



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/090  
Judgment No.: UNDT/2015/067/Corr. 2  
Date: 9 September 2015  
Original: English

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## Background and facts

1. The Applicant joined the United Nations High Commissioner for Refugees (UNHCR) in May 2005 as a Senior Programme Clerk (GL5) in Muyinga, Burundi on a fixed term contract until 31 December 2005.

2. He was reemployed on a fixed term contract on 1 January 2006 and served until 1 January 2007, the date on which he was separated.

3. He was rehired as Secretary in Bujumbura on a fixed term contract in August 2007 and separated on 1 January 2010.

4. On 9 June 2011, the Applicant filed a claim for compensation under Appendix D to the Staff Rules in respect of an illness which manifested itself shortly after he separated from service on 1 January 2010. He also requested for a waiver of the time limit for the submission of his claim.

5. On 26 July 2011, the responsible officer of the Compensation Claims Service (CCS) at the United Office in Geneva (UNOG) informed the UNHCR Human Resources (HR) Associate that he was recommending that the claim not be accepted as the Applicant's illness was not deemed attributable to the performance of his official duties on behalf of UNHCR.

6. The UNHCR HR Associate forwarded a copy of the decision to the Applicant on 10 August 2011. The Applicant was also told that he could appeal the decision within 30 days from its notice to him pursuant to art. 17 of Appendix D of the Staff Rules.

7. By e-mail of 7 September 2011 the Applicant sought to challenge the decision of the CCS/

9. At its 463<sup>rd</sup> meeting held in June 2013, the ABCC granted the Applicant a waiver of the time limit for claim submission but denied the claim that the illness of the Applicant was service incurred.

10. On 16 July 2013, the recommendation of the ABCC was approved on behalf of the Secretary General.

11. The UNHCR HR Associate informed him on 25 June 2014 that his case had been reviewed by the ABCC and that his claim had been rejected.

12. On 22 September 2014 the Applicant filed his Application challenging the decision of the ABCC through the UNDT corporate email account of the Nairobi Registry. On that date the Applicant was within the time frame for filing his Application.

13. The Applicant was advised to resubmit his Application through the Tribunal's e-filing portal which he did on 9 October 2014.

14. On 30 July 2015 the Tribunal issued a judgment rejecting the Application as being time barred. The Tribunal proceeded on the basis that the filing was done on 9 October 2014, at which date the deadline of 90 days for the filing of the application had expired.

15. On 18 August 2015 the Applicant filed an Application for reconsideration of the 30 July Judgment on the ground that the correct date of filing was 22 September and not 9 October 2014. The Respondent filed a Reply to the Application for reconsideration on 25 August 2015.

#### Applicant's Submissions

16. First the Applicant submits that the Tribunal has no power to proceed to a revision of the judgment as it is not an executable judgment within the meaning of art. 12.1 of the Statute of the Tribunal as a judgment becomes executable under art. 11.3 of the Statute after the time limit for appeal has expired. The Applicant in

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<sup>1</sup> On 31 July 2015, the Tribunal issued Judgment No. UNDT/2015/067/Corr. 1 which inserted a new paragraph 29 into the original judgment.

the present case has until 29 September 2015 to appeal the receivability judgment and it is therefore not executable

17. Secondly the Applicant argues that as revision is not permissible the Tribunal should use its powers under art. 36.1 of the Rules of Procedure to reconsider the case.

18. According to the Applicant the purpose of art. 36.1 of the Rules of Procedure is to ensure that the Tribunal has the power to do justice to the parties even if the rules of procedure do not provide a procedural mechanism for dealing with a particular matter provided that if a remedy may be granted under a different provision it cannot be said that power is not available. c123t

19. Thirdly, the Applicant submits that the Tribunal may use its powers under art.

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23. The corresponding article 291 of the Rules of Procedure that deals with revision of judgments is identical but for the use of the word “executable” and the stipulation as to timelines. It reads:

Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.

24. Under the circumstances of the present case, “decisive fact” was known to both th

Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties.

30. The circumstances obtaining in this ~~case~~ fall squarely within the ambit of art. 12.2-133(o)-T.9981 0 0 1 310.3257(1)-57(1)-57u( )-2k-5( )-27(1)-11(2)9(.)-5(2-133(o)-T.9981 0

February 2010. Accordingly, the appeal was receivable under Article 7 of the Statute of the Appeals Tribunal.

Article 26 of the Rules of Procedure of the Appeals Tribunal provides that “[c]lerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal, either on its own initiative or on the application by any of the parties on a prescribed form”. It is necessary to correct the Judgment to reflect that Ishak’s appeal was receivable. Given that this Tribunal considered the merits of the appeal in the Judgment, the correction does not alter the outcome of the appeal.

33. The Appeals Tribunal then proceeded to make the necessary corrections to the said Judgment to make it clear that Ishak’s appeal was not time barred and was therefore receivable.

34. The Tribunal in the present case will follow the *cursus* adopted by the Appeals Tribunal and proceed in the same way.

35. The Tribunal makes the following corrections to Judgment No. *Baracungana* UNDT/2015/067Corr.1.

a. At the end of paragraph 14, the following is added: “The Applicant filed his application on 22 September 2014 by sending it to UNDT corporate email account of the UNDT”.

b. Paragraph 20 is deleted and replaced by the following paragraph:

“It is clear from the sequence of events that the Applicant did file his Application with the Registry of the Tribunal within the time limit required by art. 8.1(b)(ii) of the Statute of the Tribunal which reads

An application shall be receivable if: ...

(d) The application is filed within the following deadlines:

...



The filing through email was a ~~via~~ application”.

c. Paragraphs 21 to 25 are deleted.

d. Paragraph 28 is deleted and replaced by the following: “The Application is therefore receivable”.

e. Paragraph 29 is deleted and replaced by the Following: “The Tribunal is also in presence of ~~an~~ ~~on~~ to amend the original Application. In view of the finding above, the motion for amendment ~~was~~ served on the Respondent”.

*(Signed)*

Judge Vinod Boolell

Dated this 9<sup>th</sup> day of September 2015

Entered in the Register on the 19<sup>th</sup> day of September 2015

*(Signed)*

Abena Kwakye Berko, Registrar, Nairobi