



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

HOWARD

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for the Applicant:**  
Marisa Maclellan, OSLA

**Counsel for the Respondent:**  
Susan Maddox ALS/OHRM  
Cristiano Papile, ALS/OHRM

## **Introduction**

1. The Applicant is a Warehouse Assistant at the GS-4 level in the United Nations Mission in Liberia (UNMIL). On 18 August 2014, he filed an Application for suspension of the decision dated 23 June 2014 to extend the Applicant's Administrative Leave Without Pay (ALWOP) from 4 July 2014.

2. The Respondent filed a Reply to the Application on 19 August 2014 in which it was asserted, inter alia, that the Application was not receivable.

## **Facts**

3. The Applicant joined the United Nations in June 2004. His appointment was renewed on a number of occasions and is due to expire on 30 June 2014.

4. On 27 December 2013, the UNMIL National Staff Association (NASA) staged a sit-in action outside the UNMIL base. During this time, different forces were deployed to observe, including the Jordanian Police Unit, Nigeria forces, and Liberian National Police.

5. The Applicant submitted that on his way home from the UNMIL base, he realized that he had forgotten something inside and proceeded back to the main entrance which was locked. He knocked at the gate to gain entrance and was attacked by three Jordanian police who were part of UNIL security resulting in severe internal and external injuries.

6. On 3 January 2014, the Applicant was handed a letter which informed him that he was the subject of an investigation into misconduct, and that he was being placed on Administrative Leave with Pay (ALWP) for three months, or until the completion of the investigation, effective 6 January 2014.

7. On 3 February 2014, the Applicant's brother, a lawyer, wrote a letter to the Special Representative for the Secretary General (SRSG), Karen Langren, complaining of mistreatment against the Applicant meted out by the Jordanian Police and requested an investigation. The Office of the Senior Legal Officer for the

SRSG replied on 6 February 2014 stating that an internal investigation had been initiated.

8. On 12 February 2014, while the Applicant was still on bed rest due to his injuries, he was visited by an investigator from the Office of Internal Oversight Services (OIOS), who asked if the statements made by the Applicant's brother in his letter were the Applicant's statements. The Applicant replied in the affirmative and was asked to sign the statement.

9. On 31 March 2014, a letter was brought to the Applicant's house, which stated that the ALWP which started on 6 January 2014 was due to expire on April 2014, and that the Applicant would be notified of any fresh decision.

10. By a letter, dated 2 April 2014, which the Applicant states he received on 3 April 2014, he was informed that he was being placed on ALWOP, effective upon his receipt of the letter. The letter further stated if the Applicant wished to have continued health coverage, it would be at his own expense.

11. On 30 June 2014, the Applicant reported to the UNMIL base where he was given a one year contract to sign and a letter, dated 23 June 2014, informing him that his ALWOP was being extended "for an additional three months from 4 July 2014, or until the completion of the disciplinary process, if any, whichever came earlier.

12. The Applicant requested management evaluation of the decision on 18 August 2014.

13. The Applicant also filed the present Application on 18 August 2014. The Respondent filed a Reply on 19 August 2014. Thereafter, the Tribunal heard oral submissions from Counsel for both parties on 21 August 2014.

### **Receivability**

14. It was argued by the Respondent that the Application was not receivable for the following reasons:

- a. The decision to extend the Applicant's placement on ALWOP has already been fully implemented and, as such, it cannot legally be the subject of a suspension of action.
- b. The Respondent cited *Nwuke*, UNDT/2012/002 as authority that where a contested decision has been fully implemented, suspension of action cannot be granted.
- c. Also cited in support were these three orders rendered in the matters of *Applicant*, Order No. 087 (NBI/2014), *Applicant*, Order No. 097 (NBI/2014) and *Applicant*, Order No. 167 (NBI/2014) where the applicants challenged the renewal of their placement on ALWOP were all rejected as the decisions to place the applicants on ALWOP had already been implemented.

15. In response, the Applicant argued that while the UNDT has found that a suspension of action cannot be obtained to restore a situation or reverse an unlawful act which has already been implemented, it has also found that a decision with "ongoing legal effects" is receivable because it can only be deemed to be implemented in its entirety at the end. In support of her submission the Applicant cited *Gallieny* Order No. 060 (NY/2014) and *Calvani* UNDT/2009/092.

16. On the issue of receivability, the Tribunal finds and holds that the latest ALWOP on which the Applicant was placed and which became effective on 2 July 2014 is without a doubt still ongoing and has not been fully implemented. Its full implementation will happen only sometime in October 2014 if it is not discontinued by the Respondent or set aside by the Tribunal.

17. The Respondent's argument that the decision has been fully implemented is rejected as a basis for lack of jurisdiction of this Tribunal to entertain this Application. The Application is receivable.

#### **Applicant's case**

18. The Applicant's case may be summarized as follows:

*Prima facie unlawfulness*

a. Staff rule 10.4 stipulates that a staff member shall be placed on ALWP except when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on ALWOP.

b. In this case, the Applicant has been on administrative leave for over 220 days, or over seven months, the majority of which has been without pay.

c. The Administration continues to maintain that the ALWOP is not a disciplinary measure, it appears to follow that as more information was gathered, the decision was made to convert then extend the leave from with pay to without pay. The increase in severity and punitive nature of stripping the Applicant of his salary has the *de facto* effect of serving as a disciplinary measure.

d. Staff rule 10.4(b) envisions an estimated three months as the duration of the investigative process. Several investigations were undertaken and multiple witnesses interviewed with regard to the Applicant's participation in the sit-in strike of UNMIL NASA on 27 December 2013. It was submitted on behalf of the Applicant that it is not practicable to extend his ALWOP for an additional three months after the initial period, when, in the present case, he is being kept in the dark as to the status of the investigation well into the third period of administrative leave.

e. Staff rule 10.4(c) provides that in "exceptional circumstances" the Secretary-General can take away all or part of a staff member's pay while on administrative leave. However, there is no clear articulation of what these "exceptional circumstances" may be for the purpose of placement on ALWOP.

f. The Applicant was not shown the *prima facie* evidence against him and has not been given a copy of, nor had the opportunity to respond to, the investigation report concerning his conduct.

g. The Guidelines for placement of staff members on administrative leave with pay pending investigation and the disciplinary process cannot be relied upon by the Respondent as they are not based on a properly promulgated instrument via administrative issuance.

*Urgency*

h. The decision to place the Applicant on administrative leave without pay is a decision with continuing legal effect meaning that it gives rise to the required urgency following *Calvani* UNDT/2009/092 and *Ba* UNDT/2012/025.

i. In the case of *Ba*, a decision to place a staff member on administrative leave with pay was suspended. Regarding the urgency of the decision, the learned judge found that the continuing legal effect of the unlawful decision meant that at any stage during its continuance, there was an element of urgency. He went on to state that the urgency derives from the nature of the effect on the applicant, and is also on-going. For each day that the administrative leave continued, the applicant suffered a renewed assault on her reputation and her career prospects.

j. In this case, the Applicant had made tremendous expenditures for his medical needs as a result of the 27 December 2013 incident, and, combined with lack of income, this has created a dire situation in his ability to care for the 10 people in his family, including basic needs such as food and housing. He has had difficulty meeting rent, has received a two-month notice similar to eviction and is blocked from trying to secure any other means of income.

k. In addition, the uncertainty created by the indefinite nature of his placement on ALWOP is a source of enormous stress. Given the apparent absence of any progress in the investigation in over a year, the Applicant

has no confidence that his situation could improve in the foreseeable future.

l. In *Calvani*, the learned judge considered that there were effectively two decisions to be considered, the decision to place the applicant on administrative leave and the decision to make that ALWOP. The Applicant's situation can be contrasted with that in *Calvani* where the learned judge felt that a risk of hindering the investigation meant that there was no particular urgency in relation to reinstating the applicant to the functions of his post.

m. It is the Administration which continues to extend the leave, while the Applicant has remained hopeful that there would be some completion to their actions which would warrant discontinuation. Therefore, the matter is urgent but the urgency is not self-created.

*Irreparable harm*

n. The Dispute Tribunal held in *Corna* Order No. 80 (GVA/2010), that the harm is irreparable if it can be shown that suspension of action is the only way to ensure that the Applicant's rights are observed.

o. In *Tadonki* UNDT-2009-016, it was held that a wrong on the face of it should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict. Monetary compensation should not be allowed to be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process.

p. The Dispute Tribunal found in *Calvani* 2009-UNDT-092 that damage to reputation and family distress caused by a sudden termination of salary, upon administrative leave without pay was irreparable.

q. The Dispute Tribunal found in *Calvani* 2009-UNDT-092 that damage to reputation, and family distress caused by a sudden termination of salary, upon administrative leave without pay was irreparable.

r. A decision which leaves the Applicant without salary and health care coverage indefinitely must be seen as causing irreparable harm as it negatively affects his financial, professional and personal life. The consequences of the decision described above also give rise to an irreparable harm. The realities of trying to support a family in Monrovia, during a time of heightened risk with the Ebola outbreak, with no income source for a period of over six months are daunting. The health and wellbeing of not only the Applicant but also those he supports is put in jeopardy.

### **Respondent's case**

19. The Respondent's case may be summarized as follows:

#### *Prima facie unlawfulness*

a. Staff rule 10.4(a) provides that a staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time pending an investigation and until the completion of the disciplinary process. In compliance with this provision, the Applicant was placed on administrative leave pending an investigation into his conduct. A disciplinary process has not been initiated, let alone completed, in respect of the Applicant. Therefore, the Applicant's placement on ALWOP continues to comply with staff rule 10.4(a).

b. Staff rule 10.4(b) provides that a staff member placed on administrative leave shall be given a written statement of the reason(s) for such leave and its probable duration which, so far as practicable, should not exceed three months. In compliance with this provision, by letters dated 2 January 2014, 2 April 2014 and 23 June 2014, the Applicant was informed of the reasons for his placement on administrative leave. While the Applicant's initial placement on administrative leave was for three months, as detailed below, it was not practicable, in this case, not to extend it beyond that period. This, too, was in compliance with staff rule 10.4(b).



c. Staff rule 10.4(c) provides that administrative leave shall be with full pay unless, in exceptional circumstances, the Secretary-General decides that ALWOP is warranted. Furthermore, section 4 of ST/AI/371 (Revised disciplinary measures) provides that administrative leave may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible. In compliance with these provisions, the Under-Secretary-General for Management (USG/DM), on behalf of the Secretary-General, placed the Applicant on ALWOP because:

i. There was sufficient *prima facie* evidence to indicate that the Applicant, in the context of a violent protest that disrupted UNMIL's operations, assisted in locking the Star Base gate, restricted vehicle and pedestrian access to and from the Star Base compound and physically assaulted one or more other individuals.

ii. The Applicant's conduct was serious in nature and posed a serious risk to the safety and security of United Nations personnel, as well as to the reputation of the Organization, thereby adversely affecting the effective and credible discharge of its mandate.

iii. The Applicant's redeployment would not satisfactorily alleviate the safety, security and reputational risk posed by the Applicant's presence in the workplace.

iv. The Applicant's actions, if established, were sufficiently serious that they could lead to his separation or dismissal, thereby satisfying the requirement of "exceptional circumstances".

d. In response to the Applicant's contention that he ought to have been given an opportunity to comment on the investigation report prior to his placement on ALWOP, the Respondent notes that the Organization's legislative instruments do not provide that a staff member be given the opportunity to review and comment on the evidence against him or her

prior to placement on ALWOP. Rather, the Organization's legislative instruments specifically mandate that such evidence be shared with the staff member if and when he or she is formally alleged to have engaged in misconduct.

e. In this case, a decision has not yet been made regarding whether to pursue this matter as a disciplinary case against the Applicant and, accordingly, he is not yet entitled to receive a copy of the investigation report and supporting documentation.

f. The Respondent submits that a requirement to seek a staff member's comments on the evidence prior to placement on ALWOP would effectively eviscerate the urgent and interim nature of this measure, in that it would require the disciplinary process to be carried out before a staff member could be placed on ALWOP. This would defeat the purpose of administrative leave as an interim measure to address concerns about security, safety and other concerns that would not be effectively addressed with a staff member's continued presence in the workplace.

g. The Applicant was interviewed in connection with the investigation into the events of 27 December 2013 and, therefore, did have the opportunity to provide his account of events. Furthermore, in the notification letters sent to him by the Department of Field Support (DFS), he was notified of the reasons for his placement on administrative leave and, subsequently, ALWOP. As the Tribunal held in *Ba* UNDT/2012/025, the investigators made it clear to the Applicant what their investigation was about and the references made thereto in the letter placing him on Administrative Leave could have left the Applicant in no doubt as to the reasons behind his placement on ALWOP.

h. Regarding the Applicant's contention that his placement on ALWOP has the *de facto* effect of serving as a disciplinary measure, the Respondent submits that, contrary to a disciplinary measure – which is final unless reviewed by the Tribunal – the Applicant's placement on ALWOP includes an internal review mechanism, in that, if the reasons for

his placement on ALWOP are not ultimately found to warrant his separation or dismissal, all pay withheld will be restored to him without delay. As such, the Applicant's placement on ALWOP is a preventive, rather than a punitive measure.

i. A finding that a staff member's placement on ALWOP constitutes a *de facto* disciplinary measure would be contrary to the letter of the Organization's legislative issuances because it would effectively mean that every placement on ALWOP, regardless of the reasons therefor, would be *prima facie* unlawful.

j. Regarding the Applicant's contention that the duration of his ALWOP is too lengthy, the Respondent notes that the legislative instruments of the Organization specifically contemplate that administrative leave may extend beyond three months. In this respect, staff rule 10.4(a) states that administrative leave may continue throughout the investigation and until the completion of the disciplinary process, without imposing a time limit on those processes.

k. Staff rule 10.4(b) recognizes that a hard and fast timeframe cannot be imposed on the investigation and disciplinary processes, by noting that the three-month time limit should be adhered to only insofar as practicable. The notion of practicability in staff rule 10.4(b) must be read with reference to the investigation and disciplinary processes at issue in staff rule 10.4(a). In this light, staff rule 10.4(b) clearly envisages that administrative leave may continue for longer than three months, in those cases where the investigation and disciplinary process, if any, continues for longer than three months.

l. In this case, given the nature of the matter under investigation and the number of implicated staff members, the investigation was complex and required interviews with many staff members. The report and supporting documentation are voluminous. While the investigation has concluded, consideration is presently being given to whether to pursue this matter as a disciplinary case. In the circumstances, the Respondent submits

that the continuation of the Applicant's ALWOP beyond three months is proper.

m. Regarding the Applicant's contention that his placement on ALWOP is unlawful because there is no clear articulation of what constitutes "exceptional circumstances" for the purpose of placement on ALWOP, the Respondent agrees that the Organization's legislative instruments do not explicitly state what constitutes "exceptional circumstances". However, in view of the fact that staff rule 10.4(c) specifically provides that the Secretary-General may decide whether such exceptional circumstances are met, the Respondent submits that the determination of whether "exceptional circumstances" exist in a given case is within the discretionary powers of the Respondent.

n. The Respondent submits that the "exceptional circumstances" requirement is met in this case because the Applicant's alleged actions (namely, assisting in blocking the Star Base gate) are sufficiently serious that they could, if established, lead to his separation or dismissal. The Respondent submits that this is consistent with staff rule 10.4(d), which provides that, in cases of ALWOP, the pay withheld will only be restored to the staff member if the allegations are not sustained or, if sustained; do not result in separation or dismissal.

o. Regarding the Applicant's contention that the Respondent should not rely on the "Guidelines for placement of staff members on administrative leave with pay pending investigation and the disciplinary process", the Respondent notes that, although the Applicant's placement on ALWOP meets the criteria set forth in those Guidelines, the Guidelines were not determinative of his placement on ALWOP. Rather, the Applicant's placement on ALWOP complied with the relevant provisions of staff rule 10.4 and of ST/AI/371.

p. The Guidelines reflect the Organization's policy in the application of staff rule 10.4 and ST/AI/371 on the placement of staff members on administrative leave. Through their application, the Guidelines ensure the

fair and equitable treatment of similarly situated staff members. The fact that the Guidelines may not have the force of a Staff Regulation or Staff Rule cannot mean that, simply because a decision to place a staff member on administrative leave complies with those Guidelines, it is *de facto* unlawful.

q. It is respectfully submitted that such an outcome would pervert the proper administration of the Organization. Rather, it is submitted that the fact that a placement on administrative leave is in compliance with the Guidelines may be taken as a *prima facie* indicator of the decision's legality.

*Urgency*

r. The Applicant did not contest his initial placement on administrative leave, which was notified to him on 3 January 2014, nor did he contest his subsequent placement on ALWOP, dated 2 April 2014. Moreover, he has waited more than six weeks to contest the renewal of his ALWOP, which was notified to him on 30 June 2014.

s. The Respondent recalls the Tribunal's holding in *Evangelista*, UNDT/2011/212, in which the Tribunal stated that the applicant could not seek the Tribunal's assistance as a matter of urgency when she has had knowledge of the decision for more than six weeks. Any urgency in this case is, accordingly, of the Applicant's own making.

*Irreparable harm*

t. The placement of a staff member on ALWOP, by definition, results in the payment of the staff member's salary being suspended. If this were considered to irreparably harm a staff member's rights, then every placement on ALWOP would automatically meet this branch of the tripartite test.

u. The withholding of a staff member's salary is a financial measure. Any damage to the Applicant resulting from the decision to place him on ALWOP may be directly compensated by damages.

v. The Applicant alleged that, since 27 December 2013, he has incurred approximately USD4000 in medical expenses. The Respondent notes that this allegation is unsupported by evidence. Moreover, the Applicant has not provided any indication whether these expenses were incurred prior or subsequent to his placement on ALWOP.

w. This is of central importance because it is recalled that, from 27 December 2013 to 4 April 2014, the Applicant received his full salary and continued to be covered by the Organization's medical insurance plan. Accordingly, the Respondent rejects any suggestion that medical expenses that the Applicant may have incurred prior to 4 April 2014 might have a bearing on the legality of his placement on ALWOP.

### **Consideration**

20. Applications for suspension of action are governed by arts. 2.2 and 10.2 of the Statute of the Dispute Tribunal and art. 13.1 of the Tribunal's Rules of Procedure. The three statutory prerequisites contained in art. 2.2 of the Statute, that is, *prima facie* unlawfulness, urgency and irreparable damage, must be satisfied for an application for suspension of action to be granted where the contested decision is the subject of a management evaluation.

21. Staff rule 10.4 is the legislation relied upon by the Respondent to place the Applicant on administrative leave and provides as follows:

a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time after an allegation of misconduct and pending the initiation of an investigation. Administrative leave may continue throughout an investigation and until the completion of the disciplinary process.

(b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration, which, so far as practicable, should not exceed three months.

(c) *Administrative leave shall be with full pay except when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay.*

(d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure. If administrative leave is without pay and either the allegations of misconduct are subsequently not sustained or it is subsequently found that the conduct at issue does not warrant dismissal or separation, any pay withheld shall be restored without delay.

(e) A staff member who has been placed on administrative leave may challenge the decision to place him or her on such leave in accordance with chapter XI of the Staff Rules. (Emphasis added).

22. From the foregoing, it is apparent that the Secretary-General may place a staff member on administrative leave at any time after an allegation of misconduct is made against him or her pending the start of an investigation into the alleged misconduct and until the completion of a disciplinary process.

23. In the instant case, the Applicant was placed on administrative leave a few days after the commencement of investigations into certain events of 27 December 2013 instigated by UNMIL NASA in which he was alleged to have participated. The said placement on administrative leave which was for a period of three months was made with pay.

24. One of the core issues before this Tribunal in the present case is whether there were any exceptional circumstances that justified the decision of the Secretary-General's agents to convert the Applicant's placement on ALWP to ALWOP when they decided to extend it for another three months from 2 April until the beginning of July 2014 and for a further three months thereafter from 2 July until the beginning of October 2014. In this regard, the starting point is to examine why a staff member whose alleged misconduct is under investigation is removed from the workplace during the said investigation.

25. Section 4 of ST/AI/371 (as amended) provides a clear answer in stating that "as a general principle, administrative leave may be contemplated if the conduct in question may pose a danger to other staff members or to the

Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible.”

26. In the letter dated 2 April 2014, which conveyed the first extension of the Applicant’s administrative leave, he was informed by the Under-Secretary-General for Field Support (USG/DFS) that based upon a review of the evidence set out in the investigation report into allegations of misconduct against him; it had been decided that he be placed on ALWOP. On 30 June 2014, the Applicant received a letter, dated 23 June 2014, which stated that his ALWOP was being extended for an additional three months from 2 July 2014, or until the completion of the disciplinary process, if any, whichever came earlier.

27. The two reasons given for the conversion of the Applicant’s ALWP to ALWOP were that the Respondent had assessed that there was sufficient *prima facie* evidence that he engaged in serious misconduct by blocking the main entrance to the UNMIL Star Base, Monrovia, in the course of events that took place on 27 December 2013. Also that the nature of the conduct he is alleged to have engaged in is sufficiently serious that it could, if proven, lead to his dismissal.

