

Introduction

1. The Applicant is a former staff member of the United Nations Children's Fund (UNICEF). On 23 November 2015, he filed an application challenging what he describes as the termination of his fixed-term appointment. In his application, the Applicant made several allegations of bullying, harassment, intimidation and abuse of authority against his supervisor and the UNICEF Country Representative.

2. On 3 December 2015, the Respondent filed a motion requesting the Tribunal to consider the receivability of the application as a preliminary issue and to suspend the Respondent's deadline to submit his reply on the merits pending the Tribunal's consideration of the receivability of the application.

3. On 9 December 2015, the Respondent filed a reply to the application in which it was submitted, *inter alia*, that:

As to the lawfulness of the decision not to offer the Applicant an extension of his fixed-term appointment upon its expiration, without any prejudice to the Respondent's motion on receivability filed on 3 December 2015, the Respondent submits that the decision was put into effect upon the Applicant's written agreement not to contest the decision. Accordingly, the decision not to offer the Applicant an extension of his appointment upon its expiration was lawful.

4. On 11 December 2015, the Applicant, without seeking leave from the Tribunal, filed a submission titled "Clarification to the Respondent's Reply." On the same date, the Respondent filed a motion seeking leave to file a response to the Applicant's motion. The response was included as part of the Respondent's request.

5. On 21 December 2015, Judge Vinod Boolell who was then the presiding Judge, issued Order No. 393 (NBI/2015) in which he permitted the parties' filings of 11 December 2015 to be submitted for consideration.

6. On 17 November 2016, following consultation amongst the Nairobi Judges on equitable distribution of cases, the present matter was assigned to the docket of Judge Alexander W. Hunter, Jr.

7. On 3 January 2017, vide 16(n)1oT /F931 e

13. On 8 and 9 June 2015, the Applicant held meetings with other UNICEF colleagues in Juba to discuss his concerns and complaint against Mr. Fisher.

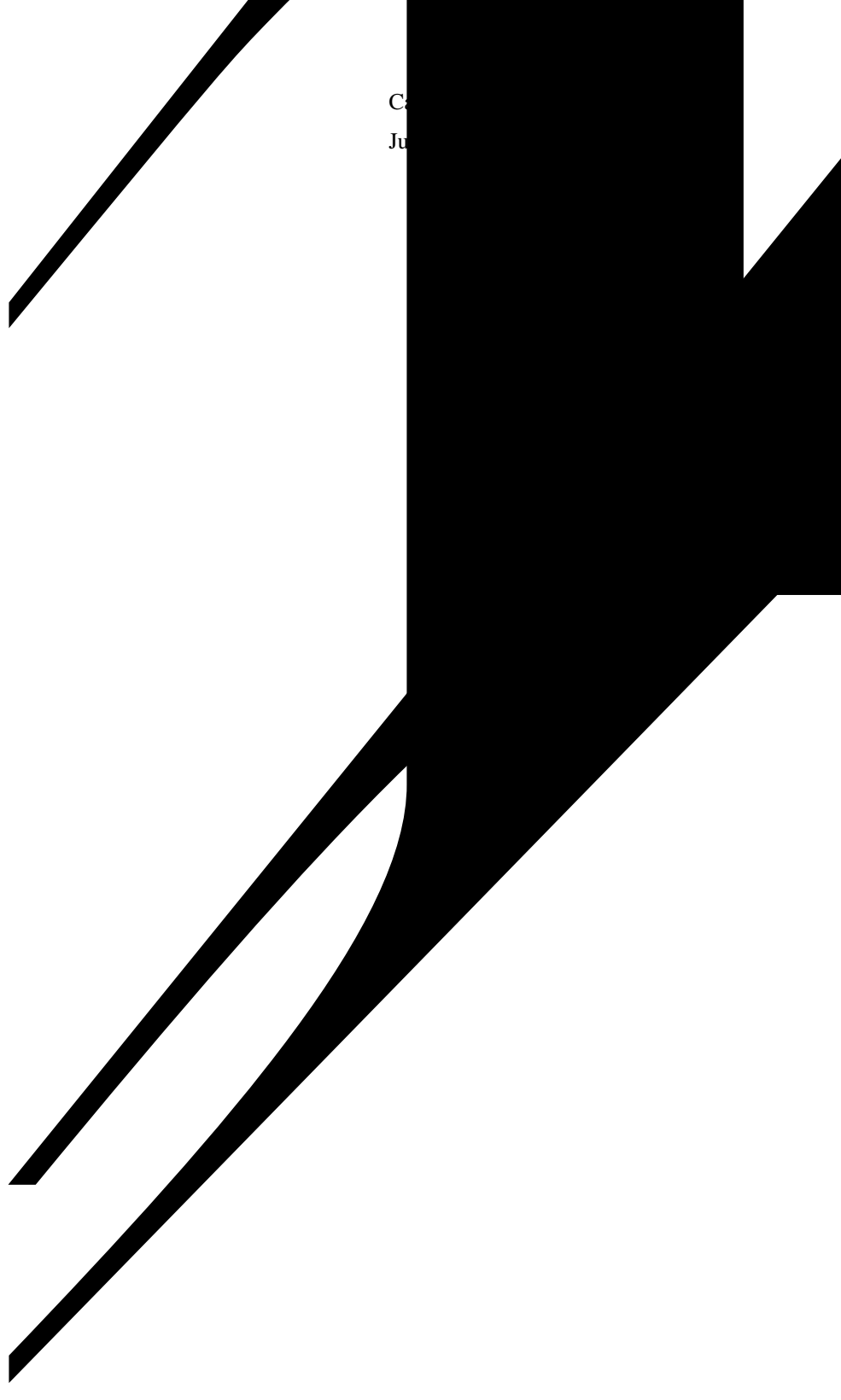
14. The Applicant travelled back to Bor on 10 June 2015 and was informed by Ms. Omayma Ahmed, Human Resources Manager, that his appointment would be extended for three months and that he would be reassigned to Juba to support the Finance Section.

15. On 15 June 2015, Ms. Ahmed sent the Applicant three documents: a memorandum from the UNICEF Representative; a letter of appointment for a three-month period; and a copy of CF/EXD/2012-007 (Prohibition of Discrimination, Harassment, Sexual Harassment and Abuse of Authority).

16. On 12 July 2015, the Applicant wrote to UNICEF's Deputy Executive Director, Management, requesting management evaluation of several issues, namely:

- a. "the undue and unfair treatment meted upon [him] by [his] Supervisor Benjamin Samuel Fisher, CFO Bor" including intimidation and bullying;
- b. his victimization by UNICEF South Sudan Management in allegedly failing to apply UNICEF Rules and Regulations as stipulated in policy documents by siding with Mr. Fisher instead of objectively considering the complaints he had raised; and
- c. the administrative decision to abolish the need for his post just two months after he commenced working.

17. On 25 August 2015, the Deputy Executive Director, Management, informed the Applicant that his management evaluation request was not receivable as no decision to abolish the post of Operations Officer (NO-B) in Bor had been made.



his post and UNICEF dismissed this request as irreceivable as no such decision had been made.

f. The Applicant indicates at section V of the application that the decision he disagrees with was made on 28 August 2015 while in section VI, he indicates that he received the reply to his request for management evaluation on 26 August 2015, which is before the decision was made that he now disagrees with in this ap.0 Tf 0.0 0..ET Q q 2.0 Tf 0.0 0.sa3(p.0 Tf)-10 TJ ET

10 June 2015, the Applicant was informed that his appointment would be extended for three months and that he would be reassigned to Juba to support the Finance Section.

26. On 15 June 2015, the Applicant received a memorandum from the UNICEF South Sudan Country Representative in which he was informed, *inter alia*, that:

- a. [I]f he wished to formally pursue his allegations against his supervisor that he should familiarize himself with the procedures set out in CF/EXD/2012-007.
- b. [H]is contract had expired and had not been terminated as alleged by him.
- c. [H]e should indicate whether he would accept the three months' new contract in the Finance Section in Juba.

It is evident from the foregoing that the Applicant's case is one of non-renewal of contract and not a termination which has different legal ramifications.

When was the contested decision taken?

27. The Applicant's contract expired on 10 September 2015. The uncontested evidence before the Tribunal is that on 29 August 2015, the Applicant signed a Separation Agreement. Notwithstanding his contention that he signed the said Agreement under duress, the Applicant must have been aware from this date that his contract would not be renewed beyond 10 September 2015.

28. In the present case, the Applicant failed to file a request for management evaluation of the non-renewal decision within the applicable deadline. This claim is not receivable.

The Applicant's claims of bullying, harassment, intimidation and abuse of authority against his supervisor and the UNICEF Country Representative.

29. In his application, the Applicant made several allegations of bullying, harassment, intimidation and abuse of authority against his supervisor and the UNICEF Country Representative.

30. With respect to the claims of bullying, harassment and intimidation against his supervisor, the Tribunal notes that the Applicant had made complaints to the UNICEF Human Resources Specialist in Juba on 23 and 25 May 2015. On 8 and 9 June 2015, he held meetings in Juba to discuss his concerns and complaint against his supervisor. On 15 June 2015, the Applicant was informed that if he wished to formally pursue his allegations against his supervisor that he should familiarize himself with the procedures set out in CF/EXD/2012-007.

31. At paragraph VII(2) of the application, the Applicant submits that he reported the case to the Ethics Office in New York and was advised to request for management evaluation due to the fact that the issues raised had to do with the management style of his supervisor. The Applicant, indeed, raised these issues in his request for management evaluation dated 12 July 2015. The management evaluation review dated 25 August 2015 did not address the issues of bullying, harassment and intimidation raised by the Applicant but only focused on the question of whether the Applicant's post had been abolished.

32. In *Nwuke* 2010-UNAT-099, the United Nations Appeals Tribunal (UNAT) held:

44. Nwuke did not strictly follow the correct proceedings to present his grievances under ST/SGB/2008/5. But neither did the Administration, which could have forwarded Nwuke's request to the competent authorities under ST/SGB/2008/5 to follow the proper procedures. Instead, the Administration addressed merely in the framework of its management evaluation what were considered the relevant facts of the case and found no discrimination. Despite that, the Administration decided that appropriate actions should be

outcome of the evaluation, he could file an application against the administrative decision.

45. This course of action clearly reveals that in the view of the Administration, the issues arising from Nwuke's application had been investigated to the extent that time, circumstances, and lack of ECA staff permitted. It results that Nwuke was not compelled to follow further administrative procedures, because the Administration, in exercising its discretion, had already acted upon his application.

46. Given this, it seems senseless and quite a paradox to refer him back to the procedures under ST/SGB/2008/5. Essentially, Nwuke has already accomplished its requirements, and his situation and pleas have already been examined and evaluated by the Administration. Hence, the UNDT had competence and must conduct the judicial review of the Administration's decision, actions taken or failure to act.

33. In *Kadri* 2015-UNAT-512, UNAT held, *inter alia*, that:

28. However, that was not the only issue to be decided. Mr. Kadri made allegations in his application of continued harassment and discrimination. ...

29. Notwithstanding this, the UNDT restricted its decision to the issue of whether Mr. Kadri had been forced to sign the Settlement Agreement under duress. For whatever reason, the UNDT failed to deal with his claim of continued harassment and discrimination.

30. Mr. Kadri's right to due process entitled him to a fair hearing and a fully reasoned judgment of his application. We hold that the UNDT's omission to adjudge the whole of Mr. Kadri's application was a violation of his due process rights and constituted a procedural error such as to affect the decision of the case.[...] Such error necessitates the remand of the case to the UNDT for completion of the hearing.

34. In his management evaluation request, the Applicant stated that:

I travelled back to Bor on 10th June 2015 as it is the last day of my contract. I wrote to HR enquiring on the status of the Contract. The response was based on the issues raised that my contract will be renewed only for three months and should be moved to Juba to support Finance Office for the period of my contract. More information on the attached memo from Jonathan Veitch, UNICEF South Sudan Representative.

I have lost trust in UNICEF South Sudan Management because they took sides with Benjamin Samuel Fisher instead of addressing the complaint. The management have decided to victimize me by

renewing my contract for

b. The Applicant's claims in relation to the allegations of bullying, harassment, intimidation and abuse of authority against his supervisor and the UNICEF Country Representative are receivable.

c. The Respondent shall file his substantive reply on the Applicant's allegations of bullying, harassment, intimidation and abuse of authority against his supervisor by close of business on 13 January 2017.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 6th day of January 2017

Entered in the Register on this 6th day of January 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi