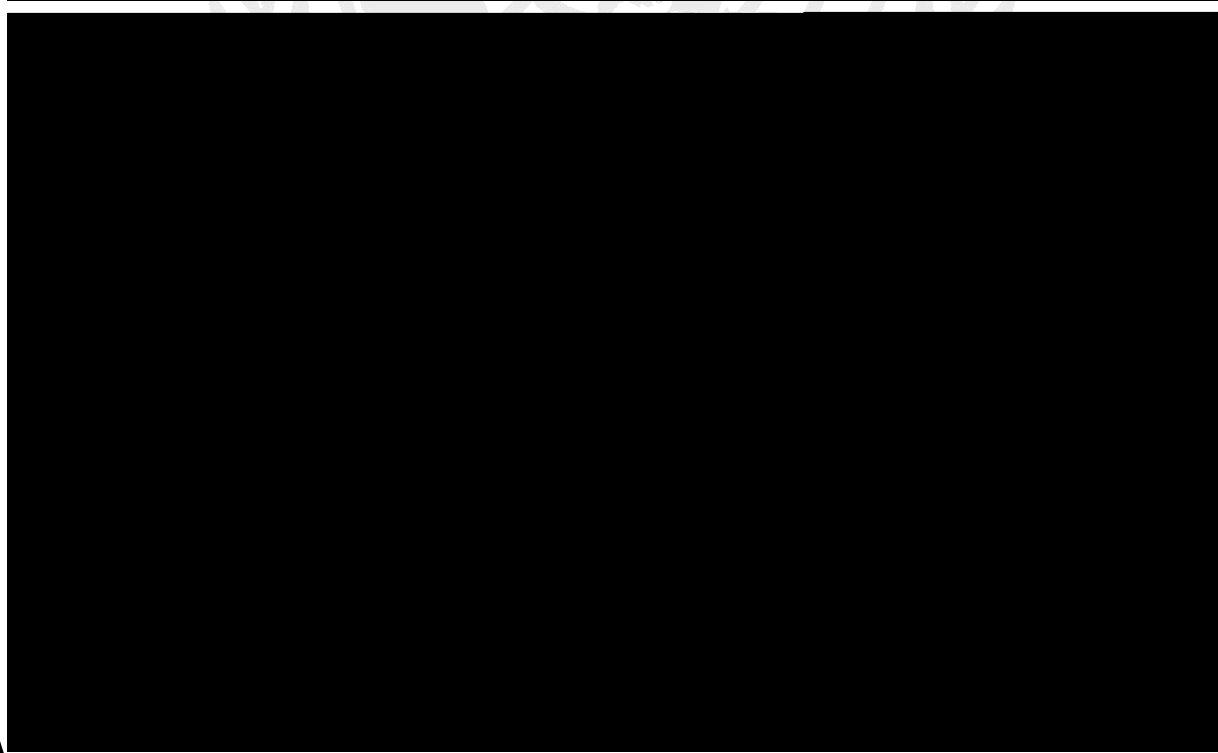
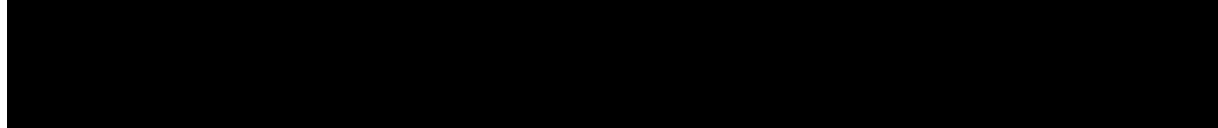




Case No. 2010-204



Counsel for Appellant: Self-represented

Counsel for Respondent: Wambui Mwangi

Judgment has been corrected in accordance with Article 26 of the Rules of Procedure of the Nations Appeals Tribunal.

**JUDGE INÉS WEINBERG DE ROCA, Presiding.**

### **Synopsis**

1. It is our view that the services provided by the Office of Staff Legal Assistance (OSLA) and the way the representation is implemented can have an impact on a staff member's terms of appointment and therefore can fall within the jurisdiction of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), without interfering with the professional independence of counsel.

2. Article 2(1) of the UNDT Statute stipulates that the UNDT "shall be competent to hear and pass judgement on an application filed by an individual...against... (a)...an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". It also establishes that "[t]he terms 'contract' and 'terms of appointment' include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance".

3. In the instant case, Brian Larkin (Larkin) requested management evaluation of the decision taken by the Chief of OSLA not to disclose a potential conflict of interest in Larkin's case. We find that this decision could have an impact on Larkin's terms of employment and therefore constitutes an administrative decision subject to review by the UNDT.

4. For the foregoing reasons, the UNDT erred in law in finding Larkin's application not receivable. We reverse the UNDT Judgment and remand the case to the UNDT for a trial on the merits.

### **Facts and Procedure**

5. Larkin joined the Branch Office of the United Nations High Commissioner for Refugees (UNHCR) in London as a Finance Assistant at the G-6 level on a fixed-term appointment in September 2006. Larkin's appointment was extended twice, in December 2006 and March 2007. In April 2007, Larkin was granted a six-month probationary appointment as Administrative and Financial Assistant. This appointment was extended once until 30 November 2007, after which date Larkin was separated from service.

6. On 22 July 2009, Larkin sought OSLA's assistance in contesting the decision not to renew his appointment and other related decisions. On 30 July 2009, OSLA assigned Larkin counsel to assist with the preparatio





appointment and therefore can fall within the jurisdiction of the UNDT, without interfering with the professional independence of counsel.

22. Larkin requested management evaluation on 18 December 2009 after receiving an email on 5 October 2009 stating that the Chief of OSLA was a former UNHCR employee. While Larkin submitted his request for management evaluation outside the 60-day time limit provided for in Rule 11.2 of the Staff Rules, the MEU, in its letter to Larkin, did not address the question of whether or not it considered his request timely, but rejected it on the sole basis that the MEU had no jurisdiction to evaluate his request since Larkin was a UNHCR staff member. While, under Article 8(3) of the UNDT Statute, the UNDT “shall not suspend or waive the deadlines for management evaluation”, the MEU has the power to waive its own time limits. In the present case, we have no indication of whether or not the MEU would have waived the time limits in the circumstances of this case. A refusal by the MEU to consider a request for management evaluation on the basis that the MEU found it not receivable *ratione personae*, must be reviewable by the UNDT and this Court.

23. In the instant case, Larkin requested management evaluation of an administrative decision which could have an impact on his terms of employment and he claimed that the MEU refused to carry out management evaluation in his case.

24. For the foregoing reasons, the UNDT erred in law in finding Larkin’s application not receivable.

**Judgment**

25. The Appeals Tribunal reverses the UNDT Judgment and remands the case to the UNDT for a trial on the merits.

Original and Authoritative Version: English

Dated this 8<sup>th</sup>