



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ALAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, ALS/OHRM

Rosangela Adamo, ALS/OHRM

Introduction

1. The Applicant is a Logistics Operations Officer at the United Nations Multidimensional Integrated Mission in the Central African Republic (MINUSCA). He serves at the P4 level, on a permanent appointment, and is based in Bangui.

The Application

2. On 30 July 2018, the Applicant filed this Application challenging the Respondent's decision to announce the selection of a "favored candidate" for Job Opening 75660, on grounds that the recruitment process violated ST/AI/2010/3.

3. The Respondent filed his response to the Application on 1 August 2018. The Respondent submits that the application is not receivable, because the impugned decision has been implemented. The selected candidate is an internal candidate who holds a permanent appointment. She was informed that she had been selected on 16 July 2018, and accepted the position on 20 July 2018. Pursuant to the terms of ST/AI/2010/3, the selected candidate's promotion was effective 1 August 2018.

Considerations

4. Applications for suspension of action are governed by Art. 2 of the UNDT Statute and Articles 13 and 14 of the Rules of Procedure of the Tribunal. Article 13 provides as follows:

1. The Dispute Tribunal shall order a suspension of action 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.**

2. [...]

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal. The impugned decision must be shown to be *prima facie* unlawful, that the matter must be particularly urgently and that implementation of the decision would cause the applicant irreparable harm. All three elements must be satisfied for the court to grant the injunction being sought, as the test is a cumulative one.

5. Also a suspension of action application will only succeed where an applicant can establish a *prima facie* case on a claim of right, or where he can show that *prima facie*, the case he has made out is one which the opposing party would be called upon to answer and that it is just, convenient and urgent for the Tribunal to intervene and, without which intervention, the Respondent's action or decision would irreparably alter the *status quo*.

6. In cases of suspension of action in which the matter of selection of staff is in issue, the role of the Dispute Tribunal is to review the challenged selection process to determine whether a candidate has received full and fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material have been taken into consideration.¹

7. The presumption of regularity is rebutted by evidence of a failure to follow applicable procedures, bias in the decision-making process, and consideration of irrelevant material or extraneous factors.² The Applicant bears the burden of showing such irregularity in the selection exercise so that there is doubt as to the lawfulness of the process that was followed. At this stage, the Applicant need only show *prima facie unlawfulness*.

8. On his part, the Applicant alleges unlawfulness and impropriety in the selection exercise; the matter is clearly urgent and may cause the Applicant the irreparable

¹ *Rolland* 2011-UNAT-122; *Aliko* 2015-UNAT-540.

² *Rolland* 2011-UNAT-122. See also *Simmons* 2014-UNAT-425; *Zhuang Zhao and Xie* 2015-UNAT-536; *Tintukasiri* 2015-UNAT-526, *Landgraf* 2014-UNAT-471.

harm he alleges. However, the Respondent makes the case that the selection process in respect of JO75660 has been closed in that an offer of the post has been offered to another candidate who has accepted it and whose appointment took effect on 1 August 2018. In other words, the contested decision has been implemented. There is therefore nothing to suspend or preserve on the part of the Tribunal.

9. If the Management Evaluation Unit upholds the impugned decision, and the Applicant files a substantive challenge of the selection process before the Tribunal, the Tribunal will use its best endeavors to schedule the matter for an expedited consideration and disposal.

ORDERS

10. The application for suspension of action in this case, pending management evaluation, accordingly **FAILS**.

(Signed)

Judge Nkemdilim Izuako

Dated this 2nd day of August 2018

Entered in the Register on this 2nd day of August 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi