



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SAHAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM

Background

1. The Applicant is a former staff member who served as a Property Control and Inventory Assistant at the G-4 level in the United Nations Operation in Côte d'Ivoire (UNOCI). By letter dated 1 June 2016, the Chief of Mission Support, UNOCI, informed the Applicant of the decision not to renew his appointment beyond 30 June 2016 (the contested decision). On 27 June 2016, the Applicant requested management evaluation of the contested decision.

2. Effective 30 June 2016, the Applicant was separated from service.

3. By letter dated 12 August 2016, the Under-Secretary-General for Management replied to the Applicant's request for management evaluation. The contested decision was upheld.

4. By email dated 24 September 2016, the Applicant filed an Application with the United Nations Dispute Tribunal (the Tribunal) seeking suspension of the decision not to renew his temporary appointment beyond 30 June 2016. On 29 September 2016, the Applicant re-filed the Application in the e-Filing portal CCMS. The Application was served to the Respondent on 30 September 2016.

5. The Respondent filed his Reply on 4 October 2016.

Applicant's contentions

6. The Applicant's contentions may be summarized as follows:

Prima facie unlawfulness

- a. His position in the General Services Section should not have been abolished as it does not belong to a Field Office. Therefore, the contested decision is flawed;
- b. His position was essential in the transition and liquidation of the Mission and, as such, should have remained until June 2017;
- c. Management did not establish a Comparative Review Panel to handle a transparent process in the staffing reduction.

Urgency

- d. He is currently deprived of his job;

Irreparable damage

- e. He suffered loss of career prospects after almost 10 years of service;
- f. He suffered high moral prejudice as a consequence of the contested decision.

Respondent's contentions

7. The Respondent's contentions may be summarized as follows:
 - a. The management evaluation has been completed. Therefore, there is no longer any basis for the Applicant's request for suspension of the implementation of the contested decision. The Tribunal lacks jurisdiction to hear the Application under art. 2.2 of its Statute;
 - b. The Application is not receivable because the contested decision was implemented effective 1 July 2016.

Considerations

8. Pursuant to art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure, the Dispute Tribunal is competent to hear and pass judgment on an application filed by an individual requesting the Tribunal:

[T]o 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 (emphasis added).

9. This provision is explicit in that the motion for suspension of action may only be entertained pending the management evaluation. Moreover, the Tribunal has consistently ruled that a condition for granting a request for suspension of

action is that the decision has not yet been implemented (see *Elkeiy* Order No. 43 (GVA/2015); *Kawas* Order No. 297 (NY/2014); *Smoljan* Order No. 43 (GVA/2013)).

10. In the case at hand, the letter dated 1 June 2016 informing the Applicant of the impugned decision makes clear that it was to be implemented on 1 July 2016, the date of his separation from service. Furthermore, the Applicant confirms in his application that the contested decision was implemented on 1 July 2016. Indeed, a decision resulting in the cessation of service of a staff member with the Organization, is fully implemented as from the date of his separation (see *Nair* Order No. 27 (GVA/2015)).

11. In light of the above, the Tribunal is satisfied that the non-renewal of the Applicant's appointment was fully implemented before the present application was filed. Furthermore, the management evaluation had also been completed (letter dated 12 August 2016) by the time that the present application was filed.

12. It follows that the application does not meet two of the cumulative and mandatory conditions for granting a suspension of action.

Conclusion

13. The application for suspension of action is rejected.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 7th day of October 2016

Entered in the Register on this 7th day of October 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi