



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/059

Order No.: 191 (NBI/2015)

Date: 10 June 2015

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MICALETTI

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:**

Edwin Nhliziyo

**Counsel for the Respondent:**

Susan Maddox, ALS/OHRM

## **Introduction**

1. At the time of the contested decision, the Applicant was a Senior Humanitarian Affairs Officer with the Office for Coordination of Humanitarian Affairs (OCHA) in Amman Jordan at the P-5 level.
2. On 3 June 2015, he filed an Application for Suspension of Action seeking the suspension of the decision to terminate his appointment.
3. The Respondent filed a Reply to the Application on 4 June 2015 in which it was asserted that the Application was not receivable.

## **Facts**

4. On 24 April 2013, the Applicant and another staff member, who was then Head of Office of the Joint Special Representative, United Nations/African Union Hybrid Operation in Darfur (“UNAMID”), had a disagreement related to the Applicant’s submission of a family visit leave request. At the time, the Applicant was serving as a Senior Humanitarian Affairs Officer in UNAMID and was in receipt of a Special Post Allowance at the D-1 level.
5. The incident was investigated by the Special Investigations Unit (SIU), UNAMID. By memorandum dated 17 April 2014, the matter was referred to the Office of Human Resources Management (OHRM) for possible disciplinary action against the Applicant.
6. According to the said memorandum, the Applicant physically assaulted the staff member. He pushed him over a distance of approximately 15-20 metres, grabbed him, strangled him and punched him in the face. The staff member sustained various injuries including a cut to his forehead, bruising on his arm and multiple finger marks to his neck.
7. On 18 February 2015, the Applicant was requested to respond to formal allegations of misconduct.

8. By letter dated 26 May 2015, which the Applicant received on 2 June 2015, he was separated from service with compensation in lieu of notice and with termination indemnity following the conclusion of a disciplinary process against him.

**Respondent's submissions on receivability**

9. The Respondent submits that the Application is not receivable for the following reasons:

- a. The Tribunal has no jurisdiction, outside the pendency of a management evaluation, to suspend the implementation of a decision relating to termination.
- b. There is no pending management evaluation in this case nor is one required.
- c. The disciplinary measure became effective upon notification thereof, suspension of its implementation is no longer possible.

**Considerations**

10. The Respondent submits that the Tribunal has no jurisdiction, outside the pendency of a management evaluation, to suspend the implementation of a decision relating to termination.

11. The Respondent further submits that the disciplinary measures became effective upon notification thereof, suspension of its implementation is no longer possible.

12. Article 10.2 of the Tribunal's Statute stipulates that:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, *except in cases of appointment, promotion or termination* (emphasis added).

13. The current Application purports to challenge the decision terminating the Applicant's appointment and cannot be entertained by the Tribunal. The United Nations Appeals Tribunal jurisprudence on this issue is clear<sup>1</sup>.

**Conclusion**

14. In view of the foregoing, the Tribunal concludes that the Application is not receivable and is therefore refused.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 10<sup>th</sup> day of June 2015

Entered in the Register on this 10<sup>th</sup> day of June 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>1</sup> See for example *Benchebbak* 2012-UNAT-256 at para. 29.