



Benue: Judge Nkemdilim Izuako

Forum: Nairobi

Registrar: Jean-Pelé Fomété

NYOMERA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Duke Danquah, OSLA

Counsel for Respondent:
Steven Dietrich, Nairobi Appeals Unit

Introduction

1. The Applicant joined the United Nations International Criminal Tribunal for Rwanda (ICTR) on 15 April 1998, as an investigator with the Investigations Section of the Office of the Prosecutor (OTP) in Kigali. As at January 2008, the Applicant had almost 10 years of continuous service and experience as a Senior Investigator. At the time of the non-renewal of his contract on 31 December 2007, the Applicant was holding an appointment at the P3, step 9, level.

2. The Applicant is contesting the decision by the Joint Appeals Board (JAB) in Nairobi to award him six months' net base salary as compensation for the violation of his due process rights on the ground that it was insufficient and inadequate.

Facts

3. The ICTR was established by United Nations Security Council Resolution 955¹ of 8 November 1994 as *ad hoc* Tribunal for the purpose of prosecuting persons responsible for the genocide and other crimes against humanity. As the

6. A substantial reduction in the number of posts in the Investigations Section by the end of 2007 was envisaged given the anticipated decrease in the number of trials for 2008

7. On 16 July 2007, the Registrar of the ICTR constituted the Staff Retention Task Force (SRTF) to develop criteria to assess staff performing similar functions across the ICTR. Staff members were notified of the establishment of the SRTF by Information Circular No. 49, dated 16 July 2007. The SRTF's role was to advise management on how to retain staff critical functions in a fair, objective and transparent manner.

8. By way of Information Circular No. 77, dated 3 October 2007, addressed to all staff members, the Registrar transmitted the final report on the staff retention criteria that would be used by Programme Managers to undertake a comparative review of the staff in their respective sections.

9. Staff were to be assessed for retention on the basis of the following criteria:

- a. Competence to perform the remaining tasks (40 points);
- b. Multi-functionality and continuity (20 points);
- c. Length of service (24 points); and
- d. Other considerations, such as
 - i. Gender (10 points);
 - ii. Geographical distribution (3 points); and
 - iii. Pension eligibility (3 points).

10. The SRTF agreed that certain criteria such as competence and continuity would be given more weight than the other listed criteria. The other criteria, such as length of service, gender, geographical distribution and pension eligibility would come into play in cases of a tie between two staff members in establishing whose appointment to renew.

11.

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and accepted by the Secretary-General was sufficient given the circumstances of the present case.

32. The Respondent argued that the compensation awarded was sufficient, as the Applicant had demonstrated that the decision not to renew his contract was tainted by prejudice, bias **o**ther extraneous factors.

33. In sum, the Respondent's submission was that the Applicant had not

38. The JAB made the recommendation for compensation in the form of six (6) months' net base salary on grounds that staff retention exercise, as applied to the Applicant, violated his due process rights.

39. In respect of the Applicant's pension entitlements, the Tribunal notes that the Respondent had submitted:

[G]iven that Mr. Nyomera was awarded (6) months net base salary, his pension contributions for those additional months would have exceeded the ten (10) year mark and, as such, he would be entitled to a lump sum pension grant.

40. The Tribunal hereby upholds the JAB's award of compensation in the form of six (6) months' net base salary and orders payment of the same to present Applicant, Madame Colleen Mudamburi.

41. The Tribunal also orders that the Respondent ensure that the pension rights of the deceased are restored in a manner compatible with both of the [retiree]