



Before: Nkemdilim Izuako
Registry: Nairobi
Registrar: Abena Kwakye-Berko

MWETAMINWA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
AAS/ALD/OHR

Introduction

1. The Applicant was a Programme Management Assistant at the FS-5/09 level working with the Political Affairs Division of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in Kisangani.¹

2. By an application filed on 28 June 2019, which was registered as Case No. UNDT/NBI/2019/093, the Applicant contests the decision by MONUSCO to abolish his post and dry cut his Fixed-Term Appointment (FTA).²

Facts

3. On 2 April 2019, the Applicant received notice from the MONUSCO Human Resources Section informing him that his FTA would not be extended beyond 30 June 2019.³ Additionally, the Applicant was informed that the Human Resources Section was going to commence his separation process and thus, he was advised to commence his check-out⁴ so as to leave on 30 June 2019.

4. Following this notice, on 13 May 2019, the Applicant requested management evaluation of the decision to separate him and received an unfavorable response on 19 June 2019.⁵

Submissions

Applicant's submissions

5. The Applicant submits that the decision to abolish his position was taken arbitrarily and that this constituted an abuse of power by MONUSCO. He maintains that there is no General Assembly decision for the closure of MONUSCO Office at

¹ Application, section I

² Application, section V

³ *ibid*

⁴ Application, section VIII

⁵ Application, section VI, Application, Annex 3

Kisangani where he was based and also no General Assembly decision adopting the 2019/2020 draft budget for MONUSCO for the abolition of his post. The Applicant additionally submits that he will suffer irreparable harm as he has no other job or income. He prayed the Tribunal to determine his matter urgently as his contract was to end on 30 June 2019.⁶

Considerations

6. The Tribunal is aware that the Applicant is self-represented and evidently disadvantaged in bringing this Application without legal assistance. There are many flaws with this Application.

7. Firstly, the application is unsigned and the Applicant's physical location is such that he cannot appear physically before the Tribunal to perfect it. The failure by the Applicant to sign the instant Application renders it incomplete. Further, although unspecified, the Application is brought in the form of a merits application.

8. To further confuse and compound this matter, the relief sought by the Applicant is that the Tribunal urgently review and reverse the decision by MONUSCO to separate him on 30 June 2019. In other words, he seeks an injunctive order or an order for interim measures rather than a final relief on the merits of his case.

9. An urgent injunctive order under the UNDT Statute and Rules of Procedure (ROP) must be brought under either Art. 13 or Art. 14 of the ROP. Since the Applicant had already received the decision of the Management Evaluation Unit, he can only resort to Art. 14 of the ROP and ask for an order suspending MONUSCO's decision to separate him on 30 June 2019.

10. This means that the Applicant would still have to show in his application that he has met the three prerequisites of: (i) prima facie unlawfulness, (ii) particular urgency and (iii) irreparable damage.

⁶ Application, section V

11. Even though the Tribunal is minded to consider that access to justice is an issue in this case and that the Applicant has submitted a most confused and inarticulate application because he did not have legal assistance, bare compliance with the law cannot be jettisoned.

12. The Appeals Tribunal has stressed that in determining whether there was particular urgency, the UNDT should explicitly address the issue of whether the Applicant acted diligently.⁷ When an Applicant for suspension of action has failed to act timeously in approaching the Tribunal, the criterion of particular urgency cannot be met.

13. The Applicant received a negative response to his request for management evaluation on 19 June 2019 and yet he did not seek an order for interim measures until Friday, 28 June 2019, which was effectively his separation date, being the last working day of June 2019. The Application fails on the prerequisite of particular urgency because the urgency in this case is self-created. The applicable rule here is that Equity aids the vigilant, not the indolent.

14. In adjudicating an application on the merits, the Tribunal is guided by art. 9 of the UNDT Rules of Procedure, which states that:

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

15. In a suspension of action application, the failure to meet the prerequisites of interim orders is a matter of law which may be adjudicated even without serving the application on the Respondent for a Reply, and even if it was not raised by the parties.

⁷ Villamorón 2011-UNAT-160 para.45.

JUDGMENT

16. The Tribunal finds that this Application fails on all scores, either as a suspension of action or an application on the merits. It finds also that the calling upon the Respondent to file a Reply will not add any value to the weakness of the application and that a summary judgment is appropriate.

17. The Application is accordingly refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 3rd day of July 2019

Entered in the Register on this 3rd day of July 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi