

# UNDT/2021/103, Mkhabela

## UNAT Held or UNDT Pronouncements

The Tribunal concluded that the application was not receivable both *ratione temporis* and *ratione materiae*. With regard to *ratione temporis*, the Tribunal noted that the Applicant became aware of the contested decision on 31 May 2019. She then ought to have requested management evaluation by 30 July 2019. She however, submitted her request on 30 December 2019, five months late, and outside the 60-day period. The Tribunal thus held that her request for management evaluation was time-barred and therefore, the application was not receivable. The Tribunal emphasized that it was not competent to extend or waive deadlines pertinent to the administrative stage of the proceedings. On the prong of *ratione materiae*, the Tribunal recalled that decisions having no direct impact on the Applicant's terms of employment were not receivable, among them, various decisions on restructuring and reorganization leading to abolishment of post are considered prefatory acts. The impugned decision to depart from the terms of the Transition Plan constituted such a prefatory act; as such, the application was not receivable.

## Decision Contested or Judgment/Order Appealed

The Applicant contested UNDP's decision to deviate from the agreed Transition Plan for restructuring the UNDP Resident Coordinator's Office in Eswatini.

## Legal Principle(s)

Pursuant to staff rule 11.2(c), a request for management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received the notification of the administrative decision to be contested. Pursuant to staff rule 11.2(c), a request for management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received the notification of the administrative decision to be contested. As per the settled jurisprudence, the Dispute Tribunal may only review decisions that have been the subject of a proper and timely request for management evaluation.

## Outcome

Dismissed as not receivable

Outcome Extra Text

## Full judgment

[Full judgment](#)

Applicants/Appellants

Mkhabela

Entity

UNDP

Case Number(s)

UNDT/NBI/2021/62

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

31 Aug 2021  
Duty Judge  
Judge Milart  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Jurisdiction / receivability (UNDT or first instance)  
Management Evaluation  
Subject matter (ratione materiae)  
Temporal (ratione temporis)  
Management Evaluation  
Time limit  
Applicable Law  
Staff Rules

- Rule 11.2(c)

Related Judgments and Orders  
2011-UNAT-182  
2014-UNAT-481  
2018-UNAT-844  
2012-UNAT-273