



1. On 31 May 2012, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York issued Judgment No. UNDT/2012/081, in the case of *Mpacko v. Secretary-General of the United Nations*, denying the application of Ms. Adele Maloka Mpacko for suspension of action pending management evaluation of the decision to reassign her.

**Facts and Procedure**

2. Briefly stated, Ms. Mpacko is an Associate Civil Affairs Officer on a P-2 post originally assigned to the Civil Affairs Section of the United Nations Stabilization Mission in Haiti (MINUSTAH). A couple of years ago, she filed a complaint against her supervisor, the Chief of the Civil Affairs Section (Chief). Subsequently, Ms. Mpacko withdrew her complaint, gave the Chief a written apology, and was reassigned to the Contracts Management Unit, MINUSTAH, where she remained

decision to downsize the Mission, the Civil Affairs Section requested that the P-2 post encumbered by [her] be returned to them.”<sup>1</sup>

6. On 7 May 2012, Ms. Mpacko requested management evaluation of the reassignment decision.

7. On 29 May 2012, Ms. Mpacko filed an application with the UNDT for suspension of action pending management evaluation of the decision to reassign her from the Procurement Section to the Civil Affairs Section, MINUSTAH, effective 1 June 2012. After reviewing Ms. Mpacko’s application, the New York Registry of the Dispute Tribunal advised Ms. Mpacko to submit her application on the proper UNDT form and to file it through the eFiling portal. On 30 May 2012, Ms. Mpacko electronically filed her application for suspension of action pending management evaluation on the proper UNDT form, and the New York Registry transmitted it to the Respondent. The Respondent filed his reply by 2:00 p.m. on 31 May 2012, as directed by the New York Registry.

8. Later on 31 May 2012, the UNDT issued Judgment No. UNDT/2012/081 denying Ms. Mpacko’s application for suspension of action pending management evaluation. In denying the application, the UNDT applied Article 2(2) of the Dispute Tribunal Statute<sup>2</sup> and determined there was no particular urgency to the application. More specifically, the UNDT concluded that Ms. Mpacko knew of the “final decision” to reassign her effective 1 June 2012, at least six weeks before she brought her application. The UNDT, thus, determined that “[a]ny urgency ... is of [Ms. Mpacko’s] own making”. The UNDT further determined that since “one of the three conditions required for temporary relief under art. 2.2 of the Statute has not been met, [it] need not determine whether the remaining two conditions -- *prima facie* unlawfulness and irreparable damage -- have been satisfied”.

9. On 30 July 2012, Ms. Mpacko filed an appeal of Judgment No. UNDT/2012/081 denying her application for suspension of action pending management evaluation. And on 28 September 2012, the Secretary-General filed his answer to the appeal.

### **Submissions**

#### **Ms. Mpacko's Appeal**

10.



whether, and only whether, the Dispute Tribunal has respected the limits of the competence conferred on it by those provisions. Were the Appeals Tribunal to decide that the Dispute Tribunal had not exceeded its jurisdiction or competence, the appeal would be considered non-receivable[.]<sup>6</sup>

17. On appeal, Ms. Mpacko raises two claims: (1) the Dispute Tribunal erred as a matter of law in determining there was no “particular urgency” for her application and erred in

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

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Faherty

Entered in the Register on this 24<sup>th</sup> day of May 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar