

UNDT/2017/064, Coker

UNAT Held or UNDT Pronouncements

Noting that the Applicant had conceded that his application was filed after the time limit set out in art. 8.1(d)(i)(b), the Tribunal concluded that the application was not receivable *rationae temporis* because the Applicant failed to comply with the 90-day filing deadline set out in art. 8.1(d) of the UNDT Statute. The Tribunal then deliberated on the Applicant's assertion that his application is receivable because the interpretation of art. 8.1(d)(i)(b) is unfair to staff members as it favours an administration that has failed to address management evaluation requests in violation of staff rule 11.2(d). The Tribunal held that art. 8 does not require that the Administration respond to the request for management evaluation in order for an application to be received by the UNDT. Article 8(1)(d)(i)(b) of the UNDT Statute, ensures the receivability of an application by the UNDT despite the failure of the Administration to respond. The Tribunal noted that the Applicant was challenging the decision to terminate his continuing appointment in a case he had filed before the UNDT in 2016 and that this was the same administrative decision that he was challenging in this application. Further, the Tribunal noted that both applications were based on the same set of facts, raised the same legal issues, were predicated on the same management evaluation and contained the same arguments. Consequently, the Tribunal concluded that this application was a replica of the 2016 application and dismissed it.

Decision Contested or Judgment/Order Appealed

Termination of the Applicant's continuing appointment.

Legal Principle(s)

An applicant may not file multiple applications concerning the same administrative decision as this offends against the principle of *lis pendens* which disavows

simultaneous parallel proceedings between the same parties, concerning the same subject matter and founded on the same cause of action.

Outcome

Dismissed as not receivable

Outcome Extra Text

The application was not receivable rationae temporis and due to the doctrine of lis pendens.

Full judgment

[Full judgment](#)

Applicants/Appellants

Coker

Entity

UNMIL

Case Number(s)

UNDT/NBI/2017/025

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Aug 2017

Duty Judge

Judge Izuako

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Termination (of appointment)

Applicable Law

Staff Regulations

- Regulation 4.1
- Regulation 4.5

Staff Rules

- Rule 11.2(a)
- Rule 11.2(d)

UNDT RoP

- Article 7.1(a)

UNDT Statute

- Article 8.1(d)(i)