



Before: Judge Shaw
Registry: Nairobi
Registrar: Jean-Pelé Fomété

LUVAI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
David Andati-Amwayi

Counsel for Respondent:
ALS/OHRM

misleadingly informed him that any recourse should be addressed to UNAT. UNAT noted that the Respondent had requested leave “to submit arguments on the merits of the case, should this matter be found to be receivable” but stated:

The Applicant should be given an opportunity to follow that proper recourse procedure, and the Respondent should be allowed to submit his claim to the Compensation Claim Committee (sic) to determine whether or not he is entitled to compensation.

5. The case was remanded for correction of the procedure. The Respondent was ordered to pay the Applicant compensation of 3 months salary, plus interest, for loss resulting from procedural delay.

6. On 26 February 2009, the Applicant filed a document with UNAT entitled “Application for Judicial Review.” The applicant wishes to challenge the decision of UNAT to remand the Applicant’s case for institution of the correct procedure.

Application for Judicial review

7. The Applicant’s application to the Tribunal seeks orders for *certiorari*, *mandamus* and prohibition on the grounds of *ultra vires*, unfair hearing and bias.

8. The Applicant submits that UNAT acted *ultra vires* the applicable procedural law because following two days after the remand for institution of the correct procedure, and in the absence of a request for a remand raised by the Secretary General, UNAT should have decided on the substance of the case.

9. He further alleges that he received an unfair hearing because UNAT noted and considered the Respondent’s request to submit arguments on the merits of the case.

10. The last ground is that UNAT showed bias by allowing the Respondent to relitigate the case through the Compensation Claims Committee; and it was unlawful for the Tribunal to remand the case to the Committee without obeying Article 18 of

the Rules; that the Applicant has no legal capacity to file his claim with the Committee directly and; there is no reason for the Tribunal to believe that its judgment will cause the Respondent to forward the claim to the secretary of the Committee without violating the maxim “justice delayed is justice denied.”

11. In responding to the Application, the Respondent makes two main points. First, it submits that in seeking a revision of Judgment 1421, the Applicant has failed to introduce any fact of a decisive nature which was unknown to the Tribunal and to the Applicant at the time the judgment was rendered. It is the Respondent’s submission, therefore, that the Applicant’s application is an attempt to reopen issues settled in the judgment; issues which are *res judicata*.

12. It is very clear from the Applicant’s response to that submission that he rejects any suggestion that his is an application for revision of Judgment 1421. He maintains

Jurisdiction

15. Judicial Review is a supervisory jurisdiction. It is exercised in national jurisdictions according either to statute or through the exercise of prerogative powers which are generally vested in the head of state. Some national statutes, particularly those in civil law jurisdictions, establish special administrative courts to review the decisions of public bodies. Other national judicial systems vest superior courts with the inherent or statutory power to supervise both public bodies and lower courts and tribunals. It is not a jurisdiction which a tribunal may exercise over itself.

16. The former UNAT and the UNDT were and are creatures of statute. Each has the ability, inherent to all courts and tribunals, to imply powers to prevent abuses of process; however, the jurisdiction of each tribunal is limited by the provisions of its respective empowering statute. In the absence of specific jurisdiction conferred on a statutory tribunal by statute, the power to exercise a supervisory jurisdiction such as judicial review cannot be implied.

17. This conclusion is reinforced by the existence of Article 12 of the Statute of the UNDT which echoes Article 12 in the Statute of the former UNAT. This article gives the Tribunal the power to revise its own decisions subject to the stipulated criteria being met. Article 12 constitutes the full extent of any jurisdiction of the Tribunal to self-review. It falls well short of conferring the significant and powerful jurisdiction of Judicial Review over its own processes or over any other Tribunal such as the former UNAT

18. The Tribunal finds that the UNDT has no jurisdiction to entertain an application for Judicial Review and the application cannot be received.

19. The Tribunal notes and commends the willingness of the Respondent to cooperate in the process once the claim has been submitted appropriately by the Applicant.

DECISION

20. The Tribunal concludes and decides that it has no jurisdiction to hear and determine the application for Judicial Review. The Applicant's application is not receivable and is dismissed.

