



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TSHILANDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
UNFPA

Introduction

1. The Applicant was an Individual Consultant working with the United Nations Population Fund (UNFPA) as a Midwife in the Democratic Republic of the Congo (MONUSCO) in Kananga, Central Kasai.¹

2. By an application filed on 30 July 2019, which was registered under Case No. UNDT/NBI/2019/114, the Applicant contests the decision by UNFPA to terminate her consultancy contract.² This was notified to her on 22 July 2019 via notice from the UNFPA Representative in the Democratic Republic of the Congo informing her of the non-extension of her consultancy contract effective 31 July 2019.³

3. The Applicant did not request management evaluation of the contested administrative decision.⁴

Applicant's submissions

4. The Applicant contends that the decision to terminate her contract was sentimental, arbitrary and harmful to her.⁵ As a remedy, the Applicant requests the Tribunal to order UNFPA to pay her: (i) salary of five months of the contract that was not paid; (ii) an amount equivalent to 12 months' salary for psychological damage and the effect the termination of the contract had on her career.

Considerations

Locus standi

5. The issue arising for consideration is the receivability of the present application. In *Christensen 2013-UNAT-335*, the United Nations Appeals Tribunal ("the Appeals Tribunal") held that "the UNDT is competent to review its own competence or

¹ Application, section I, Application, Annex 1

² Application, section V

³ Application, Annex 2

⁴ Application, section VI

⁵ Application, section VIII

jurisdiction in accordance with Article 2 (6) of its Statute” when determining the receivability of an application.

6. The Appeals Tribunal further stated “this competence can be exercised even if the parties or the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable”.

7. Articles 2.1(a) and 3 of the UNDT Statute provide as follows”

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment of the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance.

Article 3

An application under 2, paragraph 1, of the present Statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations Funds and Programmes;

(b) Any former staff member of the United Nations including the United Nations Secretariat or separately administered United Nations Funds and Programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations Funds and Programmes.

8. The foregoing provisions clearly stipulate that the jurisdiction of the UNDT is limited only to persons who are staff members of the United Nations or who were

former staff members as set out in art. 3.1 of the UNDT Statute. To that extent, the UNDT jurisdiction does not apply to the hearing of applications from non-staff members.

9. The evidence shows that the Applicant, on 6 June 2019, signed a contract with UNFPA that was governed by the terms and conditions of the UNFPA individual contactors.⁶

10. Accordingly, the Applicant, not being a staff member of UNFPA or any other entity of the United Nations, has no *locus standi* before this Tribunal. The present application cannot be entertained.

JUDGMENT

11. The application is dismissed as irreceivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 19th day of September 2019

Entered in the Register on this 19th day of September 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁶ Application, Annex 1