

# **UNDT/2023/080, Mushumba**

## **UNAT Held or UNDT Pronouncements**

Having received the notification of the disciplinary measure on 20 March 2023, the Applicant should have filed his application at the latest by 19 June 2023. The evidence on record shows, however, that the Applicant only filed his application on 21 June 2023.

In his submission dated 17 July 2023, the Applicant recognized his lateness and asked the Tribunal to exceptionally receive his application for several reasons. These reasons are not supported by evidence, and the Applicant did not explain how the alleged challenges impacted his ability to timely file his application.

While there are circumstances where a request for a waiver may exceptionally be filed after the time limit has run out, they must show that the Applicant was not able to file such request beforehand, like a technical failing of the Court Case Management System or a medical incapacity.

However, the “challenging” context that the Applicant described is unsupported by evidence, and he also never requested an extension of time to file his application or a waiver of the statutory time-limit.

Indeed, the Applicant only raised the alleged challenges in filing the application when faced with the Respondent’s request to have it dismissed on receivability grounds, and his allegations also do not meet the standard of exceptional circumstances.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contests the decision of the High Commissioner to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice, and without termination indemnity, for having engaged in sexual harassment and conduct unbecoming of an international civil servant.

## Legal Principle(s)

Time limits are to be strictly enforced for filing applications and appeals, and lateness even by several minutes, several hours, or several days is irrelevant. Requests for extensions of time or to waive the statutory time limit to file an application may be considered if exceptional circumstances justify it. The Appeals Tribunal has defined them as circumstances beyond the Applicant's control preventing him or her from timely exercising the right to appeal.

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Mushumba

## Entity

UNHCR

## Case Number(s)

UNDT/GVA/2023/033

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

28 Jul 2023

## Duty Judge

Judge Sun

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Temporal (ratione temporis)

Jurisdiction / receivability (UNDT or first instance)

## Applicable Law

UNDT Statute

- Article 8.1(d)(ii)
- Article 8.3

UNDT RoP

- Article 9

## Related Judgments and Orders

2012-UNAT-275

UNDT/2020/172

2010-UNAT-029

2012-UNAT-191

2021-UNAT-1174

2022-UNAT-1289

2022-UNAT-1289