



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

OLOWO-OKELLO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Elizabeth Brown, UNHCR
Francisco Navarro, UNHCR

Introduction

1. The Applicant is a former staff member of the United Nations High Commissioner for Refugees (UNHCR).
2. On 12 April 2019, he filed an application before the Dispute Tribunal contesting the termination of his employment with UNHCR.
3. The Respondent filed a motion for summary judgment on 15 May 2019 in which it was argued that the application is not receivable *ratione materiae*. The Respondent also requested an extension of time to file a reply if the Tribunal finds that the application is receivable.
4. Having reviewed the Respondent's motion, the Tribunal considers it appropriate to examine the preliminary issue of its jurisdiction or competence to entertain this application.

Facts

5. The Applicant joined UNHCR in February 2015 on a temporary appointment as an Associate Field Officer (Protection) in Shire, Federal Democratic Republic of Ethiopia. His appointment was renewed on subsequent occasions.¹
6. Between 1 May 2016 and 30 June 2016 the Applicant was on Special Leave Without Pay (SLWOP).
7. On 30 June 2016, The UNHCR Human Resources Staff Services (HRSS) informed the Applicant that his temporary appointment was due to expire on 30 June 2016 and that they would proceed with his separation effective 1 July 2016.²
8. On 5 July 2016, UNHCR/HRSS informed the Applicant that following further consultations, his SLWOP and appointment had been extended to cover the month of July 2016.³

¹ Application – Annex 1, letters of appointment.

² Application – Annex 5.

9. The Applicant's temporary appointment on SLWOP was also extended to cover August 2016. The Applicant was notified that his separation from UNHCR would be effective 1 September 2016.⁴

10. On 12 July 2018, the Applicant filed a complaint and request for intervention with the UNHCR Ombudsman's Office in which he requested to be rehired by UNHCR and to be informed of the reasons why he was being "blocked from rehiring".⁵

11. On 25 July 2018, the UNHCR Ombudsman's Office transmitted to the Applicant a statement from the UNHCR Legal Affairs Service (LAS) in response to his complaint. The pertinent part of the email states as follows:

In this connection, it has come to the Medical Service's attention that Mr. Okello misrepresented information in his entry medical assessment form at the time of his recruitment by UNHCR in January 2015. In particular, despite his obligation to provide full and accurate medical information to the Medical Service, he failed to disclose that he suffered from an illness. This illness became apparent at a later date. Had he provided full and accurate medical information to the Medical Service, Mr. Okello would not have been declared fit to work and would not have received his appointment.

It appears from the foregoing that Mr. Okello does not meet the highest standards of integrity required for employment with UNHCR. For the sake of fairness, nevertheless, DHR will consider any comments that he might have before reaching a final conclusion.⁶

Applicant's case

12. The Applicant submits that the UNHCR Administration sent him an email on 9 July 2016 stating that his contract had expired and was not being renewed due to not receiving medical clearance for Ethiopia. However, this email concealed the real reason as to his termination, which involved a flawed determination that resulted from a lack of due process protections, that he did not

³ Ibid.

⁴ Application – Annex 5.

⁵ Application – Annex 10.

⁶ Application – Annex 11.

meet the highest standards of integrity for allegedly misrepresenting his medical state at the time of recruitment.

13. He further states that only on 25 July 2018, after seeking assistance from the UNHCR Ombudsman, he acquired information of the UNHCR Administration's real reasons for the decision to separate him. These reasons are false.

Respondent's case

14. At section VI of his application, the Applicant states that he has requested management evaluation of the contested decision. This statement is wrong. The Applicant's communication to the Office of the Ombudsman submitted in February 2018 is not a request for management evaluation.

15. At section VII, paragraph 10 of his application, the Applicant states that he has been blocked from being rehired by UNHCR and other United Nations agencies but has not requested management evaluation of any decision not to select him for any specific position with UNHCR.

16. At section VIII, paragraph 1 of his application, the Applicant states that adverse material was included in his personnel file but has not requested management evaluation of any decision to place adverse material in his personnel file.

17. Considering that the Applicant did not request management evaluation of the decision not to extend his temporary appointment effective 1 September 2016, or of any other purported decisions, the Respondent submits that the Tribunal has no jurisdiction to hear and pass judgment on the application in accordance with art. 8.1(c) of the Statute of the United Nations Dispute Tribunal and that the application should therefore be rejected as irreceivable *ratione materiae* in a summary judgment.

Considerations

Receivability

18. The Applicant states in his application that he received the decision to terminate his appointment by email on 9 July 2016, however, he claims that this email concealed the real reason as to why his appointment was being terminated and he therefore sought the assistance of the Ombudsman's Office. He submits that he only became aware of the true reasons for the termination of his appointment on receipt of the 25 July 2018 email from the Ombudsman. The Tribunal considers that the communication of 9 July 2016 constituted an express and complete administrative decision in that it informed of the outcome and reasons for it, i.e., separation for the lack of the requisite medical clearance. At the time, this decision was, therefore, appealable under the terms of staff rules and the UNDT Statute. Supplying additional circumstances as reasons for not-rehiring the Applicant in 2018 does not revive the decision taken in 2016.

19. In accordance with art. 8 of the Statute of the United Nations Dispute Tribunal, an application is receivable if an applicant has previously submitted the contested administrative decision for management evaluation, where required. Absent a request for management evaluation, the Tribunal may not consider the merits of the case. Staff rule 11.2(c) stipulates that,

[a] request for a management evaluation shall not be receivable by the Secretary-General 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. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

20. The relevant administrative decision triggering the time limits for the Applicant to request management evaluation was the 9 July 2016 decision. The Applicant failed to submit a request for management evaluation to the appropriate authority in UNHCR which is to the UNHCR's High Commissioner's office within 60 calendar days as required by staff rule 11.2(c). The Applicant claims that he sent a management evaluation request to the Ombudsman's Office on 12

February 2018. In light of staff rule 11.2(c), at the time he would have already been time-barred and it is trite law that the Dispute Tribunal cannot suspend or waive the deadlines for management evaluation.⁷

21. Whilst it is not 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,⁸ that is not the situation in the present case as there is no evidence that the Applicant and the UNHCR Administration were in any way involved in an Ombudsman-driven negotiation process.

22. The communication relayed to the Applicant on 25 July 2018 does not constitute an administrative decision in the sense of art. 2.1(a) of the Dispute Tribunal's Statute. The Tribunal endorses here arguments of the Respondent summarized in paras. 15-16 above in this judgment.

Conclusion

23. The application is dismissed as irreceivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 16th day of May 2019

Entered in the Register on this 16th day of May 2019

(Signed)

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

⁷ Article 8.3 of the UNDT Statute.

⁸ See for example in *Wu* 2013-UNAT-306.