



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ROSS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

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

---

**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Lance Bartholomeusz, UNHCR  
Louis Lapicerella, UNHCR

## **Introduction**

1. The Applicant is a former staff of the office of the United Nations High Commissioner for Refugees (UNHCR). He was separated from service on 31 March 2016.

## **Facts**

2. In October 2016, the Applicant directed requests for information to the former Director of the Division of Human Resources Management (DHRM) at UNHCR. He inquired about his application for a Senior Legal Officer Position as well as his final emoluments.

3. By email dated 11 October 2016 to, *inter alia*, the Deputy Director of DHRM, the Senior Principal Secretary, DHRM, followed up on the Applicant's request. In her email, she noted that "[the former Director of DHRM] ha[d] moreover enquired if the name of the former staff member could be 'flagged' to say 'consult' as [the Applicant] will have internal status to apply for positions still..."<sup>1</sup>.

4. On the same day, the Deputy Director of DHRM, replied that "[he was] going to ask [the Associate Personnel Administration Officer] to include the consult per/ex notation in the last row of the MSRP"<sup>2</sup>.

5. A note was included in the Applicant's record in the MSRP which reads "Consult PER/EX or the Chief of PAPS before any possible rehire. Action recorded as per the request from Lorenzo Pasquali, the Deputy Director of DHRM via email on 11 October 2016".

6. Upon the Applicant's request, on 17 November 2017, the Respondent provided him access to a scanned copy of his complete Official Status File.

---

<sup>1</sup> According to the Respondent, the Applicant may still apply for internally advertised international UNHCR vacancies for a period of two years following his separation from service, that is, until 31 March 2018.

<sup>2</sup> The MSRP is the Respondent's human resources management system.

7. On 21 February 2018, the Applicant wrote to the current Director of DHRM to request the deletion of “records illegally entered into MSRP”.
8. On 27 February 2018, the current Director of DHRM replied to the Applicant indicating, *inter alia*, that the Respondent’s Principal Legal Adviser would reply to his query.
9. On 28 February 2018, the Respondent’s Principal Legal Adviser answered the Applicant by explaining the purpose of the “consult PER/EX” notation and noting the Agency’s view that there was no valid reason to accede to the Applicant’s request for deletion.
10. On 2 March 2018, the Applicant filed a request for management evaluation contesting the Respondent’s alleged decision to “insert adverse material into [his] online personnel file to hinder [him] from getting reemployed by UNHCR”.
11. On 9 March 2018, the Applicant filed an application for suspension of action pending management evaluation with the United Nations Dispute Tribunal (Tribunal).<sup>3</sup>
12. On 13 March 2018, the Respondent filed his response to the application. The Applicant filed a rejoinder on the same day.
13. By Order No. 032 (NBI/2018), dated 16 March 2018, the Tribunal granted the application for suspension of action.
14. The Applicant received a response to his request for management evaluation on 19 March 2018. On 28 and 29 March 2018, he filed a substantive application and a motion for interim measures pending proceedings, respectively, with the Tribunal challenging the decision to insert adverse material into his online personnel file.
15. The Respondent filed a response to the motion for interim measures on 4 April 2018. The Applicant filed a rejoinder the same day.

---

<sup>3</sup> Registered as Case No. UNDT/NBI/2018/035.

## Considerations

16. This Tribunal has previously held that a suspension of action order is akin to an interlocutory order of injunction in national jurisdictions. It is an interim order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending trial.<sup>4</sup> In substance and effect, it is an emergency application that places tight time constraints on the Tribunal and its limited human resources and brings adjudication of pending applications to a standstill. Consequently, an application for suspension of action, whether under art. 2.2 of the UNDT Statute and art. 13 of UNDT Rules of Procedure or under art. 10.2 of the Statute or art. 14 of the Rules of Procedure, should not be filed lightly.

17. The Tribunal recalls that on 9 March 2018, the Applicant filed an application pursuant to art. 2.2 of the UNDT Statute and art. 13 of UNDT Rules of Procedure seeking suspension of the same administrative decision that is the subject matter of the present motion. On 16 March 2018, the Tribunal granted the application for suspension of action and ordered the Respondent to remove the adverse material from the Applicant's online personnel file, pending management evaluation.

18. On 19 March 2018, the Deputy High Commissioner, UNHCR, issued a management evaluation decision which amended the MSRP entry to read as follows: "In case of queries or requests for administrative action by the staff member, for purposes of coordination please contact Deputy Director, DHRM". The Deputy High Commissioner informed the Applicant that he could communicate his views to the Principal Legal Adviser, UNHCR, if he considered the amended annotation to constitute adverse material.

19. The Applicant did not communicate with the Principal Legal Adviser but chose to file a substantive application and then the current motion. Entertaining this motion in the present circumstances where there appears to be unfinished

---

<sup>4</sup> See *inter alia* Applicant Order No. 087 (NBI/2014); *Dalgamouni* Order Nos. 137 and 224 (NBI/2014).

business between the parties with regard to the language of the amended MSRP entry would be premature.

20. In other words, since an interim order has previously been made in this matter and the Respondent is making concerted efforts to comply with that Order, the Tribunal sees no value in granting the current motion. The Tribunal is satisfied that the Respondent is taking steps to maintain the *status quo* between the parties pending the Tribunal's decision on the substantive application that was filed on 28 March 2018.

21. Once the Respondent files a reply to the substantive application, the Tribunal will have the opportunity to fully interrogate the Applicant's challenge of the contested decision and provide the parties with a final decision instead of an interim one.

### **Conclusion**

22. In view of the foregoing, the motion for interim measures pending proceedings is struck off.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 6<sup>th</sup> day of April 2018

Entered in the Register on this 6<sup>th</sup> day of April 2018

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi