



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

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**Oummih  
(Appellant)**

**v.**

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

**ORDER No. 191 ON MOTION  
FOR INTERIM RELIEF**

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Before:	Judge Mary Faherty, Presiding Judge Sophia Adinyira Judge Luis María Simón
Case No.:	2014-592
Date:	27 June 2014
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Secretary-General: Stéphanie Cartier

**JUDGE MARY FAHERTY, PRESIDING.**

1. On 15 January 2014, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva issued Judgment No. UNDT/2014/004 in the case of *Oummih v. Secretary-General of the United Nations*. In the Judgment, the UNDT considered Ms. Amal Oummih's allegations regarding the lawfulness of a fact-finding investigation into her complaint filed against one of her former colleagues and her first reporting officer, the Chief of the Office of Staff Legal Assistance (OSLA), under the provisions of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).
2. The UNDT found that the Executive Director of the Office of Administration of Justice (OAJ) had exceeded her competence by seeking comments from the Chief of OSLA and Ms. Oummih's former colleague in her assessment pursuant to Section 5.14 of Ms. Oummih's complaints against them and by refusing to open an investigation into all of her allegations.
3. The UNDT also found that the Executive Director's appointment of two external investigators was in violation of Section 5.14 of ST/SGB/2008/5. Therefore, the report they prepared could not be taken into account and the Executive Director's decision, which was primarily based on the findings of the report, was also unlawful.
4. The UNDT rescinded the two decisions and ordered that "[a] new decision must be taken concerning the complaint lodged by [Ms. Oummih]". The UNDT also awarded compensation in the amount of CHF 8,000 for moral damages.
5. The Secretary-General appealed the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal) on 17 March 2014.
6. On 13 May 2014, Ms. Amal Oummih filed a "Motion for Interim Relief" with the Appeals Tribunal in relation to the UNDT Judgment, and the Secretary-General of the United Nations filed his observations on 27 May 2014.

**Parties' Submissions**

*Ms. Oummih's Motion for Interim Relief*

7. Ms. Oummih asks that the Appeals Tribunal find the portion of the UNDT Judgment ordering the OAJ Executive Director to take action on Ms. Oummih's complaint against the OSLA Chief to be immediately executable unless a stay of that portion is sought and granted. She further seeks "any other Order which would preserve [her] right ... to have an investigation of her complaint conducted without delay and in accordance with ST/SGB/2008/5, including a referral of her complaint to [the Office of Internal Oversight Services (OIOS)] for a prompt investigation".

8. Ms. Oummih contends that it is more likely than not that only the granting of the interim measure requested, i.e., the immediate enforcement of the part of the UNDT Judgment ordering a new investigation in accordance with ST/SGB/2008/5, can prevent irreparable harm. The remedy ordered by the UNDT will no longer be an effective remedy by the time the UNDT Judgment is confirmed on appeal.

9. The Secretary-General was not granted a stay of proceedings and it is therefore contempt of court for the Secretary-General not to execute the portion of the UNDT Judgment ordering a new investigation in accordance with ST/SGB/2008/5.

10. Two of Ms. Oummih's other cases before the UNDT have been indefinitely postponed on the ground that the UNDT found that the outcome of the investigation would bear on its decision whether the non-renewal of her appointment was a retaliatory act.

*The Secretary-General's Observations*

11. While purportedly seeking interim relief under Article 9(4) of the Statute of the Appeals Tribunal, Ms. Oummih is effectively asking for an expedited determination of the merits of her case. By ordering the conduct of a new fact-finding investigation immediately, the Appeals Tribunal would dispose of the merits of the case and the temporary or interim relief sought by Ms. Oummih would become a final remedy instead.

12. Ms. Oummih has failed to establish irreparable harm in accordance with Article 9(4) of the Statute of the Appeals Tribunal. She has not shown that the Appeals Tribunal will adopt her

interpretation of the applicable provisions and how they apply to the specific facts and circumstances of the case.

13. The Secretary-General contends that under Article 7(5) of the Statute of the Appeals Tribunal, the filing of an appeal suspends the execution of the contested judgment. The execution of the UNDT Judgment is therefore lawfully suspended and Ms. Oummih's allegations of contempt and bad faith on the part of the Secretary-General have no merit.

14. The Secretary-General requests that the Appeals Tribunal dismiss the Motion in its entirety.

### **Considerations**

15. Article 9(4) of the Statute of the Appeals Tribunal 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 maintain consistency with the judgment of the Dispute Tribunal”.

16. This interim measures relief is subject to strict requirements. Clearly, it is only available to protect a litigant, who 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 litigant succeeds on appeal.

17. In the case at bar, Ms. Oummih argues that absent the granting of an interim measure, i.e. an Order by the Appeals Tribunal that the Secretary-General conduct a fresh fact-finding investigation and take a new decision, she will suffer irreparable harm.

18. While seeking interim relief pursuant to Article 9(4) of the Statute of the Appeals Tribunal, Ms. Oummih is effectively asking for an immediate resolution of the merits of her appeal. By ordering the conduct of a new fact-finding investigation immediately, the Appeals Tribunal would prejudge the merits of the present case and, effectively, render the appeal moot.

19. Having carefully considered the parties' submissions, the Appeals Tribunal is not satisfied that Ms. Oummih has met the requirements for Article 9(4) of the Statute of the Appeals Tribunal. The period of time which may elapse until the final resolution of Ms. Oummih's appeal will not affect her case in such way that would cause her irreparable harm, should she

succeed on appeal; such harm would be cured by the remedy deemed appropriate by the Appeals Tribunal.

20. Finally, the Appeals Tribunal finds no merit in Ms. Oummih's claim that the Secretary-General's failure to execute the UNDT order constitutes contempt of court. Article 7(5) of the Statute of the Appeals Tribunal unambiguously provides that the filing of an appeal suspends the execution of the contested judgment. The execution of the UNDT Judgment is therefore lawfully suspended and Ms. Oummih's allegations of contempt and bad faith on the part of the Secretary-General have no merit.

**Order**

21. For the foregoing reasons, the Ms. Oummih's Motion is dismissed in its entirety.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2014 in Vienna, Austria.

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on this 27<sup>th</sup> day of June 2014 in Vienna, Austria.

Weicheng Lin, Registrar