



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1710

Samuel Bwalya

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 490 (2022)

1. On 9 May 2022, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi issued Judgment No. UNDT/2022/041 in the matter of *Bwalya v. Secretary-General of the United Nations* (the Impugned Judgment) in which the UNDT upheld the Administration's decision to separate Appellant from service as a sanction for proven misconduct in the procurement function.
2. On 8 July 2022, Mr. Samuel Bwalya (Appellant) filed an appeal against the Impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). On 19 September 2022, the Secretary-General (Respondent) filed his answer.
3. On 17 October 2022, Mr. Bwalya filed a motion for leave (Motion) to respond to the Respondent's Reply in which he claims that Respondent failed to address many of the issues raised in his appeal, such as the reliability of an affidavit and purported concealment of other evidence from him.
4. On 3 November 2022, the Secretary-General filed his comments. He requests that the Motion be rejected because Appellant's submission is merely a reiteration of arguments made in his appeal and before the UNDT, and that he has not demonstrated any exceptional circumstances to justify this additional pleading.

5. Article 31(1) of the Appeals Tribunal's Rules and Section II.A.3 of the Appeals Tribunal's Practice Direction No. 1 provide that a motion to file an additional pleading may be granted if there are "exceptional circumstances justifying the motion."

6. Because what is sought to be adduced is an additional pleading, but not additional evidence, Article 2(5) of the Appeals Tribunal's Statute relating to new evidence is not applicable to this Motion.

7. I have read and analysed the UNDT's Judgment, the Appellant's and the Respondent's submissions on the substantive appeal (including in particular the Respondent's reply which is sought by the Appellant to be answered), the Appellant's Motion and submissions in support, and the Respondent's answer in opposition to the Motion.

8. Addressing each of the bases on which the Appellant supports his Motion, he says first that the Respondent has not answered all the substantive grounds of appeal in his (the Respondent's) reply to the appeal. That is not such an extraordinary circumstance that the Appellant should be allowed to address further submissions, especially when they in effect only reiterate his prior submissions in support of his substantive appeal. The appeal will be decided on the primary submissions made by each party and if, as the Appellant claims, the Respondent's reply is deficient or inadequate, then that can be taken into account by the Appeals Tribunal in deciding the case.

9. Next, the remaining six grounds relied on by the Appellant appear to be reiterations of both his case in the UNDT and, relevantly, his appeal which I understand to be based on the broad contention that the UNDT erred in fact and in law by rejecting his case as presented before it. Not only, therefore, are the circumstances not exceptional, but the Appellant should not be permitted a second opportunity to reinforce his case on appeal by the collateral mechanism of this Motion.

10. In these circumstances the Motion must fail and is denied. Nothing said in this Order should be taken to express any view about the merits of Mr. Bwalya's appeal.

IT IS HEREBY ORDERED that Mr. Bwalya's motion seeking leave to respond to the Secretary-General's reply **IS DENIED**.

Original and Authoritative Version: English

Decision dated this 11th day of November 2022
in Auckland, New Zealand.

(Signed)
Judge Graeme Colgan,
President

Order published and entered in the Register on this
11th day of November 2022 in New York, United States.

(Signed)
Juliet Johnson,
Registrar