



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

KOURA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON THE APPLICANT'S  
MOTION FOR SUSPENSION OF  
ACTION**

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

**Counsel for the Respondent:**  
Nicole Wynn, AAS/ALD/OHR, UN Secretariat  
Rosangela Adamo, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a Training Officer with the United Nations - African Union Hybrid Operation in Darfur (UNAMID). He serves on a fixed-term appointment at the P-3 level, and is based in El-Fasher.
2. On 24 January 2019, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal in Nairobi. He seeks an injunction against the recruitment process for Job Opening 106940 in Juba with the United Nations Mission in South Sudan (UNMISS).
3. The Respondent filed his Reply to the Application on 25 January 2019.

## **Applicant's submissions**

4. The Applicant's case is that he has not been given full and fair consideration for the post; that he is both qualified and rostered as a Training Officer and that UNMISS has a duty to absorb him given that his appointment expires in 5 months' time.

## **Respondent's submissions**

5. The Respondent's position is that the Applicant was given full and fair consideration for the position, but that a better suited candidate was selected. The Respondent also contends that the application must fail because the Applicant has not satisfied the tripartite test for an injunction to be granted pursuant to art. 13 of the Rules of Procedure.

## Considerations

6. 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.

7. 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*.

8. 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.<sup>1</sup>

9. 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.<sup>2</sup> 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*.

10. Following careful review of the Applicant's pleadings, the Tribunal is unable to conclude that he has discharged his burden to satisfy the Tribunal that the injunction he seeks is warranted.

11. The Respondent has, for his part, satisfied the Tribunal that the Applicant's candidature was in fact given due consideration, and that another candidate was selected for the position to match the skill set being sought.

## **Conclusion**

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

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<sup>1</sup> *Rolland* 2011-UNAT-122; *Aliko* 2015-UNAT-540.

<sup>2</sup> *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.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 30<sup>th</sup> day of January 2019

Entered in the Register on this 30<sup>th</sup> day of January 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi