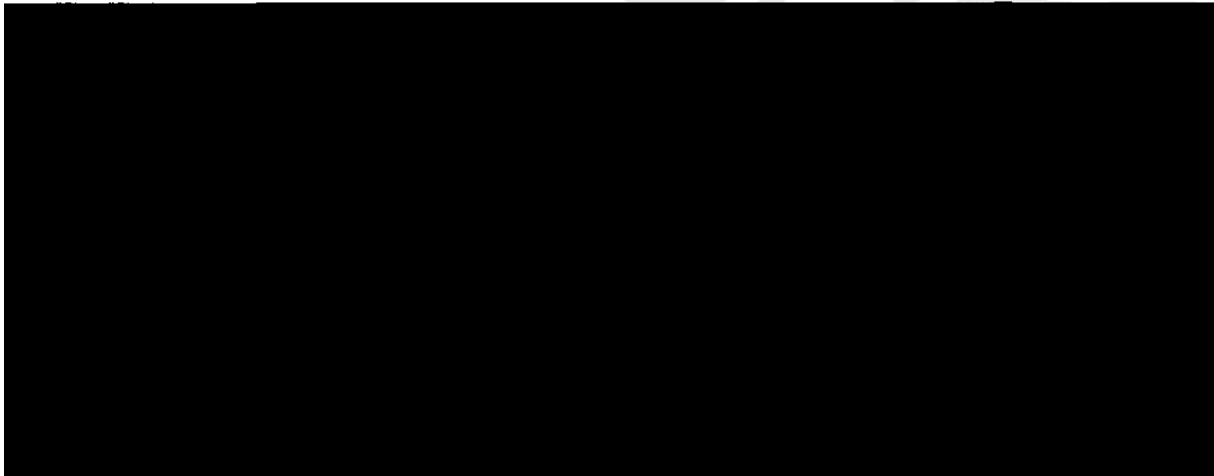




Judgment No. 2013-UNAT-362



Counsel for Appellants: Self-represented

Counsel for Respondent: John Stompor

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals: one filed by Ms. Salma Adam Nourain against Judgment No. UNDT/2012/142, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 26 September 2012 in the case of *Nourain v. Secretary-General of the United Nations*, and the other filed by Ms. Awatif Adam Nourain against the same UNDT Judgment. Ms. S. Nourain and Ms. A. Nourain appealed on 18 November 2012 and the Secretary-General answered the two appeals on 4 February 2013.

### **Facts and Procedure**

2. Ms. S. Nourain joined the African Union-United Nations Hybrid Operation in Darfur (UNAMID) in Sudan on 1 June 2008 as a Language Assistant on an Appointment of Limited Duration. On 30 May 2011, she was dismissed from service for a misrepresentation that she had made on her Personal History Profile (PHP).

3. Prior to her engagement with UNAMID, Ms. S. Nourain submitted a signed PHP dated 8 April 2008 in which she answered in the negative the question as to whether any of her relatives were employed by a public international organization. On 2 June 2009, Ms. S. Nourain submitted an updated PHP, in which she again answered the same question in the negative.

4. Following investigations into complaints about a large number of related staff members working for the mission, UNAMID found that, contrary to her statements on her PHP, Ms. S. Nourain did in fact have a sister working within UNAMID, Ms. A. Nourain.

5. A memorandum dated 8 November 2009 to Ms. A. Nourain from the Chief, National Staff Unit-Human Resources Section, UNAMID, went unanswered. In that memorandum, Ms. A. Nourain was advised that both she and her sister, Ms. S. Nourain, were employed by UNAMID in violation of former Staff Rule 4.7 and that they had 14 days within which to decide which one of them would resign. Another memorandum dated 26 November 2009 addressed to Ms. A. Nourain went equally unanswered. Ms. S. Nourain did not engage with the subsequent investigation conducted by UNAMID's Special Investigations Unit (SIU). On the other hand, Ms. A. Nourain gave a statement to the SIU investigators in which she admitted that Ms. S. Nourain was her sister.

6. Ms. S. Nourain was subsequently charged with making a material omission in her PHP by failing to disclose that she had a sister working for UNAMID and failing to respond to SIU's requests for information. Ms. S. Nourain did not respond to the allegations of misconduct. On 27 April 2011, both Ms. S. Nourain and Ms. A. Nourain were informed of the decisions to separate them from service. Ms. S. Nourain was dismissed from service without compensation, whereas her sister, Ms. A. Nourain, was separated from service with compensation in lieu of notice but without termination indemnity.

7. Both Ms. S. Nourain and Ms. A. Nourain sought review of the decisions to separate them from service. However, only Ms. S. Nourain filed an application with the Dispute Tribunal. In Judgment No. UNDT/2012/142, the UNDT rejected Ms. S. Nourain's application in its entirety. The UNDT was of the view that, by failing to disclose that she had a sister working for UNAMID, Ms. S. Nourain breached the core value of integrity expected of all United Nations staff members, and that the sanction of dismissal was proportionate to the offence.

### **Submissions**

#### **Ms. S. Nourain's and Ms. A. Nourain's Appeals**

8. Ms. S. Nourain appeals the UNDT Judgment and requests that the administrative decision to dismiss her from service be annulled, and that she be reinstated at UNAMID and compensated for lost salaries from 27 April 2011 onward.

9. Ms. S. Nourain submits that the UNDT erred on a question of law and that "the decision was unreasonable and unfair, legally and procedurally incorrect or disproportionate".

10. Ms. A. Nourain's appeal brief is identical to that submitted by Ms. S. Nourain.

#### **The Secretary-General's Answers**

11. The Secretary-General maintains that Ms. S. Nourain has failed to establish that the Dispute Tribunal has made any errors, warranting reversal of the Judgment.

12. The Secretary-General submits that the UNDT correctly upheld his decision to dismiss Ms. S. Nourain from service. The UNDT had ample basis to conclude that the facts on which the disciplinary measure rested were established. The evidence on record established that Ms. S. Nourain and Ms. A. Nourain were sisters. Although Ms. S. Nourain claims that





Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

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