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RIBUNAL

Case No.: UNDT/NBI/2020/019

Judgment No.: UNDT/2020/035

Date: 5



## Considerations

7. The Tribunal has reviewed the application, and finds that it raises a preliminary issue of jurisdiction which may be addressed *sua sponte* and without hearing the Respondent. The jurisprudence of the United Nations Appeals Tribunal authorizes the Dispute Tribunal to consider on its own motion whether it has jurisdiction or competence to review a staff member's application.<sup>1</sup>

8. Staff rule 11.2(b) sets out two conditions under which an Applicant is exempted from requesting a management evaluation. It should be read together with art. 8 of the UNDT Statute to determine whether the application is receivable by the UNDT. Article 8 provides in relevant part that:

An application shall be receivable if:

(c) An Applicant has previously submitted the contested administrative decision for management evaluation, where required.

Staff rule 11.2 (b) provides that:

A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary – General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following completion of a disciplinary process is not required to request a management evaluation.

9. The United Nations Appeals Tribunal (UNAT) held in *Diallo* that:

It follows that an application before the UNDT without a prior request for management evaluation can only be receivable if the contested administrative decision has been taken pursuant to advice from a technical body or if the administrative decision has been taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to Staff Rule 10.2 following the completion of a disciplinary process. In all other cases, where the request for management evaluation is a mandatory first step before coming to the internal justice system, this request and management

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evaluation shall provide the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency.<sup>2</sup>

10. This application does not fall under any of the stipulated exceptions to obtaining a management evaluation as a first step to invoking the powers of the Tribunal.

11. Further, assuming the Applicant had indeed requested and received the management evaluation response on 30 April 2016, as he claims, he would still be out of time to file the application pursuant to art. 8.1(i)(a) of the UNDT Statute which stipulates that an application is receivable if filed within 90 calendar days of an applicant's receipt of the management evaluation response.

12. The Applicant states that the contested decision was made on 9 December 2009 and that he became aware of it on 1 April 2011. Article 8.4 of the UNDT Statute provides that

**Judgment**

14. The application is not receivable and it is dismissed in its entirety.

*(Signed)*

Judge Rachel Sophie Sikwese

Dated this 5<sup>th</sup> day March 2020

Entered in the Register on this 5<sup>th</sup> day March 2020

*(Signed)*

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi