



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

KIMUNGUI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON RESPONDENT'S
MOTION TO HAVE RECEIVABILITY
CONSIDERED AS A PRELIMINARY
ISSUE**

Counsel for Applicant:
Hannington Amol

Counsel for Respondent:
Christine Graham, ALS/OHRM

Introduction

1. The Applicant filed an Application on 12 August 2014 to contest the decision to suspend him from duty in connection with an investigation into allegations of misconduct. He was serving as a driver for the United Nations Office at Nairobi (UNON) and the Somalia Eritrea Monitoring Group (SEMG) at the time of the Contested Decision.

2. The Application was served on the Respondent on 12 August 2014 with a deadline of 12 September 2014 by which he was to file a Reply.

3. On 23 August 2014, the Respondent filed a Motion for leave to file a Reply limited to receivability and to have receivability considered as a preliminary issue along with a Reply on receivability. He submitted in his Reply on receivability that the Application is manifestly inadmissible on the following grounds: (a) the Applicant was not a staff member at the time of the contested events, and the contested events are unrelated to his former service as a staff member (*ratione personae*); (b) the Applicant has not requested management evaluation of the contested decision (*ratione materiae*); and (c) the Application was filed outside of the time limit set out in article 8.1 of the UNDT Statute, and the three year statute of limitation in article 8.4 of the Statute (*ratione temporis*).

Case Management

4. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal, the Tribunal may at any time issue an order or give any direction which appears to be appropriate for the fair and expeditious disposal of a case and to do justice to the parties.

5. Noting that the Respondent has raised the issue of receivability in this matter, it is judicious for the Tribunal to deal with this preliminary matter prior to making any rulings that relate to the merits of the Applicant's case.

6. In view of the fact that a hearing will not be held prior to a decision being rendered on the issue of receivability, the Tribunal must ensure that it has all documentary evidence and information that is relevant to the issue at hand during its deliberations. In this vein, it is important for the Applicant to be given the opportunity to file a response to the Respondent's assertion of receivability.

In light of the foregoing,

It is hereby ORDERED that:

7. The Respondent's Motion to have receivability considered as a preliminary issue is granted. Consequently, the 12 September 2014 deadline for submission of the Respondent's substantive Reply is suspended.

8. The Applicant is to submit to the Registry in Nairobi, via the e-filing portal (CCMS), **no later than 21 September 2014**, his comments on the receivability of his claims and any documentary evidence he deems relevant to this particular issue.

9. The Applicant is to limit himself **solely** to the issue of receivability in his response and not make any submissions on the substantive aspects of his case.

10. In the event that the Application is found to be receivable, the Tribunal will provide the Respondent with further instructions on the deadline for submission of his substantive Reply.

(Signed)

Judge Vinod Boolell

Dated this 4th day of September 2014

Entered in the Register on this 4th day of September 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi