



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

SAWENJAH

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:**  
Kong Leong Toh, UNOPS

## **Introduction**

1. On 31 July 2018, the Applicant, a former employee of the United Nations, filed an application with the United Nations Dispute Tribunal (UNDT). The Applicant contests two decisions: the termination of his contract by the United Nations Office for Project Services (UNOPS) where he served as individual contractor and “deduction of money” by the United Nations Development Programme (UNDP) where he served as staff member.

2. The Respondent filed a reply on 6 September 2018 in which it was argued that the application is not receivable because the Applicant has never been a UNOPS staff member and that to the extent that the Applicant refers to the money deduction by UNDP, management evaluation was never sought in relation to it.

3. Having reviewed the reply, the Tribunal considers it appropriate to examine the preliminary issue of its jurisdiction or competence to entertain this application.

## **Considerations**

### *Termination of the Applicant’s contract with UNOPS*

4. Articles 2.1(a) and 3 of the UNDT Statute provide as follows:

#### 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 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;

...

#### 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.

5. The foregoing provisions clearly stipulate that the jurisdiction of the UNDT is limited only to persons who are staff members of the United Nations or who were former staff members as set out in art. 3.1 of the UNDT Statute. To that extent, the UNDT's jurisdiction does not apply to the hearing of applications from non-staff members. An individual contractor is not a staff member of the United Nations.

6. As correctly argued by the Respondent, the evidence shows that the Applicant signed a contract with UNOPS governed by the terms and conditions of the UNOPS Individual Contractor Agreement (ICA). The Respondent annexed the ICA as annex 13 to the reply. The ICA was signed by the Applicant on 11 March 2016 and was applicable at the time of the termination of the Applicant's employment with UNOPS. Paragraph 1.1 of the ICA specifically provides that,

[t]he Individual Contractor shall have the legal status of an independent contractor vis-à-vis UNOPS and shall not be regarded, for any purpose, as a staff member of UNOPS or any other entity of the United Nations ...

7. The Applicant, not being a staff member of UNOPS or any other entity of the United Nations, has no *locus standi* before this Tribunal in relation to the decision to terminate his appointment with UNOPS.

*Deduction of money by UNDP*

8. The Applicant was employed by UNDP from 19 July 2005 to 13 April 2016 as a Procurement Assistant and then as Human Resources Assistant at UNDP Kenya.

9. Following receipt of allegations of various procurement improprieties, on 17 November 2015 the Applicant was notified that he was the subject of an investigation into allegations that he may have failed to disclose conflicts of interest, utilized his office for gain, colluded with vendors to engage in anticompetitive schemes, and deviated from Financial Regulations, Rules and Procedures. On 19 November 2015, the Applicant was also notified that he was the subject of a second investigation into a fraudulent Education Assistance Programme entitlements claim.

10. Effective 13 April 2016, while the investigation was ongoing, the Applicant resigned from UNDP. Nonetheless, in accordance with procedures, UNDP's Office of Audit and Investigations provided the Applicant with drafts of the investigation reports, and in August and September 2017, the Applicant provided comments on the draft investigation report as well as additional evidence.

11. On 18 October 2017, the UNDP Office of Audit and Investigations issued its investigation report into the Allegations of Entitlements Fraud and Misrepresentation, Forgery and False Certification against the Applicant. The report concluded that UNDP had sustained a financial loss in the amount of at least USD1,095.96 which was directly attributable to the Applicant and recommended that UNDP recover this amount.<sup>1</sup>

12. On 26 March 2018, Mr. Simon Hannaford, UNDP's Director, Legal Office, Bureau of Management, informed the Applicant, *inter alia*, that a recommendation would be made to recover the sum of USD1,095.96 from him.<sup>2</sup>

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<sup>1</sup> Un-numbered annex to the application.

<sup>2</sup> Un-numbered annex to the application.

### **Considerations**

13. In his application under section “VI. Management Evaluation”, the Applicant states that he did not request management evaluation of the decisions to terminate his contract with UNOPS and to deduct money by UNDP.

14. In accordance with Article 8 of the Statute of the United Nations Dispute Tribunal, an application is receivable if:

[...]

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;

15. Absent a request for management evaluation, the Tribunal may not consider the merits of the case.

### **Conclusion**

16. The application is rejected as irreceivable.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 13<sup>th</sup> day of May 2019

Entered in the Register on this 13<sup>th</sup> day of May 2019

*(Signed)*

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