



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/045
Order No.: 332 (NBI/2016)
Date: 30 June 2016
Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

FAYEK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON A REQUEST FOR EXTENSION OF
TIME TO FILE AN APPLICATION

Counsel for the Applicant:
Joseph Grinblat

Counsel for the Respondent:
ALS/OHRM

Introduction

1. The Applicant is serving as the Chief of United Nations Radio Guira FM at the P-4 level with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA).

2. On 25 June, the Applicant's representative filed a request for extension of time to file an application on her behalf. The request indicates that the Applicant wishes to contest the decision dated 11 April 2016¹ to "close the case presented by [her] as a victim of harassment, after the report of the investigation panel and the decisions by OHRM, without any reparation for the damages caused to [her]".

Considerations

3. Article 8.1 (d) of the Statute and art. 7.5 of the Rules of Procedure set out the time limits within which an application should be filed before the Tribunal and both articles confer discretion on the Tribunal to suspend, waive or extend time limits upon the written request of an applicant. The request, which should not be more than two pages in length, must "succinctly set out the exceptional reasons that, in view of the Applicant, justify the request".

4. In *Hijaz* 2010-UNAT-055, UNAT held that art. 8.1 of the Statute and art. 7.5 of the Rules of Procedure do not confer any right upon the appellant, but simply provide the option of requesting the Tribunal to suspend, waive or extend deadlines where exceptional circumstances can be shown. Additionally, UNAT held in *Diagne et al.* 2010-UNAT-067 that a delay can generally be excused only because of circumstances beyond an applicant's control. However, if the exercise of discretion is unreasonable it may be overturned on appeal².

5. The present request makes mention only of the fact that the Applicant is severely ill and is hospitalized. There is no supporting evidence of this assertion by way of a medical certificate or other document from the hospital authorities where the Applicant is at present hospitalized. While the Tribunal is not putting in

¹ The Motion indicates the letter was communicated to the Applicant on 13 April 2016.

² *Abu-Hawaila* 2011-UNAT-118.

doubt the assertion about the health of the Applicant it cannot at the same time exercise its discretion under the relevant legal provisions without any supporting evidence. The law is clear. It is only in exceptional circumstances that the Tribunal may exercise its discretion to grant an extension of time. In *Christensen* 2012-UNAT-118, the United Nations Appeals Tribunal (UNAT) held that what constitutes exceptional circumstances will vary from case to case.

6. It stands to reason that without any evidence on the nature or extent of the illness of the Applicant the Tribunal is unable to exercise its discretion judiciously. It is for the Tribunal to decide whether exceptional circumstances justify the request.

7. As the Tribunal is left in the dark as to the exceptional circumstances it is unable to properly exercise its discretion.

ORDER

6. The Motion for extension of time to file an application is rejected.

(Signed)

Judge Vinod Boolell

Dated this 30th day of June 2016

Entered in the Register on this 30th day of June 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi