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8. On 3 September 2018, the Applicant commenced maternity leave for 16 weeks, with an expiry date of 21 December 2018.

9. By memorandum dated 18 December 2018 (the Decision Letter), the UNDP Associate Administrator informed the Applicant that her actions, as alleged in the charge letters of 18 September 2017 and 16 July 2018 constituted acts of misconduct and that he had decided to impose on her the disciplinary measure of “separation from service with compensation in lieu of notice and without termination indemnities pursuant to staff rules 10.1(a) and 10.2(a)(viii), effective upon your receipt of this letter”.

10. UNDP sent the Decision Letter to the Applicant’s official UNDP email address by email dated 18 December 2018. On the same day, UNDP received an automated out of office notice from the Applicant’s email account. Consequently, UNDP sent the Decision Letter to Messrs. MB and MA, counsel with the Office of Staff Legal Assistance (OSLA), with the following message:

Seeing that [the Applicant] is currently on extended leave and may not be accessing her work emails, we would appreciate if you could ensure that [the Applicant] receive a copy of the attached letter. We would also ask that you inform us of when this decision has been communicated to [the Applicant]. Please note that we will also seek to have this letter delivered to [the Applicant] via the Country Office.

11. UNDP received an email receipt indicating that the Applicant had read the message at 10:16 a.m. on 19 December 2018. On the same day, a Human Resources Analyst with UNDP Tanzania contacted the Applicant via WhatsApp to inform her that an email had been sent to her attention from UNDP Headquarters and that she should “please assist acknowledgment of recipient [sic] while replying to them [...]”.

12. On 20 December 2018, the UNDP Administrator received a message from the Permanent Mission of Tanzania in New York regarding the Decision Letter and the disciplinary measure that had been imposed on the Applicant.

13. On 23 December 2018, Mr. MB of OSLA acknowledged receipt of UNDP’s email of 18 December 2018 in his personal capacity. He clarified that he

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purposes of triggering any timeline that may commence from “receipt” of such documents.

17. On 4 January 2019, the Applicant followed up with the Deputy Country Director – Operations, UNDP, on the request to extend her

e. The Applicant may not rely on art. 8.3 of the UNDT Statute for a waiver of the applicable time limits because she has not submitted a written request. Additionally, the lack of communication between the Applicant and OSLA regarding the date of receipt of the Contested Decision is not an exceptional circumstance under art. 8.3.

20. The Applicant submits that the application is receivable because:

a. In respect of disciplinary measures, the relevant time limit starts to run from the date the staff member acknowledges receipt, not from the time the decision is issued.¹ UNDP in its communication to the Applicant and OSLA requested acknowledgement of receipt, which OSLA provided on behalf of the Applicant on 24 December 2018. Having decided to serve the Contested Decision through OSLA, UNDP is estopped from identifying an earlier date for the purpose of determining the applicable time line.

b. The Respondent failed to establish that the Applicant had actual knowledge of the Contested Decision on 19 December 2019. Time limits begin to run “from the date the staff member received notification of the decision in writing”.² The Applicant was suffering from and receiving treatment for a critical medical condition and had no knowledge of the Contested Decision.

c. The WhatsApp conversation between the Applicant and the HR Analyst did not allude to any disciplinary sanction or to a separation from service.

d. The Respondent’s reliance on the communication between the Permanent Representative of Tanzania to the UN and the UNDP Administrator is misplaced.

e. Should the Tribunal consider that the Application was filed out of time, the Applicant submits that there were exceptional circumstances to

¹ *Khisa* 2018-UNAT-883, paras. 5 and 16.

² *Schook* 2010-UNAT-013, para. 12 and *Chahrouf* 2014-UNAT-406, para. 32.

24. Since the Applicant was clearly represented by OSLA, it stands to reason that UNDP's communication of the Contested Decision on 18 December 2018 should have been addressed to OSLA. UNDP choosing to send the email to the Applicant on 18 December 2018 and receiving an email receipt on 19 December 2019 from the Applicant's email account does not expunge the fact that UNDP technically should have been communicating solely with OSLA. Additionally, the Tribunal finds that the WhatsApp messages and the communication

(c) Shall be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period.

29. Of relevance here is the fact that the last day of the statutory filing period, 24 March 2019, was a Sunday, which is not a working day for the Registry. Accordingly, the filing deadline extended to and included 25 March 2019, which was the next working day of the Registry. The Respondent does not dispute the fact that the Applicant filed her application on 25 March 2019.

30. The Tribunal finds that the application is receivable.

31. With respect to the Respondent's request for additional time to file a reply, the Tribunal notes that the Respondent has had ample time since the application was served on him on 26 March 2019 and still has ample time within which to prepare a reply. Thus, an extension of time to file said reply is not necessary.

It is hereby ORDERED that:

32. The Respondent's motion for summary judgment is refused.

33. The Respondent shall file a reply to the application **on or before 25 April 2019**.

(Signed)

Judge Nkemdilim Izuako

Dated this 12th day of April 2018

Entered in the Register on this 12th day of April 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi