



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MANI

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:

Nicole Wynn, AAS/ALD/OHR

Nusrat Chagtai, AAS/ALD/OHR

Introduction

1. The Applicant was a Movement Control (Movcon) Assistant at the FS-3 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 19 July 2019, which was registered as Case No. UNDT/NBI/2019/112, the Applicant seeks to suspend a decision by MONUSCO to separate him from service effective 30 June 2019.²
3. The Respondent filed a reply on 24 July 2019, where it is argued that the application is not receivable *ratione materiae* because there is no pending management evaluation.

Facts

4. On 2 April 2019, the MONUSCO Chief Human Resources Officer (CHRO) informed the Applicant of the ongoing comparative review process (CRP) and requested him to submit his updated personal history profile form (PHP) and completed performance reports covering the period 2016-2017 and 2017-2018 to the MONUSCO Human Resources Section.³
5. On 15 May 2019, the Applicant received an email from the Human Resources Section informing him, that after further review, it had been found that his position was not subject to a CRP and the initial memorandum relating to the same had been withdrawn.⁴
6. On 29 May 2019, the Applicant received a notice from the CHRO informing him of the non-extension of his fixed-term appointment (FTA) upon its expiration on

¹ Application, section I

² Application, section V

³ Application, Annex 4

⁴ Application, Annex 3

30 June 2019. By the same letter, the CHRO informed the Applicant that the Human Resources Section was to commence his check-out process.⁵

7. On 1 June 2019, the Applicant requested management evaluation of the decision he received on 29 May 2019. On 23 July 2019, the Management Evaluation Unit (MEU) issued a response to the Applicant's request and upheld the decision not to renew his FTA.⁶

8. On 16 July 2019, the Applicant received another letter from the CHRO, citing the notice of 29 May 2019 and informing him that his FTA with MONUSCO expired on 30 June 2019 and advising on steps to separate him from service.⁷

9. The Applicant separated from the service of MONUSCO on 30 June 2019.⁸

Submissions

Applicant's submissions

10. The Applicant did not specifically submit on the *prima facie* unlawfulness of the contested decision.⁹ The Applicant submits that the matter is urgent because a separation memo was issued despite his plea to extend his contract.¹⁰ With regard to irreparable harm, the Applicant states that separation from service will cause him extensive financial constraints.¹¹

Respondent's submissions

11. The Respondent contends that the application is not receivable. Pursuant to art.2.2 of the UNDT Statute, the Tribunal shall pass judgment on an application to suspend an administrative decision that is the subject of an ongoing management evaluation. Since the MEU issued its response on 23 July 2019, there is no pending

⁵ Application, Annex 2

⁶ Reply, Annex 2

⁷ Application, Annex 1

⁸ Application, section V

⁹ Application, section VIII

¹⁰ Application, section IX

¹¹ Application, section X

management evaluation and as such the Tribunal lacks jurisdiction to pass judgment on the Application. Consequently, the Respondent requests the Tribunal to dismiss the Application¹².

Considerations

12. 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 implementation of an 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.

13. In any event, for the Tribunal to entertain an application filed under art. 2.2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure, management evaluation must still be pending. In the instant case, MEU issued its response to the Applicant's request for management evaluation on 23 July 2019. As such, the Applicant is seeking the suspension of an action that is already overtaken by events which rendered it moot.

Conclusion

The application for suspension of action is dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart
Dated this 26th day of July 2019

Entered in the Register on this 26th day of July 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

¹² Reply

Case No. UNDT/NBI/2019/112

Order No.: 107 (NBI/2019)