



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

IDRISS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Ismail Khalil

Counsel for the Respondent:
ALS/OHRM

Introduction

1. The Applicant served as a radio operator at the GL3 level in El-Fasher, Darfur, with the African Union/United Nations Hybrid Mission in Darfur (UNAMID). He filed an application for suspension of the decision to separate him from service effective 31 December 2015.

Facts

2. The Officer-in-Charge of UNAMID's Mission Support Division (Oic/MSD) informed the Applicant of the decision not to renew his fixed-term contract beyond 31 December 2015 in a written notice dated 30 November 2015. The Applicant received this notice on 2 December 2015.

3. According to the Applicant, he requested management evaluation of the non-renewal decision and received an acknowledgment on 21 December 2015 from the Management Evaluation Unit (MEU) indicating that he would receive a response by 4 February 2016.

4. On 31 December 2015, all the offices at the United Nations Office at Nairobi (UNON), including the United Nations Dispute Tribunal (UNDT) in Nairobi, closed at 12:00 hours in light of the New Year's Day holiday on 1 January 2016.

5. At approximately 13:00 hours (Nairobi time) on 31 December 2015, the Applicant submitted a one-page document entitled "Application for suspension of action pending management evaluation" to the New York Registry of the United Nations Dispute Tribunal via the Court Case Management System (CCMS). He did not submit any supporting documentation (for example, the 30 November 2015 notice, his request for management evaluation, MEU's correspondence of 21 December 2015, etc.).

6. Since the Applicant filed his Application to the wrong UNDT Registry, the New York Registry transferred his case to the Nairobi Registry at approximately 16:00 hours (Nairobi time) on 31 December 2015. Since the Nairobi Registry closed at noon on 31 December 2015, the Application was not received and processed until 4 January 2016. On the same day, the Registry sent the Applicant an email requesting that he immediately submit his request for management evaluation and MEU's correspondence of 21 December 2015. The Applicant did not do so.

Considerations

7. Under article 2.2 of the UNDT Statute and article 13.1 of the UNDT Rules of Procedure, the Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

8. In light of the circumstances of the present matter, the Tribunal will determine *proprio motu* whether or not the impugned decision has been implemented before it serves the Application on the Respondent or enters into a discussion on whether the Applicant has met the tri-partite test for the injunctive relief that is sought.

9. The limited evidence before the Tribunal shows that the Applicant was provided with notice of his non-renewal on 2 December 2015. This advance notice gave him adequate time within which to request management evaluation and to file an application for interim relief with the Tribunal. However, he chose to wait until 1pm on 31 December, the day that the decision was to be implemented, to file an application for suspension of action.

10. Since UNDT Nairobi did not receive the Applicant's application for suspension of action until 4 January 2016, which was after implementation of the

impugned decision on 31 December 2015, this Application is out of time and cannot be entertained by the Tribunal.

IT IS ORDERED THAT:

11. The Applicant's application for suspension of action is not receivable.

(Signed)

Judge Nkemdilim Izuako

Dated this 8th day of January 2016

Entered in the Register on this 8th day of January 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi