



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CLARKSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:

Marisa MacLennan, OSLA

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Nicole Wynn, ALS/OHRM

Introduction

1. On 28 September 2015, the Applicant, an FS-4 Finance Assistant in the United Nations Mission in Liberia (UNMIL), filed an Application with the Dispute Tribunal seeking suspension of implementation of the decision not to renew his appointment beyond 30 September 2015.

2. The Respondent filed his Reply on 30 September 2015.

3. On 30 September 2015, the Tribunal granted the Application for suspension of action and informed the Parties that a reasoned order would be issued by Friday, 2 October 2015.

Facts

4. The Applicant joined the United Nations in 2009. He held a fixed term contract at the FS4 level as Finance Assistant, which expired 30 June 2015.

5. Following the expiry of his employment contract, the Applicant sought a suspension of action of the decision not to extend his contract beyond 30 June 2015. Before that Application could be considered by the Tribunal, UNMIL Administration offered the Applicant a 3-month extension of his contract.

6. On 30 June 2015, pursuant to the Tribunal's direction, the Respondent filed further submissions to clarify UNMIL Administration's position. These further submissions showed that the Applicant's extension of contract beyond 30 June 2015 would be for three months only and that the extension of all posts at the mission through 30 June 2016 would not apply to him.

7. The Management Evaluation Unit (MEU) issued a moot letter in response to the Applicant's first request for management evaluation based on UNMIL's extension of his contract.

8. On 10 July 2015, the Applicant filed an application with the Tribunal contesting three decisions: (i) a decision to abolish the post that financed his position; (ii) an implied decision not to renew his appointment; and (iii) a

subsequent decision to renew his appointment for only three months. That application is registered as Case No. UNDT/NBI/2015/075.

9. The Respondent filed his reply to that application on 13 August 2015.

10. On 28 September 2015, the Applicant received notice via email that he was to commence check out procedures and that no further extension to his contract would be made. He filed a management evaluation request on the same day and the instant Application for suspension of the decision not to extend his contract after 30 September 2015.

Considerations

Receivability

11. The Respondent's Counsel argued that the Application is not receivable because the Applicant had challenged the previous extension of his post for three months only without recourse to management evaluation. He argued also that the Applicant had also challenged the abolishment of his post which was done and implemented in 2013 and was consequently out of time.

12. Upon a proper perusal of the Application, it is clear to the Tribunal that the only Application before it is the Applicant's challenge of the decision not to extend his contract which came to an end on 30 September 2015 following a three-month renewal. A request for management evaluation was made on 28 September in that regard.

13. The Respondent's arguments on receivability are misconceived and therefore fails. The Application before the Tribunal is receivable.

14. A suspension of action Application was filed on behalf of the Applicant on 25 June 2015 challenging the non-renewal of his employment contract. Before that interim Application was heard, the Respondent renewed the Applicant's contract for three months and argued that in so doing, the Application had been rendered moot.

15. The Tribunal nevertheless upon reading the Application and its accompanying pleadings granted the said Application.

16. The instant Application was filed on 28 September 2015 with only two days left to the expiry of the Applicant's then subsisting contract. On 30 September 2015, the Tribunal was minded to grant this Application with a view to having the opportunity of giving it a proper review.

17. What emerges from a thorough reading of the pleadings on both sides is that the Applicant's substantive post of Finance Assistant at the FS4 level, post no 50342 in UNMIL, was abolished at the end of the 2012/2013 budget cycle which ended on 30 June 2013. The Respondent exhibited Annex R1 which was the notice of the said abolition dated 25 April 2013 and addressed to the Applicant. That document is not denied by the said Applicant.

18. It has been submitted on behalf of the Applicant that no proper procedures were followed in the abolition process with regard to his post because a proper staffing review was not carried out. The Respondent's case is that following the abolition of the Applicant's substantive post in 2013, UNMIL Administration had funded the Applicant's continued extensions from borrowed posts since July 2013 including a one-year stint with the Office of Internal Oversight Services (OIOS).

19. Considering that the Applicant's substantive post has not existed for the past two years and that the said Applicant has temporarily encumbered vacant posts to which he was not recruited since then, it is evidently too late in the day to challenge the abolition of his post which took place in 2013. The Applicant in the circumstances is not competent to challenge the non-renewal of his temporary contract funded from other vacant and borrowed posts at the end of September 2015.

Decision

20. The Application for suspension of action on this occasion having been fully reviewed is hereby refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 2nd day of October 2015

Entered in the Register on this 2nd day of October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi