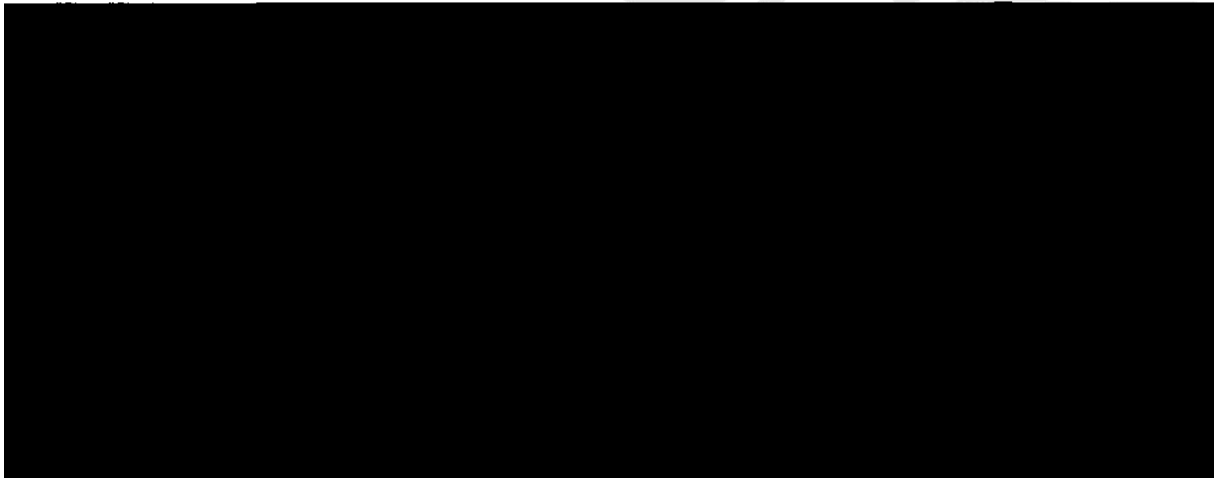




Judgment No. 2014-UNAT-460



Counsel for Mr. Ngokeng: Self-represented

Counsel for Secretary-General: StØphanie Cartier/John Stompor

JUDGE RICHARD L

7. On 6 September 2012, the Management Evaluation Unit (MEU) advised

11. The UNDT ordered the payment of six months

not a final administrative decision. Mr. Ngokeng has not established any adverse administrative decision resulting from his performance appraisal.

16. The UNDT erred by concluding that there were two separate selection processes, since the second job opening superseded the first one. Accordingly, Mr. Ngokeng's claims regarding the rejection of his candidature for the first job opening are not receivable.

17. The Secretary-General requests that the Appeals Tribunal vacate the Judgment on Receivability in its entirety.

Mr. Ngokeng's Answer

18. Mr. Ngokeng challenged the improper evaluation of his performance as a whole, not just the comments and overall rating. Mr. Ngokeng's performance appraisal was not satisfactory and had a direct and negative impact on his rights.

19. The appeal is an abuse of process and should be summarily dismissed, with an award of costs against the Secretary-General.

20. The UNDT duly took Section 15 of ST/AI/2010/5 into account in finding that Mr. Ngokeng's application was receivable. Nothing in Section 15 of ST/AI/2010/5 precludes appeals against performance evaluations tainted by gross violations of other sections of ST/AI/2010/5 and other pertinent Regulations and Rules and relevant administrative issuances.

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26. The former Administrative Tribunal's definition of an administrative decision that is

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*Conclusions*

39. Since Mr. Ngokeng's performance appraisal and the decision to suspend the recruitment process for the job opening did not have any direct legal consequences on the terms or conditions of his appointment, such decisions are not administrative decisions subject to judicial review. Accordingly, the application should not have been received *ratione materiae* and the Judgment on Receptability should be reversed.

*Judgment on the Merits*

40. Since the application should not have been received *ratione materiae*, the UNDT was not competent to address the merits of Mr. Ngokeng's application. Accordingly, the appeal is allowed and the Judgment on the Merits should be vacated.

Judgment

41. The appeals are allowed. Judgment on Receptability No. UNDT/2013/061 and Judgment on the Merits No. UNDT/2013/101 are vacated in their entirety.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2014 in New York, United States.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Adinyira