



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/051

Order No.: 328 (NBI/2015)

Date: 19 October 2015

Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

YI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S MOTION
TO WITHDRAW PROCEEDINGS**

Counsel for the Applicant:
Daniel Trup, OSLA

Counsel for the Respondent:
Camila Nkwenti, UNEP

The Application and Procedural History

1. The Applicant holds a fixed term appointment at the P4 level at the United Nations Environment Programme (UNEP). She serves UNEP as a Programme Officer/Social Safeguard Advisor.¹

2. On 24 June 2014, the Applicant filed a substantive application challenging UNEP's decision to exclude her from the "oral stage of the recruitment and selection process for the position of Senior Programme Officer P5".

3. Later on the same day, the Applicant filed an Application for Suspension of Action pursuant to art. 10.2 of the Statute of the United Nations Dispute Tribunal seeking a suspension of the recruitment process to "preserve the Applicant's entitlement vis-à-vis the current recruitment and selection process".

4. The Application for Suspension of Action was served on the Respondent on 24 June 2014, and a Reply was received by the Registry on 25 June 2014. One of the annexes (Annex K) filed by the Respondent was however inaccessible on the Tribunal's e-filing portal, and was re-filed on 30 June 2014.

5. Following the resubmission of Annex K by the Respondent, the Tribunal advised the Applicant that she may make any submissions in response to the Respondent's Reply by 1 July 2014.

6. On 1 July 2014, the Applicant filed her submissions in response to the Respondent's Reply.

7. On 1 July 2014, the Tribunal issued Order No. 170 (NBI/2014) dismissing the Application for Suspension of Action. In so doing, the Tribunal held:

¹ The Application however states that the Applicant holds a *permanent* appointment. See para. 6.

[T]he lack of clarity surrounding the implementation of the impugned decision limits what the Tribunal can do. An unlawful act will subsist because of the limitations on the court's powers for a grant of injunction. The difficulties arising from this limitation is obvious and needs little explanation.

Be that as it may, it is difficult for the court to provide effective and meaningful injunctive relief on a process which has already commenced. Stopping a process which has already begun could potentially result in more harm than good. The court would be seen as meddling in the substantive functions of an office, which could in turn adversely affect the work of many staff members. In other words, granting an injunction at this stage of the process would affect more than just the Applicant.

The Tribunal therefore finds itself in the uncomfortable situation of having to allow a *prima facie* unlawful act to stand simply because its implementation has commenced.

The propriety of the recruitment process as a whole will be determined when the Tribunal comes to decide this matter on its substantive application.

8. On 13 October 2015, the Tribunal issued Order No. 321 (NBI/2015) directing the Parties to jointly submit on the agreed and disputed facts and legal issues in this case.

9. On 15 October 2015, the Applicant filed her motion to withdraw her Application.

Order

10. The Tribunal hereby **GRANTS** the Applicant's Motion and **ORDERS** that the matter of *Yi v Secretary General of the United Nations* (UNDT/NBI/2014/051) be struck off the Court's docket.

(Signed)

Judge Vinod Boolell

Dated this 19th October 2015

Entered in the Register on this 19th October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi