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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/052

Judgment No.: UNDT/2015/050

Date: 16 June 2015

Original: English



**Respondent's submissions on receivability**

9. The Applicant is a former staff member of the Organization. He last served with the Organization on a temporary appointment with the United Nations Support Mission in Libya (UNSMIL). The appointment began on 19 February 2012 and expired on 24 August 2013. The Applicant separated from the Organization on the same date. Since then, there has been no contractual relationship between the Applicant and the Organization.

10. The Applicant applied for the generic job opening close to six months after he had separated from the Organization, on 12 January 2014. He was notified of the contested decision on 6 November 2014.

11. Pursuant to arts. 2.1 and 3.1(a) of the Dispute Tribunal's Statute, a former staff member of the Organization has access to the Dispute Tribunal only in respect of an administrative decision impacting the terms of his or her former appointment. A former staff member may challenge a decision to terminate his or her appointment, or not to renew their appointment as such decisions relate to the terms of the staff member's former appointment. A former staff member may not challenge a non-selection decision made subsequent to his or her separation from the Organization as such a decision cannot be a violation of the staff member's former terms of appointment.

12. The Applicant has not made any averment

Applicant cites the case of Masykhanov<sup>1</sup> in support of his contention that former staff members can contest administrative decisions.

14. Articles 2 and 3 of the Statute of the Dispute Tribunal explicitly give him, as a former staff member, the right to appeal administrative decisions.

15. The Applicant submits that this situation originated while he was in the

Secretariat or separately administered United Nations funds and programmes; (c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes. (Emphasis added).

3  
19. In *Gharemani*<sup>2</sup> and *Sims*<sup>3</sup>, the United Nations Appeals Tribunal held that the applications were not receivable *ratione personae* as the applicants were former staff members who were no longer subject, on the dates of filing their applications, to the Staff Regulations and Rules of the Organization and that a contested decision must have a bearing on an applicant's status as a former staff member.

20. It is the Applicant's case that the events giving rise to the contested decision arose while he was in the employment of the Organization. He alleges illegal intervention by the Chief of Staff. By the Applicant's own admission, he had "already been shortlisted for a specific SSR position while in UNSMIL". Not, however, the current contested positions.

21. The Tribunal finds that the contested decision has no bearing on the Applicant's status as a former staff member.

## **JUDGMENT**

22. In view of the foregoing, the Tribunal rejects this Application as not receivable *ratione personae*

(Signed)

Judge Nkemdilim Izuako

Entered in the Register on this 16<sup>th</sup> day of June 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi