



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Eric Muli, Officer-in-Charge

OCOKORU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former National Professional Officer in the Civil Affairs Division at the United Nations Mission in South Sudan based in Abyei. On 1 September 2023, she filed an application contesting three decisions which she identifies as:

- i. the decision of the Secretary-General to close investigations into her rape complaint;
- ii. the non-implementation of UNDT Judgment No: UNDT/2015/004; and
- iii. the decision to “underpay compensation ordered by UNDT and refusal to pay Applicant’s medical bills and withheld salary and refusal to properly and conclusively separate the Applicant.”

2. This case is the latest chapter in a decade-long set of applications filed by the Applicant. The long history of this litigation¹ is set forth in detail in prior judgments published as UNDT/2015/004, 2015-UNAT-604, and UNDT/2020/045, and need not be repeated herein. The Respondent has moved to dismiss this case on various grounds, including *res judicata*.²

Facts

3. The Applicant served at the United Nations Mission in South Sudan (“UNMISS”) as a National Professional Officer with the Civil Affairs Division (“CAD”), until her separation from the Organization on 31 July 2012.³

4. On 15 January 2015, the United Nations Dispute Tribunal (“UNDT”) ordered rescission of the Applicant’s separation from service and her reinstatement. In the alternative, the UNDT awarded compensation equivalent to two years’ net base salary.

¹ The Tribunal notes that this litigation has spanned the service of every cadre of judges appointed since the Dispute Tribunal was created in 2009.

² The other grounds, that there is not a reviewable administrative decision and that the application is moot, are not dealt with here because all the claims are barred by *res judicata*.

³ Application, section VII, page 6, para. 5.

It further awarded a total of six months' net base salary as compensation for procedural and substantive irregularities, along with post-judgment interest. *See, Ocokoru v. Secretary-General*, UNDT/2015/004. (hereafter referred to as *Ocokoru I* or "the 2015 judgment".)

5. The Administration appealed that judgment, but on 30 October 2015 the United Nations Appeals Tribunal dismissed the appeal as untimely. *See, Ocokoru v. Secretary-General*, 2015-UNAT-604.

6. On 28 November 2019, the Applicant filed her second case with the Dispute Tribunal seeking additional sums for compensation, interest, and reimbursement of medical bills. *See, Ocokoru v. Secretary-General*, UNDT/2020/045, para. 2. (hereafter referred to as *Ocokoru II* or "the 2020 judgment".)

7. By judgment dated 27 March 2020, the Tribunal noted that, in 2016 and 2017, the Respondent made two payments to the Applicant totaling of USD100,297.28 as the compensation awarded in the 2015 judgment, *Ocokoru II*, para. 7. In addition, the Tribunal awarded the Applicant additional interest but denied the other requested relief. (*Id.* at paras. 19 - 20). No appeal was taken against this judgment.

8. Nearly three and one-half years later, the Applicant filed the instant action with the Dispute Tribunal.

Considerations

9. The applicable jurisprudence has long recognized the doctrine of *res judicata*, under which an application is not receivable *ratione materiae* when the matter has been resolved by a prior final judgment (*Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-026; *Costa v. Secretary-General*, 2010 UNAT-063; *Chaaban v. Commissioner-General*, 2015-UNAT-554, para.25; *Meron v. Secretary-General*, 2012-UNAT-198, para.25; *Temu v. Secretary-General*, 2022-UNAT-1281, para. 34).

10. The Applicant's first claim here, regarding the decision to close investigations without conducting any investigation or producing a report, was fully litigated in *Ocokoru I*. In 2015, the Dispute Tribunal analyzed at length the evidence relating to the Administration failures to investigate her claim of sexual assault by another staff member at UNMISS (*Id.* at paras. 59 - 82, 129(a) – (c)). The UNDT found that the responsible officers at the mission all defied the procedures required by ST/AI/371 for dealing with reports of misconduct. “[As a result, and] contrary to the expectations of good management and good practice the Applicant was denied meaningful closure having made a serious claim of being the victim of sexual assault” (*Id.* at paras. 129 (b) – (c)). This finding resulted in compensation awarded to the Applicant.

11. Similarly, the payment of that award, and the interest thereon, was the subject of *Ocokoru II*. In 2020, this Tribunal found that Respondent had paid the compensation awarded in *Ocokoru I* in 2016 and 2017. *Ocokoru II* at para. 7, 14 - 15. However, it found an error in calculating the interest due on that award and ordered payment of the appropriate interest. (*Id.* at paras. 12, 17, 19).

12. Third, the Tribunal examined the Applicant's claim for reimbursement of medical bills in the prior cases: “Regarding the Applicant's requests for reimbursement of expenses on medical bills, these claims were not awarded by the UNDT Judgment [in *Ocokoru I*] and as such cannot be claimed as part of the execution.” (*Ocokoru II* at para. 15).

13. Finally, the issue of whether Applicant was properly and conclusively separated from service with the United Nations, was resolved in 2016 by the payment to the Applicant of two year's net base salary in lieu of reinstating her, pursuant to the judgment in *Ocokoru I*. When the Applicant tried to raise the claim again in *Ocokoru II*, this Tribunal found that “[t]he Respondent opted to compensate in lieu of reinstatement and this decision of the Respondent is dispositive of the matter.” (*Id.* at para. 14 (emphasis supplied)).

14. The Tribunal shall find the same with respect to the Applicant's attempt to relitigate all the claims she has brought in this case.

JUDGMENT

15. The Application being barred by *res judicata*, this case is dismissed as not receivable *ratione materiae*.

(Signed)

Judge Sean Wallace

Dated this 2nd day of October 2023

Entered in the Register on this 2nd day of October 2023

(Signed)

Eric Muli, Officer-in-Charge, Nairobi