management evaluation.

17. The Respondent says that the requirements of Article 11 of the Statute of the Appeals Tribunal have not been met by Mr. Diallo and that, in particular, his application is in fact an attempt to re-litigate his case after its dismissal.

Considerations

18. This application seeks the exercise of a power contained in Article 11(1) of the Appeals Tribunal's Statute which provides materially:

Article 11

1. Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.
2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own motion or on the application of any of the parties.

3. Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement.

19. On the first point of Mr. Diallo's motion, we conclude that it was open, indeed appropriate, for the Respondent to submit that the true nature of Mr. Diallo's application was other than as he had expressed it. This does not amount to a re-classification of the motion, and certainly not one by this Tribunal. It is simply a submission made by a party which we may accept or reject. However, we do agree with that categorisation by the Respondent of the Applicant's grounds in support of his application. The Applicant has not alleged that the 2019 Judgment contained an arithmetical mistake or error or accidental slip or omission (Article 11(2)). Nor can it be construed to be an application under Article 11(3). His application can only, and must therefore, be dealt with under Article 11(1).

20. Second, and more fundamentally and importantly addressing Mr. Diallo's principal application, we accept the Respondent's submissions that Mr. Diallo has not established the statutory conditions that must be fulfilled before a judgment can be revised. The Applicant has not established, "the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence."

21. We agree with the Respondent that the Applicant's arguments focus on conclusions of this Tribunal in its 2019 Judgment with which the Applicant disagrees. These matters were, however considered and rejected in that appeal. The Appeals Tribunal is the final appellate body on such matters. An application for revision of a judgment which does not meet the statutory prerequisites, cannot be a collateral means of attack on the judgment or allowed to be a second right of final appeal.

22. Mr. Diallo's motion and application fail.

Judgment

23. Mr. Diallo's application for correction or revision of our 2019 Judgment is dismissed.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Colgan, Presiding
Auckland, New Zealand

(Signed)

Judge Neven
Brussels, Belgium

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 29th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar