



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application filed by the estate of Mr. Joel Sanwidi for revision of Judgment No. 2010-UNAT-084 issued by this Tribunal on 27 October 2010. The application was filed on 27 October 2011 and the Secretary-General submitted his comments on 12 December 2011.

### **Facts and Submissions**

2. In Judgment No. 2010-UNAT-084, the Appeals Tribunal overturned the decision of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), finding that the disciplinary measure imposed upon Mr. Sanwidi was not disproportionate to his misconduct. This Tribunal concluded that, by entering into a currency exchange transaction with a vendor of the United Nations Mission in the Democratic Republic of the Congo (MONUC), Mr. Sanwidi failed to meet the standards expected of a staff member involved in procurement.

3. In the application for revision, the Applicant maintains that the Judgment at issue was rendered under the mistaken impression that the transaction in question was prohibited, and that it amounted to a loan. Attached to the application is a notarized statement dated 27 September 2011 signed by Mr. Mukoie, who was at the relevant time the owner of the Congolese company Maison Mukoie Fils (MMF) and a MONUC vendor, and who had facilitated the currency exchange for Mr. Sanwidi. The Applicant also maintains that Mr. Mukoie acted as a currency changer, not as a lender, for many MONUC staff members.

4. In his comments, the Secretary-General submits that the Applicant's assertions do not constitute a decisive fact that would warrant revision of Judgment. In his view, the Applicant should have been aware of any additional information from Mr. Mukoie that was necessary for the case prior to the release of the Judgment of the Appeals Tribunal on 29 December 2010. The Applicant's failure to obtain such information until 27 September 2011 does not transform that information into a newly discovered fact within the meaning of Article 11(1) of the Statute of the Appeals Tribunal. The Secretary-General urges the Appeals Tribunal to reject the revision application.

**Considerations**

5. Article 11(1) of the Statute of the Appeals Tribunal states:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.

6. The Appeals Tribunal found that “[b]y approaching a MONUC vendor for a currency exchange, [Mr. Sanwidi] exhibited poor judgment and put himself at ... risk that others could labor under a perception that he may favor the vendor if any opportunity presented itself to do so”.

7. The Appeals Tribunal found that Mr. Sanwidi did not meet the standards expected of a staff member involved in procurement. Accordingly, it held that his misconduct was serious and that the disciplinary measure of summary dismissal was not disproportionate.

8. The Applicant does not present new evidence but expresses disagreement with the Judgment, which reversed the UNDT judgment. The Appeals Tribunal emphasizes that the review procedure is of a corrective nature an

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Dated this 28<sup>th</sup> day of March 2013 in New York, United States.

(Signed)

Judge Weinberg de Roca51 Tf()TjEMC 0 9605 Tc -0.0013 Tw 10.98 0 0 10.9 Tc -0.0013 Tw 10.98 0 0 10.9