		Case No.:	UNDT/NBI/2020/028
	UNITED NATIONS DISPUTE TRIBUNAL	Judgment No.:	UNDT/2020/085
		Date:	8 June 2020
		Original:	English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BASSEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Sètondji Roland Adjovi

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR
Joseph Kavoi, AAS/ALD/OHR

Background

1.   On 15 April 2020, the Applicant filed an application contesting the non-renewal of his fixed-term contract and separation from the Organization effective 15 January 2020 ("the contested decision").

2.   The Respondent filed a reply on 13 May 2020 in which it is argued that the application is not receivable *rationae materiae.*

3.   The Applicant filed a rejoinder to the reply on 1 June 2020.

4.   The Tribunal finds that the application is moot and it is dismissed in its entirety.

Facts

5.   The Applicant joined the Organization on 6 December 2010. At the time of filing the application, he served at the FS-5 level as Security Officer, Deputy Supervisor in the Special Investigation Unit of the Security and Safety Section with the United Nations Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO").

6.   By letter dated 15 May 2019, the Applicant was informed that in anticipation of the General Assembly's approval of the proposed 2019/2020 budget, MONUSCO would not extend his appointment beyond 30 June 2019.[1] This was confirmed in a follow-up letter dated 29 May 2019.[2]

7.   On 27 June 2019, however, he was informed that he was amongst staff members who would be retained by MONUSCO beyond 30 June 2019, that his appointment would be extended initially until 31 July 2019 and then until 31 December 2019 subject to budget approval.[3]

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[1] Application, annex 3.
[2] Application, annex 5.
[3] Application, annex 6.

8.   On 5 August 2019, MONUSCO's Principal Security Advisor ("PSA') requested the Special Representative of the Secretary-General ("SRSG") to transfer the Applicant from Goma to Kindu, in the Democratic Republic of the Congo, to fill a gap left by the transfer of another staff member.[4]

9.   On 9 August 2019, the Applicant wrote an email to the PSA, copying the SRSG and others, providing reasons why he should not be transferred to Kindu and requested the SRSG to restrain the PSA from carrying out the deployment because it was "ill motivated".[5]

10.   On 20 August 2019, the Applicant addressed an email to the SRSG requesting an investigation by the Office of Internal Oversight Services ("OIOS") into the PSA's conduct, "occupational harassment" and her decision to deviate his experience as an investigator to a Field Security Coordinator ("FSCO") in a location where his capacity would be "neglected, underutilized and unproductive".[6] On 21 August 2019, the Chief of Staff responded that she would review the issues raised in the email and revert.[7]

11.   On 16 December 2019, the Applicant was informed of the contested decision.[8]

12.   He sought management evaluation of the contested decision on 17 December 2019 and submitted an application for suspension of action to the UNDT.[9]

13.   On 19 December 2019, the Management Evaluation Unit ("MEU") informed the Applicant that his request for suspension of action pending management evaluation had been granted.[10]

14.   On 22 January 2020, a MONUSCO Human Resources Officer informed the Applicant that the Administration was exploring the possibility of having him placed

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[4] Application, annex 8.
[5] Application, annex 9.
[6] Application, annex 12.
[7] Application, para. 19.
[8] Application, annex 13.
[9] Application, annex 17.
[10] Application, annex 18.

on a post and that since this was a slow and arduous process, there would be a delay in submitting a response to his management evaluation request.[11]

15.   On 1 January, 1 February, 1 April and 1 May 2020, the Applicant's appointment was renewed effective 1 January 2020 to 31 January 2020, 1 February 2020 to 31 March 2020, through 30 April 2020 and through 30 June 2020 respectively.[12]

Considerations

16.   The Applicant argues that whilst it is true that the application challenged the decision not to renew his fixed-term appointment beyond 15 January 2020, bias and an abuse of authority led to the decision and that the extension does not address that argument. In *Kallon*[13]*,* it was held that an applicant has to demonstrate to the UNDT how his rights remained adversely affected by a decision which has been superseded and to show that he is suffering an injury because of that decision.

17.   In the present case, the decision not to renew the Applicant's appointment beyond 15 January 2020 was superseded by the decisions taken on 1 January, 1 February, 1 April and 1 May 2020 in which the Applicant's appointment was renewed to June 2020. Other than alleging that bias and an abuse of authority led to the superseded decision, the Applicant has not demonstrated to the Tribunal how his rights remain adversely affected by the contested decision which has been superseded and he has also failed to show that he is suffering an injury as a result of the superseded decision.

18.   The Tribunal determines that this application is moot on the basis of appellate jurisprudence that a judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance; thus, placing the matter beyond the law. There is no longer an actual controversy

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[11] Application, annex 21.
[12] Reply, annexes 2-4 and 6.
[13] 2017-UNAT-742, para. 46 citing to *Gehr* UNDT/2011/211.

between the parties and there is no possibility of any ruling having an actual, real effect.[14]

Conclusion

19.   The application is moot and it is dismissed in its entirety.

(Signed)

Judge Margaret Tibulya

Dated this 8th day of June 2020

Entered in the Register on this 8th day of June 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

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[14] See for example in *Crotty* 2017-UNAT-763.