1. Introduction

1.1. The Applicant joined the International Criminal Tribunal for Rwanda (ICTR) on 14 March 2000 as an Administrative Assistant in the Office of the Registrar on secondment from the United Nations Development Programme (UNDP) office in New Delhi, India, at the FS-3 step 1 level.

1.2 On 21 December 2000, the Applicant sought review of his entry level. By memorandum dated 9 February 2001, the then Chief of Personnel in ICTR informed him that "in the absence of grade equi1(Tw t)Twqu301, th TD". 0 Tw( )Tj10.0D-0.03(hi42)Tj225606nal fo

1.5 On 2 May 2008, the Administrative Law Unit informed the Applicant of the outcome of his request for administrative review. On 30 June 2008, the Applicant filed a Statement of Appeal with the now defunct New York Joint Appeals Board. The Respondent's Reply was filed on 2 September 2008. On 28 October 2008, the Applicant filed his observations on the Respondent's Reply.

1.6 On 17 September 2009, the parties in this case attended a Directions Hearing before the New York UNDT. The Applicant's counsel participated via teleconference from India. Following the Directions Hearing, Adams J of the New York UNDT made the following Orders:

> "1. The application is transferred to the Nairobi Registry of the Tribunal.
>
> 2. The Applicant by 24 September 2009 to provide a statement to the Nairobi Registry of the Tribunal setting out the evidence on which he relies to establish exceptional circumstances justifying waiver of the time limit prescribed by Staff Rule 111.2.
>
> 3. The Applicant by 24 September 2009 is to provide a written submission to the Nairobi Registry of the Tribunal setting out the reasons justifying waiver, including references to any decisions of the UNAT.
>
> 4. The Respondent by 1 October 2009 is to provide a statement to the Nairobi Registry of the Tribunal to refute and/or contradict the evidence on which the Applicant relies."

1.7 On 27 January 2010, the Nairobi Registry of the UNDT, (by which time had become seised of the matter), informed the Parties as follows:

> "Due to an oversight, it appears that your Motion for waiver of time limits was not transmitted to the Respondent for his comments prior to its determination by the Judge presiding over your case.
>
> Please accept our apologies and our reassurance that this is not a common occurrence in the Registry. By copy of this email I am transmitting the Motion to the Respondent for his comments, if any.

> As Article 35 of the UNDT Rules does not prescribe the timeline for Respondent's comments, the Respondent is directed to submit his comments, if any, by close of business11 February 2010 to avoid further delays in proceeding with this matter."

1.8 On 12 February 2010, the Respondent addressed an email to the Nairobi Registry of the UNDT advising, inter alia, as follows:

> "Please note that the Respondent does not oppose the Applicant's motion for waiver of time limits to file an application to the Tribunal.
>
> However, we reiterate our original position as already stated in our submission that the Applicant's substantive appeal is time-barred pursuant to former staff rule 111.2(a)."

1.9 The questions for determination are whether this Application is time-barred and, if so, whether the Applicant can justify a waiver of the time limits to file his Application out of time.

2. Applicant's submission on the exceptional circumstances justifying a waiver of time-limits

2.1 The Applicant submits the following as the exceptional reasons that prevented him from filing his Application by 8 April 2001(bruary(si)-6iof)c-0.06 Tc-0.1icawe rei5 -1..1icaw(m)8.eva

prove that the atmosphere in ICTR in the preceding months was not at all normal, but very fearful and tense.

(iv) That it was not a local issue which was covered by the Local Press but the incident went right up to the Hague where the ICTR Spokeswoman had to respond to these allegations of racism.

(v) That the fact that the Registrar and the Chief of Human Resources in the ICTR agreed to give all staff members concerned the opportunity to present their cases with respect to correction of entry level and classification of posts demonstrates that it was realized that a sizeable number of staff did not feel satisfied by the way grades and steps were awarded.

(vi) That the Registrar reviewed his case in October 2006 and that this goes to prove that the Registrar did not think it was a time-barred case and that if at all the case was barred by limitation, it was revived by the review.

(vii) That the ICTR Chief of Human Resources again evaluated the Applicant's case in December 2006 and that this goes to prove that the former also did not think it was a time-barred case.

(viii) That on 7 March 2007, the Registrar promised the Applicant an impartial review of his case and that this goes to prove that even at that stage it was not a time-barred case.

3. Applicable law

3.1 Former Staff Rule 111.2 (a) described the first step required for a staff member to initiate an appeal process and provided, *inter alia*:

> "(a) A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing."

3.2 Former Staff Rule 111.2 (f) provided that:

> "(f) An appeal shall not be receivable unless the lime-limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal."

3.3 Rule 11.2, sub-paragraphs (a) and (c), of the current Staff Rules, in place

> “(c) An applicant has previously submitted the contested administrative3 Tmldecision for management evaluation, where required;3 Tmland
>
> (d) The3 Tmlapplication is filed within the following deadlines:
>
> (i) In cases where a management evluation of the contested decision is required:
>
> a. Within 90 ca Tmllendar s of the aplica Tm8(n)-0.9(t')10.7(s recei)5.5(pt)5.7(of t)5.6(h)-0.9(e3 Tmlrespo
>
> b. Within 90 calendar days of the3 Tmlexpiry of the relevant response3 management evaluation if3 Tmlno response3 Tmlto the request ws3 Tr shall be 30 c Tmlaendar days after the submission of the decision to ma for disputes arising at Headquarters and 45 calendar days for other offic

3.5 Article 8.3 of the Statute provides that:

> [illegible]

4. *Considerations*

4.1 The3Tribunal notes that the3Applicant was advised of the contested decision on 9 February 2001. However, the3Applicant did not request administrative review until 28 March 2008, approximately seven years after the contested decision was conveyed to him. The3Applicant claims that exceptional circumstances existed warranting the waiver of the3time limits by the3Tribunal. The3Applicant contends that he3did not submit a3timely request for review based on, inter alia, the3tense3and fearful atmosphere that p Tmlrevailed in ICTR starting in3January 2001.

4.2 In UNDT Judgment No. 062,

this respect in *Rosca*. In the same case, Adams J adopted the test of "exceptional" as adopted by Ebrahim-Carstens J in UNDT Judgment No. 036, *Morsy* (2009):

> "exceptional means, in substance, something out of the ordinary, quite unusual, special, or uncommon, rather than regular or routine or normally encountered but it need not be unique, unprecedented or very rare."

4.3 It is clear from the provisions above and the Dispute Tribunal's jurisprudence that a request for an administrative review or management