

Case No.:

Introduction

1. The Applicant was employed in Nairobi, Kenya, by the office of the United Nations High Commissioner for Refugees (UNHCR) in July 1993. She held a series of appointments until January 2000, when her Fixed Term Appointment was converted to an Indefinite Appointment. Following an investigation into allegations of corruption in refugee processing, the Applicant underwent disciplinary proceedings and was prosecuted in the Kenyan Courts and following the disciplinary proceedings, she was summarily dismissed from service on 24 September 2004. She was later acquitted in

5. On 28 January and 27 February 2004, the Applicant responded to the charges of misconduct and denied the allegations in their entirety. Despite her denial, the Secretary-General decided to summarily dismiss the Applicant from service effective 27 September 2004 on the grounds of repeatedly extorting money from refugees for services which were free of charge and making murder threats.

6. The Applicant requested a Joint Disciplinary Committee (JDC) review of the Secretary-General's decision on 22 November 2004. Following a hearing, the JDC upheld the summary dismissal on 20 July 2005 and on 22 July 2005 the Secretary-General agreed with the JDC's findings and conclusions. The Applicant thereafter filed an appeal with the former UN Administrative Tribunal on 31 October 2005.

7. On 8 October 2008, the former UN Administrative Tribunal issued Judgment No. 1394 (2004) in which it ordered UNHCR to pay to the Applicant USD 25,000 with interest payable at eight per cent per annum as from 90 days from the date of distribution of the judgment until payment was made. Payment of USD 25,000 to the staff member was effected on 4 December 2008. The former UN Administrative Tribunal awarded the USD 25,000 compensation on the basis of UNHCR not concluding the investigation against Applicant in a timely fashion, and that the Organization should bear the financial consequences of such delay.

8. Sometime in 2009, the Applicant, by rulings numbered CMCR Nos. 850 and 852 of 2001 of the Kenyan Chief Magistrates Court, was acquitted of the charges of extortion of funds from refugees and making death threats.

9. On 7 October 2010, the Applicant requested the Dispute Tribunal to grant an extension of time to file an application. The request was served on the Respondent on 8 December 2010. Counsel for the Respondent filed comments on the Applicant's request on 22 November 2010. In his submission, the Respondent challenged the receivability of the proposed application.

10. On 20 May 2011, the Tribunal issued Order No. 039 (NBI/2011) setting this matter down for a hearing on the issue of receivability for 27 July 2011. The Applicant applied for an adjournment on 8 July 2011 due to the unavailability of her Counsel.

11. On 22 July 2011, the Applicant filed an “Application for Interpretation/Application for Revision of Judgment”. The Application was served on the Respondent on 27 July 2011.

12. On 24 August 2011, the Tribunal issued Order No. 105 (NBI/2011) setting this matter down for a hearing to determine the issue of receivability. The hearing was held on 16 November 2011.

The Applicant’s Case

13. The Applicant’s case is as follows:

- a. She seeks a review of former UN Administrative Tribunal Judgment No. 1394 (2004).
- b. The Applicant seeks a breakdown of the USD 25,000 awarded to her in that case.
- c. The Applicant submits that she is entitled to a termination indemnity which was not paid to her at the

- a. The former UN Administrative

Case No. UNDT/NBI/2010/051

Judgment No. UNDT/2012/003

19. A decisive or material fact is one that was not known at the time the judgment was given. That fact must be of significant weight such that its application to the case should lead to a revision of the judgment¹.

20. At the hearing, the Applicant failed to articulate what decisive new fact she had discovered to substantiate her Application for revision of judgment. As previously stated, the Applicant was summarily dismissed as a result of charges of extortion of funds from refugees, fraud and making death threats. These allegations resulted in the arrest of the Applicant and criminal charges being brought against her in a Kenyan Court.

21. Even if the Tribunal were to consider the Kenyan Court rulings to be material and decisive facts, the second condition to be fulfilled in an application for revision is that it be filed within 30 days of its discovery and within one year of the judgment. A perusal of the entire case reveals that the Applicant was acquitted of criminal charges sometime in 2009 but only sought an extension to file an application based on that fact on 7 October 2010, almost two years after the former UN Administrative Tribunal's judgment.

22. The question arises as to whether the Applicant's acquittal on the criminal charges amounted to the discovery of a decisive or material fact in her case before the former United Nations Administrative Tribunal. The answer of course is No. An acquittal does not constitute a decisive or material fact under art. 29 of the Rules of Procedure. In order to qualify for a revision of judgment, a new fact, which is decisive and which if known to the Tribunal at the time of rendering its judgment would have changed the outcome of the case due to its materiality, must exist although unknown to the Applicant and the Tribunal at that time.

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analysis above, the Tribunal finds that these holdings are incorrect. Even though not expressly stated in the Statute and Rules of Procedure of the Tribunal, the Dispute Tribunal has power to revise the judgments of the former UN Administrative Tribunal, being its successor and subject to compliance with the provisions of art. 29 of the Tribunal's Rules of Procedure.

Termination Indemnity

28. It is the Applicant's contention that she is entitled to a termination indemnity which was not paid to her at the time of her summary dismissal. Annex 3 of the former Staff Rules, which was applicable at the material time, states that no termination indemnity is payable to a staff member who was dismissed from service. The Applicant's plea in this respect must therefore fail since her summary dismissal has not been withdrawn by the Secretary-General.

Rewording of the Applicant's suspension notice

29. The Applicant is seeking a review of the wording of a suspension notice which refers to criminal misconduct. The Applicant asserts that these words are prejudicial to her. There is nothing in the Statute of the Tribunal or its Rules of Procedure that allows for this Tribunal to grant such a plea in these circumstances.

Was this a proper Application to bring in the circumstances of this case?

30. The Applicant was summarily dismissed as a result of allegations of extortion of funds from refugees, fraud and making death threats. These allegations also resulted in the arrest of the Applicant and criminal charges being brought against her in a Kenyan Court. The Applicant was subsequently acquitted of all charges.

31. A summary dismissal is the most severe sanction that the Organization can impose on a staff member. It is in effect a death sentence to a person's professional career. Taking into account the fact that the Kenyan Court had acquitted the Applicant of the criminal charges that formed the basis for her dismissal, the Applicant is well advised to seek legal redress in accordance with the relevant rules for removal of

adverse materials from her personnel records or for any other remedy she considers appropriate. The Applicant should bear in mind that in accordance with art. 8.4 of the Statute of the Dispute Tribunal, no application shall be receivable if filed more than three years after a cause of action arose.