UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2015/081
Order No.:	247 (NBI/2015)
Date:	29 July 2015
Original:	English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MCNEILL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON AN APPLICATION FOR SUSPENSION OF ACTION

Counsel for the Applicant:
Jiries Saadeh, OSLA
Alexandre Tavadian, OSLA

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

The Application and Procedural History

1. The Applicant is the Chief of the Staff Counselling and Welfare Section at the African Union-United Nations Mission in Darfur (UNAMID).She serves on a fixed-term appointment at the P-5 level in El Fasher.

2. On 22 July 2015, the Applicant filed her second Application for Suspension of Action against the decision "to separate [her] from service through non-renewal of her fixed term appointment predicated upon an unlawful reclassification of her post." The impugned decision was to be effective on 31 July 2015.

3. The Respondent filed his Reply to the Application on 27 July 2015.

4. The Applicant responded to the Respondent's Reply on the same day.

Facts and Submissions

Applicant

5. On 22 January 2015, the Applicant received an unofficial and draft Staffing Table for UNAMID for financial year 1 July 2015 to 30 June 2016.[1] That Staffing Table showed that the Applicant's P-5 post (post number 68169) was to be "redeployed" as the Head of Office in Zalingei, Darfur, and a vacant P-4 post would be "reassigned" to serve as the Chief of the Staff Counselling and Welfare Section – which Section would be moved under the Human Resources Section.

6. At no point prior to receiving the draft Staffing Table had anyone discussed the restructure or reclassification with the Applicant, which had by the time the Applicant became aware of it been submitted for consideration to the Advisory

[1] Applicant's Annex A.

Committee on Administrative and Budgetary Questions (ACABQ). In her previous decade of experience as a Section Chief, the Applicant had always been consulted on proposed Staffing Tables before their submission to the ACABQ.

7. No one had discussed the "redeployment" of her specific post, which is nothing more than a disguised and illegitimate reclassification exercise. Nor, to the Applicant's knowledge, did the Organization conduct a reclassification exercise or classification review as required by ST/AI/1998/9 (System for the Classification of Posts).

8. Since January 2015, the Applicant has engaged in prolonged discussions and negotiations with relevant parties concerning this proposed reclassification of her post. For example, on 28 January 2015, the Applicant wrote to Ms. Vevine Stamp, Chief of Operations and Services and her First Reporting Officer, requesting that Senior Management review the decisions to: (1) move the Staff Counselling and Welfare Section from the Service of Operation and Services to the Human Resources Section; and (2) "redeploy" her P-5 position to the office of the Head of Office in Zalingei.[2]

9. The Applicant stated she understood that the restructuring and reclassification exercise was "based on a facsimile from Ms. Ameerah Haq dated 9 December 2014 with the subject: Guidance on Mission Support Structures"[3] and noted that "[t]here appears to be confusion as to who made [the decision in question] and whether it was based on a strict interpretation of the organizational chart included in the Guidance facsimile".

10. The Applicant made similar points in an email to Mr. Anthony Nweke (Officer-in-Charge, Division of Mission Support), Mr. Aggrey Kedogo (Chief, Human Resources), Mr. Sajjad Malik (Officer-in-Charge, Budget) and Ms. Stamp on

[2] Applicant's Annex C.
[3] Applicant's Annex D.

22 March 2015[4], to which she received a reply from Mr. Kedogo that same day. Mr. Kedogo stated that "UNAMID decided to move towards the proposed structural changes in full, and there is nothing wrong with taking that decision" and that she was not informed "of the potential downgrading of the P-5 because a decision had not been made by the time you were selected for the position".[5]

11. Shortly thereafter, the Applicant was offered only a very short term extension to her fixed-term appointment, starting on 9 April 2015 and due to expire on 30 June 2015.[6] Notably, this is precisely the date upon which the Applicant's post is proposed to be reclassified and moved to the Human Resources Section. The Applicant accepted the new fixed-term contract under protest, attaching her signed acceptance to an extensive email to numerous recipients reiterating her concerns with the entire structural and reclassification process.[7]

12. The Applicant has also sought to have the present dispute resolved through the engagement of the Office of the Ombudsman.

13. On 22 June 2015, the Applicant filed her first Request for Management Evaluation contesting the (then) imminent decision to separate her as of 30 June 2015 and an Application for Suspension of Action with the UNDT.

14. This Tribunal issued Order 223 (NBI/2015) on 25 June 2015, ordering that the Application for Suspension of Action pending management evaluation be granted.

15. The Tribunal's Order was rendered moot, because the Management Evaluation Unit (MEU) found the Applicant's challenge not receivable on 24 June 2015. MEU based its finding on the fact that "no decision had been taken and notified to [the Applicant] that [her] appointment would not be renewed". The MEU also

[4] Applicant's Annex E.
[5] Applicant's Annex F.
[6] Applicant's Annex G.
[7] Applicant's Annex H.

found that the application was moot as the Administration had taken a decision to renew the Applicant's appointment for one month (until 31 July 2015).

16. On 5 July 2015, the Applicant counter-signed and returned a copy of her Letter of Appointment for 1-31 July 2015 noting, among other things, that her signature on the Letter of Appointment "is without prejudice both to my rights as a staff member and to any action I am currently bringing, or may bring, through the Organization's internal justice system with a view to protecting those rights".

17. On 12 July 2015, the Applicant received an email from Mr Ebow Idun, Deputy Chief, Human Resources

> The purpose of this message is to inform you that following the approval of the 2015/16 budget, the post of Staff Counsellor has been reclassified and is now graded at P-4 level. We note from Inspira roster membership that you are currently not rostered at the P-4 level. We have requested the publication of a Position Specific Job Opening (PSJO) to give you the opportunity to participate in the process and be considered for the position.

18. The Applicant believes that the proposed reclassified P-4 post has not yet been advertised, on either a temporary or fixed-term basis. It is also believed that the proposed UNAMID budget for 1 July 2015 to 30 June 2016, A/69/839/Add.6, has not yet been approved by the General Assembly.

19. The Applicant fell and suffered a serious concussion in the mission area on 19 February 2015. Although she initially tried to continue with her duties, she has been on certified sick leave in the United States since 1 April 2015. That sick leave is currently certified to continue until 30 June 2015.[8]

20. The impugned decision is at least *prima facie* unlawful for failing to adhere to staff rule 2.1 and the provisions of ST/AI/1998/9.

[8] Applicant's Annex I.

21. The Applicant believes the MEU's reasoning in its letter of 24 June 2015 to be iniquitous and of great concern. It is well-established that implied decisions are "decisions" for the purposes of the Organization's internal justice system. Indeed, this Tribunal, in Order No. 223 (NBI/2015), had no hesitation in suspending the impugned decision. The Applicant submits that exactly the same conclusion should be reached by this Tribunal in the present case.

22. ST/AI/1998/9 promulgates the "standards" and procedures for classifying posts (as its preamble notes).

23. It is clear that the reclassification of the Applicant's post is about to negatively affect the Applicant's contractual status. The Applicant is not even being offered the P-4 "reclassified" post, as is her implied right as the incumbent pursuant to section 4.2 of ST/AI/1998/9. She is only being offered "the opportunity to participate in the process and be considered for the position", an "opportunity" which is afforded to any other staff member (or non-staff member).

24. Further, to the Applicant's knowledge, no efforts have been made to reassign her to a post at her personal grade level.

25. The unlawfulness of the Respondent's actions in the present case is compounded by the fact that UNAMID has attempted to circumvent the clear process for reclassification outlined in ST/AI/1998/9. Instead of directly reclassifying the Applicant's post, UNAMID is "redeploying" that P-5 post to another section and changed its functions, then "reassigned" a P-4 post from another section (see A/69/839/Add6 – the proposed UNAMID budget and ACABQ consideration). This is a transparent and flawed attempt not to apply ST/AI/1998/9 and it must be rejected.

26. Indeed, such illegitimate "re-profiling" exercises were explicitly warned against only last year, when Mr Chhaya Kapilashrami (Director, Field Personnel Division, Department of Field Support (FPD/DFS)) wrote to all missions reminding

them of their obligations under ST/AI/1998/9. Mr Kapilashrami observed, inter alia, that "the UNDT emphasized the need for missions to follow the procedure for classification of posts established under ST/AI/1998/9 … and held that the alternative approaches such as the "re-profiling" of posts have no basis in law".[9]

27. The fact that the General Assembly has now apparently approved the reclassification of the Applicant's post does not cure or otherwise remedy the unlawfulness of the underlying decision. It is plainly inadequate and insufficient for the Administration to propose to the General Assembly an unlawful reclassification. The Administration has a duty to ensure that the reclassification is procedurally regular before submitting a reclassification proposal to the General Assembly. It did not do so in this case and cannot seek to benefit from its own wrong.

28. The Applicant is scheduled to be separated on 31 July 2015, well within the period for management evaluation. She is making this application now based on the apparent failure of informal resolution and the imminent date of her separation.

29. UMAMID has claimed that it "decided to move towards the proposed structural changes in full, and there is nothing wrong with taking that decision" and that "the UNAMID 2015/2016 budget proposal was based on the guidelines disseminated in USG Haq's cable, not any other source".

30. However, it did so without considering the logic of imposing identical structures across missions regardless of size or remit. It is irrational for there to be an imposition of structural uniformity or Staff Counselling and Welfare Chief responsibilities in missions as diverse as, say, the 69-person United Nations Military Observer Group in India and Pakistan ("UNMOGIP") and the 3,500+ person UNAMID. Indeed, such uniformity was explicitly not required by USG Haq's facsimile memorandum, which allowed for the exercise of discretion. UNAMID's irrationality in failing to apply that discretion was compounded by its similarly

[9] Applicant's Annex J.

irrational decision to implement a restructuring without consultation with key personnel, including the Applicant.

31. If UNAMID had taken the opportunity to consult with the Applicant – as it should have – she would have explained the clear necessity for the Chief of Staff Counselling and Welfare at UNAMID, perhaps the most hostile environment of any current mission in the world, to hold a senior post. Indeed, UNAMID is in such need of professional counsellors that it otherwise increased its counselling and welfare posts to 30 in the recent budget.

32. Finally, further irrationality can be discerned from the fact that, because the UNAMID Chief of Staff Counselling and Welfare is now at the P-4 level, there is only one remaining P-5 counselling position within the entire Organization (at Headquarters in New York). That unfortunate circumstance unduly limits the possibilities for counsellors to progress within the Organization and indicates that the 'one size fits all' policy adopted by UNAMID was made on irrational grounds and is flawed.

33. If this Tribunal does not suspend the decision to separate the Applicant from service, the only remedy subsequently available to her will be monetary compensation.

34. Loss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in employment within the United Nations which is highly valued. Once out of the system for even a short period of time, the prospect of returning to a comparable post within the United Nations is significantly reduced. The damage to career opportunities and the consequential effect on one's life chances cannot adequately be compensated by money.

35. The Applicant has suffered from the unlawful actions of the Administration. She is on the verge of having her career improperly cut short, despite being a rare example of a senior, female staff member who has dedicated many years of excellent service to the Organization in difficult duty stations. Her prospects of securing a job of similar skills and remuneration at the age of 59 are slim. These circumstances have affected the Applicant emotionally and will affect her financially in respect of lost future earnings and a diminished pension.

Respondent

36. The Respondent submits that contrary to the Applicant's submissions, her appointment is being renewed, at her current level, until 15 September 2015. That being the case, there is "no contestable administrative decision as stipulated by art. 2.1(a) of the UNDT Statute." The Application should therefore be dismissed.

37. Contrary to the Applicant's assertions, the matter of classification is not the critical issue in this case. Following the General Assembly's approval of UNAMID's budget for 2015-2016, the P-5 post encumbered by the Applicant was redeployed to another duty station to be used to support different functions. Under the same budget, the functions of Chief, Staff Welfare and Counselling Section will be carried out at the P-4 level. To that end, a P-4 post was redeployed to the Staff Counselling and Welfare Section (SCWC).

