



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/090

Judgment No.: UNDT/2012/001

Date: 4 January 2012

Original: English

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**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

ADHOLLA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM

## **Introduction**

1. On 29 December 2011, the Applicant filed an Application for suspension of action in respect of the decision not to renew her contract beyond 31 December 2011. This decision was apparently taken by Ms. Justine Ndongo-Keller, Chief of the Languages Services Section (LSS) of the International Criminal Tribunal for Rwanda (ICTR). The decision was communicated to the Applicant by letter dated 28 October 2011.

## **Facts**

2. The Applicant joined the ICTR in 2009 and at the time of the contested decision was working as a Language Reference Assistant in LSS at the FS4 level. The Applicant advises that her position was a fixed term appointment due to expire on 31 December 2011 and that it was funded by General Temporary Assistance (GTA) funds.

3. It is well known that the ICTR is in the process of downsizing. As a consequence, retention committees have been established to assist in determining which staff are to remain and which staff are to leave at any given time. In LSS, a retention panel consisting of 11 staff members was established and, at some time in 2011, the Applicant was rated by her Second Reporting Officer, Ms. Ndongo-Keller, in consultation with translators and revisers. The ratings were given in respect of certain criteria established across the ICTR for the purposes of the downsizing exercise.

4. According to the Applicant, on 19 October 2011 she was informed orally of the decision not to extend her contract, but the written confirmation of this came in the form of an Interoffice Memorandum (“IOM”) sent by Mr. Omar L. M. Camara, Chief, Staff Administration Unit, dated 28 October 2011. The letter did not give a reason for the decision but merely reiterated Staff Rules 4.13(c) and 9.4 which provide that fixed-term appointments do not carry any expectancy of renewal and that they expire automatically on the expiration date specified in the letter of appointment.

5. The Applicant received the IOM on 9 November 2011. On 14 November she wrote to Mr. Noun Bandyandora, her First Reporting Officer and at the time Officer-in-Charge of the Documents Control Unit, requesting clarification of the retention panel's evaluation. On 15 November 2011, the Applicant was sent an email by Ms. Sarah Kilemi, Chief of the Division of Administrative Services Section (DASS), advising her as follows:

I would like to refer you to the internal policy and procedures on how to deal with disagreement with the outcome of the retention panel. You as the [staff member], have the right to meet with members of the retention panel in order to be informed on the process used to evaluate you. Thereafter if you are still not satisfied, the matter is referred to administration in order for us to have it submitted to the independent retention appeal panel.

6. Following this procedure, on 23 November 2011 a meeting was convened with the LSS Retention Panel to discuss how the Applicant was evaluated. During that meeting the panel were not able to provide the Applicant with her ratings as they did not have the relevant documents to hand. A further meeting took place on 30 November 2011 with the Chief of Human Resources, the Chief of LSS and the Applicant so that the ratings could be transmitted to her.

7. The Applicant was clearly not satisfied with the outcome of these meetings because on 14 December 2011, the Retention Appeal Panel (RAP) was convened to consider her case. The RAP informed the Applicant of its decision to uphold the separation orally, on 22 December 2011.

8. The Applicant filed this Application for Suspension of Action on 29 December 2011.

### **The Applicant's submissions**

9. The Applicant's primary contentions may be summarized as follows:

*Prima facie unlawfulness*

- (a) The Applicant's evaluation was not completed in the spirit of the "Manyara Accord" or following the process and criteria established by the ICTR in its Information Circular No. 77 of 3 October 2007.
- (b) There has been confusion, incoherence, lack of transparency and communication as to how, and when, and in respect of what time span, the evaluation was based.
- (c) There is a heavy workload in the Reference Unit so it makes no sense not to renew the Applicant's contract. The reality is that the selection of the Applicant for non-renewal was due to favouritism, discrimination, and marginalization of certain ethnic groups.

*Urgency*

- (d) The matter is urgent because the Applicant needs to "repair" the unjust stain to her professional image.

*Irreparable damage*

- (e) The damage done to the Applicant's professional image is irreparable. She has suffered moral pain as the result of endless psychological harassment.

10. The Respondent was not asked to provide submissions in this case.

**Consideration**

*Receivability*

11. As there is no Application on the Merits on behalf of the Applicant extant in the Tribunal's records, the Tribunal concludes that the present Application is filed pursuant to article 2 of the Statute of the Dispute Tribunal and article 13.1 of its Rules of Procedure.

12. Article 2.1 of the Statute of the Dispute Tribunal provides that the Tribunal may pass judgment on an application filed by an individual to appeal an

administrative decision that is alleged to be in non-compliance with the terms of their appointment or their contract of employment. Article 2.2 of the Statute of the Dispute Tribunal states:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage...

13. Article 13.1 of the Rules of Procedure of the Tribunal states:

The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

14. Staff Rule 11.2 states:

Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

15. It follows from article 2.2 of the Statute of the Dispute Tribunal and the above Staff Rule that a request for suspension of action during the pendency of the management evaluation may only be receivable if a request for management evaluation has actually been submitted.

16. In the present case, there is no evidence before the Tribunal that the Applicant did indeed make a request for management evaluation in the formal sense as discussed below, prior to filing her Application with the Tribunal. In her Application, the Applicant states that she made such a request on 14 December

2011 and received an oral response on 22 December. This ties in with the evidence filed which indicates that on 14 December the Applicant met with the RAP in order to appeal the decision, and on 22 December she was informed of the outcome of that appeal. The question then is whether the Tribunal is able to treat the Applicant's appeal to the RAP as a "request for management evaluation" within the meaning of the Staff Rules and the Statute of the Tribunal.

***What is a management evaluation?***

17. It is noteworthy that there is nothing in the Staff Rules which actually defines a "management evaluation". The fact that within the Secretariat there exists a special office—the Management Evaluation Unit (MEU)—dedicated to considering "requests for management evaluation" is not mentioned. Indeed, reading the Staff Rules, a Secretariat staff member might well imagine that he or she should write directly to the Secretary-General in his office in New York rather than to the MEU in order to fulfil the requirements of staff rule 11.2.

18. In *Gebre* UNDT/2011/140, the Tribunal concluded that an ICTR staff member requesting an administrative review of a decision by writing to the Registrar of the ICTR had complied with the requirements of article 2.2 of the Statute and former staff rule 111.2, which was the equivalent of the article 11.2 cited above applicable in that particular case. The Tribunal held that:

...under art. 16(3) of the ICTR Statute, the Registrar of the ICTR is an Assistant Secretary-General. In his position as head of administration, he has the authority to make decisions on behalf of the Secretary-General in relation to the administration and operations of the ICTR. In other words, in administering the Arusha Tribunal, the Registrar stands in the shoes of the Secretary-General and is his lawful agent.

[...]

The Applicant has in essence fulfilled the requirements of the former Staff Rule by writing to the Registrar who is the head of administration and the lawful agent of the Secretary-General at the

ICTR where he was employed, asking for a second look at the impugned decision.<sup>1</sup>

19. Can the same conclusion be drawn here? Regrettably for the Applicant, it cannot. In *Gebre*, the applicant wrote to the lawful agent of the Secretary-General, the Registrar, who was well aware from the correspondence that the applicant was requesting an administrative review.<sup>2</sup> In the present case, in contrast, the Applicant “appealed” to the RAP in pursuance of the internal review procedure she was advised to follow by the Chief of DASS.

20. The Applicant was aware of the existence of the Dispute Tribunal because she filed an Application on the prescribed form on 29 December 2011. She successfully sent it to the Dispute Tribunal. She must, therefore, have made some inquiry into the procedures applicable to the Tribunal, even if only in a cursory manner. Since the Statute and Rules of the Tribunal are set out on its website, it can be presumed that the Applicant had access to them.

21. In the circumstances, the Tribunal cannot repair the Applicant’s lack of diligence in ascertaining that a request for management evaluation was required prior to—or even concurrent with—the filing of an application for suspension of action under article 13 of the Rules of the Procedure of the Tribunal. Despite its lack of detail, article 11.2 of the Staff Rules does make it clear that a staff member must write to the Secretary-General (or, as in the case of *Gebre*, his lawful agent), requesting management evaluation of the administrative decision. An appeal to an internal review committee such as the RAP does not amount to such a written request.

22. In the absence of a request for management evaluation the Tribunal does not have the jurisdiction to consider the present Application under article 2.2. of its Statute and article 13 of its Rules of Procedure. The Application is not receivable.

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<sup>1</sup> *Gebre* UNDT/2011/140, paragraphs 21 and 26.

<sup>2</sup> *Id.* paragraph 23.

23. In view of the Tribunal's findings on the issue of receivability, it is not necessary to examine the issues of *prima facie* unlawfulness, urgency, and irreparable damage.

**Conclusion**

24. The Application is dismissed.

(Signed)

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Judge Vinod Boolell

Dated this 4<sup>th</sup> day of January 2012

Entered in the Register on this Dated this 4<sup>th</sup> day of January 2012

(Signed)

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Jean-Pelé Fomété, Registrar, Nairobi