



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/110

Judgment No.: UNDT/2018/123

Date: 7 December 2018

Original: English

**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

KUATE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**

Jean-Jacques Kouembeu Tagne

**Counsel for the Respondent:**

Nicole Wynn, ALS/OHRM, UN Secretariat

Rosangela Adamo, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 11 November 2018, the Applicant, a P-3 Conduct and Discipline Officer with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), filed an application contesting the decisions to make deductions from his salary to satisfy child support obligations and to recover dependency allowance.

2. The application was served on the Respondent on 13 November 2018 with a deadline to file a reply by 14 December 2018.

3. On 23 November 2018, the Applicant requested management evaluation of the contested decisions.<sup>1</sup>

4. On 5 December 2018, the Respondent filed a motion in which it is submitted that the application is not receivable *ratione materiae* as the Applicant did not request management evaluation of the contested decisions prior to filing the application. In said motion, the Respondent requests the Tribunal to determine the receivability of the application as a preliminary matter pursuant to art. 19.1 of the UNDT Rules of Procedure.

5. The Tribunal concurs and, in accordance with art. 19 of the UNDT's Rules of Procedure, has determined that an oral hearing is not required in determining the preliminary issue of receivability and will rely on the parties' pleadings and written submissions.

## **Relevant facts**

6. Section VI (1) of the generic UNDT application form is titled "Management Evaluation". Under this section the following question is asked of applicants: "Have

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<sup>1</sup> Annex 1 to the Respondent's motion dated 5 December 2018.

you requested a management evaluation of the contested decision?” In the present case, the Applicant’s response was “no” and he further states that he saw no need to request for management evaluation since his was an appeal against a disciplinary measure.

### **Respondent’s submissions on receivability**

7. The Respondent submits that the contested decisions were not taken as a result of a disciplinary process. Rather, as MONUSCO Human Resources informed the Applicant: (i) on 27 June 2018, the Under-Secretary-General for Field Support authorized deductions from the Applicant’s salary to pay child support obligations in accordance with staff rule 3.18(c) and ST/AI/1994/4 (Family and child support obligations of staff members), and (ii) on 27 and 28 September 2018 that the Mission would recover USD40,000 paid to him as child allowance and other benefits.<sup>2</sup>

### **Considerations**

8. Two legal issues arise for consideration in the present case: first, whether in the instant case a management evaluation was required as a matter of law; second, if so, whether an application can be accepted for review by the UNDT when filed without awaiting management evaluation or the expiration of the time limit for it since the Applicant subsequently decided to seek management evaluation on 23 November 2018. These issues arise under art. 8 of the UNDT Statute and staff rule 11.2(b), which in relevant parts provide, respectively:

#### UNDT Statute Article 8

- (a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;
- (b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;
- (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required [.]

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<sup>2</sup> Annex 2 to the Respondent’s motion dated 5 December 2018.

Staff rule 11.2

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

9. Contrary to the Applicant's contentions, the contested administrative decisions are not disciplinary measures imposed pursuant to the applicable legal procedures in ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process). The Applicant has now become aware of this as evidenced by his subsequent request for management evaluation of 23 November 2018. The United Nations Appeals Tribunal has stressed the obligation to await management evaluation, which process provides the Administration an opportunity to correct any errors in an administrative decision and resolve disputes without the necessity to involve judicial review.<sup>3</sup>

10. This application is irreceivable. It was filed without having first been submitted to management evaluation. The Applicant must now await the result of his management evaluation dated 23 November 2018 (or expiry of the time limit for it) before filing a new application, if necessary, in accordance with the applicable time limits.

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<sup>3</sup> *Kouadio* 2015-UNAT-558 para 17; *Amany* 2015-UNAT-521, para. 17; *Nagayoshi* 2015-UNAT-498 para 36; *Mosha* 2014-UNAT-446, para. 17; *Christensen* 2013-UNAT-335, para 22.; *Pirnea* 2013-UNAT-311 para 42.

## CONCLUSION

11. The present application is dismissed as not receivable.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 7<sup>th</sup> day of December 2018

Entered in the Register on this 7<sup>th</sup> day of December 2018

*(Signed)*

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