38. On 1 July 2015, following the General Assembly's approval on the financing of UNAMID and pursuant to Sections 1.1 and 2.2(c) of ST/AI/1998/9, UNAMID submitted a request to classify the P-4 post that was approved to be redeployed to the SCWC to FDP/DFS, which has the delegated authority to classify posts up to and including the D-1 level. This process is not yet complete.

39. UNAMID has not attempted to circumvent the classification procedure set out in the Classification AI. Under this AI, requests for classification can be made

pursuant to either Section 1.1 or Section 1.2 during the budget preparation. The fact that the mission requested classification under Section 1.1 following the General Assembly's approval of the 2015-2016 budget is not in breach of the Classification AI. As the Applicant was not the incumbent of the P-4 post within the meaning of section 4 of the Classification AI, her involvement in the classification process was not required. Furthermore, the Applicant has no standing to challenge the classification process as it relates to the P-4 post, as this is a new post which she does not encumber.

40. If the Dispute Tribunal finds that the Applicant does have the right to challenge the classification process, the Applicant has not shown that the process has been carried out in a flawed manner. The Classification AI does not require that her appointment be renewed beyond its expiration. Section 4.2 provides that the classification of a post shall not negatively affect the incumbent staff member's existing contractual status, salary or other entitlements. This provision grants the Applicant a right to continue to be paid her benefits and entitlements for the service rendered to the Organization during the term of her appointment.

41. However, Section 4.2 of the Classification AI does not entitle the Applicant to a future contractual status, meaning that it does not grant her a right to have her appointment renewed for a new term, beyond 31 July 2015. Rather, once the term of the Applicant's appointment expires, the principle established in Staff Regulation 4.5(c); Staff Rule 4.13(c), as well as the explicit term of the Applicant's appointment, determines that the Applicant does not have a right to have her appointment renewed. The Applicant's letter of appointment specifically states that it "does not carry any expectancy, legal or otherwise, of renewal". Accordingly, the Applicant has not demonstrated *prima facie* unlawfulness.

42. There is no situation of urgency in this case. The Applicant's appointment has been renewed until 15 September 2015. She will remain a staff member on and after 31 July 2015.

43. The Applicant has not adduced any evidence demonstrating that she will suffer irreparable harm as her appointment has been renewed, and she will remain a staff member.

Applicant

44. The Respondent's *interim* renewal of the Applicant's appointment is insufficient, and does not cure the procedural flaws and unlawfulness of the impugned decision.

45. The Administration intends to extend the Applicant's appointment for a period of 45 days. This period has presumably been selected by the Administration so as to coincide with the 45-day period in which MEU is required to render its evaluation. However, there is no guarantee that MEU will do so within the required time. Indeed, it is not uncommon for the MEU to delivery its evaluation many days, or even weeks, after the stipulated time-frame. The Applicant's short-term extension does not in itself render moot or otherwise negate the need for a Suspension of Action – only this Tribunal can provide the Applicant with an assurance that she will not be unlawfully separated pending management evaluation.

46. In this regard, indeed, the Applicant is mindful of this Tribunal's previous finding in Order No. 223 (NBI/2015) that "[i]t is not lost on the Tribunal that the decision to renew her appointment was made after she filed the application to challenge her imminent separation" (para. 36). The Tribunal in that Order found that the Administration's extension of the Applicant's contract, at that time for 30 days, was insufficient. It consequently ordered a Suspension of Action. The Applicant submits that an identical analysis should apply in the present case, notwithstanding that the Respondent has chosen to utilise the exact same (cynical) tactic for 45 days on this occasion.

47. Unlike in its submissions preceding Order No. 223 (NBI/2015), however, the Respondent in this case has also sought to argue on the merits. In essence, those arguments are that "the P-5 post encumbered by the Applicant was redeployed to another duty station to be used to support different functions" (para. 11) with a "P-4 post [being] redeployed to the Staff Counselling and Welfare Section" (para. 11). Consequently, according to the Respondent, the Applicant essentially loses any rights she may have under ST/AI/1998/9 to be consulted about, or challenge, a reclassification exercise. Rather, "[a]s the Applicant was not the incumbent of the P-4 post … her involvement in the classification process was not required."

48. It will not be lost on this Tribunal that this argument fails to address one of the central tenets of the Applicant's case; namely, that the redeployment itself was unlawful and merely a transparent and flawed attempt not to apply ST/AI/1998/9. The Respondent cannot be allowed simply to redeploy the Applicant's post and thereby avoid any and all obligations it has towards the Applicant under ST/AI/1998/9. Further, the General Assembly's subsequent approval of UNAMID's budget does not cure or otherwise remedy the Respondent's fundamentally unlawful acts.

49. All the elements required for a Suspension of Action remain in place. The Applicant has demonstrated prima facie unlawfulness. The Respondent's arguments against urgency and irreparable harm hinge only on the belated 45-day contract extension granted to the Applicant. The Applicant has explained why such extension is insufficient and why the only way she can guarantee that she will not be separated pending management evaluation is for this Tribunal to grant an Order for Suspension of Action. She respectfully reiterates her request that the Tribunal do so.

Deliberations

50. Applications for suspension of action 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.

51. 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.

52. This Tribunal has previously held that[10]:

> A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

53. This remedy is not available in situations where the impugned decision has been implemented.

54. The Tribunal must therefore consider the Parties' submissions against the test stipulated in art. 2.2 of the Statute and art. 13 of the Rules of Procedure.

Prima Facie Unlawfulness

55. The Tribunal continues to be satisfied on the submissions before it that the procedural requirements of ST/AI/1998/9 have not been complied with and have been circumvented. The Secretary-General has wide discretion in the reclassification of

[10] See *inter alia Applicant* Order No. 087 (NBI/2014); *Dalgamouni* Order Nos. 137 and 224 (NBI/2014).

posts. But like any discretion, it may not be exercised in an arbitrary, capricious or illegal manner.

56. In Order No. 223 (NBI/2015), in the case of the same Applicant, the Tribunal stated the following:

> The Tribunal considers that by using the subterfuge of reclassification the Respondent is in fact re-profiling the post encumbered by the Applicant. This procedure was held to be unlawful in *Eissa* UNDT/2013/112. In *Hersch* 2014-UNAT-433, the United Nations Appeals Tribunal found that the Respondent manipulated the job description and posting, and failed to apply the relevant Rules, Regulations and guidelines in a fair and transparent manner, thereby preventing a staff member from automatically rolling-over into a post in a new mission.

57. The Tribunal remains of the view that the Respondent has unlawfully managed the exercise which led to the "redeployment" of the P5 post encumbered by the Applicant and replaced it with a P4 post. Effectively, this has resulted in the abolition of the post encumbered by the Applicant. In *Ljungdell*,[11] the Appeals Tribunal held:

> Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner.

58. The General Assembly's approval of the budget does not alter the fact that the Respondent bypassed the relevant rules and regulations governing a reclassification exercise. The Respondent cannot use General Assembly approval of the budget to justify not having followed the prescribed processes that should have preceded the submission of its budget for approval. The General Assembly cannot be used as a cloak to shield the Respondent from non-compliance with his own rules.

[11] 2012-UNAT-265.

59. In *Diallo v Secretary General of the International Civil Aviation Organization*,[12] the Appeals Tribunal held

> The AJAB[13] rightly considered that the abolition of a post was always a traumatic experience for the incumbent, and therefore greater objectivity, care, good faith and transparency were required.

60. The Respondent has not rebutted the averment of the Applicant that she was kept in the dark about the decision to reclassify her post. The Respondent has not shown that he was alive to the need to exercise that "objectivity, care, good faith and transparency". It is all too easy to take a decision that taints of illegality and then rush to the General Assembly to obtain the *imprimatur* of legality. Such a strategy does eliminate the fruit of the poisoned tree.

Irreparable Harm

61. The Tribunal is also satisfied that allowing the decision to stand will cause the Applicant irreparable harm. That irreparable harm consists in the high likelihood of the Applicant being out of a job through an unlawful procedure or being downgraded.

62. This Tribunal recalls the position it espoused in previous cases, in that a *prima facie* unlawful decision[14]:

> [S]hould 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.

63. On the facts of the present case, the separation or downgrading of the Applicant could easily result in far reaching consequences for her career within the United Nations system. The Applicant has had a long unblemished career in the

[12] 2014-UNAT-430.
[13] The International Civil Aviation Organisation Advisory Joint Appeals Board.
[14] *Tadonki* UNDT-2009-016. *See also Corna* Order No. 80(GVA/2010); *Fradin de Bellabre* UNDT-2009-004; *Utkina* UNDT-2009-096.

Organisation and the kind of treatment being meted out to her can seriously damage her reputation and future career prospects. The resulting harm to the Applicant should those consequences come to pass would, the Tribunal finds, be irreparable so as to satisfy this limb of the test.

Urgency

64. In Order No. 223 (NBI/2015), the Tribunal said:

> The remaining limb to be satisfied is that of urgency of the application, which is tied to the question of whether the Application can succeed in the face of the renewal of the Applicant's appointment. It is not lost on the Tribunal that the decision to renew her appointment was made *after* she filed the application to challenge her imminent separation.
>
> The Applicant is correct in her assertion that the one month renewal does not cure the defects in the impugned decision. It continues to be the case that the conditions precedent to a reclassification exercise have not been met in respect of the Applicant.

65. The Respondent appears to have adopted the same tactic this time around. The fact that the Respondent has decided to defer the termination of the employment of the Applicant through the mechanism of the reprofiling of her post, cannot deprive the Applicant of the judicial protection she is entitled to.

66. The Respondent is attempting to postpone its decision to terminate the employment of a staff member without addressing the core issue of whether it has followed the relevant rules. Simply deferring the decision does not eliminate the urgency of the application; the resulting loss of her employment is imminent. The Tribunal therefore takes the view that the Applicant's access to justice cannot simply be denied by accepting the tactics of the Respondent. It is therefore urgent that the injunctive relief being sought be granted.

Observations

67. In *Cranfield,*[15] the Court held that,

> In situations where the Administration finds that it has made an unlawful decision or an illegal commitment, it is entitled to remedy that situation. The interests of justice require that the Secretary-General should retain the discretion to correct erroneous decisions, as to deny such an entitlement would be contrary to both the interests of staff members and the Administration. How the Secretary-General's discretion should be exercised will necessarily depend on the circumstances of any given case. When responsibility lies with the Administration for the unlawful decision, it must take upon itself the responsibility thereof and act with due expedition once alerted to the unlawful act.

68. Cognisant of the position in Cranfield, in its previous order suspending the implementation of the impugned decision in respect of this Applicant, the Tribunal left it up to MEU to correct the flawed process which led to the decision. The Tribunal said then:

> As it is the role of the Management Evaluation Unit, as prescribed in ST/SGB/2010/9 (Organization of the Department of Management), to conduct "an impartial and objective evaluation of administrative decisions contested by staff members of the Secretariat to assess whether the decision was made in accordance with rules and regulations," the Tribunal finds it appropriate under the circumstances of the present case that the Unit be afforded the opportunity carry out that evaluation and, if necessary, "propose means of informally resolving disputes" between the Applicant and the Respondent.

69. Rather than engaging with the substance of the dispute between the Parties and coming to an informed and considered review of the process employed by UNAMID, MEU chose to dismiss the Applicant's grievances and claim on grounds of receivability.

[15] 2013-UNAT-367, at para. 36. See also *Das* 2014-UNAT-421.

70. As a result, the matter is once again before the Tribunal on the same set of facts and circumstances.

71. The Tribunal encourages the Parties to engage in meaningful consultations towards having this matter settled. 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 the UNDT Statute and 15.1 of the Rules of Procedure, firmly urges the Parties in this matter to consult and deliberate, in good faith, on having this matter informally resolved.

72. It, of course, remains open to the Applicant to have this matter litigated on the merits should mediation be unsuccessful.

Order

73. The Application for Suspension of Action is **GRANTED** pending management evaluation.

(Signed)

Judge Vinod Boolell

Dated this 29th day of July 2015

Entered in the Register on this 29th day of July 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi