Judgment No. 2014-UNAT-411

[redacted]

Counsel for Respondent/Applicant: Samson Nyaberi

Counsel for Appellant/Respondent: Simon Thomas

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2013/023, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 18 February 2013 in the case of Igbinedion v. Secretary-General of the United Nations . The Secretary-General appealed on 22 April 2013, and on 24 June 2013, Mr. Joseph Igbinedion filed an answer, which he perfected on 8 July 2013.

Facts and Procedure

2. Mr. Igbinedion joined the United Nations Human Settlements Programme (UN-Habitat) in Nairobi in 2001 as a consultant. In January 2004, he was appointed on a fixed-term appointment, which was extended for varying periods of time to carry him through to 18 December 2010. He was then a P-3 Editor with the Governing Council (GC) Secretariat, UN-Habitat.

3. In an e-mail dated 1 December 2010, the Director of UN-Habitat's Programme Support Division informed Mr. Chris Mensah, who was the Secretary to the GC and Mr. Igbinedion's supervisor:

> After our discussion, I am now confirming that we can extend [Mr. Igbinedion]'s contract for another 4 months. This is to take him to just after the GC, ie 19/4/2011 and will help you out as you approach the GC. ....

General Assembly resolution 63/250 also has [an] in-built mechanism for dealing with the issue. Your predecessor had stated that financial arrangements had been made to guarantee contracts for all staff for two years." Mr. Igbinedion asked the Executive Director to give him eight additional months so that he would have a one-year extension.

5. On 18 March 2011, Mr. Mensah wrote to Mr. Igbinedion:

> With reference to my discussion with you on 14 March 2011 and following the Memo [of] the Executive Director of UNHABITAT to all Directors dated 21 February, this is to confirm, with pain that your post is among those that we will not be reviewed [sic] when your contract expires on 18 April 2011. A formal letter to the effect will be coming from the relevant offices.

6. Mr. Mensah wrote to Mr. Igbinedion again on 31 March 2011:

> As you may recall from our discussion in December 2010 when the duration of your contract extension arose, you were informed that the organization was only able to extend your contract on an exceptional basis to cover the Governing Council by four months (up to 18 April 2011) with no expectation of further extension.
>
> In addition to the above, the non-renewal of your contract is informed by the difficult financial situation the organization is facing and the imminent commencement of the organizational review. This, among other things, compels the [Executive Director] to issue directives freezing recruitment, the non-renewal and the curtailment of certain types of appointments, the institution of organizational review and other necessary cost cutting measures.
>
> Given that your contract was coming to an end, my email to you was to convey the situation faced by the organization which reiterated the organization's difficulties in extending your contract any further as already communicated to you in December 2010.
>
> In response to your reference on the [Executive Director's] memo, I would like to clarify that this simply reinforces the organization's inability to extend your contract any further.

7. On 9 April 2011, Mr. Igbinedion requested management evaluation of the decision not to extend his appointment beyond 18 April 2011. The Management Evaluation Unit (MEU) issued a decision on 10 May 2011, rejecting Mr. Igbinedion's request on grounds of receivability. The MEU determined that the decision to be evaluated was the one taken on 1 December 2010, when the Administration renewed Mr. Igbinedion's contract for four months.

8. Mr. Igbinedion appealed to the Dispute Tribunal on 8 May 2011. However, due to technical glitches his application did not reach the UNDT until 16 May 2011. In Judgment No. UNDT/2013/023, the Dispute Tribunal concluded that Mr. Igbinedion's application was receivable. Contrary to the MEU finding, the UNDT determined that the contested decision was that dated 18 March 2011 as embodied in Mr. Mensah's e-mail informing Mr. Igbinedion that his contract would not be renewed beyond 18 April 2011. On the merits, the Dispute Tribunal found that the non-renewal of Mr. Igbinedion's appointment was properly based on efforts by the Organization to streamline its practices in line with the funding situation it faced. However, it also found that the repeated renewal of Mr. Igbinedion's appointment without a break-in-service with the same conditions of service created a legitimate expectation of renewal in his mind "because of the legislative vacuum at the time and the absence of clear rules governing temporary appointment". The Dispute Tribunal awarded Mr. Igbinedion two months' net base salary for the frustration of this expectancy.

The Secretary-General's Appeal

9. The Secretary-General submits that the UNDT erred in finding that Mr. Igbinedion was not advised of the contested decision until 18 March 2011 and his application was therefore receivable. In his view, the correspondence of 18 March 2011 was merely a reiteration or restatement of the decision of 1 December 2010; it is not a new decision. He notes that on 1 December 2010 Mr. Igbinedion was clearly advised that his contract would not be renewed beyond 18 April 2011 and it is clear that Mr. Igbinedion himself understood the effect of the 1 December 2010 decision. The Dispute Tribunal should have found that Mr. Igbinedion's request for management evaluation filed on 9 April 2011 was more than 60 days after the 1 December 2010 notification of the decision and was accordingly time-barred.

10. The Secretary-General also submits that the UNDT erred both in fact and in law when it held that the correspondence of 1 December 2010 could not operate as an administrative decision capable of triggering the time line for requesting management evaluation because as at December 2010, the issue of financial constraints had not been disclosed. The Secretary-General notes that financial constraints were stated as an imminent concern and a justification for Mr. Igbinedion's non-renewal prior to December 2010. He is of the view that there is no requirement at law nor any jurisprudential precedents that requires that a staff member be advised of the particularities of the reasons as part of the notification of the

decision of non-renewal, or that without such details the deadline for requesting management evaluation would not begin from the date of the written notification of an administrative decision. Indeed, such a holding is contrary to the rationale of the management evaluation process, which exists to inter alia allow a decision to be explained and to be corrected, where warranted.

11. On the merits, the Secretary-General submits that the Dispute Tribunal erred in concluding that the Administration had created an expectancy of renewal in Mr. Igbinedion's mind by repeatedly extending his appointment, which led Mr. Igbinedion to believe that his

> when your contract expires on 18 April 2011. A formal letter to the effect will be coming from the relevant offices.

21. In the letter of 1 December 2010 there was no mention of non-renewal of Mr. Igbinedion's appointment after 18 April 2011; it was in the letter of 18 March 2011 that Mr. Igbinedion was told his post was among those that would not be renewed beyond 18 April 2011. The mere use of the word "confirm**"** in that e-mail does not necessarily refer to the letter of 1 December 2010. Just as it was stated in the e-mail of 18 March 2011, it was to confirm the discussions Mr. Mensah had with Mr. Igbinedion on 14 March 2011. It is in the letter of 18 March 2011 that the decision of non-renewal was communicated to Mr. Igbinedion. Thus the Secretary-General's submission that the letter of 18 March 2011 was a reiteration of the decision of 1 December 2010 is unsustainable.

22. Accordingly, we affirm the UNDT's decision that the 60 days' deadline for Mr. Igbinedion to request management evaluation started from 18 March 2011, the date of the impugned decision; and therefore his application was receivable pursuant to Staff Rule 11.2(c).

Expectancy of renewal

23. To begin with, the Appeals Tribunal refers to Staff Rules 4.12 and 4.13 which explicitly state that temporary and fixed-term appointments do not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length-.00carrywervice47.6(t)5rarc

26. It contravenes the clear and consistent jurisprudence of the Appeals Tribunal that the renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal; unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. The jurisprudence requires this promise at least to be in writing.

27. There is no evidence that the Administration made any express promise that gave Mr. Igbinedion the expectancy that his appointment would be renewed.

28. The UNDT made a finding that "the non-renewal of [Mr. Igbinedion's] appointment was properly based on efforts by the Organization to streamline its practices in line with the funding situation it faced". Having made such a finding, it was irrational of the UNDT to further hold that "the Respondent's actions in respect of [Mr. Igbinedion's] appointment created an expectancy of renewal because of the legislative vacuum at the time and the absence of clear rules governing temporary appointment".

29. There is no basis for the UNDT to hold that there was a "legislative vacuum". There

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)	(Signed)	(Signed)
Judge Adinyira, Presiding	Judge Faherty	Judge Simón

Entered in the Register on this 13th day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar