



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TAL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PURSUANT
TO ARTICLE 2.2 OF THE UNDT
STATUTE**

Counsel for the Applicant:

Michael Brazao, OSLA

Counsel for the Respondent:

Nicole Wynn, ALS/OHRM

Introduction

1. The Applicant is employed against a D-1 post as the Head of Office in El Geneina, Sudan, with the African Union - United Nations Mission in Darfur (UNAMID). On 2 August 2017, he filed an application for suspension of action (SOA) with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi, pursuant to art. 2.2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure, challenging the Respondent's decision to separate him from service upon the expiry of his contract on 31 August 2017.

2. The Respondent filed his reply on 7 August 2017.

Facts

3. On 12 October 2014, the Applicant joined UNAMID as Head of Office in El Geneina, Sudan on a one year fixed-term appointment.

4. In July 2015, the Joint Special Representative of UNAMID informed the Applicant that the Sudanese government would not renew his visa upon its expiry on 21 October 2015. Nonetheless, in October 2015, the Applicant submitted his passport to the national authorities of Sudan, seeking an extension of his visa to continue his employment with UNAMID. His visa was subsequently extended for two-months but he was informed that the extension was granted with the express understanding that no further renewals would be granted.

5. The Applicant departed from Sudan on 23 December 2015 due to the expiry of his visa.

6. From February to August of 2016, the Administration placed the Applicant on a series of Temporary Duty Assignments (TDYs) with the United Nations Mission in the Republic of South Sudan (UNMISS).

7. On 6 August 2016, the Applicant's TDY with UNMISS expired and he was repatriated to his home country of Jordan, where he has been residing until the filing of the present application. While UNAMID has continued to pay him his salary and entitlements during this period, he has been assigned no functions and has not been relocated to any other duty station.

8. On 10 October 2016, the Assistant Secretary-General for Field Support informed the Applicant that if efforts to secure another position proved unsuccessful, his appointment with UNAMID would not be renewed beyond 31 December 2016. The Applicant requested management evaluation of this decision on 30 November 2016.

9. On 9 December 2016, the Management Evaluation Unit (MEU) informed the Applicant that the Field Personnel Division of the Department of Field Support (FPD/DFS) had extended his appointment until 28 February 2017 for the express purpose of his participating in an ongoing POLNET recruitment exercise. In view of these developments, the MEU declared the Applicant's MER moot.

10. On 1 February 2017, the Applicant received a further extension of his appointment through 30 April 2017.

11. On 12 April 2017, the Applicant filed another MER challenging the implicit decision of the Administration not to renew his appointment beyond 30 April 2017. He also filed an SOA application on the same day with the Tribunal.

12. On 13 April 2017, the Applicant received an email from a UNAMID Human Resources Assistant, informing him that he would be granted a final, non-renewable extension of his appointment until 30 June 2017. Because of this extension, the Applicant withdrew his SOA application on 18 April 2017.

13. On 28 April 2017, the Applicant received a letter from UNAMID's Chief of Human Resources Management Section (CHRMS) reaffirming the Administration's position that his appointment would not be renewed beyond 30 June 2017.

14. On 17 May 2017, the Applicant wrote to the UNAMID Chief of Staff (CoS), informing him that the Head of the International Organizations Department of the Sudanese Foreign Affairs Ministry had recently informed the Jordanian Ambassador to Sudan that a request to restore the Applicant's visa privileges would be received favourably. Based on these new developments, the Applicant requested that UNAMID resubmit a request to the Sudanese Ministry of Foreign Affairs to restore his visa privileges.

15. On 25 May 2017, UNAMID submitted the Applicant's visa application to the Foreign Ministry in Sudan.

16. On 30 May 2017, the Applicant sent a follow up e-mail to the CoS seeking an update on his visa situation. That same day, the CoS informed him that UNAMID had already submitted the visa application.

17. By email dated 1 June 2017, the Director, FPD/DFS informed the Applicant that the decision to separate him from service on 30 June 2017 would be maintained.

18. On 5 June 2017, the Applicant filed an MER challenging the decision to separate him from service effective 30 June 2017.

19. On 6 June 2017, the Director, FPD/DFS informed the Applicant that should the visa be granted before 30 June, UNAMID "may consider reviewing the decision on the non-renewal of your appointment at that time."

20. On 8 June 2017, the Applicant filed an application for suspension of action before the Tribunal challenging the decision not to renew his appointment beyond 30 June 2017.

21. The Tribunal granted the Applicant's SOA application by its Order No. 109 (NBI/2017) dated 15 June 2017. Accordingly, the Applicant's appointment was extended, initially to 31 July 2017, and then to 31 August 2017. On 25 July 2017, the Applicant received a letter from the CHRMS informing him of the decision not to renew his appointment beyond 31 August 2017.

22. The Applicant requested management evaluation of the 25 July 2017 administrative decision on 1 August and filed the current application for suspension of action on 2 August 2017.

23. The Respondent provided the Tribunal with a copy of MEU's 4 August 2017 response to the Applicant's request for management evaluation.

Considerations

24. Applications for suspension of action are governed by art. 2.2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 2.2 provides:

The Dispute Tribunal shall be competent to hear and pass judgment 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.

25. The remedy provided to applicants under art. 2.2 of the UNDT Statute and art. 13 of the Rules of Procedure is available only during the period that MEU is reviewing the contested administrative decision. Whatever the Tribunal's decides and

orders in respect of the lawfulness or otherwise of an administrative decision, the order lapses as soon as MEU completes its review and issues its decision.

26. In the present case, the Respondent provided the Tribunal with a copy of MEU's 4 August 2017 response to the Applicant's request for management evaluation.

27. The Applicant has received MEU's response to his 1 August 2017 request. In view of the foregoing, the Tribunal can no longer entertain his application for suspension of action.

Conclusion

28. The application for suspension of action is accordingly **REJECTED**.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 10th day of August 2017

Entered in the Register on this 10th day of August 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi