



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

ABASSA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON AN APPLICATION FOR
REVISION**

Counsel for the Applicant:

Self- represented

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Elizabeth Gall, ALS/OHRM

Introduction

1. The Applicant is a staff member of the United Nations Economic Commission for Africa (UNECA), working as an Agricultural Advisor in the Food Security and Sustainability Development Department (FSSDD) in Addis Ababa, Ethiopia.

2. On 30 June 2012, he filed the current Application for Revision of Judgment No. UNDT/2012/086 with the United Nations Dispute Tribunal (UNDT). The Applicant seeks a Revision of the Judgment pursuant to article 12 of the UNDT Statute and article 29 of the UNDT Rules of Procedure, on the grounds that he did not receive the Dispute Tribunal's email correspondence seeking his comments on the Respondent's Reply on Receivability.

Facts

3. On 27 October 2010, the Applicant requested management evaluation of the decision not to select him for the post of Chief, Agricultural Production Systems Section (APSS), FSSDD, UNECA (Contested Decision).

4. On 15 December 2010, the Management Evaluation Unit (MEU) responded to the Applicant, stating that his request was not receivable because it was not sent within sixty days from the date on which the Applicant received notification of the administrative decision.

5. On 11 March 2011, the Applicant filed for an Extension of Time to File an Application with the Dispute Tribunal, stating that he was seeking to mediate his claim with the Office of the Ombudsman.

6. On 18 March 2011, the Tribunal issued Order No. 029 (NBI/2011) granting the Applicant's request and allowing him until 15 April 2011 to file his Application.

7. On 14 April 2011, the Applicant sought another extension of the deadline to file his Application on grounds that the mediation process was still underway. The Tribunal acknowledged receipt of this email on 15 April 2011 and informed the Applicant that the Judge assigned to his case would be notified of his request.

8. On 15 May 2011, the Registry wrote to the Applicant asking if the dispute had been resolved, and whether his 14 April 2011 request for an extension of time was still relevant. The Applicant did not respond to this email.

9. The Tribunal sent another email to the Applicant on 29 November 2011 asking him to inform the Tribunal of the status of the case by 2 December 2011. The Applicant responded on 2 December 2011, stating that the mediation services of the Office of the Ombudsman had produced no result as of 2 December 2011 and he was therefore ready to submit his Application.

10. The Applicant filed his Application on 2 March 2012 challenging the Contested Decision and also alleging that he was not notified of the decision. The Registry served the Application on the Respondent on 8 March 2012.

11. On 28 March 2012, the Respondent filed a Reply Limited to Receivability and for Consideration of Receivability as a Preliminary Issue.

12. The Tribunal gave the Applicant until 24 April 2012 to file a response to the Respondent's Reply on Receivability.

13. On 6 June 2012 the Tribunal issued Judgment No. UNDT/2012/086 rejecting the application on the ground that it was not receivable *rationae temporis*. As at that date, the Applicant never challenged the Reply on Receivability.

14. The Applicant has now requested a revision of the judgment on receivability on a number of grounds.

15. In brief he submits that he had not received the Tribunal's request to respond to the Respondent's motion on receivability.

Deliberations

16. By virtue of article 12.1 of the Statute of the Tribunal:

Either party may apply to the Dispute Tribunal for a revision of an executable judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.

17. The Rules of Procedure of the Tribunal embody similar provisions in article 29.1 except that article 29.1 does not refer to an executable judgment but to a judgment. On occasion arising that rule will have to be amended to make it consonant with article 12.1 of the Statute that should at any rate have precedence over the Rules of Procedure.

18. A judgment on receivability is not an executable judgment. It is not a judgment on the merits of the case where all issues have been adjudicated upon. An executable judgment is one in which the court determines on the substantive issues of the case having heard and deliberated on the evidence and arguments submitted by the parties.

19. A judgment on receivability is based on a procedural issue. In the present case, the procedural issue had to do with the timeliness of the application and scope of the court's jurisdiction where the statutory timelines have not been observed. In other words, the court never got to consider the merits because it was procedurally *estopped* from considering the substantive issues raised. It was therefore *not* an executable judgment within the meaning article 12.1 of the Statute.

20. The Tribunal therefore holds that the application for revision is not receivable as it is not an executable one.

21. The application is rejected.

(Signed)

Judge Vinod Boolell

Dated this 20th day of November 2013

Entered in the Register on this 20th day of November 2013

(Signed)

Abena Kwakye-Berko, Acting Registrar, UNDT, Nairobi