



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2009/069  
Order No.: 041 (NBI/2011)  
Date: 18 May 2011  
Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

CHRISTENSEN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON APPLICANT'S MOTION FOR  
CONSOLIDATION, WAIVER OF TIME-  
LIMITS**

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**Counsel for Applicant:**

Miles Hastie, Office of Staff Legal Assistance

**Counsel for Respondent:**

Steven Dietrich, ALS/OHRM

Marcus Joyce, ALS/OHRM

## **Introduction**

1. The Applicant, a former staff member of the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, is appealing against several administrative decisions not to pay her salary and certain entitlements which remained outstanding upon her separation from service with the Organization on 23 June 2003.
2. On 28 May 2010, the Tribunal issued Order No. 101 (NBI/2010) which dealt with case management in respect of the present case. The Applicant filed her response to the said Order on 30 July 2010 in which she advised the Tribunal that she was canvassing the possibility of consolidating her two cases which were transferred from the New York Registry.
3. The Respondent filed a response to Order No. 101 (NBI/2010) on 30 June 2010 in which he, *inter alia*, challenged the receivability of the Applicant's claims.
4. The Parties attended a case management hearing on 30 November 2010, following which the Tribunal issued Order No. 240 (NBI/2010) directing:
  - a. The Applicant to file a Motion for Consolidation by Wednesday, 22 December 2010.
  - b. The Respondent to file his Reply to the said Motion by Wednesday, 29 December 2010.
  - c. The Applicant to file her Observations on the Reply, if any, within three days from the date of service of the Reply.
  - d. That the matter was adjourned to Wednesday, 2 March 2011 for the hearing of the Motion for Consolidation.
5. The Applicant filed her "Motion for Consolidation, Waiver of Time Limits" ("the Motion") on 22 December 2010.

6. The Respondent filed a Motion requesting for extension of time for compliance with Order No. 240 (NBI/2010) on 23 December 2010. On 29 December 2010, the Tribunal informed the Parties that the Respondent's request for extension of time for compliance with Order No. 240 (NBI/2010) had been granted. The Respondent's response to the Motion was subsequently filed on 19 January 2011.

### **Applicant's Case**

7. The Applicant's arguments in favour of Consolidation, Waiver of Time Limits are:

8. The Motion concerns consolidation of two current UNDT Applications transferred from the Joint Appeals Board (JAB). It also concerns the consolidation of those two Applications with another pending Application for which leave to file late was requested, pursuant to art 7.5 of the Rules of Procedure of the Tribunal, but the leave application has not yet been addressed by the Tribunal. The Applicant submits that these two related cases should have both been transferred to the Nairobi Registry but only one file number was assigned, that is, UNDT/NBI/2009/69 and that to the extent that both New York cases were formally consolidated upon their transfer to Nairobi, a portion of the Motion is moot.

9. The two Applications are: former JAB case 2005-004, which was transferred to the New York Registry of the UNDT, with File No. UNDT/NY/2009/105 (the "Salary Case") and former JAB case 2006-053, which case was transferred to the New York Registry of the UNDT, with File No. UNDT/NY/2009/106 (the "Entitlements Case"); and the pending Application, for which leave to file was sought by letter to the New York Registry (transferred to Nairobi) on 14 December 2009 ("the ABCC case"), but which has not been judicially addressed.

10. All three cases concern the fall-out of the Applicant's health conditions. She contracted typhus in or around her duty station in Arusha, Tanzania, in 1998. Her illness subsequently became a chronic and debilitating condition, *Rickettsia* Disease. She required repeated and prolonged medical treatments in Nairobi and

Johannesburg, incurred expenses and was denied entitlements that have not been reimbursed or paid. All of these claims were originally made in the Entitlements Case.

11. The Applicant's medical condition became so serious that she was unable to work. Her fixed-term contract was not renewed and she was given an illness-related pension. It is not disputed that she was unable to work due to her illness. However, the Administration contends that the Applicant's illness was not attributable to performance of her official functions.

12. In 2004, the Advisory Board on Compensation Claims (ABCC) made a decision in favour of the Administration on the issue of whether the Applicant's illness was attributable to performance of her official functions. If the Applicant's illness was deemed work-related, she would have been entitled to full salary (which was greater than her pension and the half-salary she had been paid for her final nine months of work) until her retirement. The reason for her dismissal and her entitlement to a salary until retirement was the subject to two separate cases, the Salary Case and the former UN Administrative Tribunal Case Number 1493 (the "ABCC Case").

13. In Judgment No. 1427, the ABCC Case, the former UN Administrative Tribunal dismissed the Applicant's case as not being receivable. Although the former UN Administrative Tribunal expressed doubt about the correctness of the ABCC decision, it held that it could not rule on the issue unless or until the Applicant had asked the Secretary-General to convene a Medical Board to review the ABCC's decision. The former UN Administrative Tribunal observed that in exceptional circumstances, a staff member could ask the Secretary-General to convene such a Medical Board at any time. Accordingly, the Applicant asked for convocation of such a Medical Board on 27 February 2009. Her request was first met with silence. The request was then received by the Management Evaluation Unit (MEU), which indicated their view that the matter was not receivable as it was *sub judice* in the Salary Case and the Entitlements Case before the Tribunal and because of the ABCC decision.

14. The Applicant submits that the MEU, on behalf of the Secretary-General, did not substantively consider the request to review the ABCC decision. Accordingly, the Applicant promptly filed a letter with the Tribunal seeking leave to file an application beyond the ordinary time limits, to overturn the failure of the Administration to review the ABCC decision.

15. The Applicant submits that there are common issues of fact and law, common evidentiary bases and interdependent pleas that all militate in favour of consolidation. Legal efficiency, judicial economy, legal consistency and finality all favour such a consolidation.

16. There are at least three areas of overlap among the Applications: the background to the Applicant's condition and how a simple typhus infection developed into full-blown *Rickettsia* Disease through misdiagnosis and mistreatment at her workplace; the factual and legal issue of whether the Applicant's illness was work-related; the factual and legal issues of which expenses are related to the Applicant's illness; the factual and legal issue of whether the Applicant's various and continuing medical, legal and financial problems constitute exceptional circumstances to justify a waiver of time limits, for the overlapping time periods of the three Applications ; and the remedies sought. The Applicant submits that there is no good reason why these issues should be made subject to determination by different Judges or the same Judge at different times.

17. The Applicant submits that there is overlapping evidence and argument, duplicative or triplicate work and expense for the judiciary and the parties. The Applicant has seen over 20 clinical specialists in at least four countries. There will be a considerable body of evidence before the court from scattered witnesses. Repetition of this exercise would be an incredibly wasteful use of time and resources which the Applicant and the United Nations can ill-afford.

18. In response to the JAB appeal in the Entitlements case, the Applicant submits that the Administration contended that the school and counselling expenses for the

Applicant's daughter and the Applicant's medical expenses were not recoverable because her health problems were not work-related. The Administration relied upon the determination of the ABCC. It was the Administration's position that the ABCC decision needed to be separately contested before these claims could be adjudicated. The Administration reprised these arguments before this Tribunal in the Respondent's Response to Order No. 101 dated 30 June 2010. The Applicant submits that this Motion would ensure that the correctness of the ABCC decision was properly established before the same Judge of this Tribunal through the Salary Case and/or the ABCC Reconsideration Case.

19. The MEU in the ABCC Reconsideration Case denied the review on the ground that, inter alia, the ABCC decision was already before the court in the Salary Case and Entitlements Case. The Applicant submits that the Administration cannot "deny review, then attempt to cut out the basis for its own objection, then complain that review was not sought in a timely fashion".

20. The Respondent has argued, in the past, that the claims of the Salary Case and ABCC Reconsideration Case needed to be preceded by a request for reconsideration or reopening of the ABCC Case. The Applicant submits that in all but form, the Secretary-General was asked to reconsider the ABCC decision in 2005. Having asked the Administration to pay her salary and been denied, the Applicant challenged the correctness of the ABCC decision before the same decision-maker (the Secretary-General) that was required to reopen the ABCC decision. The Applicant submits that there can be no doubt that the Administration misunderstood the nature of this legal challenge. In the circumstances, the fact that the Applicant had inadequate legal assistance at the time should not redound to the detriment of the Applicant.

21. Further, the MEU in the ABCC Reconsideration Case held that the ABCC decision was already before the court in the Salary Case. The Administration should not be seen to resile from that position. In any event, the Applicant submits that this objection could not possibly hold sway after the Applicant clearly and expressly

asked the Secretary-General for reconsideration of the ABCC decision, pursuant to Appendix D of the Staff Rules, in 2009, in the ABCC Reconsideration Case.

22. The Administration cannot frustrate the review process by simply remaining silent, instead of responding negatively. One of the rulings in the former UN Administrative Tribunal Case number 1493 was that if the matter were returned to the Secretary-General and he maintained his position, a claim could be pursued before the Tribunal.

23. The Applicant submits that the JAB found that she was engaged with the Administration in a train of correspondence concerning all of these claims that had still not been resolved by 31 January 2006, within two months of 22 March 2006. The Administration continued to indicate that further examination of the issues was warranted. The Applicant maintains that the JAB was correct in holding that there were no time bars to the adjudication of the Entitlements Case and that if the Tribunal is inclined to find otherwise, there were exceptional circumstances arising from her medical, legal and financial situation to justify a waiver of the time limit.

24. The Applicant submits that with respect to the ABCC Reconsideration Case, the Respondent has contended that the Applicant was required to file an application before the Tribunal within 90 days of the MEU decision of 29 October 2009, that is, by 27 January 2010. Given that the MEU stated that there was no decision to review and that the matter could not be reviewed because it was already before the Tribunal, the Applicant considers this contention to be unjustified.

25. By letter dated 14 December 2009, the Applicant sought leave of this Tribunal to file an application late. That letter was sent, well in advance of the 90-day deadline, in the knowledge that the Applicant needed to secure new legal counsel. The decision of whether to grant leave has not been determined. The Applicant renews its request for leave to file by this Motion.

26. The Applicant submits that there can be no credible contention that the Administration did not have timely notice of the Applicant's intention to pursue a

challenge to the ABCC decision after 29 October 2009, nor can it be suggested that the Applicant abandoned such an intention. Both parties' discussion of the "core issues" in the case, filed in mid-2010, refer to such a challenge through a new application. The delays between 27 January 2010 and the present were caused by a change in counsel, a problem both the Administration and the Tribunal were alerted to, and administrative delays at the Tribunal.

27. The Applicant submits that the Administration never directed her to the correct forum until a time when it contended that time bars existed. The Administration responded with stony silence to a clear challenge of the ABCC decision in 2005, waited for time to pass, and then indicated that the challenge was not in the correct form. Even years later, after the former UN Administrative Tribunal suggested that the Applicant make such a request, the Secretary-General ignored it. The Applicant submits that the MEU then argued that there was no decision to review then it argued that there was a decision for review, but an appeal of that review was out-of-time. The contradictory procedural posturing of the Administration has made it difficult for the Applicant to properly exercise her rights.

28. The Applicant submits that through no fault of her own, she has been given some poor advice and misleading signals by counsel, the courts and their registries. Former counsel directed legal challenges to an inappropriate forum providing advice that paralleled that given by the Administration and court registries. The Applicant's nine assignments or re-assignments of counsel and periods when counsel could not be reached, was a matter beyond her control. Her lack of financial means put paid counsel out-of-reach. Her debilitating medical problems compounded all of these problems.

29. The Applicant submits that her diligent efforts to bring her claims to the Administration and court are amply evidenced by the chronology of her case. If anything, legal confusion prompted the Applicant to seek redress in too many fora, a matter that this Motion seeks to redress. The Applicant has not seen or heard any argument regarding prejudice to the Administration.



30. The Applicant notes that the Administration has proposed that, after its receivability concerns are addressed, if the Tribunal concludes that the Secretary-General should be required to examine the ABCC decision, the Tribunal should require only that the matter be remitted to the Secretary-General. The Administration proposes that the Secretary-General would then decide, not if the ABCC decision was flawed, but whether there are exceptional circumstances such that he should decide to consider the request to review the ABCC decision. If the Secretary-General makes a decision not to consider that request, a decision the Secretary-General has had five years to make, then the matter, presumably, could be reviewed again in the Tribunal. The Tribunal would then be asked to review whether the Secretary-General should have found there were exceptional circumstances; a matter presumably already canvassed in the context of the receivability concerns now before the court.

31. The Applicant further submits that the Administration would then submit that the Secretary-General is entitled to decide whether to substantively reconsider the ABCC decision or accept the recommendations of any Medical Board then convened to review the ABCC decision. If the Secretary-General's decision to accept or not accept the Medical Board decision was alleged to be flawed, that then could be brought before the tribunal. The practical effect of such a proposal is easy to predict; the interests of the party advancing it are not hard to surmise.

32. In view of the foregoing, the Applicant requests the Tribunal to order that the three Applications be consolidated for a timely and comprehensive hearing on the merits.

### **Respondent's Case**

33. The Respondent submits that before consideration can be given as to whether all three Applications should be consolidated, a determination should be made as to whether the Tribunal should grant the Applicant's renewed request for leave.

34. On 16 April 1999, the Applicant submitted a compensation claim to the ABCC pursuant to art. 11 of Appendix D to the Staff Regulations and Rules. The

ABCC considered the Applicant's claim at its 419<sup>th</sup> meeting on 22 June 2004, and recommended that the Secretary-General reject her claim on the basis that her tick typhus was not service-incurred, since the tick bite likely occurred while the Applicant was on private travel. The ABCC found that the Applicant's illness was not attributable to the performance of her official duties on behalf of the United Nations, but was incurred during a private recreational visit to Mount Meru, an area outside the city of Arusha where the Applicant worked. The ABCC took the view that the tick bite could not have occurred in Arusha, the Applicant's duty station. Accordingly, whilst the Organization regrets that the Applicant is in poor health, the Organization bears no responsibility for her illness.

35. The Controller, on behalf of the Secretary-General, approved the ABCC's recommendation on 26 July 2004, and the Applicant was informed accordingly on 9 August 2004.

36. Article 17 of Appendix D sets out the procedure by which a staff member can seek review of the Secretary-General's decision to either accept or reject the ABCC's recommendation. Rather than seeking a review of the Secretary-General's decision by a new Medical Board under art. 17 of Appendix D, the Respondent submits that the Applicant requested administrative review of the ABCC's recommendation on 10 October 2005. The Applicant then submitted a Statement of Appeal, dated 16 January 2006, to the former JAB.

37. On 28 November 2006, the former JAB rejected the Applicant's Statement of Appeal as not receivable, and advised that the contested decision fell under Appendix D, rather than Chapter XI of the Staff Rules. The former JAB further advised the Applicant to focus further action within the framework of Appendix D of the Staff Rules and the Statute of the former UN Administrative Tribunal.

38. On 22 June 2006, the Applicant submitted an Application to the former UN Administrative Tribunal requesting that Tribunal to set aside the ABCC's finding that her tick typhus was not service-incurred. On 30 January 2009, the former UN

Administrative Tribunal issued Judgment No. 1427, rejecting the Applicant's Application on the grounds that the Applicant had failed to request reconsideration of the Secretary-General's decision by a Medical Board, contrary to the requirements of art. 17 of Appendix D of the Staff Rules. Accordingly, the former UN Administrative Tribunal found that the Applicant's claim was not receivable. In reaching its decision, the former UN Administrative Tribunal observed that time had run well beyond the thirty-day time period in which the Applicant should have brought her request for reconsideration; however, the former UN Administrative Tribunal suggested that the Secretary-General may still accept her request for review, provided the Applicant could demonstrate exceptional circumstances.

39. On 27 February 2009 and 5 June 2009, the Applicant forwarded a letter requesting the Secretary-General to reopen her case pursuant to art. 9 of Appendix D of the Staff Rules. The Secretary-General did not respond to this request from the Applicant and, accordingly, her case was not re-opened.

40. On 4 September 2009, the matter was called on for a Directions Hearing before the Tribunal in New York. The Tribunal observed that the Applicant wished to re-litigate the ABCC's decision before the Tribunal; however, she had failed to request management evaluation following the Secretary-General's non-response to her request for reconsideration.

41. Accordingly, by letter dated 8 September 2009 the Applicant sought management evaluation of the Secretary-General's failure to review her request for reconsideration. On 23 October 2009, the MEU rejected the Applicant's request on the basis that it was not receivable. On 26 October 2009, the Applicant's Counsel filed another request to the MEU and again, by letter dated 29 October 2009 where the MEU rejected the request on the basis that it was not receivable. The MEU stated that the Applicant's petitions dated 27 February 2009 and 8 September 2009 did not constitute decisions for the purposes of provisional Staff Rule 11.2 and, therefore, there was no decision to be evaluated. Furthermore, pursuant to the Secretary-General's Report (A/62/294, paragraph 82), administrative decisions taken pursuant

to the advice given by technical boards such as the ABCC or the Medical Boards are not subject to a management evaluation.

42. On 14 December 2009, the Applicant forwarded a letter to the Registry of the Tribunal requesting an extension of the deadline for filing an Application before the Tribunal with regard to re-opening her request for reconsideration of the ABCC's recommendation.

43. The Respondent submits that the Applicant's request for leave to file a fresh application for reconsideration of the ABCC's decision should be denied. The primary issue is whether the Applicant has demonstrated the existence of exceptional circumstances to justify a waiver of the time-limit within which to file a request for reconsideration of the ABCC's decision.

44. The Applicant contends in her draft Application that she was not aware that she could appeal the ABCC's decision under art. 17 of the Appendix D of the Staff Rules. The Applicant further contends that she first became aware of art. 17 following the issuance of the former UN Administrative Tribunal judgment No. 1427 rejecting her appeal.

45. The Respondent submits that the Applicant's contentions are without merit and that the record shows that she received sufficient guidance and directions from the former UN Administrative Tribunal, the former JAB, and the Tribunal in New York as to how to pursue her claims. The Respondent submits that the Applicant's claim of ignorance of art. 17 of Appendix D is not persuasive.

46. The Respondent submits that the United Nations Appeals Tribunal most recently held in *Diagne et al*<sup>1</sup> that ignorance of the staff rules does not constitute exceptional circumstances warranting a waiver of the time-limits. While the Applicant did in fact submit letters to the Secretary-General on 27 February 2009 and 5 June 2009, the Applicant did not demonstrate the existence of exceptional

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<sup>1</sup>2010-UNAT-67.

circumstances to justify a waiver of the time-limit. The Applicant's main contention, in her letter dated 27 February 2009 to the Secretary-General was that she had no knowledge of Appendix D of the Staff Rules, and, concedes her ignorance of the law. As such, the Applicant did not receive a response from the Secretary-General to her request, which she construes as a negative response.

47. Given that the Applicant did not demonstrate the existence of exceptional circumstances to justify a waiver of time-limit, the Respondent submits that the Secretary-General acted within the scope of his discretionary authority under art. 17 of Appendix D when he chose not to respond to the Applicant's request for reconsideration. The Applicant has not presented any evidence that the Secretary-General failed to properly exercise his discretionary authority by not accepting the Applicant's justifications for not filing her request on time.

48. Further, at the first Directions Hearing on this case, the Tribunal noted that the Applicant sought to re-litigate the ABCC's claim, and further noted that the Applicant failed to seek management evaluation of the Secretary-General's non-response to her request for reconsideration. Nevertheless, the Applicant subsequently sought management evaluation, which the MEU correctly rejected on 29 October 2009 on the basis that it had no jurisdiction to review decisions taken by technical bodies, such as the ABCC. Accordingly, the MEU could not substantively consider the Applicant's request to review a decision taken by a technical body, such as the ABCC.

49. The Applicant's request for leave should be rejected because, once again, she is now time-barred from filing an Application, having failed to do so within 90 days of the MEU decision of 29 October 2009 in accordance with art. 8.1.d.i of the Tribunal's Statute.

50. The Respondent submits that a review of the record shows that the Applicant had either filed her claim in the wrong forum or failed to make her submissions within the statutory time-limits. The Respondent submits that he has had to constantly

object to the Applicant's filings on receivability grounds throughout the course of the proceedings because she consistently filed her submissions outside the statutory time-limits before the Secretary-General under art. 17 of Appendix D, the MEU and now this Tribunal.

51. In her renewed request for leave, the Respondent submits that Applicant has presented the same reasons to demonstrate the existence of exceptional circumstances namely: ignorance of art. 17 of Appendix D; her medical condition and absence of legal counsel to support her request for leave. In her request, the Applicant submits a list of explanations and excuses, which, taken together, do not amount to exceptional circumstances to justify a waiver of the time-limit. The Applicant blames the Administration for the legal quandary where the record shows that the Applicant failed to make timely submissions and exhaust all remedies available to her under the Staff Rules, as found by the former UN Administrative Tribunal and the former JAB. The Respondent therefore contends that the Applicant has not demonstrated exceptional circumstances to justify granting her request for leave to file the draft Application.

52. In the event the Applicant's request for leave is granted, the Respondent submits that the issue here is whether all three Applications should be consolidated and that even though the Salary and the ABCC Cases are intricately linked as they are both based on the validity of the ABCC's decision, it is premature to consolidate both cases at this time because the primary receivability issue relating to the ABCC Case has to first be determined before a review of the merits can be undertaken and, by extension, the merits of the Salary Case. As such, the Salary Case should not be consolidated with the ABCC Case until the Tribunal decides whether to grant the Applicant's request for leave to file a new application for reconsideration.

53. The Respondent objects to the consolidation of the Salary and ABCC Cases with the Entitlements Case. The Respondent submits that a review of the Entitlements Case shows that it is a separate and distinct case from the others because it relates to the question of whether the Applicant should have received specific benefits and

entitlements under her former contract with the ICTR following her evacuation and separation from service. This question is unrelated to the primary issues raised in the other two cases, namely: whether the ABCC correctly determined that the Applicant's illness was (a) not service-incurred and, if not, (b) whether she is entitled to compensation under Appendix D of the Staff Rules.

54. The Respondent submits that the issues raised under all three cases are governed by separate and distinct provisions of the Staff Rules. The Salary and ABCC Cases are governed by Appendix D of the Staff Rules whereas the Entitlements Case is primarily governed by Chapter IX of the Staff Rules and that to consolidate all three cases would confound the already complicated progression of these three cases.

55. In view of the foregoing, the Tribunal is requested to reject the Applicant's Motion and request for leave to file the draft Application.

## **Considerations**

### ***Receivability of the ABCC Case***

56. The applicable rule in relation to the procedure by which a staff member can seek review of a decision by the Secretary-General accepting or rejecting the ABCC's recommendation is art. 17.d of Appendix D to the Staff Rules titled "Rules Governing Compensation in the event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations". In the present case, as described in the former UN Administrative Tribunal Judgment Number 1427 of 30 January 2009, the Applicant failed to request reconsideration of the Secretary-General's decision in accordance with art. 17 of Appendix D, even after she was directed to do so by the JAB on 28 November 2006.

57. In the said Judgment, the former UN Administrative Tribunal stated that although the Applicant was well beyond the thirty-day time period in which she should have brought her request for reconsideration, the Secretary-General could still

have accepted for consideration her request for review if she could demonstrate exceptional circumstances. If she demonstrated exceptional circumstances and if the Secretary-General maintained his position, denying her service-incurred status, she would then be free to bring her claim to the Tribunal.

58. Subsequent to that decision, on 27 February 2009 and 5 June 2009, as per the Respondent's submissions, the Applicant forwarded a letter requesting the Secretary-General to reopen her case pursuant to art. 9 of Appendix D of the Staff Rules. The Secretary-General did not respond to this request from the Applicant and, accordingly, her case was not re-opened. The Tribunal observes that the Administration's failure to respond, especially in view of the Applicant's predicament, is inexcusable.

59. In essence, the Applicant is requesting the Tribunal to order the Administration to waive the time limits for seeking review of the decision by the Secretary-General accepting the ABCC's recommendation. The deadline for the Applicant to have sought review of the decision by the Secretary-General in the present case was within thirty days of notice of the Secretary-General's decision, that is, by or before, 9 September 2004. As stated above, the Applicant sought this review on 27 February 2009. The Applicant cited poor advice by her counsel and poor health as the exceptional circumstances that prevented her from seeking review of the decision within the required period.

60. The Tribunal observed in *Zewdu*<sup>2</sup> that it does not have the power to suspend or waive any deadline in relation to management evaluation as art. 8.3 of the Statute of the Tribunal plainly states that the Tribunal shall not suspend or waive the deadlines for management evaluation. In *Sethia*<sup>3</sup>, the Appeals Tribunal reaffirmed its decision in *Costa*<sup>4</sup> adding that the Tribunal does not have the power under art. 8.3 of the Statute of the Tribunal to suspend or waive the deadlines for requesting

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<sup>2</sup> UNDT/2011/043.

<sup>3</sup> 2010-UNAT-079.

<sup>4</sup> 2010-UNAT-036.



administrative review under the old system of internal justice. Additionally, art. 8.4 of the Statute of the Tribunal states that an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

***Kamanou Judgment***

61. The Tribunal notes that the facts in the present case can be distinguished from those in *Kamanou*<sup>5</sup>. *Kamanou* was a single, comprehensive case where the Applicant alleged that she had suffered discrimination and harassment which manifested in the decisions not to promote her and not to attribute her contribution to certain intellectual works. The Trial Judge went ahead in that case to single out the issue of non-attribution for a separate determination. The Appeals Tribunal held that the issue of non-attribution in that case was directly relevant to the issues of discrimination and harassment and could not be dealt with separately.

62. In the present case, the different Applications were filed separately; each can stand alone and can be decided separately without affecting the Applicant's right to a fair hearing. In view of the foregoing, the Tribunal finds that the ABCC Case is not receivable.

***Consolidation of the Salary and Entitlements cases***

63. Having reviewed the parties' arguments on the issue of consolidation, the Tribunal finds that it would be appropriate, for a fair and expeditious disposal of the cases, to consolidate the Salary and the Entitlements Cases.

IT IS ORDERED THAT:

64. That the ABCC Case is not receivable.

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<sup>5</sup> *Kamanou* 2011-UNAT-113.

65. The two Applications which were transferred to the New York Registry of the Tribunal namely: File Number UNDT/NY/2009/105 (the “Salary Case”) and former JAB case 2006-053, which was transferred to the New York Registry of the UNDT, with File Number UNDT/NY/2009/106 (the Entitlements Case) are hereby consolidated.

66. The matter of *Christensen v. the Secretary-General of the United Nations* be heard from **Monday, 12 September 2011 to Wednesday, 14 September 2011**. Parties who are not physically present in Nairobi shall participate via audio or video conference (as shall be determined by the Tribunal).

67. The parties are required to provide the Registry, by or before **27 May 2011**, with the following information:

- a. Whether they intend to call witnesses and indicating clearly the relevance of the evidence of each witness. The parties should also indicate the approximate amount of time they may need for examination-in-chief of their witnesses.
- b. The names of witnesses and full contact details (telephone/email) to the Registry.
- c. It is the responsibility of the parties to ensure the availability of their witnesses.

68. This Order also serves as a hearing notice, pursuant to Article 16 of the Tribunal’s Rules of Procedure.

(Signed)

Judge Nkemdilim Izuako

Dated this 18 day of May 2011