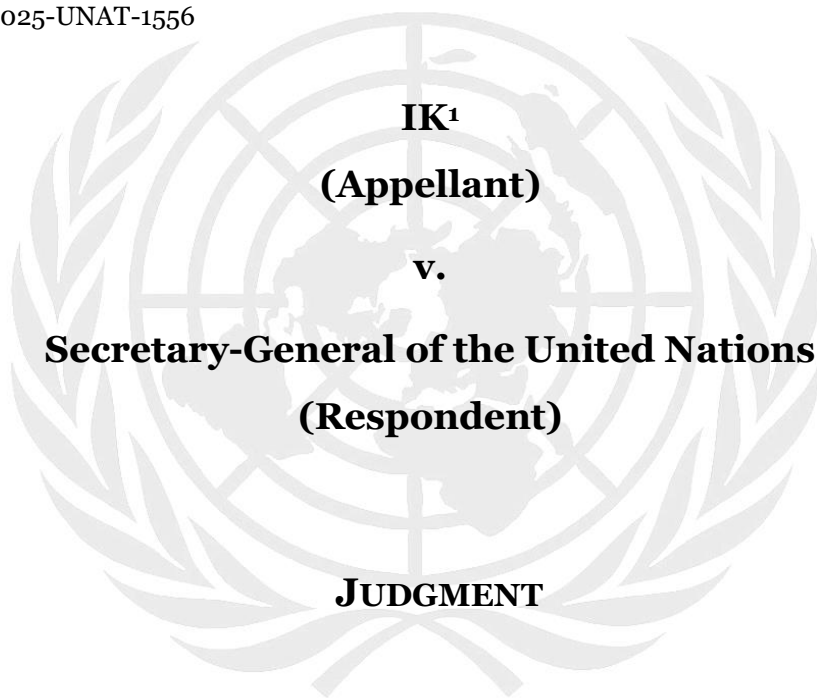




# UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

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Judgment No. 2025-UNAT-1556



**IK<sup>1</sup>**  
**(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Katharine Mary Savage Judge Gao Xiaoli Judge Abdelmohsen Sheha
Case No.:	2024-1940
Date of Decision:	27 June 2025
Date of Publication:	28 July 2025
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Amanda Stoltz

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<sup>1</sup> This unique two-letter substitute for the party's name is used to anonymize the Judgment.

**JUDGE KATHARINE MARY SAVAGE, PRESIDING.**

1. IK, a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) contested the decision to impose on him the disciplinary measure of dismissal for sexual harassment and sexual abuse (contested decision).
2. On 27 May 2024, by Judgment No. UNDT/2024/034 (impugned Judgment),<sup>2</sup> the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed IK's application.
3. IK lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.
5. As a preliminary matter, the UNDT order to anonymize IK's name remains in effect, pursuant to Section II.C.32 of Practice Direction No. 1 of the Appeals Tribunal.

**Facts and Procedure**

6. IK joined UNHCR in March 2004. At the relevant time of events, he was serving as a Senior Operations Officer, at the P-4 level, at the El Gedaref Sub-Office (SO) in Sudan.<sup>3</sup>
7. On 21 February 2022, the Inspector General's Office (IGO) received allegations of sexual harassment against IK from the Complainant, a UNHCR staff member. The allegations pertained to events that reportedly occurred in December 2021. Specifically, it was reported that IK "attempted to forcibly kiss her and when she refused, he became angry and attempted to touch her breast. He then grabbed her hand to make her feel his penis and 'how hard he was'".<sup>4</sup>
8. At the time of the alleged events, the Complainant was an Associate Field Officer, at the P-2 level, in El Gedaref SO. IK provided her guidance and instructions in the absence of her direct supervisor or as needed. Both lived in the same shared guesthouse, which housed several international staff members.<sup>5</sup>

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<sup>2</sup> *IK v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/034.

<sup>3</sup> Parties' Joint statement on agreed facts, para. 1.

<sup>4</sup> Investigation Report, para. 1.

<sup>5</sup> Parties' Joint statement on agreed facts, paras. 2 and 4.

9. On 23 February 2022, the IGO opened an investigation into the allegations of misconduct. On 25 March 2022, IK was informed that he was the subject of the investigation.<sup>6</sup>

10. The IGO interviewed IK on 28 March 2022. It also interviewed the Complainant, M.M. (a UNHCR Senior Community Based Protection Associate based in Rome, Italy, and who had been deployed in El Gedaref from November 2021 to the end of January 2022) and M.V. (a UNHCR Principal Situation Coordinator in El Gedaref SO).<sup>7</sup> According to the Complainant, she discussed the sexual incident with M.V. and M.M. on 9 and 27 January 2022, respectively.<sup>8</sup>

11. On 1 April 2022, the IGO transmitted the draft of its Investigation Report to IK, who submitted his comments on 6 April 2022.

12. On 13 May 2022, the IGO issued its Investigation Report, in which it found that the following allegations had been substantiated:<sup>9</sup>

a. On or around 15 December 2021, [IK] attempted to kiss [the Complainant] on the mouth, touched her breast and took her hand to make her feel his erection;

b. On the same day and/or after, [IK] insisted on questioning why she was refusing his advances by asking her, amongst other questions, if she was a virgin and why she was behaving like a teenager; and,

c. A few days later, [IK] had another conversation with [the Complainant] where he told her of his interest in a romantic relationship.

13. In support of its findings, the IGO assessed the credibility of both IK and the Complainant:<sup>10</sup>

47. Overall, the IGO did not find the testimony of [IK] to be credible. When he was asked if there ever was a time when [the Complainant] asked him to stop his behaviours, [IK] never mentioned the alleged incident of sexual harassment although he knew about it, at a minimum, because [M.V.] told him about it. [IK]'s answers were evasive when presented with the exact allegation made by [the Complainant]. Instead, [IK] spent a considerable amount of his subject interview and comments on the draft findings explaining in details the fact that he had used the kitchen like others and that he was not the only man going there. This was not the crux of the allegations and, at best, only a side issue.

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<sup>6</sup> *Ibid.*, paras. 7-8.

<sup>7</sup> Investigation Report, paras. 6, 8 and 24.

<sup>8</sup> Impugned Judgment, paras. 14(n) and (o).

<sup>9</sup> Investigation Report, para. 55.

<sup>10</sup> *Ibid.*, paras. 47-48 and 50.

48. The IGO found the statement of [the Complainant] to be credible. The IGO noted that the version she provided to both [M.V.] on 9 January 2022 and to [M.M.] on 27 January 2022 were very similar in the sense that it was about an incident, with sexual connotation, that had happened between her and [IK] and which left her emotionally affected. The lack of exact corroborative details (...) is not materially affecting the credibility of her version of events. (...)

...

50. The IGO also took note of the fact that [IK] raised credibility issues with the testimony of [the Complainant] because of discrepancies like the exact date it would have happen[ed], the fact that she waited a ‘long time’ to report the allegation and that he doesn’t have a kitchen or kitchenette but only a microwave and refrigerator. The IGO does not consider these discrepancies to be affecting the credibility of [the Complainant].

14. The IGO also examined IK’s claim that he was the target of a conspiracy by the Complainant and M.M., and the victim of a “Middle East lobby” aimed at preventing his promotion to the P-5 level. These claims were found to be unsubstantiated. Moreover, the IGO considered it an aggravating factor that IK, as “a manager (...) and second level supervisor of [the Complainant], behaved in such a manner”.<sup>11</sup>

15. On 20 May 2022, the Director of Human Resources (DHR) formally notified IK by letter of the allegations of misconduct issued against him and the initiation of a disciplinary process. He was also provided with a copy of the Investigation Report and afforded an opportunity to respond to the allegations within one month, which he did on 16 June 2022.<sup>12</sup>

16. By letter dated 13 October 2022, the DHR informed IK that the High Commissioner had determined that the following allegations raised against him had been established by clear and convincing evidence:<sup>13</sup>

- a. On or around 15 December 2021, you attempted to kiss [the Complainant] on the mouth, you touched her breast and took her hand to make her feel your erection;
- b. Then you insisted on questioning why she was refusing your advances by asking her, amongst other questions, if she was a virgin and why she was behaving like a teenager; and
- c. A few days later, you had another conversation with [the Complainant] where you told her of your interest in pursuing a romantic relationship with her.

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<sup>11</sup> *Ibid.*, paras. 52-54.

<sup>12</sup> Letter of allegations of misconduct dated 20 May 2022.

<sup>13</sup> Sanction letter dated 13 October 2022.

17. The DHR concluded that IK's actions constituted sexual harassment and sexual abuse, in respect of which the disciplinary measure of dismissal was imposed in accordance with Staff Rule 10.2(a)(ix) and that his name would be included in the ClearCheck database.

18. In reaching its decision, the High Commissioner took into account IK's long and satisfactory service with UNHCR as well as his "unblemished disciplinary record", as mitigating factors. Conversely, the fact that he was a "senior officer occupying supervising functions towards [the Complainant]" was considered as an aggravating factor. The High Commissioner also considered and rejected several of IK's contentions, as outlined below:<sup>14</sup>

With regards specifically to [M.M.] and [M.V.]'s statements, these do not constitute hearsay, as they are not used to evidence the truth of their contents. Rather, statements of this type are used to evidence the consistency (or otherwise) of contemporaneous reporting of the incident (which is direct evidence), and are thus relevant to a complainant's credibility. (...)

...

It was noted that you also provided a list of all the colleagues who were residing at the guesthouse during the period between 12 December 2021 to 9 January 2022 (...). Given that there were no witnesses during the events abovementioned, it was considered that the probative value of these colleagues' testimony would have been minimal, and certainly could not have been exculpatory.

...

You further argued that the interactions between [the Complainant] and yourself after the incident were normal, which would demonstrate that the incidents alleged never happened; you raised that you exchanged cordially on WhatsApp and cooked together on 30 December 2021. (...) In any event, maintaining a professional and cordial relationship with a superior – especially noting that [the Complainant] stated that she was worried about losing her job following the incidents, given your seniority – was considered a normal reaction and does not adversely affect [the Complainant]'s credibility.

...

You maintained that [the Complainant]'s statement is not credible as she did not immediately report the incident. However, the decision not to immediately report sexual misconduct does not ordinarily, in and of itself, adversely affect the credibility of victims.

#### *Procedures before the Dispute Tribunal*

19. On 7 January 2023, IK filed an application before the Dispute Tribunal challenging the contested decision.

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<sup>14</sup> *Ibid.*

20. On 28 June 2023, the parties filed a Joint statement on agreed facts.

21. On 9 August 2023, the UNDT held a case management discussion (CMD), during which IK informed the UNDT that he would be the only witness testifying on his behalf.<sup>15</sup> On 12 February 2024, pursuant to Order No. 1 (NB1/2024) dated 9 January 2024, IK reiterated his decision not to call any additional witnesses.<sup>16</sup>

*Impugned Judgment*

22. Between 4 and 6 March 2022, the UNDT held a hearing on the merits of the case, during which it heard oral evidence from IK, the Complainant, M.V., and M.M.<sup>17</sup>

23. On 27 May 2024, the Dispute Tribunal issued the impugned Judgment, concluding that it had been established by clear and convincing evidence that IK had sexually harassed and abused the Complainant and dismissing his application.

24. Specifically, the Dispute Tribunal accepted the Complainant's account of the incident that occurred on 19 December 2021, which it summarized as follows:<sup>18</sup>

b. (...) She testified that, one evening, when they had finished eating dinner, between 6.30 and 8.30 p.m., [IK] offered to prepare tea with milk and asked her to help prepare it upstairs in his living area. While upstairs waiting for the milk to boil, he asked the Complainant to take his contribution for an upcoming party, which she accepted. He subsequently asked her to give him a kiss. She approached his cheek to kiss him as colleagues or as friends, but she stated 'he started to approach my mouth, touch my body, hug me, and I started to push him away from me'; she said 'no' and started explaining to him that she does not have affairs with colleagues.

c. She recalled that [IK] became angry, he used the 'F' word and threw the money; he told her he loved her and started asking if she was rejecting him because she is a virgin or because of his appearance and skin colour. She reiterated that she said 'no' to [IK]. However, he grabbed her forearm to forcibly direct her to his bedroom. She insisted that they return downstairs and pushed him away when he started approaching her again to hug her; he took her hand and made her 'touch his private areas to see how hard it was'.

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<sup>15</sup> Recording of the CMD held on 9 August 2023.

<sup>16</sup> Answer brief, para. 15.

<sup>17</sup> Impugned Judgment, para. 10.

<sup>18</sup> *Ibid.*, paras. 14b) and c).

25. The UNDT observed that, although the Complainant failed to provide the precise date of that incident prior to her testimony at the hearing – an omission it considered the “weakest link in the case” – this was not, in itself, a sufficient basis “to totally repudiate the Complainant’s report that she was sexually harassed”.<sup>19</sup> The UNDT noted that her “case was sufficiently detailed” and that the sequence of events was “quite plausible”.<sup>20</sup> Specifically, regarding the incident that occurred on 19 December 2021, the UNDT found the surrounding circumstances to be “highly plausible”, noting that the Complainant and IK appeared “comfortable in each other’s company/presence”, making it “not unusual that they would choose to go to [IK]’s private living quarters to boil milk”. The UNDT further found it “highly believable that [IK] would seize such an opportunity to express his feelings even possibly in an aggressive way, and to express his interest in a relationship with highly sexual connotations”.<sup>21</sup>

26. The UNDT considered the corroborating testimonies of two witnesses, M.M. and M.V., to be significant.<sup>22</sup> Additionally, the UNDT rejected IK’s argument that the delay in reporting the allegations undermined the Complainant’s credibility, noting that it is not unusual for victims to discuss incidents of a sexual nature informally before submitting a formal report to the IGO.<sup>23</sup>

27. The UNDT also rejected IK’s contention that the Complainant’s complaint was a result of a division between the Arab and African staff, noting that he did not belong to either of these two groups.<sup>24</sup>

28. Although it did not make an explicit finding regarding the charge of sexual abuse or regarding the third count of misconduct, namely that IK told the Complainant of his interest in pursuing a romantic relationship with her, the UNDT concluded that the remainder of the incidents alleged occurred and that this was “sufficient to establish a case of sexual harassment against [IK]”.<sup>25</sup>

29. The UNDT found that IK’s due process rights had been respected during both the investigation and the disciplinary process. In this regard, the UNDT noted that IK had the

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<sup>19</sup> *Ibid.*, para. 31.

<sup>20</sup> *Ibid.*, para. 32.

<sup>21</sup> *Ibid.*, para. 33.

<sup>22</sup> *Ibid.*, paras. 34-36.

<sup>23</sup> *Ibid.*, para. 32.

<sup>24</sup> *Ibid.*, para. 30.

<sup>25</sup> *Ibid.*, para. 37.

opportunity to call witnesses but chose not to do so. As for IK's argument that he was denied the opportunity to question the Complainant during the investigation process, the UNDT observed that he was afforded a chance to respond to her statement. It further noted that the "idea of securing the rights of the Complainant would be undermined if she had to face cross-examination before a charge is brought and before [IK] was deemed to have committed the breach of conduct".<sup>26</sup>

30. Last, the UNDT found that the sanction imposed on IK was proportionate to his offence. It emphasized that, in cases of sexual harassment – particularly where there is a likelihood that the harassment had an impact on the victim – a more lenient sentence could expose the Organization to liability. Therefore, it held that in such circumstances, the Administration may have limited or no alternative but to impose dismissal as the appropriate disciplinary measure.<sup>27</sup>

#### *Procedure before the Appeals Tribunal*

31. In August 2024, IK filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 25 October 2024.

### **Submissions**

#### **IK's Appeal**

32. IK requests that the Appeals Tribunal grant the appeal, reverse the impugned Judgment, declare him "acquitted of all unfounded charges of misconduct", and order his reinstatement in his former position. Alternatively, he asks the Appeals Tribunal to direct the Administration to pay him his "full salary and benefits until the ordinary retirement age". IK further requests that, in any event, the UNAT order that "the investigation report, the due process letter, and all relevant material, along with the impugned decision, be expunged from the personnel file, and a factually correct certificate of employment, mentioning [his work] qualities and recommending him to future employers, be issued". He also seeks an award of moral damages in the amount of USD 50,000, reimbursement of legal fees in the same amount, and any other relief the Appeals Tribunal deems appropriate.

33. IK also requests an oral hearing before the Appeals Tribunal to ensure "a thorough and fair examination of all relevant evidence", to address the shortcomings in the UNDT's findings –

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<sup>26</sup> *Ibid.*, paras. 38 and 42.

<sup>27</sup> *Ibid.*, paras. 46-47.



particularly regarding the date of the alleged incident – and to allow for the introduction of the testimony from residents of the guesthouse.

34. IK submits that the UNDT “ostensibly” relied solely on the parties’ written submissions, while ignoring his earlier submissions in his application, his comments to the draft Investigation Report, and his response to the letter of allegations of misconduct. He contends that the UNDT also disregarded the parties’ Joint statement on agreed facts, specifically the fact that eight other international staff members were present at the guesthouse during the day of the alleged incident.

35. Relatedly, IK argues that the UNDT erred by failing to recognize the “critical importance” of the IGO’s omission to interview these staff members, despite his express request. He further asserts that the UNDT “unjustly” held him responsible for not calling these individuals to testify, disregarding that he lacked the means to contact them, after the Secretary-General declined, during a CMD held on 9 June 2024, to provide their contact details.

36. IK submits that the UNDT failed to recognize the “critical flaws” in the investigation, claiming that the investigator exceeded the limits of their mandate by leading witnesses and exhibiting both implicit and explicit bias through suggestive questioning intended to “elicit specific, predetermined responses”. He cites two examples: first, that during the Complainant’s interview, the investigator “manipulated [the] questioning to falsely establish [the] supervisory relationship” between her and IK; and second, that although the Complainant initially could not provide a specific date for the alleged incident, the investigator used “repeated and suggestive questions that seemingly guided her toward an approximate date”.

37. IK challenges the UNDT’s conclusion that he and the Complainant were in a supervisor-supervisee relationship, emphasizing that he had no authority over her performance evaluations, or “hiring/firing decisions”.

38. IK argues that the UNDT erroneously interpreted the tension in the common kitchen area as evidence of a strained relationship between him and the Complainant, due to alleged sexual harassment. He clarifies that the tension stemmed instead from unrelated disputes over the use of the kitchen by other colleagues.

39. IK submits that the UNDT failed to address “critical inconsistencies” in the Complainant’s statements, especially regarding the date of the alleged incident. He argues that the UNDT lacked jurisdiction to accept a change to the initially provided date and that such a change rendered the

investigation redundant. IK maintains that the revised date of 19 December 2021 only emerged after he testified about his whereabouts on 15 December 2021. By doing so, IK argues that the Secretary-General effectively “picked and chose” the new date and “fed” it to the Complainant. He notes that the UNDT failed to examine that, according to the Complainant’s own account – namely, that he was scheduled to travel to Khartoum the next day, a Thursday – the timeline aligns more closely with 15 December 2021, a Wednesday, than with 19 December 2021, a Sunday. He also argues that the testimony of E.L., a resident of the guesthouse, would have been crucial in either supporting or contradicting the Complainant’s account and contends that the UNDT erred in not calling E.L. to testify. He also submits that the Complainant’s failure to initially identify E.L. or list him as a witness, amounts to a “significant omission and a measured *mala fide*”.

40. IK reiterates that the UNDT failed to properly consider the significance of the Complainant’s messages on the day following the incident, which, in his view, are inconsistent with someone who had experienced such an event.

41. IK questions the credibility of M.M. and M.V., asserting that their testimonies amount to hearsay and contain several “inconsistencies” that undermined their integrity. He also alleges that M.M.’s statement resulted from the “collaboration” between the Complainant and M.V. IK submits that M.V. was involved in the case as a “third party” and, in accordance with UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/2014/4), “her statements in interviews with the investigating body and before the Tribunal indicate violations of her mandatory obligations as a third party”.

42. Last, IK submits that the UNDT misapplied the standard of clear and convincing evidence and improperly placed the burden of proof on him. He also contends that the UNDT erroneously interpreted his failure to deny the allegations when confronted by M.V. as an “admission of guilt”.

### **The Secretary-General’s Answer**

43. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

44. Regarding IK’s request for an oral hearing, the Secretary-General contends that such a hearing would not assist in the fair and expeditious disposal of the case, as the issues on appeal are clearly defined by the facts and record.

45. The Secretary-General submits that IK failed to demonstrate any error warranting a reversal of the impugned Judgment or to identify any of the grounds for appeal enumerated in Article 2(1) of the Appeals Tribunal Statute (Statute). Instead, IK merely disagrees with the outcome of the case. The appeal should be dismissed on this basis alone.

46. Nevertheless, even if the Appeals Tribunal were to consider IK's arguments, the Secretary-General contends that they lack merit.

47. The Secretary-General contends that IK failed to demonstrate that the UNDT disregarded his submissions, ignored the parties' Joint statement on agreed facts, failed to recognize the importance of the IGO not interviewing other residents of the guesthouse, or unjustly held him responsible for not producing these witnesses.

48. On the contrary, the Secretary-General submits that the UNDT appropriately considered IK's submissions, devoting four pages of the impugned Judgment to summarizing them. Furthermore, he observes that IK has not identified which specific arguments were allegedly disregarded by the Dispute Tribunal. In any event, the Secretary-General recalls that it is well established that the UNDT is not required to address each and every claim made by a litigant.

49. Concerning IK's claim that the UNDT ignored the parties' Joint statement on agreed facts – which identified that there were eight other international staff members present at the guesthouse during the day of the alleged incident – and failed to appreciate the “critical importance” of the IGO not interviewing these staff members, the Secretary-General submits that IK has not demonstrated how these alleged errors affected the outcome of the case. He contends that IK's arguments should be dismissed on this basis alone. In any event, the Secretary-General observes that the UNDT explicitly noted that “the IGO may not have interviewed all of the persons who could possibly have been witness” but found that it was “questionable whether these witnesses would have contributed anything to [his] case”.<sup>28</sup> Furthermore, the Secretary-General notes that the UNDT correctly found that IK had the opportunity to call witnesses but chose not to do so.<sup>29</sup>

50. The Secretary-General contends that IK has not shown that the UNDT failed to recognize “critical flaws” in the investigation. While he acknowledges that the UNDT did not expressly

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<sup>28</sup> *Ibid.*, para. 43.

<sup>29</sup> *Ibid.*, paras. 41 and 44.

address IK's allegations of bias against the IGO, the Secretary-General argues that the UNDT correctly found that IK's due process rights had been respected.

51. The Secretary-General argues that IK failed to demonstrate that the UNDT erred in concluding that he and the Complainant had a supervisor-supervisee relationship. He highlights that, according to the parties' Joint statement on agreed facts, it is undisputed that IK was the supervisor of the Complainant's direct supervisor and provided her guidance and instructions in the absence of her direct supervisor or as needed. In any event, the Secretary-General contends that IK has not shown the relevance of this alleged error.

52. The Secretary-General submits that IK failed to demonstrate any reversible error in the UNDT's assessment of the alleged tension in the kitchen area. The Secretary-General further notes that the existence of "tension" between IK and the Complainant was not a legal prerequisite for a finding of misconduct and was therefore immaterial to the UNDT's ultimate conclusion regarding the lawfulness of the contested decision.

53. The Secretary-General argues that IK did not demonstrate that the UNDT overlooked "critical inconsistencies" and "omissions" in the Complainant's statements. The Secretary-General notes that the UNDT acknowledged that "the Complainant did not provide a precise date until the date of hearing", but reasonably concluded that this did not undermine her credibility or the overall integrity of the case.<sup>30</sup> He emphasizes that the Complainant provided a reasonable explanation for not initially recalling the date of the incident and highlights that she consistently linked the incident to IK "handing over his contribution for the party and with [his] travel to Khartoum the following day". He also clarifies that an exact date is not required to establish clear and convincing evidence of misconduct.

54. The Secretary-General strongly denies IK's claim that the date of 19 December 2021 was "picked and chosen" by him and "fed" to the Complainant. He further observes that the Investigation Report is not redundant and remains part of the record. Regarding E.L.'s testimony, the Secretary-General reiterates that the UNDT correctly held that it was questionable whether any additional witnesses would have supported IK's case.<sup>31</sup> He also reiterates that IK chose not to call E.L. as a witness and failed to demonstrate how his testimony "would have provided exculpatory evidence (...) but only claim[ed] that he could have either supported or contradicted [the

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<sup>30</sup> *Ibid.*, paras. 25 and 31.

<sup>31</sup> *Ibid.*, para. 43.

Complainant]’s account”. As for the Complainant’s failure to identify E.L. from the outset or include him as a witness, the Secretary-General submits that this does not amount to a “significant omission and a measured *mala fide*”. In this regard, he notes that the IGO never asked the Complainant to identify E.L. by name, and no adverse inference can reasonably be drawn from this omission.

55. The Secretary-General submits that the UNDT properly evaluated the Complainant’s messages to IK the day after the alleged incident. He highlights that the Complainant’s attempt “to maintain a professional and cordial relationship with [him] after the incident does not adversely affect her credibility, noting especially that she stated that she was worried about losing her job because of the incident, and given the seniority of [IK] and the fact that they were living in the same guesthouse”.

56. The Secretary-General argues that IK failed to demonstrate that the testimony of M.M. and M.V. lacked credibility. He contends that IK’s submissions on this point are irrelevant, raise no error in the impugned Judgment, but merely reiterate arguments previously made before the UNDT. The Secretary-General notes that IK’s claims of collusion among M.V., M.M. and the Complainant are speculative, “objectively highly implausible”, and unsubstantiated. Furthermore, he also notes that M.V. was not a “third party” facilitating informal resolution; it was the Complainant who reported the matter to the IGO.

57. Last, the Secretary-General contends that IK failed to demonstrate that the UNDT erroneously inferred that IK’s failure to immediately deny the allegations when confronted by M.V. was an “admission of guilt”, that the impugned Judgment was grounded on “baseless assumptions” or that the UNDT failed to adhere to the required standard of proof. The Secretary-General highlights that the UNDT’s finding that the Complainant’s account was sufficiently detailed, the circumstances highly plausible, and that M.M. and M.V.’s testimonies reinforced the Complainant’s version of events did not amount to a reversal of the burden of proof.

### **Considerations**

#### *Oral hearing and new evidence*

58. IK seeks an oral hearing in this appeal on the basis that this will ensure “a thorough and fair examination of all relevant evidence”, address the shortcomings in the UNDT’s findings, particularly regarding the date of the alleged incident, and allow for the introduction of new

testimony from the staff members who were residents of the guesthouse. The Secretary-General opposes the request.

59. An appeal is not a rehearing of the matter but an opportunity for the parties to demonstrate errors of fact and law by the UNDT, based on the evidence and other documents that were before it, and in the judgment issued by it. Under Article 8(3) of the Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure, this Tribunal may grant an oral hearing if it would “assist in the expeditious and fair disposal of the case”. Article 2(5) of the Statute allows for additional *documentary* evidence to be received on appeal “in exceptional circumstances” and if the receipt of such evidence “is in the interest of justice and the efficient and expeditious resolution of the proceedings”.

60. IK failed to call any of the eight staff members present at the guesthouse to testify before the UNDT apparently because he did not have their contact details. Yet, in spite of his knowledge of the existence of these witnesses and the nature of the evidence that he sought they give, IK did not call these witnesses. He was not barred an opportunity to call witnesses to testify.

61. In *Ular*,<sup>32</sup> we noted that oral hearings have been refused where the factual and legal issues have already been clearly defined by the parties and such a hearing would not assist in the expeditious and fair disposal of the case on appeal. The factual and legal issues which are the subject of this appeal have been clearly defined and we can find no basis to warrant an oral hearing being convened in this matter. There is no indication that such a hearing would assist in the expeditious and fair disposal of this appeal and it has not been shown that such a hearing would be in the interests of justice. For these reasons, the request for an oral hearing and to have new evidence heard for the first time on appeal is denied.

### *Merits of appeal*

62. Article 2(1)(b) of the Dispute Tribunal Statute (UNDT Statute) requires that Tribunal in disciplinary cases to examine: i) whether the facts on which the disciplinary measure is based have been established by clear and convincing evidence where termination is a possible sanction; ii)

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<sup>32</sup> *Lilian Ular v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1409, paras. 41-42. See also *Enrico Muratore Aprosio v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1371, paras. 68-69; *Mustapha Guenfoudi v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1364, paras. 61-62; *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-712, para. 12; *Anshasi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-790, para. 15.

whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected.<sup>33</sup> On appeal this Tribunal must, in terms of Article 2(1) of the Statute, determine whether the UNDT has: i) exceeded its jurisdiction or competence; ii) failed to exercise jurisdiction vested in it; iii) erred on a question of law; iv) committed an error in procedure, such as to affect the decision of the case; or v) erred on a question of fact, resulting in a manifestly unreasonable decision. On appeal, IK takes issue with a number of errors which he contends were committed by the UNDT. In order to overturn a finding of fact by the UNDT, this Tribunal must be satisfied that the finding is not supported by the evidence or made by excessive inferences therefrom, either of which have resulted in a decision which is manifestly unreasonable.

63. We have found that some degree of deference should be given to the factual findings by the UNDT as the court of first instance, particularly where oral evidence is heard. This is so in that it “has the advantage of assessing the demeanour of witnesses while they are giving evidence and this is critical for assessing the credibility of the witnesses and the persuasiveness of their evidence”.<sup>34</sup> Nevertheless, as we stated in *Theunens*:<sup>35</sup>

... (...) [I]n undertaking its task, the UNDT is required to provide a full, systematic analysis of the evidence that was presented to it during the hearing and set out explicit reasons for accepting or rejecting the testimony of each witness who testified. It must make explicit findings pertaining to the credibility and reliability of the evidence placed before it and provide a clear indication of which disputed version it prefers, along with an explanation. This involves a consideration of issues including: i) the witness' candour and demeanour; ii) the witness' latent and blatant biases; iii) internal and external inconsistencies in the evidence; iv) the probability or improbability of particular aspects of the witness' version; v) the calibre and cogency of the witness' testimony when compared to that of other witnesses testifying in relation to the same incident; vi) the opportunities the witness had to experience or observe the events in question; and vii) the quality, integrity and independence of the witness' recall of the events.

64. At its hearing in the matter, the Complainant testified, with IK provided with the opportunity to challenge her account of events in cross-examination. The Complainant's evidence was, in key material respects, consistent with the version of events that she had provided to the

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<sup>33</sup> *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment 2019-UNAT-972, para. 69.

<sup>34</sup> *Ibid.*, para. 70.

<sup>35</sup> *Reynaud Joseph-Marie Theunens v. Secretary-General of the United Nations*, Judgment No. 2025-UNAT-1512, para. 60.

IGO during its investigation into the matter, save for her evidence as to the date on which the incident occurred. The Complainant told the investigators that the incident occurred around 15 December 2021, whereas in her oral testimony before the UNDT, she stated that it had occurred on 19 December 2021. There is no dispute that this was after IK had testified about his whereabouts on 15 December 2021. IK argues that the erroneous date given by the Complainant to the investigators was one of the “critical flaws” in the investigation. This, he said, was so in that it indicated that the investigators had exceeded the limits of their mandate by leading the Complainant to arrive at an approximate date in a manner which rendered the investigation redundant. We find no merit in this contention.

65. We are satisfied that it was appropriate for the investigators, in their attempt to determine the date on which the incident occurred, to press the Complainant to state a date. Doing so did not amount to a “critical flaw” in the investigation, nor did it evidence any bias on the part of the investigators. Instead, it amounted to a proper attempt to determine the relevant facts. There is no support for IK’s contention that the initial date was “picked and chosen” and “fed” to the Complainant by the investigators. The Complainant explained in her evidence before the UNDT that she was not sure of the precise date of the incident when she spoke to the investigators, but that she had subsequently determined the correct date to be 19 December 2021 after she had cross-checked her e-mails and WhatsApp messages from around that time. There was no support for IK’s contention that she had changed her evidence as to the date after becoming aware of IK’s explanation regarding his whereabouts on 15 December 2021, nor did IK contradict her evidence that she had, as a matter of fact, determined the correct date after cross-checking it against her messages. The Complainant’s effort to ensure she testified to the correct date displayed the degree of diligence expected of her given the seriousness of the complaint she had lodged. Rather than undermining her credibility, or constituting one of a number of “critical inconsistencies” in her evidence, as IK suggests, the UNDT correctly found that the date correction was *bona fide* and did not warrant a rejection of the Complainant’s evidence or undermine the credibility or reliability of her account in relation to the incident that occurred on 19 December 2021.<sup>36</sup>

66. Despite the incorrect date having been given to the investigators, the Complainant’s evidence before the UNDT regarding the incident did not differ in other material respects from her account given to the investigators. Thus, although the date issue was recognised by the UNDT as

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<sup>36</sup> See *Muteeganda v. Secretary-General of the United Nations* Judgment No. 2018-UNAT-869, para. 35.



the “weakest link in the case”, we concur that it was not sufficient “to totally repudiate the Complainant’s report that she was sexually harassed”.<sup>37</sup> In *Ramos*,<sup>38</sup> a contradiction regarding a date was found not to impact the other evidence or materially alter the outcome of the case. We are satisfied that the same applies in this matter. The Complainant’s evidence was in all other respects clear, consistent, credible and reliable, and it was corroborated by the evidence of M.V. and M.M., to whom she spoke following the incident, both of whom testified before the UNDT. In addition, her version was not undermined in the course of cross-examination.

67. IK placed store on the fact that eight international staff members who were resident in the guesthouse were not interviewed by the investigators or called to testify before the UNDT, when their accounts were of “critical importance”, would have been capable of disproving the Complainant’s version and that the Complainant’s failure to identify one of the eight staff members, E.L., as a witness, was a “significant omission” and “a measured *mala fide*”. As previously indicated, there was no bar on IK calling any of the eight staff members to testify before the UNDT. Furthermore, the Complainant’s evidence was that she was alone with IK when the incident happened and her undisputed testimony was that she did not inform any of the guesthouse residents of the incident. She did not shout or scream during the incident, and while she said IK was angry after she had spurned his advances and “was using the F-word, throwing the money, reacting angry, aggressively”, she noted that he did not shout either.<sup>39</sup> IK’s version, in contrast, was to deny the Complainant’s account in all respects, with no possible reason advanced either by him or his counsel as to what motive she could have had for concocting a false version of events against him in order to unjustly implicate him.

68. It is difficult to understand what value the accounts of any of these eight staff members could have had in the matter, given this evidence. Consequently, we are unable to find that either the Complainant or the Secretary-General was *mala fide* in failing to call such witnesses and their conduct in this regard did not amount to a serious omission in the conduct of the matter. This is all the more so when the versions of both the Complainant and IK were that none of the eight staff members could have had any knowledge of the incident: according to the Complainant, because she was alone with IK, with no one in the vicinity of the incident, and neither she nor IK having

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<sup>37</sup> Impugned Judgment, para. 31.

<sup>38</sup> *Gonzalo Ramos v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1256, para. 65.

<sup>39</sup> Hearing transcript, 6 March 2024, the Complainant’s testimony, p. 49: 3-6.

shouted during or following the incident; and according to IK, because the incident did not happen at all.

69. The work of an investigator is not an exact science. Although the investigation process is aimed at uncovering facts and other relevant evidence, a failure on the part of an investigator to interview one witness does not necessarily mean that a fatal flaw was committed in the investigative process, nor that the wholesale rejection of the investigation is warranted. The IGO's failure to interview every witness was not a violation of IK's due process rights, particularly where there is no relevant basis for the witnesses to be interviewed.<sup>40</sup> The impact of such a failure turns on the effect it has on the investigation process and outcome. In the current matter, while the investigators may not have interviewed all of the persons who could have been called to testify, we are satisfied that the UNDT cannot be faulted for finding it to be "questionable" whether the eight staff members would have contributed anything to IK's case.

70. IK also takes issue with the failure of the UNDT to consider his allegations of bias against the investigators and cites a number of examples of instances in which conclusions were reached to his detriment when these were not warranted on the facts. We find these to be without merit. While he disputes the finding that he supervised the Complainant, he cannot dispute that he was the supervisor of the Complainant's direct supervisor and that in this capacity he gave the Complainant guidance and instructions from time to time. As much was evident from the Joint statement on agreed facts prepared by the parties, by which he was bound.<sup>41</sup> There is, therefore, no dispute that IK was senior in the organisational hierarchy to the Complainant. It follows that even if the relationship was not directly supervisory in nature, IK was in a position of relative power in relation to the Complainant given his senior status.

71. IK takes further issue with the Complainant's communication with him following the incident, which he contends impacted negatively on her credibility and draws into question the veracity of her account. There is no dispute that the day following the incident the Complainant sent IK a WhatsApp message which read: "Hello dear, hope you arrived safe."<sup>42</sup> IK contends that the Complainant's conduct in this regard was inconsistent with someone who had experienced the incident of which she had complained. The Complainant's explanation for this was that she was

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<sup>40</sup> *Al Waleed Abdelrahman Abdrabou v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1460, para. 77.

<sup>41</sup> *Wassim Saleh v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1368, para. 56.

<sup>42</sup> WhatsApp message from the Complainant to IK dated 20 December 2021 at 6:16 p.m.

“shocked with what [had] happened”, “was not clearly thinking” and “was trying to keep [her] job”.<sup>43</sup> The UNDT found that her communication with IK evidenced her attempt to maintain a professional and cordial relationship with IK after the incident and did not adversely affect her credibility given that she was worried about losing her job because of the incident, the fact that IK was senior to her and that they were living in the same guesthouse.<sup>44</sup> We take no issue with this finding and are not persuaded that, in its assessment of this evidence, the UNDT erred in any respect.

72. IK contends that the evidence of M.M. and M.V. amounted to hearsay and contained several “inconsistencies” that undermined their integrity. He also alleges that M.M.’s statement resulted from the “collaboration” between the Complainant and M.V. and submits that M.V. was involved in the case as a “third party” and, therefore, in accordance with UNHCR/HCP/2014/4, “her statements in interviews with the investigating body and before the Tribunal indicate violations of her mandatory obligations as a third party”. The Secretary-General disputes as much. From the record, it is clear that both testimonies related to contemporaneous reports given to them by the Complainant that corroborated the complaint. IK failed to demonstrate that the testimonies of M.M. and M.V. lacked credibility or that their evidence was directed at falsely implicating him. IK’s claims of collusion between M.V., M.M. and the Complainant were unsubstantiated and M.V. was not a “third party” facilitating informal resolution given that it was the Complainant who reported the matter to the IGO.

73. What is of relevance is that when confronted by M.V. with the Complainant’s report, IK failed to immediately deny the allegations. This was an important failure on his part and one which was of relevance and was properly considered by the UNDT. Faced with the details of such an incident, the UNDT was entitled to have regard to whether such response was one which could reasonably have been expected of a senior staff member in IK’s position. In finding that it was not, we find that the UNDT did not err.

74. There is also no merit in IK’s contention that his submissions were not considered by the UNDT, when these were summarised in four pages of the impugned Judgment. IK did not identify

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<sup>43</sup> Hearing transcript, 6 March 2024, the Complainant’s testimony, p. 62: 4-5.

<sup>44</sup> See *AAT v. Secretary-General of the United Nations* Judgment No. 2024-UNAT-1412, para. 84.

which specific arguments were disregarded by the UNDT, but regardless, as we have found previously, the UNDT is not required to address each and every claim made by a litigant.<sup>45</sup>

75. The UNDT noted that the Complainant's "case was sufficiently detailed" and that the sequence of events was "quite plausible".<sup>46</sup> Specifically, regarding the incident that occurred on 19 December 2021, the UNDT found the surrounding circumstances to be "highly plausible", noting that the Complainant and IK appeared "comfortable in each other's company/presence", making it "not unusual that they would choose to go to [IK]'s private living quarters to boil milk".<sup>47</sup> The UNDT further found it "highly believable that [IK] would seize such an opportunity to express his feelings even possibly in an aggressive way, and to express his interest in a relationship with highly sexual connotations".<sup>48</sup> We can find no issue with these findings, nor with the UNDT's rejection of IK's contention that the Complainant's complaint was a result of a division between the Arab and African staff, noting that he did not belong to either of these two groups.

76. Although it did not make an explicit finding regarding the charge of sexual abuse or regarding the third count of misconduct, namely that he told the Complainant of his interest in a romantic relationship, the UNDT concluded that the remainder of the incidents alleged occurred and that this was "sufficient to establish a case of sexual harassment against [IK]".<sup>49</sup>

77. Sexual harassment exists where there is "any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another".<sup>50</sup> It is recognised as "particularly serious when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive environment", with it noted that it can take the form of a single incident.<sup>51</sup> Staff Regulation 1.2 sets out the basic rights and obligations of staff, requiring staff members to uphold "faith in fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women".<sup>52</sup> Staff Rule 1.2 expressly requires that staff members refrain from sexual exploitation and abuse, as well as "[a]ny form of (...) harassment, including sexual or gender harassment at the workplace or

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<sup>45</sup> *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, paras. 34 and 35.

<sup>46</sup> Impugned Judgment, para. 32.

<sup>47</sup> *Ibid.*, para. 33.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, para. 37.

<sup>50</sup> Sections 5.3 of UNHCR/HCP/2014/4.

<sup>51</sup> *Ibid.*

<sup>52</sup> Staff Regulation 1.2(a).

in connection with work”.<sup>53</sup> Staff Rule 10.2(a)(ix) provides that dismissal is included among the disciplinary measures that may be taken for such misconduct.

78. To find that sexual harassment has occurred there must be sufficient, credible and reliable evidence proving a high probability that the staff member concerned: i) made a sexual advance; ii) made a request for a sexual favour; iii) verbally or physically engaged in conduct or behaviour of a sexual nature; or iv) made a gesture of a sexual nature. In addition, the advance, request, conduct or gesture must be shown to have been unwelcome; might reasonably have been expected or perceived to cause offence or humiliation to another; or have caused an intimidating, hostile or offensive work environment. As we stated in *Ramos*, “[s]exual harassment can encompass numerous types of conduct, some overtly sexual in nature and others more subtle. There is a wide spectrum of conduct that can be defined as sexual harassment and its determination is entirely context specific”.<sup>54</sup>

79. It is typical in disputes concerning sexual harassment that the alleged conduct takes place in private, without direct evidence other than from the complainant and staff member alleged to have committed the misconduct. The evidentiary questions in such cases center on the credibility of both witnesses.

80. Having regard to the material that was placed before the UNDT, we are not persuaded that it has been shown that the UNDT made any material errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction in arriving at the decision that it did. The UNDT undertook its task in the manner required of it. It analysed the evidence placed before it and set out explicit reasons in an extensive Judgment for accepting or rejecting the testimony of each witness who testified, having regard to issues including the credibility of individual witnesses and the reliability of their accounts, and explaining why it preferred one disputed version over another. Its findings were borne out by the testimony of witnesses, certain of whom corroborated each other in key respects, with there being no merit in the allegations of bias raised by IK. He was given the opportunity to call witnesses but chose not to do so. The UNDT did not misapply the standard of clear and convincing evidence and did not improperly place the burden of proof on IK. We are equally satisfied that IK’s due process rights were respected during both the investigation and the

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<sup>53</sup> Staff Rule 1.2(e) and (f).

<sup>54</sup> *Gonzalo Ramos* Judgment, *op. cit.*, paras. 37-38.

disciplinary process and that the sanction imposed on IK was proportionate to the seriousness of the offence committed, and that this was so despite his years of service and senior position.

81. The UNDT cannot be faulted for dismissing IK's application for the reasons stated. It follows that the appeal must be dismissed.

**Judgment**

81. IK's appeal is dismissed, and Judgment No. UNDT/2024/034 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27<sup>th</sup> day of June 2025 in New York, United States.

*(Signed)*

Judge Savage, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 28<sup>th</sup> day of July 2025 in New York, United States.

*(Signed)*

Juliet E. Johnson,  
Registrar