



IN THE MATTER OF:

*J.M., Applicant*

v.

*Chairperson of the African Union Commission, Respondent*

FOR APPLICANT: Steven KAYUNI, Esq.

FOR RESPONDENT: Namira NEGM, Legal Counsel, African Union Commission

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

HEARD ON: 9 November 2021, 30 March 2022

#### JUDGMENT

##### *Procedural and Factual History*

1. On 18 May 2020, Applicant, Head, Resource Mobilization Division in Strategic Policy Planning, Monitoring and Evaluation, and Resource Mobilization Directorate (SPPMERM), filed an application challenging the appointment of SPPMERM director (“MAT”) in August 2016 without following a competitive recruitment process as required by Staff reg. 6.4. Applicant also faults Respondent for failing to provide effective remedy for his long-pending grievances.
2. Respondent filed his written Answer on 17 June 2020, after which Applicant submitted his written Observations on 18 July 2020.
3. Applicant joined the Organization in 2007 as a regular appointee Senior Policy Officer (P-3) with SPPMERM. Following a competitive process conducted in 2012, Applicant was appointed Head of Resource Mobilization Division (P-5) in the same department. In 2016, he was additionally appointed, on acting basis, Head of Knowledge Management Division also within the same department.
4. In 2015, Applicant was appointed acting Director of SPPMERM after the director at the time had passed away. He served in acting capacity until Respondent issued the contested appointment in favor of MAT.
5. In September 2015, Respondent issued a vacancy announcement for the post of SPPMERM director. Applicant submitted his application. A shortlist of six (6) candidates was prepared and submitted to the appointment board, APROB, on 6 November 2015.
6. Applicant was not among the shortlisted candidates. Applicant claims the shortlisting process lacked objectivity since the panel was improperly composed. He also denounces the shortlisting outcome given that he served as acting director of SPPMERM at the time which indicated his fitness and qualification for the post.
7. In any case, the competitive recruitment exercise did not proceed to conclusion. By memorandum dated 28 June 2016, MAT was transferred to SPPMERM from the department of Programming, Budgeting, Finance and Accounting (“PBFA”), where he then served as division head. MAT was subsequently appointed as acting SPPMERM director on 11 July 2016.
8. Several weeks later, by memorandum dated 1 August 2016, the AHRMD director asked the Chairperson to appoint MAT as a substantive director of SPPMERM citing MAT’s years of leadership experience, professionalism, qualifications as well as his prior candidacy for the post of PBFA director. Upon the Chairperson’s approval, MAT was issued an appointment letter on 31 August 2016.

9. Applicant alleges the appointee, MAT, had not actually applied for the contested post and lacked “background knowledge in the area of planning.” According to Applicant, MAT had been unsuccessful in two prior recruitment processes in relation to the post of PBFA director. Applicant claims that the Deputy Chairperson and AHRMD director at the time facilitated the irregular appointment in order to prevent Applicant from being appointed on the post given his strong qualifications, experience and fitness for the post.
10. On 2 December 2016, Applicant and six other senior staff members jointly filed their respective complaints the Chairperson. The group consisted of seven division heads each claiming that they had been aggrieved by unfair appointment of directors within their respective departments. By a letter dated 15 December 2016, the Chairperson’s Chief of Staff advised the complainants that the Chairperson had referred their grievances to AHRMD.
11. Despite advancing through the Organization’s administrative processes, the grievances, including Applicant’s, were never resolved. In November 2018, the APROB recommended a salary upgrade to each aggrieved staff. Applicant, for instance, was recommended for an upgrade to the P-6 salary grade while maintaining the title of division head. On 22 November 2018, the Deputy Chairperson, acting on behalf of the Chairperson, approved the recommendations of APROB, which were never executed.
12. On 20 March 2020, Applicant petitioned the Chairperson to review and resolve his grievances. The Chairperson did not respond. The instant application followed on 18 May 2020 wherein Applicant asks the Tribunal to: (a) declare the appointment of SPPMERM director was unlawful; (b) declare that Respondent failed to resolve Applicant’s grievances; and failed to provide effective administrative remedies; (c) order payment of \$480,000 in moral damages; (d) order payment of \$54,000 plus interest for loss of higher earnings arising from failure to execute the Deputy Chairperson’s upgrade decision; and (e) award him costs.
13. Respondent submits that Applicant’s claims are not receivable having been filed out of time. Respondent further contends that Applicant lacks standing to challenge the appointment of SPPMERM director because he was not shortlisted for the post; and even if he had been shortlisted there was no guarantee that he would have been ultimately appointed as SPPMERM director.
14. On the merits, the Respondent alleges that discretionary decisions are not subject to review, and Applicant failed to show breach of rule or procedure. Respondent represents a competitive process was undertaken but Applicant had not been shortlisted. Respondent maintains that it was lawful for Respondent to appoint from a roster of candidates as happened here. On the non-execution of APROB’s recommendations, Respondent submits that the Deputy Chairperson signed off on it without proper authority.
15. In July 2021, the Tribunal was notified that the parties were engaged in settlement discussions upon which the Tribunal temporarily suspended proceedings. Proceedings were subsequently reinstated after notification by the parties that the settlement discussions had not been successful.
16. Following a preliminary review of the application, on 19 October 2021, the Tribunal asked Respondent to explain the legal authority for and the general process of appointing candidates from roster. Respondent submitted his reply on 1 November 2021. Applicant replied on 8 November 2021.
17. The Tribunal is satisfied that the facts and issues have been presented adequately in the pleadings and determines this matter without the need to invite the parties for an oral hearing

