



**File number:** SA-11-HJ

**Before:** Higher Judge for Staff Appeals  
Judge Charles L. Smith III

**Date:** 31 December 2019

**Language:** English

**Classification:** Public

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**PUBLIC REDACTED VERSION OF THE DECISION ON APPEAL BEFORE THE  
HIGHER JUDGE FOR STAFF APPEALS OF 4 DECEMBER 2019**

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**Appellant:**  
[REDACTED]

**Legal Assistant to the Appellant:**  
Neil Macaulay, Barrister at Bretton Woods Law  
Dr Graham Butler, Associate Professor of Law at Aarhus University

**Respondent:**  
The Registrar

## I. INTRODUCTION

1. The Higher Judge for Staff Appeals is seized of an appeal (“Second Appeal”) against the decision of the Judge for Staff Appeals of 13 September 2019 (“Impugned Decision”), filed by [REDACTED] (“Appellant”) on 28 September 2019. On 1 October 2019, the President of the Specialist Chambers assigned the undersigned Judge to serve as Higher Judge for Staff Appeals in this case. On 15 October 2019, the Second Appeal was deemed admissible and transmitted to the Registrar (“Respondent”). The Registrar filed a response on 29 October 2019 (“Response”). The Appellant filed a reply on 6 November 2019 (“Reply”).

## II. SUBMISSIONS BY THE PARTIES<sup>1</sup>

2. The Appellant argues that the Appeal is filed “under protest” since the test for appealing to the Higher Judge for Staff Appeals (“manifest error of law causing a miscarriage of justice”) “sets an excessively high, narrowly categorised and deficient basis for an appeal to be brought forward”.<sup>2</sup> He argues that Rule 84(h) of the Staff Rules of the Specialist Chambers and Specialist Prosecutor’s Office (“Staff Rules”) and Rule 22(3) of the Rules of Procedure for Staff Appeals (“Staff Appeals Procedure”) are drafted such that they are required to be “read down” and that errors of law should encompass errors of fact.<sup>3</sup> Notwithstanding this, the Appellant argues that the Appeal meets the required standard.<sup>4</sup>

3. The Appellant argues that by interpreting “staff member” pursuant to the Staff Rules to only include current staff members, the Judge for Staff Appeals manifestly erred and “reached a conclusion that would render the staff appeals provisions at KSC

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<sup>1</sup> This section provides a mere summary of the parties’ arguments that are relevant to the merits of the appeal.

<sup>2</sup> Second Appeal, para. 8.

<sup>3</sup> Second Appeal, paras 8-9.

<sup>4</sup> Second Appeal, para. 13.

largely unfit for purpose”.<sup>5</sup> Further, he argues that the interpretation is inconsistent with the Staff Appeals Procedure, “unduly restrictive”, and violates “the basic rights to due process and access to a legal remedy”.<sup>6</sup> In addition, the Appellant argues that the Judge for Staff Appeals erred in concluding that there was no administrative decision in the present case.<sup>7</sup> In his interpretation of “administrative decision”, the Judge for Staff Appeals sought guidance from UNAT case law and the Appellant argues that this amounts to legislating and is without basis in law.<sup>8</sup>

4. The Respondent argues that the Judge for Staff Appeals had “a firm legal basis in the Staff Rules to draw upon well-established jurisprudence in the field of international administrative law” when interpreting “administrative decision” in the Staff Rules.<sup>9</sup> The Respondent does not make any substantial arguments about the Appellant’s submissions concerning the interpretation of “staff member”.<sup>10</sup> The Respondent’s position is that the Judge for Staff Appeals did not err in his interpretation of “administrative decision” and that the two grounds on which the Impugned Decision is based are independent of each other. Therefore, the Respondent states,:

regardless of whether the alleged error complained of by the Appellant relevant to the interpretation of ‘staff member’ is a manifest error of law, it would in any event not result in a miscarriage of justice, as it would have had no effect on the outcome of the Decision on the Appeal.<sup>11</sup>

### III. APPLICABLE LAW

5. Rule 84(h) of the Staff Rules reads:

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<sup>5</sup> Second Appeal, para. 15; Reply, para. 1.

<sup>6</sup> Second Appeal, paras 16-17, 19; Reply, para. 1.

<sup>7</sup> Second Appeal, para. 21.

<sup>8</sup> Second Appeal, para. 26.

<sup>9</sup> Response, para. 32.

<sup>10</sup> Response, paras 15-18.

<sup>11</sup> Response, para. 18.

(h) Decisions made by a Staff Appeal Judge shall become final unless they are appealed within fourteen days to the Higher Judge for Staff Appeals. Such appeals shall be limited to a manifest error of law causing a miscarriage of justice.

6. Rule 22 of the Staff Appeals Procedure sets out, in part:

(3) The Decision on the Appeal may be appealed only on the grounds of a manifest error of law causing a miscarriage of justice.

#### IV. CONSIDERATIONS

7. In the Second Appeal, the Appellant challenges the legal standard of appeal to the Higher Judge for Staff Appeals and argues that it should be “read down” and, in particular, that errors of law should be interpreted to include errors of fact. This is unsustainable. The Higher Judge for Staff Appeals is duty bound to apply the existing legal framework regulating the operation of the Kosovo Specialist Chambers, in this case the legal standard reflected in Rule 84(h) of the Staff Rules and Rule 22(3) and (4) of the Staff Appeals Procedure. The Appellant’s arguments in this respect are therefore rejected.

8. The Impugned Decision is based on two grounds, each sufficient to support its conclusion on inadmissibility. The first ground concerns the Appellant’s eligibility to file an appeal. The Judge for Staff Appeals concluded in this respect that the Appellant, as a former staff member, had no standing to file the appeal.<sup>12</sup> The appeal was therefore inadmissible.<sup>13</sup> The second ground concerns whether the Registrar had rendered a “final administrative decision” with regard to the Appellant’s employment situation. The Judge for Staff Appeals concluded that no such decision had been rendered and the appeal was therefore inadmissible “in this respect as well”.<sup>14</sup> The

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<sup>12</sup> Impugned Decision, paras 34-39.

<sup>13</sup> Impugned Decision, para. 39.

<sup>14</sup> Impugned Decision, paras 40, 47.

Judge for Staff Appeals correctly identified the two grounds as separate and independent of each other.<sup>15</sup>

9. I will first address the second ground: the interpretation of “final administrative decision”. The first matter to review is whether the Judge for Staff Appeals made a manifest error of law in concluding that there had been no final administrative decision in the present case.

10. The KSC statutory documents do not define “manifest error of law”. However, a plain meaning of “manifest” suggests that the alleged error of law should be “clear, obvious [or] unquestionable”.<sup>16</sup> When interpreting “final administrative decision”, the Judge for Staff Appeals correctly took as a starting-point Rule 83 of the Staff Rules, which sets out that “Every Staff member shall have the right to appeal against a final administrative decision of the Registrar relevant to the rights and obligations of staff”.<sup>17</sup> In his interpretation of “administrative decision”, he sought guidance in “well-established jurisprudence in the field of international administrative law”.<sup>18</sup> The Judge for Staff Appeals explained that the basis for doing so was to be found in Rule 84(g) of the Staff Rules, which sets out that he shall act “in accordance with the highest standards of administrative practices in comparative fields”.<sup>19</sup>

11. The Judge for Staff Appeals’ recourse to UNAT case law when interpreting “administrative decision” is reasonable and well-reasoned. The Appellant has not demonstrated that the Judge for Staff Appeals erred in this respect, let alone that it was a clear, obvious or unquestionable error. Therefore, the Judge for Staff Appeals has not made a manifest error of law (let alone one that would cause a miscarriage of justice).

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<sup>15</sup> Impugned Decision, paras 40-47.

<sup>16</sup> Law, J. (ed.), *A Dictionary of Law* (Ninth Edition), Oxford University Press 2018, p. 802.

<sup>17</sup> Impugned Decision, paras 13, 40.

<sup>18</sup> Impugned Decision, para. 45.

<sup>19</sup> Impugned Decision, para. 44.

12. With regard to “miscarriage of justice”, the understanding of the term in a legal context is “grossly unfair outcome in a judicial proceeding”.<sup>20</sup> Therefore, in the context of staff appeals within the KSC system, one important aspect of the “miscarriage of justice” requirement is that if the error of law would have no effect on the outcome of the Judge for Staff Appeals’s decision, an appeal to the Higher Judge for Staff Appeals must be rejected. In light of the conclusions set out above concerning the second ground, I will not further consider the Appellant’s arguments concerning the first ground. Even if the Judge for Staff Appeals would have committed a manifest error of law concerning the first ground, this could not cause a miscarriage of justice since the Impugned Decision would stand on the basis of the second ground alone.

#### V. CONCLUSION

13. For the foregoing reasons, the Second Appeal is dismissed and the Impugned Decision is affirmed.



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**Judge Charles L. Smith III,  
Higher Judge for Staff Appeals**

Dated this Tuesday, 31 December 2019  
At The Hague, the Netherlands.

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<sup>20</sup> Garner, B.A. (ed.), *Black’s Law Dictionary* (Tenth Edition), Thomson Reuters 2015, p. 834.