



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KOUMOIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
None

Introduction

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP).
2. On 16 October 2017, he filed an application with the United Nations Dispute Tribunal (UNDT) seeking:
 - a. An order for the execution of a default judgment dated 14 December 2009 including immediate payment of interim relief salaries “embedded in the above default judgment”.
 - b. An order for enforcement of a mediated settlement agreement dated 24 May 2010.

Facts

3. The facts described below are derived from a previous application filed before this Tribunal by the Applicant and from the documents filed in relation to the present case.
4. On 3 September 2009, the Applicant filed an application with the UNDT Registry in New York. For the purpose of geographical proximity, the application was transferred to the UNDT Registry in Nairobi and registered as Case No. UNDT/NBI/2009/034.
5. That application was served on the Respondent on 6 October 2009.
6. On 20 November 2009, in relation to Case No. UNDT/NBI/2009/034, the Respondent filed a motion titled “Motion requesting clarification” where it was

alleged that the application was not served on them on 6 October 2009 and prayed the Tribunal for a further extension of one month to file a reply.¹

7. Given the lack of action on the part of the Respondent, on 14 December 2009, the Tribunal issued an unnumbered order, the relevant parts of which read as follows:²

20. The Tribunal therefore concludes that the issue of clarification does not arise here and that the Respondent is no longer, at this present juncture, part of the proceedings.

21. Should the Respondent opt to apply to re-enter the proceedings pursuant to Article 10(1) of the Rules, the motion to this effect should be filed with the Registry no later than Wednesday 16 December 2009.

8. On 16 December 2009, the Respondent filed a motion requesting that he be allowed to take part in the proceedings on the basis that he did not properly receive the application.³

9. On 17 December 2009, the UNDT permitted the Respondent to take part in the proceedings and, on 25 January 2010, the Respondent filed a reply.⁴

10. On 28 January 2010, the Applicant made a request for summary judgment in Case No. UNDT/NBI/2009/034.⁵

11. On 7 June 2010, the Tribunal issued Judgment No. UNDT/2010/105 in respect to Case No. UNDT/NBI/2009/034, in which the application was dismissed in its entirety. In dismissing the application, the Tribunal addressed, *inter alia*, the Applicant's motion for summary judgment. It held:

84. The Tribunal finally notes that the Applicant filed a motion on 28 January 2010 for summary judgment pursuant to Article 9 of the Tribunal's Rules of Procedure. The Applicant further contacted on several occasions the Tribunal through its Registry to follow-up on his

¹ Paragraph 49 of Judgment No. UNDT/2010/105 issued in relation to Case No. UNDT/NBI/2009/034.

² Annex 0.A of the present application.

³ Paragraph 51 of Judgment No. UNDT/2010/105 issued in relation to Case No. UNDT/NBI/2009/034.

⁴ *Ibid.*, at para. 52.

⁵ *Ibid.*, at para. 54.

motion. That motion of the Applicant was totally misconceived. Article 9 of the Rules of Procedure clearly states that a party may move the Tribunal for summary judgment when there is no dispute as to the material facts. Any party is entitled to a judgment as a matter of law. However, the Applicant had not shown in any way that there was no dispute on the facts and thus entitled to summary judgment. The Tribunal therefore did not give any consideration to the motion.

12. Judgment No. UNDT/2010/105 was subsequently appealed by the Applicant and affirmed by UNAT Judgment 2011-UNAT-119.

Applicant's case

13. The Applicant seeks an order for “immediate disbursement of the interim relief salaries owed to [him] by decision made by the Tribunal as part of its default judgment issued in writing on December 14th 2009”.

14. He also seeks an order for enforcement of a mediated settlement agreement dated 24 May 2010 which the Applicant annexed to his application and is titled “Mediation Settlement Agreement dated May 24th, 2010 reached under the auspices of UNDT between UNDP and Appellant's party”. The contents of the said “Agreement”, a letter dated 24 May 2010 from Guillaume Bailly, First Advisor, the Permanent Mission of the Republic of Ivory Coast to the United Nations to Helen Clark, then UNDP Administrator, is reproduced hereunder in English.

On the express instructions of the President of the Republic of Côte d'Ivoire and the Government of Côte d'Ivoire, I have the honor to confirm my agreement to reinstatement with promotion to the D-2 level as Executive Director based in New York of the Global Environment Fund of [Applicant] in compensation for the loss suffered by our national in case UNDT/NBI/2009/034 before the United Nations Administrative Tribunal in Nairobi, Kenya.

The Ivorian Government would therefore be grateful if you would inform the United Nations Administrative Tribunal in Nairobi of the formalization of the support of the Republic of Cote D'Ivoire to its citizen so that the final adjudication of the post is published as soon as possible.

You will find herewith the [Applicant's] file, including the acceptance of the charges against the UNDP by the new Directorate of this

institution, which you have managed with brilliance since April 2009. I remain at your disposal for any further information and for the follow-up of this file for which the Government of Cote D'Ivoire is waiting for the successful outcome.

15. Another filing by the Applicant is a letter dated 9 December 2010 from Alexandre Assemien of the Ivory Coast Ministry of Planning and Development to the Applicant.⁶ The letter, titled "Reintegration as Executive Director of the Global Environment Unit within UNDP in New York", describes the aftermath of that intervention as follows:

Following the audience/working meeting that you had with the Senior Minister in Charge of Planning and Development in connection with the above mentioned subject, and after review of the case file that you submitted to us, we contacted the Office of the Administrator of the United Nations Development Program.

We have been informed that your Case has been legally determined by the United Nations Dispute Tribunal and that your application was dismissed. The Government takes note of the above decision by the United Nations Jurisdictions. As a result, we recommend that you lodge an appeal of this decision using every legal resources and avenues available to you.

Please, kindly accept my warm and most distinguished greetings.

Considerations

16. The Tribunal has addressed the issue of receivability *suo motu*.

The Applicant's request for an order for execution of the "default judgment"

17. Article 32.2 of the Tribunal's Rules of Procedure provides that once a judgment is executable under art. 11.3 of the Statute of the Dispute Tribunal, either party may apply to the Tribunal for an order for execution of the judgment if the judgment requires execution within a certain period of time and such execution has not been carried out. The said art. 11.3 stipulates,

The judgements and orders of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with the

⁶ Annex 9 to the application.

statute of the United Nations Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal. Case management orders or directives shall be executable immediately.

18. Having reviewed the previous application filed by the Applicant which was registered as Case No. UNDT/NBI/2009/034, Judgment No. UNDT/2010/105 which disposed of that case, UNAT Judgment 2011-UNAT-119 which dismissed the Applicant's appeal of Judgment No. UNDT/2010/105 and the documents filed by the Applicant in support of the present case, it is immediately apparent that the Applicant did not obtain a default judgment as he alleges. The 14 December 2009 Order that the Applicant considers a default judgment merely directed the Respondent on the procedural requirements for applying to re-enter proceedings, and which indeed happened with the Respondent filing a reply on 25 January 2010.⁷ On 7 June 2010, the Tribunal proceeded to Judgment No. UNDT/2010/105 in which it dismissed the application in its entirety. Procedurally, this Judgment is not by default whereas in its substance is not executable.

The "Mediation Agreement"

19. The letter dated 24 May 2010 which the Applicant filed in support of the allegation that he had entered into a mediated agreement with UNDP is not a mediation agreement. Rather, on the face of it, it is expression of a position on the subject of the ongoing UNDT proceedings from an entity not being a party to the proceedings (a UN Member State). The other letter dated 9 December 2010 from the Ivory Coast Ministry of Planning and Development to the Applicant is not a mediation agreement either. If anything, it confirms that the case is disposed of by way of judgment.

20. The Tribunal, therefore, concludes that, there being no default judgment to execute and no mediation agreement to enforce, this application is moot and not

⁷ See para. 7 above.

receivable. To spare court expenses, the Tribunal has chosen to proceed to judgment without transmitting the application to the Respondent.

Judgment

21. The Application is manifestly inadmissible and is accordingly rejected.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 24th day of October 2017

Entered in the Register on this 24th day of October 2017

(Signed)

Eric Muli, Legal Officer, for,
Abena Kwakye-Berko, Registrar, Nairobi