



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Abena Kwakye-Berko

YODJEU NTEMDE (THE SON OF GOD;
THE HOLY GRAIL; THE KING OF THIS
WORLD)

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant claims to be a former Human Resources Assistant at the G-5 level with the United Nations Economic Commission for Africa (“ECA”). He further claims to be currently working with the Department of Operational Support (“DOS”).¹

2. On 4 July 2023, the Applicant filed this application, requesting to be recognized as a former staff member of ECA. With this recognition, the Applicant expects to obtain the benefits that go with the status of former United Nations employees, including being assisted by the Office of Staff Legal Assistance (“OSLA”). Further, with this recognition, the Applicant envisages obtaining a compensation of approximately USD500,000 of what he terms as lost salary income since 2021.

Considerations

3. This application raises several issues about receivability.

Locus standi

4. In *Christensen* 2013-UNAT-335, the United Nations Appeals Tribunal (“the Appeals Tribunal”) held that “the UNDT is competent to review its own competence or jurisdiction in accordance with Article 2 (6) of its Statute” when determining the receivability of an application. The Appeals Tribunal further stated, “this competence can be exercised even if the parties or the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable”.

5. Articles 2.1(a) and 3 of the UNDT Statute provide:

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary- General as the Chief Administrative Officer of the United Nations: (a) to appeal an administrative decision that is alleged to be in noncompliance with the

¹ Application, section I.

terms of appointment of the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance.

Article 3

An application under article 2, paragraph 1, of the present Statute may be filed by:

- (a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations Funds and Programmes;
- (b) Any former staff member of the United Nations including the United Nations Secretariat or separately administered United Nations Funds and Programmes;
- (c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations Funds and Programmes.

6. These provisions clearly limit the jurisdiction of the UNDT to persons who are staff members of the United Nations or who were former staff members. UNDT jurisdiction does not include applications from non-staff members.

7. The evidence shows that on 5 January 2021, the Applicant was selected as a consultant at the Institute for Economic Development and Planning (“IDEP”).² IDEP functions as a subsidiary body of ECA³. However, on 10 March 2021, the Applicant sent an email to IDEP indicating that he had not been able to take up the offer because he had been subjected to detention in the United States of America. By the same email, the Applicant indicated that he was now ready to join IDEP since he had been released from prison.⁴

8. On 20 March 2021, the Applicant sent a reminder to IDEP seeking information on the status of his selection. On 22 March 2021, IDEP replied, stating:

² Application, exhibit 36.

³ www.uneca.org.

⁴ *Ibid.*

I hereby inform you that we had to proceed with the recruitment of another consultant. Therefore, and whilst thanking you for all the updates provided in your messages, the team wishes you all the success moving forward. (emphasis added).⁵

9. Thus, it is clear that the Applicant was never selected as a staff member, but only as a consultant, and that he never occupied that consultancy. Although the Applicant indicates that he separated from the service of ECA on 22 March 2021, the Applicant never took up that or any position with IDEP/ECA.⁶

10. The Tribunal notes that the Applicant also claims to be a staff member of DOS effective 8 October 2021.⁷ The evidence on record indicates that the Applicant was only selected for a position of Administrative Assistant at DOS. Although the Applicant confirmed his interest in the position, there is no evidence, such as an offer of appointment or a letter of appointment, that DOS ever appointed him to the position.

11. Since the Applicant, was never a staff member of ECA, IDEP, DOS or any other entity of the United Nations, he has no *locus standi* before this Tribunal. The present application cannot be entertained.

Res judicata

12. Moreover, the Tribunal has previously rejected an application by the Applicant contesting the same claims he raises now. In Judgment No. UNDT/2022/078, the Tribunal found that the Applicant was not a staff member and had no legal standing before it. Accordingly, his application was found non receivable *ratione personae*.

13. This issue having already been litigated by the Tribunal, the Applicant may not seek to litigate it again. Thus, the application is also barred by *res judicata*.

⁵ *Ibid.*

⁶ Application, section I.

⁷ *Ibid.*

Receivability *ratione materiae*

14. If the request for management evaluation is time-barred, the application before the UNDT is not receivable because the UNDT Statute forbids the waiving of time limits for management evaluation.⁸ The Appeals Tribunal also affirms that an untimely request for management evaluation bars applications before the Tribunal even if management evaluation was actually received.⁹

15. Based on the evidence on file, the contested decisions, both ECA and DOS were taken in March and October 2021 respectively.¹⁰ The Applicant requested management evaluation on 22 August 2022, more than a year later.¹¹

16. The Tribunal finds that the application is not receivable *ratione materiae* because the Applicant did not request management evaluation within the 60-day statutory period of staff rule 11.2(c).

JUDGMENT

17. The application is dismissed as not receivable.

18. All other pending motions or requests are denied as moot.

(Signed)

Judge Sean Wallace
Dated this 20th day of July 2023

⁸ *Rosana* 2012-UNAT-273.

⁹ *Awan* 2015-UNAT-588, paras. 13-14.

¹⁰ Application, section I, and exhibits 1 and 38.

¹¹ Application, exhibit 38.

Entered in the Register on this 20th day of July 2023

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi