

UNDT/2014/023, Kashala

UNAT Held or UNDT Pronouncements

The Respondent submitted that the Application is not receivable *ratione temporis* since the Application was filed more than three years after the Applicant's receipt of the impugned administrative decision, however the Tribunal found the application to be receivable due to the exceptional circumstances of this case. Obligations under ST/AI/371: Under paragraph 24 of ST/AI/371/ it was the duty of the Applicant to file an appeal with the JDC within two months of the notification of the disciplinary measure meted out to him. Although the Applicant failed to submit a request for review of his summary dismissal to the JDC directly, the Tribunal deemed his request to OHRM to be a timely and proper appeal in light of the fact that OHRM treated it as an appeal by forwarding it to the JDC for processing. To the extent that OHRM transmitted his appeal to the JDC and informed him of this action, the Tribunal held that he had a right to rely on this information. Access to justice: The Tribunal noted that the Applicant was denied the right to have the disciplinary measure imposed on him reviewed by a supervisory body, the JDC. This denial was compounded by the fact that his case was never transferred to the UNDT under the transitional measures for determination. Under these exceptional circumstances, the Tribunal held that the decision to summarily dismiss the Applicant must be reviewed by the UNDT as this would have been the remedy open to the Applicant had his case been transferred pursuant to ST/SGB/2009/11. The Tribunal concluded that to invoke deadlines in such circumstances would be denying justice to an individual.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss him from service for serious misconduct.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Kashala

Entity

MONUC

Case Number(s)

UNDT/NBI/2012/023

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

28 Feb 2014

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Termination (of appointment)

Summary dismissal

Applicable Law

Administrative Instructions

- ST/AI/371

Secretary-General's bulletins

- ST/SGB/2009/11

Staff Rules

- Rule 11.2(a)

UNDT RoP

- Article 7.6

UNDT Statute

- Article 8.4

Related Judgments and Orders

UNDT/2011/067

UNDT/2011/215

UNDT/2012/139