

UNDT/2009/054, Nwuke

UNAT Held or UNDT Pronouncements

The application was not receivable under article 13 of the UNDT Rules of Procedure because at the time the application was filed, there was no management evaluation pending. It was only on 21 October 2009 that the Tribunal received a copy of the request for management evaluation of the decision of 5 October 2009. The application was not receivable under article 14 of the UNDT Rules of Procedure because the administrative decision dated 5 October 2009 to fill the post related to an appointment and could not be the subject of interim relief in view of the exception contained in article 14. Additionally, there was no unlawfulness in the decision of the Respondent not to appoint the Applicant to the position of Director, TFED, UNECA. The Applicant had himself to blame as he declined to submit to an interview as requested. He could not invoke his own omissions to pray for an equitable remedy.

Decision Contested or Judgment/Order Appealed

The Applicant sought suspension of the administrative decision to fill the Post of Director, Trade, Finance and Economic Development Division (“Director, TFED”).

Legal Principle(s)

Article 14.1 of the UNDT Rules of Procedure, read together with article 10.2 of the UNDT Statute, puts a limit on the power of the Tribunal to order interim relief to suspend the implementation of an administrative action even if all the other requirements are met. Such interim relief cannot be ordered in cases of appointment, promotion or termination. The underlying philosophy behind the express exception in art. 14 is to avoid any paralysis of the work of the Organization and any hampering of its activities. Given the principles and purposes of the Organization as set out in Article 1 of the Charter, it would be indeed inadvisable to

issue suspension orders in relation to appointments or promotions when these measures have been implemented for the good running of the Organization. That exception however does not debar an applicant from seeking relief through alternative procedures.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Nwuke

Entity

ECA

Case Number(s)

UNDT/NBI/2009/066

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

26 Oct 2009

Duty Judge

Judge Boolell

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Jurisdiction / receivability (UNDT or first instance)

Staff selection (non-selection/non-promotion)

Applicable Law

Staff Rules

- Rule 11.2(a)
- Rule 11.2(c)

UNDT RoP

- Article 13.1
- Article 14.1

UNDT Statute

- Article 10.2
- Article 2.2