



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/029
/UNAT/1687
Judgment No.: UNDT/2010/199
Date: 19 November 2010
Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ATTANDI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

David Andati-Amwayi

Counsel for Respondent:

Joerg Weich, HRMS/UNON

Introduction

1. The Applicant joined the Information and Communication Technology Services (ICTS) at the United Nations Office at Nairobi (UNON) on 12 September 2001 as a Programming Assistant on a fixed-term appointment and served in this capacity for seven years.
2. On 8 December 2008, the Applicant was informed that his fixed-term appointment with ICTS/UNON would not be renewed beyond 31 December 2008.
3. On 23 December 2008, the Applicant wrote to the Secretary-General to request administrative review of the decision not to renew his fixed-term contract beyond 31 December 2008.
4. On the same day, the Applicant filed a request for suspension of action of the same decision with the Joint Appeals Board (JAB) in Nairobi.
5. On 1 January 2009, the Applicant's contract was extended through 31 January 2009 in order to allow the JAB to consider the request for suspension of action of the decision not to renew his contract.
6. On 29 January 2009, the JAB, in its Report No. 2/09, recommended that the Secretary-General reject the applicant's request for suspension of action. On 30 January 2009, the Applicant was informed that the Secretary-General had decided to follow the JAB's recommendation.
7. On 1 May 2009, the Applicant filed an Application with the former UN Administrative Tribunal requesting for judicial review of the decision by the Secretary-General to reject his request for suspension of action.
8. The Respondent's Answer was filed on 5 November 2009 following requests by the Respondent for extensions of time on 11 August 2009 and 24 September 2009. On 4 December 2009, the Applicant was informed that his case had been transferred to the Dispute Tribunal.

9. On 3 March 2010, the Tribunal issued Judgment No. *Attandi* 2010/038, in which the present Applicant's Application on the merits of the decision not to renew his fixed-term contract beyond 31 December 2008, was struck out.

Applicant's Case

10. In the present Application, the Applicant states his case as follows:

a. Since the Respondent's decision on the recommendation of the JAB Panel on Suspension of Action is final under former staff rule 111.2 (c) (iii) of the United Nations, this Application is based on "judicial review, which is allowed under general principles of law".

b. JAB Report No. 2/09 is "*ultra vires*, biased and illegal".

c. In view of the foregoing, the Applicant requests the Tribunal to order the "three available remedies for judicial review, namely, certiorari, mandamus and prohibition".

Respondent's Case

11. The Respondent's submissions are summarized below:

a. The Secretary-General's decision to accept the JAB recommendation regarding a request for suspension of action is not subject to appeal pursuant to former staff rule 111.2 (c) (iii) and, therefore, this appeal is not receivable.

b. In light of the foregoing, the Respondent submits that the present Application is not receivable and requests the Tribunal to dismiss each and all of the Applicant's pleas and to dismiss the application in its entirety.

Judgment

12. Former staff rule 111.2 (c) (iii), which was applicable at all material times, provided that the Secretary-General's decision on a recommendation by the JAB rejecting an application for suspension of action was not subject to appeal.

13. The Applicant cannot in one breath acknowledge that the decision of the Secretary-General under former staff rule 111.2 (c) (iii) is not subject to appeal and in another submit that the JAB Report on which the decision was founded is *ultra vires*, biased and illegal. The Applicant has not given reasons for such a sweeping submission.

14. The remedies of certiorari, mandamus and prohibition are totally irrelevant here. Additionally, each of the three is a relief that may be invoked in some national jurisdictions in particular applications depending on the cause of action on which they are founded and are brought through a specific procedure. Even a litigant with a proper cause of action cannot seek the three remedies in a blanket fashion as done by the Applicant in this case.

15. This Application is both confused and misconceived. It is not properly brought under any general principles of law or any applicable staff regulation or staff rule.

16. The Tribunal considers that the Applicant is not entitled to any remedies. This Application is not receivable and is additionally frivolous and vexatious.



Judge Nkemdilim Izuako

Dated this 19th day of November 2010

Entered in the Register on this 19th day of November 2010



Jean-Pelé Fomété, Registrar, UNDT, Nairobi