



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Macharia
(Appellant)
v.
Secretary-General of the United Nations
(Respondent)

JUDGMENT
[No. 2010-UNAT-015]

Before: Judge Rose Boyko, Presiding
Judge Sophia Adinyira
Judge Kamaljit Singh Garewal

Case No.: 2009-020

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: David Andati-Amwayi

Counsel for Respondent: Cristian Gimenez Corte

JUDGE ROSE BOYKO, Presiding.

Synopsis

1. The Appellant, Jane Macharia (Macharia), was dismissed for serious misconduct on 22 June 2009. Upon her *ex parte* motion, the UNDT granted her 21 days, until 16 October 2009, to file her substantive application challenging her summary dismissal. On 16 October 2009, she brought another *ex parte* motion for an extension of one year, suggesting that negotiations were either underway, needed, or being contemplated. The UNDT on 25 November 2009 rejected her application for a further extension of time. Macharia appeals this decision. We find no error in the UNDT judgment and affirm it.

Facts and Procedure

2. Macharia joined the Organization in June 1990. She was summarily dismissed effective 22 June 2009. At that time, she was an Administrative Assistant at the G-6 level with the United Nations Human Settlements Programme (UN-Habitat), United Nations Office of Nairobi (UNON/Nairobi).

3. In an email dated 22 June 2009, the Secretary a.i., Joint Appeals Board (JAB) and Joint Disciplinary Committee (JDC) at UNON, advised her that in view of the on-going process for handing over the pending cases to the new justice system, they could not receive appeals against an administrative decision imposing a disciplinary measure.

4. In a memorandum also dated 22 June 2009 to the Chief, Human Resources Management Service (HRMS)/UNON, Nairobi, Macharia requested that the dismissal decision be suspended until the new system was in place, so that she could “appeal for the review of the decision for separation”. The Chief, HRMS/UNON, advised her the following day that the dismissal decision could not be suspended, and that he would forward her memorandum to the Administrative Law Unit in New York. He advised Macharia that “[she] may initiate [her] appeal against the decision as a former staff member”.

5. In an email dated 6 October 2009, the Office of Staff Legal Assistance advised the UNDT Registry that it was no longer representing Macharia. The email was copied to Macharia and her current Counsel.

6. Around the end of September 2009, Macharia filed an application with UNDT requesting an extension of the time limit, and was granted 21 days through 16 October 2009 by which to submit her application to UNDT. On 16 October 2009, Macharia filed another request for a one-year extension with the UNDT.

7. In judgment no. UNDT/2009/081 rendered on 25 November 2009, the UNDT rejected Macharia's application for a one-year extension and struck out the entire case. The UNDT found that Macharia "has not adduced anything by way of evidence to show that negotiations are in fact ongoing". It noted that "[Macharia] is neither ready nor willing to file and prosecute her substantive application at this time. It is an abuse of the process of this Tribunal for [her] to indulge in frivolous and unending applications for extension of time where she is more inclined to ignore orders granted her in a previous application".

Submissions

Macharia's Appeal

8. Macharia alleges several errors in law and fact. In particular, Macharia submits that the UNDT erred in law and in fact by failing to allow the parties to engage in direct negotiations before a judgment was rendered; by misinterpreting the "the need for direct negotiations" as actual negotiations; and by failing to forward the notice of withdrawal of appearance that was filed by Macharia's former counsel on 7 October 2009 to Macharia, and by failing to forward Macharia's application for time extension to the Administration.

9. Macharia contends that the UNDT had no factual basis for stating that she was "neither ready nor willing to file and prosecute her substantive application at this time". She further contends that the UNDT erred by failing to distribute the impugned judgment to the Office of Legal Affairs which is the focal point for the direct negotiations.

Secretary-General's Answer

10. The Secretary-General responds that Macharia merely asserts errors of law and fact without offering evidence or legal arguments as to why the UNDT's conclusions constituted errors. She therefore fails to comply with the requirements of Article 8(2)(a) of UNAT Rules of Procedure.

11. The Secretary-General submits that contrary to what Macharia seems to suggest, there were no negotiations or mediations ongoing or contemplated by both parties. The Administration did not express any interest in mediating the matter, but consistently advised Macharia to raise her concerns with the UNDT.

12. The Secretary-General argues that the decision to suspend deadlines is a prerogative of the UNDT. He further contends that the UNDT is not responsible for coordinating the legal representation for Macharia. The email of 6 October 2009 from the former Counsel withdrawing her representation was copied to both Macharia and her present Counsel. Finally, he submits that neither the UNDT Statute nor its Rules of Procedure require the UNDT to obtain the other party's observations on an application for time extension before deciding on the application.

Considerations

13. Macharia was dismissed on 22 June 2009. In addition to appealing to the former JDC, she had the option of, commencing 1 July 2009, either seeking a management evaluation or filing a UNDT application and she opted for the latter. She did not apply to the UNDT in a timely manner, but obtained an *ex parte* order granting a 21-day extension to file her application by 16 October 2009. On 16 October 2009, she again sought by an *ex parte* motion an extension for one year, suggesting in her application that negotiations were either underway, needed, or being contemplated. The UNDT on 25 November 2009 rejected her application for a further extension of time, hence her appeal to UNAT.

14. We find no error in the UNDT judgment. The evidence about negotiations either being contemplated, needed, or underway was refuted on appeal. There is nothing exceptional about this case. Macharia reveals no reason why her application cannot be filed at this time and tenders no evidence to persuade the UNDT or UNAT that her request for an extension of time is reasonable. In these circumstances it is unnecessary to consider her request for an oral hearing, which she makes on the grounds that she could then provide information "deemed necessary by UNAT". Macharia has had time and the assistance of legal counsel to advance her application and has not availed herself of these opportunities.

THE UNITED NATIONS APPEALS TRIBUNAL

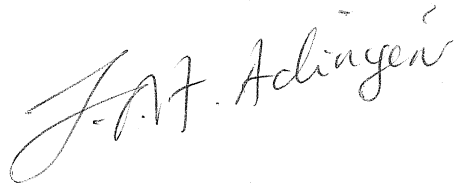
Case No. 2009-020

Judgment

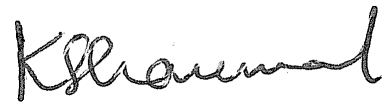
15. For the foregoing reasons, the appeal is dismissed.



Judge Boyko, Presiding



Judge Adinyira



Judge Garewal, Presiding

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT