



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NEUPANE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**

Edwin Nhliziyo

**Counsel for the Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Maureen Munyolo, AS/ALD/OHR, UN Secretariat

## Introduction

1. The Applicant joined the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”) as Chief of Engineering Section, at the P-5 level in August 2017. On 5 May 2021, he was reassigned to the position of Chief of Section, Centralized Warehouse, P-5 within MINUSCA’s Mission Support Division (“MSD”).

2. On 5 April 2022, he filed an application contesting his reassignment.

3. The Respondent filed a motion dated 11 May 2022 requesting the Tribunal to find that the application was not receivable *ratione materiae* because of the untimely request for management evaluation. The Respondent is also requesting the Tribunal to determine receivability as a preliminary matter pursuant to art. 19 of the UNDT Rules of Procedure.

## Facts

4. On 2 July 2020, the Applicant, then Chief of Engineering Section at MINUSCA, was selected for a Job Opening for an equivalent post with the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”). He indicated, in September 2020, that he was unable to join MINUSMA for personal reasons.<sup>1</sup> In October 2020, the Applicant was *de facto* reassigned as Chief of Section, Centralized Warehouse at MINUSCA. From 14 to 28 March 2021, while the incumbent was still formally holding the position of Chief of Engineering Section, P-5, at MINUSCA, the post was advertised on Inspira.<sup>2</sup>

5. On 5 May 2021, the Applicant was informed by memorandum from the Director of Mission Support (“DMS”) that, on 4 May 2021, the Special Representative of the Secretary General (“SRSG”) at MINUSCA had approved his reassignment to

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<sup>1</sup> Application, annex A.4, page 1.

<sup>2</sup> *Ibid.*, annex A/9.

the position of Chief of Section, Centralized Warehouse, P-5 within MINUSCA MSD with retroactive effect from 29 October 2020.<sup>3</sup>

6. On 24 May 2021, the Applicant wrote to the MINUSCA Chief Human Resources Officer (“CHRO”) raising concerns and seeking clarification on the validity of his reassignment. He did not receive any response.<sup>4</sup>

7. The Applicant’s personnel action (“PA”) was processed on 26 November 2021 through UMOJA transferring the Applicant’s post from Chief of Engineering Section to Chief of Section, Centralized Warehouse within MINUSCA.<sup>5</sup>

8. On 30 November 2021, the Applicant submitted a request for management evaluation, challenging his reassignment and requesting his reinstatement to his initial position of Chief of Engineering Section.<sup>6</sup>

9. The Applicant confirms receipt of the 5 May 2021 memorandum<sup>7</sup> in his application, however, he indicates that between the May memorandum and the November personnel action, he was not sure of the date of the impugned decision.

### **Considerations**

10. Staff rule 11.2(c) provides that:

A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty 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.

11. Article 8(3) of the UNDT Statute stipulates that,

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<sup>3</sup>MINUSCA-DMS, *Interoffice Memorandum* dated 5 May 2021.

<sup>4</sup> Application, annex A/6.

<sup>5</sup> *Ibid.*, at section V (1). (And at annex A/4, page2 and reply, annex R/2).

<sup>6</sup> *Ibid.*, at annex A/3, page 5.

<sup>7</sup> *Ibid.*, at annex A/3, page 4.

The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

12. The contested decision was communicated to the Applicant, at the latest, on 5 May 2021. The memorandum from the DMS expresses it in unambiguous and unconditional terms, including that the reassignment was not temporary. The 60-day' deadline for requesting management evaluation began to run from that date. Accordingly, if the Applicant wished to challenge his reassignment, he should have filed a management evaluation request by 4 July 2021, in particular given that instantly in May 2021 he questioned the legality of the impugned decision. He did not do so until 30 November 2021. Applying the above-cited rules the application is, therefore, not receivable.

### **Conclusion**

13. The application is rejected as not receivable.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 6<sup>th</sup> day of October 2022

Entered in the Register on this 6<sup>th</sup> day of October 2022

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi