



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

DENG DENG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Duke Danquah, OSLA

Counsel for Respondent:
Nataly Boucly, UNDP, BOM, Legal Support Office
Josianne Muc, UNDP, BOM, Legal Support Office

Introduction

1. On 17 August 2007, the Applicant filed a claim with the Joint Appeals Board (“JAB”) contesting the non-renewal of his appointment with the United Nations Development Programme for Somalia (“UNDP Somalia”). The JAB examined his appeal and unanimously decided to make no recommendation in favour of the Applicant. The Secretary-General endorsed the JAB recommendation and did not take any further action.

2. The Applicant filed an application dated 26 May 2009 with the former United Nations Administrative Tribunal, challenging the non-renewal of his fixed-term appointment beyond 28 February 2007 (“the impugned decision”). On 4 December 2009, the Respondent requested the former United Nations Administrative Tribunal to dismiss the application in its entirety.

3. On 1 January 2010, the case was transferred to the United Nations Dispute Tribunal (“UNDT” or “Dispute Tribunal”) in accordance with ST/SGB/2009/11 on *Transitional measures related to the introduction of the new system of administration of justice*.

Allegations

4. The Applicant alleges that the impugned decision is unlawful, for the following reasons:

- a. The Respondent violated his due process rights in the non-renewal of his appointment; and
- b. The decision was motivated by prejudice, bias, or abuse of power

Facts

5. On 2 July 2005, the Applicant joined the UNDP Somalia. He was appointed on a one- year 200-series contract, at the L-4/4 level, as Programme Manager of the reintegration of Returning Refugees and Internally Displaced Persons (“RRIDP”) Programme in Somalia.

6. On 3 March 2006, a report entitled “*Outcome Evaluation: Reintegration of Returning Refugees and Internally Displaced Persons*” (“the Report”), commissioned by UNDP Somalia and prepared by external consultants, was published to provide a “forward-looking assessment” of the progress achieved under the RRIDP programme *vis-à-vis* its mission and expected outcomes. The 50-page report stated *inter alia* that

“The mission finds that the RRIDP project document is overly ambitious in terms of the stated outcomes and outputs. (...) It is of note that UNDP-RRIDP has been requested to provide leadership to the overall working group [Humanitarian Coordination System at the country level], including the conceptualisation and organization of ground-level operational planning. In practice, however, RRIDP does not appear to have been able to take on these tasks, and its lack of leadership and technical ability is criticized by other participating [UN Agencies].”

7. On 26 June 2006, the Applicant’s appointment was renewed for six months, until 31 December 2006.

8. On 3 July 2006, the Applicant was hospitalized in Nairobi, Kenya due to serious heart problems. On 9 September 2006, he was evacuated to Toronto, Canada and went through a major heart operation later in that same month.

9. In a letter dated 2 August 2006, the Deputy Resident Representative (Programme) Mr. Eric Overvest (“DRRP”) submitted the Report to the First Secretary of the Royal Norwegian Embassy, who is one of the major donors to the programme.

10. On 28 November 2006 the Applicant received a separation package from the UNDP Benefits and Entitlements Services (“BES”) effective 30 November 2006.

11. Following medical clearance, the Applicant returned to Nairobi on 25 December 2006. The UNDP Offices were closed for the Christmas Holiday. He requested a meeting with Mr. Overest, DRRP, Mr. Bruno Lemarquis, Country Director and Mr. Eric La Roche, Resident Coordinator. A meeting took place on 8 January 2007 with Mr. Overest and Mr. Lemarquis only. In the course of that encounter, the Applicant challenged the termination of his appointment. He requested that his contract be extended in order to be given an opportunity to settle back from sick leave, pay his medical bills and seek alternative employment.

12. On 1 January 2007, the Applicant’s appointment was extended for two months, until 28 February 2007.

13. On 31 January 2007, the Applicant submitted a letter from his attending physician, certifying his fitness to return to work immediately.

14. The Applicant was separated from service effective 28 February 2007.

15. By email dated 6 March 2007, the Applicant requested a “grace period” to Mr. Everest and Mr. Lemarquis until the end of April 2007 in order to give him more time to find employment in the UN system.

16. On 17 April 2007, the Country Director, Mr. Lemarquis wrote a letter, at the request of the Applicant, describing the purpose of the RRIDP programme managed by the Applicant and his responsibilities within the programme. In a final note, he stated:

“Mr. Deng Deng left at the expiry of his contract due to the reformulation of the Country Office programmatic interventions in the area of Poverty Reduction and Sustainable Livelihoods as well as [International Non-Governmental Organizations].”

17. In a letter to the UNDP Administrator dated 27 April 2007, the Applicant requested administrative review of the decision not to renew his appointment. He alleged that the non-renewal of his appointment while he was on sick leave violated the provisions of Administrative Instruction ST/AI/2005/3.

18. In a letter dated 18 June 2007, the Director and Assistant Administrator of the UNDP Bureau of Management replied on behalf of UNDP Administrator that the Applicant did not have a right to the extension of his fixed-term appointment and that his allegations were not founded.

19. On 17 August 2007, the Applicant lodged an appeal with the New York JAB. It was followed by a reply from the Respondent dated 23 October 2007 and further observations from the Applicant dated 12 November 2007.

20. A JAB Panel convened on 25 June 2008 to examine the Applicant's appeal. In its report dated 16 July 2008, the Panel unanimously decided that the Respondent did not violate the Applicant's due process rights in the non-renewal of his contract and that the Applicant had not presented "clear or convincing evidence that the decision in question was motivated by prejudice, bias, or abuse of power".

21. On 9 September 2008, the Secretary-General decided to endorse the JAB's recommendation and decided to take no further action.

22. On 26 May 2009, the Applicant appealed the decision of the Secretary-General dated 9 September 2008 with the former United Nations Administrative Tribunal. On 13 October 2008, the Respondent requested an extension of time to file his response, until 4 December 2009, at which date he filed his submission.

23. By letter dated 4 February 2010 from the Registrar of the Dispute Tribunal, the Applicant was notified that, pursuant to the United Nations General Assembly Resolutions 62/228 and 63/253 and ST/SGB/2009/11 on *Transitional measures*

related to the introduction of the new system of administration of justice, his case had been transferred to the Dispute Tribunal.

Judicial Proceedings

24. On 19 July 2009, the Dispute Tribunal issued a case management order in the present matter (No. 131 (NBI/2010)). The Applicant submitted his reply on 30 August 2009 attaching an unsigned and undated witness statement from the former Chairman of UNDP Staff Association in Nairobi. He also moved the Tribunal to hear this matter. The Respondent submitted his reply on the same day and requested leave from the Tribunal to submit additional documentary evidence.

25. On 31 August 2011, the Respondent filed a motion to strike the Applicant's reply to the order, arguing that the Applicant had in his response developed arguments on the merits and submitted an invalid witness statement, which was "undated, unsigned, unspecific of the witness name" and "largely based on hearsay".

26. In an Order No. 164 (NBI/20100 dated 2 September 2010), the Tribunal rejected the Respondent's motion to strike the Applicant's reply to Order No. 131, stating that nothing in the Applicant's response was against the requirement provided for in the order. Further, with regards to the witness statement, the Tribunal stated that it was not considered as documentary evidence and that the Tribunal was not called upon to determine its probative value at that stage.

27. On 8 September 2010, the Registrar issued a notice of hearing setting the trial on 26 October 2010. Both parties informed the Registrar that they had no objection to the proposed date of hearing.

