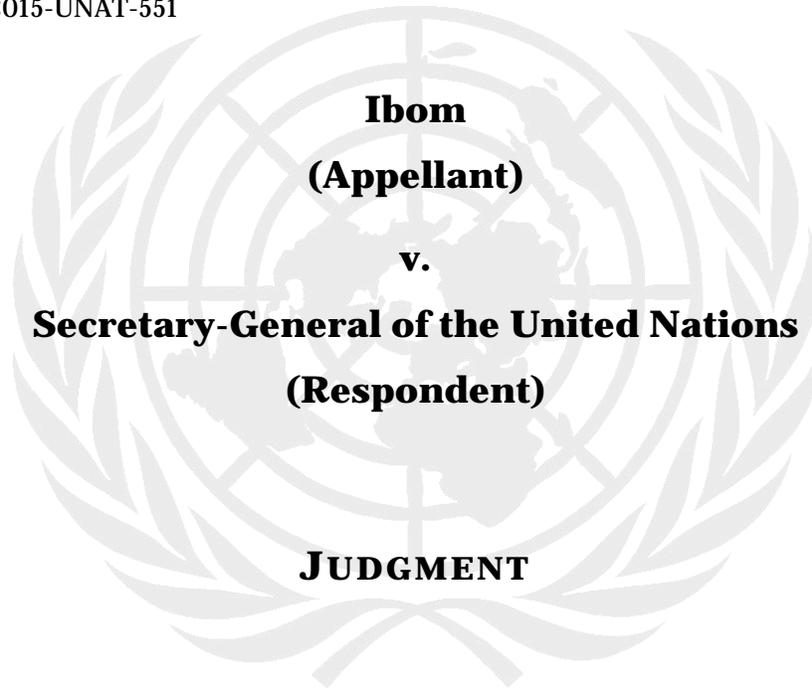




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-551



**Ibom
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Rosalyn Chapman
Judge Deborah Thomas-Felix

Case No.: 2014-635

Date: 2 July 2015

Registrar: Weicheng Lin

Counsel for Mr. Ibom: Usungurua Bassey

Counsel for Secretary-General: Noam Wiener

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2014/084, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 25 June 2014 in the case of *Ibom v. Secretary-General of the United Nations*. Mr. Erasmus Ibom appealed on 13 August 2014 and the Secretary-General answered on 24 October 2014.

Facts and Procedure

2. On 1 October 2007, the Appellant entered into service with the United Nations Development Programme (UNDP) as Head of the Resident Coordinator Field Office in South Sudan, on an appointment of limited duration.

3. On 30 June 2008, the Deputy Resident and Humanitarian Coordinator informed the Appellant by letter that due to a lack of funding, his contract would not be extended beyond its date of expiry, being 30 September 2008.

4. On 30 September 2008, the Appellant's contract expired and he was separated from service.

5. On 20 January 2014, the Appellant submitted a request for management evaluation of the decision not to renew his appointment to the Management Evaluation Unit (MEU). In his request, he complained, inter alia, that he felt he had been unjustly separated and that he had not been paid his repatriation allowance or received compensation for his severance.

6. On 21 January 2014, the MEU forwarded the Appellant's request to UNDP for review. UNDP found that the management evaluation request was incomplete and requested the Appellant to provide a complete request, which he did on 17 February 2014.

7. On 1 April 2014, UNDP informed the Appellant that his request for management evaluation was time-barred and consequently was not receivable. In any event, having reviewed the merits of his claim, UNDP informed the Appellant that there was no factual or legal basis to overturn the decision.

8. On 5 June 2014, the Appellant filed an application with the UNDT contesting the non-renewal decision. By way of remedy he sought reinstatement with promotion to the P-5 level and “payment of outstanding entitlements”.

9. On 25 June 2014, the UNDT issued its Judgment in the matter and dismissed the Appellant’s application on the basis that it was not receivable. It found that not only had the Appellant failed to request administrative review in accordance with the strict timelines required by former Staff Rule 111.2(a), but that his claim was barred by virtue of Article 8(4) of the UNDT Statute, which precludes the UNDT’s jurisdiction over claims filed more than three years after the Appellant’s receipt of the contested administrative decision.

10. On 13 August 2014, the Appellant filed his appeal and, on 24 October 2014, the Secretary-General answered.

11. On 13 November 2014, the Appellant filed a “Motion for Leave to File Additional Pleadings”. The Secretary-General filed his comments on 21 November 2014 and opposed the motion.

Submissions

Mr. Ibom’s Appeal

12. The Appellant contests the UNDT’s Judgment and UNDP’s response of 1 April 2014 to his management evaluation request. He submits the UNDT erred in law by “failing to consider and decide on the issue of payment of outstanding entitlements” and only considered the “renewal or otherwise of the contract”, which point he noted has since been abandoned. The Appellant requests payment of a termination indemnity, as well as pension entitlements from the United Nations Joint Staff Pension Fund (UNJSPF), repatriation grant and home leave entitlements. The Appellant requests that this Tribunal order the Administration “to work out and pay [him]” the foregoing entitlements.

The Secretary-General’s Answer

13. The Dispute Tribunal correctly concluded that the Appellant’s application was not receivable. As the Appellant was appointed under the former 300 series of the Staff Rules, former Staff Rule 111.2(a) applied in June 2008 when the Appellant was notified of the decision not to extend his contract. Under Staff Rule 111.2(a), the Appellant was required to

request administrative review within two months of notification of the contested administrative decision, i.e., at the latest by 30 August 2008, whereas he requested management evaluation on 20 January 2014, over five years later. In addition, the UNDT correctly relied on Article 8(4) of the UNDT Statute to conclude that it had no jurisdiction to hear the Appellant's case. Having found as much, the UNDT was also correct not to rule on the Appellant's submissions concerning his alleged entitlements. The Secretary-General requests that this Tribunal dismiss the Appellant's appeal in its entirety and affirm the UNDT Judgment.

Considerations

14. As a preliminary matter, Mr. Ibom's Motion for Leave to File Additional Pleadings is refused. Mr. Ibom has not demonstrated any exceptional circumstances which would justify the Appeals Tribunal exercising its discretion to allow him to file additional pleadings.

15. On 5 June 2014, Mr. Ibom filed an application with the UNDT seeking: (a) reinstatement and a promotion to the P-5 level; and (b) payment of outstanding entitlements.

16. In his appeal to this Tribunal, Mr. Ibom has abandoned his challenge to the non-renewal of his contract. His appeal states: "The Dispute Tribunal ruled only on the renewal of the contract (which Appellant has now abandoned.)" However, Mr. Ibom claims that the UNDT "erred in law by failing to decide on the issue of payment of outstanding entitlements". The entitlements claimed are pension entitlements, repatriation grant and home leave.

17. Mr. Ibom was notified by letter dated 30 June 2008 that his contract would not be renewed. He did not request administrative review or management evaluation of this decision until 20 January 2014. On 1 April 2014, he was informed by UNDP that his request for management evaluation was time-barred and not receivable.

18. The UNDT, having considered the applicable law, did not err in deciding that, since Mr. Ibom had waited more than five years to finally contest an administrative decision of which he was notified in June 2008, his application was not receivable.

19. The UNDT correctly found that, even if it was minded to consider Mr. Ibom's application, it was clearly barred from doing so by Article 8(4) of the UNDT Statute, which provides:

Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

20. The UNDT correctly concluded that since Mr. Ibom's application was filed more than five years after his receipt of the contested administrative decision, it would be acting *ultra vires* to entertain it.

21. This appeal has no merit whatsoever and cannot succeed.

Judgment

22. The appeal is dismissed and the Judgment of the Dispute Tribunal is affirmed.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar