



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

OPOLOT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION  
PURSUANT TO ARTICLE 10.2 OF  
THE UNDT STATUTE**

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

**Counsel for the Respondent:**  
AAS/ALD/OHR

## **Introduction**

1. The Applicant is a staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves on a on fixed-term appointment (FTA) as a Telecommunications Assistant at the GL-3/07 level in Entebbe, Uganda.<sup>1</sup>

2. On 15 April 2019, the Chief Human Resources Officer (CHRO) of MONUSCO informed the Applicant that the Secretary-General had proposed the closure of seven field offices and one team site, resulting in the abolition of 764 posts as part of MONUSCO's proposed budget for the period 1 July 2019 to 30 June 2020. The CHRO also informed the Applicant that in view of the eminent abolition of some posts, there was a necessity to initiate a Comparative Review Process (CRP). Accordingly, the CHRO requested the Applicant to submit his updated Personal History Profile (PHP) and completed ePerformance reports covering the periods 2016-2017 and 2017-2018 for consideration during the CRP process.<sup>2</sup>

3. On 29 May 2019, the CHRO informed the Applicant that, following the CPR, the Applicant had been identified for retrenchment and thus, his FTA would not be renewed beyond 30 June 2019.<sup>3</sup>

4. On 17 June 2019, the Applicant wrote to the Management Evaluation Unit (MEU) requesting suspension of the decision of non-extension of his appointment.<sup>4</sup>

5. On 24 June 2019, the Applicant filed an application for suspension of action pending management evaluation with the United Nations Dispute Tribunal (UNDT) in Nairobi challenging MONUSCO's decision not to renew his FTA

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<sup>1</sup> Application, section I

<sup>2</sup> Application, Annex I

<sup>3</sup> Application, Annex 2

<sup>4</sup> Application, Annex 3

beyond 30 June 2019 due to the proposed abolition of his post in the mission's 2019-2020 budget proposal.<sup>5</sup>

6. On 28 June 2019, the Tribunal, having taken note that the Applicant had satisfied the requirements for urgency and irreparable damage, granted the Applicant's request for suspension of action by its Order No. 086 (NBI/2019).<sup>6</sup>

7. On 20 September 2019, the Applicant received a response to his request for management evaluation from the Under-Secretary-General for Management Strategy, Policy and Compliance informing him that the decision not to renew his FTA was upheld.<sup>7</sup>

8. On 23 September 2019, the CHRO informed the Applicant that MEU had upheld the Administration's decision not to renew his FTA and accordingly, his separation from MONUSCO would take effect close of business 30 September 2019.<sup>8</sup>

9. On 25 September 2019, the Applicant filed an application under art. 2.1 of the UNDT Statute challenging the decision by MONUSCO not to renew his FTA due to the abolition of his post. At section IX of the application, the Applicant requests "suspension of the implementation of the contested decision not to renew [his] Fixed Term Appointment" as a remedy.

10. The Registry transmitted the application to the Respondent on 25 September 2019 and the Respondent's reply shall be filed by 25 October 2019. Since there is no requirement, either under art. 10.2 of the UNDT Statute or art. 14 of the Rules of Procedure for the Tribunal to await the Respondent's response before the applicant's request for suspension of action is considered, the Tribunal has decided to determine the current request for suspension of action solely on the application and supporting documentation presented by the Applicant.

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<sup>5</sup> Application, Annex 4

<sup>6</sup> Application, Annex 5

<sup>7</sup> Application, Annex 6

<sup>8</sup> Application, Annex 7

## **Considerations**

11. The application is made under art. 10.2 of the UNDT Statute and art. 14 of the UNDT Rules of Procedure, which allow the Tribunal to suspend the implementation of the impugned decision pending proceedings where the decision appears *prima facie* to be unlawful, where it is a case of particular urgency and where the implementation would cause irreparable damage. The Tribunal, however, is not competent to suspend implementation of the contested administrative decision in cases of appointment, promotion or termination.

12. The United Nations Appeals Tribunal (UNAT/the Appeals Tribunal) has consistently held that cases of separation following non-renewal constitute a case of appointment and fall under the exclusionary clause of art. 10.2 of the UNDT Statute.<sup>9</sup> The Appeals Tribunal has found that in these cases, “the reversal of the underlying contested decision results in the issuance of a new appointment reflecting ‘expressly or by reference all the terms and conditions of employment’ as provided for in Staff Rule 4.1”.<sup>10</sup>

13. In the current case, the Applicant is challenging the non-renewal of his FTA with MONUSCO due to the abolition of his post by the General Assembly. The Tribunal is satisfied that the subject matter of the application for interim relief is an appointment decision and therefore falls under the exclusionary clause of art. 10.2 of the UNDT Statute and art. 14 of the Rules of Procedure.

14. In light of the foregoing, the Tribunal is not competent to grant the remedy sought by the Applicant in his application.

## **ORDER**

15. This application for suspension of action is accordingly dismissed.

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<sup>9</sup> *Siri* 2016-UNAT-609, para 33; *Benchebbak* 2012-UNAT-256, paras. 12 and 34.

<sup>10</sup> *Siri* 2016-UNAT-609.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 26<sup>th</sup> day of September 2019

Entered in the Register on this 26<sup>th</sup> day of September 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi