



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

PORRAS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PENDING  
MANAGEMENT EVALUATION**

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**Counsel for the Applicant:**  
Daniel Trup, OSLA

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

## **Introduction**

1. The Applicant filed the current application on 17 June 2019 seeking suspension of the decision by the United Nations Interim Security Force in Abyei (UNISFA) to separate him from service upon the expiry of his fixed-term appointment (FTA) on 30 June 2019.

2. Article 13 of the UNDT Rules of Procedure requires only that the Tribunal transmit a copy of the suspension of action (SOA) application to the Respondent and to issue a decision within five days thereof. Since there is no requirement under either art. 2.2 of the Statute or art. 13 of the Rules of Procedure, for the Tribunal to await the Respondent's response before the applicant's request is considered, the Tribunal decided to adjudicate the current SOA application without the Respondent's reply.

## **Facts**

3. The Applicant entered service with UNISFA on 25 July 2013 as a P-4 Logistics Officer serving in Abyei.

4. On 12 April 2016, the former Chief of Mission Support, Mr. Elijah Karambizi, informed the Applicant of his reassignment from Abyei to Kadugli as an Administrative Officer effective 26 April 2016.

5. Mr. Abdul Wahab, who was the Acting Chief Service Delivery Services (SDS) and the Applicant's first reporting officer (FRO), wrote to Mr. Karambizi on 18 April 2016 to object to the Applicant's reassignment to Kadugli. His objection was based on the following: (i) the Kadugli position was a P-3 Administrative Officer post whereas the Applicant was a P-4 Logistics Officer; (ii) the P-3 Administrative Officer post in Kadugli was undergoing a recruitment process and there was enough back up personnel to perform the functions of the post until the selected Administrative Officer took up the post; (iii) there was a significant demand for logistics support in Abyei, which the Applicant was providing; (iv) the Applicant was serving in FMU and his removal from that unit would negatively impact service delivery operations.

6. The Applicant requested managed evaluation of the decision to reassign him to Kadugli as an Administrative Officer on 2 May 2016.

7. Mr. Karambizi clarified for the Applicant on 19 May 2016 that the P-4 post he was encumbering was being “temporarily loaned to the duty station of Kadugli for operational purposes”. He was further informed that he would be reassigned to Kadugli at the P-4 level and that “[a]s part of the 2017-2018 budget preparation process, the mission would review to ascertain if the P-4 post [he was] encumbering should be reassigned to Kadugli on a permanent basis.”

8. UNISFA received a letter from the Government of Sudan, dated 9 February 2017, expressing its unwillingness to have the Applicant work in Kadugli. Consequently, the Applicant was temporarily assigned from Kadugli to Gok Machar for 90 days from 4 April 2017 to 3 July 2017. The Administration also uploaded the Applicant’s profile in COSMOS so that other missions could consider him for recruitment.

9. Effective 18 July 2017, the Applicant was reassigned to Gok Machar against the P-4 post of Administrative Officer that he was encumbering under the Supply Chain Management Section.

10. On 14 May 2019, the current CMS, Mr. Robert Kirkwood, informed the Applicant that he would be separated from service upon the expiry of his FTA on 30 June 2019 for the following reasons: (i) the functional title of the position he was encumbering had been changed to P-4 Logistics Officer in the 2018-2019 budget due to “the critical requirement of the functions in the Supply Chain Performance management Unit in Abyei”; (ii) the functions of the P-4 Logistics Officer are required in Abyei and not in Gok Machar; (iii) efforts to place him in another mission had not been successful; and (iv) uncertainty regarding issuance of a Sudan visa for him to work in Abyei as the P-4 Logistics Officer in view of the circumstances under which he was moved out of Kadugli.

## Considerations

11. Applications for suspension of action pending management evaluation are to be decided in accordance with art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of the Tribunal's Rules of Procedure. Article 2.2 provides:

The Dispute Tribunal shall be competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

12. The Tribunal must decide whether the Applicant satisfies the three cumulative requirements in art. 2.2 of the Statute and art. 13 of the Tribunal's Rules of Procedure, namely that the decision appears to be *prima facie* unlawful, that the matter appears of particular urgency, and that the implementation of the decision would appear to cause irreparable damage.

13. The Tribunal is not required to make a conclusive finding when it is considering an application for suspension of action. It simply applies the statutory test by making a swift assessment based on the documents presented in support of the application. Whether this initial assessment is upheld when the substantive issues of fact and law are subsequently considered will depend on the evidence, arguments and submissions of both the Applicant and the Respondent.

14. Since the Applicant is not challenging his reassignment to Kadugli in the current application, the Tribunal will not comment on the propriety or impropriety of that decision.

15. The issues that are currently before the Tribunal are: (i) whether the Respondent's decision to separate the Applicant from service instead of reassigning him to Abyei as the P-4 Logistics Officer is *prima facie* unlawful; (ii) whether the matter is urgent; and (iii) whether implementation of the separation decision will cause the Applicant irreparable damage.

*Prima facie unlawfulness*

16. In *Corcoran* UNDT/2009/071, the Tribunal held that:

Since the suspension of action is only an interim measure and not the final decision of a case it may be appropriate to assume that *prima facie* in this respect does not require more than serious and reasonable doubts about the lawfulness of the contested decision. This understanding can also rely on the fact that Art. 2.2 of the UNDT Statute only requires that the contested decision “appears” *prima facie* to be unlawful (cf. UNDT/2009/003 Hepworth).

17. The Applicant submits that the separation decision is unlawful because: (i) his 2016 reassignment to Kadugli was presented as a temporary measure with an expectation of return; (ii) he is not responsible for the Government of Sudan’s decision to expel him from Kadugli and as such, redeployment must be fully explored by UNISFA; (iii) the P-4 Logistics Officer post in Abyei is vacant; and (iv) it is apparent that UNISFA is unwilling to apply for his visa to allow him to return to Abyei, which was his original duty station. This is evidenced by the fact that many UNISFA staff are deployed to Abyei, which is shared by South Sudan and Sudan, without seeking the consent of any of the authorities.

18. Had Mr. Karambizi’s memorandum of 12 April 2016 taken effect without the challenge from Mr. Abdul Wahab on 18 April 2016, it appears that the Applicant would have been reassigned to Kadugli on a permanent basis. However, after the Applicant sought management evaluation, Mr. Karambizi clarified on 19 May 2016 that the Applicant’s post was being “temporarily loaned” to Kadugli for operational purposes and that the matter of a permanent reassignment would be revisited during the 2017-2018 budget preparation process.

19. This subsequent review of the status of the Applicant’s post appears to have been overridden by the 9 February 2017 decision of the Government of Sudan to oust the Applicant from Kadugli.

20. The Tribunal has serious and reasonable doubts about the lawfulness of the contested decision for the following reasons:

- a. The Applicant was serving as the P-4 Logistics Officer in Abyei before his temporary reassignment to Kadugli;
- b. Since he was not informed that the decision to reassign him temporarily had been reversed, he had reason to believe that he would be returned to Abyei at some point to assume functions as a P-4 Logistics Officer;
- c. There is currently a vacant P-4 Logistics Officer post in Abyei; and
- d. It is premature for the mission to decide on separation when there is no certainty regarding the Government of Sudan's decision on a visa for the Applicant to return to Abyei.

*Urgency*

21. In *Maloka Mpacko* UNDT/2012/081, the Tribunal recalled that:

If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133, *Jitsamruay* UNDT/2011/206).

22. The Applicant was notified by the CMS of the decision to separate him from service on 14 May 2019. He explains that he did not submit a request for management evaluation and suspension of action by the Management Evaluation Unit (MEU) until 10 June because he was trying to resolve the matter informally with UNISFA. Further, he filed his application for suspension of action with the Tribunal on 17 June, which was the same day that MEU rejected his request for suspension of action.

23. The Tribunal finds that the Applicant acted reasonably by first trying to informally resolve the matter locally and then initiating the formal process when he still had 20 days before the end of his FTA. The Tribunal also finds that since the Applicant came to the Tribunal at the first available opportunity, i.e. the same

day that MEU rejected his request for suspension of action, he was diligent in filing his application for suspension of action with UNDT. Thus, the urgency in this case was not self-created.

24. The Tribunal holds that the Applicant has satisfied the prerequisite for urgency.

*Irreparable damage*

25. The Applicant submits that should the separation decision be implemented on 30 June 2019; he will suffer harm due to the loss of employment and the loss of the chance to advance his career at UNISFA. He submits that such harm cannot be compensated for by a monetary award.

26. It is established law that a loss of a career opportunity with the United Nations is considered irreparable harm for the affected individual.<sup>1</sup> The Tribunal finds that implementation of the separation decision now would damage the Applicant's career prospects in a way that could not be compensated by a monetary award. The requirement of irreparable damage is satisfied.

**Conclusion**

27. The Tribunal finds that the three statutory conditions for a suspension of action have been met by the Applicant.

**ORDER**

28. This application for suspension of action is accordingly GRANTED pending management evaluation.

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<sup>1</sup> *Saffir* Order No. 49 (NY/2013); *Farrimond* Order No. 200 (GVA/2013)

*(Signed)*

Judge Nkemdilim Izuako

Dated this 20<sup>th</sup> day of June 2019

Entered in the Register on this 20<sup>th</sup> day of June 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi