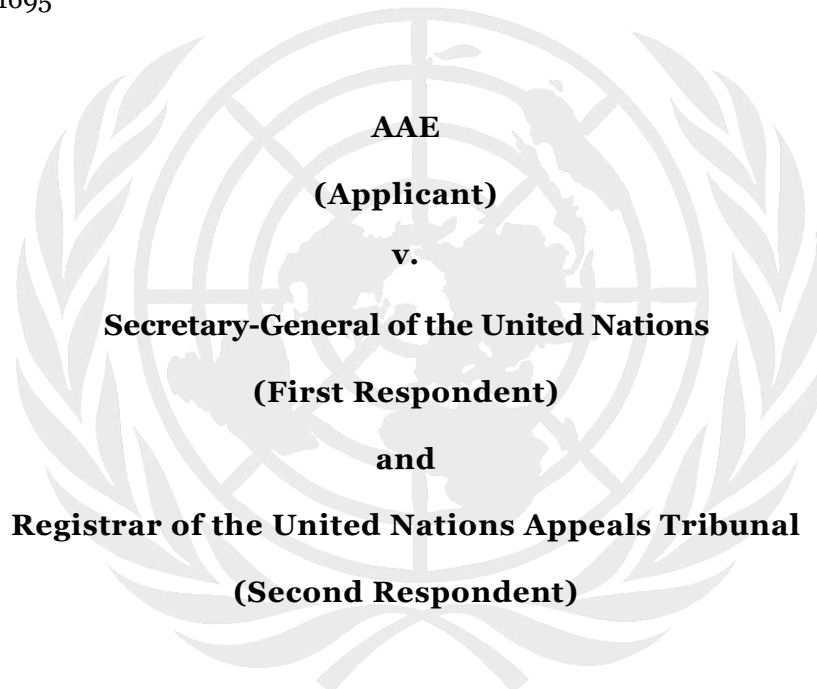




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1695



AAE

(Applicant)

v.

Secretary-General of the United Nations

(First Respondent)

and

Registrar of the United Nations Appeals Tribunal

(Second Respondent)

ORDER No. 471 (2022)

1. The Applicant (AAE) moves to have the Secretary-General and the Registrar of the United Nations Appeals Tribunal (UNAT) held in contempt, I assume although this is not stated, in contempt of the United Nations Dispute Tribunal (UNDT). I have made that assumption because it is the orders of the UNDT that are said to have been breached by the Respondents and which breaches are said to amount to contempt. The Applicant does not propose what is to be the consequence or sanction of a finding of contempt.

2. AAE has appealed against the majority Judgment of a Full Bench (three Judges) of the UNDT deciding that his dismissal from service for gross misconduct was justified.¹ The Secretary-General has cross-appealed against the UNDT's Judgment. These substantive appeals are yet to be considered and decided by the Appeals Tribunal.

¹ *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/030 dated 28 March 2022.

3. The Motion, which has been filed by AAE before his appeal has been set down for consideration, is unusual and some background and contextual information is necessary. I assume that AAE is not content to await the substantive hearing of his appeal to determine the alleged contempts to ensure that there are no further instances of what he alleges are breaches between now and then.

4. AAE, formerly a staff member attached to the United Nations Population Fund (UNFPA) was severed from service for the rape of a work colleague and for interfering with an investigation into what were then allegations of this serious misconduct by deleting relevant electronic communications. It is unnecessary and would be inappropriate to say any more about the circumstances which led to AAE's dismissal from service as his substantive appeal is yet to be heard and decided by this Tribunal. I will, however, address the UNDT's Orders which AAE says were breached.

5. On 17 August 2021, the UNDT (a panel of three Judges) granted AAE's Motion for concealment of his identity.² The UNDT's Order included both that AAE's motion was granted and an additional particularised direction. Granted was his motion that his "identity [was to be] concealed in all public records". The UNDT's additional direction was to the UNDT's Registry and was that the UNDT Registry "remove the Applicant's name from all decisions in the present case that are published on the UNDT website".

6. AAE's case is that, by naming him in the two documents filed by the Secretary-General in the UNAT, the Secretary-General acted "in contempt, and/or in total disregard of the subsisting Order of 17 August 2021, intentionally [naming him] in all its court processes in clear violation of the Order of the UNDT of 17 August 2021".

7. AAE's case against the Registrar as Second Respondent appears to be that, by accepting and processing the filing of the Secretary-General's Answer to the substantive appeal and the Cross-Appeal each bearing his name in those documents' entitling, the Registrar was in breach of the UNDT's Order and, thereby in turn, in contempt of the UNDT.

8. There are two matters going to jurisdiction which I will identify but which, because of an absence of submissions from the parties' counsel on them and because the Motion can be disposed of on its merits, I will leave undecided. The first is whether a motion

² *Applicant v. Secretary-General of the United Nations*, UNDT Order No. 166 (NBI/2021).

alleging contempt of the UNDT is within the UNAT's jurisdiction. The second is the citation of the Registrar of the UNAT as a Respondent when the Registrar was not a party to the proceeding before the UNDT. These are questions which raise preliminary and, at least, serious doubts about the justiciability of AAE's Motion. For the purposes of this Motion only, I will assume that there is jurisdiction to make the Order sought by AAE.

9. Addressing those merits of the Motion, if proceedings for contempt may arise from breach of an order made by the UNDT (or the UNAT for that matter), the terms of the order alleged to have been breached must be precise and easily ascertainable by anyone who may potentially be affected thereby. It is a serious charge that one is in contempt of a judicial body and not only must the order or direction allegedly breached be clear, but the standard of proof of a contempt must be high.

10. The Motion cannot succeed against the Registrar of the UNAT. Accepting an appeal for filing that meets the statutory criteria and processing it including by sending advice of it to the Respondent as the rules require cannot possibly be a contempt. The additional merits which I am about to address in relation to the Secretary-General apply also to the position of the Registrar.

11. Even ignoring the arguable jurisdictional barriers to granting the Motion which have not been argued, there are several grounds on which it must fail on its merits in respect of the Secretary-General.

12. First, the precise terms of the UNDT's Order have not been breached. The disclosure of AAE's name has not been on "public records". The disclosures have been on documents filed by the Secretary-General in the UNAT's Registry. Those documents are not, or are at least not yet, public records: only the parties, the UNAT Registry and the UNAT judiciary have access to these. Nor has its disclosure been in breach of the second leg of the UNDT's Order: there has not been a breach of the direction to the UNDT Registry to remove AAE's name from decisions published on the UNDT's website.

13. Second, the UNDT's Order was intended to prevent those not parties to or otherwise involved in his case from ascertaining AAE's identity. The Secretary-General and now the UNAT must necessarily know which of the many UNDT cases labelled "Applicant v. The Secretary-General" this is so as to ensure that the correct case is dealt

with on appeal. By providing, on the pleadings in the UNAT, AAE's correct name, this is assured. That does not mean that his identity will necessarily be made known more widely. AAE may apply to the UNAT to prohibit publication of his identity in publications emanating from this jurisdiction. Further, I note that the Secretary-General has cross-appealed against the decision of the UNDT to prohibit identity publication. This will ensure that the question of publication of AAE's identity will arise for re-consideration in the UNAT.

14. The Secretary-General asserts that the UNDT did not hear from him before issuing its Order prohibiting publication made on 17 August 2021. That appears from the UNDT's recitation of the background to the making of the Order to have been so: that is, the Order was made unilaterally on the Applicant's motion to the UNDT without offering the Secretary-General an opportunity to oppose, or otherwise comment on, that order as he would have done had this been afforded to him. That ground must, however, play no part in deciding the Motion before me as it is an issue in the substantive cross-appeal.

15. For the foregoing reasons, AAE's Motion is dismissed.

16. I direct the Registrar of the UNAT to allocate to this Order and any subsequent documents published by the UNAT in relation to this case, an anonymising three-letter code to preserve AAE's anonymity to others than AAE himself, the Secretary-General and the UNAT, until the appeal and cross-appeal can be determined on their merits.

IT IS HEREBY ORDERED that AAE's motion is **DENIED**.

Original and Authoritative Version: English

Dated this 31st day of August 2022
in Auckland, New Zealand.

(Signed)
Judge Graeme Colgan,
President

Order published and entered in the Register on this
31st day of August 2022 in New York, United States.

(Signed)
Weicheng Lin,
Registrar