



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/102  
Order No.: 259 (NBI/2014)  
Date: 20 November 2014  
Original: English

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**Before:** Judge Vinod Boolell  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

DALGAMOUNI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**CASE MANAGEMENT ORDER**

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**Counsel for the Applicant:**  
Alexandre Tavadian, OSLA

**Counsel for the Respondent:**  
Steven Dietrich, ALS/OHRM  
Alister Cumming, ALS/OHRM

### **The Application and Procedural History**

1. The Applicant is a Budget Officer at the Regional Service Centre in Entebbe, Uganda (RSCE). She serves at the P4 level on a fixed term appointment.
2. On 12 November 2014, the Applicant filed the subject Application of this Order before the Tribunal.
3. Taking into account the substantive application before the Tribunal, this is the Applicant's fifth challenge at the UNDT. All five of these applications stem from and essentially revolve around the same set of facts.
4. Given the multiple applications and motions by this Applicant before the Tribunal, the procedural history in this case is set out in full.
5. On 16 May 2014, the Applicant filed an application for suspension of action challenging the decision not to extend her fixed-term appointment. The Tribunal issued Order No. 137 (NBI/2014) on 23 May 2014, granting the application.
6. On 23 September 2014, the Applicant filed her second Application for Suspension of Action. The Applicant complained that she had been subjected to "a series of actions which cumulatively amount to a decision to constructively dismiss her by depriving her of her functions". The "most recent decision" was made on 19 September 2014.
7. The Respondent argued that the Applicant's second application for suspension of action was not receivable as a matter of substance; that it did not meet the statutory timelines; and that it had, in any event, been implemented.
8. On 24 September 2014, the Tribunal issued Order No. 214 (NBI/2014) setting the matter down for hearing.

9. The Tribunal heard the Parties on 25 September 2014. The Applicant and one other witness testified. The Tribunal admitted the written statement of one further witness for the Applicant, without objection from the Respondent. For his part, the Respondent called one witness. Closing submissions were filed by both Parties on 26 September 2014.

10. On 30 September 2014, the Tribunal issued Order No. 218 (NBI/2014) in which it found the second application receivable and granted the stay that the Applicant sought, pending management evaluation.

11. On 10 October 2014, the Tribunal issued Order No. 224 (NBI/2014) in which it fully set out its position in respect of the receivability and merits of the second application.

12. On 7 November 2014, the Applicant moved for execution of Order No.224 (NBI/2014) pursuant to arts. 32.2 and 36 of the Rules of Procedure.

13. Also, on 7 November 2014, the Applicant received the outcome of her second request for management evaluation.

14. In response to the motion for execution, the Respondent took the position that the Tribunal does not have the jurisdiction to decide on the motion for execution as Order No. 224 (NBI/2014), which was issued pending management evaluation, was no longer in force.

15. On 12 November 2014, the Applicant filed an application on the merits and with it the present Application for *interim* relief pursuant to art. 14 of the Rules of Procedure.

16. The Respondent replied to the Application on 13 November 2014, and the Applicant filed her Rejoinder to the Respondent's Reply on 16 November 2014.

17. On 19 November 2014, the Tribunal issued Order No. 255 (NBI/2014) granting the *interim* relief sought by the Applicant. The Tribunal informed the Parties in the same Order that a case management order will shortly issue.

18. Also on 19 November 2014, the Tribunal issued Order No. xxx (NBI/2014) dismissing the Applicant's motion for execution.

## **DELIBERATIONS**

19. The present case exhibits certain peculiarities in that each application the Applicant files before the Tribunal reveals the on-going tug of war between her and the Chief of the RSCE (CRSCE), Ms. Safia Boly.

20. As part of Order No. 137 (NBI/2014), the Tribunal recognised the hostile work environment in which the Parties found themselves and urged them to “engage in meaningful consultations towards having this matter resolved”. The Tribunal said then:

Given the facts of this case, the Tribunal strongly believes that while the Management Evaluation Unit (MEU) carries out its review of the Applicant's request, the Parties should engage in meaningful consultations towards having this matter resolved. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of these (and potentially future) proceedings, the Tribunal pursuant to articles 10.3 of the Statute and 15.1 of the Rules of Procedure, strongly urges the Parties in this matter to consult and deliberate, in good faith, on having this matter informally resolved.

A conducive and productive working relationship between the employer and an employee demands nothing less.

21. Four months later, recalling its observations in the same order, the Tribunal held in Order No. 224 (NBI/2014) as follows:

The circumstances described to the Tribunal by both the Applicant and the witness who testified on her behalf paints the picture of a

bad working environment. Staff members cannot be expected to work effectively and productively while being marginalised and humiliated. It makes for poor morale. From the Organisation's perspective, it is equally poor form to have a staff member on payroll with no functions to perform. It is a waste of the Organisation's resources, which cannot be condoned.

22. The Tribunal is concerned that its advice, despite having been repeated, has not been heeded by the Parties so as to have made a difference to the circumstances prevailing at the RSCE.

23. Much of the litigation after the issuance of Order No. 224 (NBI/2014) could have been avoided had the Parties engaged genuinely towards having the prevailing issues resolved.

24. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of proceedings, the Tribunal pursuant to articles 10.3 of its Statute and 15.1 of the Rules of Procedure, strongly and firmly urges the Parties in this matter to consult and deliberate on having this matter informally resolved or mediated.

25. The Tribunal hereby **DIRECTS** the Parties to jointly advise the Registry by **22 December 2014** on:

- a) The likelihood of this matter being settled informally; OR
- b) If an order formally referring the matter for Mediation is necessary.

*(signed)*

Judge Vinod Boolell

Dated this 20<sup>th</sup> day of November 2014

Entered in the Register on this 20<sup>th</sup> day of November 2014

*(signed)*

Abena Kwakye-Berko, Registrar, Nairobi