



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-235

**Mbatha
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

ORDER

Before:	Judge Rosalyn Chapman, Presiding Judge Mary Faherty Judge Richard Lussick
Order No.:	192 (2014)
Date:	27 June 2014
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Noam Wiener

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. On 1 June 2011, the United Nations Dispute Tribunal (UNDT) rendered Judgment No. 2011/096, dismissing the application of Mr. Stephen Makau Mbatha in the case of *Mbatha v. Secretary-General of the United Nations*.

2. In the Judgment dismissing the application, the UNDT held that: (1) the Administration had fully justified the decision to suspend Mr. Mbatha's supervisory duties and he had not shown discrimination or improper motivation regarding that decision; (2) the non-renewal of contract claim was moot since his contract had been renewed beyond the date he challenged; and (3) the claims of failure to comply with the performance appraisal procedures were time-barred for 2008-2009 and unexhausted for 2009-2010.

3. On 16 July 2011, Mr. Mbatha filed a request for an extension of time of three months to file an appeal, based on medical grounds. In Order No. 56 (2011), dated 26 July 2011, the United Nations Appeals Tribunal (Appeals Tribunal) denied Mr. Mbatha's request; nevertheless, he was afforded until 3 August 2011 to file his appeal. However, Mr. Mbatha did not file his appeal by 3 August 2011.

4. Almost two years later, on 16 July 2013, the Appeals Tribunal's Registry advised Mr. Mbatha that his case would be considered abandoned, and it would be closed, unless he contacted the Registry by 1 August 2013. He did not contact the Registry by that date.

5. On 10 October 2013, Mr. Mbatha filed a second request for an extension of time to file his appeal, based again on medical grounds. In this request, which is currently pending, Mr. Mbatha seeks an extension of time of "at least one year." Mr. Mbatha states that he has been unable to prepare his appeal or obtain legal assistance since he separated from service on 16 November 2011, and he is currently on disability from the United Nations Joint Staff Pension Fund.

6. Article 7(3) of the Appeals Tribunal Statute (Statute) provides that this Tribunal may "suspend or waive the deadlines for a limited period of time and only in exceptional cases" upon written request by the applicant, and Article 30 of the Rules of Procedure (Rules) allows this Tribunal to shorten or extend a time limit "when the interests of justice so require". However, the authority to extend the time for filing an appeal afforded under Article 7(3) of the Statute and Article 30 of the Rules is limited by Article 7(4) of the Statute, which

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provides: “Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than one year after the judgement of the Dispute Tribunal.”

7. The UNDT Judgment that Mr. Mbatha seeks to appeal was rendered more than three years ago. In light of the prohibition in Article 7(4) of the Statute, which prohibits the Appeals Tribunal from receiving an appeal filed more than one year after the issuance of the challenged judgment, it would be futile to grant Mr. Mbatha’s request for an extension of time; thus, it should be denied.

8. Since it is now too late for Mr. Mbatha to file an appeal, his case should be closed administratively by the Registry without a determination of the merits. This administrative closure is a final Order, which is not subject to revision or interpretation.

IT IS HEREBY ORDERED that the motion for an extension of time to file an appeal IS DENIED.

IT IS FURTHER ORDERED that the Registry shall administratively close Mr. Mbatha’s case.

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Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

Entered in the Register on this 30th day of June 2014 in Vienna, Austria.

(Signed)

Weicheng Lin, Registrar