Judgme

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2015/007, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 28 January 2015, in the case of *Ten Have v. Secretary-General of the United Nations*. On 27 March 2015, the Secretary-General filed his appeal, and on 1 June 2015, Ms. Claudia Ten Have filed her answer.

Facts and Procedure

2. The facts as found by the Dispute Tribunal read as follows:[1]

> … At the time of this Application [in October 2013], the Applicant served as a Programme Officer in the Division of Environmental Law and Conventions (DELC) at the United Nations Environment Programme (UNEP). She serves on a fixed-term appointment at the P4 level.
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> …
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> … The Applicant used to live at the Rosslyn Lone Tree Estate, a property classified by the Security and Safety Service of [the United Nations Office at Nairobi (UNON)] (SSS/UNON) as a stand-alone house on its own compound within the meaning of the Revised Kenya Minimum Operating Residential Security Standards (MORSS). She was therefore entitled to claim the cost of monthly guard and alarm contracts, the KES 40,000 [monthly residential security allowance (MRSA)], and the one-off lump sum for capital expenditures, capped at USD 3000.[[2]]
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> … On 1 April 2011, the Applicant moved out of Rosslyn Lone Tree and into Rosslyn Valley Estate (RVE). This house was classified by SSS/UNON as a stand-alone house in a shared compound, within the meaning of the Revised Kenya MORSS. As per the MORSS, residents of shared compounds are not entitled to claim the MRSA for guard and alarm contracts nor the additional MRSA of 40,000 shillings per month.
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> … On 24 June 2011, the Applicant submitted a fresh claim for MRSA via the online Lotus Notes application. She claimed the "Shared Security Portion" and not the cost of a monthly alarm and guards' contract.
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> … On 10 August 2011, SSS/UNON approved the Applicant's claim for the Shared Security Portion, calculated at the rate of USD 800 per month. This was calculated on the basis of the amount specified in the Applicant's Lease Agreement. The approved

[1] Impugned Judgment, paras. 1-21.
[2] The exchange rate between the US Dollar and the Kenyan Shilling was 1: 80.75 on 30 December 2010, and 1: 101.90 on 30 October 2015.

amount of USD 800 was indicated in the online Lotus Notes Application, a copy of which was shared with the Applicant.

... From April 2011, the Applicant received the USD 800 MRSA which she had claimed and continued to receive the monthly payment of KES 40,000.

... In December 2012, during the course of a review of another staff member's rental subsidy application, it was discovered that some United Nations staff residing in RVE had been paid incorrect amounts of security allowance. As a result of this discovery, an analysis was undertaken of the payments made to all staff members living in the same compound.

... In February 2013, the Applicant stopped receiving the KES 40,000.

... On 16 April 2013, the Human Resource Management Service (HRMS) advised SSS/UNON of the overpayments. The Special Investigations Unit (SIU) of SSS/UNON initiated an investigation into the overpayments received berpaymw Tw[(lrecv1.rece)o2(e lm4.6(tthe ov)5.6(e9

> … The SIU completed its investigation report on 25 April 2013 and concluded that the overpayment was the result of administrative error. It also added that although the Applicant was "expected to declare the irregular payment, it [was] possible that she could have failed to notice the same in good faith". Ms. Martha Gumunyu of SSS/UNON provided a detailed explanation of the rationale behind the classification of the Applicant's residence and her non-eligibility for the additional MRSA and concluded that the Applicant "was irregularly paid KES 40,000 per month for recurrent security related expenditure only applicable to a stand-alone house. BFMS UNON did not fully effect changes of her entitlements in tandem with security report".
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> … HRMS/UNON invited the Applicant to a discussion on the security report and the overpayments on 4 June 2013. The Applicant maintained that she was entitled to the additional MRSA.
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> … On 4 June 2013, the Applicant received an Inter-Office Memorandum dated 3 June 2013 informing her that she was no longer entitled to the MRSA of KES 40,000 that she had been receiving since February 2011 because the residence that she was occupying was part of a shared compound and not a standalone house. She was advised that a total amount of KES 889,000 would be recovered from her salary in accordance with section 3 of ST/AI/2009/1 (Recovery of overpayments made to staff members).

3. In Judgment No. UNDT/2015/007, the Dispute Tribunal found that Ms. Ten Have's application was timely and receivable. It held that the words "calendar days" in Staff Rule 11.2 did not include the days on which the Organization is not working. Consequently when the deadline for Ms. Ten Have to request management evaluation fell on Saturday, 3 August 2013, it devolved onto the following working day, Monday, 5 August 2013. Regarding the merits of the case, the UNDT found that Ms. Ten Have was not entitled to the MRSA for the security guard and alarm service and upheld UNON's decision to recover the overpayments between June 2011 and January 2013. However, as the Administration made an administrative error by paying her MRSA from April 2011 to January 2013 and Ms. Ten Have was "realistic[ally]" not aware of the overpayments until 4 June 2013 when she received the 3 June 2013 memorandum notifying her of the recovery of the overpayments, the two-year recovery rule set forth in ST/AI/2009/1 applied such that the Administration could only recover two years of overpayments made to Ms. Ten Have dating back to 4 June 2013. Consequently, the UNDT ordered the refund of the recovery of the first two months of overpayment (April and May 2011). As the UNDT had no doubt that the UNON Administration's error caused Ms. Ten Have "some stress", it ordered that

Ms. Ten Have's Answer

8. There is no error of law or fact for the UNDT to hold that the two-year limitation on recovery of overpayments was applicable to Ms. Ten Have and to apply the two-year limitation period on the recovery of overpayments. Contrary to the Secretary-General's assertion, the UNDT used the date of 4 June 2013 because it was the day on which Ms. Ten Have was notified of the discovery of the overpayments, after the SIU had completed

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Judgment

18. The Secretary-General's appeal is upheld and Judgment No. UNDT/2015/007 is vacated.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Simón, Presiding	Judge Chapman	Judge Lussick

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar