



**JUDGE LUIS MARÍA SIMÓN**, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Murtala Jimoh Balogun against Judgment No. UNDT/2012/026, rendered by the United Nations Dispute Tribunal

one-year intermediate-term appointment under the 200-Series of the Staff Rules. In May 1992, his appointment was converted to a fixed-term contract.

9. On 10 January 2002, in response to the co

13. Mr. Balogun appealed. In Judgment No. UNDT/2012/026, the UNDT dismissed Mr. Balogun's application and awarded USD 500 as costs against him for abuse of process of the court. The UNDT recalled UNAdT's Judgment No. 1232, and determined that all issues reviewed by the UNAdT were res judicata. The UNDT rejected Mr. Balogun's application as it contained "the same facts and rais[ed] the same issues as the three previous applications with the former UN Administrative Tribunal". The UNDT found that Mr. Balogun had abused the proceedings and decided to award costs against him, as a matter of principle, though he was no longer a staff member and it might be difficult, if not impossible, to recover those costs from him.

14. Mr. Balogun appealed on 20 March 2012. The Secretary-General answered on 22 May 2012. On 7 June 2012, Mr. Balogun filed a motion seeking leave to file additional pleadings. By Order No. 98(2012), the Appeals Tribunal denied his motion.

15. On 16 October 2012, Mr. Balogun filed another motion to correct a typographical error in paragraph 19 of his appeal brief.

### **Submissions**

#### **Mr. Balogun's Appeal**

16. Mr. Balogun submits that when he requested payment of termination indemnity, there was no decision taken in that regard. The MEU confused the termination decision in respect of his contract taken in September 2002 with a decision to pay termination indemnity.

17. Mr. Balogun maintains that the UNDT failed to address the substantive issue of termination indemnity that he had brought to it for determination. The UNDT thus failed to exercise the jurisdiction vested in it.

18. Mr. Balogun also maintains that the UNDT committed procedural errors when it issued a summary judgment on the assumption that there was no dispute to the material facts of his case. In his view, the Respondent and the Appellant held conflicting views regarding the latter's separation and his eligibility for termination indemnity.

19. Mr. Balogun requests that the UNDT Judgment be vacated and that his case be remanded to the UNDT for trial on merits.

**Secretary-General's Answer**

20. The Secretary-General submits that the UNDT correctly found that Mr. Balogun's application was not receivable because his request for management evaluation was time-barred.

21. The Secretary-General also submits that the UNDT correctly found that Mr. Balogun was aware that he would not be paid a termination indemnity as of the date that his contract expired on 31 December 2002. The Secretary-General recalls the UNAdT's determination that Mr. Balogun's case was one of non-renewal and not termination.

22. The Secretary-General further submits that Mr. Balogun failed to establish any factual or legal errors on the part of the UNDT that would warrant a reversal of its conclusion that his application was not receivable.

**Considerations**

23. The Court notes that it granted the motion to correct a typographical error in the appellate brief submitted by M. Balogun.

24. This Tribunal holds that the main issue in the present case is the receivability of Mr. Balogun's request for management evaluation of his application for payment of termination indemnity, as well as his subsequent application before the Dispute Tribunal, rather than matters which are *res judicata*.

25. Mr. Balogun's separation from the Organization dates back to 31 December 2002, and he has since then been involved in judicial procedures before the UNAdT, trying to reverse the decision not to renew his fixed-term contract. On 22 July 2005 that Tribunal rejected his application. His subsequent applications for revision of the respective judgment had the same outcome.

26. It is clear to this Court that, at the time of his separation, Mr. Balogun was perfectly aware that he was not going to receive a termination indemnity as the Administration considered his case as one of non-renewal, and not of termination.

27. Thus, when Mr. Balogun contested before the UNAdT his separation from the Organization he should have also submitted the request for payment of a termination indemnity, so as to be able to collect it in the event that he did not succeed in the first part of his application.

28. At that time, he had a course of action which entitled him to challenge the separation and, eventually, the issue of termination indemnity if the separation was not reversed.

29. He failed to follow-up on his application for termination indemnity.

34. Therefore, this Tribunal considers that the principles of good faith and of due process of law granting access to justice must also be upheld. In the present case those principles lead us to vacate the award of litigation costs imposed by the UNDT.

**Judgment**

35. The appeal is allowed in part; the UNDT Judgment is vacated partially with regard to the award of litigation costs.

Original and Authoritative Version: English

Dated this 1<sup>st</sup> day of November 2012 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Faherty

Entered in the Register on this 18<sup>th</sup> day of January 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar