



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

PONCE-GONZALEZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
George Irving

Counsel for the Respondent:
Alan Gutman, AAS/ALD/OHR

Background

1. On 5 August 2019, the Applicant, Chief, Budget and Finance Officer with the United Nations Interim Security Force for Abyei (“UNISFA”), filed a revised application contesting the failure to afford full and fair consideration to his candidacy for the post of P-5 Chief, Operations and Resource Management, advertised under Recruit from Roster (“RFR”) exercise number 104637 and abuse of authority in cancelling the RFR in violation of the applicable rules following his unlawful disqualification (“the contested decision”).

2. The Respondent filed a reply on 6 September 2019 in which it is argued that the application is not receivable.

Relevant facts

3. On 9 October 2018, the Administration issued an RFR exercise for the post of Chief, Operations and Resource Management, UNISFA, at the P-5 level under the reference 18-Administration-UNISFA-104637-J-Abyei with a closing date of 23 October 2018.¹

4. The Applicant submitted his candidacy for RFR 104637 on 22 October 2018.

5. On 28 January 2019, he was notified that the RFR 104637 recruitment exercise had been cancelled and that it may be advertised at a later stage.²

6. On 18 March 2019, the Applicant requested management evaluation of the Office of Human Resources Management’s decision to cancel the RFR 104637 recruitment exercise. On 10 April 2019, he submitted to the Management Evaluation Unit (“MEU”) an addendum to his request of 18 March.³

¹ Application, annex 2.

² Application, annex 4.

³ Application, annex 9.

7. On 7 May 2019, the MEU upheld the contested decision.

Considerations

8. The Tribunal determines that this application which challenges the cancellation of a recruitment process is not receivable and must fail. In so finding the Tribunal is guided by the appellate jurisprudence on this particular issue.

9. In *Ishak*, the United Nations Appeals Tribunal (“UNAT”) held that,

... [a] selection process involves a series of steps or findings which lead to the administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the UNDT.⁴

10. The Tribunal reiterated, in later cases such as *Ngokeng*⁵ and *Kawamleh*,⁶ that a selection process may only be challenged in the context of an appeal against the outcome of that process and that where the selection exercise was cancelled, there was no contestable decision.

11. The Tribunal lacks jurisdiction to review preparatory steps of an administrative decision.

Conclusion

12. The application is not receivable and is rejected.

(Signed)

Judge Margaret Tibulya

Dated this 28th day of May 2020

⁴ 2011-UNAT-152, para. 29.

⁵ 2014-UNAT-460, para. 37.

⁶ 2018-UNAT-818, para. 14.

Entered in the Register on this 28th day of May 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi