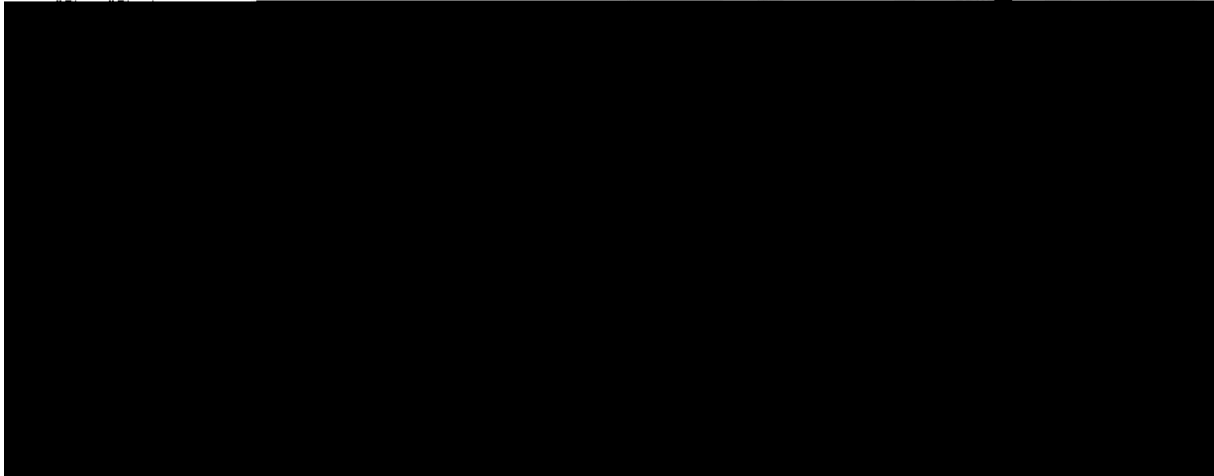




Judgment No. 2014-UNAT-446



Counsel for Appellant: Self-represented

Counsel for Respondent: Paul Oertly

JUDGE SOPHIA ADINYIRA , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Levina Raymond Mosha against Judgment on Receivability No. UNDT/2013/088, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 19 June 2013 in the case of *Mosha v. Secretary-General of the United Nations*. Ms. Mosha filed a non-conforming appeal on 19 August 2013, which she subsequently perfected. The Secretary-General filed an answer on 13 September 2013.

#### Facts and Procedure

2. Ms. Mosha was a library clerk on a fixed-term appointment at the G-4 level with the International Criminal Tribunal for Rwanda (ICTR) until her resignation effective 30 June 2011.

3. After she tendered her resignation on 30 May 2011, a check-out process was initiated. On 7 June 2011, the then President of the ICTR Staff Association refused to complete Ms. Mosha's check-out on the grounds of ongoing investigations into the finances of the ICTR Staff Association, particularly the Executive Committee of the Staff Association, on which Ms. Mosha had served. That resulted in delays in the processing of Ms. Mosha's final emoluments and in submitting her pension forms to the United Nations Joint Staff Pension Fund (UNJSPF).

4. Ms. Mosha protested, first to the former President of the ICTR Staff Association, and then to various officials up to the ICTR Registrar.

5. On 26 March 2012, Ms. Mosha was paid her final emoluments and on 28 March 2012, the ICTR sent notice of Ms. Mosha's separation to the UNJSPF.

6. On 25 May 2012, Ms. Mosha filed an application with the Dispute Tribunal contesting the decision to withhold her final emoluments and the delay in notifying the UNJSPF of her separation. She did not request management evaluation before applying to the UNDT. The Secretary-General filed a motion for leave to have receivability considered as a preliminary issue.

7. In Judgment on Receivability No. UNDT/2013/088, the Dispute Tribunal dismissed Ms. Mosha's application as non-receivable on the grounds that she had failed to seek management evaluation. The Dispute Tribunal, moreover, ordered Ms. Mosha to pay USD 600 for having filed a "vexatious and frivolous" application.

8. Ms. Mosha appeals the UNDT Judgment.

Ms. Mosha's Appeal

9. Ms. Mosha submits that the UNDT erred in fact when it declared her application vexatious and frivolous, as it failed to review the facts that she had presented. In her view, it is not fair for her as a victim of malpractice to be ordered to pay USD 600.

10. Ms. Mosha also submits that the UNDT erred in procedure by not considering the substance of her case, but instead declaring that it lacked jurisdiction for rendering such a decision on the basis of the legal technicalities of Staff Rule 11.2(a). In her view, the lack of management evaluation was not fatal to her case. Procedural technicalities should not be used to thwart substantive justice.

11.

26 March 2012 payment of her final emoluments rendered her subsequent UNDT application moot.

15. The Secretary-General further submits that Ms. Moshā has not shown any error in the UNDT's characterization of her application as an abuse of process or in its award of costs against her. In his view, the UNDT's decision is consistent with the emerging jurisprudence of the Appeals Tribunal on abuse of process.

16. The Secretary-General requests that the Appeals Tribunal dismiss Ms. Moshā's appeal in its entirety.

#### Considerations

17. The impugned Judgment correctly concluded that the claim was not receivable. The UNDT committed no error in finding that, in the absence of the required management evaluation pursuant to Staff Rule 11.2(a), the application was not receivable. This has been the consistent jurisprudence of both the Appeals Tribunal and Dispute Tribunal.

18. Upon our review of the UNDT Judgment, it is evident that Ms. Moshā knew of the process of management evaluation at the time of the impugned administrative decision. She chose to protest to the former President of the ICTR Staff Association and the various other officials up to the ICTR Registrar. We therefor



Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2014 in Vienna, Austria.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Chapman

Entered in the Register on 29<sup>th</sup> day of August 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar