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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/099

Judgment No.: UNDT/2019/087

Date: 20 May 2019

Original: English

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**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ATUYA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**  
Edwin Nhliziyo

**Counsel for the Respondent:**  
Nicole Wynn, AAS/ALD/OHR  
Nusrat Chagtai, AAS/ALD/OHR



application, held a fixed-term appointment expiring 31 December 2018.<sup>1</sup>

8.

b. That attempts to force her out of the United Nations have been ongoing for at least two years. On two occasions, she was forcibly and unlawfully detained against her will for reasons that have never been clearly explained to her but were based on a misdiagnosis of her illness. There were veiled allegations that she was either abusing alcohol or was mentally sick and she suffered the humiliation of being frog marched out of her residence and detained for several days in MINUSCA's Level II hospital.

c. The latest detention was triggered by her filing a complaint after she was physically assaulted but ended up being the victim by being tricked into going to the Level II Hospital for x-rays and being detained and evacuated to Kenya.

d. The decision to retrench her was taken while she was on forced sick leave and the "whole fiasco was caused by UN doctors rushing to judgment about the exact nature of her illness".

e. MINUSCA twice confined her against her will based on a misdiagnosis of her medical condition. Her treatment on both occasions was a violation of both her rights as a staff member, and "her human rights against false arrest". On both occasions, there was no evidence that she was a danger to herself or the community.

13. The Management Evaluation Unit (MEU) conveyed its evaluation on 5 October 2018 in which it decided:

a. That the decision on the non-extension of the Applicant's appointment had been rendered moot by the fact that, on 4 September 2018, the MINUSCA Chief of Section, Human Resources Management Service, had confirmed that her appointment would be extended through 31 December 2018.

b. That her request for management evaluation in relation to the decision to hospitalize her was not receivable because, on 13 July 2016, she had submitted a MER of an earlier decision to forcibly remove her

from her home and detain her in the MINUSCA level II Hospital in Bangui for six days and subsequently medically evacuate her to Nairobi for treatment. The Applicant later withdrew that MER and MEU closed that file on 29 March 2017. According to the MEU, the Applicant's 28 June 2018 MER challenged the same substantive issues and could not be revisited.

### **receivability**

14. The Application is not receivable *ratione materiae*. The Applicant does not challenge a reviewable administrative decision. Article 2.1(a) of the Dispute Tribunal's Statute provides that it is competent to hear and pass judgment on an applica

did not request management evaluation until 27 June 2018, about 90 days later.

18. The Applicant's claim that she was unable to "deal with the issue until she was released from the medical facility" on 28 May 2018 is unsupported. On the contrary, according to the Applicant, she could manage her own affairs and make decisions for herself during the relevant period. Indeed, she identified her own consultant psychiatrist in Nairobi and admitted herself into the Nairobi addiction treatment center where she was also able to engage representation in this case while admitted.

### **Considerations**

19. It is settled law that to be reviewable, an administrative decision must have the key characteristic in that it must "produce direct legal consequences" affecting a staff member's terms or conditions of appointment. What constitutes an



Entered in the Register on this 20<sup>th</sup> day of May 2019

*(Signed)*

Legal Officer, for  
Abena Kwakye-Berko, Registrar, Nairobi