



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

GAKUMBA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

UNDP

Introduction

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP) in Kigali, Rwanda.
2. On 13 January 2015, he filed an Application in which he purports to seek for a Revision of Judgment No. 2013-UNAT-387.

Facts

3. The Applicant joined UNDP in Rwanda in July 2002 initially on a three-month probationary appointment, which was extended first for two months, and then twice on a fixed-term appointment for one year to carry him through 31 December 2004. He was separated from service at the end of 2004.
4. The Applicant challenged the decision to separate him from service in Case No. UNDT/NBI/2010/019. In Judgment No. UNDT/2012/192, the Dispute Tribunal found that the Applicant's performance evaluations and his subsequent non-renewal of service were tainted by the absence of due process and other procedural violations. The Tribunal ordered his reinstatement or the award of two years' net base salary in lieu of reinstatement. In addition, the Dispute Tribunal ordered that the Applicant be paid seven months' net base salary in compensation for the due process and other procedural violations.
5. The Secretary-General appealed. In Judgment No. 2013-UNAT-387, the Appeals Tribunal (UNAT) allowed the appeal in part by reducing the compensation in-lieu of reinstatement to one-year's net base salary. UNAT affirmed the Dispute Tribunal's award of seven months' net base salary for due process and procedural violations.
6. On 7 February 2014, the Applicant filed with UNAT an application for revision of its Judgment. UNAT dismissed the said application for revision in Judgment No. 2014-UNAT-492 of 22 December 2014.

7. The Applicant then brought the present Application which, although framed as seeking a revision of the Appeal Tribunal's judgment, in actual fact alleges that new facts came to light after the Dispute Tribunal's judgment rendered in 2012 for which an appeal had been brought and determined by UNAT and revision refused.

Applicant's Submissions

8. The Applicant submits this Application for revision on the basis of the discovery of a "new fact/evidence", that is, the UNDP Policy on Consideration for Conversion to a Permanent Appointment of UNDP Staff Members Eligible to be Considered as at 30 June 2009 (UNDP Conversion Policy).

9. The UNDP Conversion Policy was dated 9 December 2010. He claims that, at the time the UNAT Judgment was rendered on 17 October 2013, the UNDP Conversion Policy was unknown to UNAT and to him. He became aware of the UNDP Conversion Policy on 4 February 2014.

10. The Applicant requests that the Dispute Tribunal Judgment be revised in light of the UNDP Conversion Policy so that it would include an order for his reinstatement and the payment of all his back salaries and all due indemnities plus interest, or alternatively, an order for payment of all his monthly salaries, past and future, until his retirement.

11. The Applicant further submits that UNAT should have issued an Order remanding his application for revision to the Dispute Tribunal before deciding on the merits for the purpose of initiating or correcting a required procedure.

Considerations

12. Applications for revision of judgment are governed by art. 12 of the Statute of the Dispute Tribunal and art. 29 of the Dispute Tribunal's Rules of Procedure. The cited articles provide that either party may apply for a revision of an executable judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Dispute Tribunal and to the party applying for revision, provided that such ignorance was not due to negligence.

13. This Application is manifestly inadmissible for the following reasons. Firstly, the Dispute Tribunal does not have the jurisdiction to revise a judgment after the Appeals Tribunal has ruled on the same matter. Secondly, as held by UNAT in its Judgment No. 2014-UNAT-492 rendered on the Applicant's Application for Revision of Judgment No. 2013-UNAT-387:

The request filed by Mr. Gakumba does not fulfill the statutory requirements and constitutes, in fact, a disguised way to attempt to re-open the case... It is manifestly inadmissible to submit that the UNDP Conversion Policy issued in 2010 could not be argued by the staff member in 2012 before the UNDT, or in 2013 before the Appeals Tribunal. Furthermore, no valid reason has been provided about the untimely submission of the application for revision¹.

Abuse of Process

14. This Tribunal finds that the Applicant has manifestly abused its process. Article 10.6 of the Statute of the Dispute Tribunal stipulates that where such is the case, costs may be awarded against the offending party.

15. In *Gehr* 2013-UNAT-294², it was held that the fact that the application was moot was so obvious that no reasonable person could have arrived at any other conclusion and that the applicant had abused the appeals process by filing an appeal that was blatantly frivolous.

¹ At paras. 14-15.

² At para. 21.

16. Having considered the procedural history of the present case, the Tribunal holds also that this Application is most frivolous and vexatious and as already found constitutes a manifest abuse of proceedings. Costs shall accordingly be awarded against the Applicant.

Judgment

17. In view of the foregoing, the Tribunal decides that this Application for revision is not receivable and is therefore dismissed in its entirety.

18. Additionally, the Tribunal orders costs against the Applicant in the amount of USD500. The Respondent shall withhold the said sum from the compensation awarded to the Applicant in Judgment No. 2013-UNAT-387.

(Signed)

Judge Nkemdilim Izuako

Dated this 26th day of January 2015

Entered in the Register on this 26th day of January 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi