UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/093
Judgment No.: UNDT/2016/045
Date: 27 April 2016
Original: English

Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KING

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
George Irving

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant challenges a decision dated 21 July 2015 which he described as "the Organization's refusal to finalise [his] separation from service including [his] repatriation to [his] initial place of recruitment (the United States) and processing of [his] separation documents affecting his pension and health insurance entitlements".

2. The Applicant subsequently withdrew his claim relating to his pension and health insurance entitlements.[1]

Procedural history

3. The Applicant filed his Application with the Tribunal on 28 August 2015.

4. The Respondent filed his Reply on 1 October 2015 in which he alleged that the Application is not receivable *ratione temporis* and *ratione materiae*.

5. The Applicant filed submissions on the issue of receivability on 4 December 2015 in compliance with Order Nos. 354 (NBI/2015) and 370 (NBI/2015).

6. Pursuant to Order No. 012 (NBI/2016), the Applicant and Respondent filed additional documentary evidence and written submissions on 2 and 3 February 2016, respectively.

Facts

7. The Applicant is a national of Sierra Leone. He entered into service with the United Nations on 26 January 1998 at the United Nations Headquarters in New York where he worked until 7 March 1999. During that time, he held a G-4 visa[2].

[1] Applicant's submission on receivability dated 4 December 2015.
[2] This is a non-immigrant visa granted by the Government of the United States of America to individuals who are traveling to the United States to take up an appointment with a designated international organization, including the United Nations, and their immediate family members. See http://travel.state.gov/content/visas/en/other/employee-of-international-organization-nato.html.

8. On 21 July 1999, the Applicant was reappointed to serve with the United Nations Interim Administration Mission in Kosovo ("UNMIK"). He was subsequently assigned to various peacekeeping missions, including the African Union-United Nations Mission in Darfur ("UNAMID"). He served with UNAMID from 8 March 2008 as a Communications Officer at the FS-6 level until he reached the mandatory retirement age on 31 August 2014.

9. By a memorandum dated 3 July 2014, the UNAMID Chief Human Resources Officer ("CHRO") informed the Applicant that, due to his upcoming retirement, he would be separated from service on 31 August 2014 and that his date of departure from the mission would be 1 September 2014. The CHRO further advised that the Applicant was entitled to repatriation travel from his duty station to either his place of home leave (Freetown, Sierra Leone) or his place of recruitment (Brooklyn, New York); and requested the Applicant to complete the United Nations Joint Staff Pension Fund (UNJSPF) instructions for payment of benefits and return that to the UNAMID Human Resources Section ("UNAMID HRS") for forwarding to the Pension Fund.

10. On 5 and 15 August 2014, the Applicant informed the CHRO by email that both his place of home leave and place of recruitment were New York and that he wanted to travel to his place of home leave upon his separation from service. UNAMID HRS informed the Applicant on 5 and 15 August 2014 that the matter had been referred to the United Nations Regional Service Center in Entebbe ("RSCE") and the Department of Field Support ("DFS") in New York, respectively, for advice.

11. By an email dated 20 August 2014, the Onboarding & Separation Service Line at the RSCE sought the Applicant's confirmation of his travel itinerary from Khartoum, Sudan to New York. On 21 and 27 August 2014, UNAMID HRS followed up with the Applicant to request his confirmation of the travel itinerary.

12. On 1 September 2014, the Applicant emailed UNAMID HRS regarding a number of issues, including confirmation of his travel itinerary and his G-4 visa status. He wrote in relevant part that:

> As you realized I do not have a visa to travel to the United States. Since I am returning to my "Place of Recruitment" which is employment based travel, I must have a letter from the UN requesting issuance of a Visa to return to New York.
>
> …
>
> I have provided the above explanations and clarifications to expedite the correction and update of my Administrative Details and Personnel Action so that I can depart from the Mission as soon as possible.

13. The Applicant was provided with an itinerary on 3 September 2014 for travel to New York on 7 September 2014 and was informed by the CHRO that "it is a staff member's responsibility to ensure that they have valid travel documents – appropriate visas, UNLPs and national passport to undertake travel to any country".

14. In his response to the CHRO on 3 September the Applicant stated that:

> I am a G-4 holder and I am still a G-4 holder. Leaving the G-4 blank in my Personnel Action has not removed my G-4 status from INS records. At the end of my assignment when returning to the US the UN should give me a letter requesting that I be issued G-4 Visa to return to my Place of Recruitment because it is employment based. […]. Upon completion of my assignment the UN in particular should give me a letter requesting issuance of G-4 Visa to return to the US.

15. On the same day, the CHRO informed the Applicant by email that the Organization cannot request the G-4 visa for him because neither was he assigned to work in the United States nor was he traveling there for official business.

16. On 8 September 2014, the Applicant sought management evaluation of the "decision by UNAMID CCPO that [his] travel to New York on separation which is [his] place of recruitment is a private matter".[3] He stated that the decision was taken

[3] Respondent's Reply, Annex R8.

on 3 September when the CCPO sent him an email that he was not travelling to the United States on official business.[4] He further stated:

> Management evaluation should clarify to the UN that they are obligated to give me a letter stating that I have served the UN for 17.5 continuous years and that I am returning to my place of recruitment where they took me from.[5]

17. The Management Evaluation Unit ("MEU") wrote to the Applicant on 10 September 2014, framing the issues for which he was seeking management evaluation as: "the location of [his] home leave" and "[his] request to be issued a letter for the US embassy stating that [he is] a former UN staff member". The Applicant was asked by MEU whether these issues had been resolved and if he wished to withdraw his case.

18. The Applicant made the following additional submissions to MEU on 12 September 2014, which he resent on 16 September:

> Dear [MEU],
>
> The issue about 1) The location of my Place of Home Leave have not resolved and I would like MEU to evaluate it and 2) The letter to the US Embassy had also not been resolved, because the Memo from the US Consular office in Skopje made it explicitly clear that at the end of my assignment I would be issued a G-4 visa. The argument put forward by UNAMID Administration that I was not a G-4 holder was invalid, because 17 months after I was reassigned to UNMIK/Kosovo i.e on Jan 20, 2001 the District Director US INS New York stated that I had "Duplicate Status". I was entitled to be issued "Advance Parole Travel" document as a US TPS holder. If the INS checked my records on file and advised that I was a G-4 holder and hence I was covered by the UN and also, the US Consular office in Skopje had made it clear that G-4 holders would be stripped of their G-4 visa but were guaranteed that at end of their assignment they would unconditionally be reissued a G-4 visa, then I totally consider the UN decision that my G-4 expired immediately I left the USA in July 1999 totally unacceptable. I did not know how long the email exchange with the UN would last for as they had also argued as could be seen on the "TO WHOM IT MAY CONCERN" letter that my entry on duty UN was

[4] *Ibid.*
[5] *Ibid.*

> July 1999. There seemed to be no progress in sight. So I made a tactical withdrawal from the endless denial/argument in the interest of me getting out of the Mission now and challenge the decision later when I am in the USA. It is unlawful as an employee & employer relationship. I have been abandoned by the UN. Therefore, the issue is not yet closed and waiting for MEU to evaluate such decision. I last saw my 3 children 10 (ten) years ago in 1994. I cannot afford to waste time over such baseless argument.

19. On 26 September 2014, the CCPO wrote to inform him that "[he] could have been repatriated to [his] home country Sierra Leone but [he] chose to be repatriated to the US".

20. On 21 October 2014, the Applicant made further submissions to MEU. His submissions read, in relevant part, as follows:

> ….
>
> I have submitted my request for non-immigrant visa to expedite my exit from Sudan. The company/organization paying for the ticket had to be specified, the relationship, address and contact info. My response UN, EMPLOYER, UNAMID HQ NORTH DARFUR. The corrections to the "TO WHOM IT MAY CONCERN" from UNAMID and my PA and Administrative Details have to be corrected.
>
> ….
>
> I am still waiting for a proper letter of "TO WHOM IT MAY CONCERN" to take to the US Consul in Khartoum and also update/corrections to my Personnel Action and Administrative details.

21. On 28 October 2014, the Applicant wrote to a UNAMID staff member seeking corrections to his PA, including to the place of his home leave, and a "to whom it may concern" letter that had been given to him.

22. On 4 November 2014, a travel authorization was approved to obligate funds for the cost of the Applicant's air ticket to New York, terminal expenses and his relocation grant.

23. On 18 March 2015, the Applicant emailed a number of individuals at United Nations Headquarters in New York, including the former Under-Secretary-General for Field Support ("USG/DFS"). In this email, the Applicant complained of lack of

access to his United Nations email via Lotus Notes and reminded them that the issuance of his certificate of service and travel authorization, that were required for his repatriation to the United States, were still outstanding. According to the Applicant, he did not receive a response to this email.

24. By a memorandum dated 15 June 2015, which was sent to the two email addresses supplied by the Applicant, MEU rejected the Applicant's request for management evaluation dated 8 September 2014. The reason given by MEU for the rejection was that from the provisions of ST/AI/2000/19 (Visa status of non-United States staff members serving in the United States, members of their households and their household employees, and staff members seeking or holding permanent resident status in the United States), he did not have a legal right to retain the G-4 visa status acquired during his appointment in United Nations Headquarters in New York after he was employed outside the United States. Under the same ST/AI, he did not have a right to request and obtain a G-4 visa for his repatriation to the United States given that he was being separated and was not travelling to the United States on official business. In the absence of any right to a G-4 visa the MEU determined that his request had no direct effect on the terms of appointment and his request was not receivable.

25. On 6 July 2015, the Applicant's Counsel wrote to the current USG/DFS. In that letter he advised that the Applicant had been attempting for a considerable time to "rectify a mistake in his entitlement to repatriation. His place of return has erroneously been given as Sierra Leone […]. The purpose of this letter is therefore to request a response to [the Applicant's] standing request that his place of repatriation be recognized as the United States and a proper travel authorization be issued so that he may proceed to leave Sudan". Counsel informed the USG/DFS that if he did not receive a response by 21 July 2015, he would consider this as a negative administrative decision in accordance with staff rule 11.2 and proceed with legal recourse.

26. On 24 July 2015, having not received a response from the USG/DFS, the Applicant submitted a second request for management evaluation through his Counsel. He specified the administrative decision to be evaluated as: "The decision rejecting [his] request to recognize the United States as the proper place of repatriation and to issue proper travel authorization so that [he] may proceed with [his] relocation from Sudan and finalize [his] separation from service".

27. On 30 July 2015, MEU informed Applicant's Counsel that on 15 June 2015, it had already responded to the issues raised in the 24 July 2015 request for management evaluation. MEU also stated that:

> With regard to your client's new management evaluation request, we note that your client was advised by UNAMID on 3 September 2014 that his air ticket to the US would be issued, upon confirmation that he has a valid visa. Moreover, his travel upon separation to New York was authorized on 6 November 2014. It is clear that UNAMID is willing to travel [the Applicant] to New York, however, as indicated in the NR letter attached, UNAMID does not have the obligation to provide him with a visa for the US.

28. On the same day MEU acknowledged that, as they had not received a return receipt for its 15 June 2015 response, the Applicant may not have received it. MEU resent the memorandum to the new email address supplied by the Applicant and to his Counsel on 30 July 2015.

29. By an email dated 4 August 2015, the Deputy Director of the Field Personnel Operations Service, DFS, responded to the correspondence from the Applicant's Counsel of 6 July 2015 to the USG/DFS. The Deputy Director informed Counsel of the Organization's willingness to repatriate the Applicant to New York upon the Applicant's confirmation that he possessed the necessary travel documents for the United States. He also informed Counsel of the Organization's willingness to explore other locations for the Applicant's repatriation.

30. Applicant's Counsel responded to the Deputy Director by email dated 10 August 2015 requesting a correct Certificate of Service and a *Note Verbale* from the

Organization with specific details to enable the Applicant to apply for a visa to the United States.

31. The Director of the Field Personnel Division, DFS, responded to Applicant's Counsel on 26 August 2015 as follows:

> [T]he Organization stands ready to arrange [the Applicant's] travel to New York, his place of recruitment, as per his entitlement pursuant to Staff Rules 7.1(a)(iv) and 7.1(b).
>
> However, we wish to reiterate that the Organization is not legally responsible for securing the required entry visa for [the Applicant] to enter the United States as [he] is not travelling to New York on official business, on behalf of the United Nations. Please also refer to the most recent letter from the Management Evaluation Unit (MEU) on this issue dated 5 August 2015 (attached). Accordingly, we are not in a position to accede to your request that the Organization issue a Note Verbale to the US Embassy.
>
> The extent to which we are able to assist [the Applicant] is by issuing him with a Certificate of Service (attached), noting that he held a valid G-4 visa during the period when he served at UN Headquarters in New York from 26 January 1998 to 7 March 1999. I am also attaching a copy of the approved travel authorization provided to [the Applicant] in 2014.
>
> Should [the Applicant] wish to be repatriated to Sierra Leone, his home country, or to Uganda where his spouse currently resides, we are willing to pursue either option.

32. The Applicant filed the current Application with the Tribunal on 28 August 2015.

Issue

33. The issue for determination in this judgment is the receivability of the Applicant's claim in his Application of 28 August 2015 relating to his repatriation to his initial place of recruitment.

Respondent's submissions

34. The Application is not receivable *ratione temporis* for the following reasons:

a. The Applicant requested management evaluation on 9 September with further submissions on 20 October 2014[6]. The relevant response period under staff rule 11.2(d) was 45 days from 20 October (4 December 2014). In the absence of a response from MEU by 4 December, the Applicant should have filed an application to the Dispute Tribunal, pursuant to article 8.1(i)(b) of the UNDT Statute, by 4 March 2015.

b. MEU's response of 15 June 2015 had no impact on the deadline for seeking recourse before the Dispute Tribunal because the time limit for filing the Application had already expired when it was issued. MEU's response did not reset the time limit.

c. The Applicant has not provided any evidence to support his belief that the matter was still under consideration and no final decision had been made. The setting of an arbitrary deadline by his Counsel's letter of 6 July 2015 to the USG/DFS did not reset the deadline. Even if the Applicant had a basis to believe that the matter was still under consideration that did not absolve him from his responsibility to comply with the statutory time limits. The Secretary-General did not extend the deadline for requesting management evaluation under staff rule 11.2(c).

d. In accordance with *Cooke* 2013-UNAT-380, the Dispute Tribunal is not competent to adjudicate this Application and cannot waive the filing time on its own motion. Rather, prior to the deadline for filing an application, a staff member must make a written request for an extension or waiver of the deadline.

35. The Application is not receivable *ratione materiae* for the following reasons:

a. The Applicant has not identified any administrative decision in non-compliance with his terms of appointment. The Organization has agreed to

[6] The email communication between the Applicant and MEU shows that this additional submission was made on 21 October and not on 20 October.

repatriate the Applicant to Brooklyn, New York. Accordingly, there is no dispute that the Applicant is entitled to repatriation to the United States. There is therefore no adverse administrative decision relating to his repatriation.

b. The Applicant has no right under his former appointment to a G-4 visa following his separation from service. The issuance of G-4 visas is governed by ST/AI/2000/19. The Applicant is not an official of, or a person employed by the United Nations. Nor will he be stationed on official business in the United States. Accordingly, under section 1.1 of ST/AI/2000/19, he is not entitled to a G-4 visa.

Applicant's submissions

36. On the issue of receivability *ratione temporis*, the Applicant submits that the Respondent's argument that time limits begin to run from the moment one becomes aware of the problem or issue that is the basis of a subsequent administrative decision is both unreasonable and impractical. Pursuant to *Schook* 2010-UNAT-013[7], the Applicant should have received notification of the decision in writing but he did not. Thus, the period of 60 calendar days for appealing the decision did not start. Additionally, pursuant to *Asariotis* UNDT/2013/144, an administrative decision may arise where there is a refusal, explicit or implicit.

37. He originally raised the issue without the assistance of counsel and was told his request was untimely because no final decision had been taken and that the matter remained under review. In the absence of any response for over six months, however, the Applicant authorized his Counsel to make a request for a final decision, failing which he would consider it a negative decision. It was not until this request for management evaluation of the refusal to take action that he was advised that a prior management evaluation had been issued. He had not received this response. Nevertheless, the response was to a different formulation of the contested decision and is inapplicable to the present application. The Respondent has consistently

[7] See also *Bernadel* 2011-UNAT-180 and *Manco* 2013-UNAT-342.

misstated his claim as a refusal by the Administration to effect a G-4 visa so as to enable him to return to the United States in that status. However, what he is actually contesting is the refusal of the Organization to provide the necessary travel authorization and corresponding documentation that would allow him to apply for and receive the necessary approval from the United States authorities to return to his place of recruitment.

38. As to the issue of receivability *ratione materiae,* the Applicant contends that the failure to respond to his request is itself an appealable administrative decision. He is aware that the issuance of United States visas is outside the purview of the Organization and is therefore not contesting the refusal of the Organization to request a G-4 visa. He has requested travel authorization with an accompanying letter to the United States authorities acknowledging that his repatriation is official travel in accordance with his terms of employment so that he may proceed to make the necessary arrangements, including an appropriate United States visa. Without these documents, he is left stranded in his former duty station and denied an entitlement guaranteed by his contract.

39. The Applicant contends that since September 2014, he has been unable to complete his repatriation because the Organization has refused to issue the necessary documentation required by the United Nation Staff Regulations and Rules that will enable him to obtain the required visa for entrance to the United States. This includes a proper certificate of service, travel authorization and a *Note Verbale* from UNAMID regarding his right to be returned to his place of recruitment.

40. In his Application, the Applicant submits that his entitlement to repatriation is set forth in staff regulation 9.4. His entitlement to a travel authorization and to a certificate of service is set out in staff rules 7.4 and 9.12 respectively. He maintains that the core of his claim is the duty of care and the obligation of good faith and fair dealing in terms of providing the necessary documentation to assist him in exercising his right to repatriation.

Considerations

What is the contested administrative decision?

41. The Applicant made two requests for management evaluation. The Respondent maintains that there was one administrative decision, the Applicant summits that there were two separate decisions.

42. The Applicant first raised the issue of his repatriation in his email of 1 September 2014, which was addressed to the CHRO.

43. On 3 September 2014, the Applicant emailed the CHRO again asking that the United Nations provide him with a letter requesting issuance of a visa for him to return to New York.

44. On the same day, the CHRO unequivocally informed the Applicant, in writing, that the Organization cannot request the G-4 visa for him and provided him with the reasons for this decision. The Tribunal finds that this was the first contested decision.

45. On 8 September 2014, the Applicant requested management evaluation of the CHRO's email of 3 September 2014. He made additional submissions to MEU on 12 September 2014, which he resent on 16 September, and on 21 October 2014.

46. According to the Applicant, his second request for management evaluation dated 24 July 2015 arose from the failure of the Administration to reply to his Counsel's 6 July 2015 request to the USG/DFS for a "response to [the Applicant's] long standing request that his place of repatriation be recognized as the United States and a proper travel authorization be issued so that he may proceed to leave Sudan".

47. In the second management evaluation request, he identified the administrative decision to be evaluated as: "The decision rejecting [his] request to recognize the United States as the proper place of repatriation and to issue proper travel

authorization so that [he] may proceed with [his] relocation from Sudan and finalize [his] separation from service".

48. The Tribunal finds that, in spite of this confusing attempt by the Applicant to characterize it as a second administrative decision (or omission), his second request for management evaluation sought review of the same decision that was conveyed to him on 3 September 2014 after he requested the Administration to assist him with obtaining a visa to the United States. In his second request, the Applicant asked the Administration to provide him with "proper travel authorization". As a non-United States staff member he needed a visa to enter the United States.

49. The response of the Administration on these requests was consistent: obtaining a visa to the United States was the responsibility of the Applicant.

50. The Tribunal holds that there was one contested administrative decision dated 3 September 2014.

Is the Application receivable ratione temporis?

51. The United Nations Appeals Tribunal ("the Appeals Tribunal") has consistently held that the restatement of an original administrative decision when repeatedly questioned by a staff member does not reset the clock with respect to statutory timelines. The time starts to run from the date on which the original decision was made.[8]

52. In this case the clock was set on 3 September 2014, the date of the original decision that obtaining a visa to the United States was the responsibility of the Applicant. The Applicant submitted a timely request for management evaluation on 8 September 2014.

53. Pursuant to art. 8.1(d) of the UNDT Statute, an application shall be receivable by the Tribunal if the application is filed within the following deadlines:

[8] *Sethia* 2010-UNAT-079, *Aliko* 2015-UNAT-539; *Fiala* 2015-UNAT-516; *Kazazi* 2015-UNAT-557.

> (i) In cases where a management evaluation of the contested decision is required:
>
> a. Within 90 calendar days of the applicant's receipt 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;

54. The deadline for filing an application with the Tribunal would normally begin to run from the date of receipt of a response from MEU or upon the expiry of the time allocated to MEU to respond.

55. Viewed in the most favorable light for the Applicant, the time limits in art. 8.1(d)(i) of the UNDT Statute began to run from 21 October 2014, the date of his last submission to MEU concerning his first request for management evaluation. From that date the relevant response period of 45 days ended on 5 December 2014. As MEU did not respond within the response period of 45 days, the Applicant had 90 calendar days until 5 March 2015 to file his application with the Tribunal.

56. In *Neault* 2013-UNAT-345, the United Nations Appeals Tribunal ("Appeals Tribunal") stated that "When the management evaluation is received after the deadline of 45 calendar days but *before* the expiration of 90 days for seeking judicial review, the receipt of the management evaluation will result in setting a new deadline for seeking judicial review before the UNDT" (emphasis added).[9]

57. The facts in the present case are different from those in *Neault*. MEU's response to the first request for management evaluation was received by the Applicant on 30 July 2015 which was *after* the expiration of the 90 day deadline. Its late arrival did not set a new deadline for submitting the Application to the Tribunal. The 90 days ran from 5 December 2014 to 5 March 2015.

58. The Application was not filed until 28 August 2015, well outside the 90 days limit.

59. In summary, the date of the contested decision was 3 September 2014. The second alleged contested decision and subsequent request for management evaluation was a reiteration of the first and did not "reset the clock". In the face of the delayed response of MEU to the first request for management evaluation, the Applicant had until 5 March 2015 to file his application to the Tribunal. The Application was filed out of time and is not receivable on that basis.

Is the Application receivable ratione materiae?

60. In *Wasserstrom* 2014-UNAT-457, the Appeals Tribunal stated that: "The key characteristic of an administrative decision subject to judicial review is that the decision must 'produce[] direct legal consequence' affecting a staff member's terms or conditions of appointment. 'What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision'".

61. It is not in dispute that the Applicant is entitled to repatriation upon separation on retirement. The requirement for travel authorization and Certification of Service are set out in the Staff Rules.

62. Staff members who are travelling on official business must have proper authorization pursuant to staff rule 7.4.

> Authorization to travel
>
> Before travel is undertaken, it shall be authorized in writing. In exceptional cases, staff members may be authorized to travel on oral orders, but such oral authorization shall require written confirmation. A staff member shall be responsible for ascertaining that he or she has the proper authorization before commencing travel.

63. A written travel authority was authorized on 4 November 2014 to obligate funds for the cost of the Applicant's air ticket to New York, terminal expenses and his relocation grant.

64. The Administration reiterated on 26 August 2015 that it stood ready to arrange his travel and enclosed a copy of the travel authorization already provided to the Applicant in 2014.

65. Staff rule 9.12 on certification of service states the following:

> Any staff member, who so requests shall, on leaving the service of the United Nations, be given a statement relating to the nature of his or her duties and the length of service. On the staff member's written request, the statement shall also refer to the quality of his or her work and his or her official conduct.

66. On 26 August 2015, the Administration provided the Applicant with a certificate of service which stated, inter alia, that he had served with the United Nations in the United States during specified times and had held a G-4 visa at that time.

67. Any challenge to decisions by the Administration in relation to the Travel Authorization and the Certification of Service is moot and not receivable.

68. Beyond these matters the Applicant has not identified any direct legal consequence affecting the Applicant's terms or conditions of appointment or any other breach of the relevant rules or regulations arising from the impugned decision.

69. The Application is not receivable *ratione materiae*.

Decision

70. The Application is dismissed in its entirety

(Signed)

Judge Coral Shaw

Dated this 27th day of April 2016

Entered in the Register on this 27th day of April 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi