



N.G.

v.

Chairperson of the African Union Commission

FOR APPLICANT : *Pro se*

FOR RESPONDENT: Office of the Legal Counsel, African Union Commission

BEFORE : Hon. Andrew K.C. NYIRENDA, Hon. Shaheda PEEROO and Hon. Salufu S. MAINGA¹

JUDGMENT

Procedural and Factual History

1. On 16 March 2018, the Applicant, a former staff member of the African Court on Human and Peoples' Rights (ACHPR), filed an application contesting a 6 October 2017 decision not to renew his regular appointment.²
2. On 6 October 2017, the President of ACHPR informed the Applicant that his regular appointment would not be renewed beyond 14 October 2017.
3. On 10 October 2017, the Applicant wrote to the President of ACHPR seeking review of the decision.³ On 13 March 2018, the ACHPR President answered in writing affirming the decision to not renew the Applicant's regular appointment.⁴
4. The Tribunal transmitted the application to the Respondent on 27 April 2018 requiring an Answer be filed no later than 28 May 2018.
5. On 4 June 2018, the Respondent filed a request for extension of time after the original filing deadline had long run out. The Tribunal refused the request.⁵
6. On 26 June 2018, the Respondent's legal representative again filed a request for extension of time claiming that the delay was caused because the ACHPR provided the information required to prepare an Answer only after the thirty-day time period had expired. The Respondent submitted that allowing the late-filed answer would not cause irreparable harm to the Applicant.

¹ Judge Sylvester Salufu Mainga was sworn in as African Union Administrative Tribunal Judge on 10 July 2019. He joins Judges Nyirenda and Peeroo in this judgment to permit disposition of this matter under Article 4(i) of the Tribunal's Statute.

² Application, Annex 9(b).

³ Application, Annex 9.

⁴ Application, Annex 18.

⁵ Order of 13 June 2018.

Legal Standards

7. Except for applications challenging a disciplinary action, requesting administrative review of the contested decision by the Chairperson or other appropriate authority is a mandatory first step.⁶ The Tribunal cannot review a non-disciplinary administrative decision that has not been the subject of a prior administrative review under Staff Rule 62.1.1.⁷
8. A staff member must seek such review within thirty days of the contested administrative decision.⁸ The reviewing official has thirty days to complete the review, failing which the request will be deemed constructively denied.⁹ The staff member then has additional thirty days to file an application with the Tribunal, reckoned thirty days after the filing of administrative review request or from the date of receipt of a decision on the administrative review request, whichever comes first.¹⁰
9. These *statutory* filing deadlines define how the Tribunal acquires its adjudicatory authority over a staff member's application. As such, they are jurisdictional rules not open to equitable considerations by the Tribunal.¹¹ We are, therefore, bound by the time limits set forth in the Statute and we will apply those without any exception. Staff members must strictly comply with these mandatory rules.
10. Unlike *statutory* filing deadlines, we retain the discretion to consider late-filed pleadings not in compliance with our Rules of Procedure. We may accept late filings if the reasons for the delay are exceptional and doing so will assist the ends of justice.
11. Under Article 14(v) of the Statute, we may summarily decide an application on the basis of available information without requiring the presence of the parties. We will do so, on our own motion or on application by a party, when there is no dispute as to the material facts of the case and a judgment can be issued as a matter of law. In the interest of administrative economy, we will not allow applications that do not satisfy receivability requirements to survive our scrutiny under Article 14(v).¹²

Discussion

Respondent's late-filed written answer

12. For the sake of completeness and guidance to legal representatives of the Respondent, the Tribunal will first determine the admissibility of the Respondent's late-filed Answer.
13. The Tribunal transmitted the application to the Respondent on 27 April 2018. The Answer was due on or before 28 May 2018. The Respondent sought leave to file an answer out of time on 4 June 2018. The Tribunal refused the request on 13 June 2018. Despite the Tribunal's refusal, on 26 June 2018, the Respondent filed a second request for extension of time accompanied by an Answer to the Application.
14. The matter of extension of time to file an Answer was determined with finality, after full consideration, when the 13 June 2018 Order was issued. We again reiterate that an extension request filed after the expiry of the original deadline cannot be granted. Much like the first untimely extension request, the Respondent's second request presented no facts that we deem to be exceptional. It is accordingly refused.

⁶ Staff Rule 62.1.1– 62.1.2; *B.W.*, AUAT/2015/008

⁷ Staff Rule 62.1.1– 62.1.2; Statute Art. 13(i); Rule 11.7.

⁸ *Id.*

⁹ *Id.*

¹⁰ Staff Rule 62.1.1– 62.1.2; Statute Art. 13(iv).

¹¹ *ILOAT Judgment* No. 3559 para 3; *Ahmed*, UNDT/2017/005.

¹² *See M.M.*, AUAT/2015/006, p.6 (late filed claims may be set aside as being time-barred).

Receivability of application

15. The Applicant had up to thirty calendar days following a timely response to or constructive denial of his administrative review request to bring his application to the Tribunal. An administrative review request is deemed constructively denied where the reviewing official fails to respond within thirty days of receiving a staff member's review request under Staff Rule 62.1.¹³
16. As we held in *Gakumba I*,¹⁴ it does not matter that the outcome of the Applicant's review request was conveyed five months after the Applicant submitted his review request to the ACHPR President. The time allowed by Staff Rule 62.1.1 and Article 13 of Statute to challenge the decision lapsed on 9 December 2017, that is, thirty days after the Applicant's request was deemed constructively denied by ACHPR President on 9 November 2017. The Applicant's failure to file his application on or before 9 December 2017 renders his claim time-barred.
17. The Tribunal does not have the authority to extend or waive the time in which to file an application.¹⁵ We thus exercise our authority under Article 14(v) of the Statute to dismiss the application as being untimely.

Orders

18. For the above reasons, the Tribunal:
 - a. DENIES the Respondent's request to file his Answer out of time;
 - b. REFUSES to admit into the record the Answer filed on 26 June 2018; and
 - c. DISMISSES the application.

Date: 10 September 2019

/signed/

Hon. Andrew K. C. NYIRENDA, President
Hon. Shaheda PEEROO
Hon. Sylvester S. MAINGA

Secretary: _____



¹³ Rule 11.7(iii), Rules of Procedure.

¹⁴ *N.G.*, AUAT/2019/002.

¹⁵ *M.Z.L.*, AUAT/2018/001, para. 13.