



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MADI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

None

## **Introduction**

1. On 29 December 2017, the Applicant, a former staff member in the Gaza Field Office (GFO) of the United Nations Relief and Works Agency for the Palestine Refugees in the Near East (UNRWA), filed an application with the United Nations Dispute Tribunal (UNDT). The Applicant contests UNRWA's decision to deny his request for early voluntary retirement.

## **Facts**

2. The Applicant was a locally recruited staff member of UNRWA who served as a Construction Engineer in GFO.

3. On 1 November 2016, the Applicant filed an application with the UNRWA Dispute Tribunal contesting the decisions to deny: 1) his request for special leave without pay; and 2) his request for early voluntary retirement.

4. On 19 November 2017, the UNRWA Dispute Tribunal issued its judgment UNRWA/DT/2017/036 dismissing the application.

5. On 29 December 2017, the Applicant filed the present application with the UNDT.

## **Considerations**

6. 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 complies with articles 8.1 to 8.3 of the Rules of Procedure.

7. The Tribunal has, on several occasions, considered matters of admissibility or receivability on a priority basis without first transmitting a copy of the

application to the Respondent or awaiting the Respondent's reply before taking action to consider the claim.<sup>1</sup>

8. After a review of the application and its supporting documents, the Tribunal has decided that this claim can be determined on a priority basis without first transmitting a copy of the application to the Respondent for a response.

***Locus standi***

9. The issue arising for consideration is the receivability of the present application. In *Christensen 2013-UNAT-335*, the United Nations Appeals Tribunal ("the Appeals Tribunal") held that "the UNDT is competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute" when determining the receivability of an application. The Appeals Tribunal went on to state:

This competence can be exercised even if the parties or the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable.

10. The Tribunal has accordingly chosen to proceed by way of a judgment on receivability as it is competent to raise the issue of jurisdiction *sua sponte*.

11. On the question of the Applicant's *locus standi* or, in other words, the right of the Applicant to be heard on an application filed before the Dispute Tribunal the Tribunal recalls art. 2.1(a) and art. 3 of the UNDT Statute which provide that:

**Article 2**

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the

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<sup>1</sup> See *Hunter* UNDT/2012/036, *Milich* UNDT/2013/007, *Masykanova* UNDT/2013/033, and *Kalpokas Tari* UNDT/2013/180.

Secretary-General as the Chief Administrative Officer of the United Nations:

(a) to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment of the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

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### **Article 3**

An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

12. The issue is whether the Applicant is a staff member within the meaning of art. 3 of the Statute of the Dispute Tribunal and whether he challenges a decision within the meaning of art. 2.1(a).

13. Article 101, paragraph 1, of the Charter of the United Nations reads:

The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

14. Under the above provisions the power of appointment of staff members rests with the Secretary-General subject to regulations made by the General Assembly. And the legal act by which the Organization legally undertakes to employ a person as a staff member is by a letter of appointment signed by the Secretary-General or

an official acting on his behalf.<sup>2</sup> The terms and conditions of the employment contract of a staff member are set forth in the letter of appointment and its express incorporation by reference of the Organization's Regulations and Rules and all pertinent administrative issuances.<sup>3</sup>

15. The jurisdiction of the UNDT is limited to persons having acquired the status of staff members of the United Nations or former staff members, as set out in art. 3.1 of the UNDT Statute.<sup>4</sup> The UNDT has no jurisdiction to hear applications from UNRWA staff members.<sup>5</sup> The jurisdiction of the Tribunal is governed not only by the subject matter or nature of the litigation, which must be an administrative decision, but also on the status of the individual, that is, whether the individual is a staff member within the meaning of art. 101 of the Charter of the Organization.

16. While the Applicant indicates in his application that he was offered a position in UNAMID in 2016, it remains that at the time of the contested decision he was a staff member of UNRWA and contests a decision taken by that Agency. This entity does not fall under the jurisdiction of the UNDT nor does the Applicant fulfil the requirements of arts. 2.1(a) and 3 of the Statute of the UNDT. He therefore has no *locus standi* to challenge a decision of UNRWA before this Tribunal.

## **Conclusion**

17. In view of the foregoing, the application is rejected as being not receivable.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 17<sup>th</sup> day of January 2018

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<sup>2</sup> See *Gabaldon* 2011-UNAT-120.

<sup>3</sup> See *Slade* 2014-UNAT-463.

<sup>4</sup> See *Iskandar* 2011-UNAT-116.

<sup>5</sup> See *Achkar* 2012-UNAT-267.

Entered in the Register on this 17<sup>th</sup> day of January 2018

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi