



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals by Mr. Kasirim Nwuke, one against Order No. 103 (NBI/2012) and the other against Judgment No. UNDT/2012/116, both of which were issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 1 August 2012. Mr. Nwuke appealed on 3 August 2012 and 14 August 2012, respectively. The Secretary-General filed one answer to both appeals on 13 September 2012.

### **Facts and Procedure**

2. Mr. Nwuke has been a staff member with the Economic Commission for Africa (ECA) in Addis Ababa since 2001. In November 2011, when the present case arose, he was the P-5 Chief of Section with the Office of Strategic Planning and Programme Management.

3. On 8 November 2011, a temporary vacancy announcement for the D-1 post of Director, Governance and Public Administration Division (GPAD), was circulated, the incumbent, Mr. Hamdok, having been promoted as Deputy Executive Secretary of ECA. Mr. Nwuke applied, but he was not interviewed or selected. On 22 November 2011,

7. In Judgment No. UNDT/2012/116 also dated 1 August 2012, Judge Boolell provided the reasons as to why he had decided not to grant Mr. Nwuke's suspension request. Judge Boolell found that Mr. Nwuke's suspension request met the test of *prima facie* unlawfulness, one of the three cumulative conditions for a successful suspension request. In his view, the impugned decision was fraught with procedural irregularities. However, Judge Boolell considered that as the impugned decision was implemented when the selected candidate was notified on 20 July 2012, Mr. Nwuke's suspension request failed to meet the "urgency" requirement set out in Article 2(2) of the UNDT Statute. Mr. Nwuke appealed that Judgment. This is Case No. 2012-362.

### **Submissions**

#### **Mr. Nwuke's Appeals**

##### **Case No. 2012-359**

8. The UNDT failed to exercise the jurisdiction and competence vested in it by refusing to entertain Mr. Nwuke's application for suspension of action of the decision under appeal.

9. The UNDT exceeded its authority when it did not consider all relevant laws of the Organization.

10. The UNDT Judge should have recused himself from this case, as he had decided on a similar case in 2012.<sup>1</sup> In that earlier case, the UNDT Judge rejected the application for suspension of action for the same reason given in the Order under appeal. By presiding over the present case, the UNDT Judge exercised what amounted to an appellate review of his own previous judgment.

##### **Case No. 2012-362**

11. The UNDT failed to exercise the jurisdiction and competence vested in it by rejecting his suspension of action application when, it is submitted, the impugned decision was not implemented.

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<sup>1</sup> *Nwuke v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/002.





Original and Authoritative Version: English

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

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Chapman

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar