UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-809

Mbaa

(Appellant)

v.

Secretary-General of the United Nations

Counsel for Mr. Mbaa: Self-represented

Counsel for Secretary-General: Wambui Mwangi

JUDGE JOHN

6.   By Order No. 116 (NBI/2017) dated 20 June 2017, the UNDT provided Mr. Mbaa with an opportunity to address the issue of non-receivability of his application which had been filed outside the applicable time limits. On 23 June 2017, Mr. Mbaa provided a response which dealt only with the merits of his case and did not provide any response on the issue of receivability.

7.   On 27 June 2017, the UNDT rendered the impugned Judgment holding that Mr. Mbaa's application was not receivable because it was time-barred as a result of his failure to file his application within the established time limits. Mr. Mbaa filed more than one year after the statutory deadline. The Dispute Tribunal also held that Mr. Mbaa failed to set out any exceptional circumstances justifying the delay.

8.   As mentioned, Mr. Mbaa filed his appeal on 23 July 2017, and the Secretary-General filed an answer on 22 September 2017.

9.   On 27 September 2017, Mr. Mbaa filed before the Appeals Tribunal a motion for additional pleadings, in which he sought the setting aside of the impugned Judgment and an order allowing him to file a case on the merits. On 2 October 2017, the Secretary-General submitted his response to the motion in which he argues that the motion should be dismissed as Mr. Mbaa had not adduced exceptional circumstances for filing an additional pleading and that the motion merely reiterated the arguments made by Mr. Mbaa in his appeal.

Submissions

Mr. Mbaa's Appeal

10.   Mr. Mbaa requests the Appeals Tribunal to set aside the UNDT's Judgment dismissing his application and allow him to file a case out of time before the UNDT to be heard on J

may be granted if there are exceptional circumstances justifying the motion. However, an additional pleading consisting merely of arguments that reiterate or supplement a staff member's appeal, as in this case, provides no exceptional circumstance. In his motion Mr. Mbaa in fact merely reiterates assertions already made in his appeal. The motion merely re-argues the appeal and reflects Mr. Mbaa's disagreement with the Secretary-General's answer. There is no basis to find that his request to file an additional pleading is exceptional. Nor does the motion raise any new or compelling arguments. It must, accordingly, be dismissed.

14. For the reasons that follow, we are satisfied that the UNDT correctly concluded that the application was time-barred and not receivable as a result of Mr. Mbaa's failure to file his application within the established time limits.

15. Staff Rule 11.2(b) provides that a staff member wishing to contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to Staff Rule 10.2 following the completion of a disciplinary process, is not required to request m97.te pbwEom(pbwEo)n 319.97(d)n 319.43

basis of allegations not made before the UNDT. His contention that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision by failing to accept that he was unable to start the appeal process as he feared for his safety and had no access to internet at his place of hiding is accordingly not sustainable.

19.

Judgment

20.   The appeal is dismissed and Judgment No. UNDT/2017/047 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Murphy, Presiding	Judge Lussick	Judge Knierim

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar