



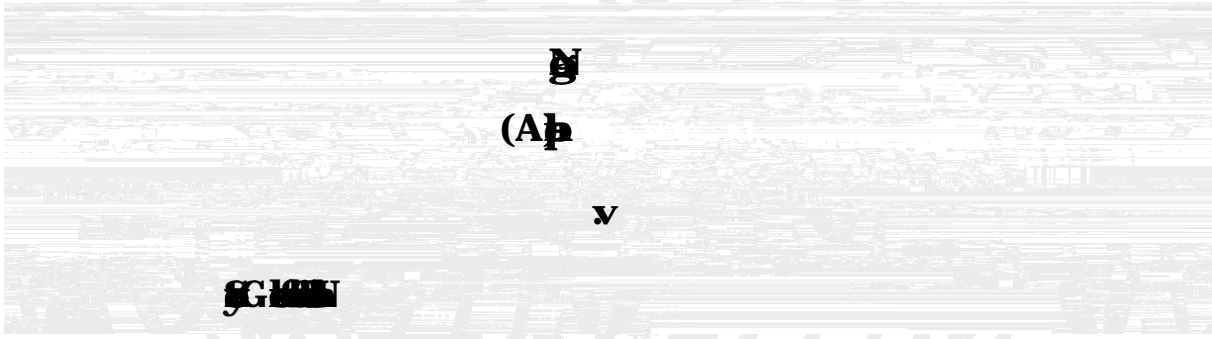
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Judgment No. 2018-UNAT-823



**UN
(Ap
v**

SECRET



Counsel for Mr. Ngoga:

Angela Kobel/Sharon Kemitare

Counsel for Secretary-General:

Patrick Killebrew

JUDGE SABIN KHEM , PRESIDING .

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THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2018-UNAT-823

in

Ngoga

19. Mr. Ngoga submits that the UNDT erred in law and fact in finding that his application was time-barred as “he was attempting to have the matter resolved by engaging the Ombudsman and the Under[-]Secretary[-]General [for] Management”. He submits that the rejection of his application for dependency benefits for his adopted children was communicated to him on 25 January 2016 and only three days later, on 28 January 2016, he contacted the Office of the Ombudsman, suggesting, *inter alia*, to offset the repayment of the claimed overpayment of dependency benefits for his spouse with the dependency benefits for his adopted children to which he “would have been entitled”. Mr. Ngoga claims to have been subsequently “actively engaged” in finding a solution with the Office of the Ombudsman and argues that the UNDT failed to take into consideration the considerable delay caused by the Ombudsman’s late response in July 2016 to his request for advice on the way forward.

20. Mr. Ngoga further asserts that “[t]he (...) Dispute Tribunal committed an error in procedure, such as to affect the decision of the case when it failed to properly evaluate the evidence brought before it”. The UNDT “clearly ignored the fact that [he] was not in fact doing

his adopted children, the UNDT correctly held that Mr. Ngoga had failed to seek management evaluation of the decision of which he had been notified on 1 November 2015 within the 60-day time limit as contained in Staff Rule 11.2(c) because he submitted his request for management evaluation as late as 11 May 2016.

23. Moreover, the Secretary-General submits that Mr. Ngoga's arguments are without merit. Pursuant to the Appeals Tribunal's case law, mediation has to be pursued within the time limit for filing an application with the UNDT. Therefore, the statutory time limit for filing an application against the decision to recover over

[t]he Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b)

29. Article 8(1)(d)(i)(a) of the UNDT Statute requires that an application to the UNDT be filed within 90 calendar days after the receipt of management evaluation. Mr. Ngoga, after having received the 14 April 2015 response by the MEU, waited nearly two years until filing his application to the UNDT on 6 April 2017, which is clearly outside the time limit.

30. The time limit for filing his application with the UNDT was not extended by application of Article 8(1)(d)(iv) of the UNDT Statute. Mr. Ngoga did not seek mediation until 28 January 2016 and thus not “within the deadlines for the filing of an application under subparagraph (d) of [Article 8(1) of the UNDT Statute].”

31. Consequently, as Mr. Ngoga missed the time limits by more than a year, his application was clearly irreceivable.

Decision to reject retroactive payment of dependency allowance for Mr. Ngoga's

THE UNITED NATIONS



37. The appeal is dismissed and Judgment No. UNDT/2017/056 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Knierim, Presiding