



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ESSIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE APPLICANT'S
APPLICATION FOR SUSPENSION OF
ACTION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Alister Cumming, ALS/OHRM

Introduction

1. The Applicant holds a temporary appointment with the United Nations. He is currently a Civil Affairs Officer at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves at the P4 level and is based in Goma.

2. On 16 March 2015, the Tribunal received the Applicant's Application for Suspension of Action. He is seeking an injunction against a decision excluding him from being considered for the position of Principal Civil Affairs Officer (D1). In his Application, he stated that he had already submitted the mandatory request for management evaluation and received a response to the said request.

3. On 16 March 2015, the Tribunal issued Order No. 087 (NBI/2015) directing the Applicant to file the response from the Management Evaluation Unit (MEU), which he claimed to have received on 6 March 2015. The Tribunal also directed service of the Application on the Respondent and urged the Applicant to seek representation by counsel.

4. The Respondent filed his Reply to the Application on 17 March 2015.

5. On the same day the Applicant furnished the Tribunal with a letter from MEU dated 6 March 2015, which was not a response to his request for review but an acknowledgment of the receipt of his request.

Submissions

Applicant

6. The Applicant applied for a D1 post of Principal Civil Affairs Officer (14-CIVL-MONUSCO-37458-R-GOMA/M) on 21 October 2014.

7. On 26 January 2015, he was informed by the Hiring Manager that he did not meet the requirements for that post. The Applicant complained about the manner in which his application for the post was treated to the MONUSCO Chief of Staff, Director of Mission Support and a Human Resources Officer in Goma.

8. On 25 February 2015, the Applicant met with the Chief of Staff who told him that since the Hiring Manager's assessment of his candidature was contradicted by the Human Resources Office, expert assessment from Headquarters had confirmed that the Applicant was not going to be interviewed for the post.

9. It was the Applicant's case that the act of removing his name from the list of candidates to be interviewed "violated his right to benefit from an opportunity for which [he] is clearly qualified according to the DPKO/DFS SOP on the Staff Selection System for Peacekeeping Operations and Special Political Missions".

10. The Applicant also alleged discrimination, intimidation and abuse of authority on the part of the Hiring Manager.

11. The Applicant stated that he had already been fulfilling the duties and responsibilities of the D1 post since 25 August 2014 and had been told by both his first and second reporting officers that his performance was satisfactory.

12. The Applicant argued that the Application is urgent because a candidate had been selected and submitted to the Field Central Review Board (FCRB) for its approval.

Respondent

13. The Application is not receivable as no final decision has been taken; the matter is currently before the FCRB for its review.

14. Should the Tribunal find the Application to be receivable, it must fail for not meeting the required test for the grant of a suspension of action. The Applicant has not met the requirements of art. 2.2 of the Statute in that he has failed to show that the impugned decision is *prima facie* unlawful, that it is urgent or that it will cause him irreparable harm.

15. The Applicant was fully and fairly considered for the contested position in accordance with the provisions of ST/AI/2010/3 (Staff selection system).

16. The Hiring Manager reviewed all candidates against the criteria of the job opening in accordance with section 7.4 of ST/AI/2010/3. Three applicants were found to be eligible and suitable and were shortlisted for interview in accordance with section 7.5. The Applicant was not found to be suitable, and was therefore not shortlisted for further assessment.

17. In order to confirm the Applicant's suitability for the job opening, MONUSCO contacted the Division of Policy, Evaluation and Training (DPET) within the Department for Peacekeeping Operations (DPKO) and the Department of Field Support (DFS). Field Personnel Operations Services (FPOS) within DFS was also asked to provide input.

18. The Occupational Group Manager for Civil Affairs of the Recruitment Unit within the Field Personnel Division (FDP) of DFS decided that the Applicant did not meet the work experience criteria. The Applicant's Personal History Profile showed that he has only 37 months work experience in a conflict or post-conflict field mission. The Applicant's work experience with the Government of Côte d'Ivoire does not fulfill the required criteria. The Government of Côte d'Ivoire is not a DPKO mission, neither is it an Agency, Fund or Programme of the United Nations. Also, it is not a national or international NGO nor is it a regional organization or a bilateral international assistance programme. Any work experience outside those parameters does not fulfill the criteria set out in the job opening.

19. Contrary to the Applicant's submissions, the Hiring Manager did not attempt to intimidate him into agreeing that he was not suitable. Instead, she had sought to explain to the Applicant why he was not suitable for further assessment. It did not require the agreement of the Applicant. While his meeting with the Hiring Manager took place on 26 January 2015, she had already recorded her assessment of his qualifications on 15 January 2015.

Deliberations

20. Applications for suspension of action pending management evaluation are governed by article 2.2 of the Statute of the United Nations Dispute Tribunal ("the Tribunal") and article 13 of the Tribunal's Rules of Procedure.

21. The three statutory prerequisites contained in art. 2.2 of the Statute, i.e. *prima facie* unlawfulness, urgency and irreparable damage, must be satisfied for an application for suspension of action to be granted. It is a cumulative test.

22. The Applicant bears the burden of showing that the cumulative test has been met.

23. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by the Applicant to show that there is a triable issue before the court.¹

24. The Tribunal finds that the Applicant has not made out a case of *prima facie* unlawfulness.

¹ See also: *Hepworth* UNDT/2009/003 at para. 10, *Corcoran* UNDT/2009/071 at para. 45, *Berger* UNDT/2011/134 at para. 10, *Chattopadhyay* UNDT/2011/198 at para. 31; *Wang* UNDT/2012/080 at para. 18.

25. The Tribunal is persuaded that the Hiring Manager had in fact assessed the Applicant as unsuitable on 15 January 2015, and only conveyed her decision to him as a matter of courtesy when they met on 26 January 2015.

26. On the facts as presented, the Tribunal is satisfied that the Respondent properly applied the provisions of ST/AI/2010/3. The Respondent, in fact, showed sufficient care in assessing the eligibility and suitability of the Applicant for the post he applied for.

27. The Tribunal finds no impropriety in the Respondent's application of the rules in respect of the Applicant's candidature in this selection exercise. This Application therefore fails on the limb of *prima facie* unlawfulness.

28. Having found that the impugned decision is not unlawful, and given that the test for suspension of action is a cumulative one, it is unnecessary for the Tribunal to proceed to assess this Application on grounds of urgency and irreparable harm.

29. The Application for Suspension of Action is **accordingly REFUSED**.

(Signed)

Judge Nkemdilim Izuako

Dated this 19th day of March 2015

Entered in the Register on this 19th day of March 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi