



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/021

Judgment No.: UNDT/2023/015

Date: 13 March 2023

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Jenny Kim, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant filed the current application on 22 February 2022 to contest the “refusal” of the United Nations Income Tax Unit (“ITU”) to process and pay his United States of America (“USA”) federal tax liability for 2013, 2015 and 2017 based on his failure to prove that he had taken medical leave to address mental health challenges that “affected his judgment regarding his personal life” (“contested decision”).
2. The Respondent filed a reply on 25 March 2022 in which he contends that the application is without merit because the contested decision is legal, reasonable, and procedurally fair.
3. The Applicant filed a rejoinder to the Respondent’s reply on 24 September 2022.
4. On the Tribunal’s orders¹, the parties filed additional submissions on 22 and 23 December 2022.
5. The Tribunal held hearings on 18 and 19 January 2023 and heard testimony from: the Applicant; QI, the Chief of ITU; and TO, an ITU staff member.

Facts

6. The Applicant resigned from the Organization at the end of January 2013. At the end of 2014/beginning of 2015, he was re-hired by the Organization as a consultant and in April 2015, he was appointed on a fixed-term appointment [redacted] at the P-4 level.²
7. In 2013, the Applicant was a permanent resident of the USA. In August 2016, he informed the Human Resources section of the expiry of his permanent residency in July 2016. Human Resources informed him that he remained a permanent resident until he officially filed for abandonment of his residency status. He abandoned his residency

¹ See Order No. 171 (NBI/2022).

² Applicant’s oral evidence on 18 January 2023.

status effective February 2020. The Applicant did not file USA tax returns for the years 2013, 2015 and 2017. He explained that he was not aware that until he legally relinquished his permanent residency status that he was obliged to file US taxes.³

8. In August 2019, the USA Internal Revenue Service (“IRS”) placed a *lien* on the Applicant’s bank account and recovered some money from the account. This was when the Applicant realized that he was required to file his tax returns, so he engaged a tax consultant to assist him.⁴

9. On 8 February 2020, the Applicant visited the ITU office at United Nations Headquarters (“UNHQ”) in New York and submitted his tax returns for 2013, 2015 and 2017.⁵ He received three notifications from the ITU’s generic email address acknowledging receipt of his claims.⁶ He recounted in detail that on the same day, upon advice of the person in the ITU office, he also submitted an *ad hoc* hand-written statement to an ITU staff member explaining that he had submitted the returns late due to mental health issues.⁷ The ITU staff member explained to the Applicant that they were in the process of dealing with staff members who were submitting claims for the current year and that late claims, including his, would not be prioritized.⁸ The Respondent refutes this assertion and avers that although an ITU staff member had advised him on 8 February 2020 about the explanatory note, the Applicant did not submit the written explanation until 16 October 2021 when ITU requested again that he do so.⁹ According to the Applicant, after his submission in February 2020, he followed up severally (e.g. phone calls to the general ITU number, sent a colleague to the ITU office, and sent emails) but did not receive a response from ITU for almost 20 months.¹⁰ The Applicant was unable to provide the Tribunal with any emails he sent to ITU between February 2020 and April 2021.

³ *Ibid.*

⁴ *Ibid.*

⁵ Application, section VII, para. 1.

⁶ Application, annexes 10, 10.1 and 10.2

⁷ Application, section VII, paras. 1-3; Applicant’s response of 23 December 2022 to Order No. 171 (NBI/2022); and Applicant’s oral evidence on 18 January 2023.

⁸ Applicant’s oral evidence on 18 January 2023.

⁹ Respondent’s submission pursuant to Order No. 171 (NBI/2022), dated 22 December 2022.

¹⁰ Application, section VII, para. 4 Applicant’s oral evidence on 18 January 2023.

10. QI and TO gave evidence that before the COVID-19 pandemic in March 2020, ITU allowed staff members to submit both current and late tax claims in person. The ITU reception staff would check the claims for basic information (i.e., name, signature, address, correct attachments, etc) but not give the claims a detailed review/examination. Staff members submitting late claims would be informed that ITU would not process their claims until after the annual 15 June deadline for current claims, and that they should follow up after the deadline. The claims and any supporting documents would be stapled together and placed in a box. At the end of the day, the box would go into the ITU office and ITU staff were assigned to log the claims in. “Logging in” meant giving the documents a number; the documents were not scanned into the system. Current year claims were processed separately between January and 15 June of each tax year while late claims were logged in but not processed until after 15 June; or after 15 October, if IRS had granted taxpayers an extension for current claims. Once the documents were logged in, staff members received a standard notification that their claims had been received and that ITU would contact them “should there be a need for any clarification or any missing document.” After the late claims were logged in, they were put into trays based on the letter of the staff member’s last name. The Applicant’s claims were logged in and then placed in TO’s tray for processing because he was responsible for staff members’ whose last names started with “L”. The ITU has no specific time frame within which to review/process late claims. It prioritizes the processing of late claims in cases where staff members have followed up.

11. Due to the COVID-19 pandemic, ITU staff members started working remotely five days a week in mid-March 2020 when Alternate Working Arrangements (“AWA”) were mandated. Between June 2020 and July 2021, ITU assigned staff to go into the workplace, on an as-needed basis, to attend to high-priority emergency tasks. TO recalled going to the workplace on or about 7 June 2020 for the first time. In early July 2021, ITU staff returned to the workplace at UNHQ at least one day a week, in

compliance with paragraph 9 of the Human Resources Policy Guidance on Gradual Return to the Workplace, version 1.1 of 2 July 2021.¹¹

12. Since ITU staff members were working from home after March 2020, TO did not have access to the hard copy claims filed by the Applicant in February 2020. Also, due to ill health, TO did not return to the workplace immediately so the Applicant's claims remained in his tray until sometime in July 2021 when ITU staff returned to the workplace.

13. In May 2021, the Applicant received a tax delinquency notice for payment of USD81,337.17 from the IRS, which he submitted to the ITU on 9 May 2021 using the ITU generic email address.¹² The payment of USD81,337.17 was to be made to IRS by 2 June 2021.¹³ Subsequently, the Applicant's Counsel managed to postpone the tax payment from 3 June 2021 to 30 November 2021.¹⁴ TO, who was working remotely in May 2021, responded to the Applicant's email.

14. Between May and October 2021, the Applicant communicated with TO and provided various documentation (index number, personnel action form, form 65, etc.) requested by TO because the Applicant had no statements of earnings on file.¹⁵ TO subsequently spoke to the Applicant via MS Teams to clarify his residency status, which, as it was elucidated by the Applicant in the hearing, expired in 2016. With respect to the 2013, 2015, 2017 tax claims, he testified that there was no written explanation attached to the claims when he started his review, so he told the Applicant to submit justification for the late submission to enable QI to either sign or forward it to the Office of Human Resources ("OHR") for approval.¹⁶

¹¹ Respondent's submission of 25 January 2023 filed pursuant to Order No. [Redacted].

¹² Annex R/2 to the Respondent's submission dated 25 January 2023 in compliance with Order No. [Redacted].

¹³ Application, annex 5 (represents a tax bill of USD72,040.69, penalty charges of USD2,453.94, and interest charges of USD6,842.54).

¹⁴ Application, annex 2, para. 11.

¹⁵ TO's oral evidence on 19 January 2023; and annex R/2 to the Respondent's submission dated 25 January 2023 in compliance with Order No. [Redacted].

¹⁶ TO's oral evidence on 19 January 2023.

15. The Applicant submitted a typed explanatory memorandum to TO on 16 October 2021¹⁷, which TO forwarded to QI. QI testified that there was no hand-written explanation when he received the hard copies of the Applicant's 2013, 2015 and 2017 claims.¹⁸ On 20 October 2021, TO informed the Applicant that QI wanted him to submit a medical report to prove that he had been physically/mentally unable to handle tax issues. The Applicant refused to comply with this request on the basis that his medical records are confidential.¹⁹

16. The Applicant requested management evaluation of the contested decision on 21 October 2021. The Applicant reiterated in his management evaluation request ("MER") that medical records are confidential and not relevant for the ITU to process his tax claims. He also explained that he had made "no claim to receiving medical help but rather professional help to overcome [his] situation".²⁰ On the same day, the Applicant wrote to QI protesting his request for a medical report and informing him that he was going to file a harassment complaint against him and TO for refusing to process his tax returns.²¹ In a response dated 22 October 2021, QI explained that ITU required a doctor's certificate to support his statement and not his medical records.²² QI explained that pursuant to staff rule 3.16(ii), the Organization does not reimburse claims that are submitted after one year. However, ITU accepts claims, tells the staff members to provide written justification and then forwards it to the Assistant Secretary-General for Human Resources ("ASG/OHR") for a decision. Since the Applicant refused to provide additional documentation, ITU did not forward his claim to the ASG/OHR.

17. The Applicant avers that he refused to submit the doctor's certificate because it constituted a medical record²³ and because QI did not explain to him that the doctor's

¹⁷ Application, annexes 1 & 6.

¹⁸ QI's oral evidence on 18 January 2023.

¹⁹ Application, annex 1.

²⁰ Application, annex 2.

²¹ Application, annex 1.

²² Annex R/2 to the Respondent's submission dated 25 January 2023 in compliance with Order No. [Redacted].

²³ *Ibid.*

certificate was required for exceptional consideration of his request for tax payment.²⁴ He posits that he found this out during discussions with the Management Evaluation Unit (“MEU”) and provided proof that he had sought help from the United Nations staff counsellor and a psychiatrist.²⁵

18. In a management evaluation response dated 24 November 2021, the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) informed the Applicant that since he had exceeded the deadline set out in staff rule 3.17, the ITU had been willing to make a request to senior management for exceptional approval of retroactive reimbursement, provided that the Applicant submitted supporting documentation, such as long-term medical leave, a doctor’s certification, etc. The Administration had been unable to grant the exception because the Applicant was unwilling/unable to provide evidence of exceptional circumstances. Consequently, the USG/DMSPC decided to uphold the contested decision.²⁶

19. The Applicant filed the current application on 22 February 2022. As part of his application, the Applicant submitted, *inter alia*: an email dated 4 April 2017 from one LK providing him with the contact details for a psychiatrist/psychotherapist in Tunisia; an email chain dated 10 April 2017 between him and LK setting up a skype meeting; a medical certificate from a psychiatrist/addiction specialist placing him on sick leave for 21 days from 13 April 2017; and an email chain dated 25 April 2017 from the Applicant to the Chief Medical Officer requesting to travel to the USA for his certified sick leave (“CSL”).

Submissions

20. The Applicant’s case is that the Respondent acted unlawfully because:

- a. The ITU acted in bad faith through the delay of 20 months before requesting a medical report even though he had provided an explanatory note

²⁴ Application, section VII, para. 8.

²⁵ *Ibid.*, para. 9. The Applicant confirmed in his submission of 22 December 2022 that these documents are the same ones he filed as annexes 7 and 7.1 to his application.

²⁶ Application, annex 3.

regarding his mental health issues in February 2020 and not informing him that his late return was subject to the approval of an exceptional waiver. The practices of ITU, as demonstrated by witness evidence in the hearing, were chaotic, dismissive and punitive.

b. Pursuant to ST/IC/1999/111 (Mental health – medical and employee assistance facilities), he had refused to divulge confidential medical information because he was unaware that he was being considered for an exceptional waiver. Once he understood the reason for the request, he provided MEU with a sick leave report approved by the Chief Medical Officer (“CMO”) of his peacekeeping mission²⁷ and a report from his attending psychiatrist.

c. From 2013 to 2017, the United Nations withheld/deducted staff assessment of approximately USD120,000.00 from his gross salary for the settling of his USA taxes. These funds were retained in escrow and not remitted to him.

d. The Respondent disregarded guidance regarding recognition of mental health problems afflicting staff. Instead, his mental health challenges were trivialized thus resulting in the failure to grant him the exception.

e. The Applicant seeks the following remedies from the Organization: (i) settlement of his USA tax obligations for 2013, 2015 and 2017; and (ii) payment of the penalties accrued after the date he submitted his tax returns to the date the Organization makes payment to the IRS.

21. The Respondent’s case is that the application should be dismissed for the following reasons:

a. For staff serving outside the USA, the 2013, 2015 and 2017 deadlines for submitting requests for income tax reimbursements to the Organization

²⁷ Application, annexes 7 and 7.1.

were: 1 April 2014²⁸; 1 April 2016²⁹ and 2 April 2018³⁰. In accordance with staff rule 3.17(ii), the Applicant should have made a written claim for reimbursement no later than 1 April 2015, 1 April 2017, and 2 April 2019 for the respective tax claims but has not done so within the required time frames.

b. The Applicant's written explanation for the late filing was inadequate. This led the ITU to request the Applicant to substantiate his statement with a medical report, but the Applicant refused to do so. Apart from 21 days of sick leave in 2017, the Applicant admitted that he had not sought medical attention for any physical or physiological ailment. Twenty-one days of leave over a six-year period was not within the period where it would have had any impact on the Applicant's ability to submit his income tax claim. The Applicant failed to meet his burden of demonstrating that there were extenuating circumstances justifying a waiver of staff rule 3.17(ii), moreover, he provided a different justification in the hearing, namely, that he had not attended to taxes because his residence permit in the US had expired.

c. In light of the information circulars, the Applicant should have known the applicable deadlines for his tax reimbursement claims, and that his claims for reimbursement would not be accepted absent extenuating circumstances. The ITU is not responsible for any penalties accrued because it is the Applicant's sole responsibility to pay the tax due to the USA authorities. It was the Applicant's choice to wait for the potential reimbursement from the ITU instead of trying to mitigate the accrual of penalties.

d. The Applicant's claim that USD120,000 was withheld from his gross salary between 2013 and 2017 is baseless. The Administration does not withhold money for the purpose of settling staff members' taxes. The only deduction from the gross salary of staff members is the staff assessment, which

²⁸ ST/IC/2014/6*, para. 6.

²⁹ ST/IC/2016/4*, para. 6.

³⁰ ST/IC/2018/6, para. 6.

is not a withholding tax but rather an amount deducted from all United Nations staff members' gross pay, regardless of their tax obligations.

Considerations

22. The legal framework governing this matter is as follows:

Former staff rule 3.17 (ST/SGB/2016/1).

A staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled shall not receive retroactively such allowance, grant or payment unless the staff member has made written claim: (i) In the case of the cancellation or modification of the staff rule governing eligibility, within three months following the date of such cancellation or modification; or (ii) In every other case, within one year following the date on which the staff member would have been entitled to the initial payment.

ST/AI/1998/1 (Payment of income taxes to United States tax authorities).

- a. Section 2.1 - A staff member who is a United States citizen or a permanent resident (green card holder) who has signed the Waiver of Privileges and Immunities of the United Nations is, as a rule, subject to taxation by the United States on his or her earnings from the United Nations. Staff members are personally responsible to ascertain and meet their legal obligations, if any, arising under United States federal, state and municipal income tax legislation.
- b. Section 2.2 - A staff member who is liable for such taxes and who wishes to claim reimbursement must apply for reimbursement or for advances to pay estimated taxes.
- c. Section 3 - Procedures that set out the requirements incumbent on staff members making applications for tax reimbursement or advances to pay estimated taxes are announced on a yearly basis by the Controller in an information circular.

The information circulars relevant for this case are ST/IC/2018/6 (Payment of 2017 income taxes), ST/IC/2016/4* (Payment of 2015 income taxes) and ST/IC/2014/6* (Payment of 2013 income taxes). These circulars provide, in the relevant part:

- a. Purpose of the UN tax reimbursement system is to place United Nations staff members subject to taxation in the position in which they would have been if

their official emoluments were not taxed. It is intended neither to provide a benefit, nor to place the staff member at a disadvantage, in relation to other United Nations staff members who are not required to pay taxes to a Member State on their United Nations emoluments.³¹

- b. Staff assessment is not a withholding tax and as such, it cannot be reimbursed to staff members under any circumstances. It is an amount deducted from all United Nations staff members' gross pay regardless of their nationality. Staff assessment deductions are credited to the Tax Equalization Fund. Member States that do not impose income tax on United Nations earnings receive a portion of the Tax Equalization Fund as an offset against their assessments for the United Nations regular budget, peacekeeping and tribunal budgets. Staff members who have to pay national income taxes on their United Nations earnings, are reimbursed from the Tax Equalization Fund irrespective of the total amount of staff assessment deducted from their salaries.³²
- c. For staff serving outside the US, the 2013, 2015 and 2017 deadlines for submitting requests for income tax reimbursements to the UN were: 1 April 2014³³; 1 April 2016³⁴ and 2 April 2018³⁵.
- d. To request tax reimbursement, a staff member must submit a photocopy of their income tax returns together with properly completed forms F.65, F.65/A (if applicable) and F.243 to the ITU. Staff members who have received tax advances must submit annual requests for tax reimbursement within the deadline for submission.³⁶
- e. As the responsibility for filing complete, correct and timely tax returns is that of the individual taxpayer, the United Nations will not reimburse staff members for penalties and/or interest imposed by tax authorities on their United Nations earnings except if: (a) the delays are attributable to the Organization; or (b) penalties or interest are the result of written instructions given by the United Nations. Under certain conditions, staff members serving outside the United States may also be reimbursed for penalties and interest. The United Nations will not pay any late filing penalties under any circumstances. Staff members should file the appropriate extension forms with tax authorities before the deadline for filing.³⁷

³¹ ST/IC/2014/6*, para. 1; ST/IC/2016/4*, para. 1; and ST/IC/2018/6, para. 1.

³² ST/IC/2014/6*, para. 2; ST/IC/2016/4*, para. 2; and ST/IC/2018/6, para. 2.

³³ ST/IC/2014/6*, para. 6.

³⁴ ST/IC/2016/4*, para. 6.

³⁵ ST/IC/2018/6, para. 6.

³⁶ ST/IC/2014/6*, para. 5; ST/IC/2016/4*, para. 5; and ST/IC/2018/6, para. 5.

³⁷ ST/IC/2014/6*, paras. 12, 47 & 66-68; ST/IC/2016/4*, paras. 12, 47 & 66-68; and ST/IC/2018/6, paras. 12, 47 & 66-68.

- f. Limitation on retroactivity of claims for reimbursement of taxes (waiver of staff rule 3.17(ii)): no claims for reimbursement of taxes will be entertained beyond one year after the deadline, unless the United Nations accepts that there are extenuating circumstances. In such cases, a staff member may request that the time limit in staff rule 3.17(ii) be waived and support such a request with a written explanation for the delay.³⁸

23. Based on the facts before it and the framework outlined above, the Tribunal will examine two questions: whether the refusal to pay the Applicant's taxes was unlawful, and whether the Administration is liable for delay in processing of the claim.

Whether the refusal to pay the Applicant's taxes was unlawful

24. It is undisputed that the Applicant filed his claims for tax reimbursement six years late for the 2013 tax year, four years late for the 2015 tax year and two years late for the 2017 tax year. Pursuant to the information circulars on payment of income taxes, the one-year deadline in staff rule 3.17(ii) may be waived if the United Nations accepts that there are extenuating circumstances, which the staff member must lay out in writing. Notwithstanding that the date of the provision of the Applicant's written explanation is disputed, the issue remains whether the explanation eventually provided is rational and credible; in other words, whether the reason invoked logically justifies the delay in the totality of the circumstances, including the length of it and the fact that staff serving outside the US readily enjoy a longer deadline, and whether it has been sufficiently demonstrated, given the nature of the reason.

25. The Applicant submitted an explanation indicating that he had not been medically fit to submit his tax claims in a timely manner due to depression and alcoholism, which, as he claims, he could not have diagnosed himself. The Tribunal recalls that, as noted by the Appeals Tribunal, judgments on fitness of staff members for duty, are principally left to medical professionals and are not to be determined on the basis of assessments or opinions of others, including the staff member, the

³⁸ ST/IC/2014/6*, para. 20 (refers to former staff rule 3.16); ST/IC/2016/4*, para. 20; and ST/IC/2018/6, para. 20.

managers concerned and, it may properly be added, the Tribunal.³⁹ The Applicant cannot invoke impossibility to diagnose himself on the one hand, and yet, on the other hand, expect the ITU to uncritically accept extenuating circumstance on the basis of his self-made diagnosis alone. The Administration, therefore, rightly requested the Applicant to support the claimed inability to file tax returns through a professional attestation and properly concluded that the medical certificate granting the Applicant three weeks of sick leave starting 13 April 2017 did not suffice to justify the overall period of inaction. This does not amount to trivialisation of mental health issues.

26. The attendant circumstances, moreover, belie the Applicant's claim. The Applicant resigned from the Organization at the end of January 2013, however, on his own words, at the end of 2014/beginning of 2015, he was re-hired by the Organization as a consultant and, since 2015, has held a staff position as Chief of Security in a Mission. In 2016 and 2017, as known to the parties and *ex officio* to this Tribunal, he entered litigation before the UNDT.⁴⁰ That the Applicant rebuilt his career, held a position of a significant responsibility and took legal actions, indicates that he was capable of functioning professionally and of taking decisions. Mental health problems which selectively and completely affected his ability to follow up on taxes alone do not sound plausible.

27. Finally, the Applicant's own testimony undermines his claim of extenuating circumstances. His testimony conclusively establishes that the Applicant did not file claims for tax reimbursement in a timely manner because he mistakenly believed that he was not required to file and pay taxes to the United States Government upon expiry of his permanent residence.⁴¹ His error came to light in August 2019, when the IRS placed a *lien* on his bank account to recover the outstanding tax arrears.⁴²

28. In conclusion, the Tribunal finds that extenuating circumstances have not been

³⁹ *Harris* 2019-UNAT-897, para. 21.

⁴⁰ [Redacted] and [Redacted].

⁴¹ MS Teams Hearing of 18 January 2023 at 30:40 of 2:10:51. See also application annex 2, page 2 of 4, para. 2.

⁴² Application, annex 2, page 2, para. 3.

proven and the refusal to pay the Applicant's taxes was not unlawful.

Whether the Administration is liable for delay in processing of the claim

29. The Tribunal accepts, obviously, the ITU policy that current tax cases must be given priority; it also accepts that the Organization may establish policies on what constitutes extenuating circumstances for late submissions. However, as enunciated in the information circulars, the Administration undertook to decide on late filings, and, as testified by TO, there is always bulk of these cases. They must be processed. On this score, the Tribunal agrees with the Applicant that processing late tax submissions was marred by chaotic practices and convey a dismissive attitude. They include the fact that late filings were not immediately assigned to any designated ITU staff and there was no established timeframe for processing late returns, notwithstanding that from October, at the latest, until April the following year, the ITU has no other returns to service but the late ones. The order of handling late filings, as attested to by QI, is based on persistence of the interested staff in nagging the ITU. QI has also refused any meaning to the statement included in the ITU confirmation of receipt: "*A staff member from the Income Tax Unit will get in touch with you should there be a need for any clarification or any missing document*", which he brushed off as "only a standard formula." During the COVID-19 pandemic and the lockdown of offices, i.e., roughly from March 2020 till July 2021, original documents were left in boxes and not attended to at all. These practices are unbecoming of a professional bureaucracy.

30. The Tribunal was not given any rational reason why the Applicant's case had received no attention whatsoever from the end of June 2020 (finalisation of the bulk of current claims) to May 2021 (TO's reply to the Applicant's query). Even considering that the ITU was working remotely and access to paper documents was difficult, the Applicant's requests had been filed in the system and should have been responded to, starting with a request to re-file - or to file, if missing - the explanation for lateness electronically. Regarding the latter point, the Tribunal gives credence to the Applicant that he had written by hand and filed his explanation in February 2020. The Applicant recounted in detail his experience at the ITU office, including stapling the documents,

he also described the ITU lady. Whereas the ITU *modus operandi*, as described above, indicates that ITU could likely have lost or misplaced the explanation.

31. The aforesaid shortcomings notwithstanding, the Tribunal does not find basis to hold the Respondent financially liable for interest and penalties accrued through the delay. Leaving aside the issue that the Applicant does not in any way quantify the amount of interest and penalties for which he demands compensation, the Tribunal recalls that the Respondent's obligations regarding processing the tax returns is only subsidiary to the staff members obligation toward the IRS. The Applicant was principally responsible for filing and paying his taxes within deadlines. This is clearly stated in the information circulars. This duty was not lifted when the Applicant filed his late request with the ITU, and, in the face of ITU inaction, he was obliged to mitigate the ongoing accrual of interest and penalties, by paying the dues himself, through urging the ITU earlier, and/or through petitioning for deferment with the IRS as he eventually managed to obtain through his tax counsel.

32. Based on the foregoing, the application is unfounded on both counts.

Judgment

33. The application is refused.

34. The Applicant's name is to be anonymised and his current workplace and previous case numbers are to be redacted in the published version of this judgment.

(Signed)
Judge Agnieszka Klonowiecka-Milart
Dated this 13th day of March 2023

Entered in the Register on this 13th day of March 2023

(Signed)
Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi