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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/046

Judgment No.: UNDT/2020/221

Date: 31 December 2020

Original: English

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**Before:** Judge Francis Belle  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

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v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**  
Irene Kashindi

**Counsel for the Respondent:**  
Nicole Wynn, AAS/ALD/OHR, UN Secretariat  
Rosangela Adamo, AAS/ALD/OHR, UN Secretariat



7. On 31 August 2020, the Director of Mediation Services wrote to the Registry of the UNDT seeking more time for the parties to continue with their “good faith efforts” to resolve this matter without recourse to litigation.

8. On 2 September 2020, the Tribunal issued Order No. 168 (NBI/2020) granting the extension of time that was sought.

9. On 2 October 2020, the Director of Mediation Services informed the Tribunal that the parties were continuing their discussions in good faith towards a partial settlement of the dispute, and that an extension of the suspension of proceedings would facilitate finalization of those discussions.

10. On 6 October 2020, the Tribunal issued Order No. 195 (NBI/2020) to allow more time for the partial settlement to be finalised.

11. On 15 October 2020, the Applicant informed the Tribunal that the dispute had been partially settled and withdrew that part of the claim which was no longer in dispute.

12. The Tribunal held a case management discussion with the parties on the same day to discuss delineation of the issues that remain in dispute.

13. On 19 October 2020, the Tribunal issued Order No. 205 (NBI/2020) to schedule the filing of further submissions on receivability and the need for an oral hearing. These submissions were filed and responded to as directed in the Order.

14. On 16 November 2020, the Tribunal held another case management discussion with the parties.

15. On 10 December 2020, the Tribunal ruled that the matter is suitable for determination on the basis of the parties written submissions and directed the parties to file their closing submissions.

16. The parties filed their respective closing submissions on 18 December 2020.

## **Facts and Submissions**

17. The Applicant claims to have been sexually harassed by a colleague (VL) on 8 July 2015. She reported the matter to her supervisor on the same day.

18. On 5 and 6 June 2016, she reported verbal harassment and abuse by the same colleague.

19. On 20 August 2017, the Applicant reported the alleged sexual abuse to the Office of Internal Oversight Services (“OIOS”).

20. On 17 November 2017, the Applicant sought management evaluation of “various breaches and actions including matters dealing with abuse of authority, performance evaluation, harassment and failure to take action on [her] complaint on sexual exploitation and abuse.”

21. The Management Evaluation Unit (“MEU”) responded to the Applicant on 28 November 2017. MEU found the Applicant’s request for review not receivable as she had not identified a reviewable administrative decision. On the alleged sexual harassment and abuse, MEU advised the Applicant to report the matter to OIOS; which she had already done.

22. On 24 November 2017, MONUSCO issued job opening (“JO”) 81515 for the Position. The Applicant applied for the position on 27 November 2017. MONUSCO Human Resources Section (“HRS”) screened in 92 job applicants for the Position, including the Applicant, and invited them to take a written assessment. The Applicant did not sit the test.

23. On 22 August 2018, the Investigation Division of OIOS issued an investigation report in which it found that the Applicant’s claims were substantiated. OIOS forwarded the report to the United Nations Development Programme (“UNDP”), as the subject of the complaint was a UNDP staff member.

24. On 14 March 2019, the Applicant filed a second request for management



Applicant was given full and fair consideration in the selection exercise to the extent that she participated in it. Having declined to sit the assessment test, the Applicant's candidature could not be further considered.

31. The Applicant contends that it is not possible to isolate her claims. All the claims should be looked at as part of a whole chain of events which constituted continuing wanton abuse of authority, humiliation and distress the Applicant continued to receive which had adverse effects on her health leading to hospitalization for depression-related sickness.<sup>1</sup> All the actions and omissions in question have direct legal consequence and constitute breaches of the "terms of appointment or contract of employment." The jurisprudence cited by the Respondent cannot therefore apply

32. The Applicant takes issue with the fact that OIOS took almost two years to reply to her complaint on sexual harassment, and the Respondent close to four years from the date of the incident in 2015 to hurriedly communicate the outcome. The Applicant is aggrieved with the decision to close the matter without having spoken to her. The investigation, the Applicant submits, was improperly conducted and the Respondent's submissions on receivability clearly shows that he has misunderstood the sequence of events as complained of by the Applicant. The Applicant's complaints show "wanton and continuous harassment" by her superiors, which conduct the Respondent had a duty to protect her from but did not.

### **Considerations**

33. The Tribunal considers that there are three matters to be resolved. Firstly, there is the allegation of continued harassment, unfair treatment and abuse of authority to which the Applicant allegedly fell victim over a period of time. Secondly, there is the more precise complaint of a non-selection after her application to be considered for a post; thirdly, the alleged mishandling of an alleged sexual harassment complaint.

34. The Tribunal recalls that there is an established procedure for dealing with

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<sup>1</sup> Annex 9, application.







the complaint and two years after it had been delegated to the OIOS for investigation.

46. But the Applicant had already filed her application on the basis that she had received no response to her complaint. The Tribunal therefore finds that at the time the application was made, she accurately stated that there was no response to her complaint that she had been made aware of; thus, making this application receivable.

47. The Tribunal also finds that it is unsatisfactory for MEU to have found the request for review not receivable on grounds that the Applicant failed to make an application after her first request for management evaluation, even though the Applicant up to that point faced the situation where there had been no satisfactory response to her complaint of sexual harassment.

48. Under ordinary circumstances, it would be with the input of the investigators being provided that either the complainant takes action, or the Administration takes action against the perpetrator of the sexual harassment. The Applicant cannot be blamed for having proceeded on the basis that no report had been issued up to the time that the application was filed.

49. Indeed, the timing of the OIOS report and the decision being taken not to pursue the complaint appears almost retaliatory in the circumstances, and if not retaliatory in some way intended to ensure that the application would fail without any proper assessment.

50. The Tribunal is aware that the Administration may have some discretion with regard to taking action in cases of allegations of sexual harassment. But the seriousness of such a charge requires that the A

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