



Introduction

1. The Applicant is a former staff member of the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, where she worked as a Team

budget report included, *inter alia*, details on the abolition of certain posts within the ICTR as from 31 December 2008 but which would continue to be funded as General Temporary Assistance (GTA) posts from 1 January to 30 June 2009.

5. The Applicant's abolished Administrative Clerk post was among these GTA funded posts.

6. On 31 May 2011, the Applicant received a memorandum from Mr. Omar Camara, Chief, Staff Administration Section at the ICTR informing her that her fixed-term appointment would not be extended beyond 30 June 2011 when it was due to expire.

7. On 28 June 2011, Dr. Nadine Magali Ufitiniema of the ICTR Clinic wrote to Ms. Carmen De Los Rios, Chief, Human Resources & Planning Section at the ICTR informing her that the Applicant had taken ill and had been medically evacuated from Arusha to Dar es Salaam.

8. Due to her medical evacuation, the Applicant's separation from service, which was to take effect on 30 June 2011, was suspended until such a time when the Human Resources section would be informed that her medical evacuation and medical leave had come to an end.

9. On 1 July 2011, the Applicant was issued with a fixed-term letter of appointment for a period of three months which was to expire without notice on 30 September 2011.

10. On 23 August 2011, Dr. Ufitiniema wrote to Ms. Sarah Kilemi, Chief, Department of Administrative Services Section (DASS) at the ICTR recommending that the Applicant be medically evacuated to Johannesburg, South Africa, for treatment. At her preference, the Applicant was instead evacuated to New Delhi, India.

11. As from 1 October 2011, the Applicant was issued with another letter of appointment for a fixed-term period of one month expiring without notice on 31 October 2011. Subsequently, her appointment was extended for a further period of two months due to expire without notice on 31 December 2011.

19. On 20 March 2012, Dr. Castro responded by stating that once the

As you are aware payment of DSA and related expenses must be supported by a claim filled in by the claimant attaching all supporting documents. However, as of today you have not submitted any claim. We therefore urge you to submit this claim (F10) as soon as possible in order to facilitate payment of your DSA entitlement [...].

The following documents will be required to accompany the F10-claim form:

A copy of the ticket you purchased and any other terminal expenses incurred in connection with the journey.

Boarding passes indicating the date of departure and the date of arrival in India and boarding passes indicating the date of departure and the date of arrival in Arusha.

A copy of your stamped passport indicating your departure from Arusha.

26. In the same communication, the Applicant was informed that her separation pay had been computed and paid to her bank account.

27. Pursuant to Order No.152 (NBI/2013) issued on 3 July 2013 the Tribunal scheduled a case management hearing for 13 August 2013. On 16 July 2013, the Applicant informed the Tribunal that owing to her medical condition she would be unable to attend the hearing. She therefore requested that the Tribunal proceed to determine the case in her absence pursuant to art. 17.2 of the Tribunal's Rules of Procedure.

28. On 18 July 2013, the Registry informed both parties that having reviewed the Applicant's submissions, the Tribunal had decided, in accordance with art. 16.1 of the Tribunal's Rules of Procedure, not to hold an oral hearing in this case and that the matter would be decided on the basis of the parties' written pleadings.

Applicant's case

29. A summary of the Applicant's case as deduced from her written pleadings and documents annexed to her Application are summarized below.

30. She has not been formally informed of her separation from service and only found out that she was not on the payroll starting March 2012. She has not received any notification requiring her to check out after 31 March 2012.

31. The ICTR had a duty to issue her with a fresh separation notice. The separation notice issued to her on 31 May 2011 regarding the separation which was to take effect on 30 June 2011 can no longer be said to be a legitimate notice of separation since her contract had been renewed several times through to April 2012.

32. After 31 March 2012, the Applicant had an expectancy of renewal of her appointment in light of the several renewals that had been done consecutively since July 2011.

33. Her post had not been abolished as claimed by the Respondent.

34. Her DSA has been unlawfully withheld by the ICTR. The email sent to her on 6 July 2013 from Charity Kagwi informing her of her DSA entitlements and Separation benefits was only prepared as a defense technique to “blackmail” the UNDT to believe that the ICTR had exercised its duty properly.

35. Her salary payments from March 2012 have not been paid contrary to established procedures. Specifically, her salary for April 2012, which had been declared to be withheld, has not been released to her.

36. The Applicant claims that the UNDT was reluctant in providing guidance to her regarding the interpretation of the applicable guidelines to file an Application as well as on her request for extension of time to file her Application

37. The Applicant therefore prays for the following remedies:

- a. Payment of all her outstanding DSA for the 116 days that she spent in India on medical evacuation.
- b. The release of her pending salaries since February 2012 to present.
- c. Reinstatement to service by the ICTR on medical grounds.
- d. Alternatively, since the ICTR is undergoing a downsizing exercise, if she is to be separated from service, then the ICTR should formally inform her so.

- e. The issuing of her pending Management Evaluation Report that she requested for on 15 June 2012.
- f. Payment of two years' net base salary for moral and psychological damages.

Respondent's case

38. The Respondent's case as deduced from the pleadings and documentary evidence is as summarized below.

39. The Application is not receivable because:

- a.

45. Subsequently, the Applicant's appointment was extended severally beyond 30 June 2011 for the sole purpose of allowing her to utilize her sick leave entitlements due to her medical condition. Her appointment was not extended beyond March 2012 as she had been deemed fit to work by her medical doctor

52. The Respondent submitted that for two of the contested decisions, the Applicant did not seek management evaluation within the required 60-day time limit although he did not identify which two these were. The Respondent also submitted that the Application was not filed with the Dispute Tribunal within 90 calendar days of the expiry of the response period for management evaluation under staff rule 11.4 (a).

53. On her part, the Applicant maintains that her Application is not time barred in light of the advice given to her by the UNDT Registrar on 3 October 2012 to the effect that at the time she was within the prescribed time limit to file her Application.

54. In assessing the probity of the advice given to the Applicant by the UNDT Registrar, it is on record that the Registrar, on 3 October 2012 advised the Applicant as follows:

Article 8.1(d)b of the Statute of the Tribunal which seems to apply to your situation reads as follows:

An application shall be receivable if:

[...]

(d) The application is filed within the following deadlines:

(i) In cases where management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

Since you appear to have filed a request for management evaluation on 15 June 2012, you are still within the prescribed time limit to file your application. There is therefore no need to apply for an extension of time.

55. From the foregoing, the Registrar correctly advised the Applicant that having filed her request for management evaluation on 15 June 2012, as at 3 October 2012, there was no need for her to request for extension of time as the prescribed 90 day time limit was not yet due.

56. Contrary to the Respondent's submission that two of the contested

April 2013, about five and a half months after the expiry of the applicable time limit.

62. As enunciated by the Appeals Tribunal in *Christensen*², it is an Applicant's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations and ignorance cannot be invoked as an excuse. The advice given to her by the Registrar should not have been interpreted as an infinite assurance that the Applicant would always have a limitless period within which to file her Application.

63. The importance of abiding by prescribed time-limits is well established in the jurisprudence of both the Dispute and Appeals Tribunals. Equally important is the need to strictly adhere to the stipulated procedural requirements prior to the commencement of formal litigation proceedings.

64. The Tribunal's jurisdiction to entertain any Application hinges squarely on the preliminary question of whether or not receivability criteria as provided for in both the Statute and the Rules of procedure have been met. Not having been

(Signed)

Judge Nkemdilim Izuako

Dated this 6th day of September 2013

Entered in the Register on this 6th day of September 2013

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi.