UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/098
Judgment No.: UNDT/2011/200
Date: 23 November 2011
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

DI GIACOMO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Susan Maddox, ALS/OHRM, UN Secretariat

Notice: This Judgement has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 26 September 2011, the United Nations Dispute Tribunal rendered a final decision in Case No. UNDT/NY/2010/098, under *di Giacomo* UNDT/2011/168 ("Judgment"), whereby the Tribunal concluded it did not have jurisdiction to consider the Applicant's case and dismissed the application without consideration of its merits.

2. On 26 October 2011, the Applicant filed an application in relation to the Tribunal's Judgment, ostensibly under art. 12.2 of the Statute of the Dispute Tribunal. In his application, the Applicant requests a number of corrections and revisions to paras. 1, 4, 6, 9, 11, 13–15, 20, 23, 25, 28–30, 39 of the Judgment, with regard to, *inter alia*, the scope of his case and the contested decisions, relevant facts and parties' submissions.

3. On 9 November 2011, the Applicant filed an appeal against the Tribunal's Judgment with the United Nations Appeals Tribunal in accordance with art. 2.1 of the Statute of the Appeals Tribunal. This appeal was registered under Case No. 2011-269.

4. The principal issue for consideration is whether the Dispute Tribunal has jurisdiction to consider this matter in light of the filing of an appeal.

5. On the particular circumstances of this case, and in view of the fact that this judgment addresses matters of jurisdiction, the Tribunal did not deem it necessary to invite the Respondent's views on the present application.

Consideration

6. Pursuant to art. 12.1 of the Tribunal's Statute, either party may apply "for a revision of an executable judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Dispute Tribunal

and to the party applying for revision, always provided that such ignorance was not due to negligence". Such application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment. (See also art. 29 of the Tribunal's Rules of Procedure.)

7. Article 12.2 of the Tribunal's Statute provides that "[c]lerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties". (See also art. 31 of the Tribunal's Rules of Procedure.)

8. The former United Nations Administrative Tribunal had similar provisions in its Statute regarding applications for revision and correction (see art. 12 of the Administrative Tribunal's Statute, in its last revision). The Administrative Tribunal stated in Judgment No. 896, *Baccouche* (1998), para. I:

> It is clear from this provision that applications for revision are admissible only if a new fact is discovered which is sufficiently important to have affected the Tribunal's decision and which was unknown either to the applicant or to the Tribunal.
>
> Further, applications for correction of clerical mistakes have no other purpose than to amend such mistakes in the text of a judgment. In fact, such mistakes may be typographical or arithmetical (affecting, for example, the amount of compensation) or they may result from an accidental slip or omission. The point at issue always relates to a defect in the drafting of the judgment and never to its substance, i.e. to possible unawareness on the part of the Tribunal of facts or applicable rules.

9. The Applicant proposes changes to the Tribunal's findings regarding the scope of the case; objects to the Tribunal's factual findings and requests the inclusion of some facts and the exclusion of others; and proposes amendments to the summaries of the parties' submissions, as well as to the section on legal considerations. In some parts, he seeks to re-write the Tribunal's Judgment in his own

words. In effect, the Applicant seeks revision of the Judgment under art. 12.1 of the Statute, as well as correction under art. 12.2 of the Statute.

10. In one particular instance, he requests re-consideration of a paragraph in the Judgment concerning the Dispute Tribunal's findings regarding the scope of the case and the nature of the contested decisions. However, the Applicant's request in this respect also constitutes a ground of his appeal against the Judgment as an alleged error on a question of fact, as evidenced at paragraph A of the present application and paragraph 4 of his appeal filed on 9 November 2011.

11. The instant application has a fundamental difficulty of a jurisdictional nature. The proceedings before the Dispute Tribunal were concluded, its final judgment was rendered, and an appeal has been filed. Generally, once an appeal is filed with an appellate tribunal, the tribunal of first instance becomes *functus officio* and is no longer seized of the matter. The Dispute Tribunal need not consider whether an appeal operates as a stay of execution of the Judgment since, in at least one respect, a matter for consideration before the Dispute Tribunal is also one for consideration and determination by the Appeals Tribunal. At this point, the Dispute Tribunal has ceased to have any jurisdiction and the Appeals Tribunal must be regarded as being seized of the case. To have some aspect of the proceedings continuing concurrently in the trial court would be an abuse of process.

12. As the Dispute Tribunal has rendered its final judgment, and the Appeals Tribunal is seized of this case, the Dispute Tribunal has no jurisdiction to consider the application.

Conclusion

13. The application is dismissed.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 23rd day of November 2011

Entered in the Register on this 23rd day of November 2011

(*Signed*)

Hafida Lahiouel, Registrar, New York