



Before: Judge Alexander W. Hunter, Jr.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KELAPILE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
REQUEST FOR WITHDRAWAL OF
PROCEEDINGS**

Counsel for the Applicant:

Daniel Trup, OSLA

Counsel for the Respondent:

Sandra Baffoe-Bonnie, OES/ECA

Introduction

1. The Applicant was appointed Chief of Staff in the Office of the Executive Secretary (ES) in the United Nations Economic Commission for Africa (UNECA) on 1 August 2014. He serves at the D1 level on a fixed term appointment.

Procedural History

2. On 24 September 2015, the Registry of the United Nations Dispute Tribunal (UNDT) in Nairobi received the Applicant's application for suspension of action, challenging the Respondent's decision to "strip him of his core functions as Chief of Staff." The Applicant contends that the impugned decision is inconsistent with the United Nations Staff Regulations and Rules as well as with the jurisprudence of the UNDT.

3. On 1 October 2015, the Applicant filed a motion to withdraw his request for interim measures "pursuant to the terms and conditions of a recently concluded interim settlement between the Parties."

4. The Tribunal issued Order No. 310 (NBI/2015) on the same day, granting the Applicant's motion and striking the matter off of the court's docket.

5. On 3 November 2015, the Applicant filed a substantive application pursuant to art. 2.1(c) of the UNDT Statute and an Application for Suspension of Action pursuant to art. 14 of the Rules of Procedure. The Applicant is challenging the Respondent's decision to "not comply with the intent, letter and spirit of the Settlement Agreement reached on 1 October 2015 through mediation."

6. Both applications were served on the Respondent on the same day. The Respondent was directed to file his reply to the Motion for Interim Relief by 4 November 2015.

7. On 4 November 2015, the Tribunal received the Respondent's Motion for Extension of Time.

8. On 4 November 2015, the Tribunal issued Order No. 358 (NBI/2015) partially granting the Respondent's motion. The Respondent filed his reply to the application for interim relief on 5 November 2015. The Tribunal sought the Applicant's response to the Respondent's reply, particularly on the issue of receivability. The Applicant filed his response on 6 November 2015.

9. On 9 November 2015, the Tribunal issued Order No. 365(NBI/2015) dismissing the application for suspension of action. The Tribunal also directed service of the order on the Office of the Ombudsman and Mediation Services (OMS) to facilitate "meaningful consultations towards having this matter resolved" and informed the parties that a notice of hearing will issue shortly after the filing of the Respondent's reply.

10. On 30 November 2015, the Respondent filed a Motion for Directions. The Respondent asked the Tribunal to "allow the Parties [to] comply with the Tribunal's observations on Order No. 365 (NBI/2015)" and to "suspend proceedings to allow the Parties to make full efforts and focus at mediation for the fair and expeditious disposal of the case."

11. The Applicant responded to the Respondent's motion on 1 December 2015 and urged the Tribunal to "reject the request of the Respondent to admit into evidence any mediation documentation."

12. On 3 December 2015, the Tribunal issued Order No. 383 (NBI/2016) granting the Respondent's Motion for Suspension of Proceedings pending mediation and extended the deadline for the filing of the Respondent's reply.

13. On 11 January 2016, the Ombudsman requested (on behalf on the parties) that the suspension of proceedings be further extended. The Tribunal granted the extension that was sought.

14. On 25 January 2016, the Ombudsman informed the Tribunal that mediation was not successful. The Respondent filed his reply to the substantive application on the same day.

15. The Applicant filed his submissions in response to the Respondent's reply on 12 February 2016.

16. On 14 April 2016, the Ethics Office concluded its investigation into the Applicant's formal complaint of harassment and abuse of authority by the Executive Secretary of UNECA pursuant to ST/SGB/2008/5.

17. On 1 July 2016, the Applicant was given notice of the Organisation's decision not to renew his contract upon its expiry. The Respondent cited the "irreversible breakdown in working relationship between him and senior management, mutual loss of trust, confidence and good faith which has made the working environment untenable."

18. On 5 July 2016, the applicant filed for protection against retaliation with the Ethics Office.

19. On 6 July 2016, the Applicant moved for a stay of the Respondent's decision not to renew his contract pursuant to art. 13 of the Rules of Procedure.

20. On 7 July 2016, the Respondent informed the Applicant that he has suspended the decision not to renew the latter's contract, thus making the application for a stay of the decision moot. The Tribunal accordingly issued Order No. 333 (NBI/2016) striking out the application for suspension of action.

21. On 4 August 2016, the parties were informed that this matter was transferred to the docket of Judge Goolam Meeran.

22. On 5 August 2016, the Tribunal issued Order No. 409 (NBI/2016) setting the matter down for a Case Management Discussion (CMD).

23. On 9 August 2016, the Ethics Office found that there was a *prima facie* case of retaliation and ordered the matter transferred to the Office of Internal Oversight Services (OIOS) for investigation.

24. The CMD took place on 16 August 2016.

25. On 17 August 2016, the Tribunal issued Order No. 415 (NBI/2016) for the purposes of case management.

26. On 22 August 2016, the Applicant filed a substantive application challenging the Respondent's decision not to renew his contract with the Organisation. This application is registered in the UNDT's records as UNDT/NBI/2016/062. The new application included a motion for consolidation of UNDT/NBI/2016/062 with UNDT/NBI/2015/112.

27. On 21 September 2016, the Respondent filed his reply to UNDT/NBI/2016/062 urging the Tribunal to dismiss both the application and the motion for consolidation of the two cases.

28. Following the completion of Judge Meeran's term at the UNDT in Nairobi, this matter was transferred to the docket of Judge Hunter in December 2016.

29. On 9 January 2017, the Respondent filed a motion to have the Applicant's case, in respect to the non-renewal (2016/062), dismissed as moot on the grounds that the Acting Executive Secretary of UNECA has decided to "renew the Applicant's contract for two years."

30. On 11 January 2017, the Tribunal sought the Applicant's response to the Respondent's motion. The Applicant responded to the motion on 12 January 2017 strenuously objecting to the Respondent's motion to have case 2016/062 dismissed.

31. The Applicant, however, undertook to withdraw his application (2016/062) once the anticipated final settlement of the issues in dispute and contract extension had been reached.

32. On 23 January 2017, the Applicant filed a Motion to Withdraw Proceedings on grounds that the Respondent has reversed “its decision to separate Mr. Kelapile” and has issued a contract extension.

33. On 30 January 2017, the Tribunal issued Order No. 021 (NBI/2017) granting the Applicant’s motion and striking case UNDT/NBI/2016/062 from the Tribunal’s docket.

34. On 2 February 2017, the Tribunal issued Order No. 023 (NBI/2017) setting this matter down for a case management discussion on 7 February 2017, commencing at 1500hrs (Nairobi time).

35. The CMD took place as scheduled.

36. The parties informed the Tribunal that they were currently engaged in efforts to have this dispute resolved *inter partes* and that the Ombudsman has been engaged towards that end. They moved for the matter to be suspended pursuant to art. 10.3 of the Statute.

37. On 8 February 2017, the Tribunal issued Order No. 030 (NBI/2017) suspending the proceedings for one month to allow for mediation.

38. On behalf of the parties, on 10 March 2017, the Ombudsman applied for the suspension of proceedings to be extended.

39. On 14 March 2017, the Tribunal issued Order No. 066 (NBI/2017) granting the motion. The Tribunal extended the period for suspension of proceedings but also instituted a schedule for the submission of sworn witness statements and a bundle of documents.

40. On 2 May 2017, the Applicant filed the subject motion on the present order for leave to withdraw proceedings following the signing of a settlement agreement between the parties.

Order

41. The Tribunal commends the parties for their sustained efforts at having this matter resolved without recourse to further litigation.

42. The Tribunal gratefully acknowledges the constructive approach adopted by the Acting Executive Secretary of the ECA, Mr. Abdalla Hamdok, that led to this matter being successfully and definitively resolved.

43. The Tribunal hereby **GRANTS** the Applicant's motion and **ORDERS** that the matter of *Kelapile v Secretary General of the United Nations* (UNDT/NBI/2016/112) be struck from the Tribunal's docket.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 3rd day of May 2017

Entered in the Register on this 3rd day of May 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi