



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

DHINDSA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON APPLICATION FOR REVISION**

Counsel for Applicant:

Manuel Calzada

Counsel for Respondent:

Nicole Wynn, Appeals Section/ALD/OHR, UN Secretariat

Introduction

1. The Applicant holds a permanent appointment at the D-2 level. He served as the Director of Mission Support (“DMS”) of the United Nations Support Office for Somalia in Mogadishu until October 2022.
2. In October 2022, the Applicant was notified that the Government of Somalia had informed the Secretary-General that he was not welcome to return to Somalia. The Applicant was thus placed on Special Leave With Full Pay (“SLWFP”) with effect from 17 November 2022, pending efforts to find him a suitable alternate placement if he was declared *persona non grata*.
3. On 7 February 2024, the Applicant filed an application pursuant to art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure, for suspension of the Respondent’s decisions to extend his placement on SLWFP as well as the recruitment for the position of DMS, which he encumbered. This application was registered under Case No. UNDT/NBI/2024/008 (Dhindsa).
4. By Order No. 20 (NBI/2024), dated 13 February 2024, the Tribunal dismissed as not receivable the application under Case No. UNDT/NBI/2024/008 (Dhindsa).
5. On 15 February 2024, the Applicant filed an application for revision of judgment directed at Order No. 20 (NBI/2024), which is the subject of this Judgment.
6. The Respondent filed a reply to the application on 18 March 2024 in which he contends that the application is not receivable. The Applicant filed a rejoinder addressing the issue of receivability raised by the Respondent.

Parties’ submissions

7. The Applicant’s principal contentions are:
 - a. The Tribunal erred when understanding that the application registered under Case No. UNDT/NBI/2024/008 was for a suspension of action pending

management evaluation pursuant to art. 13 of the Tribunal's Rules of Procedure;

b. He admittedly did not file for suspension of action pending management evaluation "given the unlikelihood that the three elements of the requirement for SOA would be met";

c. Instead, he claims that his request for suspension of action was made pursuant to art. 14 of the Tribunal's Rule of Procedure;

d. The Applicant says that he made this clear in a supplementary submission dated 13 February 2024, and that the Tribunal did not take this submission into account before issuing its Order No. 20 (NBI/2024) on the same day; and

e. His application for revision is receivable in the interest of justice and fairness pursuant to art. 19 of the UNDT Rules of Procedure.

8. The Respondent's principal contentions are:

a. Article 12.1 of the UNDT Statute provides for applications for revisions of executable judgments, not orders;

b. Even in the case of a judgment, an application is receivable only when it seeks revision "on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence";

c. The application neither seeks revision of an executable judgment nor does the Applicant claim the discovery of a newly discovered decisive fact;

d. Even assuming the application in Case No. UNDT/NBI/2024/008 was one for suspension of action during the proceedings under art. 14 of the UNDT Rules of Procedure and not one under art. 13, the Applicant still cannot be granted relief under art. 12.1 of the UNDT Statute; and

e. An application under art. 14 of the Rules would not have been receivable because the Applicant had not filed an application on the merits that was served on the Respondent for a reply within 30 days, which is a prerequisite for a request for interim measures during the proceedings.

Consideration

9. Article 12.1 of the UNDT Statute stipulates that:

Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

10. Article 29.1 of the UNDT Rules of Procedure is similarly worded.

11. Assuming *arguendo* that Order No. 20 (NBI/2024) meets the definition of “judgement” as required by the applicable law, the Applicant bears the burden of establishing the discovery of a decisive fact unknown to him or to the Tribunal at the time when the said Order was rendered.

12. In the present case, the Applicant’s principal contention is that the Tribunal misconstrued his application in Case No. UNDT/NBI/2024/008 (the previous case) as being filed under art. 13 of the UNDT Rules of Procedure (governing suspension of action during a management evaluation), rather than art. 14 (governing suspension of action during the proceedings) of those Rules.

13. Nowhere in the application for Case No. UNDT/NBI/2024/008 does the Applicant indicate that he was filing an art. 14 suspension of action request. However, his application was filed while he was awaiting a response from management evaluation.

14. Additionally, an application under art. 14 requires a party to have filed a substantive application on the merits as a prerequisite. *Applicant* UNDT/2011/187, para. 31. See also *Mwangi* Order No. 168 (NBI/2017), paras. 18-19. Since no such

substantive application was filed in the previous case, art. 14 would not apply. Hence, it was reasonable for the Tribunal to assume that the request was meant to be made pursuant to art. 13.

15. The Applicant now claims that the Tribunal was mistaken in inferring his intent in the previous application. To the extent that the Applicant's intent was to file under art. 14, and that this "fact" was unknown to the Tribunal at the time of its Order No. 20 (NBI/2024), this unknown fact was not a decisive fact.

16. The Tribunal notes that suspension of action under either art. 13 or art. 14 of its Rules of Procedure has the same requirements: "where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage".

17. The Applicant did not address the three required elements in his original application and, in his 13 February submission in the previous case, he conceded that he was unlikely to meet the required three elements.

18. The Tribunal agrees that the required elements were not met. The decision did not appear to be *prima facie* unlawful; there was no particular urgency given that the Applicant was on leave with full pay and there was no showing of irreparable harm.

19. Thus, the application for suspension of action under the previous case was properly denied, regardless of whether the Applicant intended to invoke art. 13 or art. 14.

Conclusion

20. In view of the foregoing, the Tribunal DECIDES that the application for revision is dismissed.

(Signed)

Judge Sean Wallace

Dated this 11th day of July 2024

Case No. UNDT/NBI/2024/009

Judgment No. UNDT/2024/041

Entered in the Register on this 11th day of July 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi