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Case No.: UNDT/NBI/2019/045

Judgment No.: UNDT/2019/086

Date: 16 May 2019

Original: English

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**Before:** Judge Agnieszka Klonowiecka -Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye -Berko

OLOWO -OKELLO

v.

SECRETARY -GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Elizabeth Brown, UNHCR  
Francisco Navarro, UNHCR

## **Introduction**

1. The Applicant is a former staff member of the United Nations High Commissioner for Refugees (UNHCR).
2. On 12 April 2019, he filed an application before the Dispute Tribunal contesting the termination of his employment with UNHCR.
3. The Respondent filed a motion for summary judgment on 15 May 2019 in which it was argued that the application is not receivable *ratione materiae*. The Respondent also requested an extension of time to file a reply if the Tribunal finds that the application is receivable.
4. Having reviewed the Respondent's motion, the Tribunal considers it appropriate to examine the preliminary issue of its jurisdiction or competence to entertain this application.

## **Facts**

5. The Applicant joined UNHCR in February 2015 on a temporary appointment as an Associate Field Officer (Protection) in Shire, Federal Democratic Republic of Ethiopia. His appointment was renewed on subsequent occasions.<sup>1</sup>
6. Between 1 May 2016 and 30 June 2016 the Applicant was on Special Leave Without Pay (SLWOP).
7. On 30 June 2016, the UNHCR Human Resources Staff Services (HRSS) informed the Applicant that his temporary appointment was due to expire on 30 June 2016 and that they would proceed with his separation effective 1 July 2016.<sup>2</sup>
8. On 5 July 2016, UNHCR/HRSS informed the Applicant that following further consultations, his SLWOP and appointment had been extended to cover the month of July 2016.<sup>3</sup>

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<sup>1</sup> Application – Annex 1, letters of appointment.

<sup>2</sup> Application – Annex 5.



meet the highest standards of integrity for allegedly misrepresenting his medical state at the time of recruitment.

13. He further states that only on 25 July 2018, after seeking assistance from the UNHCR Ombudsman, he acquired information of the UNHCR Administration's real reasons for the decision to separate him. These reasons are false.

**Respondent's case**

14. At section VI of his application, the Applicant states that he has requested management evaluation of the contested decision. This statement is wrong. The Applicant's communication to the Office of the Ombudsman submitted in February 2018 is not a request for management evaluation.

15. At section VII, paragraph 10 of his application, the Applicant states that he has been blocked from being rehired by UNHCR and other United Nations agencies but has not requested management evaluation of any decision not to select him for any specific position with UNHCR.

16.

## Considerations

### *Receivability*

18. The Applicant states in his application that he received the decision to terminate his appointment by email on 9 July 2016, however, he claims that this email concealed the real reason as to why his appointment was being terminated and he therefore sought the assistance of the Ombudsman's Office. He submits that he only became aware of the true reasons for the termination of his appointment on receipt of the 25 July 2018 email from the Ombudsman. The Tribunal considers that the communication of 9 July 2016 constituted an express and complete administrative decision in that it informed of the outcome and reasons for it, i.e., separation for the lack of the requisite medical clearance. At the time, this decision was, therefore, appealable under the terms of staff rules and the UNDT Statute. Supplying additional circumstances as reasons for not-rehiring the Applicant in 2018 does not revive the decision taken in 2016.

19. In accordance with art. 8 of the Statute of the United Nations Dispute Tribunal, an application is receivable if an applicant has previously submitted the contested administrative decision for management evaluation, where required. Absent a request for management evaluation, the Tribunal may not consider the merits of the case. Staff rule 11.2(c) stipulates that,

[a] request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

20. The relevant administrative decision triggering the time limits for the Applicant to request management evaluation was the 9 July 2016 decision. The Applicant failed to submit a request for management evaluation to the appropriate authority in UNHCR which is to the UNHCR's High Commissioner's office within 60 calendar days as required by staff rule 11.2(c). The Applicant claims that he sent a management evaluation request to the Ombudsman's Office on 12

