



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/04

Judgment No.: UNDT/2010/153

Date: 26 August 2010

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

VERSCHUUR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Katya Melliush, OSLA

Counsel for respondent:
Miouly Pongnon, UN-Habitat

Background

1. The Applicant started working for the United Nations Human Settlements Programme (UN-HABITAT) on 2 February 1991 as a Programme Management Officer (PMO) with the Regional and Technical Cooperation Division on a fixed term appointment at the L3 level. At the time of this application, he was at the P4/12 level. In 2001, the position of Chief, Management Support Unit at the P5 level within the Programme Support Division was advertised. The Applicant was short-listed, interviewed and recommended by the panel as the second candidate for the post and placed on a roster for future vacancies with similar positions.

2. On 2 August 2007, Vacancy Announcement (VA) 07-PGM-UN-HABITAT – 416445, a P5 post, was advertised on *Galaxy* for the position of Chief, Programme Support Section. The Applicant applied and was an eligible candidate at the 30-day mark. The said VA was then cancelled, and re-advertised on 17 December 2008. On 14 January 2008, the Applicant applied for the re-advertised post. On 18 March 2008, having been short-listed, he was interviewed by an interview panel. On 15 May 2008, he was informed by the Human Resources Management Services, following an inquiry he had made, that he had not been rostered against the post.

3. On 16 May 2008, the Applicant requested from the Programme Case Officer (PCO), who was also the Programme Manager, clarification on the criteria used to determine that he was not suitable to be placed on the roster for future similar positions. The PCO notified him that the decisions were taken by an independent panel of which he was not a member.

Procedural History

4. The present application was filed before the now defunct Joint Appeals Board (JAB) in Nairobi on 14 November 2008. The Respondent's Reply to the application was filed on 14 January 2009. Subsequently, the Applicant filed his Observations to the Respondent's Reply on 20 May 2009, having been granted an extension of time limit to this effect on 31 March 2009.

5. On 1 July 2009, the appeal was transferred to the United Nations Dispute Tribunal pursuant to the provisions of the United Nations General Assembly Resolution 63/253 and section 2 of ST/SGB/2009/11 on Transitional Measures Related to the Introduction of the New System of Administration of Justice. The Registrar of the Tribunal in Nairobi communicated the fact of the transfer to the Applicant and the Respondent on 8 July 2009 and 30 July 2009 respectively.

6. On 3 November 2009, the Registry invited the parties to a status conference to be held on 10 November 2009 for purposes of, *inter alia*, addressing all issues having a bearing on the readiness of the case for consideration and determination by the Tribunal. During the status conference, the Judge presiding over the case issued directional orders granting the Applicant leave to submit additional information pertinent to his application as well as to make a request for discovery of documents from the Respondent. The Applicant's submissions in response to the directional orders issued on 10 November 2009 were filed on 13 November 2009. The Respondent's Reply to the Applicant's Additional Submissions was filed on 25 September 2009. On 23 November 2009, the Tribunal granted the Respondent 15 calendar days within which to comply with the Applicant's request for discovery of documents.

7. The hearing in this matter was initially fixed for 15 December 2009 which date was later revised to 25 June 2010, during which both parties called witnesses in evidence and the Respondent tendered exhibits.

Applicant's case

8. The Applicant's case is that the entire process used to select pre-approved candidates to be placed on the roster for vacancies with similar positions was manipulated.

9. He claims also that the Respondent's actions have violated the Applicant's statutory right to full and fair consideration of his application to the VA and to his statutory right to career progression within the Organisation.

10. He contends that the manipulation of the recruitment/rostering process by the Respondent has in effect resulted in a consistent obstruction of his career development prospects and created an offensive work environment which, in turn, constitutes professional harassment and abuse of authority.

11. In spite of being a 30-day candidate, the Applicant was considered with 60-day candidates contrary to the Rules.

12. The VA in issue was first made in August 2007 and the Applicant although a 30-day candidate, was not considered before the said VA without good or sufficient reason was cancelled in November or December and re-advertised.

13. The interview panel regarded the request of the Executive Director of UN-Habitat (ED) to reduce the list of recommended candidates as an instruction and accordingly accepted to modify their initial independent and objective review.

The Respondent's case

14. The Respondent's contention is that the Applicant's case is flawed and devoid of merit, and ought to be dismissed for failure to prove violation in any form or substance of any of the applicable Rules.

15. He takes the position that the Applicant's procedural rights were duly observed and that the Applicant has not produced evidence of prejudice or extraneous factors which would vitiate the ED's decision not to include him on the list of recommended candidates.

16. He contends too that no evidence was provided by the Applicant to establish that the cancellation of the first VA was done *mala fides* and that it is within the discretionary authority of the head of office or the PCO to cancel a vacancy announcement.

17. The PCO did review all candidates eligible for consideration whether at the 15-day, 30-day or 60-day mark on the basis of pre-approved criteria, taking into account the overall requirements for the post and the interests of the Organisation.

18. The Applicant has not shown that he took any measures to address his allegations of professional harassment and abuse of authority and as such these remain speculative.

CONSIDERATIONS

Where a panel is raised to interview and recommend candidates in the process of selection to an advertised post, is such a panel independent in carrying out its functions? If it is independent, are there limits to this independence?

19. It is in evidence that the Programme Case Officer (PCO) (who is also the Programme Manager) had prepared a short-list of six qualified candidates and then set up a panel of three officers to interview the said candidates for the position of Chief, Management Support Section. The interview panel conducted telephone interviews for each of the six candidates using a set of pre-approved criteria, as

required by ST/AI/2006/3, to assess them. The panel produced a written report of the interviews and recommended five out of the six candidates for the position.

20. The Administrative Instruction on Staff Selection usually cited as ST/AI/2006/3 of 15 November 2006 was promulgated to establish a new staff selection system dealing with matters of recruitment, placement, promotion and mobility of staff. Section 7 of this Administrative Instruction provides for the consideration and selection of staff. Section 7.5 requires that competency-based interviews be conducted in all cases of recruitment or promotion. Both S.7.4 and S.7.5 make it clear that Programme Managers are responsible for the evaluation of candidates.

21. Since the evaluation of candidates for appointment or promotion requires that interviews be conducted, it is evidently the responsibility of the Programme Manager to set up an interview panel. He may be a member of the interview panel if he chooses or he may opt not to be. In the instant case, a panel of three members was raised by the PCO who chose not to be a member of the said panel. The PCO told the Tribunal in his testimony that the panel was independent and that he did not influence it in any way.

22. I am of the view that bearing in mind the responsibility of a Programme Manager, the interview panel which he sets up is to all intents and purposes his agent. He sets up the panel to evaluate candidates through competency-based interviews for appointments or promotions in compliance with the Rules. He also provides the panel with a set of pre-approved criteria to be used in making its evaluation. In other words, he gives the panel the authority to conduct interviews and gives it the tools in the form of criteria with which to evaluate the candidates.

23. Like a principal in law, the Programme Manager must be bound by the evaluation and recommendations of the interview panel he has set up as long as that panel has acted within its terms of reference. He has no authority to ask the panel to

change its report or any part of it except where he is satisfied that the panel had gone outside of its mandate. A situation in which the panel exceeds its mandate or acts outside its terms of reference would arise for instance, where in conducting the said interview; it considered other competencies which were not in the vacancy announcement or in the pre-approved criteria with which it was provided. In such a situation, the Programme Manager, in the light of the need for accountability on his part would have a duty to properly redirect the panel or if need be reconstitute it.

24. Much as the Rules do not provide for the composition of an interview panel, as a matter of established practice and in line with the United Nations core values of integrity and professionalism and the core and managerial competencies of accountability and building trust, such a panel is usually made up of a minimum of three persons. It is not only desirable but absolutely mandatory that there is integrity in any selection process in the Organisation. Such integrity must be manifest, not guessed.

25. In the instant case, the Programme Manager who is also the PCO told the Tribunal in his testimony that he did not influence the interview panel in their conduct of the interviews. This testimony was corroborated by the panel chair. This independence enjoyed by the interview panel did not however appear to withstand the intervention of the Executive Director.

Did the intervention of the Executive Director amount to an irregular interference with the selection process? Was her decision to reduce the number of recommended candidates a valid exercise of her discretionary authority?

26. Evidence tendered by the Respondent is that a written report of the interview was made by the interview panel showing the questions asked and evaluating the answers given by each candidate. The report also showed the scores that were awarded to each of the candidates. For the five candidates who it finally

recommended, the panel recorded two of them as “strongly recommended” in its report while the other three candidates were recorded as “recommended.”

27. Evidence shows that a memo and the said report were submitted to the ED by the PCO showing the recommendations made. Transmitting a list of those recommended for the position to the Central Review Body (CRB) is a function for the ED under the Rules. Upon getting the list of recommendations in this case, it is in evidence that the ED was of the view that there were too many recommended candidates and told the PCO that she did not want more than three recommended candidates on the list that would be sent to the CRB for approval. The PCO reported this to the Chair of the interview panel (CIP) and later took him to see the ED on the matter.

28. In his oral testimony before the Tribunal, the CIP said that when he and the PCO met with the ED, she told him that she was surprised that the panel had recommended five candidates. She said also that she wanted a list of candidates of appointable calibre pointing out that the report showed that some were very good while others were average. She asked that the panel look at their report again and decide whether the recommendation of the five candidates was what the panel actually wanted to say.

29. Following this encounter with the ED, the interview panel was reconvened and its Chair then reported the concern of the ED to the other members. The panel deliberated on this development and agreed that it ought to have been more discriminating in making its recommendations and then changed its report to reflect the concern raised by the ED. As a result, the panel made a second recommendation of only two candidates. Three of those earlier recommended, including the instant Applicant, were dropped from the list of recommended candidates.

30. As the Applicant’s name was no longer on the said list when it was submitted to the CRB for approval, it was not cleared by the CRB; as a result the Applicant was

not placed on the roster of candidates suitable and cleared for appointment to similar positions at the P5 level. The matter of the intervention of the ED which led to the dropping of the Applicant's name from the list of those recommended to the CRB for approval is the core of this application.

31. Did the ED have the power or discretion to intervene as she did? Did this intervention amount to interference and abuse of authority? Did it serve to erode the independence of the interview panel and the Programme Manager? Are there limits to what the ED can do with respect to the candidates in the process of an appointment or promotion exercise?

32. Section 7.7 of ST/AI/2006/3 provides as follows:

Programme Managers shall transmit their proposal for one candidate or, preferably, a list of qualified, unranked candidates to the appropriate central review body through the head of department/office after 15-, 30-, or 60-day mark. The head of department/office shall ensure that, in making the proposal, he or she has taken into account the Organization's human resources planning objectives and targets, especially with regard to geography and gender, and provide a certification to that effect to the central review body...

33. The foregoing provision makes it clear that the duty of the head of department, which in this case is the ED, is to transmit the proposal submitted to him or her by the Programme Manager to the CRB. The head of department may however transmit the said proposal only after being satisfied that the Organisation's human resources planning objectives and targets, particularly as they concern gender and geographical distribution, have been met.

34. Section 9.2 provides that the Programme Manager has the duty to recommend candidates to the head of department who under the provisions of S.9.1 has the sole authority to make a selection decision after taking into account some departmental and organizational objectives and targets.

35. Under cross-examination, the CIP told the Tribunal that he knew that the panel's job was to evaluate the candidates and filter out those who were not qualified for the post. He also believed that the panel conducted the interview on behalf of the ED and did not think it was wrong to discuss it with her. He added that if the ED wanted the panel to recommend a candidate who was outside its report then it would be her wish but if the person she wanted recommended was in its report, there was nothing wrong with it.

36. Still in answer to a question in cross-examination, the CIP said that the panel believed that each of the three persons whose names they had had to remove from the list of recommended candidates could do the job. Taken to the logical implications of his answers, the CIP believed that although the panel had recommended candidates who were in its view appointable; if the ED wanted the interview panel to reduce the number of candidates it found eligible for appointment, it was perfectly within her rights and competence to demand it and proper for the panel to do as asked.

37. It is either that the interview panel was not sure about the job it was given to do or that it was not willing to do its job independently. The Applicant in his oral testimony wondered why the panel had ranked the candidates they recommended. I agree that the panel had no business or power sending a recommended list that ranked the candidates contrary to the Rules. It was clearly required to send a list of recommended, unranked, candidates. It failed in one of its duties when it "strongly recommended" some and merely "recommended" others.

38. On his part, the Programme Manager told the Tribunal in cross-examination that the role of the interview panel is only advisory. He then stated in reply to a question that the panel is meant to bring some independence into the selection. I do not agree that the role of an interview panel which has been properly set up to interview candidates is only advisory. As I have stated above, the interview panel is the agent of the PCO who is bound by its evaluation and recommendations as long as

the panel has acted within its mandate. The panel does not just bring “some independence” into the selection; it ensures that there is independence in the process.

39. I have observed earlier in this judgment that integrity is a core value of the United Nations Organization and any appointments or promotions processes, as with other matters within the Organization, must not only have integrity but must be seen to have it. “Integrity refers to ‘honesty’ or ‘trustworthiness’ in the discharge of official duties, serving as an antithesis to ‘corruption’ or the ‘abuse of office.’”

40. Any interview process which is conducted for the purpose of evaluating candidates for promotion or appointment must be both independent of any influences and above board. While an interview panel may have been set up by a Programme Manager, the panel is not only independent of the said Programme Manager in doing its job and for as long as it acts within its mandate; it is also equally independent of the head of department. There are indeed limits to what the ED can do with respect to the process of appointments and promotions in his or her office. Clearly, it was not the intendment or the spirit of the applicable Rules that the selection process should be reduced to a one-man show, where from scratch to finish; it is the wish and business of the head of department.

41. It amounts to interference and manipulation for a head of department with the sole discretion under the Rules of having the final say in the making of a selection decision, to seek to influence the outcomes of an interview panel and its report. Such unlawful interference which substitutes as in this case, the opinions of the head of department or ED, with that of the panel which conducted the interviews, taints the process in so far as it denies the Applicant and others like him the opportunity of having their names sent to CRB and of possibly being rostered. Additionally and unfortunately, it gravely impinges on the integrity of the process.

42. I have no doubt that the members of the interview panel laboured under the mistaken belief that they were not independent of the ED in discharging their duty.

The CIP had actually testified that he believed that they conducted the interviews on behalf of the ED. The panel understandably lent itself to the directions of the head of department who was able to bend it to re-do and submit a second report with recommendations different from its independent evaluation.

43. It is my finding that the Executive Director of UN-Habitat interfered with and manipulated the selection process by influencing the interview panel to drop the names of the Applicant and two others from the recommendations list. This resulted in the name of the Applicant not being sent to the CRB for clearance and, as a result, in the Applicant not being placed on a roster for similar positions at the P5 level within the organisation. This kind of situation must not be tolerated within the UN Organisation for its capacity to destroy rather than build trust - a required managerial competency, and the denial of due process which is its by-product.

44. Beyond the prejudice to the Applicant's candidacy which resulted in his not being rostered; it was nothing short of a disservice to the Organization on the part of the ED in causing the Applicant and two others who were recommended by the interview panel to have their names dropped. Rostering of candidates aside of being a vehicle for increasing mobility of staff members and supporting career aspirations, is cost-effective for the Organisation as it provides a ready pool of eligible candidates to select from when necessary, saving the time and expenses that new selection processes would involve.

Was the allegation that the cancellation of the first vacancy announcement targeted the Applicant's candidacy well-founded? Was the cancellation made in order to afford the incumbent an opportunity to apply for the post?

45. It is in evidence that the position which is in issue in this case was first advertised on *Galaxy* on 2 August 2007. The Applicant was one of two candidates who applied and was eligible at the 30-day mark. These two candidacies were not

considered and the vacancy announcement was subsequently cancelled and reissued on 17 December 2007.

46. Why was the vacancy announcement cancelled four months into its issue and after the Applicant who was an eligible internal candidate had applied?

47. In his testimony, the Programme Case Officer told the Tribunal that he had cancelled the vacancy announcement due to lapse of time. According to him, a long period had elapsed since the vacancy announcement was issued due to the fact that his assistant had taken a sabbatical and he had no officer to assist him with processing the applications released.

48. Under cross-examination, the witness was shown a memorandum which he had sent to the ED dated 4 April 2008 in which he stated that the cancellation and re-issue of the said vacancy announcement were done because no suitable candidates were identified. The witness in answer reiterated that lapse of time was the reason for the cancellation and added that it was also possible that no suitable candidates had applied. He continued that when his assistant took a sabbatical, it was difficult to find a replacement that could do her work. When pressed on the discrepancy between his explanation to the ED on paper and to the Court, the witness persisted with the explanation that “too much time” had passed, and referred also to UNON’s policy of cancelling and re-advertising vacancies that have been in the system for 180 days without being filled. The witness did not, and I expect could not, explain why this ‘lapse of time’ was not the reason proffered to the ED.

49. The witness further said that although no Rule requires that there must be more than one suitable candidate before a selection process can proceed, as a matter of practice, he would review and shortlist more than four or five candidates. He added that it was up to him as the PCO to decide that there were sufficient candidates for consideration and when to stop the release of candidates.

50. It was his testimony that although the Applicant was a suitable candidate in the cancelled vacancy announcement, all it meant was that he could only be short-listed. He continued that what he actually meant to say in his memorandum of 4 April 2008 was that there were not sufficient suitable candidates.

51. It is evident that the cancelled vacancy announcement had not been out for up to six months or 180 days to warrant its cancellation as is the practice. Clearly the Programme Manager was not stating the true position when he wrote in his 4 August 2008 memo that he cancelled the VA because there were no suitable candidates knowing as he did that there were at least two suitable 30-day candidates.

52. In the Respondent's written statement to the JAB at paragraph 29, it is claimed that the decision to cancel a vacancy announcement is within the discretionary authority of the head of office or Programme Manager and that in this case, cancellation of the first VA was done by the PCO in order to broaden the pool of potential candidates. Nowhere in the Rules is this discretion to cancel a vacancy announcement on the part of the Programme Manager provided for.

53. It is my finding that the Programme Manager's explanation about the cancellation being due to lapse of time is an after-thought meant to cover up his lack of compliance with Administrative Instructions. His testimony that he had the prerogative to decide when there were sufficient candidates, and when to stop the release of candidates, is in clear contravention of section 7.1 of ST/AI/2006/3 and is unfortunate. He had no such prerogative, power or discretion. He had a bounden duty to consider the eligible candidates at the 30-day mark in the VA he had cancelled but failed to do so.

54. While I hesitate to make a finding as to whether the Applicant's candidature was the target of the December 2007 cancellation, the signals are nevertheless most disturbing. The said cancellation, when read together with subsequent developments in the selection process as these concern the Applicant, does not exactly leave the

said Programme Manager smelling of roses. Managers must diligently acquaint themselves with all the relevant Rules that govern the actions they take in the spirit of the core competency of accountability.

A mix of 30 and 60-day candidates?

55. Both oral and documentary evidence tendered before the Tribunal were clear that the decision to evaluate the candidates for the position of Chief, Programme Support Section was made at the 60-day mark. It is agreed by both parties to this application that both 30-day and 60-day candidates did not have separate lists but had the lists and names of all the candidates pooled, transmitted and evaluated together. Did this process conform to the Staff Rules?

56. Section 7 of ST/AI/2006/3 provides for consideration and selection of candidates. It states in subsection 1:

In considering candidates, programme managers must give first priority to lateral moves of candidates eligible to be considered at the 15-day mark under section 5.4. If no suitable candidate can be identified at this first stage, candidates eligible at the 30-day mark under section 5.5 shall be considered. Other candidates shall be considered at the 60-day mark where applicable.

57. In the case of *Xu v Secretary-General*, this Tribunal found that the Applicant, a 15-day candidate was evaluated along with 30-day candidates and that in so doing the said evaluation had contravened the Rules and constituted a breach of the rights of the Applicant in that case.

58. At paragraph 30 of the Respondent's statement to the Joint Appeals Board of 14 January 2009, it is contended that that the "PCO reviewed all candidates eligible for consideration whether at the 15-, 30- or 60-day mark on the basis of pre-approved criteria, taking into account the overall requirements for the post and the interests of the Organization." The same PCO or Programme Manager put the lie to this assertion when he told this Tribunal, in answer to a question in cross-examination, that he was

not aware that the Rules provide that 15-day and 30-day candidates should be first considered. He stated that it is the prerogative of the PCO to decide whether to consider 60-day candidates along with 15-day and 30-day candidates.

59. Nowhere in the Rules is such a prerogative conferred or vested on a Programme Manager. It bears restating that Managers must acquaint themselves with the Rules in order to understand the nature and scope of the functions they perform. To act *ultra vires* and yet believe that one is within the boundaries of his job and functions do not exhibit the expected UN managerial competencies of leadership, building trust and decision-making.

60. The Programme Manager in this case, perhaps due to a mistaken perception of his role, conducted the evaluation process in issue to quite an extent outside the Rules of the Organisation. He had no prerogative to decide that he wanted to evaluate 30-day and 60-day mark candidates together. Not even the Secretary-General himself has such a prerogative! I find that the Applicant's due process rights were breached in this regard.

The exercise of discretionary authority.

61. The Respondent's case has been strewn with assertions of discretionary authority that may be exercised by both the Programme Manager and the Head of Office.

62. For instance, the Respondent refers to the discretionary authority of the Head of Office or Programme Manager to cancel a vacancy announcement after the Applicant and another eligible candidate had applied. In the same vein it was submitted, that the decision to interfere with the recommendations of the interview panel which resulted in removing the Applicant's name and the names of two others

from a list that was sent to the CRB for approval and rostering, was based on the proper exercise of the ED's discretionary authority.

63. In his testimony, the Programme Manager while answering a question stated that his understanding of the Rules is that he sends the list of recommended candidates to the ED who decides whether to send it to the CRB. In other words, he believed that the Head of Office may simply decide not to send on the list. He also told the Tribunal that although two eligible internal candidates of which the Applicant was one had applied to the initial VA of August 2007, he felt there were not enough candidates and had the discretion to cancel and reissue the VA. The same Programme Manager was convinced of his prerogative and discretion to mix and evaluate together all candidates whether at the 15-day, 30-day or 60-day mark.

64. During the course of the hearing, the Respondent and his witnesses made much use of the words 'discretion' and 'prerogative.' While it may well be a matter of choice of words, or words used loosely and without adequate appreciation of its import, I feel it is necessary for me to state that the words discretion and prerogative carry specific meaning in law. It is important therefore that Parties and Counsel be sufficiently apprised of the import of these terms when choosing to use them in their submissions to the court.

65. The words "discretion" and "prerogative" refer to different types of power, which may be used to varying degrees depending on the ambit within which it was afforded and is being exercised. They are not absolute and do not confer the holder of such power with the right to do with as he/she pleases. Discretion while being the power or right to act according to one's judgment, by its nature involves the ability to decide responsibly. It is about being wise and careful in the exercise of one's judgement. Prerogative, on the other hand, is defined as an exclusive or special right, power or privilege. In public administration, both prerogative and discretion where they exist must be used judiciously. The Administrator does not exercise power for its

sake or according to his whims but only in furtherance of the institution's interest. The failure to exercise discretion judiciously amounts to abuse of authority.

66. With regards to the ED in this case, I am of the view that on being sent an unranked list of recommended candidates, she had the discretion to examine that list only against the Organization's human resources planning objectives and targets, especially taking into account the issues of geography and gender and then send it with a certification to that effect to the CRB. She may only refuse to send on the list, if for some reason, she is able to reasonably conclude that evaluation of candidates and the resultant recommendations had not been properly done.

Findings

67. In the light of the foregoing considerations and review, I make the following findings:

- i. The interview panel in the instant case did not carry out its functions independently of the Executive Director of UN-Habitat as required by the Organization's core value of integrity.
- ii. The Executive Director unlawfully interfered with the recommendations of the said interview panel and succeeded in substituting her own opinion with that of the panel.
- iii. The Executive Director manipulated the selection process by influencing the interview panel to drop the names of the Applicant and two others from the list of recommended candidates to ensure that they were not placed on the roster.
- iv. The interference and manipulation of the Executive Director impinged on the integrity of the selection process.

- v. The Programme Manager's explanations that the cancellation of an earlier vacancy announcement was done because of lapse of time were an after-thought meant to cover up his lack of compliance with Administrative Instructions.
- vi. The Programme Manager had a bounden duty to consider candidates who were eligible at the 30-day mark but failed to do so.
- vii. The Programme Manager has no prerogative to decide that he wanted to consider 60-day candidates along with 15-day and 30-day candidates.
- viii. The right of the Applicant to a fair and full consideration was violated by the various acts of lack of independence of the interview panel and the unlawful interference with the selection process, the manipulation of the said process and the failure to consider his candidacy at the 30-day mark as stipulated in the Rules.

Conclusion/Remedies

68. The Application succeeds.


69. The Respondent is hereby ordered to pay to the Applicant the equivalent of six months net base salary.



Judge Nkemdilim Izuako

Dated this 26th day of August 2010

Entered in the Register on this 26th day of August 2010



Jean-Pelé Fomété, Registrar, UNDT, Nairobi