### *Discussion*

18. For an application to be receivable, a staff member must seek review by the Chairperson within thirty (30) days of the contested administrative decision.<sup>1</sup> The Chairperson has thirty (30) days to complete the review, failing which the request will be deemed constructively denied.<sup>2</sup>
19. The staff member then has additional thirty (30) days to file an application with the Tribunal, reckoned thirty (30) 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.<sup>3</sup> Staff members must strictly comply with these mandatory timelines.<sup>4</sup>

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<sup>1</sup> Staff rule 62.1.

<sup>2</sup> *Id.*

<sup>3</sup> Staff rule 62.1; AUAT Statute art.13(iv).

<sup>4</sup> *M.Z.L.*, AUAT/2018/001, para. 13.

20. The central contention in this application, filed on 18 May 2020, is the lawfulness of Respondent's appointment of SPPMERM director without a competitive process and from an alleged roster of preapproved candidates. The contested decision was taken by the former Chairperson in August 2016 and the Tribunal can reasonably proceed on the basis that that Applicant became aware of the contested decision at least when MAT entered on duty as SPPMERM director in September 2016. Thus, the period provided to Applicant to file a timely application unfortunately expired in December 2016.
21. The Tribunal has considered Applicant's various submissions that the Organization promised to resolve his grievances together with the grievances of other staff members who filed a joint complaint with Respondent on 2 December 2016. Even accepting the explanation, the last communication pertaining to that complaint was issued in November 2018, wherein Applicant was, as a matter of administrative grace, recommended by APROB for a salary upgrade. Applicant has not accounted for filing his application more than eighteen months later in May 2020 with circumstances of delay in some way attributable to Respondent.
22. Had the Tribunal proceeded to review the application on its merits, it would agree that there were substantial defects in the process resulting in the appointment of SPPMERM director. Clearly, there was no legal authority for Respondent's alleged discretion to make a direct appointment from a roster of pre-approved candidates outside the competitive process mandated under Staff reg. 6.4.
23. Despite being specifically asked for it, Respondent was unable to provide the authority for appointment from a roster nor was Respondent able to explain when and how the specific roster utilized for the contested post was established, who was included in the roster or the period of validity of the roster. It would, therefore, appear to the Tribunal that the process of appointing SPPMERM director was neither lawful nor transparent.
24. Still, it would have been a problematic proposition for the Tribunal to ultimately find in Applicant's favor. As far as standing to contest the decision is concerned, Applicant was not shortlisted for the post and hence no longer under consideration at the time Respondent took the contested decision. Therefore, the Tribunal would have reluctantly determined that the egregious irregularities noted above were only theoretically prejudicial in reference to Applicant.
25. There being no need to reach other issues in the case, the Tribunal DISMISSES the application.

Date: 20 April 2022

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

Secretary: \_\_\_\_\_

