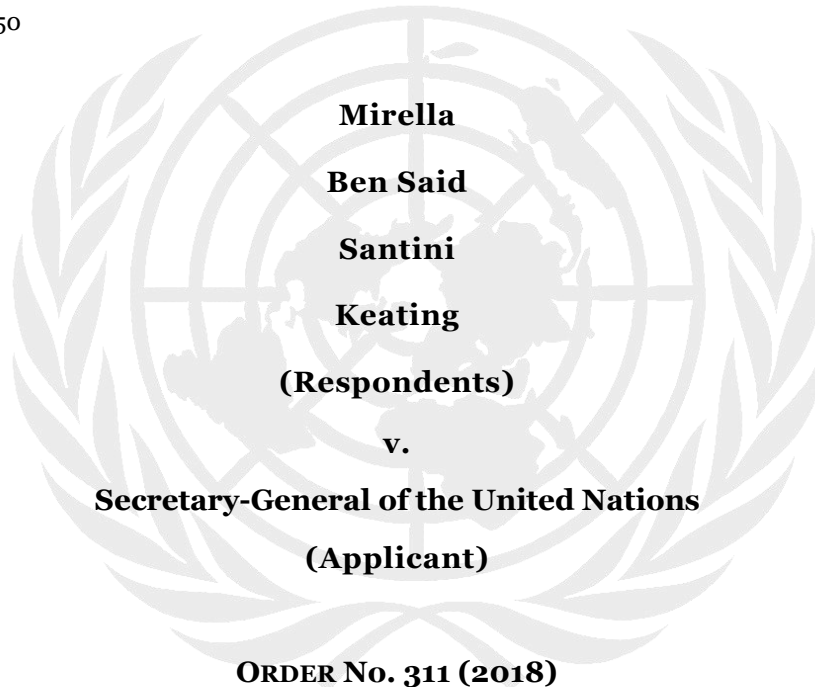




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2018-1150



1. The United Nations Dispute Tribunal (UNDT) issued Judgment No. UNDT/2017/099 in the case of *Mirella, Ben Said, Santini and Keating v. Secretary-General of the United Nations* on 29 December 2017.

2. The Judgment relates to the Resolution of the General Assembly to adopt a new compensation package for staff of the Organisation. In resolution 70/244, the General Assembly accepted the recommendations of the International Civil Service Commission to adopt a new compensation package for internationally recruited staff, including the introduction of a new unified single rate salary scale, effective 1 January 2017, for all the professional and higher categories of staff. The Respondents challenged the decision to reduce their salaries pursuant to the Resolution and the manner of the implementation of the new salary scale. The UNDT held that the contested decisions were reviewable administrative decisions, and in particular that the decision to implement the new salary scale was unlawful because it breached the Respondents' acquired right to receive a certain quantum of compensation, which could not under any circumstances be modified without their express consent. It accordingly

rescinded the Secretary-General's decision to reduce their salary. The Secretary-General intends to appeal the Judgment of the UNDT.

3. On 9 February 2018, the Secretary-General filed a motion with the United Nations Appeals Tribunal (Appeals Tribunal), seeking a waiver of the 15-page limit of the appeal brief stipulated in Article 8(2)(a) of the Rules of Procedure of the Appeals Tribunal (Rules) and an extension of that limit to 25 pages. The Respondents did not file a response to the motion.

4. In support of the motion, the Secretary-General submits that the waiver of the 15-page limit would enable him to present his legal arguments in a full and comprehensive manner so as to assist the Appeals Tribunal in dealing properly with the complexity of the appeal. The Judgment of the UNDT and the consequent appeal raise complex and momentous issues of fact and law including questions related to the scope of the UNDT's jurisdiction as well as the nature and scope of the principle of "acquired rights". The appeal thus will require the determination of complicated and highly nuanced issues of law. The existing jurisprudence of various international tribunals that have dealt with the principle of acquired rights over many decades is extensive and legally complex. Different approaches have been taken by different tribunals with the result that the existing jurisprudence is difficult to reconcile into a coherent body of law. The Appeals Tribunal has not in the past had an opportunity to pronounce on the nature and scope of the principle of acquired rights. Accordingly, the Secretary-General submits that the parties should be permitted to provide the Appeals Tribunal with full information and analysis of the body of case law and other material. In order to do so, it should not be restricted to the 15-page limit.

5. Article 8(2)(a) of the Rules limits the length of appeal briefs to 15 pages; Article 9(2)(a) of the Rules sets out the same limit for answers. Article 14 of the Rules stipulates that "provided that the waiver does not affect the substance of the case before the Appeals Tribunal, the President may waive the requirements of any article of the rules of procedure dealing with written proceedings".

6. Whilst the page limit provided in Article 8(2)(a) of the Rules serves the interests of justice in the vast majority of cases, in a case of this magnitude a waiver of the requirement will be appropriate.¹ The appeal will raise complex questions of law, the

¹ *Tadonki v. Secretary-General of the United Nations*, Order No. 126 (2013), paras. 3-4.

determination of which will impact significantly upon the rights and interests of all professional and higher staff in the Organisation. It will be in the interest of justice to relieve the Secretary-General of the constraint of page limits in making his submissions to this Tribunal. This Tribunal will benefit from as full an explication of the issues as the parties deem prudent and necessary. Thus, it will be in the interests of justice and procedural fairness to extend such a waiver to both parties. The Secretary-General has requested the page limit to be extended to 25 pages. In light of the complexity of the issues and the existing body of jurisprudence, I am inclined to grant a more generous waiver. Accordingly, pursuant to Article 14 of the Rules, the requirements of Articles 8(2)(a) and 9(2)(a) of the Rules may be waived in this matter so to permit both parties a brief of 35 pages.

7. In view of the fact that the time limit for filing an appeal of Judgment No. UNDT/2017/099 will expire shortly, I have also decided in terms of Article 14 of the Rules to grant 10 additional working days to the Secretary-General to perfect and file an appeal. Consequently, his appeal is due on 13 March 2018.

8. **IT IS HEREBY ORDERED** that the motion **IS GRANTED** and the parties are permitted to file briefs of up to 35 pages. The Secretary-General shall file his appeal on or before 13 March 2018.

Original and Authoritative Version: English

Dated 26th day of February 2018
in Cape Town, South Africa.

(Signed)
Judge John Murphy,
President

Entered in the Register on this 26th day of
February 2018 in New York, United States.

(Signed)
Weicheng Lin, Registrar