



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/102

Order No.: 103 (NBI/2015)

Date: 26 March 2015

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 an 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.

18. Also on 19 November 2014, the Tribunal issued Order No. 256 (NBI/2014) dismissing the Applicant's motion for execution.

19. On 20 November 2014, the Tribunal issued Order No. 259 (NBI/2014) urging the Parties to "consult and deliberate on having this matter informally resolved or mediated".

20. On 24 December 2014, the Parties jointly informed the Tribunal that "there is a likelihood that the case may settle informally." The Parties moved the Tribunal to formally refer the matter "for mediation".

21. On 6 January 2015, the Tribunal issued Order No. 001 (NBI/2015) suspending these proceedings and referred the matter to be mediated by the Office of the United Nations Ombudsman & Mediation Services. The Office was to "advise the Tribunal on the status of the mediation process by 6 February 2015."

22. On 1 February 2015, the Applicant filed an application for leave to file further submissions for an order of execution of Order No. 255 (NBI/2014) pursuant to arts. 32.2 and 36 of the Rules of Procedure.

23. The Respondent replied to that application for execution on 6 February 2015.

24. On 11 March 2015, the Applicant filed a Motion to Resume Proceedings in this matter.

25. The Respondent filed his response to that Motion on 23 March 2015.

## **DELIBERATIONS**

26. The Tribunal is concerned at the direction these proceedings have taken.
27. To-date, no report/submission as to the status of the mediation has been received by the Tribunal. This was due on 6 February 2015.
28. In the meantime, the Applicant has filed two Motions before this Tribunal; which submissions, the Respondent has responded to as directed by the Tribunal. The first of these Motions by the Applicant was in fact filed before the deadline given to the Mediation Service.
29. Although pleadings on these motions by the Applicant are now complete, the Tribunal must ask what chance Mediation had to properly proceed while Parties engaged in adversarial exchanges.
30. The Tribunal is now faced with the Applicant's Motion to Resume Proceedings in that she has informed the Mediator that she no longer wishes to "pursue the informal dispute settlement process."
31. The Respondent replied to that Motion indicating that he "remains willing to participate in mediation. However, the Respondent agrees that if the Applicant is no longer willing to participate in mediation, the proceedings should be resumed".
32. The Tribunal continues to take the view that mediation or informal resolution of this dispute would be in the best interest of the Parties; and in the interest of the efficient use of the Tribunal's resources and the expeditious conduct of proceedings.

33. The Tribunal is also mindful of paragraph 27 of General Assembly resolution 69/203 (Administration of justice at the United Nations) in which the courts are exhorted to proactively promote the “successful settlement of disputes.”<sup>1</sup>

34. To this end, the Tribunal makes the following **ORDERS**:

a) The Office of the United Nations Ombudsman & Mediation Services will provide the Tribunal with the Report on the status of the mediation that was due on 6 February 2015, by **31 March 2015**;

b) The Parties will consult between themselves and provide the Tribunal with a **common** position as to their willingness to have this matter settled by **10 April 2015**.

*(Signed)*

Judge Vinod Boolell

Dated this 26<sup>th</sup> day of March 2015

Entered in the Register on this 26<sup>th</sup> day of March 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>1</sup> Paragraph 27 states: “*Recalls* the emphasis placed by the General Assembly on the resolution of disputes, and requests the Secretary-General to report on the practice of proactive case management by the judges of the United Nations Dispute Tribunal in the promotion and successful settlement of disputes within the formal system in his next report;”