



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

KODURU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Nicole Wynn, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former staff member of the United Nations Mission for Justice Support in Haiti (“MINUJUSTH”), filed an application contesting her “separation from service” upon the expiry of her fixed-term contract.
2. The Respondent replied that the application is not receivable and, in any event, without merit.
3. For the reasons set out below, the Tribunal finds the application receivable but rejects it on the merits, having considered that the decision not to extend the Applicant’s appointment was supported by the facts and the Applicant failed to show that it was unduly motivated.

Facts

4. The Applicant joined MINUJUSTH on a fixed-term appointment on 7 October 2017.
5. On 12 April 2019, by Security Council resolution 2466 (2019), the Security Council ordered the closure of MINUJUSTH on 15 October 2019 and requested the Secretary-General to begin the gradual withdrawal of the mission.
6. On 12 September 2019, MINUJUSTH Chief Human Resources Officer notified the Applicant that following Security Council resolution 2466, the Applicant would be placed on Special Leave with Full Pay from 22 September 2019 to 15 October 2019, at which time she would be separated from the Organization.
7. From 11 October 2019, the Applicant went on sick leave. In order to allow the Applicant to utilize her sick leave entitlements, her contract was extended until 7 October 2020 after which she was separated on a disability retirement.

8. MINUJUSTH closed on 15 October 2019 with its liquidation team completing all closure activities on 31 December 2019.

Consideration

Receivability

9. The Respondent objects that the application is not receivable because it is moot, given that the Applicant was not separated upon the expiration of her fixed-term appointment as she was placed on sick leave until after the closure of MINUJUSTH.

10. The Respondent relies in *Kallon* 2017-UNAT-742 (paras. 44 and 45) in which the Appeals Tribunal found that an application is moot when “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 no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect”. It further found that a claim of mootness should be rejected when the challenged decision continues to produce collateral consequences.

11. The Respondent further refers to *Belkhabbaz* 2018-UNAT-895 (para. 40) where the Appeals Tribunal held that there was no basis for a separate set of remedies concerning a decision not to extend the applicant’s contract pending a rebuttal process because the applicant had remained in employment with the Organization on sick leave.

12. The Applicant responds that the contested decision is reviewable beyond purely financial considerations because her sick leave was motivated by the challenged decision.

13. The Tribunal is not persuaded that the current application is moot as per *Kallon*.

14. Indeed, had the Applicant's contract been extended, her entitlements would have been calculated on a scale different from that applied to her sick leave period. Moreover, should the contested decision be found unlawful, the Applicant could be entitled to receive compensation for the harm caused by the unlawful decision under art. 10.5(b) of the Dispute Tribunal's Statute regardless of any entitlements she may have benefited from during her sick leave.

15. With respect to the calculation of any remedies, the Tribunal finds that this is a matter of merits, not receivability, and is not persuaded that the above-referred jurisprudence is relevant.

16. These determinations are therefore not purely academic and deserve a review of this matter on the merits.

Merits

17. The Applicant argues that she began experiencing "negative actions" in her workplace since the issuance of a judgment by the Appeals Tribunal in her favour concerning a 2015 matter.

18. With respect to the alleged negative actions, the Applicant refers to a memorandum dated 20 June 2018 discharging her from her functions and excluding her from communication related to her previous functions.

19. The Applicant further states that she was placed on a performance improvement plan ("PIP") in October 2018 which, she alleges, caused her to go on sick leave for depression.

20. The Applicant further alludes to the fact that her home leave was rejected and her United Nations *Laisser Passer* was not issued for extended periods of time. She further states that the Chief of Staff and the Special Representative of the Secretary-General of MINUJUSTH both shouted at her and that she was excluded from

planning meetings related to the organization of the newly created United Nations Office in Haiti (“BINUH”).

21. The Applicant argues that she was excluded from consideration for other assignments and arbitrarily excluded from consideration for newly created positions in BINUH.

22. In sum, the Applicant claims that the reason for the non-extension of her fixed-term appointment was a pattern of abuse against her.

23. The Respondent responds that the Applicant’s fixed-term appointment was not extended beyond its expiration after the Security Council decided to close MINUJUSTH.

24. The Tribunal recalls that staff regulation 4.5(c) and staff rule 4.13(c) both provide that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal.

25. In line herewith, in *Agha* 2019-UNAT-916, at paras. 16-17, the Appeals Tribunal recapitulated its long-standing case law concerning the judicial review of impugned decisions not to renew fixed-term appointments. The Appeals Tribunal stated that it is a well-established principle that such appointments do not carry an expectation of renewal. It further recalled that separation as a result of expiration of a fixed-term appointment takes place automatically, without prior notice, on the expiration date specified in the letter of appointment. It recalled, however, that a decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or was motivated by bias, prejudice or improper motive. The Appeals Tribunal finally recalled that it is the applicant’s burden to prove such factors played a role in the administrative decision.

26. In *He* 2018-UNAT-825 (paras. 45-46) the Appeals Tribunal further recalled that the Administration must state the reasons not to renew a fixed-term appointment to enable the Tribunal to review the legality of the decision.

27. The Tribunal notes that the Applicant alleges that the decision not to extend her contract was caused by a protracted pattern of harassment. However, there is no record of the Applicant having contested any of the decisions or conducts that she claims constituted harassment, nor does she provide any evidence of a causal link between the alleged incidents of harassment and the decision not to renew her appointment.

28. Rather, what the record shows is that the reason not to extend the Applicant's appointment was the closure of MINUJUSTH in October 2019. Given that the reason provided by the Administration is supported by the facts in evidence and that the Applicant has failed to show any ulterior motive, the Tribunal finds the decision lawful.

29. Moreover, given that the Applicant's fixed-term appointment expired and was not terminated, the Administration was under no obligation to retain her under staff rule 9.6(e). Any challenge of the Applicant's non-selection for positions in BINUH are outside the scope of this application.

Conclusion

30. In light of the foregoing, the application is rejected.

(Signed)

Judge Joelle Adda

Dated this 9th day of March 2021

Entered in the Register on this 9th day of March 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York