



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NGOGA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**

Angela Kobel  
Sharon Kemitare

**Counsel for the Respondent:**

Nicole Wynn, ALS/OHRM  
Paulos Weldesellasie, ALS/OHRM

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

## Introduction

1. The Applicant is a former P-5 Senior Political Officer with the United Nations Mission in South Sudan (UNMISS).
2. On 6 April 2017, he filed an application with the United Nations Dispute Tribunal (UNDT) contesting a decision dated 25 January 2016. The Applicant's Counsel characterizes the contested decision as follows:
  - a) The decision emanated from the claimed overpayment of dependency benefits for our client's spouse, Ms. Peace Ngoga, and the subsequent recovery of the monies by deducting funds from our client's pension.
  - b) [...] the decision of UNMISS to in declining to consider our client's dependants (sic) benefits claim on behalf of his adopted children.
  - c) Our client requested that he claim dependency benefits retroactively for his adopted children, which he had not done during his stay with the UN. Our client had a right to receive those benefits on behalf of his children. In view of the fact that he could not claim on behalf of his spouse, he requested that he claim on behalf of his children retroactively to offset the claimed overpayment.
3. On 8 May 2017, the Respondent filed a Motion for summary judgment in which it was argued that the application is not receivable *ratione materiae*.
4. The Respondent filed a reply to the application on 15 May 2017.
5. The Tribunal has decided, in accordance with art. 16.1 of the Tribunal's Rules of Procedure, that an oral hearing is not required in determining the preliminary issue of receivability in this case and will rely on the parties' pleadings.

## **Facts**

6. The Applicant was initially appointed in August 2006 as a P-5 Senior Political Advisor with the United Nations Mission in Sudan (UNMIS). In July 2011, he was reassigned to UNMISS in Juba, South Sudan at the same level, where he served until his retirement on 30 April 2014 (Annex 1 to the reply).

7. Throughout his employment with the Organization, the Applicant was remunerated at the dependency rate based on his wife's dependent status (Annex 3 to the reply).

8. On 8 March 2010, UNMISS hired the Applicant's wife as a P-3 Humanitarian Affairs Officer in a different duty station (Annex 4 to the reply).

9. By memorandum dated 3 December 2014, UNMISS notified the Applicant that he had been overpaid by USD109,034.04 because he continued to be remunerated at the dependency rate even though his wife had become a staff member in March 2010.

10. On 23 December 2014, the Chief, Payroll Operations informed the Applicant that after offsetting the overpayment against his separation entitlements, he owed the Organization USD81,953.76.

11. On 30 January, 13 February and 23 March 2015, the Applicant requested management evaluation of the decision to retroactively change his dependency status as of March 2010. In a response dated 14 April 2015, the Management Evaluation Unit (MEU) concluded that the decision to recover overpayments made in connection to the Applicant's failure to report the change of his wife's dependency status was made in accordance with the relevant rules and guidelines and was therefore lawful.

12. In October 2015, the Applicant applied for retroactive dependency benefits for his adopted children.

13. The Chief Human Resources Officer, UNMISS, responded to the Applicant on 1 November 2015 informing him that UNMISS was unable to exceptionally consider his request.

14. On 28 January 2016, the Applicant requested mediation assistance from the Ombudsman.

15. On 11 May 2016, the Applicant requested management evaluation of the UNMISS decision to deny his request for retroactive dependent child benefits. His request was found not receivable.

#### **Respondent's submissions on receivability**

16. The Respondent makes the following submissions in his motion for a summary judgment

a. The application should be summarily dismissed because it is not receivable. The Dispute Tribunal lacks jurisdiction because the Applicant failed to timely request management evaluation.

b. UNMISS denied the Applicant's request for dependent child benefits on 1 November 2015 and again on 25 January 2016. The time to request management evaluation started to run on 1 November 2015, the date of the first denial of his request. The second denial did not reset the time limit.

c. The Applicant should have requested management evaluation no later than 31 December 2015. Even taking 25 January 2016 as the date of the contested decision, the Applicant had to request management evaluation no later than 25 March 2016.

d. The Applicant did not request management evaluation until 11 May 2016, more than 60 days after both denials of his request.

e. Contrary to the Applicant's contentions, the exception under art. 8(1)(d)(iv) of the UNDT Statute and staff rule 11.4(c) does not apply here. Under article 8(1)(d)(iv), a staff member may file an application within 90 calendar days after the mediation has broken down if the parties have sought mediation of their dispute within the deadlines for the filing of an application.

f. There was no deadline for filing an application in this case because the Applicant did not timely seek management evaluation. The Applicant did not request mediation until after he had missed the deadline for requesting management evaluation. He had no right to file an application at all. The Statute does not toll the deadline for filing an application before the Dispute Tribunal when the Applicant has not made a timely request for management evaluation. In such a case, the Dispute Tribunal lacks jurisdiction to review the claim.

### **Applicant's submissions on receivability**

17. The Applicant at paragraph IX of his application submits that his application should be considered on the basis of "United Nations Dispute Tribunal Rule 11.4". He appears to refer to art. 8.1(iv) of the UNDT Statute which stipulates that,

where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the application is filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

18. The Applicant submits that his mediation was concluded sometime in January 2017 and he is therefore well within the 90-day time limit.

## **Considerations**

19. The sole legal issue arising for consideration at this stage is whether the application is receivable.

### *The applicable law*

20. Staff rule 11.2(a) provides that a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

21. In accordance with staff rule 11.2(c), a request for a management evaluation shall not be receivable 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.

22. Staff rule 11.4(a) stipulates that a staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the UNDT within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2 (d), whichever is earlier.

23. Staff rule 11.4(c), which is similar to art. 8.1(iv) of the UNDT Statute, stipulates that:

(c) Where mediation has been pursued by either party within the deadline for filing an application with the United Nations Dispute Tribunal specified in staff rule 11.4 (a) or (b) and the mediation is deemed to have failed in accordance with the rules of procedure of the Mediation Division of the Office of the Ombudsman, the staff member may file an application with the Dispute Tribunal within 90 calendar days of the end of the mediation

*What are the contested decisions?*

24. In his application, the Applicant states that he is contesting two decisions, namely, the MEU decision of 14 April 2015 and the UNMISS decision of 25 January 2016. In the letter dated 14 April 2015, MEU concluded that the decision to recover overpayments made in connection with the Applicant's failure to report a change in his wife's dependency status was lawful. In October 2015, the Applicant applied for retroactive dependency benefits for his adopted children. The Chief Human Resources Officer, UNMISS, responded to the Applicant on 25 January 2016 informing him that UNMISS was unable to exceptionally consider his request. These are the two decisions properly before the Tribunal for adjudication.

*Is the application receivable?*

25. With respect to the contested decision affirmed by MEU on 14 April 2015, that is, the decision to recover overpayments made in connection with the Applicant's failure to report a change in his wife's dependency status, the Applicant had until 13 July 2015 to file an application challenging it. He failed to do so and that aspect of his claim is not receivable.

26. Turning now to the decision rejecting the Applicant's request for retroactive dependency benefits for his adopted children, the Applicant was required to request management evaluation of that decision within 60 calendar days of 25 January 2016, by 25 March 2016, in accordance with staff rule 11.2(c) but failed to do so. Instead, the evidence before the Tribunal is that he only did this on 11 May 2016. The MEU responded to his request on 12 May 2016 informing him that his request was not receivable.

27. In the meantime, on 28 January 2016, the Applicant wrote to the Office of the Ombudsman seeking mediation and proposing a repayment plan. It is the Applicant's contention that his mediation was concluded sometime in January 2017 and he is therefore well within the 90-day time limit for filing an application.

28. Mediation efforts may automatically extend the deadline for filing of an application but not for seeking management evaluation. The latter, pursuant to staff rule 11.2(c) may only be extended by the decision of the Secretary-General and “under conditions specified by the Secretary-General.” The Applicant had not requested the management evaluation of the decision refusing his request for retroactive dependency benefits within the statutory deadline. There is no evidence that he asked for extension of the management evaluation deadline nor that the Secretary-General extended such deadline or specified any conditions for extending it. Whilst, in certain circumstances, it would not be unreasonable to infer that the Ombudsman’s participation in settlement negotiations may amount to the Secretary-General’s implicit extension of the management evaluation deadline for the period of the negotiations<sup>1</sup>, in the present case, however, such inference would be belied by the fact that MEU on 12 May 2016 refused the management evaluation request as belated, without any reaction from the Applicant.

### **Judgment**

29. The application is rejected as it is not receivable.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 14<sup>th</sup> day of July 2017

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<sup>1</sup> *Wu* 2013-UNAT-306, para. 25.



Entered in the Register on this 14<sup>th</sup> day of July 2017

*(Signed)*

Eric Muli, Legal Officer, for,  
Abena Kwakye-Berko, Registrar, Nairobi