



File number: SA-13-HJ

Before: Higher Judge for Staff Appeals
Judge Charles L. Smith III

Date: 16 December 2019

Language: English

Classification: Public

**PUBLIC REDACTED VERSION OF THE DECISION ON THE ADMISSIBILITY
OF THE APPEAL OF 18 NOVEMBER 2019**

Appellant:
[REDACTED]

Legal Assistant to the Appellant:
Neil Macaulay, Barrister at Bretton Woods Law
Graham Butler, Associate Professor of Law at Aarhus University

Respondent:
The Registrar

I. INTRODUCTION

1. The Higher Judge for Staff Appeals is seized of an appeal (“Second Appeal”) against the decision of the Judge for Staff Appeals of 22 October 2019 (“Impugned Decision”), filed by [REDACTED] (“Appellant”) on 1 November 2019. On 4 November 2019, the undersigned Judge was assigned by the President of the Specialist Chambers to serve as Higher Judge for Staff Appeals in this case.

2. The present decision deals with the admissibility of the Second Appeal. In this respect, the Appellant submits that the Second Appeal is filed “under protest” as the applicable law for the determination of an appeal before a Higher Judge for Staff Appeals is “unconstitutional and unlawful”.¹ Further, the Appellant argues, the requirement for bringing such an appeal “sets an excessively high burden on the appellant, [...] is too narrowly categorised and is a manifestly deficient basis for allowing an appeal”.² The Appellant adds that the appeal ground of “manifest error of law causing a miscarriage of justice” is “wholly inconsistent with natural justice and general due process principles and international administrative law of other comparable institutions”.³ The Appellant therefore submits that the relevant provision should be “read down” and that error of law should be interpreted as encompassing errors of fact.⁴ With regard to the substance of the Impugned Decision, the Appellant argues that the Judge for Staff Appeals had not consider some of her arguments and in fact “declared a disinterest” in them; that the Judge for Staff Appeals had not decided the case “on the pleadings of the parties”; and that there was perceived or real bias on behalf of the Judge for Staff Appeals and that he therefore should have recused himself.⁵

¹ Second Appeal, para. 14.

² Second Appeal, para. 14.

³ Second Appeal, para. 15.

⁴ Second Appeal, paras 14-15.

⁵ Second Appeal, paras 19, 21-22, 24, 29, 34-37.

II. APPLICABLE LAW

3. Rule 84(h) of the Staff Rules of the Specialist Chambers and Specialist Prosecutor's Office ("Staff Rules") reads:

- (h) Decisions made by a Staff Appeal Judge shall become final unless they are appealed within fourteen days to the Higher Judge for Staff Appeals. Such appeals shall be limited to a manifest error of law causing a miscarriage of justice.

4. Rule 5 of the Rules of Procedure for Staff Appeals ("Staff Appeals Procedure") sets out that time limits are calculated by calendar days and run from the first working day after the notification of the relevant filing. Further, if the last day of a time limit falls on a weekend, the last day shall be considered the next working day.

5. Rule 21 of the Staff Appeals Procedure reads, in part:

- (2) The Second Appeal shall be in writing and shall include:
 - (i) where applicable, the name and contact details of the Appellant and his or her present or former status with the Specialist Chambers or the Specialist Prosecutor's Office;
 - (ii) where applicable, the initial Decision of the Registrar and the request for review filed in this respect by the Appellant in accordance with Staff Rule 84(a);
 - (iii) the Decision of the Registrar or the Disciplinary Decision contested before the Judge for Staff Appeals, as applicable;
 - (iv) the submissions and material filed by the Parties before the Judge for Staff Appeals;
 - (v) the contested Decision on the Appeal;
 - (vi) the arguments of the Appealing Party regarding the alleged manifest error of law causing a miscarriage of justice, as specified in Rule 22(3);
 - (vii) the relief sought; and
 - (viii) where applicable, the name and contact details of any person representing the Appellant, if any, in accordance with Rule 9.

6. Rule 22 of the Staff Appeals Procedure sets out, in part:

- (1) The Second Appeal shall be filed within fourteen (14) days of notification of the Decision on the Appeal.[...]

- (3) The Decision on the Appeal may be appealed only on the grounds of a manifest error of law causing a miscarriage of justice.
- (4) If the Higher Judge for Staff Appeals considers that the Appealing Party does not identify the alleged manifest error of law causing a miscarriage of justice, he or she shall summarily dismiss the Second Appeal within fourteen (14) days of his or her assignment pursuant to Rule 23(1). The Appealing Party shall be notified of the summary dismissal forthwith, including the reasons thereof.
- (5) If the Higher Judge for Staff Appeals considers the Second Appeal admissible, he or she shall transmit the Second Appeal to the other Party within fourteen (14) days of his or her assignment pursuant to Rule 23(1).

III. CONSIDERATIONS

7. Rule 22(2) of the Staff Appeals Procedure sets out the formal requirements for an appeal before a Higher Judge for Staff Appeals, including which documentation an appellant should attach to the appeal. Upon review of the Second Appeal, I find that these requirements are met in the present case.

8. The Impugned Decision was filed and the parties were notified of it on 22 October 2019. Pursuant to Rules 5(2) and 22(1) of the Staff Appeals Procedure, the appeal against a decision by the Judge for Staff Appeals must be filed within fourteen days, starting the first working day after the notification. In the present case, the Appellant filed the Second Appeal on 1 November 2019 and I conclude therefore that it was filed within the required time-limit.

9. Rule 22(3) and (4) of the Staff Appeals Procedure clarifies that an appellant must identify “a manifest error of law causing a miscarriage of justice” as the ground for his or her appeal. The burden is upon the Appellant to identify such an error.

10. In the Second Appeal, the Appellant challenges the legal standard of appeal to the Higher Judge for Staff Appeals and argues that it should be “read down” and, in particular, that errors of law should be interpreted to include errors of fact. Therefore, rather than identifying “a manifest error of law causing a miscarriage of justice”, the

Appellant modifies the legal standard and makes her arguments in accordance with this new standard. This is unsustainable. The Higher Judge for Staff Appeals is duty bound to apply the existing legal framework regulating the operation of the Kosovo Specialist Chambers, in this case the legal standard reflected in Rule 84(h) of the Staff Rules and Rule 22(3) and (4) of the Staff Appeals Procedure.

11. As the Appellant has not identified any manifest error of law causing a miscarriage of justice, pursuant to Rule 84(h) of the Staff Rules and Rule 22(3) and (4) of the Staff Appeals Procedure, I find that the Second Appeal does not meet the admissibility requirements.

IV. CONCLUSION

12. In view of the foregoing, the Second Appeal is declared inadmissible.



**Judge Charles L. Smith III,
Higher Judge for Staff Appeals**

Dated this Monday, 16 December 2019
At The Hague, the Netherlands.