



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

SULEMANI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**

Mbili Bunjuki

**Counsel for Respondent:**

Nicole Wynn, ALD/OHR, UN Secretariat

Rosangela Adamo, ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a former staff member with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), contests the Administration’s decision not to renew his fixed-term appointment beyond 30 June 2018 as a result of a restructuring exercise. The application was initially filed with the Nairobi Registry on 12 September 2018.

2. On 16 November 2018, the case was transferred to the New York Registry, and on 20 January 2020, it was assigned to the undersigned Judge.

3. For the reasons below, the Tribunal finds that the application is not receivable.

## **Facts**

4. The Applicant joined MONUSCO in 2010, where he served as a Disarmament Demobilization and Reintegration Assistant at the time of his separation from service effective 30 June 2018.

5. By memorandum dated 7 May 2018, the Applicant was informed that in light of the budget proposal for the period from 1 July 2018 to 30 June 2019, which proposed the abolishment of 304 posts, a comparative review process would be conducted for all the staff members with the same functional title in his organizational unit.

6. By memorandum dated 31 May 2018, the Applicant was notified that as a result of a comparative review process, he was identified as one of the staff members subject to retrenchment, and therefore, his appointment would not be extended beyond 30 June 2018.

7. By memorandum dated 1 June 2018, the Administration notified the Applicant that he would be separated from service upon expiration of his fixed-term appointment on 30 June 2018.

8. On 2 July 2018, the Applicant requested a management evaluation. In the request, he claimed that the comparative review process was tainted with “bias or procedural irregularities” and lacked “transparency in the process and equity”.

9. Following the management evaluation of 31 July 2018, the decision not to extend the Applicant’s fixed-term appointment was upheld. The reason was that the Administration had lawfully decided not to extend the appointments of MONUSCO staff as a result of a restructuring exercise prompted by a major reduction of MONUSCO budget and all proper procedures were followed in making the contested decision.

10. On 12 September 2018, the Applicant filed the present application. In the application, he claims that the contested decision is unlawful because after serving eight years and five months with the Organization, he is entitled to a written notice of three months prior to his separation. He argues that since his appointment lasted more than five years, his appointment should be considered as a continuing appointment and therefore he is entitled to a three-month notice, instead of a one-month notice he received before his separation.

### **Considerations**

11. The Tribunal notes that it is competent to raise a receivability issue on its own initiative, whether or not it has been raised by the parties (see, for instance, *O’Neill* 2011-UNAT-182, para. 31).

12. In the application, the Applicant contests the non-renewal decision on the sole ground that while he was entitled to a three-month notice, he received only a

one-month notice before his separation. He does not challenge the comparative review process and this issue is therefore not before the Tribunal.

13. In the Applicant's request for a management evaluation of 2 July 2018, however, no reference is made to a question as to whether he was entitled to a three-month notice before separation. Instead, he argued that the comparative review process, which resulted in the contested decision, was conducted improperly and did not comply with the applicable legal framework.

14. Under staff rule 11.2(a), a staff member wishing to contest an administrative decision shall submit a request for a management evaluation first, unless he or she is exempt from this requirement under staff rule 11.2(b). The exemption set forth in staff rule 11.2(b) is not applicable in this case.

15. Pursuant to art. 8.1 of its Statute, the Dispute Tribunal has jurisdiction to consider applications appealing an administrative decision only when a staff member has previously submitted the contested decision for management evaluation, where required. As the Appeals Tribunal held in *Aliko* 2015-UNAT-540, at para. 38, the Dispute Tribunal has no competence to address the allegations not raised in the management evaluation request.

16. As the only issue that the Applicant raises in his application is the Administration's alleged failure to give him a three-month notice prior to his separation, and this issue was neither raised in his request for management evaluation nor addressed in the subsequent management evaluation decision, the Tribunal has no competence to address it now.

17. Therefore, the application is not receivable.

**Conclusion**

18. The Tribunal rejects the application as not receivable.

*(Signed)*

Judge Joelle Adda

Dated this 24<sup>th</sup> day of January 2020

Entered in the Register on this 24<sup>th</sup> day of January 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York