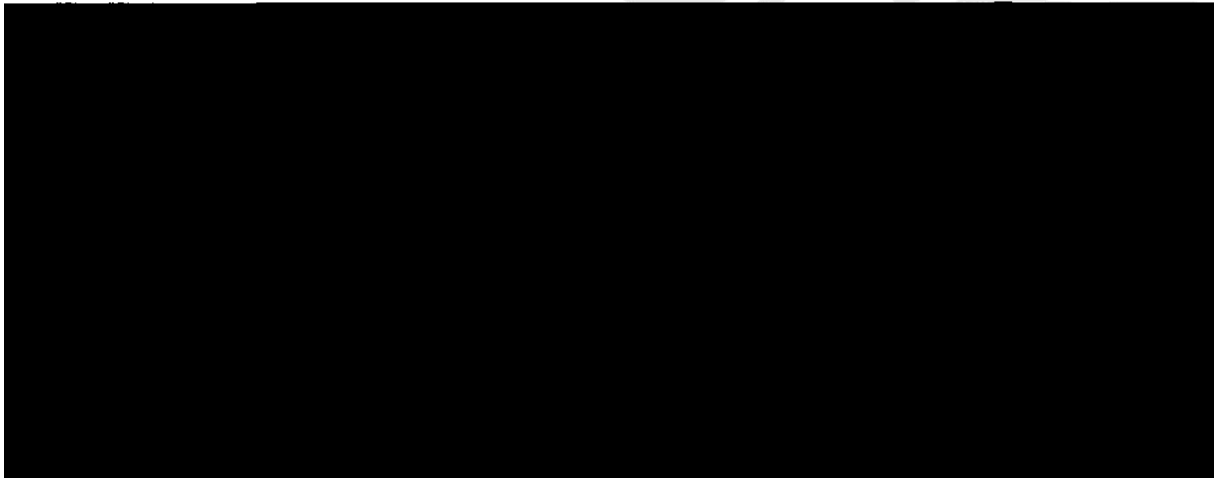




Judgment No. 2013-UNAT-387



Counsel for Mr. Gakumba: Self-represented

Counsel for Secretary-General: Amy Wood

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2012/192, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 6 December 2012 in the case of *Gakumba v. Secretary-General of the United Nations*. The Secretary-General appealed on 1 February 2013 and Mr. Nzamwita Gakumba answered on 18 March 2013.

### Facts and Procedure

2. The Dispute Tribunal made the following findings of fact:<sup>1</sup>

... [Mr. Gakumba] joined the United Nations on 22 July 2002 for a probationary period of three months as a Programme Analyst in the United Nations Development Programme (UNDP) in Kigali, Rwanda. This probationary period was extended on 22 October 2002 for two months through to 31 December 2002.

... On 1 January 2003, his contract was converted to a fixed-term appointment and extended through to 31 December 2003. At the expiration of [Mr. Gakumba's] contract in December 2003, he was offered a fixed-term contract to run from 1 January 2004 to 31 December 2004.

...

... Sometime in 2003, the UNDP Rwanda Kigali office supported [Mr. Gakumba's] participation in UNDP's Virtual Development Academy course for 2003 which he completed successfully. [Mr. Gakumba] was also elected President of the Staff Association in December 2003.

... In April 2003, UNDP's Career Review Group (CRG), concluded [Mr. Gakumba's] Results and Competency Assessment (RCA) for 2002 with a recommendation of "partially met expectations".

... In early 2004, Mr. Kamau [, UNDP's Resident Representative (RR),] informed UNDP staff that the involvement of the Staff Association in the CRG would be discontinued. On 28 February 2004, [Mr. Gakumba] wrote to Mr. Kamau, on behalf of the Staff Association, disputing this decision.

... In May 2004, [Mr. Gakumba's] immediate supervisor, Mr. Gana Fofang, Deputy Resident Representative (DRR), assessed [Mr. Gakumba's] performance as "fully met expectations" for the period from 1 February 2003 through 31 January 2004. Thereafter, Mr. Fofang proceeded on a new assignment in Mozambique. On 17 May 2004, the CRG, under the chairmanship of Mr. Kamau,

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<sup>1</sup> The facts here are taken from Judgment No. UNDT/2012/192, paragraphs 1 – 21.

disagreed with the views of [Mr. Gakumba's] immediate supervisor and assessed [Mr. Gakumba's] performance for the period as "unsatisfactory".

... By email dated 19 May 2004, addressed to Mr. Kamau and copied, *inter alia*, to all the UNDP Rwanda Staff, [Mr. Gakumba] contested the CRG's findings and conclusions and alleged that Mr. Kamau had "manipulated" the CRG.

... On 21 May 2004, Mr. Kamau addressed an email to all UNDP Rwanda staff in which he informed them that [Mr. Gakumba's] contract had been terminated effective

I expressed equal frustration with [Mr. Gakumba] and others periodically as performance and deadline pressures occasioned and not as stated and I know of no aggressive behaviour what ever that means.

... On 21 August 2004, Ms. Odette Murat, Deputy Resident Representative, UNDP, Kigali, Rwanda notified [Mr. Gakumba] that the UNDP Management had received, on 20 August 2004, two official complaints against him from two former consultants who claimed, *inter alia*, that he had threatened and intimidated his colleagues at UNDP, Rwanda. Copies of the complaints were attached for [Mr. Gakumba's] review and comments.

... On 23 August 2004, [Mr. Gakumba] refuted the allegations. He stated that his election as President of the Staff Association attested to the trust and confidence that staff had put in him, especially in promoting their interests which was disturbing to the senior management because he did not allow management to manipulate him. [Mr. Gakumba] stated that he was not aware of any written or signed memorandum addressed to him regarding these allegations of misbehaviour as was required by the United Nations Regulations and Rules. He rejected the allegations as unfounded.

... On 9 December 2004, the RCA Rebuttal Panel submitted its report concluding, *inter alia*, that:

- a. the CRG did not provide adequate justification for its decision to downgrade [Mr. Gakumba's] RCA rating by two levels from "fully met expectations" to "unsatisfactory";
- b. [Mr. Gakumba's] performance review lacked due process in terms of lack of documentary evidence and feedback on [his] performance and "substantially different" assessments of [his] performance by Mr. Kamau and Mr. Fofang and the non-participation of Mr. Fofang in the CRG meeting even though he was willing to participate via telephone;
- c. [Mr. Gakumba's] behavioural issues had a negative impact on his performance which was documented by the CRG;
- d. given the severity of the CRG comments, the Panel was concerned that management did not take timely and appropriate steps to address [Mr. Gakumba's] alleged behavioural issues;
- e. there was insufficient evidence to justify the final RCA/CRG rating of "unsatisfactory"; and
- f. the Panel recommended that [Mr. Gakumba's] CRG rating be changed to "partially met expectations" having taken into account Mr. Kamau's information on behavioural issues.

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alternative, two years' net base salary in lieu of reinstatement. In addition, the Dispute Tribunal ordered that Mr. Gakumba be paid seven months' net base salary in compensation for "several procedural and due process violations, humiliation and embarrassment" resulting from administrative actions including Mr. Kamau's letter of 21 May 2004 and the CRG's flawed evaluation.

### **Submissions**

#### **The Secretary-General's Appeal**

5. The Secretary-General submits that the Dispute Tribunal erred in setting compensation

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**Considerations**

13. Having considered both parties' submissions,



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