



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MKHABELA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Elizabeth Gall, MBS/OLS, UNDP

Facts

6.

Applicant's submissions

16. The Applicant maintains that her application is receivable. The Respondent's argument pertains to form rather than the substance of the dispute. The Applicant contends that the Respondent will suffer no prejudice if the matter is heard on its merits.

17. While admitting that she did not file her application on time, the Applicant submits that there are exceptional circumstances in her case. She documents that she contracted the Covid-19 virus and maintains that she was in isolation for "some time". Further, as a result of the manner in which she was separated from her employment, she suffered deep depression for months. The two being the main reasons why she could not file her application on time.⁹

18. Accordingly, the Applicant requests the Tribunal not to grant the Respondent's motion to have receivability determined as a preliminary matter.

Considerations

19. The Tribunal advises the Applicant that in the recourse to the internal formal justice system, a degree of formality is to be expected, and complied with, in the process. As a preliminary matter, the Tribunal is competent to adjudicate the merits only where the receivability requirement is satisfied. It is, accordingly, competent to consider a receivability issue on its own initiative, whether or not it has been raised by the parties.¹⁰ Moreover, receivability is determined by strict rules, in the application of which the Dispute Tribunal exercises no discretion, among them the requirement that the decision have direct impact on an applicant's terms of employment and the requirement of a timely request for management evaluation. It is only where the strict requirements are fulfilled that it would be open to the Tribunal to entertain a question of waiver of the time limit for the application. These requirements are not fulfilled in the present case.

20. The Tribunal agrees with the Respondent that the application is not receivable

ratione materiae. It is firmly established in the jurisprudence that applications against decisions having no direct impact on the applicant's terms of employment are not receivable; among them, various decisions on restructuring and reorganization leading to abolishment of post are considered prefatory acts, the validity of which could only be challenged before the Tribunals in the context of an application against a non-renewal of appointment.¹¹ The impugned decision to depart from the terms of the Transition Plan constituted such a prefatory act; as such, the application is not receivable.

21. The Tribunal also agrees with the Respondent that the application is not receivable *ratione temporis*. It is recalled that, pursuant to staff rule 11.2(c), a staff member wishing to contest an administrative decision before the Dispute Tribunal must submit the contested decision for management evaluation within a deadline of 60 days from the notification. For reasons stated by the Respondent and reproduced in paragraph 14 above, the Applicant's request for management evaluation was late by 5 months. The Tribunal is not

Entered in the Register on this 2nd day of September 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi