



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ARMAND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Rosangela Adamo, AAS/ALD/OHR

Introduction

1. The Applicant is a Movement Control Assistant at the FS-5 level working with the United Nations Support Office in Somalia (“UNSOS”).¹
2. By an application filed on 19 November 2020, he contests an administrative decision of 10 November 2020, pursuant to which UNSOS informed him that, with effect from the November 2020 payroll, the Organization will be deducting a monthly sum of USD5,032.33 from his salary in honouring a court judgment on child support.
3. The Applicant requested management evaluation on 17 November 2020, which has not yet been obtained.
4. The Tribunal decided that the application does not require forwarding to the Respondent for a reply.

Considerations

5. As a preliminary matter, the Tribunal notes that it is competent to adjudicate the merits only where the receivability requirement is satisfied. It is, accordingly, competent to consider a receivability issue on its own initiative, whether or not it has been raised by the parties.² The Tribunal recalls that the matter of honouring child support obligation was previously subject of this Tribunal’s Judgment No. UNDT/2020/181, whereby the application was rejected as not receivable for want of an administrative decision. In the present case, the Tribunal finds that the matter is also not receivable, albeit for a different reason: whereas the existence of an administrative decision does not seem questionable, the application has been filed without awaiting a response to the request for management evaluation.
6. The Tribunal recalls that, although staff rule 11.2 and art. 8 of UNDT Statute require only “requesting” management evaluation and not actually obtaining it, the

¹ Application, section I.

² E.g., *O’Neill* 2011-UNAT-182, para. 31.

Appeals Tribunal stressed the obligation to await management evaluation, mindful that this process provides the Administration an opportunity to correct any errors in an administrative decision and resolve disputes without the necessity to involve judicial review.³ Another rationale noted by the Appeals Tribunal for management evaluation and the attendant requirement to wait for the period necessary to obtain it⁴, is that it provides for the applicant an opportunity to consider reasons on the part of the Administration prior to drafting and filing of the application and in this way fosters rationality and completeness of the argument before the Tribunal. In view of this jurisprudence, the Tribunal considers that the application which, as the present one, had been filed without awaiting the result of management evaluation (or expiry of the time limit for it) is not receivable. Such situation, for an applicant who wishes to pursue his or her claim before the Dispute Tribunal, calls for a new filing made in accordance with the applicable time limits.

7. Noting that in connection with the present case the Applicant has also filed two seemingly identical applications for suspension of action, the Tribunal reiterates its suggestion, contained in paras 21-22 of Judgment No. UNDT/2020/18, that the Applicant consider refraining from impulsive or otherwise undisciplined filings. In addition to obscuring the procedural standing of his matter, his actions may cause administrative fatigue conducive to his arguments being overlooked or may eventually lead to the Tribunal finding him liable for costs incurred by such filings.

JUDGMENT

8. The Application is dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart
Dated this 23rd day of November 2020

³ *Kouadio* 2015-UNAT-558 para 17; *Amany* 2015-UNAT-521, para. 17; *Nagayoshi* 2015-UNAT-498 para 36; *Mosha* 2014-UNAT-446, para. 17; Christensen 2013-UNAT-335, para 22; *Pirnea* 2013-UNAT-311, para 42.

⁴ *Neault* 2013-UNAT-345 at para. 34.

Entered in the Register on this 23rd day of November 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi