



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-883



**Khisa
(Appellant)**

v.

Secretary-General of the United Nations

Counsel for Ms. Khisa:

Mudibo and Company Advocates

Counsel for Secretary-General:

John Stompor

JUDGE JOHN MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2018/047, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 4 April 2018, in the case of *Khisa v. Secretary-General of the United Nations*. Ms. Janet Khisa filed the appeal on 1 May 2018, and the Secretary-General filed his answer on 6 July 2018.

Facts and Procedure

2. Ms. Khisa entered service with the Organization on 4 November 2006. At the time of her separation from service

6. Almost ten months later, on 17 October 2017, Ms. Khisa filed an application with the Dispute Tribunal in terms of Article 2(1)(b) of the UNDT Statute appealing the administrative decision imposing the disciplinary measure of separation from service. The Secretary-General filed a motion for summary judgment and a reply on 27 October 2017 in which he contended that the application was not receivable. By Order No. 022 (NBI/2018), dated 6 March 2018, the Dispute Tribunal instructed Ms. Khisa to file a response to the Secretary-General's motion for summary judgment by 27 March 2018. On 25 March 2018, Ms. Khisa filed a motion for a waiver of the deadlines in terms of Article 8(3) of the UNDT Statute.

7. In the Judgment now under appeal, the UNDT dismissed Ms. Khisa's application as not receivable. The UNDT found that, as Ms. Khisa received the contested decision on 20 December 2016, she was required, in terms of Article 8(1)(d)(ii) of the UNDT Statute, to have filed her application with the UNDT within 90 calendar days of her receipt of the administrative decision, and that the period had expired on 20 March 2017 and Ms. Khisa had not submitted her application until 17 October 2017.

8. In respect of the motion for suspension, waiver or extension of time limit that Ms. Khisa filed on 25 March 2018, the UNDT concluded that her motion could not be entertained because it was not filed before the filing of her substantive application. Article 8(3) of the UNDT Statute provides that the UNDT, upon request from an applicant, may decide to suspend or waive the deadlines in exceptional cases. However, an application for a waiver or extension of time limits must be made prior to the filing of a late application of appeal, which Ms. Khisa had failed to do.

9. The UNDT nonetheless considered whether there were exceptional circumstances for Ms. Khisa's failure to appeal in a timely manner. Ms. Khisa was admitted to hospital for pregnancy-related complications on 2 January 2017, was discharged on 29 May 2017, but applied to the UNDT only on 17 October 2017, nearly five months after her hospital discharge. There was

Submissions

Ms. Khisa's appeal

11. Ms. Khisa submits that there were exceptional circumstances beyond her control after her discharge from the hospital. The doctor recommended bed rest for three months to stabilize her condition. So, after six months at the hospital, she was still ill for the next three months. She was only able to engage an attorney after her full recovery. She could not delegate the task of looking for an attorney to others because the search needed her direct input.

12. Ms. Khisa requests that the Appeals Tribunal set a precedent by allowing her case to go forward. She also requests "unconditional release of [her] Benefits from [her] savings and salary payment of now approximately two years".

The Secretary-General's Answer

13. The Secretary-General submits that the UNDT correctly concluded that Ms. Khisa's application was not receivable and dismissed it on that basis, as she had failed to file the application until after more than seven months past the deadline.

14. The UNDT also correctly concluded that Ms. Khisa had failed to file a timely request for waiver of the deadline to file her application. She submitted such a motion approximately five months after filing her application, in contravention of the jurisprudence of the Appeals Tribunal that a motion of this kind must be filed before the statutory time limit for filing the application has elapsed.

15. In respect of the UNDT's conclusion that Ms. Khisa could not avail herself of the plea of exceptional circumstances for a waiver of the time limit, the Secretary-General submits that any error on the part of the UNDT in considering her plea of exceptional circumstances did not adversely affect its ultimate conclusion that Ms. Khisa's application was irreceivable.

Considerations

16. Staff Rule 11.2(b) provides that a staff member wishing to formally contest a decision to impose a disciplinary measure is not required to request a management evaluation. In cases where management evaluation is not required, in terms of Article 8(1)(d)(ii) of the UNDT Statute, the application to the UNDT must be filed within 90 calendar days of the applicant's receipt

Judgment

19. The appeal is dismissed and Judgment on