



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MAVUNGU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
AAS/ALD/OHR

Introduction

1. The Applicant was a Disarmament, Demobilization and Reintegration (DDR) Assistant at the GS-4/9 level working with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in Goma.¹

2. By an application filed on 15 July 2019, which was registered as Case No. UNDT/NBI/2019/106, the Applicant seeks to suspend a decision by MONUSCO to not extend his Fixed-Term Appointment (FTA) effective 30 June 2019.²

Facts

3. The Applicant requested a management evaluation of the contested decision, on 30 May 2019.³ On 31 May 2019, the Management Evaluation Unit acknowledged receipt of the Applicant's request and advised him that the management evaluation in his case will be completed within 45 days of receipt of the request, or no later than 14 July 2019.⁴

4. The Applicant separated from the service of MONUSCO on 30 June 2019.⁵

Submissions

Applicant's submissions

5. The Applicant submits that the decision not to extend his FTA is unlawful because it violates United Nations Security Council resolution 2463 which provides that the downsizing process would take place in December 2019. The decision was also taken before the General Assembly approved the MONUSCO 2019-2020 budget.⁶ The

¹ Application, section I

² Application, section V

³ Application, Annex 3

⁴ Application, Annex 4

⁵ Application, section V

⁶ Application, section VIII

Applicant further submits that the matter is urgent but does not specifically address how urgent it is.⁷ With regard to irreparable harm, the Applicant states that termination of his FTA led to the loss of a job, which was the only source of income for himself and his family. This has ravaged his family, both financially and socially.⁸

Considerations

6. This application is made under art. 2.2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure, which allows the Tribunal to suspend the implementation of the impugned decision where it appears *prima facie* to be unlawful, that it is a case of particular urgency and its implementation would cause irreparable damage. All three elements of the test must be satisfied before the impugned decision can be stayed. An urgent injunctive order must be of a matter pending implementation

7. In the present case, the Applicant separated from the service of MONUSCO on 30 June 2019. Therefore, there is no action to suspend as the Applicant is already out of service. Clearly, the Applicant is seeking the suspension of an action that is already overtaken by time. Having found that the contested decision has already been implemented, the Tribunal need not consider the other prongs of the test under art 2.2 of the UNDT Statute.

8. In a suspension of action application, the failure to meet the prerequisites for the granting of the order sought is a matter of law which may be adjudicated even without serving the application on the Respondent for a Reply, and even if it was not raised by the parties.

Conclusion

9. The application for suspension of action is irreceivable.

⁷ Application, section IX

⁸ Application, section X

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 18th day of July 2019

Entered in the Register on this 18th day of July 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi