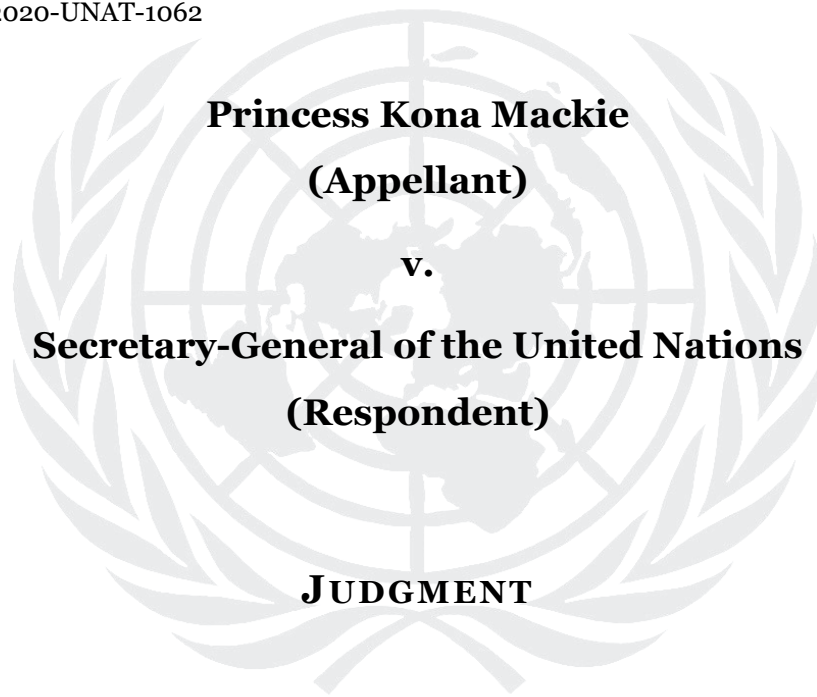




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2020-UNAT-1062



**Princess Kona Mackie  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Kanwaldeep Sandhu
Case No.:	2020-1373
Date:	30 October 2020
Registrar:	Weicheng Lin

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Counsel for Appellant:	Julius Nye Cuffie
Counsel for Respondent:	André Luiz Pereira de Oliveira

**JUDGE SABINE KNIERIM, PRESIDING.**

1. Ms. Princess Kona Mackie filed before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) a motion seeking an extension of time to file an application to challenge the decision not to make a new posting available to her following the termination of her appointment. In Judgment No. UNDT/2020/015, the UNDT found that the motion raised a preliminary issue of jurisdiction which it could raise *proprio motu* without first hearing the Secretary-General. The UNDT dismissed the motion because the application was not receivable *ratione materiae* finding that Ms. Mackie had failed to request management evaluation and that her case did not fall under any of the exceptions to requesting management evaluation under Staff Rule 11.2. Ms. Mackie appeals. The United Nations Appeals Tribunal (Appeals Tribunal) dismisses the appeal for the reasons set out below.

**Facts and Procedure**

2. Ms. Mackie is a former staff member of the United Nations-African Union Hybrid Operation in Darfur (UNAMID).

3. On 24 February 2019, Ms. Mackie was notified that her appointment with UNAMID had been terminated. According to Ms. Mackie, she was also verbally informed by UNAMID Human Resources that she would be placed in *COSMOS*, a recruitment system, whilst they scanned for a new posting for her since she was on a continuing appointment. On 13 November 2019, Ms. Mackie received a termination indemnity package and it was only then that she realized that no new posting would be made available to her.

4. On 25 January 2020, Ms. Mackie filed a motion for an extension of time to file an application with the Dispute Tribunal.

5. On 29 January 2020, the UNDT in Nairobi issued Judgment on Receivability No. UNDT/2020/015 dismissing the motion. The UNDT found that the motion raised a preliminary issue of jurisdiction which it could raise *proprio motu* without first hearing the Secretary-General. The UNDT found that contrary to Ms. Mackie's contention, her case did not fall under any of the exceptions to requesting management evaluation under Staff Rule 11.2, and therefore, the application was not receivable *ratione materiae*.

6. On 27 February 2020, Ms. Mackie filed an appeal before Appeals Tribunal and the Secretary-General filed his answer on 8 May 2020.

7. On 15 June 2020, Ms. Mackie filed a motion for leave to file additional pleadings stating that the Secretary-General, in his answer to her appeal, raised “fresh issues” which needed her response. On 29 June 2020, the Secretary-General filed his response opposing the motion.

### **Parties’ Submissions**

#### **Ms. Mackie’s Appeal**

8. Ms. Mackie requests that the Appeals Tribunal grant the appeal and find the application receivable on grounds that the UNDT failed to exercise its jurisdiction and erred in law when it found that she was required to request management evaluation. The contested decision was issued pursuant to advice obtained from the Comparative Assessment Review Committee (Committee), a technical body within the meaning of Staff Rule 11.2. She was therefore exempt from requesting management evaluation. The UNDT erred in procedure, fact and law when it decided not to grant her an extension to file an application against the contested decision. She had not sought legal advice earlier since Human Resources had verbally informed her that she would be placed on the internal roster *COSMOS* while Human Resources scanned for a new posting for her. It was only on 13 November 2019, when she received a termination indemnity package that she realized that no new posting would be made available to her. Her case has prospect of success, if heard on its merits. She was discriminated against as the only woman in her department, her contract having been terminated while the contracts of her three male colleagues were not. There were therefore exceptional circumstances that allowed for an extension of the time limit.

#### **The Secretary-General’s Answer**

9. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment. The UNDT correctly held that Ms. Mackie’s motion was not receivable *ratione materiae* as Ms. Mackie had failed to request management evaluation. The contested decision was not taken pursuant to advice obtained from a technical body or following the completion of a disciplinary process. As such Ms. Mackie’s claim did not fall under any of the stipulated exceptions to obtaining a management evaluation as a first step to

invoking the powers of the internal justice system. Moreover, the UNDT has no jurisdiction to waive deadlines for filing a request for management evaluation.

10. Ms. Mackie has failed to demonstrate that the UNDT made any errors warranting a reversal of the UNDT Judgment. First, she has failed to demonstrate that the Committee constitutes a technical body. Staff Rule 11.2(b) allows for an exception to the management evaluation requirement when the challenged decision was taken pursuant to advice obtained from a technical body, as determined by the Secretary-General. Administrative Instruction ST/AI/2018/7 (Technical Bodies) specifies that the list of technical bodies referred to in Staff Rule 11.2(b) consists of Medical Boards or independent medical practitioners duly authorized to review medical decisions or medical recommendations; and Classification Appeals Committees. The Committee in the present case does therefore not constitute a technical body for the purpose of Staff Rule 11.2. Second, Ms. Mackie has failed to demonstrate that the UNDT should have granted her an extension of time to file an application against the contested decision. She merely repeats the arguments made in her motion and does not identify any error by the UNDT.

### **Considerations**

#### *Preliminary issue*

11. We reject Ms. Mackie's motion for additional pleadings. Neither the Statute nor the Rules of Procedure of the Appeals Tribunal contain any provisions on additional pleadings after the answer to an appeal has been filed. To allow such additional pleadings would require exceptional circumstances. In her motion, Ms. Mackie has not presented any compelling reasons why the Appeals Tribunal should accept any additional pleadings of hers. She did not specify which "fresh issues" the Secretary-General raised in his answer. This answer dealt with the issue of receivability which had been at the center of the UNDT Judgment and, therefore, is not a fresh issue.

#### *Merits of Ms. Mackie's appeal*

12. Ms. Mackie's appeal is without merit. The UNDT did not commit any errors in procedure, fact or law but correctly dismissed Ms. Mackie's motion for an extension of time to file an application against the contested decision.

13. Under Article 8(3) of the UNDT Statute, the Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. However, the Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

14. In the present case, the UNDT did not err in dismissing Ms. Mackie's motion for an extension of time to file an application because Ms. Mackie's application was not receivable *ratione materiae*, as she had not submitted a timely request for management evaluation of the contested administrative decision before filing her application with the UNDT.

15. Under Article 8(1)(c) of the UNDT Statute, an application shall be receivable if the applicant has previously submitted the contested decision for management evaluation where required. This obligation upon the applicant is also prescribed in Staff Rule 11.2(a), which provides that a staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General in writing a request for management evaluation. Pursuant to Staff Rule 11.2(c) a request for management evaluation is to be submitted to the Secretary-General within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

16. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process. An application before the UNDT without a prior request for management evaluation can only be receivable if the contested administrative decision has been taken pursuant to advice from a technical body, as determined by the Secretary-General, or if the administrative decision has been taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to Staff Rule 10.2 following the completion of a disciplinary process. In all other cases, where the request for management evaluation is a mandatory first step before coming to the internal justice system, this request and management evaluation provide the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency. The Tribunals have no jurisdiction to waive deadlines for requests for management evaluation.<sup>1</sup>

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<sup>1</sup> *Diallo v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-936, para. 27, citing *Newland v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-820, paras. 28 and 29 and *Khan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-559, para. 25.

17. Ms. Mackie was not exempted from filing a request for management evaluation. Contrary to her contentions, the contested decision was not issued pursuant to advice obtained from a technical body within the meaning of Staff Rule 11.2. Administrative Instruction ST/AI/2018/7 of 18 May 2018 on technical bodies provides:

2. The list of technical bodies being referred to under staff rule 11.2 (b) are as follows:
  - (a) Medical boards or independent medical practitioners duly authorized to review medical decisions or medical recommendations, including reconsiderations referred to in article 5.1 of appendix D to the Staff Rules;
  - (b) Classification Appeals Committees.

18. The Committee does not fall under this enumeration and, consequently, does not constitute a technical body within the meaning of Staff Rule 11.2. Ms. Mackie was therefore obliged to request management evaluation before filing an application to the UNDT. Without such a request, her application was not receivable *ratione materiae*.

**Judgment**

19. Ms. Mackie's appeal is dismissed.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2020.

*(Signed)*

Judge Knierim, Presiding  
Hamburg, Germany

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Sandhu  
Vancouver, Canada

Entered in the Register on this 17<sup>th</sup> day of December 2020 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar