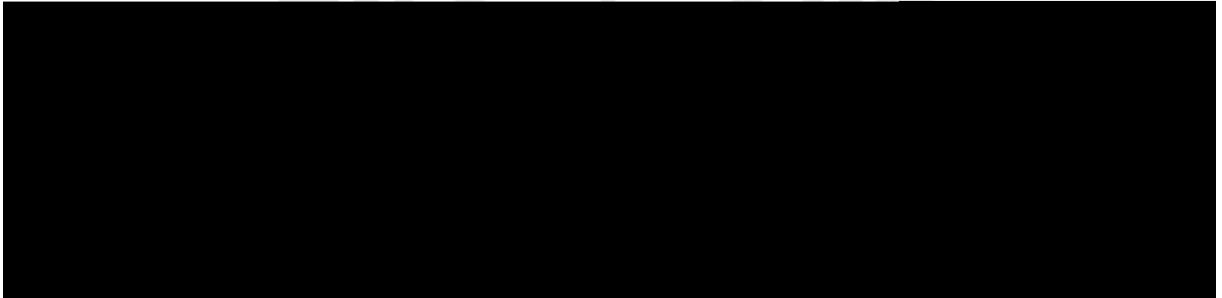


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Judgment No. 2021-UNAT-1170



Counsel for Appellant: Self-represented

Counsel for Respondent: Maryam Kamali

(UD#E (O) N RA*MOND MURP) **DRA, TIN# , OR T) E MA(ORIT*.

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) as, before an appeal, by Mattie () ussell See Mr. See# a mem, er of t!e press (!o !as ne/er , een n t!e employ of t!e 2rgan%at%on and (!o % also not a3t%ng on ,e!alf of an %3apa3%tated or de3eased staff mem, er.

2. Mr. See % 3!alleng%ng t(o orders %sued ,y United Nations *%pute Tribunal (*%pute Tribunal or UN* T8 Judge Joelle Adda %n relat%on to Case No. UN*T:N; :2011:0<7 Underly%ng Case8# of (!%#! Mr. See % not a party. =n part%ular# Mr. See ta+es %sue (%! 2rder No. 171 7N; :20208 7Contempt 2rder8# %sued ,y Judge Adda on t!e prem%e t!at !e !ad pu, l%ed 3onf%dent%al mater%als from a /%tual !ear%ng !eld on > No/em, er 2020 n t!e Underly%ng Case. T!% (as allegedly %n 3ontra/ent%on of t!e Judge's pro! % %t%on to ma+e any re3ord%ngs of t!e pro3eed%ng.

>. -or reasons set out , elo(# t!e ma@r%ty re3ts Mr. See's appeal as non-re3e%a, le.

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<. T!e fa3ts of t!% appeal are unusual and pose an %sue t!at % not stra%g! tfor(ard. T!e appeal % aga%nst an order of Judge Adda of t!e UN*T (!%#! !eld a 3ournal%t# Mr. See# %n 3ontempt and pro! % %ted !%m from attend%ng any future pu, l% !ear%ngs of t!e UN*T 3ondu3ted ,y Judge Adda# unt% !e purged t!e 3ontempt ,y eAt%ngu%!%ng all %legal re3ord%ngs of t!e > No/em, er 2020 !ear%ng 3ondu3ted ,y Judge Adda %n t!e Underly%ng Case. Mr. See also appeals aga%nst a se3ond order of t!e UN*T# 2rder No. 17B 7N; :20208 7Case Management 2rder8# (!%#! granted anonym%y to t!e appl%ant and ot!er %nd%/%duals %n/ol/ed %n t!e same 3ase.

0. 2n > No/em, er 2020# t!e *%pute Tribunal !eld a /%tual !ear%ng %n t!e Underly%ng Case. Mr. See % not a staff mem, er or a former staff mem, er of t!e 2rgan%at%on. Nor d%d !e a3t on ,e!alf of an %3apa3%tated or de3eased staff mem, er. " e (as a33ord%ngly not a party# as 3ontemplated %n Art%le > of t!e *%pute Tribunal Statute

¹ Applicant v. Secretary-General of the United Nations# Case No. UN*T:N; :2011:0<7 Underly%ng Case8# Applicant v. Secretary-General of the United Nations# 2rder No. 171 7N; :20208 dated 1 No/em, er 2020 7Contempt 2rder8# Applicant v. Secretary-General of the United Nations# 2rder No. 17B 7N; :20208 dated 1 No/em, er 2020 7Case Management 2rder8.

UN* T Statute# %n t! e l%gat%on of t! e Underly%ng Case dur%ng C! %! t! e Contested 2rders

10. In assessing the Contempt Order of the UNAT Appeals:

The Appeals Tribunal has held that the dispute Tribunal as the relevant right to hold a party in contempt of court if she refuses to obey its orders. The Applicant could have been an attendee in the public gallery of a hearing deliberately and directly refuses to follow the dispute Tribunal's order not to make any recordings and these recordings are subsequently published.

The Applicant Mr. See must not take any photos of himself or should not take any clear to him and take photographs of him, or take any illegal recordings from the hearing cannot be reproduced on a publicly accessible social media platform such as Facebook. Accordingly, Mr. See has demonstrated to the Tribunal that all illegal recordings have been removed from the public domain and destroyed. The Tribunal held Mr. See in contempt of court and prohibited him from attending any of his future hearings.

11. Regarding Mr. See's complaint that the (as denied access to the virtual hearing) the UNAT noted that the standard practice to prohibit latecomers from attending a hearing after the hearing has begun. Therefore, because the UNAT reasoned that important instructions regarding the hearing should be provided to the ones prohibiting recording

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20. There is no need in this appeal to pronounce definitively on whether the UNAT as an administrative tribunal rather than a court is as an independent power, beyond its statutorily conferred powers to hold a non-party in contempt or whether Mr. See in fact committed contempt of the U

2B. The Commission# Mr. See is not a person in respect of whom the Appeals Tribunal has jurisdiction ratione personae in terms of the Express Ordering of Article 2728 of the Statute. He is not, as required, by Article 2728 of the Statute# the partyJ Applicant# respondent or representative of an incapacitated or deceased staff member to a judgment of the UN*T. He is a member of the public, as such, denied access to UN*T proceedings, by way of a procedural default or order.

21. The apparent appearance of the jurisdictional difficulty# Mr. See nonetheless requests the Appeals Tribunal to assume jurisdiction not explicitly provided for in the Statute, because he is aggrieved, by the Contested Orders.

20. The Commission# (under Article 11 of the UN*T) rules confers jurisdiction to hold a non-party in contempt# the UN*T undoubtedly may issue an order regulating access

THE UNITED NATIONS APPEALS TRIBUNAL

>6.

JOINT DISSENTING OPINION OF JUDGES RAEME / OLIVIERO

(JUDGE 1 AND 2 ALDEEP SANDHU) AND (JUDGE CHAN, RANJAN SEN).

1. We respectfully dissent from the conclusion of the majority as to the Appeals Tribunal's jurisdiction to entertain this appeal. We acknowledge that this is a very difficult issue to which there are no plain and unrefuted answers.

2. We reach the same conclusions expressed as an observation, by the majority in the opening sentences of each of paragraphs 2B and 30 in this Judgment. To be an appellant one must be a party to the judgment challenged. The reasons set out below consider that Mr. Sen (as a party to a proceeding apparently instituted, by the UN* T itself against him for contempt. Indeed, he could go further and consider that the UN* T (as well as out jurisdiction to hold Mr. Sen as a stranger to the Underlying Case, before him in contempt. The requirements imposed on him were intended to, and are the consequent sanctions for him in UN* T m7168(o) 4(a) 4(s) -8373() -95.9552(9(n) 4.04 424(s09)] TJN258 0 T dN[(

0. The necessity for judicial review of contempt orders against non-parties, is a fundamental principle of the Appeals Tribunal's jurisdiction. It is clear that UNAT orders must be complied with and the UNAT may take the necessary measures to enforce its orders. For example, in *Uganda v. the Appeals Tribunal* (in considering the Secretary General's actions) held that:

The Court emphasizes that a party is not allowed to refuse the execution of an order issued, by the dispute Tribunal under the pretext that it is unlawful or (as rendered) in excess of that body's jurisdiction, because it is not for a party to decide, out of its own issues, whether or not to comply with the orders. The absence of compliance may merit contempt procedures.

B. Although Mr. See was not an original party to the UN* T proceedings, between the applicant and the Secretary-General in the Underlying Case, when the UN* T made an order against him as a defendant, he became a party to that case in reality as a proceeding for contempt apparently instigated by the UN* T itself. The case against him in reality is the respondent party to that proceeding for contempt. The test meets the requirement for a party to appeal under Article 2728 of the Statute and on that test the test of relevance, namely of an appeal under Article 77187, 8 of the same Statute depends.

1. Although the UN* T's declaration of his contempt and the sanctions that flowed therefrom contained in an order of the UN* T in reality also that (as a UN* T judgment) is not an interlocutory procedural direction made for the expeditious and just progress of the case then, before the UN* T. It is final and dispositive of the only issues then concerning Mr. See, that is, the contempt of the UN* T and so the consequences of that.

10. In Villamorán the Appeals Tribunal held that an appeal of an interlocutory order is relevant, when the UN* T has clearly exceeded its jurisdiction:

The Appeals Tribunal needs to establish whether it is competent under Article 2 of its Statute to hear the present interlocutory appeal. Article 2 inter alia provides that the Appeals Tribunal is competent to hear and pass

Original and Authenticated Versions: English

* dated the 21st day of October, 2021.

(Signed)

Judge Colgan
Australia/Nealand

(Signed)

Judge Sandhu
Kantou/er/Canada

(Signed)

Judge Ne/en
russels/ elgum

Entered in the register on the 20th day of November, 2021 in New York; or in the United States.

(Signed)

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