



IN THE MATTER OF:

M.L., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: *Pro se*

FOR RESPONDENT: Guy-Fleury NTWARI, Legal Counsel, African Union Commission

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 28 August 2022, 22 September 2022

JUDGMENT

Procedural and Factual History

1. On 6 August 2021, Applicant, former Director of Bureau of the Pan African Parliament (PAP) filed an application challenging the termination of her appointment effective 30 September 2009.¹
2. Respondent filed his written answer on 20 October 2021, after which Applicant submitted her written Observations on 30 November 2021.
3. On 11 April 2005, PAP appointed Applicant for a three-year term as Director of Bureau (P-5/Step5). The appointment was extended under the same terms through and ending on 10 April 2011.
4. By memorandum dated 6 August 2009, PAP's Clerk *a.i.* advised Applicant that her appointment would be terminated effective 30 September 2009 because she was a special-appointee of the previous President of PAP and her at-will appointment should have ended when the official elective term ended on 28 May 2009.
5. In a reply to Applicant's 25 September 2009 letter, the Clerk reiterated on 29 September 2009 that Applicant's appointment was linked to the former PAP president's term of office.
6. By letter dated 17 August 2011, the Clerk informed Applicant that her matter was "before the African Union Tribunal." This information appears to have been disputed by the director of HRM's memorandum of 6 October 2011. Yet, Applicant claims she continued to inquire about the status of her application with the Tribunal. The Tribunal has no record of such application or the claimed inquiries.
7. On 26 September 2012, Applicant brought a wrongful termination action against PAP in the South Gauteng High Court, Johannesburg. On 11 October 2012, that court entered a default judgment in her favor awarding her damages in the amount of \$293,371.04 and 15% interest. The default judgment was reversed on 19 September 2014 after PAP appealed the default judgment asserting immunity from the legal processes of the Republic of South Africa.
8. On 21 October 2014, Applicant wrote to the President of PAP seeking amicable settlement. Based on the opinion received from the Office of Legal Counsel, the Clerk declined her request by a memorandum dated 16 February 2015.
9. On 2 June 2015, Applicant addressed yet another appeal to the President of PAP. On 9 October 2015, the President informed Applicant that her grievance was being considered by the African Union Commission.
10. In her application of 6 August 2021, Applicant seeks: (a) declaration that her termination was unlawful; (b) payment of material damages equivalent to eighteen months' salary; and (c) \$39,320.28 in moral damages.

¹ The contested decision having been issued on 6 August 2009, this application is governed by the rules contained in the Staff Regulations and Rules, CM/1745(LVII) (1993), which were in force until the enactment of the current Staff Regulations and Rules, Assembly/AU/4(XV) (25-27 July 2010).

11. In reply, Respondent submits that the application is time-barred. On the merits, Respondent argues that Applicant was properly separated because her at-will appointment was coterminous with the term of office of the elected official who appointed her.
12. The facts and issues have been presented adequately in the pleadings and this matter is decided without the need to invite the parties for an oral hearing.

Discussion

13. 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.² The Tribunal cannot review a non-disciplinary administrative decision that has not been the subject of a prior administrative review under Staff rule 62.³
14. A staff member must seek such review within thirty days of the contested administrative decision.⁴ The reviewing official has thirty days to re-examine the decision, failing which the request is deemed constructively denied.⁵ 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.⁶ Staff members must strictly comply with these mandatory timelines.⁷
15. Applicant was informed of the decision to terminate her appointment, the administrative decision she contests in this application, by a memorandum dated 6 August 2009.
16. In assessing the present application, the Tribunal has considered its own limited operational status during 2001-2015. The Tribunal has also charitably considered the events recounted by Applicant as a basis for waiver of the filing deadlines, none of which are sufficiently compelling to warrant a waiver.
17. While PAP's Clerk incorrectly informed Applicant that her grievance was before the Tribunal, the Tribunal accepts Respondent's argument that the information was subsequently clarified through HRM director's memorandum of 6 October 2011. Moreover, as an experienced professional who has navigated the much more complex litigation system of South Africa, the Tribunal is not inclined to accept that she lacked understanding that an application to the Tribunal can be made through an affirmative filing by the aggrieved staff alone, not through referral by an official. Further, Applicant's argument on these grounds strains common sense and appears implausible in the absence of any correspondence addressed to the Tribunal prior to filing her application.
18. On the other hand, the Tribunal accepts that Applicant was diligently engaged about her grievance with PAP, directly or through her national authorities, as evidenced by the multiple communications with PAP officials. By communication dated 16 February 2015, however, the Clerk firmly declined Applicant's offer for amicable settlement. Consequently, the Tribunal is of the view that the application should have been filed with the Tribunal at the latest soon after the Clerk's refusal memorandum. Her application contesting the 6 August 2009 decision, filed twelve years to the day, is woefully out of time and therefore time-barred.
19. There being no need for determination of other issues in this case, the application is DISMISSED.

Date: 21 October 2022

/signed/

SYLVESTER MAINGA, PRESIDENT
JAMILA B. SEDQI
PAULO D. COMOANE

Secretary: _____



² Staff rule 62; *B.W.*, AUAT/2015/008.

³ Staff rule 62; AUAT Statute art. 13(i); AUAT RoP, rule 11.7.

⁴ *Id.*

⁵ *Id.*

⁶ Staff rule 62; AUAT Statute art.13(iv).

⁷ *M.Z.L.*, AUAT/2018/001, para. 13; *M.S.*, AUAT/2020/007.