



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

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Case No. 2023-1792

**Hydar Daniel Mlouk Majook**

**(Appellant)**

v.

**Secretary-General of the United Nations**

**(Respondent)**

**Order No. 554 (2024)**

1. On 11 January 2023, the United Nations Dispute Tribunal (UNDT) issued Judgment No. UNDT/2023/002 in the case of *Majook v. Secretary-General of the United Nations*, dismissing Mr. Majook's application as not receivable *ratione temporis* pursuant to Article 8(4) of the Dispute Tribunal Statute because it was filed more than three years after receipt of the contested decisions (impugned Judgment).
2. On 10 March 2023, Mr. Majook filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), which was registered as Case No. 2023-1792. On 2 June 2023, the Secretary-General filed an answer.
3. On 25 July 2023, Mr. Majook filed a motion for additional pleadings, contending that there was no administrative decision taken by the Administration, and consequently the UNDT should not have applied the statutory time limits prescribed under Article 8(4) of its Statute. By Order 529(2023) of 16 August 2023, that motion was denied due to failure to identify exceptional circumstances supporting the granting of the motion.
4. On 5 February 2024, Mr. Majook filed another motion requesting production of the contested administrative decision, and attached six Annexes. The motion did not comply with formal requirements and, on 8 February 2024, the UNAT Registry advised him of the necessary corrections and granted a time limit for re-filing the motion.

5. On 16 February 2024, Mr. Majook filed the present Motion for Interim Measures (Motion). He requests the Appeals Tribunal to intervene by requesting the contested decision from the Respondent and by providing “temporary relief and wait for the outcome of the mediation”.

6. Mr. Majook argues that the impugned Judgment is not consistent with the contested decision because there is no contested decision (“that he found”).<sup>1</sup> He contends that the contested decision is necessary in order that he could examine it, and identify its date and reasons. He also submits that the Parties have sought mediation, the mediator being the Ministry of Foreign Affairs of South Sudan, and the mediation is still ongoing.<sup>2</sup> He asserts that the mediator is still in the process of resolving the matter and that he is still waiting for the resolution from the mediator.<sup>3</sup>

7. On 23 February 2024, the Secretary-General filed a response to the Motion, requesting the Appeals Tribunal to dismiss it.

8. The Secretary-General contends that it is unclear what interim measures Mr. Majook seeks: an administrative decision from the Respondent cannot be sought by way of a motion for interim measures and he does not specify how the Appeals Tribunal should intervene. The Secretary-General argues that Mr. Majook fails to demonstrate the legal requirements in Article 9(4) of the UNAT Statute: he has not shown any irreparable harm that needs to be prevented. The Secretary-General adds that the interim measure sought would not maintain consistency with the impugned Judgment and that he appears to seek the suspension of the proceedings until the outcome of a mediation the existence of which has not been established. Lastly, the Secretary-General submits that the appeal is unlikely to succeed.

9. I consider that the Motion made by the Appellant is two-fold. He is requesting the Appeals Tribunal (i) to issue an order to the Respondent to produce the contested

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<sup>1</sup> Mr. Majook submits that in Section V of his application before the UNDT, he had mentioned that he had not received the contested decision.

<sup>2</sup> Mr. Majook cites Article 8(1)(d)(iv) of the UNDT Statute which sets out as follows: “Where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the application is filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.”

<sup>3</sup> Mr. Majook refers to Annexes 1-6 to the Motion.

decisions, and (ii) to grant the interim relief of suspension of the appeals proceedings until the alleged mediation comes to end.

10. In respect of his first request for order of production of evidence, Article 8(1) of the UNAT Statute provides: “The Appeals Tribunal may order production of documents or such other evidence as it deems necessary, subject to article 2 of the present statute”. Article 2(5) of the Statute, to which Article 8(1) is subject, provides materially:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

11. Further, Article 10(1) of the UNAT Rules of Procedure specifies:

(...) On its own volition, the Tribunal may order the production of evidence if it is in the interest of justice and the efficient and expeditious resolution of the case, provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal.

12. It follows that the Appeals Tribunal may admit additional documentary evidence where an appellant shows: i) exceptional circumstances; ii) that it will be in the interest of justice and the efficient and expeditious resolution of the proceedings to receive the additional evidence; and, iii) that the evidence was not known to either party and should have been presented at the Dispute Tribunal level.<sup>4</sup>

13. The Appellant had already made a request for additional pleadings in respect of the contested decision, arguing that there was no administrative decision to which the UNDT could have applied the statutory time limits. His request was denied due to the failure to identify exceptional circumstances supporting it. Likewise, the Appellant in his present application does not identify any exceptional circumstances justifying his request.

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<sup>4</sup> *Surendra Bista v. Secretary-General of the United Nations*, UNAT Order No. 552 (2024), para. 10.

In any event, such a request should have been made before the UNDT. Therefore, this part of the Motion is denied.

14. Regarding the second request pertaining to the interim relief, Article 9(4) of the UNAT Statute provides: “[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 to maintain consistency with the judgment of the Dispute Tribunal”.

15. The Appeals Tribunal has consistently held that “an interim measure of relief is subject to very strict requirements; such relief is available to protect a litigant from the likelihood of irreparable harm, who the Dispute Tribunal believes is likely to succeed at trial or the Appeals Tribunal believes is likely to succeed on appeal.”<sup>5</sup> In the same vein, the Appeals Tribunal has found that Article 9(4) of the UNAT Statute “requires, in effect, that any interim order will maintain the *status quo* established by the UNDT’s Judgment”.<sup>6</sup>

16. As a matter of principle, I find that the requested measure of temporary suspension of the appeals proceedings is misplaced as it does not fit the spirit of interim relief. The very purpose of interim relief is to preserve the *status quo*, as established by the UNDT, until the judgment on appeal is rendered. Therefore, the intended effect of interim relief is not to delay the issuance of the judgment on appeal, but rather to ensure the existence of favorable circumstances to enable full applicability of the UNDT’s Judgment. The Appellant’s request to suspend the appeals proceedings is inconsistent with that purpose. On the contrary, the requested relief would lead to delaying the decision on the appeal.

17. In any event, the Appellant’s request cannot succeed as it does not meet the formal legal requirements to order interim reliefs. The Appellant did not present evidence that irreparable damage would occur unless the requested relief is granted. Nor did he establish that his request would allow consistency with the UNDT’s Judgment currently under appeal.

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<sup>5</sup> *Nadine Kaddoura v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, UNAT Order No. 409 (2021), para. 6.

<sup>6</sup> *Leopold Camille Yodjeu Ntemde v. Secretary-General of the United Nations*, UNAT Order No. 487 (2022), para. 5.

18. Finally, I do not find any reason under Article 11(3) of the UNAT Rules of Procedure to order the adjournment of the Appellant's case that is ready to be decided in the upcoming Spring Session of the Appeals Tribunal.

19. For these reasons, the Motion is denied.

**IT IS HEREBY ORDERED** that Mr. Majook's 16 February 2024 Motion is denied.

Original and Authoritative Version: English

Decision dated this 1<sup>st</sup> day of March 2024  
in Cairo, Egypt

*(Signed)*  
Judge Abdelmohsen Sheha,  
Presiding

Order published and entered in the Register on this  
1<sup>st</sup> day of March 2024 in New York, United States.

*(Signed)*  
Juliet E. Johnson,  
Registrar