



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2017-1122

Koumoin

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

Order No. 308 (2018)

1. On 24 October 2017, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi issued Judgment on Receivability No. UNDT/2017/083 in the case of *Koumoin v. Secretary-General of the United Nations*, rejecting the application filed by Mr. Mathieu-Credo Koumoin for execution of a “default judgment” and a “mediated settlement agreement” as manifestly inadmissible on the grounds that no default judgment was made in favour of Mr. Koumoin and no mediated settlement existed either.

2. On 25 October 2017, Mr. Koumoin appealed the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal) and the Secretary-General filed his answer on 29 November 2017.

3. On 2 and 5 January 2018, Mr. Koumoin filed three motions in connection with his appeal. In Motion No. 1, he seeks leave to adduce a notice of action (I-797) issued by the United States Department of Homeland Security approving his application for permanent resident status (Green Card), and a direct deposit form for the purpose of his receiving “immediate payment of [his] Interim Relief Salaries ordered since December 14th 2009”. In Motion No. 2, in addition to including the copy of I-797 and the direct deposit form, Mr. Koumoin requests that the Appeals Tribunal join the Government of the United States of America as a party to the proceedings because “[t]he US Government has already claimed an interest in this Case” and the determination of

the proper relief by the Appeals Tribunal may be difficult to achieve in the absence of the Government of the United States. And in Motion No. 3, Mr. Koumoin again attaches I-797 and the direct deposit form and requests that the Appeals Tribunal dispose of his case by summary judgment, as “there is no dispute as to the material facts before UNAT”.

4. On 17 January 2018, Mr. Koumoin’s motions were transmitted to the Secretary-General for response within 10 calendar days.

5. On 29 January 2018, the Secretary-General timeously filed three separate responses, requesting that the Appeals Tribunal reject Mr. Koumoin’s three motions, as he has failed to advance any exceptional circumstances in support of his motions. Specifically, in the view of the Secretary-General, Motion No. 1 should be rejected because Mr. Koumoin’s new legal status in the United States is not relevant to the questions before the Appeals Tribunal. Likewise, Motion No. 2 should be rejected, because the Appeals Tribunal has no jurisdiction over the Government of a Member State and Mr. Koumoin’s argument about his being owed interim relief salaries is no more than a reiteration of his contentions in his appeal. As there is dispute over the material facts of the case, Mr. Koumoin’s motion for a summary judgment should necessarily fail.

6. As regards Motion No. 1, Mr. Koumoin essentially requests this Tribunal to receive the evidence regarding his permanent residence in the United States as additional evidence. Such may only be received in terms of Article 2(5) of the Statute of the Appeals Tribunal in exceptional circumstances and if it is in the interest of justice and the efficient and expeditious resolution of the proceedings. The evidence self-evidently must be relevant. Mr. Koumoin’s case concerns the receivability of his request for an order of execution of an alleged default judgment and a request to be reinstated and promoted in terms of an alleged mediation settlement. His legal status as a resident of the United States has no conceivable relevance to the issues raised by his appeal. For that reason alone, the request must be refused. But, in addition, there are no exceptional circumstances, nor does Mr. Koumoin offer any convincing explanation of how the receipt of such evidence would be in the interest of justice and the efficient and expeditious resolution of the proceedings.

7. In Motion No. 2, Mr. Koumoin seeks joinder of the United States Government on the basis that his new resident status in the United States requires him to waive his rights, privileges and immunities as a staff member of the Organisation. The Appeals Tribunal may permit joinder in an appeal in exceptional circumstances under Article 31(1) of its Rules of Procedure, but there are no exceptional circumstances in this instance. More importantly, this Tribunal has no jurisdiction over the governments of member states and thus an order to that effect would not be competent.

8. The application for summary judgment in terms of Motion No. 3 is equally without merit and ill-conceived. It is permissible for this Tribunal to issue summary judgment in terms of Article 19(2) of our Rules of Procedure. However, summary judgment is only appropriate when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law.¹ The material facts in this appeal are wholly contested. The appeal turns on whether the UNDT was correct in its findings that there was in fact no default judgment and no mediated settlement. There is accordingly no basis at all to issue summary judgment.

9. In short, the motions are all manifestly groundless, frivolous and unreasonable. Mr. Koumoin was a senior staff member of the Organisation and ought to know better than to bring trivial and patently implausible motions of this kind. His conduct approximates a manifest abuse of the appeals process and, if repeated, will invite an appropriate costs award in terms of Article 9(2) of the Statute of the Appeals Tribunal.

IT IS HEREBY ORDERED that Mr. Koumoin's motions **ARE DENIED**.

Original and Authoritative Version: English

Dated this 15th day of February 2018
in Cape Town, South Africa.

(Signed)
John Murphy
President

Entered in the Register on this 15th day of
February 2018 in New York, United States.

(Signed)
Weicheng Lin, Registrar

¹ *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-740.