



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NIGAM

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:**  
Thomas Jacob, UNDP

## Introduction

1. The Applicant is a former United Nations Resident Coordinator and United Nations Development Programme (UNDP) Resident Representative at the D-1 step 12 level serving with UNDP in Riyadh, Saudi Arabia.<sup>1</sup>

2. By an application filed on 30 September 2019, he contests the 5 August 2019 decision whereby he was informed of the closure of an investigation against him after a process that he describes as discriminatory and an abuse of authority.<sup>2</sup>

3. On 11 October 2019, the Respondent filed a motion for summary judgment arguing that the application is not receivable *ratione materiae*.

## Facts

4. In April 2019, the International Monetary Fund Office of Internal Investigations (IMF/OII) informed the Applicant of allegations against him raised by two UNDP staff members in the context of the holding of two events in New York for a digital platform called “Digital Good”.<sup>3</sup>

5. On 5 August 2019, IMF/OII informed the Applicant that the allegations against him were not substantiated and that the matter had been closed from an investigation perspective.<sup>4</sup>

6. On 23 July 2019 and on 24 August 2019, the Applicant wrote to the UNDP Chief of Staff and the UNDP Acting Assistant Administrator respectively, requesting for the draft report of the investigations.<sup>5</sup>

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<sup>1</sup> Application, section II and annex 3.

<sup>2</sup> Application, section V.

<sup>3</sup> Application, section VII.

<sup>4</sup> Application, annex 3.

<sup>5</sup> Application, section VII, para. 3 and annex 4.

7. After, what the Applicant describes as “many weeks”, without a response to his request, the Applicant filed this application.<sup>6</sup> He had not requested management evaluation.<sup>7</sup>

### ***Respondent’s submissions***

8. The Respondent submits that the Applicant has not been the subject of any disciplinary or non-disciplinary measures listed under staff rules 10.2 (a) and 10.2 (b), nor is the notification of the closure of investigations against the Applicant a decision taken by a technical body. Accordingly, the Applicant was required to request the management evaluation prior to the submission of an application to the United Nations Dispute Tribunal (UNDT).

9. The Respondent therefore requests the Tribunal to find that the application is not receivable. Should the Tribunal find the application receivable, the Respondent requests that the deadline to file the Respondent’s reply be extended for 27 days after the issuance of its order on receivability.

### **Considerations**

10. Pursuant to art. 8.1(c) of the UNDT Statute, an application shall be receivable if “an applicant has previously submitted the contested administrative decision for management evaluation, where required.” An exception, as provided by staff rule 11.2 (b), is foreseen only in cases of where the advice was obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure. In the present case, there is no decision imposing disciplinary or administrative measures. The Applicant did not request management evaluation of any administrative decision related to the conduct of the investigation. Notwithstanding the question whether the Applicant would be capable of showing that investigative actions went contrary to the terms of his appointment, he

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<sup>6</sup> Ibid, para. 7.

<sup>7</sup> Application, section VI(1).

was required to seek management evaluation before bringing his application to the Tribunal. This he did not do.

11. The failure to seek management evaluation before approaching the Tribunal precludes entertaining the application.

## **JUDGMENT**

12. The application is not receivable.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 18<sup>th</sup> day of October 2019

Entered in the Register on this 18<sup>th</sup> day of October 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi