



**Administrative Tribunal**

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LIMITED

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1042

Case No. 1083: EDONGO

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Kevin Haugh, Vice-President; Mr. Omer Yousif Bireedo;

Whereas on 21 May 2001, Hubert Menye Edongo, a former staff member of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR) filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 31 July 2001, the Applicant, after making the necessary corrections, again filed an Application in which he requested, in accordance with article 12 (the former article 11) of the Statute of the Tribunal, the revision of Judgement No. 987 rendered by the Tribunal on 22 November 2000;

Whereas the Application contained pleas requesting the Tribunal to:

"...

- [Set] aside ... [the] Applicant's summary dismissal, with complete restoration of all benefits, back pay, pensionable remuneration, emoluments, and all other allowances ...;

...

- [Award] ... fifteen thousand US dollars in respect of costs and expenses;
- [Award] ... moral damages in an amount equal to at least two years of the Applicant's salary at the time of his impugned dismissal;
- [Award] interest on any monetary damages awarded hereunder...; and,
- [Award] such other relief as the UNAT deems necessary, just and equitable."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 January 2002;

Whereas the Respondent filed his Answer on 11 December 2001;

Whereas the Applicant filed Written Observations on 20 March 2002, requesting, inter alia, oral proceedings;

Whereas, on 9 July 2002, the Tribunal decided that no oral proceedings would be held in the case;

Whereas the facts in the case were set forth in Judgement No. 987.

Whereas the Applicant's principal contentions are:

1. The case consists of extraordinary circumstances that deserve the intervention of the Tribunal in response to this Application for review.
2. The Applicant submits that Judgement No. 987 was tainted by omission of material facts, mistaken findings of material facts, and by the omission to consider the Applicant's claim that his conduct was entirely consistent with the established UNHCR procedure and that he never intended to defraud the Organization.

Whereas the Respondent's principal contention is:

The Applicant failed to introduce any fact of a decisive nature which was unknown to the Tribunal and to the Applicant at the time Judgement 987 was rendered, and, accordingly, his request for a revision of that Judgement is without merit.

The Tribunal, having deliberated from 25 June to 23 July 2002, now pronounces the following Judgement:

I. The Applicant seeks revision of Judgement No. 987 of 22 November 2000, rejecting the Applicant's application in its entirety. The Applicant claims that the Tribunal erred in Judgement No. 987 when it failed to consider all of the relevant facts and concluded that the Applicant's behaviour rose to the level of fraud.

II. The case concerns whether a revision should be granted. The Applicant requests that the Tribunal revise Judgement No. 987 on the grounds that the Tribunal failed to take account of all material facts which proved the Applicant had no intention to defraud the Organization. The Respondent claims that the Applicant failed to introduce any fact of a decisive nature, which was unknown to the Tribunal and to the Applicant at the time Judgement No. 987 was rendered and that therefore the Application is not receivable.

III. On 24 April 1998, he was summarily dismissed for serious misconduct based on allegations of mismanagement and misappropriation of funds: including failure to pay for personal telephone calls and for an unauthorized shipment of his personal effects. In May 1998, the Joint Disciplinary Committee (JDC) unanimously concluded that the decision to summarily dismiss the Applicant for misconduct was justified on the basis of conclusive evidence. The Applicant appealed to the Tribunal. The Tribunal rejected the Application in its entirety and on 31 July 2001 the Applicant appealed to the Tribunal for a revision of Judgement No. 987.

IV. The Applicant claims that the Tribunal failed to take account of and ignored material facts which showed that the Applicant had no intention to defraud the Organization, and erroneously concluded that his behaviour rose to the level of fraud. The Respondent claims that the Applicant did not introduce any decisive fact, which was unknown to the Tribunal when Judgement No. 987 was rendered that would justify revision.

There is longstanding jurisprudence on the issue of revision handled by the Tribunal. In its jurisprudence, the Tribunal has held that in the absence of a "new fact, wrongful act or error of such nature as to justify the application for review", it is inadmissible to attempt "to reopen

issues that were settled definitely by the [original] judgement, ... thus constituting *res judicata*". (See Judgement No. 556, *Coulibaly* (1992), para. III). The Tribunal also ruled that "attempts to re-argue issues already decided by Judgement ... and which are *res judicata*" are considered to be "improper" and "abuse of its procedures". (See Judgement No. 497, *Silveira* (1990), para. XV). This ruling was later reaffirmed in Judgement No. 503, *Noble* (1991), para. III, where the Tribunal found that "[i]t is plainly frivolous for the Applicant to attempt to relitigate factual issues in the guise of seeking an interpretation of a Tribunal judgement".

Article 12 of the Tribunal's Statute specifies that the Application for revision must introduce a new fact of a decisive nature, which was unknown to the Tribunal and also to the Applicant at the time of the judgement. The Tribunal has consistently held that all the elements under Article 12 of the Statute must be met by an Applicant in order to request a revision of a judgement. (See Judgements *Coulibaly* (*ibid.*); No. 669, *Khan* (1994); No. 672, *Burtis* (1994) and No. 896, *Baccouche* (1998).) Furthermore, the Tribunal has stated in Judgement No. 894, *Mansour* (1998), para. II, that

"[u]nder its Statute, the Tribunal's powers of revision of a judgement are strictly limited and may be exercised only upon compliance with the conditions set forth in article [12]. No party may seek revision of the judgement merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation."

Finally, the Tribunal held, that "[t]he Statute does not provide for appeals of Tribunal judgements". (See Judgements No. 995, *Facchin* (2001) and *Baccouche* (*ibid.*).)

V. Insofar as the Applicant seeks revision on the basis that the Tribunal in its Judgement No. 987 failed to mention or deal with the Applicant's submission that, since the report of the Board of Auditors to the General Assembly for the period ending 31 December 1997 recited that "the UNHCR Administration informed the Board that no cases of fraud or presumption of fraud had come to its notice during 1997" this establishes conclusively that he had not been guilty of fraud, the Tribunal is satisfied that the alleged quotation is of no consequence as it has no bearing on the issues arising. The Tribunal knows not whether the Administration had averted to or known about the matters in issue when this information was allegedly relayed. Furthermore, even if the Administration was aware of the position and had not concluded that it was fraud, this

conclusion is in no way binding on the Tribunal as it is for the Tribunal to decide for itself how the Applicant's conduct should be characterized.

VI. The Tribunal finds that, within the confines of Article 12, the Applicant has failed to bring forth any new fact of a decisive nature which was unknown to the Tribunal or the Applicant at the time Judgement No. 987 was rendered or identified any substantial decisive error and therefore dismisses all the Applicant's claims.

VII. For the foregoing reasons, the Tribunal rejects the Application in its entirety.

(Signatures)

Mayer GABAY  
President

Kevin HAUGH  
Vice-President

Omer Yousif BIREEDO  
Member

Geneva, 23 July 2002

Maritza STRUYVENBERG  
Executive Secretary