



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D**



5. Mr. Iskandar assumed his functions as Principal Officer at UNAMID on 3 June 2008. His title was subsequently changed to “Deputy Director” due to operational reasons. Mr. Iskandar’s RLA was subsequently extended for periods of varying duration until 26 January 2010, when he reached the mandatory retirement age.

6. There was a dispute among WFP, UNAMID and Mr. Iskandar regarding the precise terms of the RLA when it was up for extension. In January 2009, WFP notified first UNAMID and subsequently Mr. Iskandar that WFP agreed to the extension of Mr. Iskandar’s RLA to 26 January 2010, but WFP’s agreement to extend the RLA “d[id] not include return rights to the Programme”. Both Mr. Iskandar and UNAMID objected to that term set by WFP.

7. In February 2009, Mr. Iskandar was interviewed for the position of Deputy Director, Khartoum Liaison Office, UNAMID, at the D-1 level. By memorandum dated 8 March 2009, the Director of Mission Support, UNAMID, informed the Acting Chief Civilian Personnel Officer (Acting CCPO), UNAMID, that Mr. Iskandar had been selected for the post of Deputy Director. But Mr. Iskandar did not receive a letter of appointment for the post of Deputy Director.

8. In response to Mr. Iskandar’s request for information, on 8 June 2009, the Acting CCPO/UNAMID informed Mr. Iskandar that, as he remained a staff member of WFP on loan to UNAMID, there was no need for a letter of appointment to be issued to him. The Acting CCPO advised Mr. Iskandar that he could be considered for an UNAMID appointment and, if selected, be given a letter of appointment, if he resigned from WFP.

9. In September 2011, the Acting CCPO notified Mr. Iskandar that his RLA had expired on 30 June 2009, and that after 1 July 2009 his mission service could be extended for more than three months only under a secondment arrangement entailing a contract with UNAMID, which was subject to the agreement of WFP, among others. On 10 September 2011, Mr. Iskandar signed the secondment proposal for the period 1 July 2009 to 26 January 2010. But there was no evidence that WFP agreed to this secondment arrangement.

10.

But the decision not to appoint Mr. Iskandar as Deputy Director, UNAMID, Khartoum Liaison Office, at the D-1 level, was upheld following the management evaluation.

11. Mr. Iskandar retired on 26 January 2010. He filed an application before the UNDT on 15 March 2010. In Judgment No. UNDT/2010/100, the UNDT rejected the application on the ground that the UNDT was not competent to hear the application in respect of two decisions: i) WFP's decision not to treat him as a staff member at the D-1 level while he was on loan from WFP to UNAMID; and ii) UNAMID's decision not to appoint him to the post of Deputy Director, Khartoum Liaison Office. With respect to i), the Dispute Tribunal found that it did not have jurisdiction to review the decision taken by WFP. Regarding ii), the Dispute Tribunal found that, as a WFP staff member who was on loan to UNAMID but had no contractual relationship with UNAMID, Mr. Iskandar did not have standing **ratione personae** to contest UNAMID's decision not to offer him an appointment.

12. On 8 July 2010, Mr. Iskandar appealed the UNDT judgment above to the Appeals Tribunal. In Judgment No. 2011-UNAT-116 dated 11 March 2011, the Appeals Tribunal overturned the UNDT judgment and remanded the case to the UNDT for determination of Mr. Iskandar's application in respect of the contested decision by UNAMID.

13. In Judgment No. UNDT/2011/166, the UNDT rejected Ms. Iskandar's application on the merits, finding that Mr. Iskandar had failed to establish that UNAMID had committed any fault by which its responsibility to him was entailed. Specifically, the UNDT rejected Mr. Iskandar's argument that during the period from 1 July 2009 to 26 January 2010 he was no longer on loan to UNAMID but was working for UNAMID under a secondment arrangement. The UNDT found that the same RLA governed his relationship with UNAMID during the entire period of his service from 3 June 2008 to 26 January 2010. The UNDT also found that any possible confusion created by UNAMID about whether Mr. Iskandar had been selected for the post of Deputy Director at the D-1 level was clarified by the Acting CCPO's email of 8 June 2009, which made it clear that Mr. Iskandar could not be promoted to

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conditions for the offer are met by the candidate. The conditions for an offer should be understood as all those mentioned in the offer, those arising from the relevant rules of law for the appointment of staff members of the Organization, as recalled in Article 2, paragraph 2 (a) of the Statute of UNDT, and those necessarily associated with constraints in the implementation of public policies entrusted to the Organization.

25. The Inter-Organization Agreement covering the reimbursable loan of Mr. Iskandar, signed by WFP, UNAMID and Mr. Iskandar himself, in article 23 states that “the loaned employee shall return to the releasing agency upon completion or termination of his assignment

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Weinberg de Roca, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Courtial

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar