



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

Judgment No. 2022-UNAT-1273

**Mathieu Mukeba Wa Mukeba
(Applicant)**

v.

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

JUDGMENT ON APPLICATION FOR REVISION

Before: Judge Sabine Knierim, Presiding
Judge Graeme Colgan
Judge Kanwaldeep Sandhu

Case No.: 2022-1648

Date of Decision: 28 October 2022

Date of Publication: 18 November 2022

Registrar: Juliet Johnson

Counsel for Applicant: Self-represented

Counsel for Respondent: Patricia C. Aragonés

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an application for revision of Judgment No. 2021-UNAT-1080 by Mr. Mathieu Mukeba Wa Mukeba, a former staff member serving at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Mr. Mukeba challenged the Administration's decision to impose the disciplinary measure of separation from service. By Judgment No. UNDT/2020/103, the UNDT dismissed the application for want of prosecution. Mr. Mukeba appealed. On 19 March 2021, UNAT issued Judgment No. 2021-UNAT-1080 dismissing the appeal. Mr. Mukeba has filed an application for revision of Judgment No. 2021-UNAT-1080.

2. For reasons set out below, we dismiss the application.

Facts and Procedure

3. Mr. Mukeba commenced service with the Organization on 1 December 2007. Prior to his separation, he held a fixed-term appointment at the G-3 level, performing the functions of a Driver at the Office of the Director of Mission Support, MONUSCO.

4. On 16 August 2018, the Assistant Secretary-General (ASG) for Human Resource Management imposed upon Mr. Mukeba the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity. The ASG imposed such measure after establishing that Mr. Mukeba had engaged in serious misconduct by misappropriating and taking supplies belonging to the Organization to an undisclosed location.

5. On 6 November 2018, Mr. Mukeba filed an application with the UNDT in Nairobi, challenging the imposition of the disciplinary measure of separation from service.

6. On 19 July 2019, the case was transferred to the UNDT New York Registry. On 31 January 2020, by way of Order No. 18 (NY/2020), the Dispute Tribunal decided to hold a hearing on the merits and requested the parties to confirm their availability.

7. On 3 March 2020, by way of Order No. 39 (NY/2020), and upon consultation with the parties, the UNDT scheduled the hearing for 26 March 2020. However, on 18 March 2020, by e-mail from the Registry, the UNDT informed the parties that due to technical difficulties caused by the COVID-19 lockdown, the hearing was postponed until further notice.

8. Having overcome technical difficulties associated with COVID-19, the Registry contacted Mr. Mukeba on 10 June 2020 asking him to confirm his ability to attend a virtual hearing via Microsoft Teams. Having received no response from Mr. Mukeba, the Registry e-mailed him again on 15 June 2020 regarding his ability to attend a hearing on Microsoft Teams. During that time, the Registry also attempted to reach Mr. Mukeba via the phone number on record but was unsuccessful.

9. Having received no response, on 18 June 2020, the UNDT issued Order No. 103 (NY/2020) ordering Mr. Mukeba to contact the Registry by Friday, 26 June 2020, and cautioning him that his case would be dismissed for want of prosecution if he failed to do so. Mr. Mukeba did not contact the Registry within the prescribed deadline of 26 June 2020.

10. By Judgment No. UNDT/2020/103 dated 29 June 2020, the UNDT dismissed the application for want of prosecution. The UNDT ruled that Mr. Mukeba had been directed on three separate occasions (10, 15 and 18 June 2020) to make the necessary submissions for the continuation of his case. The UNDT also noted that the Registry had made several phone calls to reach Mr. Mukeba but was not able to do so. The UNDT found that Mr. Mukeba was given sufficient time to comply with the Order and was clearly warned of the consequences of non-compliance. As of the date of the UNDT Judgment, Mr. Mukeba had still not made any submissions or contacted the Registry. The UNDT concluded that Mr. Mukeba was no longer interested in the pursuit of his proceedings, which, as a consequence, it deemed abandoned.

11. On 30 June 2020, Mr. Mukeba e-mailed the Registry, requesting the UNDT to reconsider the Judgment and to proceed with the hearing in his case, without giving any reasons for his failure to comply with the UNDT's previous directions. On the same day, by way of Order No. 110 (NY/2020), the UNDT ordered Mr. Mukeba to provide any justifications, along with supporting evidence, as to why he did not comply with the requests for information.

12. On 2 July 2020, Mr. Mukeba responded that he understood the Registry's communication of 18 March 2020 to be a suspension of the hearing until the COVID-19 crisis had abated. He added that he thought writing to the UNDT during the COVID crisis would be a distraction for the UNDT, which is why he thought about waiting for the end of the pandemic to pursue his case.

13. Not finding Mr. Mukeba's explanation compelling, the UNDT, on 7 July 2020, by Order No. 114 (NY/2020) rejected his request to reconsider its Judgment on dismissal for want of prosecution.

14. On 10 August 2020, Mr. Mukeba appealed the UNDT Judgment to the Appeals Tribunal. On 19 March 2021, UNAT issued Judgment No. 2021-UNAT-1080 dismissing the appeal. UNAT concluded that Mr. Mukeba had failed to identify any of the five grounds of appeal as enumerated in Article 2(1) of the Statute and had failed to explain why UNAT should reverse the UNDT Judgment. UNAT also found no error in the UNDT's dismissal of the application for want of prosecution, as Mr. Mukeba had not provided any compelling reason for his lack of communication with the UNDT. Accordingly, UNAT dismissed the appeal and affirmed the UNDT Judgment.

15. On 12 January 2022, Mr. Mukeba filed an application for revision of Judgment No. 2021-UNAT-1080. The Secretary-General filed his comments on 15 February 2022.

Submissions

Mr. Mukeba's Application for Revision

16. Mr. Mukeba submits that the proceedings with the UNDT in Nairobi had not been completed, and that the e-mails sent to him announcing a new date for the hearing had arrived in his spam folder while the e-mail advising that his application had been dismissed for want of prosecution had arrived in his inbox. Mr. Mukeba also submits that the Secretary-General had recognized that he had not stolen any property, that the number of alleged stolen items had seemed to increase during the disciplinary proceedings, and that there was no proof that he had taken the alleged stolen items to an unknown location. Mr. Mukeba asks that the UNAT "solve" his case so that he may be absolved, as he claims he has suffered an injustice.

The Secretary-General's Comments

17. Mr. Mukeba has failed to identify the discovery of a decisive fact which was, at the time the UNAT Judgment was rendered, unknown to the Appeals Tribunal and to him, as is required by Article 11 of the UNAT Statute. For this reason alone, the application for revision fails and should be dismissed in its entirety.

Considerations

18. Applications for revision of judgment are governed by Article 11(1) of the UNAT Statute (Statute) and Article 24 of the UNAT Rules of Procedure (Rules). By these provisions, an applicant must show or identify a decisive fact that at the time of the Appeals Tribunal Judgment was 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.¹

19. Article 11(1) of the Statute reads as follows:

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.

20. The Appeals Tribunal has consistently held that “any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal”.²

¹ *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-890, para. 12; *Walden v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-573, para. 16.

² *Walden, op. cit.*, para. 17.

21. Thus, in order to succeed in his quest for revision, Mr. Mukeba must prove that he has discovered a decisive fact that was unknown to both him and this Tribunal at the time of Judgment, and that he filed his application for revision within 30 calendar days of the discovery of this fact.

22. These conditions are not met in the present case.

23. Mr. Mukeba submits that the proceedings with the UNDT in Nairobi had not been completed. This is not a decisive fact in the meaning of Article 11(1) of the UNAT Statute. Mr. Mukeba's case had been transferred from Nairobi to the New York Registry on 19 July 2019, and Mr. Mukeba was duly informed of this transfer which completed all proceedings in Nairobi.

24. Mr. Mukeba further alleges that the (10, 15 and 18 June 2020) e-mails sent to him by the UNDT announcing a new date for the hearing had arrived in his spam folder while the e-mail advising that his application had been dismissed for want of prosecution had arrived in his inbox. This is not a decisive fact unknown at the time of the UNAT Judgment.

25. Mr. Mukeba's allegations are unsubstantiated. He does not state, in his application for revision, when he found out that the UNDT e-mails had arrived in his spam folder. Also, Mr. Mukeba does not maintain that he did not take notice of these e-mails in his spam folder.

26. On 30 June 2020, one day after issuing its 29 June 2020 Judgment, the UNDT ordered Mr. Mukeba to provide any justifications, along with supporting evidence, as to why he did not comply with the requests for information. On 2 July 2020, Mr. Mukeba responded that he understood the Registry's communication of 18 March 2020 to be a suspension of the hearing until the COVID-19 crisis had abated and added that he thought writing to the UNDT during the COVID crisis would be a distraction for the UNDT, which is why he thought about waiting for the end of the pandemic to pursue his case. However, Mr. Mukeba did not allege that he did not receive any e-mails of the UNDT before the 29 June 2020 Judgment and was thus not aware that the UNDT had tried to contact him.

27. It is not credible that the UNDT's e-mails dated 19 July 2019, 18 March 2020, and 29 and 30 June 2020 all safely arrived in Mr. Mukeba's inbox while the e-mails dated 10, 15 and 18 June 2020 arrived in his spam folder. Mr. Mukeba does not present any corroboration for his assertion.

28. Mr. Mukeba's final statement (that the disciplinary sanction was unlawful) is a legal opinion but not a decisive fact for the 19 March 2021 UNAT Judgment which deals with the issue of want of prosecution.

Judgment

29. The application for revision of Judgment No. 2021-UNAT-1080 is dismissed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Knierim

(Signed)

Judge Colgan

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 18th day of November 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar