



Before: Judge Nkemdilim Izuako
Registry: Nairobi
Registrar: Jean-Pelé Fomété

CHRISTENSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON APPLICANT'S MOTION FOR
CONSOLIDATION, WAIVER OF TIME-
LIMITS

Counsel for Applicant:
Miles Hastie, Office of Staff Legal Assistance

Counsel for Respondent:
Steven Dietrich, ALS/OHRM
Marcus Joyce, ALS/OHRM

Introduction

1. The Applicant, a former staff member of the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, is appealing against several administrative decisions not to pay her salary and certain entitlements which remained outstanding upon her separation from service with the Organization on 23 June 2003.

2. On 28 May 2010, the Tribunal issued Order No. 101 (NBI/2010) which dealt with case management in respect of the present case. The Applicant filed her

14. The Applicant submits that the MEU, on behalf of the Secretary-General, did not substantively consider the request to review the ABCC decision. Accordingly, the Applicant promptly filed a letter with the Tribunal seeking leave to file an application beyond the ordinary time limits, to overcome the failure of the Administration to review the ABCC decision.

15. The Applicant submits that there are common issues of fact and law, common evidentiary bases and interdependent pleas that militate in favour of consolidation. Legal efficiency, judicial economy, legal consistency and finality all favour such a consolidation.

16. There are at least three areas of overlap among the Applications: the background to the Applicant's condition and how a simple typhus infection developed into full-blown *Rickettsia*

asked the Secretary-General for reconsideration of the ABCC decision, pursuant to Appendix D of the Staff Rules, in 2009, in the ABCC Reconsideration Case.

22. The Administration cannot frustrate the review process by simply remaining silent, instead of responding negatively. One of the rulings in the former UN Administrative Tribunal Case number 1493 was that if the staff were returned to the Secretary-General and he maintained his position, a claim could be pursued before the Tribunal.

23. The Applicant submits that the JAB found that she was engaged with the Administration in a train of correspondence concerning all of these claims that had still not been resolved by 31 January 2006, within two months of 22 March 2006. The Administration continued to indicate that further examination of the issues was warranted. The Applicant maintains that the JAB was correct in holding that there were no time bars to the adjudication of the Entitlements Case and that if the Tribunal is inclined to find otherwise, there were exceptional circumstances arising from her medical, legal and financial situation to justify a waiver of the time limit.

24. The Applicant submits that with respect to the ABCC Reconsideration Case, the Respondent has contended that the Applicant was required to file an application before the Tribunal within 90 days of the MEU decision of 29 October 2009, that is, by 27 January 2010. Given that the MEU stated that there was no decision for review and that the matter could not be reviewed because it was already before the Tribunal, the Applicant considers this contention to be unjustified.

25. By letter dated 14 December 2009, the Applicant sought leave of this Tribunal to file an application late. That letter was sent, well in advance of the 90-day deadline, in the knowledge that the Applicant needed to secure new legal counsel. The decision of whether to grant leave has not been determined. The Applicant renews its request for leave to file by this Motion.

26. The Applicant submits that there can be no credible contention that the Administration did not have timely notice of the Applicant's intention to pursue a

challenge to the ABCC decision after 29 October 2009, nor can it be suggested that the Applicant abandoned such an intention. Both parties' discussion of the "core issues" in the case, filed in mid-2010, were to such a challenge through a new application. The delays between 27 January 2010 and the present were caused by a change in counsel, a problem both the Administration and the Tribunal were alerted to, and administrative delays at the Tribunal.

27. The Applicant submits that the Administration never directed her to the correct forum until a time when it contended that time bars existed. The Administration responded with stony silence to a clear challenge of the ABCC decision in 2005, waited for time to pass and then indicated that the challenge was not in the correct form. Even years later, after the former UN Administrative Tribunal suggested that the Applicant make such a request, the Secretary-General ignored it. The Applicant submits that the MEU then ar

30. The Applicant notes ~~at~~ the Administration ha

ABCC considered the Applicant's claim at its 41st meeting on 22 June 2004, and recommended that the Secretary-General reject her claim on the basis that her tick typhus was not service-incurred, since the tick bite likely occurred while the Applicant was on private travel. The ABCC found that the Applicant's illness was not attributable to the performance of her official duties on behalf of the United Nations, but was incurred during a private recreational visit to Mount Meru, an area outside the city of Arusha where the Applicant worked. The ABCC took the view that the tick bite could not have occurred in Arusha, the Applicant's duty station.

Administrative Tribunal issued Judgment No. 1427, ~~rejecting~~ the Applicant's Application on the grounds that ~~the~~ Applicant had failed to request reconsideration of

to the advice given by technical boards as the ABCC or the Medical Boards are not subject to a management evaluation.

42. On 14 December 2009, the Applicant forwarded a letter to the Registry of the Tribunal requesting an extension of the deadline for filing an Application before the Tribunal with regard to re-opening her request for reconsideration of the ABCC's recommendation.

43. The Respondent submits that the Applicant's request for leave to file a fresh application for reconsideration of the ABCC's decision should be denied. The primary issue is whether the Applicant has demonstrated the existence of exceptional circumstances to justify a waiver of the time-limit within which to file a request for reconsideration of the ABCC's decision.

44. The Applicant contends in her draft Application that she was not aware that she could appeal the ABCC's decision under art. 17 of the Appendix D of the Staff Rules. The Applicant further contends that she first became aware of art. 17 following the decision of the Tribunal on 20 July 2011 (UNDT/2011/16).

object to the Applicant's filings on receivability grounds throughout the course of the

administrative review under the old system of internal justice. Additionally, art. 8.4 of the Statute of the Tribunal states that an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

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61. The Tribunal notes that the facts in the present case can be distinguished from those in *Kamanou*⁵. *Kamanou* was a single, comprehensive case where the Applicant alleged that she had suffered discrimination and harassment which manifested in the decisions not to promote her and not to attribute her contribution to certain intellectual works. The Trial Judge went ahead in that case to single out the issue of non-attribution for a separate determination. The Appeals Tribunal held that the issue of non-attribution in that case was directly relevant to the issues of discrimination and harassment and could not be dealt with separately.

62. In the present case, the relevant Applications were filed separately; each can stand alone and can be decided separately without affecting the Applicant's right to a fair hearing. In view of the foregoing, the Tribunal finds that the ABCC Case is not receivable.

65. The two Applications which were transferred to the New York Registry of the