28. On 3 November 2010, the Respondent filed a request for leave to file additional documentary evidence.

29. On 6 November 2010, Counsel for the Applicant informed the Registrar of the Dispute Tribunal that he had been trying to contact his client by telephone calls

and emails to no avail. On the day of the trial, 8 November 2010, the Applicant was not available to attend the hearing which started at 15.00 hours Nairobi time by telephone. The hearing was therefore adjourned. By email on the same day, the Applicant wrote to his counsel and the court to apologise for his absence, stating that he had been working outside of Juba, Southern Sudan – a hardship duty station - where there was no access to internet. Having not seen his counsel's emails, he was not aware of the hearing date. He further informed the court that his witness was also away from his duty station, on Rest and Recuperation leave.

30. By order No. 220 (NBI/2010) dated 9 November 2010, the Tribunal decided to set another date for trial, to 18 January 2011. It further requested the Respondent to call four more witnesses, who were at the time working with the Applicant:

- a. The Deputy Resident Representative Programme
- b. The Country Director
- c. The Deputy Resident Representative Operations
- d. The Resident Coordinator

31. After further exchanges between the Registry and the parties regarding the organization of the hearing and the availability of witnesses, the Tribunal decided by Order No. 243(NBI/2010) that 18 and 19 January 2011 would be the dates set for trial.

32. On 11 January 2011, the parties filed synopses of witness statements. The Respondent further requested leave to file additional documents.

Hearing

33. The Tribunal heard the present matter on 18 and 19 January 2011. All witnesses, including the Applicant, were heard by audio-conference.

34. At the end of the hearing the Tribunal directed the Respondent to provide the Terms of Reference (“TOR”) of the programme manager who was in charge of the new programme formulated after the closure of the RRIDP Programme. It further requested the parties to file written closing submissions by 10 February 2011. Both parties complied with this oral order within the set deadline.

35. As requested by the court during the hearing, the Respondent submitted as part of his closing submissions the following additional documents:

- a. The vacancy announcement for the post of Programme Manager RRIDP, encumbered by the Applicant.
- b. The vacancy announcement for the post of Programme Manager Recovery and Sustainable Livelihoods at the L-5 level;
- c. The vacancy announcement for the post of Project Manager Somaliland and Bari Region Flood Prevention and Water Shed Management Projects at the L-4 level.

Applicant’s submissions

36. The Applicant submits that his contract was terminated in violation of his due process rights. He argues that the impugned decision was taken in bad faith, while he was on emergency sick leave, on the ground that the RRIDP programme was to be phased out. He believes that it was a “trick” on the part of UNDP Somalia senior management to reclassify his post and hire another individual. In this regard, the Applicant argues that:

- a. When the transformation of the RRIDP programme was communicated officially to the donors by letter dated 2 August 2006, he - as the Programme Manager - was never communicated such critical information. At the time he had not yet left for treatment and could have been shown the letter, which in his view, was a lack of transparency on the part of UNDP Somalia senior management. The

Applicant does not dispute that the RRIDP Programme was reshaped to be replaced by the Sustainable Livelihood Programme following the recommendation contained in an evaluation report dated 3 March 2006. However, such report should have been discussed with him before informing the donors or anyone else outside UNDP Somalia. Furthermore, UNDP Senior Managers did not inform the Applicant because they had an ulterior motive in acting to separate the Applicant from the UN.

- b. The senior management team did not expect the Applicant to return after his major heart surgery and intensive medical care. The Human Resources BES sent him a separation package while he was still in hospital in Toronto. On 30 November 2006, the Deputy Resident Representative (Operations) called him to advise that the UNDP Office would organize the transfer of his personal belongings to Canada. He returned to Nairobi to challenge the decision not to extend his appointment with senior management, while he was still on sick leave.

37. Whilst the Applicant acknowledges that the Secretary-General has a discretionary authority in the renewal of appointment he argues that in the present case such authority was abused by management. In his view, extraneous factors motivated the impugned administrative decision. The post he held, he argues, was rearranged to make way to another individual. In this respect, he avers that the Respondent violated his due process rights in the following manner:

- a. There are elements of arbitrariness and bias which influenced the decision to terminate his contract. These are countervailing circumstances within the meaning of the former UN Administrative Tribunal Judgment No. 885, *Handelsman* (paragraph III, 1998);

- b. The Respondent violated the UN Charter Article 101.3 and staff regulation 1.2 (a) by not respecting the principles of “integrity, competence and respect for the dignity and human rights of every staff member”;
- c. More importantly, the termination of the Applicant’s appointment whilst he was on sick leave violated section 3.9 of ST/AI/2005/3. The Applicant argues that he was entitled to an extension of his appointment up to the maximum entitlement of sick leave under staff rule 106.2 or 206.3, for a total of six months of sick leave comprised of three months of full pay and three months of half-pay. He claims that he was so traumatized by the threat of losing his job that he focused all his attention on saving his post and “rushed” back to Nairobi hoping to retain his post. The managers agreed to assist him to find alternative employment elsewhere in the Organization which was not successful. Further they did not assist him to take full advantage of the leave entitlements available to him not only to ensure his full recovery but to eventually obtain a post elsewhere;
- d. The Applicant further asserts that the post was actually filled by another person long before the Applicant returned to the duty station, even before his separation from the Organization. In his view evidence suggests that, although the Evaluation Report was laudable to the RRIDP programme’s achievements, for which the Applicant was responsible as Programme Manager, the Organization failed to give the “fullest regard” to the “qualifications and experience” of someone like him who was “already in the service of the United Nations”, as per staff regulation 4.4, when the new programme was substantially similar to the RRIDP programme and went to selecting the new person.

38. In the light of the above, the Applicant asserts that the non-renewal of his contract was unfair. He argues that the improper conduct of UNDP Somalia senior

management proves their prejudice against him. The real issue at stake, he argues, is not the non-renewal of his contract but the manner in which he was conducted. The senior management has not shown any sensitivity or concern as they informed him of his termination while he was in a hospital bed under dire physical and emotional pain. They could have waited until the Applicant had fully recovered from his heart operation before terminating his fixed-term contract. He further argues that with regard to the letter dated 17 April 2007 by the Country Director, he had to exert pressure to obtain such letter. In fact, although the Applicant was the Programme Manager, the programme was closed during his absence, without his knowledge.

39. As remedy the Applicant seeks :

- a. Reinstatement in his position;
- b. Alternatively, that he be placed in an appropriate post that is commensurate with his previous post in all essential respects within the Organization; or
- c. Financial compensation for the years he was forced to separate from the Organization.

Respondent's submissions

40. It is the Respondent's view that the Applicant's contract was not renewed in compliance with the applicable rules.

41. Firstly, the Respondent submits that the Applicant was holder of a 200-series appointment limited to service with UNDP. As stated in the letter of appointment, such appointment expires without notice and carries no expectancy of renewal or conversation to any type of appointment.

42. The Respondent further submits that the decision not to renew the Applicant's appointment was free of improper motives or bias. The Outcome

Evaluation report was prepared by independent consultants, to provide an assessment of the progress achieved under the Programme, including making recommendations for the future. On 3 March 2006, a report was finalised, which addressed various issues, including perspectives for the future of the Programme. Upon completion of his initial one-year appointment on 2 July 2006, the Applicant's appointment was renewed for six months, until 31 December 2006. The Respondent asserts that the Applicant was informed before the extension of his appointment that his contract may not be further extended as the RRIDP Programme might be downsized and closed down shortly after 31 December 2006. Thereafter, the Applicant was hospitalized on 3 July 2006 and the closing down of the RRIDP Programme was officially communicated to donors supporting the Programme on 2 August 2006. They were also advised that a new programme in support of Transition and Recovery was to be created. In September 2006, the Applicant travelled to Canada to undergo a major heart surgery. Later, in 28 November 2006, close to the expiry of his contract, the Applicant was informed in writing that his contract would be not renewed beyond 31 December 2006. The Applicant travelled back on 25 December 2006 and his contract was renewed for a period of two months, until 28 February 2007. On 31 January 2007, he submitted a letter from his certifying physician stating that he was fit to return to duty as from that date. The Respondent is accordingly of the view that evidence suggests that the non-renewal of the Applicant's contract has been made in conformity with the rules, in good faith and free of bias and was not motivated by extraneous factors.

43. The Respondent argues that no due process rights were violated. The Applicant's appointment did not carry any expectancy of renewal. Moreover, the contract did not end while the Applicant was on sick leave. He explains that the Applicant was cleared to return back to duty on 31 January 2007 and his contract expired on 28 February 2007. Therefore, contrary to the Applicant's contentions, the decision of not renewing his appointment did not violate ST/AI/2005/3.

44. Furthermore, the Respondent is of the view that the Applicant has not discharged his burden of establishing any countervailing circumstance which would have given rise to a reasonable expectancy of a renewal of his fixed-term contract. UNDP Somalia, he avers, had no obligation to extend his appointment beyond his medical clearance, on 31 January 2007. However, they did extend the contract as an act of solidarity *vis-à-vis* the Applicant's medical condition.

45. In the light of the above, the Respondent submits that he did not abuse his discretionary authority in not renewing his appointment. The decision was motivated by the fact that the RDDIP closed down to be reshaped into a more relevant project. Accordingly, the Respondent avers that he did not take the contested decision on the ground of improper motive or extraneous facts. The Applicant's rights were therefore not violated and the impugned decision was taken in respect of the applicable rules.

46. With regards compensation, the Respondent submits that the Applicant is not entitled to be reinstated or placed on another post commensurate with his previous post. He further avers that the Applicant is not more entitled to any financial compensation. In the light of the above, the Respondent requests the Tribunal to dismiss the application in its entirety.

Considerations

47. The Applicant held a one year Fixed-Term Contract from 2 July 2005 to 2 July 2006. His contract was extended at the same time he went to hospital for serious medical problems in Kenya, after which he was evacuated to Canada on 9 September 2006.

48. The Applicant submits that the contested decision violated his due process rights, specifically section 3.9 of ST/AI/2005/3, because he was advised of the non-renewal during his sick leave. He also avers that the non-renewal of his contract was based on improper motives. He alleges that the Respondent manipulated the process in order to hire a new individual.

49. The Tribunal notes the Respondent's arguments that the impugned decision was made in accordance to the applicable rules and the Administration's discretionary authority to restructure programmes. Furthermore, the Applicant held a 200-series appointment limited to service with UNDP in the capacity of RRIDP Programme Manager and his contract did not carry any expectancy of renewal. The Respondent argues that he has shown good faith by granting the Applicant another two months, beyond 31 December 2007, in order for him to find alternative employment.

50. The crux of the matter is whether the Respondent violated the Applicant's rights in terms of due process and whether there is evidence to suggest that the contested decision was motivated by improper motives against the Applicant.

Allegations of Violation of Due Process

51. The Applicant claims that the Respondent violated section 3.9 of ST/AI/2005/3.

52. The provisions of ST/AI/2005/3 reads as follows:

“When a staff member on a fixed-term appointment is incapacitated for service by reason of an illness that continues beyond the date of expiration of the appointment, he or she shall be granted an extension of the appointment, after consultation with the Medical Director or designated medical officer, for the continuous period of certified illness up to the maximum entitlement to sick leave at full pay and half pay under staff rules 106.2”

53. The Tribunal notes that the Applicant went on extended sick leave from 3 July 2006 and, initially, his fixed-term contract was to end on 31 December 2006, with the abolition date of the RDDIP programme. However, UNDP extended the Applicant's contract for a further two months, until 28 February 2007. The Applicant provided documentation that he was fit to return to work late January 2007.

54. Based on the evidence, the Tribunal notes that the Applicant had been made aware of the need to reshape the RDDIP programme on 6 July 2006 during a phone conversation with the Head of Business Development Unit. The Applicant was at the time of the event on sick leave.

55. He also received a phone call from Mr. David Allen on 25 October 2006 in the course of which he was advised of the decision of the donors to close down the RRIDP programme effective 31 December 2006.

56. On the next day, the Respondent consulted with UNDP Human Resources for input in view of the Applicant's medical status. Even though the project closed down on 31 December 2006 and that UNDP Somalia had no intention to extend the appointment of the staff member beyond the end of the programme, the Applicant was granted an extension of two months from 1 January to 28 February 2007 in view of the delicate operation he had to go through and the need for recovery time. In his testimony before the court, Witness Lemarquis explained the reasons why the Applicant's appointment was extended. He said that, after discussions, the Office decided to extend the Applicant's appointment in order to give him time to return from his sick leave and find alternative employment.

57. Evidence therefore suggests that the Respondent took into account the health situation of the Applicant.

58. The Tribunal does not find evidence that the Applicant was effectively separated while on sick leave. Admittedly the Applicant was made aware of the forthcoming end of the programme whilst he was on sick leave. However, the Tribunal did not find that the Applicant's contract expired while he was on sick leave. On the contrary, the Applicant was fit to return to work when his contract expired on 27 February 2007. Accordingly, the Tribunal cannot conclude that section 3.9 of ST/AI/2005/3 was violated.

Allegations of Improper Motives

59. The Applicant argues that his contract was not renewed because the Respondent wanted to hire a new individual to replace him.

60. The former UN Administrative Tribunal has consistently held that the Secretary-General has the discretion to take decisions in the overall interest of the Organization so as to maintain or improve the effectiveness of the Organization. In *D'Hellencourt* UNDT/NBI/2009/11, the Dispute Tribunal reaffirmed such a discretionary power, quoting UN Administrative Tribunal Judgment No. 117, *Van der Valk* (1968)¹ in which the Tribunal stated that, *it cannot substitute its judgment for that of the Administration in respect to reorganization of posts or staff in the interest of economy and efficiency.*

61. Furthermore, in the case of *Raj* (Judgment No. 350, (1985))², the former UN Administrative Tribunal Judgment held *The mere fact that a reorganization may hinder the prospects or in any way affect the career of a staff member does not necessarily point to the existence of discrimination or improper motives in the Administration and thus, does not in itself give grounds for any claim against the decision taken. Responsibility of the Administration would only arise if the reorganization had been carried out for improper motives; in this case with the deliberate intention of damaging a staff member's position. It is for the staff member concerned to prove that the Administration exercised its discretion in this improper way.*

62. However, it must be emphasised that no discretion can be absolute. The discretionary authority to reorganize an office and terminate a staff member's contract should not be tainted by extraneous factors or improper motives. In *Abosedra* Order No.10 (NBI/2011), the Applicant filed an application seeking suspension of the decision not to renew his contract with the United Nations Economic Commission for Western Asia ("ESCWA"). The Respondent submitted that the primary basis for the decision to allow the Applicant's appointment to expire

¹ Para. IV.

² Para. IV.

was the re-structuring of the division, which was being contemplated to meet the new operational demands. The Tribunal reiterated that a decision would be unlawful if it was motivated by countervailing circumstances. It stated “*Examples of such circumstances are a mistake of law or fact; bias; overlooking of facts; wrong inferences or conclusions from facts; abuse of authority; improper motives or considerations; arbitrary or irrational exercise of discretion; giving of a false reason.*” In the case of *Abosedra*, the Tribunal considered that, based on the evidence adduced during the hearing, the restructuring of the Division was at the time of the non-renewal of the Applicant’s appointment an “embryo” with months to go and there was no written evidence that the restructuring would actually happen, contrary to the Respondent’s allegations. The Tribunal therefore found that the decision not to renew the Applicant’s contract was tainted by extraneous factors.

63. The situation in the present case is different as there is clear written evidence adduced during the hearing that the whole RRIDP programme was to be phased out on the basis of an evaluation made by external consultants. It was not an “embryo” with months to go at the time the Applicant’s contract was not renewed. It is clear from the evidence that the restructuring of the RDDIP programme had been thought and prepared months in advance.

64. Furthermore, the Tribunal takes note that the decision to close down the RRIDP programme was made by the donors. The Respondent only played an advisory role with regards to the effectiveness of the programme.

65. The Tribunal further notes that the mandate of the new phase is rather different from the RRIDP programme. The new programme called “Recovery and Sustainable Livelihoods” (“RSL”) focused on activities in three areas:

- a. “Recovery of livelihoods through integrated area development strategies and community capacity development;

- b. Disaster risk management, through the rehabilitation of flood control and other small infrastructures and the creation of irrigable land, thus creating opportunities for improving community livelihoods;
- c. Support the emergence of a viable private sector with impact on job creation through enabling environment for businesses and for micro-finance sector”.

66. In contrast, the RRIDP Programme had as main mandate to implement a programme focused on providing durable solutions such as adequate social services and economic prospects to ensure that returnees come home to stay and reintegrate well into their communities. Three of the witnesses, Mr. Overvest, Mr. Lemarquis and Mr. Allen provided evidence that UNDP Somalia was going through a general restructuring at the time, and, within that context, the RRIDP Programme was to close down in line with the assessment made of the programme and the decision of the donor member states.

67. It follows from the evidence that the RRIDP programme was effectively abolished and replaced by a new programme of a different nature. The restructuring process took almost a year to complete. Unlike in *Abosedra* Order No.10 (NBI/2011), evidence suggests that the restructuring phase was not an “embryo” at the time when the Applicant was notified of the non-renewal of his appointment beyond 31 December 2006, a date which corresponded to the expiration of the programme.

68. The Applicant claims that the restructuration had for main purpose to replace him with an earmarked candidate. The Tribunal notes that, as a Programme Manager, the Applicant assumed overall responsibility for, and management of, the operational and development activities of the RRIDP Programme. Qualification and experience required for his post at the L-4 were “Advanced University Degree in Development Studies or related disciplinary; sound work experience of at least 7 years in the field of emergency humanitarian assistance; rehabilitation and

development in crisis countries; fluency in English with excellent writing skills; knowledge of Arabic desirable; working experience in Somalia is an asset.”

69. On the other hand, it appears that the new positions advertised for the new programme (a post of ALD-4 Project Manager – Somaliland and Bari Regional Flood Prevention and Water shed Management projects, and a post of L-5 Programme Manager Recovery and Sustainable Livelihoods) required more qualifications and experience than the post encumbered by the Applicant. No doubt the job descriptions for these new vacancies were very different and required *inter alia* more experience and a different set of competencies. In the light of the above, the Tribunal considers that the Applicant did not adduce sufficient evidence to support his allegations that the Respondent’s decision was motivated by countervailing circumstances.

70. It may well be asked why the Applicant who had returned from sick leave at the time when the vacancy announcements were posted did not apply for the new positions. Witness Lemarquis testified at the hearing that he was not aware whether the Applicant applied for the new positions. He further explained that the new positions did not require IDP experience only.

71. In the light of the above, the Tribunal finds no evidence to suggest that the decision taken by the Secretary-General not to renew his appointment violated the Applicant’s due process rights and that it was biased or motivated by countervailing circumstances.

Conclusion

1. For the foregoing reasons, the application is rejected.

(Signed)

Judge Vinod Boolell

Dated this 31st day of May 2011

Entered in the Register on this 31st day of May 2011

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi