



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

IBOM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**  
Usungurua Basse

**Counsel for the Respondent:**  
UNDP

## **Introduction**

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP). He filed the current Application on 5 June 2014<sup>1</sup> to contest the decision of the Deputy Resident and Humanitarian Coordinator in South Sudan not to renew his fixed-term appointment (FTA) beyond 30 September 2008 (Contested Decision).

2. The Applicant is seeking: (i) reinstatement and a promotion to the P-5 level; and (ii) payment of outstanding entitlements.

## **Facts**

3. The Applicant entered into service with UNDP on 1 October 2007 on an appointment of limited duration (ALD)<sup>2</sup> as Head of the Resident Coordinator Field Office at the L-4 level in Bor, South Sudan.

4. By a letter dated 30 June 2008, the Deputy Resident and Humanitarian Coordinator informed the Applicant that due to the lack of funding, his contract would not be extended beyond its expiry of 30 September 2008.

5. The Applicant was separated from service on 30 September 2008.

6. On 20 January 2014, the Management Evaluation Unit (MEU) received the Applicant's management evaluation request (MER) and on 21 January 2014, MEU forwarded the MER to UNDP for review. UNDP subsequently requested that the Applicant provide a complete MER, which he did on 17 February 2014.

7. UNDP responded to the Applicant's MER by way of a letter dated 1 April 2014. In this response, UNDP informed the Applicant that his MER was time-barred

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<sup>1</sup> The Application was initially filed via Lotus Notes. The documents were subsequently uploaded into the Court Case Management System (CCMS) on 18 June 2014.

<sup>2</sup> The Applicant's appointment was governed by the former 300 series of the Staff Regulations and Rules.

and therefore not receivable. On the merits, UNDP informed the Applicant that there was no factual or legal basis upon which the Contested Decision could be overturned.

### **Preliminary matters**

8. Pursuant to article 8.4 of the UNDT Rules of Procedure, the Registrar “shall transmit a copy of the application to the respondent and to any other party a judge considers appropriate” after ascertaining that the application is in compliance with articles 8.1 to 8.3 of the Rules of Procedure.

9. However, in *Kalpokas Tari* UNDT/2013/180, Meeran J stated that:

11. The Tribunal has regard not only to the plain words of the Statute and Rules of Procedure, but also to the expectations of the General Assembly in resolutions 66/237 and 67/241 that the Tribunal adopt effective measures in dealing with frivolous and manifestly inadmissible applications. In particular, para. 42 of General Assembly resolution 67/241 states:

42. [The General Assembly] *Recognizes* the importance of effective measures against the filing of frivolous applications [and] encourages the judges to make full use of those measures currently available to them . . . .

12. Consistent with the General Assembly’s resolutions, the Tribunal has on several occasions considered matters of admissibility or receivability on a priority basis (see *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, and *Masykkanova* UNDT/2013/033).

13. The present case may properly be dealt with on a priority basis without first transmitting a copy of the application to the Respondent, or awaiting the Respondent’s reply before taking any action to consider the claim.

10. This Tribunal endorses the views set out in *Kalpokas Tari*. After a review of the Application and its supporting documents, the Tribunal decided that the present matter could be determined on a priority basis without first transmitting a copy of the application to the Respondent for a response.

## **Issues**

11. The only issue for determination in this judgment is whether the Applicant complied with the timelines stipulated in the UNDT Statute and Rules of Procedure.

## **Considerations**

12. Pursuant to former staff rule 111.2(a), a staff member was required to request an administrative review of a contested decision within two months from the date of being notified of the decision. The rule further stipulated that if the Secretary-General replied to the staff member's request, he or she could appeal against the answer within one month of the receipt of such reply. If the Secretary-General did not reply to the letter within one or two months, depending on the staff member's duty station, the staff member could appeal against the original administrative decision within one month of the expiration of the specified time limit.

13. Further, under article 8.1(c) of the UNDT Statute, the jurisdiction of the Dispute Tribunal can only be invoked in this matter if the contested administrative decision had previously been submitted for management evaluation. Staff rule 11.2(a) provides in relevant part that a staff member wishing to formally contest an administrative decision is required to submit a written request for management evaluation to the Secretary-General. Such a request is a mandatory first step for an Applicant prior to the submission of an Application to the Dispute Tribunal and it is not open to the Tribunal to waive this requirement or make any exception to it.<sup>3</sup>

14. Pursuant to staff rule 11.2(c), a request for management evaluation "shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested".

15. Documents submitted by the Applicant shows that he was informed, in writing, of the Contested Decision on 30 June 2008. Thus, to have complied with

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<sup>3</sup> Samardzic 2010-UNAT-072, Trajanovska 2010-UNAT-074, Ajdini 2011-UNAT-108.

former staff rule 111.2(a), he should have submitted a request for administrative review on or before 30 August 2008 but he did not do so. On 20 January 2014, he submitted an initial request for management evaluation, which was supplemented on 17 February 2014. He has not proffered any additional evidence demonstrating that he remonstrated against the decision at that time or at any other time prior to his management evaluation request of January 2014.

16. As the Tribunal noted in *Akunamambo* UNDT/2014/002, the purpose of a request for management evaluation is to give the Administration an opportunity to set right what would appear to be a wrong decision and to provide an acceptable solution where necessary. This procedure is conducive to good administration and prevents the Tribunal from being clogged with cases unnecessarily.

17. Where an applicant has failed to request management evaluation in a timely manner, the Dispute Tribunal has no jurisdiction to consider his/her application. This holds true in the present matter where the Applicant waited more than 5 years to finally protest an administrative decision that he was notified of in June 2008.

18. The Applicant provides the following reason for the delay in submitting his request for management evaluation:

The delay in challenging the said decision was due to the content of the said notification letter which indicated that I would be assisted for reassignment in the following months [...].

19. The Tribunal does not accept this explanation, which it finds to be regrettably impertinent in light of the language used by the Deputy Resident and Humanitarian Coordinator in his letter of 30 June 2008 that “[w]e will do everything possible to assist you in your future career, and will be contacting you directly **over the next month** with more information” (*emphasis added*). The letter does not state that he would be assisted with reassignment and neither does it give a time frame of months. The letter clearly indicated that he would be provided with more information within a month. Assuming *arguendo* that the Deputy Resident and Humanitarian Coordinator

had promised that his office would assist with reassignment, why did the Applicant not follow up within a month or two instead of sitting not only for months, but for years, waiting for an assignment that was not forthcoming? The only reason that comes to mind is that the Applicant contentedly slept on his rights after he had, in his mind, delegated his responsibility to look for work to others.

20. Lastly, even if the Tribunal was minded to consider this Application, the provisions of article 8.4 of the UNDT Statute clearly place a bar on any such action. Article 8.4 stipulates that:

Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

21. The Tribunal notes that this Application has been filed more than 5 years after the Applicant's receipt of the contested administrative decision. Thus, the Tribunal would be acting *ultra vires* to entertain it.

22. Article 10.6 of the UNDT Statute grants this Tribunal the authority to award costs against a party who has manifestly abused the proceedings. The Tribunal is of the considered view that the Applicant, by the filing of this frivolous Application, has manifestly abused the proceedings. If he happened to be in the employment of the Organization in any capacity, the Tribunal would have ordered costs against him to the tune of USD500. Unfortunately, since he is no longer a staff member, this is not a feasible option.

### **Decision**

23. The Tribunal concludes that the Application is not receivable and is therefore dismissed, in its entirety, with prejudice.

*(Signed)*

Judge Vinod Boolell

Dated this 25<sup>th</sup> day of June 2014

Entered in the Register on this 25<sup>th</sup> day of June 2014

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi