

2024-UNAT-1408, Hydar Daniel Mlouk Majook

UNAT Held or UNDT Pronouncements

The UNAT agreed with the UNDT's conclusion on the receivability of the application but suggested that the UNDT should have applied a different methodology for determining it.

The UNAT held that the staff member did not have standing before the UNDT regarding claims made in his former capacity as an individual contractor, and thus this claim failed on *ratione personae* grounds. The other claims made in his former capacity as staff member failed on *ratione materiae* grounds. He failed to prove that a specific request had been made to the Administration for certification of service. Absent any request, it cannot be said that a positive or implied administrative decision existed. In any event, the staff member did not request management evaluation of the contested decisions.

The UNAT found that the staff member had not discharged his burden to satisfy it that the UNDT's Judgment was defective on any of the grounds of appeal.

The UNAT was of the view that the staff member's argument with regard to his ignorance of the UNDT had no relevance. In any event, that argument does not have a chance to succeed because, ignorance cannot be invoked as an excuse.

The UNAT dismissed the appeal and affirmed the UNDT's Judgment.

Decision Contested or Judgment/Order Appealed

A former individual contractor and former national staff of UNMISS contested several decisions: (a) not to pay him his contractor's fee for 2009 and his salary for 2011, (b) to terminate his appointment in 2012 without serving him with a letter of termination with clear reasons, and (c) not to issue him a certificate of service.

In Judgment No. UNDT/2023/002, the UNDT rejected the application as not receivable *ratione temporis*.

The staff member appealed.

Legal Principle(s)

The appeals process under the internal justice system in place is of a corrective nature. The role of the UNAT is not to review the case *de novo*.

It is the appellant's burden to satisfy the UNAT that such errors exist and, as such, the scope of the appeal is normally determined by the party who initiated the appeals process.

Receivability is a gateway test that, if successful, enables the Tribunal to review the case on the merits. It is a logical sequence of tests that must normally be satisfied in the following order: *ratione personae*, *ratione materiae*, and *ratione temporis*.

It is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Hydar Daniel Mlouk Majook

Entity

UNMISS

Case Number(s)

2023-1792

Tribunal

UNAT

Registry

New York

Date of Judgement

8 Apr 2024

President Judge

Judge Sheha

Judge Colgan

Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNAT)

Appeal

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Personal (ratione personae)

Temporal (ratione temporis)

Procedure (first instance and UNAT)

Oral hearings

Applicable Law

Administrative Instructions

- ST/AI/1997/7
- ST/AI/2013/4

Staff Rules

- Rule 11.2
- Rule 9.12

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1
- Article 2.2

UNDT Statute

- Article 8.1(a)
- Article 8.1(c)

Related Judgments and Orders

2023-UNAT-1402

2017-UNAT-737

UNDT/2023/002

2018-UNAT-849

2012-UNAT-218