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

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Case No. 2012-359

**Nwuke (Respondent/Applicant)**

**v.**

**Secretary-General of the United Nations**

**(Appellant/Respondent)**

**ORDER No. 100 (2012)<sup>1</sup>**

1. On 30 July 2012, Mr. Kasirim Nwuke filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), seeking the suspension of the decision to select another candidate for the D-1 post he had applied for. On 1 August 2012, the Dispute Tribunal issued Order No. 103 (NBI/2012), by which it dismissed Mr. Nwuke's application.
2. On 3 August 2012, Mr. Nwuke appealed the UNDT Order before the United Nations Appeals Tribunal (Appeals Tribunal). That same day, he also filed a motion asking that the Appeals Tribunal restrain the Secretary-General from placing the selected candidate on the post in question until a judgment on the appeal is issued.
3. On 15 August 2012, the Secretary-General filed his observations on the Motion. He requests that this Court dismiss Mr. Nwuke's Motion in its entirety as the requirements of temporary relief have not been satisfied.
4. Article 9(4) of the Appeals Tribunal's Statute provides that "[a]t any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal".

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<sup>1</sup> Reissued for technical reasons on 12 September 2012.

5. The Appeals Tribunal previously held that it

[...] may make an interim order for temporary relief, pending the outcome of the appeal, on two conditions:

i) It must be satisfied on a balance of probabilities that there is real likelihood of irreparable harm which can be prevented if temporary relief is granted; and

ii) The temporary relief granted is consistent with the judgment of the Dispute Tribunal. <sup>2</sup>

6. This interim measures relief is available to protect a party, which the Appeals Tribunal believes is likely to succeed on appeal, and, where there is real likelihood that without receiving the temporary relief, justice will in effect be denied even if the party succeeds on appeal. The likelihood of success on appeal is the rationale for the Appeals Tribunal's Statute requiring that any interim measure for temporary relief must be consistent with the judgment of the Dispute Tribunal.

7. In the present case, Mr. Nwuke does not seek an interim measure for temporary relief which is consistent with the judgment of the Dispute Tribunal. He in fact seeks the exact opposite, namely the suspension of action which the UNDT did not grant him. Since therefore one of the two cumulative conditions under Article 9(4) of the Appeals Tribunal's Statute is not fulfilled, I need not further consider the second condition.

8. For the foregoing reason, Mr. Nwuke's request for interim injunctive relief is denied.

Original and Authoritative Version: English

Dated 28<sup>th</sup> day of August 2012 in Montevideo,  
Uruguay.

(Signed)  
Judge Luis María Simón, President

Entered in the Register on this 28<sup>th</sup> day of August  
2012 in New York, United States.

(Signed)  
Weicheng Lin, Registrar

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<sup>2</sup> Order No. 3 (2010), *Koumoin v. Secretary-General of the United Nations*, para. 9.