



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/044

Order No.: 039 (NBI/2018)

Date: 4 April 2018

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

KRA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON A MOTION FOR  
INTERIM MEASURES PENDING  
PROCEEDINGS**

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**Counsel for the Applicant:**

Self represented

**Counsel for the Respondent:**

ALS/OHRM

## **Introduction**

1. The Applicant is serving as a Child Protection Officer at the P-3 level with the United Nations-African Union Mission in Darfur (UNAMID). He filed the current motion for interim measures pending proceedings on 3 April 2018 challenging the decision to terminate his fixed-term appointment (FTA) effective 8 April 2018.

## **Background facts**

2. On 4 December 2017, the Director of Mission Support, (DMS), UNAMID notified the Applicant of the termination of his FTA effective 31 December 2017.

3. On 9 December 2017, the Applicant submitted a request for management evaluation to the Management Evaluation Unit (MEU) regarding the decision to terminate his FTA. He also requested suspension of the contested decision pending management evaluation, which was granted on 26 December 2017.

4. On 29 March 2018, the Applicant received a response to his management evaluation request upholding the decision to terminate his FTA.

5. On 2 April 2018, the Applicant received in interoffice memorandum from the Chief Human Resources Officer (CHRO), UNAMID, informing him of the termination of his FTA effective 8 April 2018. The Applicant filed the current motion seeking suspension of the decision to terminate his appointment during the Tribunal's proceedings on 3 April 2018.

## **Considerations**

6. Pursuant to articles 10.2 of the Tribunal's Statute and 14.1 of its Rules of Procedure, the Dispute Tribunal may, at any time during the proceedings, order interim measures to provide temporary relief where the contested administrative decision appears prima facie to be unlawful, particularly urgent and where implementation would cause irreparable damage. This temporary relief may include an order to suspend implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

7. Clearly, the Tribunal is under a duty to transmit a copy of the suspension of action application to the Respondent and to issue a decision within five days thereof. There is no requirement, either under art. 10.2 of the Statute or art. 14 of the Rules of Procedure, for the Tribunal to await the Respondent's response before the applicant's request is considered.

8. It is necessary for the Tribunal to explain to the Applicant, a self-represented staff member, that a request for interim measures under art. 10.2 of the Statute and art. 14.1 of the Rules of Procedure is based upon an ongoing or pending substantive application. In essence, these articles require the filing of a substantive application challenging a given administrative decision before an applicant can come before the Tribunal with a motion for interim measures during the proceedings. In the absence of a substantive application, an applicant has no standing to file a motion for interim measures.

9. In the current case, the Applicant seeks to invoke the Tribunal's power to grant injunctive relief although he has not yet filed a substantive application with the Tribunal. Additionally, he is seeking suspension of a decision to terminate his contract. Regrettably, articles 10.2 of the Statute and 14.1 of the Rules of Procedure clearly provide that the Dispute Tribunal may not grant interim measures in cases of **appointment, promotion or termination**.

10. In light of the foregoing, the Tribunal cannot grant the Applicant's motion for interim measures.

11. The Applicant has received a response to his management evaluation request. He may, if he still wishes to contest the administrative decision, file a substantive application with the Tribunal in accordance with art. 8 of the Tribunal's Statute and its Rules of Procedures for consideration of the matter on its merits.

## **Order**

12. The Applicant's motion for interim measures pending proceedings is refused.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 4<sup>th</sup> day of April 2018

Entered in the Register on this 4<sup>th</sup> day of April 2018

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi