



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/017

Judgment No.: UNDT/2009/056

Date: 29 October 2009

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

HIJAZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON THE APPLICANT'S
MOTION
FOR EXTENSION OF TIME TO FILE
AN
ACTION
DATED 10 OCTOBER 2009**

Counsel for Applicant:
Self represented

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal

THE UNITED NATIONS DISPUTE TRIBUNAL (“Tribunal”) sitting in the person of Judge Nkemdilim Izuako;

1. The Applicant, who is a staff member of the International Criminal Tribunal for Rwanda (ICTR), entered the services of the United Nations on 9 December 1992 as a Personnel Assistant at the G-5//II level at the Economic and Social Commission for Western Asia (ESCWA). On 1 February 1998, the Applicant was placed on special leave without pay to pursue a Professional Category position with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). He entered into service at UNRWA on 1 March 1998 as a Personnel Officer (International) at the 16/1 level. On 1 July 1998, the Applicant was separated from ESCWA. At the time of his separation from ESCWA, the Applicant was at the G-5/VIII within the United Nations Common System of salaries, allowances and other conditions of service.
2. On 24 July 1998, the ICTR requested UNRWA to release him on secondment to the Tribunal as a Personnel Assistant on a fixed-term appointment for an initial period of one year. Since the policy at the time in UNRWA was not to release its staff on secondment, on 6 August 1998, the Applicant informed the ICTR that he would be willing to resign from UNRWA and take the offered position in Arusha.
3. On 18 September 1998, the ICTR made the Applicant an Offer of Appointment for the position of Personnel Assistant at the FS-3/I level. On 30 September 1998, the Applicant wrote to the Chief of Personnel Section, ICTR, requesting clarification on some details of the Offer of Appointment he received from the ICTR, arguing that his position at UNRWA was above the General Service category at the UN Secretariat. The then Chief of Personnel Section responded by sending the Applicant an amendment to the Offer of Appointment on 14 October 1998 which corrected his entry level to FS-3/II level and explained how his entry level was defined.

4. The Applicant accepted the Offer of Appointment on 3 November 1998, but asked to meet the Chief of Personnel Section to discuss his recruitment level upon his arrival to ICTR. On the next day, the Chief clarified that he had explained on his previous correspondence how the Applicant's entry level was defined. The Applicant entered on duty at the ICTR on 12 February 1999.
5. On 6 July 2001, the Applicant requested the then Officer-in-Charge, Personnel Section, ICTR, to "review [his] entry level/step and take the necessary actions to correct it to reflect the proper one". Since the Applicant did not receive any answer to his request and subsequent reminders, he brought the issue to the ICTR Staff Association.
6. Between 2001 and 2009, the Applicant repeatedly made claims to the ICTR to review his grade level. On 4 February 2009, the Registrar notified him that he agreed with previous conclusions that "[the Applicant] was recruited in accordance with prevailing guidelines at that time and [his] entry level was correctly determined". Therefore, he decided to close the case and stated that he "cannot continue to entertain any requests on the matter".
7. On 30 March 2009, the Applicant requested review to the Secretary-General inter alia "not correcting [his] entry level to the UN-ICTR". However, the Administrative Law Unit's reply issued on 1 June 2009 did not bring satisfaction to the Applicant and the Applicant was given under the then applicable rule one month of the receipt of the letter, i.e. 1 July 2009, to appeal to the Joint Appeals Board.
8. On 16 June 2009, the Applicant appealed on time the impugned decision before the Joint Appeal Board (JAB) in New York. Nevertheless, due to the transitional period during which the JAB was being phased out, and the UN Dispute Tribunal commencing its operations as of 1 July 2009, the Applicant's appeal was never acknowledged by the now defunct JAB.

9. Subsequently, by email dated 22 July 2009, the Applicant contacted the Registrar, UNDT in Nairobi informing him that he wished to file an action before the Tribunal to contest the administrative decision taken by the ICTR not to correct his entry level at that Tribunal and requested extension of time to avail himself of legal assistance.
10. On 5 August 2009, the Applicant was provided with copies of the Tribunal's Rules of Procedure, the relevant UNDT forms to file his action and the contact details of the Chief of the Office of Staff Legal Assistance (OSLA).
11. By a written motion dated 11 August 2009, the Applicant, prayed the Tribunal for an extension of time to file a matter before it. On 25 August 2009, the Tribunal granted the said motion and gave the Applicant seven weeks from the date of the Order to file his action by or before 13 October 2009. The Applicant till date has not complied with that Order.
12. Instead, on 10 October 2009, the same Applicant brought the instant motion for a further extension of time. He now asks that time be further enlarged up to 12 January 2010, that is more than three months from the date of his motion, to enable him file the said matter before the Tribunal.
13. Based on the documentation provided by the Applicant, his reasons for this latest application for further extension of time are that he had sent an email to the Chief of the OSLA for legal assistance and representation on 7 August 2009. Thereafter, OSLA sent him a reply email only on 9 September 2009 asking that he fill the necessary forms and brief the office adequately. The Applicant says that he was not able to respond promptly to the Chief of OSLA's email because "I was sick (I got severe flu) for more than two weeks, was trying to get more information/supporting documents, comments on the OIC, Administrative Law Unit, OHRM, and scan the whole required documents to him which has taken a lot of time for me to do it."

14. The Applicant also proffers that he needs more time in view of the fact that he only recently accepted a post of Administrative Officer, P-3, EMRO, WHO, Cairo, Egypt for which he has requested ICTR to release him as of 8 November 2009 although his contracts ends on 31 December 2009. Another reason put forward by the Applicant is that he is engaged with preparing his hand-over notes in his current workplace and making arrangements for his moving out of Arusha to Cairo.

15. In considering this application, the Tribunal recalls the provisions of Article 8.3 of the Statute which states:

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. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

16. It is important to recall that the Applicant had on an earlier application been granted seven weeks extension of time to file his matter . He did not comply with this order of the Tribunal. It is my considered view that the reasons provided by the Applicant, in this latest application for a further enlargement of time, cannot qualify as exceptional circumstances as provided for in the Statute. If this motion is granted, the Tribunal would have extended time from 01 July 2009 to 12 January 2010.

17. It is mention worthy that by his own account the Applicant had sent an email to OSLA and waited for nearly five weeks for their reply. Even when he received a reply directing him on what steps to take in order to properly brief them, the Applicant did not comply. Instead he states that he was ill. He has not provided any proof of his illness by tendering a sick certificate or shown that the said illness had affected his capacity to take the required preparatory action in his case. It is unfortunate that the Applicant had not shown enough diligence in seeking legal advice during the seven-week extension of time he was granted by order issued on 25 August 2009, or indeed in filing his matter. Considering that the matter of review of the Applicant's entry level at the ICTR is one that he has

consistently pursued for over ten years with his Employers the ICTR, it is difficult to understand why he now needs about six months to properly bring the same matter before the Tribunal.

18. On the whole, I find the application totally unserious and lacking in diligent prosecution. The present application not only lacks merit but constitutes an abuse of the process of the Tribunal.

19. IN THE LIGHT OF THE FOREGOING,

THE TRIBUNAL HEREBY ORDERS:

(a) That the Applicant's motion for extension of time before the Tribunal is refused;

(b) That his incomplete action registered as Case No. UNDT/NBI/2009/17 is struck out.

(Signed)

Judge Nkemdilim Izuako

Dated this 29th day of October 2009

Entered in the Register on this 29th day of October 2009

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi