



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

---

Judgment No. 2024-UNAT-1446

**Ashok Kumar Nigam**  
**(Appellant)**

**v.**

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

**JUDGMENT**

---

Before:	Judge Graeme Colgan Presiding Judge Gao Xiaoli Judge Katharine Mary Savage
Case No.:	2023-1832
Date of Decision:	28 June 2024
Date of Publication:	18 July 2024
Registrar:	Juliet E. Johnson

---

Counsel for Appellant: Pattola Niroop

Counsel for Respondent: Patricia C. Aragonés

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Ashok Kumar Nigam, a former United Nations staff member, appeals against Order No. 092 (NBI/2023) issued by the Judge President of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), which declined to direct the recusal of another Judge presiding over Mr. Nigam's case before the Dispute Tribunal.<sup>1</sup>

2. For the reasons set out below, we refuse and dismiss Mr. Nigam's appeal as being unreceivable.

**Facts and Procedure**

3. Mr. Nigam, a former staff member with the United Nations Development Programme (UNDP), brought a case before the UNDT presided over by Judge Francis Belle.<sup>2</sup> In Judgment No. UNDT/2021/092, the UNDT found Mr. Nigam's case unreceivable and did not consider or determine its merits.<sup>3</sup> Mr. Nigam appealed to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) where he succeeded in having the UNDT 2021 Judgment set aside.<sup>4</sup> Among the remedies was the remission of the case to the UNDT for decision on its merits with directions from the UNAT.

4. The case came again before Judge Belle. Mr. Nigam objected to Judge Belle hearing and deciding his case given that he had originally rejected it for non-receivability. Mr. Nigam sought to have Judge Belle recused, requesting another UNDT judge to hear and decide his case. The motion for recusal came before the Judge President as required by the Dispute Tribunal Statute (UNDT Statute). The Judge President rejected the claim for recusal of Judge Belle.<sup>5</sup> It is this Order of the Judge President that Mr. Nigam purports to appeal. His case as remitted by the UNAT to the UNDT has not yet been decided on its merits.<sup>6</sup>

---

<sup>1</sup> *Nigam v. Secretary-General of the United Nations*, Order No. 092 (NBI/2023) dated 25 May 2023 (impugned Order).

<sup>2</sup> Case No. UNDT/NBI/2020/056.

<sup>3</sup> *Nigam v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/092 (2021 UNDT Judgment).

<sup>4</sup> *Ashok Kumar Nigam v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1269 (2022 UNAT Judgment), para. 44.

<sup>5</sup> Impugned Order, para. 8.

<sup>6</sup> In UNDT Order No. 112 (NBI/2023), Judge Belle granted Mr. Nigam's motion to suspend proceedings pending the UNAT's resolution of the present interlocutory appeal.

*The impugned Order*

5. After summarising Mr. Nigam’s grounds for the recusal of Judge Belle, noting the Judge’s comments in response, and identifying the relevant statutory criteria for UNDT recusals,<sup>7</sup> the Judge President referred also to Article 2(b) of the Code of Conduct for the Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (Judges’ Code of Conduct). The Judge President concluded that Judge Belle expressed no views on the merits of Mr. Nigam’s case in the 2021 UNDT Judgment, and that in the 2022 UNAT Judgment the UNAT did not direct, as it could have if it had considered this warranted, that the remitted case be heard by a different UNDT judge. Consequently, the Judge President dismissed the Motion for Recusal.

**Submissions**

**Mr. Nigam’s Appeal**

6. Mr. Nigam argues that it is inappropriate for the same Judge, whose earlier 2021 UNDT Judgment was set aside by the UNAT, to now determine his case which has, until recently, been case-managed by another Judge including exploring a negotiated settlement between the parties. He submits that Judge Belle will now in effect be sitting in judgment on his own case and that in doing so, not only will justice not be done, but it will not be seen to be done.

7. Mr. Nigam further submits that the Judge President breached, by failing to address it, Article 27(2)(c) of the UNDT Rules which includes as grounds for recusal “[a]ny other circumstances that would make it appear to a reasonable and impartial observer that the judge’s participation...would be inappropriate”. Mr. Nigam submits that this test for recusal is met in circumstances in which a Judge who had earlier decided his case against him but had been reversed on appeal, is now to hear his case on its merits. In support of this submission Mr. Nigam relies on several judgments of English courts.<sup>8</sup>

---

<sup>7</sup> Article 4(9) of the UNDT Statute and Article 28(2) of the UNDT Rules of Procedure (UNDT Rules).

<sup>8</sup> For example, Mr. Nigam relied on *The King v. Sussex Justices* [1924] KB 256; *R v. Gough* [1993] All ER 724; and *Lawal v. Northern Spirit Limited* [2003] UKHL 35.

**The Secretary-General's Answer**

8. The Secretary-General submits that Mr. Nigam's appeal is not receivable because it is not an appeal against a final judgment of the UNDT as interpreted and applied under Article 2(1) of the UNAT Statute. The impugned Order was one affecting case management and so was within the UNDT's competence in law.

9. The Secretary-General also contends that Mr. Nigam has not identified any error of law or fact by the Judge President.

10. The UNDT applied the provisions of Articles 27 and 28 of the UNDT Rules which define conflicts of interest of Judges including "... any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her." Examples that illustrate this principle include a prior relationship with a party, or a prior involvement of a judge in a case, either as a party or counsel.

11. The Secretary-General relies on previous authority that, without more, it is not a judicial conflict of interest that a judge may have decided some preliminary issue or issues against a litigant.<sup>9</sup>

12. The cases relied on by Mr. Nigam are from a national jurisdiction and are not applicable to the United Nations internal justice system.

13. The Secretary-General invites the UNAT to dismiss Mr. Nigam's appeal.

**Considerations**

14. Before determining whether the Judge President erred in the impugned Order, we must first determine the receivability of the appeal, as raised by the Secretary-General. The question is whether Mr. Nigam is entitled to appeal at this point, given that the Order merely declined to make a direction about case management of Mr. Nigam's case and is not a final judgment on its merits. Alternatively, must Mr. Nigam wait to exercise his right of appeal until a final decision has been made by the Dispute Tribunal?

---

<sup>9</sup> *Asr Ahmed Toson v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1159, para. 35.

15. Article 2(1) of the UNAT Statute provides for appeals against “judgments” of the UNDT. Our longstanding jurisprudence confirms and interprets this to mean that, with narrowly-based and rare exceptions, appeals can only be brought against final judgments of the UNDT. While appeals against interlocutory orders of the UNDT may be entertained in exceptional cases — such as where there is a claimed exercise of a jurisdiction not possessed by the Dispute Tribunal or there has been a similar fundamental jurisdictional error, or where the first instance tribunal has acted irremediably — this is not such a case. Mr. Nigam based this appeal on alleged errors of fact and law by the Judge President, with no allegation of the UNDT acting extra-jurisdictionally or similarly in excess of its jurisdiction.

16. Nor is it analogous to the other exceptional category where the UNDT’s order is effectively irremediable if allowed to stand pending the final and substantive judgment on the merits.<sup>10</sup> There is likewise no suggestion in the grounds of appeal advanced by Mr. Nigam that his complaint about Judge Belle’s participation — essentially alleging bias against him — will be effectively irremediable should he have to wait for a final judgment before getting a right of appeal in which he may include his current complaint about Judge Belle.

17. This not being such an exceptional case as described above, it is not receivable by the Appeals Tribunal. Generally, case management decisions by the UNDT, including the subject of this appeal, are not appealable until the proceeding before the UNDT has been finalised.<sup>11</sup> Mr. Nigam’s case is not an exception to this rule.

18. For the foregoing reasons we conclude that Mr. Nigam’s appeal is not receivable by the UNAT.

19. However, even if it could be claimed that the Judge President acted extra-jurisdictionally by permitting a case to be decided by a judge allegedly biased in law, we have concluded that there is no merit to this argument. It is for the UNDT, not for litigants before it, to assign judges to cases. Even if proper grounds exist to disqualify a particular judge, a litigant has only the right to apply for disqualification: the decision to do so, although ultimately appealable, rests with the Judge President. The mere fact that a judge has erred previously, even in the same case, is not alone a ground to disqualify that same judge from

---

<sup>10</sup> *Olexandr Maruschak v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1282, para. 17.

<sup>11</sup> *Reilly v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-975.

deciding other issues in or the remainder of the case. UNDT Judges take an oath of office to execute their judicial duties “without fear, favour, or prejudice in all matters they adjudicate”.<sup>12</sup> There is no evidence to indicate that, although the 2021 UNDT Judgment was overturned by the UNAT, Judge Belle would now be biased against Mr. Nigam and so should not preside now over his case.

20. As to Mr. Nigam’s submission that the UNDT both overlooked and indeed breached one of the tests of propriety under the Judges’ Code of Conduct, the significant phrase in Article 2(c) is that “it may reasonably appear to a properly informed person” that a judge has a conflict of interest if he or she decides the case. Such an appearance must be reasonable, meaning it must be objectively viewed and substantiated. Further, this appearance must be based on proper information, requiring a thorough and objective assessment of the situation.

21. We have analysed the 2021 UNDT Judgment which was set aside on appeal and forms the basis of Mr. Nigam’s assertion of bias against Judge Belle. We have also considered the 2022 UNAT Judgment which reversed in part Judge Belle’s determination and remitted the case to the Dispute Tribunal. Nowhere in either Judgment is there any indication of bias by Judge Belle against Mr. Nigam, or even criticism beyond what a reasonably informed observer might expect from a partly erroneous judgment and its subsequent appellate review.

22. There are two additional protections available to someone in Mr. Nigam’s situation. The first is that the UNAT can, and on appropriate occasions does, direct that a remitted case be henceforth determined by another judge. As the Judge President correctly observed in the impugned Order, that was not a direction made in this case.<sup>13</sup> The 2022 UNAT Judgment turned on technical points of jurisdictional compliance and not, for example, on any suggestion that Judge Belle had robustly expressed a negative assessment of Mr. Nigam’s credibility or like indication of a view of Mr. Nigam or of his case’s merits.

23. The second inbuilt protective mechanism is that the Judge President, rather than the challenged judge, must determine motions for recusal. This ensures a degree of independent scrutiny and decision of the question. That expectation of objectivity and independence was not misplaced in this case.

---

<sup>12</sup> See Judges’ Code of Conduct, Article 2.

<sup>13</sup> Impugned Order, para. 7.

24. We are not persuaded that the Judge President erred in her Order declining to require Judge Belle to recuse himself further from Mr. Nigam's case. We are satisfied that an objective observer, properly informed of all relevant circumstances, would not conclude that Judge Belle was biased against Mr. Nigam or should be disqualified from adjudicating the case on its merits.

**Judgment**

25. Mr. Nigam's appeal against UNDT Order No. 092 (NBI/2023) is dismissed as being not receivable.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of June 2024 in New York, United States.

*(Signed)*

Judge Colgan, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Savage

Judgment published and entered into the Register on this 18<sup>th</sup> day of July 2024 in New York, United States of America.

*(Signed)*

Juliet E. Johnson, Registrar