



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

MOHAMMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for applicant:

Augustine Mathern Kusalika

Counsel for respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. On 26 June 2012, the Applicant, a former staff member of the International Criminal Tribunal for Rwanda (ICTR), filed an Application before the Dispute Tribunal challenging the decision not to renew his fixed-term appointment beyond 31 December 2011 (impugned decision).

2. On 24 July 2012, the Respondent filed a Motion for Leave to Have Receivability Considered as a Preliminary Issue. In addition to leave, the Respondent moved for the Application to be dismissed on grounds of receivability. A Reply to the substantive Application was also filed.

3. The Applicant was afforded the opportunity to respond to the Respondent's Motion, which Reply was filed on 2 April 2013.

4. Having reviewed the submissions of the Parties, the Tribunal considers it necessary to first rule on whether the present Application is receivable before adjudicating the matter on the merits.

Parties' Submissions

5. The Respondent submits that the Application is time barred.

6. According to the Respondent's calculation, the Applicant ought to have filed his Application before the Tribunal by 28 May 2012; that is, 90 days from the "deadline for the response to the Applicant's request for management evaluation" as stipulated in art. 8.1(d)(i) of the Statute of the United Nations Dispute Tribunal (Statute). The Applicant filed his Application on 27 June 2012, 30 days late.

7. The Respondent also contends that the Application cannot be received by the Tribunal because the Applicant never sought suspension, waiver or extension of the

time limit to file his Application pursuant to the provisions of art. 8.3 of the Statute and art. 7.5 of the Rules of Procedure.

8. The Applicant submits that his Application was filed within the timeline stipulated in the Statute. He received the decision of the Management Evaluation Unit on 30 March 2012, and filed his Application before the Tribunal on 27 June 2012.

Deliberations

9. The question before the Tribunal is whether the Application before the Tribunal complies with the timelines enshrined in the Statute and Rules of the Tribunal.

10. The threshold for receivability before this Tribunal is governed by articles 7 and 35 of the Rules of Procedure. Article 7. 1 provides:

Applications shall be submitted to the Dispute Tribunal through the Registrar within:

- (a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;
- (b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or
- (c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

11. This provision must be read together with art. 8 of the Statute of the Dispute Tribunal. Article 8.1, in relevant part, provides that an application shall be receivable if:

- (d) The application is filed within the following deadlines:
 - (i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's *receipt* (*emphasis added*) of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices.

12. Timelines before the Tribunal would therefore normally begin to run from the date of receipt of a decision by management evaluation or the expiry of the time allocated to the Management Evaluation Unit to respond i.e. ninety (90) days from the date of the receipt of a management evaluation decision or ninety days following the expiry of the thirty (30) or forty-five (45) day (depending on where the request was filed) deadline. The Management Evaluation Unit's decision was therefore due on 28 February 2012.

13. It is on record that the Applicant in this case received a Management Evaluation decision *dated* 30 March 2012. He states in his Application that he received the decision on 2 April 2012. He filed his Application on 27 June 2012, which translates to exactly ninety (90) days from 30 March 2012.

14. The Respondent's argument is that the Application is time barred because it was filed more than ninety (90) days after the Management Evaluation Unit's decision *was due* counting forty-five (45) days from 14 January 2012 (when the Applicant filed his request for Management Evaluation).

15. The Tribunal is thus faced with the question as to whether the Applicant in the present case should be penalised for a delayed decision from the Management Evaluation Unit.

16. It is worth noting, that the issue here is not one of delayed *receipt*, but of a decision that was *issued* one month after the deadline for its issuance. In other words,

this is not a case in which the Management Evaluation Unit issued a timely decision which was received by the Applicant late. This is a situation in which the Management Evaluation Unit's decision was *issued* a month later than it should have been.

17. The Respondent is, in effect, arguing that a prudent applicant should have been cognizant of the provisions of art. 8.1 (d) (i) (a) and (b) and filed his application at the *earliest* possible time. In other words, knowing the timelines ahead of him, the Applicant should have commenced the process of putting his application together from the date the Management Evaluation decision was due and met the ninety (90) day deadline from that date.

18. The Tribunal is not persuaded by the Respondent's argument. The Applicant cannot be penalised for the Management Evaluation Unit being dilatory in its obligations.

19. The Tribunal finds that a reasonable scenario to transpire may be one in which an applicant commences the process of putting his application together at the forty-five (45) day mark, having not had a management evaluation response. A decision then arrives from the Management Evaluation Unit, which raises elements which the applicant feels he must address in his substantive application. The applicant refers to art. 8.1(d) (i) (a) and (b) and feels, correctly, that his circumstances must be that envisaged in sub-paragraph (a) which gives him ninety (90) days from the date of *receipt*.

20. The situation as described above is what has likely transpired in the present case. The Tribunal has examined the papers in this matter from as many angles as has been raised by the Parties, and finds that this matter must properly be found to be receivable.

21. The Respondent's Motion for Leave is GRANTED, and his request to have the Application dismissed on grounds of receivability is hereby REFUSED.

(Signed)

Judge Vinod Boolell

Dated this 5th day of August 2013

Entered in the Register on this 5th day of August 2013

(Signed)

Abena Kwakye-Berko, Acting Registrar, UNDT, Nairobi