



Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MACKIE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Julius Cuffie, Esq.

Counsel for the Respondent:

AAS/ALD/OHR

Introduction

1. On 25 January 2020, the Applicant filed a Motion for extension of time to file an application.

2. Having reviewed the Motion, the Tribunal finds that it raises a preliminary issue of jurisdiction which may be addressed *sua sponte* and without hearing the Respondent.¹

Summary of relevant facts

3. The facts below arise from the documents filed by the Applicant in support of her application.

4. The Applicant is a former Property Management Assistant at the United Nations –African Union Hybrid Operation in Darfur (UNAMID).

5. On 24 February 2019, she was notified that her appointment with UNAMID had been terminated.

6. According to the Applicant, when she received the notification of termination, she was verbally informed by the UNAMID Human Resources that she would be placed in *COSMOS*, a recruitment system, whilst they scanned for a new posting for her since she was a staff member on a continuing appointment.²

7. It was only after she received her termination indemnity package on 13 November 2019 that she realized that no new posting would be made available to her. It was then that she sought legal advice.

8. The Applicant submits that these facts constitute an exceptional case for the Dispute Tribunal to suspend or waive the deadline set out in art. 8.1(ii) of the UNDT

¹ See *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335.

² Paragraph VIII(2) of the Motion.

Statute and extend the deadline for her to file her case.

Considerations

9. At paragraph VI(1) of the Motion, under the section titled “Management Evaluation”, the Applicant states that she has not requested management evaluation of the contested decision because her case “falls under the situation for which the request for management evaluation is not required, as provided for in art. 11.2 of the Staff Regulations and Rules of the UN”.

10. The Dispute Tribunal has the mandate under arts. 2.6 and 8.1(c) of its Statute and is required under the United Nations Appeals Tribunal’s (UNAT) jurisprudence to consider, *sua sponte*, in circumstances such as those reflected in this Motion, whether or not it has jurisdiction or competence to review a staff member’s Motion before it.³

11. Since this process is a question of law and a preliminary consideration to assuming jurisdiction in a matter, the Dispute Tribunal does not require to be moved by the parties appearing before it to assess it and make a determination.⁴

12. Staff rule 11.2(b) sets out two conditions under which an Applicant is exempted from requesting a management evaluation. It should be read together with art. 8 of the UNDT Statute to determine whether the application is receivable by the UNDT. Article 8 provides in relevant parts that:

An application shall be receivable if:

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

Staff rule 11.2 (b) provides that:

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

³ *Babiker* 2016-UNAT-672, para. 45, and in *Christensen* para. 20

⁴ *Christensen*, para. 21.

New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following completion of a disciplinary process is not required to request a management evaluation.

13. Based on the construction of the above provisions, UNAT held in *Diallo* that:

It follows that an application before the UNDT without a prior request for management evaluation can only be receivable if the contested administrative decision has been taken pursuant to advice from a technical body or if the administrative decision has been 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. In all other cases, where the request for management evaluation is a mandatory first step before coming to the internal justice system, this request and management evaluation shall provide the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency.⁵

14. It is clear that this application does not fall under any of the stipulated exceptions to obtaining a management evaluation as a first step to invoking the powers of the internal justice system.

15. The reason given in the Motion that; *when she received the notification of termination, she was verbally informed by the UNAMID Human Resources that she would be placed in COSMO, whilst they scanned for a new posting for her since she was a staff member on a continuing appointment and that it was only after she received her termination indemnity package that she realized that no new posting would be made available to her*, as a ground for not requesting management evaluation has no legal basis.

16. Under the circumstances this application is not receivable *ratione materiae*.

17. Consequently, the Applicant's Motion to extend time within which to file her application is dismissed.

⁵ 2019-UNAT-936, at para. 27.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 29th day of January 2020

Entered in the Register 29th day of January 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi