



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

LIKUYANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Jason Okemwa, Advocate

Counsel for the Respondent:
Saidou N'Dow, UN-Habitat

Introduction

1. The Applicant is a former staff member of the United Nations Centre for Human Settlements (“UNCHS”), as it then was. He was suspended without pay on 3 April 1997. Two charges were brought against him. The first was making unauthorized calls and the other was allegation of submitting false medical claims from Aga Khan Hospital Nairobi.

2. The Applicant was subsequently summarily dismissed and filed an appeal with the former United Nations Administrative Tribunal. On 17 November 2000, the former UN Administrative Tribunal delivered Judgment No. 976 in respect to the Applicant’s appeal.

3. On 20 September 2010, the Applicant filed an “Application for Revision of Judgment Number 976”, in which he requested the United Nations Dispute Tribunal (“UNDT”) to revise the whole of Judgment No. 976. The Respondent filed a response to the Application on 30 November 2010. The Tribunal heard this case on 14 November 2011.

Applicant’s submissions

4. The Applicant’s submissions are summarized below:

a. The former UN Administrative Tribunal erred in rejecting his appeal because the following decisive facts were unknown to both the Applicant and to the former UN Administrative Tribunal on 17 November 2000:

i. The authority to suspend staff members during disciplinary investigations was delegated to the Director-General of the United Nations Office in Nairobi (“UNON”) only on 19 June 2006 and not in 1995, 1997, 1998, or at any other time prior to 19 June 2006.

9. The Applicant has not presented any fact, let alone one of a decisive nature, which was unknown to the parties when Judgment No. 976 was rendered. The Applicant rests his Application primarily on the grounds that the authority to suspend staff members during disciplinary investigations was delegated to UNON only on 19 June 2010 and not in 1995, 1997, 1998 or any time prior to 19 June 2010.

10. The legality or otherwise of the fact of the Applicant's suspension was not a decisive factor in the judgment rendered by the former UN Administrative Tribunal. It was not an issue that fell for determination by the former UN Administrative Tribunal. At page 12 of the judgment, the former UN Administrative Tribunal hinted that it was already established on the record that on 17 December 1998, the Applicant was restored to full pay status as from 30 April 1997 to 27 October 1998, and separated from service on 28 October 1998. This effectively meant that there was no suspension issue and that whatever alleged error or wrong caused to the Applicant by his suspension was addressed prior to the judgment and therefore could not have made any difference whatsoever in the outcome of the judgment and was therefore not a decisive factor in the judgment.

11. The issue for determination at the time of the judgment was whether the decision to separate the Applicant from service was a proper exercise of discretion. On the totality of the evidence adduced before the Tribunal, the Respondent submits that the Tribunal properly considered the conduct of the Applicant regarding the unauthorized telephone calls constituted disciplinary misconduct and that the Secretary-General properly exercised his discretion to separate the Applicant from service. The Applicant has not advanced any fact which vitiates this finding or would justify a reconsideration of the judgment.

12. The discovery of where or in whom the authority lies in meting out a suspension as a form of disciplinary measure could not have made any difference or have been a decisive fact which might justify reconsideration of the original evidence or any issue in the case which was not considered by the Tribunal. The Respondent

17. The Respondent has argued that the UNDT does not have the jurisdiction to revise judgments of the former UN Administrative Tribunal. In *Kiarie-Nyoike* UNDT/2012/003 this Tribunal held that 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. That having been said, in the present case the Applicant avers that on 28 February 2010, he discovered a decision, namely, that the power to suspend staff members during disciplinary investigations was delegated to the Director-General of UNON only on 19 June 2006 and not at any time prior to 19 June 2006.

18. The issue of power to suspend staff members is governed by art. 29 of Proc 3re.