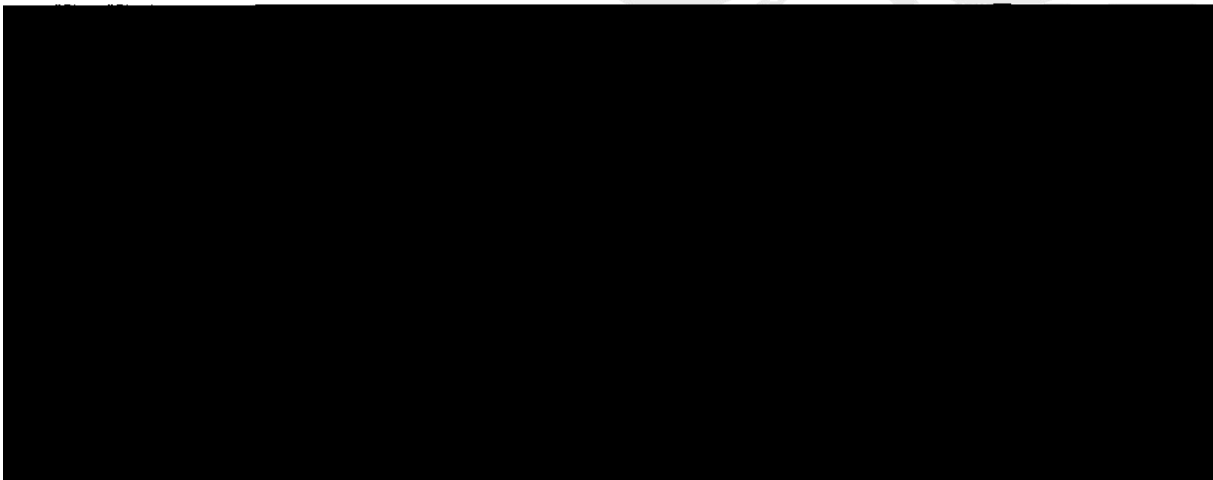


Judgment No. 2015-UNAT-577



**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it the appeal by Mr. Marc Michael Staedtler of Judgment No. UNDT/2014/127, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 21 October 2014, in the matter of *Staedtler v. Secretary-General of the United Nations*. Mr. Staedtler filed his appeal on 29 October 2014, and the Secretary-General filed his answer on 2 January 2015.

**Facts and Procedure**

2. Mr. Staedtler is a former staff member of the United Nations Human Settlements Programme (UN-Habitat).

3. On 14 October 2012, Mr. Staedtler requested legal representation from the Office of Staff Legal Assistance (OSLA) regarding, *inter alia*, UN-Habitat's alleged violation of the United Nations' procurement and project management rules and regulations, the possible non-renewal of his appointment due to retaliation against him, and other complaints he had about his treatment by UN-Habitat management.

4. On 21 November 2012, OSLA provided him with legal advice or assistance, including a detailed assessment of his complaints.

5. On 27 November 2012, Mr. Staedtler advised OSLA that he had received notice of the non-renewal of his appointment, effective 30 December 2012. On 3 December 2012, in a telephone conversation, a Legal Officer with OSLA advised Mr. Staedtler to request the reason for the non-renewal decision. Subsequently, on 5 December 2012, two Legal Officers from OSLA had an hour long telephone discussion with Mr. Stae

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13. On 12 November 2013, OSLA provided legal advice to Mr. Staedtler on key jurisprudence that might assist him in pursuing his claims, but advised him that it would not represent him. In response to Mr. Staedtler's further request to OSLA to reconsider its decision not to represent him in Case No. 2, OSLA declined. OSLA again explained that it could not represent him in Case No. 2, which "may be heard together or depend upon some of the same facts [as Case No. 1 when] we have declined assistance in [Case No. 1]".

14. On 3 December 2013, Mr. Staedtler submitted a request for management evaluation of OSLA's decision of 5 November 2013, to decline legal representation in Cases No. 1 and No. 2. The Management Evaluation Unit informed Mr. Staedtler that his request was not receivable on 20 December 2013.

15. On 30 December 2013, Mr. Staedter filed an application with the UNDT contesting OSLA's decision of 5 November 2013, declining to represent him in Case No. 1 and Case No. 2. The Secretary-General filed his reply on 4 April 2014.

16. On 1 July 2014, pursuant to Order No. 169 (NBI/2014), the matter was transferred from the Nairobi Registry to the Geneva Registry, where it was assigned Case No. UNDT/GVA/2014/52.

17. On 6 August 2014, and 19 August 2014, the UNDT issued Order No. 116 (GVA/2014)<sup>2</sup> and Order No. 126 (GVA/2014),<sup>3</sup> respectively, which Mr. Staedtler challenged by an appeal filed on 26 August 2014.<sup>4</sup>

18. On 21 October 2014, the Dispute Tribunal issued Judgment No. UNDT/2014/127 rejecting Mr. Staedtler's application. Mr. Staedtler filed an appeal of Judgment No. UNDT/2014/127 on 29 October 2014, and the Secretary-General answered on 2 January 2015.

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<sup>2</sup> The UNDT granted the Secretary-General's motion to participate in the proceedings and to accept his reply of 3 April 2014 as part of the UNDT record.

<sup>3</sup> The UNDT denied the "Applicant's motions for reconsideration [of Order No. 116] and for permission to respond to the Respondent's reply".

<sup>4</sup> See *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-560 (finding the interlocutory appeal was not receivable).

**Submissions**

**Mr. Staedtler's Appeal**

19. The Appellant claims that the Dispute Tribunal: “(i) committed errors of procedure, (ii) exceeded its competence in ignoring relevant matters placed before it by the parties, (iii) erred on questions of fact and (iv) erred on questions of law resulting in a manifestly unreasonable judgment”.

20. The Appellant complains that the UNDT “exceeded its competency when it failed to reflect in its summary of the procedural background that the Appellant had filed an Interlocutory Appeal” which the Appeals Tribunal had not decided before the UNDT issued its Judgment.

21. The Appellant claims that the UNDT erred in law in concluding that OSLA’s decision not to represent him in Case No. 1 and Case No. 2 was not unlawful. The proper standard for OSLA to decline legal representation is not whether a case has no reasonable prospect of success but whether a case is obviously frivolous.<sup>5</sup> As the Appellant’s cases were not obviously frivolous, OSLA’s decision was unlawful.

22. The Appellant asserts that the UNDT committed an error in procedure, exceeded its competence and erred on a question of fact and law when it failed to evaluate whether OSLA properly executed its discretion in declining legal representation in Case No. 2. Rather, its decision was based on personal prejudice and bias against the Appellant and a self-serving interest in defending its prior refusal of December 2012 to represent him.

23. The Appellant submits that the UNDT exceeded its competence and made errors of fact in paragraphs 21, 22, 48, 54, 56, 58, 59, 60, 61 and 62 of the Judgment and made further errors of fact when it failed to either include information or make certain findings in paragraphs 23, 24, 25, and 37 of the Judgment.

24. Lastly, the Appellant urges the Appeals Tribunal to “direct the appointment of an alternative Judge” and to hear all of his cases together in order to determine the overarching retaliation against him that amounts to institutional retaliation.

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<sup>5</sup> Citing *Kita v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/025.

**The Secretary-General's Answer**

25. The UNDT is neither required to consider the Appellant's appeal of an interlocutory order in its Judgment, nor to suspend the proceedings or stay the issuance of its Judgment while the interlocutory appeal is pending. Accordingly, the UNDT did not exceed its competence when it did not consider the pending interlocutory appeal.

256

appointment and therefore can fall within the jurisdiction of the UNDT, without interfering with the professional independence of counsel.<sup>7</sup>

30. Staff Rule 11.4(d) provides that “[a] staff member shall have the assistance of counsel through the Office of Staff Legal Assistance if he or she so wishes [...] in the presentation of his or her case before the United Nations Dispute Tribunal”.<sup>8</sup>

31. Based on Staff Rule 11.4(d), the Appeals Tribunal has determined that “the right of staff members to receive assistance from OSLA does not amount to a right to be represented by OSLA”.<sup>9</sup> Nevertheless, we also found that “[t]he discretionary power of OSLA not to represent a person is not unfettered”.<sup>10</sup>

32. In his UNDT application contesting OSLA’s decision of 5 November 2013, to decline to provide him with legal representation in Cases No. 1 and No. 2, Mr. Staedtler claimed the decision: (i) was “substantively irregular” in that OSLA failed to give valid reasons to support its decision; (ii) violated his due process rights to “fair dealing, to act in good faith and to respect [his] dignity”; (iii) was an abuse of authority in that it incorporated personal prejudice and bias against him; and (iv) caused him severe emotional and professional damage, which requires monetary compensation.

33. The Dispute Tribunal found no merit to Mr. Staedtler’s claims, concluding that “OSLA provided [the Appellant] with legal assistance. Its refusal to provide legal representation was reasoned and appropriate and did not breach any lawful obligations of OSLA.”<sup>11</sup> For the reasons discussed below, the Appeals Tribunal determines that the Dispute Tribunal did not err in law or fact or exceed its competence in reaching this conclusion.

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<sup>7</sup> *Scheepers v. Secretary-General of the United Nations*,

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# THE UNITED NATIONS APPEALS

42. On appeal, Mr. Staedtler raises two additional claims. He complains that the UNDT “exceeded its competency when it failed to reflect in its summary of the procedural background that the Appellant had filed an Interlocutory Appeal” which had not been decided by the Appeals Tribunal before the UNDT issued its Judgment. The Secretary-General reasonably interprets this claim to mean that the Appellant asserts that the UNDT exceeded its competence by issuing the Judgment while his interlocutory appeal was pending or, in other words, the interlocutory appeal should have stayed the UNDT proceedings so that a Judgment could not issue.

43. There is no legal authority for the Appellant’s contention, as the Secretary-General

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Original and Authoritative Version: English

Dated this 30<sup>th</sup>