28. During the hearing, Counsel for the Respondent submitted that whilst “exceptional circumstances” are not defined by the Staff Rules and Regulations, “where the conduct at issue is one that can lead to dismissal” should be the correct standard for justifying the conversion from ALWP to ALWOP.

29. This argument is untenable for two reasons. The first is that there is no gain-saying that a proven misconduct on the part of a staff member can lead to the disciplinary action of separation or dismissal. This fact was well known to the Respondent on 2 January 2014 when he first sent the Applicant on ALWP. In other words, from the very beginning when investigations into the Applicant’s alleged conduct of 27 December 2013 were initiated and he was placed on ALWP, and up until 2 April 2014 when the element of pay was removed from his administrative leave and until the filing of this Application when another three-month ALWOP is running against the Applicant, nothing had changed.



30. Further, the Organization's legislation has remained the same and considering the rationale for administrative leave, the Applicant has remained outside the workplace and cannot affect or influence any investigations, tamper with investigative material or constitute nuisance.

31. Again, the claim by the Respondent that upon concluding and reviewing the investigation report, he decided that the ALWP be extended to ALWOP until the completion of any subsequent disciplinary process, clearly amounts to prejudging the Applicant and engaging in disciplinary action against him. In essence, the Respondent has prejudged an alleged misconduct outside of the applicable rules and has defeated the purpose of the administrative leave procedure and the clear provisions of staff rule 10.4 (d) that placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure.

32. The Tribunal at this stage wishes to address the matter of the time that has elapsed since 3 April 2014 when the Applicant was advised that a review of the investigation report had been undertaken and a decision taken to place him on ALWOP. In stating his case, the Respondent has told the Tribunal that he had placed the Applicant on ALWOP for three months without making up his mind as to whether he wanted to pursue disciplinary action against him. Upon the expiry of that three-month period, he has embarked on a second three-month period of ALWOP and is yet to decide whether the disciplinary process will be resorted to.

33. Staff rule 10.4 (b) provides that as far as practicable, administrative leave should not exceed three months. Having diligently concluded investigations into the alleged misconduct of the Applicant, produced the investigation report and reviewed the said report within three months; why has the Respondent or his agents been unable to decide nearly five months later whether to close the case or to proceed with disciplinary action? The circumstances of this extension of ALWOP, without doubt, point to a veiled disciplinary action.

34. With regard to the argument that the Secretary-General has discretionary powers to decide what constitutes "exceptional circumstances", the Tribunal must

underscore the fact that, as it held in the case of *Contreras* UNDT/2010/154<sup>1</sup> the word “discretion” is not synonymous with the word “power” and that in public administration, discretion must be exercised judiciously. In other words, the exercise of discretionary power is not absolute and any exercise of discretion by a public officer must be exercised carefully and with a sense of accountability.

35. The Tribunal in view of the foregoing considerations, finds and holds that the decision to convert the Applicant’s ALWP to ALWOP cannot be attributed to any exceptional circumstances and that the requirement of *prima facie* unlawfulness has been satisfied in this Application.

36. Having carefully reviewed the parties’ submissions, the Tribunal is convinced that the elements of urgency and irreparable harm have also been met. Each new day in the circumstances in which the Applicant is placed, escalates the urgency and desperation of his situation. With regards to hardship, the Tribunal particularly takes judicial notice of the ongoing Ebola virus disease outbreak currently ravaging almost every county in Liberia warranting a countrywide state of emergency and finds that the deprivation of a staff member and his family of 10 of a source of income at such a critical time to be especially insensitive, lacking in humanitarian values, and irresponsible of the UNMIL Administration.

### **Conclusion**

37. The Tribunal grants the Application for suspension of action and hereby orders that the decision to deprive the Applicant of his salaries while he is on administrative leave pursuant to staff rule 10.4 be suspended until the management evaluation filed by the Applicant has been completed.

38. The Applicant must be on notice that the grant of this interim Order may be necessarily discharged upon receipt of the response from the Management Evaluation Unit.

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<sup>1</sup> At para. 74.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 26<sup>th</sup> day of August 2014

Entered in the Register on this 26<sup>th</sup> day of August 2014

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi