



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

KAMDEM SOUOP

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**

Emmanuel Simh

**Counsel for the Respondent:**

Elisabeth Gall, BMS/OLS, UNDP

## Introduction

1. The Applicant is a staff member of the Regional Office for Central Africa of the Office of the United Nations High Commissioner for Human Rights (“OHCHR-CARO”) in Yaoundé, Cameroon, under a United Nations Development Programme (“UNDP”) fixed-term appointment. On 13 February 2023, he filed an application to contest the implicit decision of the UNDP Resident Representative rejecting his request for reimbursement of medical evacuation costs.

2. On 16 March 2023, the Respondent filed his reply in which he submits that the application is *premature* as it was filed before the Applicant had received the response for his request for management evaluation; besides, it is without merits.

## Facts

3. On 1 June 2020, the Applicant was appointed to OHCHR-CARO under a UNDP fixed-term appointment as a Communication and Advocacy Assistant, at the G-5 level in Yaoundé.<sup>1</sup>

4. From March till early June 2022, there were exchanges concerning a possibility of the Applicant’s medical evacuation, which, however, was ultimately not approved.<sup>2</sup>

5. On 7 June 2022, the Division of Healthcare Management and Occupational Safety and Health (“DHMOSH”) notified the Applicant that his medical condition did not fulfil the criteria for a medical evacuation of a local staff member. DHMOSH

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<sup>1</sup> Reply, annex R/1.

<sup>2</sup> Application, annex titled Translated Att6-Mail approving my Evacuation-Director Bouaka-29 mar 2022. Application, annex titled *Att7\_ APPROVED EVACUATION Form-AB Kamdem Souop*. Reply, page 3, para. 7. Reply, annex titled *Kamdem Souop Reply Annex R6*, page 2. Application, annex titled *ATT5\_DHMOSH Decision*. Reply, annex R2. Application, annex titled *Translated-Att10\_confirmation of DHMOSH Decision*.

confirmed its earlier commitment to support the Applicant receiving medical treatment in Morocco, given that treatment for his condition was not available at his duty station.<sup>3</sup>

6. On 22 July 2022, the Office of Staff Legal Assistance (“OSLA”) wrote to the Regional Representative-OHCHR-CARO requesting, on the Applicant’s behalf, reimbursement of travel expenses and Daily Subsistence Allowance (“DSA”) in connection with the Applicant’s “medical evacuation” to Casablanca, Morocco.<sup>4</sup>

7. On 20 September 2022, OSLA sent another letter to the Regional Representative, OHCHR-CARO, requesting reimbursement. The same day, the Regional Representative, OHCHR-CARO, advised that OSLA contact OHCHR’s Human Resources Management Section in Geneva.<sup>5</sup>

8. On 3 November 2022, the Applicant submitted a request for management evaluation of the contested decision to the Management Evaluation Unit.<sup>6</sup>

9. By letter dated 18 November 2022, the Management Evaluation Unit informed the Applicant and his legal representative that the United Nations Secretariat “does not have the authority to review management evaluation requests from staff members of the UNDP. The Funds and Programmes of the United Nations carry out the management evaluation function through their own administrative structures.” The letter also included the email address of the Assistant Secretary-General and Director, Bureau for Management Services (“BMS”), to whom his request should be addressed.<sup>7</sup>

10. The Applicant wrote to the Resident Representative, UNDP Cameroon (“UNDP-RR”) on 21 November 2022, requesting reimbursement of travel expenses for his medical evacuation to Morocco in April-May 2022 with DSA.<sup>8</sup>

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<sup>3</sup> Application, annex titled *Translated-Att 10\_confirmation of DHMOSH Decision*.

<sup>4</sup> Reply, page 4, para 12.

<sup>5</sup> Reply, annex titled *Kamdem Souop, Reply annex R.3*.

<sup>6</sup> Application, annex titled *Att4\_Management Evaluation*.

<sup>7</sup> *Ibid.*

<sup>8</sup> Reply, annex titled *Kamdem Souop; Reply Annex R4*.

11. On 6 December 2022 the Applicant reiterated his request to the UNDP-RR but did not receive a response.<sup>9</sup>

12. On 27 January 2023, the Applicant submitted a request for management evaluation to UNDP.<sup>10</sup>

13. The Executive Assistant, Directorate, BMS, acknowledged receipt of the request for management evaluation on 30 January 2023 and informed the Applicant that he should expect a response by 13 March 2023.<sup>11</sup>

### **Consideration**

14. Article 8.1(c) of the UNDT Statute and staff rule 11.2 establish management evaluation as a mandatory – save exceptions which are irrelevant here - first step before submission of an application to the Dispute Tribunal.

15. In accordance with art. 8.1(i) of the UNDT Statute, the application must be filed

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

16. Staff rule 11.2 and art. 8 of the UNDT Statute require only a request for a management evaluation and not necessarily to obtain it. However, the Appeals Tribunal has stressed the obligation to await management evaluation. The purpose of management evaluation is to provide the administration the opportunity to correct any error in an administrative decision so that judicial review of the administrative decision

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<sup>9</sup> Reply, page 5, para. 16.

<sup>10</sup> Reply, annex titled *Kamdem Souop Reply Annex R5*.

<sup>11</sup> *Ibid.*

is not necessary and that for this goal to be met it is essential to clearly identify the contested disputed decision so that there would not be any need for judicial intervention.<sup>12</sup>

17. Another rationale identified by the Appeals Tribunal for management evaluation and the requirements to wait for the time to obtain it, is that it gives the Applicant the opportunity to consider the reasons on the part of the Administration before filing the application<sup>13</sup> and thus promotes the rationality and completeness of the arguments before the Tribunal. As held by this Tribunal in *Steinbach*, the application which had been filed without the result of management evaluation remains not receivable also after the management evaluation has been issued. Such a situation, for an Applicant who wishes to pursue his or her claim before the Dispute Tribunal, requires a new filing in accordance with the applicable time limits.<sup>14</sup>

18. In the present case, the Applicant requested management evaluation on 27 January 2023. The deadline for the administration to respond was 13 March 2023. The Applicant filed his application on 13 February 2023 that is, 28 days too early.

19. The Applicant may still timely file a new application by 11 June 2023, if the management response is not received. In the event management evaluation is, however, received by that date, the Applicant will have an additional 90 days and an opportunity to incorporate any relevant arguments. In accordance with the jurisprudence of the Appeals Tribunal

When a response is received after the deadline for a response to a request for management evaluation has lapsed but before the expiration of the 90-day time limit for filing an application with the UNDT, then the receipt of the response resets the clock for filing an application with

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<sup>12</sup> *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.

<sup>13</sup> *Neault* 2013-UNAT-345, para. 34.

<sup>14</sup> *Steinbach* UNDT/2018/034, para. 47. citing to, among others, *Kouadio* 2015-UNAT-558 and *Neault* 2013-UNAT-345.

the UNDT.<sup>15</sup>

20. The present application is, however, *premature* and is therefore not receivable.

### **Judgment**

21. The application is dismissed as it is not receivable.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 26<sup>th</sup> day of May 2023

Entered in the Register on this 26<sup>th</sup> day of May 2023

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>15</sup> *Neault* 2013-UNAT-345; *Lemmonier* 2016-UNAT-679; *Dieng* 2019-UNAT-941.