



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/032
Order No.: 036 (NBI/2022)
Date: 25 March 2022
Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ULLAH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION FOR EXTENSION OF TIME
TO FILE AN APPLICATION**

Counsel for the Applicant:
Shubha Suresh Naik, OSLA

Counsel for the Respondent:
ECA

Introduction

1. On 23 March 2022, the Applicant filed a motion for extension of time to file an application before the Dispute Tribunal in respect of the Economic Commission for Africa's ("ECA") decision not to short-list and to not select him for the position of Chief, Evaluation in Strategic Planning Oversight and Results Division.¹

2. The Applicant submits that on 10 November 2021, he requested management evaluation of the contested decision and the Management Evaluation Unit's ("MEU") decision was due on 25 December 2021. Therefore, the deadline to file the application will be on 25 March 2022.²

3. The Applicant further submits that after filing the management evaluation request, there have been negotiations with the Administration to resolve the matter amicably under the auspices of MEU. The negotiations are at an advanced stage. In order to protect his interests, if the negotiations fail, he would like to seek an extension of 30 days to file the application.

4. The Applicant, therefore, requests the extension of time for 30 days, until 24 April 2022 to file the application.

Considerations

5. Article 8.3 of the Dispute Tribunal's Statute provides that the Dispute Tribunal "may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases". Article 7.5 of the Dispute Tribunal's Rules of Procedure provides that in exceptional cases an applicant may request a suspension, waiver or extension of the time limits for filing an application. Article 7.5 further states that any such request shall set out the exceptional circumstances that, in the view of the applicant, justify the request.

¹ Motion, sections V.

² Motion, section VIII, para. 7.

6. The power to suspend or waive deadlines for filing applications in this Tribunal is discretionary and must be exercised judiciously following laid down objective criteria as set out in the rules and jurisprudence.

7. Pursuant to the relevant legal framework as set out above, the key factor to consider is whether the Applicant has demonstrated exceptional circumstances to warrant granting the motion for suspension or waiver of time limit ³.

8. What constitutes exceptional circumstances will be decided on a case-by-case basis, however the Appeals Tribunal has held in *El-Kathib*⁴ that only events beyond the applicant's control and actually preventing him or her from pursuing legal action may be regarded as "exceptional circumstances" warranting such a waiver.

9. In the case at bar, in support of the motion to show exceptional circumstances, the Applicant argues that:

The process of negotiations and settlement require agreement from various parties in the Administration over which the Applicant has no control. If the Applicant now files, the Application it would not be judicious administratively and would lead to unnecessary costs and time for pursuing the case for all involved. In the event the negotiations are successful, and settlement is reached, it is expected that almost all administrative costs associated with a UNDT application could be avoided. Therefore, there exists exceptional circumstances to grant the said extension of time.⁵

10. The Tribunal finds that the reasons provided as exceptional grounds for granting a suspension of or waiving time limit to file the application are not legally valid. In fact, such reasons are expressly excluded as considerations to grant such motion, see for example, the United Nations Appeals Tribunal ("UNAT") holding, that:

This Tribunal also holds that] the exceptional suspension of time limits provided for under Article 8(1) of the UNDT Statute and provisional Staff Rule 11.1 applies only to informal dispute resolution conducted through the Office of the Ombudsman. The suspension of time limits cannot be extended by analogy to other informal dispute resolution procedures, precisely because of its exceptional character. Exceptions to

³ *Christensen* 2012-UNAT-218 ; *Rüger* 2016-UNAT-693.

⁴ *El-Kathib* 2010-UNAT-029.

⁵ Motion, section VIII, para. 6.

time limits and deadlines must be interpreted strictly and are not subject to extension by analogy.....⁶

11. The Tribunal also refers to *Applicant*⁷ which is an authority that a suspension of or waiver of time limit may be granted pending settlement negotiations but only where the office of the Ombudsman is involved in the negotiation process. The office of the MEU is not a recognized mediation entity for purposes of granting the motion, consequently time does not stop running during MEU intervention. The UNAT held that:

In our considered opinion, what is envisaged or required by the UNDT Statute and the Staff Rules is that: mediation has to be pursued by either party within the deadline for filing an application with the UNDT; such informal dispute resolution is carried out through the Office of the Ombudsman; the time limits may be tolled when the Mediation Division of the Ombudsman's Office is involved in settlement or mediation discussions; and the staff member may file an application within 90 calendar days of the breakdown of the mediation.⁸

ORDER

12. In view of the foregoing, the motion is denied.

(Signed)

Judge Rachel Sophie Sikwese
Dated this 25th day of March 2022

Entered in the Register on this 25th day of March 2022

(Signed)

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

⁶ *Abu-Hawaila* 2011-UNAT-118, para. 29.

⁷ *Applicant* 2015-UNAT-590, para. 51.

⁸ *Ibid.*

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