



UNITED NATIONS

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

GEBRE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Introduction

1. The Applicant is a former staff member of the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania. In his Statement of Appeal dated 13 August 2008 to the Joint Appeals Board (JAB), the Applicant is contesting the administrative decisions dated 8 April 2008 not allowing him an extension of his appointment beyond the mandatory age of retirement and denial of the opportunity to compete for a substantive FS-5 Level position. He is also contesting the subsequent review of his case by the Administrative Law Unit.

2. On 18 November 2010, the Tribunal issued a case management Order No. 225 (NBI/2010) which required, among other directions, that the Parties file their concise statement of facts and identify the legal issues and the remedies sought. The Respondent replied to the Order on 17 December 2010, contending that the Application was time-barred and not receivable. On 1 March 2011, a hearing was held to determine the receivability of the Application.

Facts

3. On 5 April 2003, the Applicant joined the ICTR as a Procurement Assistant at the FS-3 Level. He was promoted on 1 October 2004, to the FS-4 Level. Due to the vacancy of an FS-5 Level position and the fact that the Applicant was the only staff member in the section with the relevant experience and work capacity to cover the portfolio, he was recommended for and received a special post allowance (SPA) on that level during the period of 1 November 2004 to 31 January 2007.

4. On 12 January 2006, the post of Procurement Assistant at the FS-5 Level was advertised. This was the same post that the Applicant had encumbered on an SPA for more than two years. The Applicant applied for the vacancy and was invited for an interview but the recruitment process was not completed at the time of his retirement. It is the explanation of the Respondent that the Central Review Panel found that the post number ascribed to the vacancy announcement was wrong. Accordingly, the post was re-advertised on 20 December 2006 with a

10. By an email dated 6 November 2007, the Applicant wrote to Nchimbi, who was then the President of the ICTR Staff Association, explaining the circumstances and the urgency of his case. Nchimbi advised the Applicant by an email dated 5 May 2008 on the necessary actions that he should take, including writing a letter to the Secretary-General of the United Nations.

11. On 5 May 2008, the Applicant requested for an administrative review and

- b. He was not informed of the decision of the cancelation of the first vacancy announcement in writing as he was entitled to.
- c. Although he received notice that the position had been re-

- b. Whether an application for administrative review, as in this case, addressed to the said Registrar could be adjudged to have complied with the requirements of former Staff Rule 111.2 (a).

The position of Registrar of the ICTR

15. The ICTR was established by the United Nations pursuant to Resolution 955 (1994)⁴ of 8 November 1994, having received the request of the Government of Rwanda⁵ to establish an International Tribunal for the sole purpose of prosecuting persons responsible for the genocide and other serious violations of International Humanitarian Law committed in the territory of Rwanda. The ICTR Statute provides for the mandate of the Tribunal.

16. Article 10 of the said Statute provides that the Tribunal shall consist of the following organs:

- a. The Chambers, comprising three Trial Chambers and an Appeals Chamber;
- b. The Prosecutor;
- c. A registry

17. Under arts. 16(1) and (3),⁶ the Registrar is the head of administration of the ICTR at the level of Assistant Secretary-General:

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda...

3. The Registrar shall be appointed by the Secretary-General^{8.6i1(General.1e Inte.6(Redfr)-}

Did the Applicant comply with staff rule 111.2(a)?

22. The core of the Respondent's case in this Application is that the Applicant did not follow the correct procedure as required by former staff rule 111.2 (a) and is therefore out of time rendering his application non-receivable and this Tribunal incompetent to entertain it.

23. The Applicant, on the other hand, has submitted, *inter alia*, that when a staff member clearly signaled to the Secretary-General or his agent, acting with delegated authority, that he or she would like to appeal an administrative decision, it is incumbent on the said agent to properly and in good faith proceed under that signal. The Registrar knew upon receiving the Applicant's "appeal" that he was seeking a review of the administrative decision and that former staff rule 111.2(a) in issue here did not adequately guide a staff member who sought an administrative review as to how to channel his request.

The said staff rule provides as follows:

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.

24. This Tribunal has given considerable thought to the matter of the process to be followed as required by the former Staff Rule reproduced above. It is the Tribunal's finding that the Applicant had made several efforts in seeking a review of the impugned decision. Could it be said that his many efforts directed to the ICTR Registrar in this case were like seeds which fell on the roadside or on infertile soil and would therefore not germinate and yield fruit? Were his requests to the Registrar misdirected, sent to a person other than the Secretary-General to whom they ought to have been sent?

25. It is well established that a request for the administrative review of a decision already taken is meant to provide the administrator an opportunity to reconsider the impugned decision. This requirement in the Staff Rules was not intended to act as a landmine along the way for the aggrieved staff member. In the

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