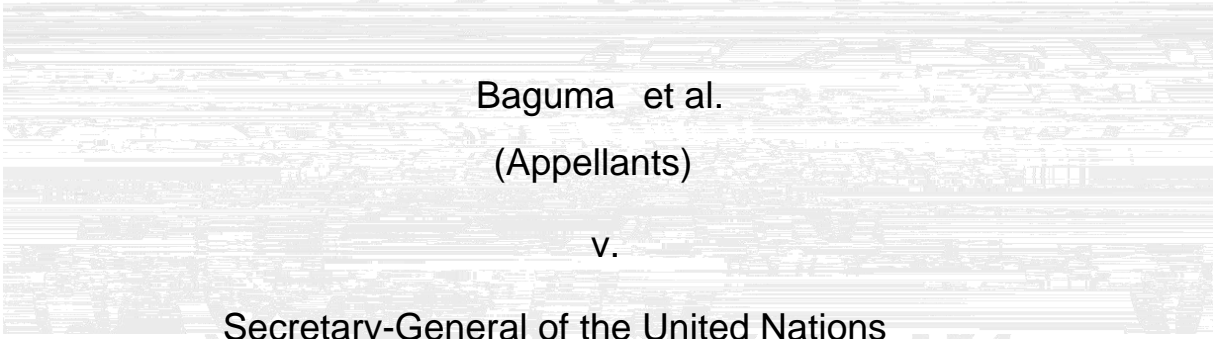




UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

---

Judgment No. 2017-UNAT-752



Baguma et al.  
(Appellants)

v.

Secretary-General of the United Nations

Counsel for Appellants: Nicole Washienko, OSLA  
Michael Brazao, OSLA

Counsel for Respondent Stéphanie Cartier

Reissued for technical reasons on 2 October 2017

JUDGE ROSALYN CHAPMAN , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it individual appeals filed by seven former staff members<sup>1</sup> (Appellants) of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO or Mission) against

abolition of posts. Their letters of appointment provided, *inter alia*, that “the normal expiration of the appointment at its term does not require the payment of any indemnity” and that “[a] Fixed-Term Appointment, irrespective of the length of service, does not carry any expectancy, legal or otherwise, of renewal or conversion to any other type of appointment in the Secretariat of the United Nations”.

5. The following facts are uncontested, as found by the Dispute Tribunal:<sup>5</sup>

... Before the said abolition, the United Nations Security Council in its Resolution 2147 (2014), had called on MONUSCO to enhance the flexibility, effectiveness and capacity of the operations of the military force in the implementation of the Mission's mandate. It also pointed to the need for a clear exit strategy.

... Thereafter, on 26 February 2015, the

... MEU replied to the designated focal point for the affected LAs on 2 July 2015 and promised to send its decision by 13 August 2015.

... Meanwhile, on 24 June 2015 the Applicant[s] received a memorandum from MONUSCO's CCPO stating that [their] fixed-term appointment[s] would not be renewed beyond 30 June 2015 and that accordingly, [their] separation from the Organization would take effect at the close of business on that same date.

... Shortly thereafter, the Applicant[s] [were] offered ... Individual Contractor (IC) contract[s] by the United Nations Office for Project Services (UNOPS) [each] for the position of LA within MONUSCO. [These] IC contract[s] [were] for a period of one month effective 1 July 2015 but [were] subsequently extended.

6. On 23 September 2016, the UNDT rendered Judgments in each of the Appellants' cases, pursuant to which it held that: (i) the Appellants' challenges to the abolition of their posts were not receivable on the grounds that staff members lacked standing to challenge a decision taken by the General Assembly; (ii) their challenges to the non-renewal of their appointments were not receivable "in so far as [the non-renewal decisions were] properly implemented in consequence of the General Assembly's decision toe

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2017-UNAT-752

The Secretary-General's Answer

13. The Appellants fail to establish any reversible error by the UNDT. The UNDT correctly concluded that it was not competent to review the decision by the General Assembly to abolish the Appellants' posts. It also correctly determined that it is not competent to review the challenge in their respective cases. So far as the consequences of the decision to abolish their posts.

14. ~~Secretary-General's Answer~~ (the UN) [TJ 19.6448 0 TD -.0166 Tc .0213 Tw [(D...]]  
regard, nor do they do so on appeal.

15. The UNDT also made the Ovcharenk. et al, and the Appellants' claim that in the present case was improperly implemented—because it had been both proposed and implemented by the Secretary-General— is without merit. The jurisprudence relied upon by the UNDT for the proposition that it is not competent to review the General Assembly's decision to abolish their posts is inapplicable in its entirety.

Considerations

Kagizi et al. v. Secretary-General of the United Nations .<sup>8</sup> Accordingly, we adopt the reasoning of Kagizi et al. , as set forth below:

... The administrative decision, which the Appellants contest in their applications before the UNDT, is the decision “not to renew [their] fixed-term appointment[s] and to separate [them] from service on the grounds of purported abolition of [their] post[s]”.<sup>[9]</sup>

... The General Assembly is the ultimate decision-making organ in the Organization and its decisions are not subject to challenge in the internal justice system.<sup>[10]</sup> The Appeals Tribunal notes the procedure of the United Nations which allows for the Secretary-General to make recommendations to the General Assembly, and for the Secretary-General to adopt and implement these recommendations when approved.

... The evidence shows that the Secretary-General, due to both budgetary constraints and changes in strategic direction of the Organization, made recommendations to the General Assembly for the abolition of 80 GS LA posts. The General Assembly approved these recommendations.<sup>[11]</sup>

... The Appeals Tribunal agrees with the UNDT’s finding of non-receivability of challenges to the abolition of posts made pursuant to decisions of the General Assembly. Neither of the parties takes issue with this ruling.

... The Appeals Tribunal upholds the UNDT’s findings that the Appellants lacked the capacity to challenge the non-renewal of their appointments, in so far as their non-renewals were properly implemented, in consequence of the General Assembly’s decision to abolish their posts.<sup>[12]</sup> Generally speaking, applications against non-renewal

asking is for the Appeals Tribunal to review and assess the quality of the Secretary-General's submissions presented to the General Assembly. This cannot be done.

... The fact that the Secretary-General is both the proposer and the implementer is in keeping with the structure of the Organization; in any event, the fact remains that the Secretary-General's proposal is an act prefatory to the General Assembly's decision and to the administrative decision at issue.<sup>[14]</sup>

... We note, further, that, in accordance with the above mentioned principles, the UNDT only denied receivability of the Appellants' application against their non-renewal in so far as it was deemed to be a direct challenge against the General Assembly's decision to abolish 80 LA posts. In other aspects, the UNDT regarded the application as receivable and dealt with the merits of the case in stating that: (i) following Ovcharenko et al. an administrative decision taken as a result of the General Assembly is lawful and the Secretary-General cannot be held accountable for executing such a decision; (ii) the provisions of Section 3.7(b) of ST/AI/2013/4 were not contravened by the hiring of the Appellants under IC contracts; and, (iii) no unequal treatment occurred in the implementation of the Mission's restructuring which led to the abolition of 80 LA posts in Bukavu and Kinshasa. These findings were not substantially challenged on appeal.

... In order to give guidance to the UNDT and the parties, the Appeals Tribunal points out that the UNDT had no authority to review the decision to offer IC contracts by UNOPS as this is not an administrative decision subject to judicial review. The only administrative decision at issue in the present case is the non-renewal of the Appellants' fixed-term appointments; the re-hiring on IC contracts is neither part of this decision nor is its lawfulness of any legal relevance thereto.

... For the reasons above, the Appeals Tribunal dismisses the appeals and upholds the decisions of the UNDT.

---

[14] Ibid .



Judgment

18. The appeals are dismissed and Judgment Nos. UNDT/2016/164, UNDT/2016/174, UNDT/2016/172, UNDT/2016/167, UNDT/2016/ 170, UNDT/2016/171 and UNDT/2016/173 are hereby affirmed.

Original and Authoritative Version: English

Dated this 14<sup>th</sup> day of July 2017 in Vienna, Austria.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Lussick

Entered in the Register on this 5<sup>th</sup> day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar