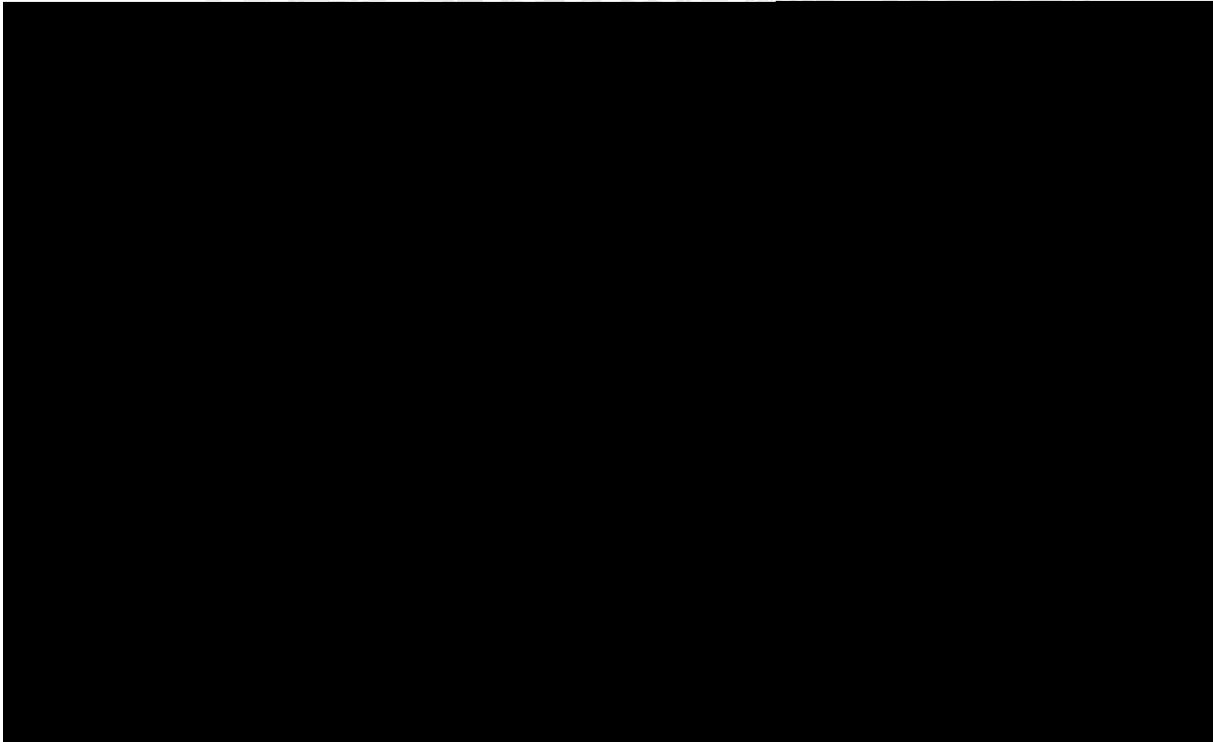


Judgment No. 2018-UNAT-833



Counsel for Mr. Koumoin:

Self-represented

Counsel for Secretary-General:

Francisca Lagos Pola

JUDGE MARTHA HALFELD , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2 017/083, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 24 October 2017, in the case of Koumoin v. Secretary-General of the United Nations. Mr. Mathieu-Credo Koumoin filed the appeal on 25 October 2017, and the Secretary-General filed an answer on 29 November 2017.

#### Facts and Procedure

2. Mr. Koumoin is a former staff member of the United Nations Development Programme (UNDP). During the material time, he was a Regional Coordinator for West and Central Africa, with the Global Environmental Facility (GEF), Bureau of Development Policy, under the 200-Series of the Staff Rules (project personnel).

3. At the end of March 2006, Mr. Koumoin filed a request for administrative review of the decision not to renew his appointment on the grounds of non-performance. In June 2008, the former Joint Appeals Board (JAB) issued a report, in which it made no recommendation in support of Mr. Koumoin's appeal. The Secretary-General endorsed the JAB's position. Mr. Koumoin thereafter appealed to the former Administrative Tribunal. His case was subsequently transferred to the newly established Dispute Tribunal.

4. In Judgment No. UNDT/2010/105 dated 7 June 2010, the Dispute Tribunal dismissed Mr. Koumoin's application that he had filed on 31 August 2009 challenging UNDP's decision not to renew his appointment. In terms of procedure, the UNDT Judge recalled that two days after he had issued an Order dated 14 December 2009, finding that the Secretary-General was technically no longer part of the UNDT proceedings related to Mr. Koumoin's case as the Secretary-General had not filed a reply within the prescribed time limits. The Secretary-General then filed a motion requesting the Dispute Tribunal's permission to participate in the proceedings. The Dispute Tribunal granted the motion, gave the Secretary-General a copy of Mr. Koumoin's application of 31 August 2009 and set 25 January 2010 as the deadline for the Secretary-General's reply. The Secretary-General filed his reply on 25 January 2010. On the merits, the UNDT concluded that the non-renewal of Mr. Koumoin's appointment was a legitimate and proper exercise of the Organization's discretion; that the UNDP had correctly

followed the performance appraisal procedures; and that Mr. Koumoin's rights to whistle-blower protection had not been violated.

5. Mr. Koumoin appealed. By Judgment No. 2011-UNAT-119 dated 11 March 2011, the Appeals Tribunal affirmed the UNDT's decision.

6. More than six years later, on 16 October 2017, Mr. Koumoin filed another application with the Dispute Tribunal, seeking an order for execution of a "Default Judgment" said to be issued by UNDT on 14 December 2009 and an order for enforcement of a "Mediation Agreement" dated 24 May 2010.

7. On 24 October 2017, the Dispute Tribunal issued Judgment on Receivability No. UNDT/2017/083, without having transmitted

9. On 30 November 2017, Mr. Koumoin filed a motion seeking leave to file additional pleadings, to which the Secretary-General filed his response opposing the motion.

10. In Order No. 305 (2017) dated 26 December 2017, the Appeals Tribunal denied Mr. Koumoin's motion to file additional pleadings and ordered that the Registrar shall not include Mr. Koumoin's motion and annex thereto as well as the Secretary-General's response to the motion in the case file. The Order was transmitted to the parties on 26 December 2017.

11. Between 2 and 5 January 2018, Mr. Koumoin filed three motions, seeking permission to adduce several documents and requesting that the Appeals Tribunal issue a summary judgment

that the Appeals Tribunal order enforcement of the 24 May 2010 “Mediation Settlement Agreement” and specific performance including his immediate appointment as the UNDP-GEF Executive Director/Coordinator at Headquarters in New York at the D-2 level.

The Secretary-General's Answer

16. The Secretary-General contends that the Dispute Tribunal correctly dismissed Mr. Koumoin's application as moot and not receivable, as far as the execution of a default judgment and the enforcement of a mediation agreement were concerned, as there was no default judgment or mediation agreement. Mr. Koumoin's pleas relating to the non-renewal of his appointment should be set aside and cannot be re-litigated, as they have already been reviewed and rejected by both the Dispute Tribunal and Appeals Tribunal.

17. Mr. Koumoin's reference to the grounds of appeal without substantiating why the impugned Judgment was defective is not sufficient to reverse that Judgment. He has failed to contest any aspect of the impugned Judgment or to refute the Dispute Tribunal's finding that his application was moot and not receivable. By repeating his UNDT submissions before the Appeals Tribunal, Mr. Koumoin is essentially rearguing his case and requesting the Appeals Tribunal to consider his original UNDT submissions *de novo*.

Lawfulness of the UNDT summary judgment

20. The decision by the Dispute Tribunal to dismiss Mr. Koumoin's application as "manifestly inadmissible" is not tainted by any of the errors set forth in Article 2(1) of our Statute, which are the only grounds of appeal at the disposal of the parties.

21. As established by Article 9 of the UNDT Rules of Procedure<sup>5</sup>

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine,

26. In the initial proceedings, the UNDT issued Judgment No. UNDT/2010/105, dismissing Mr. Koumoin's application, and the Appeals Chamber affirmed the UNDT's decision.

Judgment

31. The appeal is dismissed and Judgment on Receivability No. UNDT/2017/083 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22<sup>nd</sup> day of March 2018 in Amman, Jordan.

(Signed)

(Signed)

(Signed)

Judge Halfeld, Presiding