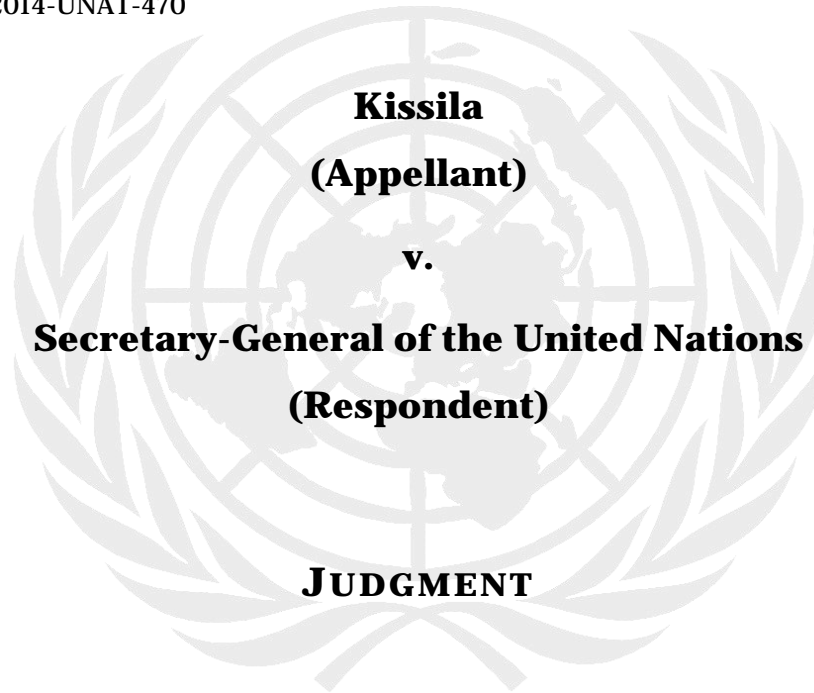




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-470



Before:	Judge Richard Lussick, Presiding Judge Sophia Adinyira Judge Luis María Simón
Case No.:	2013-543
Date:	17 October 2014
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Phyllis Hwang

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Jennifer Kissila against Judgment on Receivability No. UNDT/2013/115, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 6 September 2013, in the case of *Kissila v. Secretary-General of the United Nations*. Ms. Kissila appealed on 6 November 2013, and the Secretary-General of the United Nations answered on 27 December 2013.

Facts and Procedure

2. Ms. Kissila is a former staff member of the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, where she served as a Team Assistant at the General Service level. In connection with the 2010-2011 budget exercise, certain ICTR posts including that encumbered by Ms. Kissila were abolished.

3. On 31 May 2011, Ms. Kissila received a memorandum from the Chief of Staff, Administration Section, ICTR, informing her that her fixed-term appointment would not be extended beyond its expiration date of 30 June 2011. However, on 28 June 2011, Ms. Kissila fell ill and was medically evacuated from Arusha, first to Dar es Salaam, Tanzania, and then to New Delhi, India. The ICTR accordingly suspended Ms. Kissila's separation from service and extended her fixed-term appointment for varying periods through 31 March 2012, on medical grounds.

4. Ms. Kissila was discharged from the hospital in India on 10 December 2011. The ICTR was informed that she would be fit to return to work on 27 March 2012. It is not clear whether Ms. Kissila returned to work on 27 March 2012. However, her contract was not renewed beyond 31 March 2012.

5. According to Ms. Kissila, she filed a request for management evaluation of the decision not to renew her contract with the Management Evaluation Unit (MEU) on 15 June 2012. However, the MEU did not respond during the 45-day response period.

6. On 2 October 2012, Ms. Kissila wrote to the Registry of the UNDT in Nairobi stating as follows:

I am intending to file an Application with UNDT in due course. Owing to the fact that I submitted my Request for Management Evaluation on 15 June 2012 and the MEU promised to release its report on 2 August 2012 of which it did not. The ninety (90) day[s] required of me to file an Application with UNDT expires today 2 October 2012 and I have not received a report from MEU.

I am humbly requesting the UNDT to Extend Time Limit to file an Application pending the receipt of Management Evaluation Unit report or whatever the date that UNDT will propose or whichever comes first.

7. On 3 October 2012, the Registry of the UNDT in Nairobi responded:

Having reviewed your request, the Judge in charge has directed that you be advised as follows:

Article 8.1(d)[(i)]b of the Statute of the Tribunal, which seems to apply to your situation reads as follows:

[...]

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

Since you appear to have filed a request for management evaluation on 15 June 2012, you are still within the prescribed time limit to file your application. There is therefore no need to apply for an extension of time.

8. On 19 April 2013, Ms. Kissila filed her application with the Dispute Tribunal.

9. In July 2013, the ICTR informed Ms. Kissila that her separation pay had been computed and paid to her bank account. The ICTR also informed Ms. Kissila that she was entitled to the daily subsistence allowance (DSA) of USD 15,402 for 106 days that she

received medical treatment, if she would fill in an F-10 claim with the necessary documentary proofs.

10. In Judgment on Receivability No. UNDT/2013/115 of 6 September 2013, the Dispute Tribunal dismissed Ms. Kissila's application as not receivable *ratione temporis*. The UNDT noted that Ms. Kissila filed a request for management evaluation on 15 June 2012. Consequently, the 45-day period for MEU to respond ran out on 30 July 2012. From that date, she had 90 days, i.e., until 28 October 2012, to apply to the Dispute Tribunal. However, Ms. Kissila did not apply to the Dispute Tribunal until 19 April 2013. The Dispute Tribunal found no evidence of exceptional circumstances for the delay of about five and a half months. The Dispute Tribunal also reviewed the exchanges between Ms. Kissila and the UNDT Registry, but found that the Registry had properly advised Ms. Kissila about time limits in her case.

Submissions

Ms. Kissila's Appeal

11. The Dispute Tribunal made numerous errors of fact, law and procedure in respect of the non-renewal of her fixed-term appointment, her DSA entitlement and payment, her hospitalization, the funding of her post, her contract extensions and the separation procedure. Consequently, she "deems the [Dispute] Tribunal's Judgement as a manifestly unreasonable one".

12. Ms. Kissila received an assurance from the UNDT Registry that her case would be receivable. Her interpretation as a layperson of the e-mail from the UNDT Registry was that the request for time extension was not needed, as she was officially informed that there was no need to ask for an extension.

13. The Dispute Tribunal erred in fact and in law in refusing or failing to admit the cumulative prejudicial effect of the irregularities in her case, into which it should have ordered a preliminary investigation, and instead based its decision on legal technicalities, which were not fatal. "[A] mere diversion from procedure should not act a barrier to dispense justice because a situation to the contrary constitutes a mockery of justice."

14. Ms. Kissila requests that the Appeals Tribunal reverse the Judgment of the UNDT and allow the present appeal to proceed.

The Secretary-General's Answer

15. The UNDT correctly concluded that Ms. Kissila's application was not receivable as time-barred.

16. Ms. Kissila has not established any error on the part of the UNDT warranting a reversal of the Judgment. It was her responsibility to determine that her deadline for applying to the UNDT expired on 28 October 2012 and that the UNDT Registry did not have any obligation to provide any clarification to her as to when exactly her deadline would expire. There was nothing in the response of the UNDT Registry that could support a reasonable interpretation that Ms. Kissila was granted an extension of time to file her UNDT application in April 2013.

17. Ms. Kissila's arguments about the alleged factual errors made by the UNDT do not undermine the UNDT's conclusions about the receivability of her UNDT application as the UNDT only looked at the issue of receivability, and not the merits of her case.

18. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.

Considerations

19. The UNDT Registry, in responding to Ms. Kissila's request for an extension of time in which to file her application, advised her in its e-mail of 3 October 2012 of the relevant statutory provisions governing the question of receivability. It correctly concluded that, since Ms. Kissila had filed a request for management evaluation on 15 June 2012, she was still within the prescribed time limit and there was therefore no need to apply for an extension of time.

20. The relevant part of Article 8 of the Statute of the UNDT provides:

1. An application shall be receivable if:

...

(d) The application is filed within the following deadlines:

- (i) In cases where a management evaluation of the contested decision is required:
- a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or
 - b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices[.]

21. Had Ms. Kissila applied the law which the UNDT Registry had set out for her, she would have calculated that she had until 28 October 2012 to file her application. Instead, she did not file her application until 19 April 2013.

22. Ms. Kissila claims that her interpretation as a lay person of the advice given by the UNDT Registry was that an extension of time was not needed. That was certainly the case when the UNDT Registry sent its e-mail, but it was unreasonable for Ms. Kissila, even as a lay person, to conclude from that advice that an extension of time would never be needed and that there was no limitation on the time for filing.

23. This Tribunal has repeatedly and consistently strictly enforced the time limits for filing applications and appeals. Strict adherence to filing deadlines assures one of the goals of our new system of administration of justice: the timely hearing of cases and rendering of judgments.¹

24. Moreover, this Tribunal has held that it is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.² In the present case, Ms. Kissila's argument that she is a lay person has no merit at all, particularly since the UNDT Registry had specifically advised her of the applicable law.

¹ *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, para. 26, citing *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043; *Thiam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-144; *Ibrahim v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-069, and *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

² *Christensen v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-218, para. 39, citing *Jennings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-184.

25. Ms. Kissila's claim that the UNDT based its decision on legal technicalities which were not fatal also has no merit. The decision of the UNDT was not based on mere technicalities but on the statutory law governing the issue. What Ms. Kissila describes as a "mere diversion from procedure" was in fact a contravention of Article 8 of the UNDT Statute.

26. Ms. Kissila has not demonstrated any error of law or fact in the UNDT's decision that her application was not receivable *ratione temporis*. We find no merit in her appeal.

Judgment

27. The appeal is dismissed in its entirety and the Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar