



**Before:** Judge Margaret Tibulya

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MANCINELLI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

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

---

**Counsel for the Applicant:**  
Julia Kyung Min Lee, OSLA

**Counsel for the Respondent:**  
Katrina Waiters, UNFPA

## **Introduction**

1. The Applicant is a Deputy Representative working with the United Nations Population Fund (UNFPA). She serves on a fixed-term appointment at the P-4/10 level, and is based in Conakry, Guinea.

2. On 6 December 2019, she filed an application for suspension of action (SOA) pending management evaluation before the United Nations Dispute Tribunal in Nairobi contesting the decisions of UNFPA to; (a) extend her placement on Administrative Leave With Pay (ALWP); and (b) the short-extension of her appointment until 31 December 2019.<sup>1</sup>

3. The Respondent filed his reply to the application on 11 December 2019.

## **Facts**

4. The Applicant joined UNFPA in 2009 working as a Programme Specialist. In March 2012, the Applicant transferred to UN Women as a Programme Specialist at the P-4 level at the United Nations Headquarters in New York.<sup>2</sup>

5. On 1 November 2018, the Applicant re-joined UNFPA and began her assignment as Deputy Representative in Guinea.<sup>3</sup>

6. On 13 December 2018, UNFPA's Chief, Legal Unit, received an Investigation Report from UN Women's Chief, Legal Unit. The report was prepared by the Investigations Division of the Office for Investigation and Oversight Services (ID/OIOS) regarding the Applicant as the subject of an investigation.<sup>4</sup>

---

<sup>1</sup> Application, section II.

<sup>2</sup> Reply, section II.

<sup>3</sup> Application, annex A.

<sup>4</sup> Reply, annex 6.

7. On 16 August 2019, the UNFPA Director, Office of Audit and Investigation Services (OAIS) endorsed the Investigation Report and referred it to the UNFPA Chief, Legal Unit for appropriate action. The OAIS decided to endorse the OIOS Investigation Report without taking further investigation actions pursuant to section 7.3.3 of the UNFPA Disciplinary Framework.<sup>5</sup>

8. On 20 September 2019, the Applicant was placed on ALWP until 31 October 2019 pending investigation and the disciplinary process.<sup>6</sup>

9. On 25 October 2019, the Applicant was informed that her contract had been renewed for only two months, until 31 December 2019.<sup>7</sup> On 29 October 2019, the Applicant requested management evaluation of the decisions to place her on ALWP and to only renew her contract for two months.

10. On 21 November 2019, the Applicant's ALWP was extended until 31 December 2019.<sup>8</sup>

11. On 6 December 2019, she requested management evaluation for the decision to extend her ALWP. The Applicant is yet to receive a response from the Management Evaluation Unit to both requests.<sup>9</sup>

### **Applicant's submissions**

12. The Applicant's case is that she has satisfied the tripartite test for the grant of a suspension of action pending management evaluation of the contested decisions. The Applicant submits that the impugned decisions appear *prima facie* unlawful. The initial letter of 20 September 2019 placing her on ALWP does not provide any reasons justifying the decision, contrary to staff rule 10.4(b), section 14.3 of the UNFPA Disciplinary Framework and the settled law that an administrative decision must be

---

<sup>5</sup> Reply, annex E.

<sup>6</sup> Reply, annex L.

<sup>7</sup> Application, para 24.

<sup>8</sup> Application, annex U.

<sup>9</sup> Application, section III.

fully and correctly reasoned. The Administration has also failed to provide reasons justifying the extension of her placement on ALWP. With regard to urgency, the Applicant contends that the continuing legal effect of the impugned decision means that at any stage during its continuance, there is an element of urgency. For the irreparable harm, the Applicant submits that if she continues to be placed on ALWP, her employment prospects with the United Nations entities will be significantly and adversely affected. If the SOA is not granted, the harm done to her reputation will be irreparable and could not be adequately compensated at a later stage.

### **Respondent's submissions**

13. The Respondent's position is that the contested decision to place the Applicant on ALWP is not *prima facie* unlawful. He submits that all procedural and substantive requirements of UNFPA's Disciplinary Framework were carefully and fully complied with in placing the Applicant on ALWP. The Respondent also contends that the decision to renew the Applicant's appointment for two months is also not *prima facie* unlawful. The Staff Rules do not prescribe any specific time frame for which a fixed-term appointment is to be renewed. Therefore, as a matter of principle, UNFPA reserves the right to renew any fixed-term appointment, once it has decided to renew it at all, for such a period as it deems appropriate. The Respondent submits that the urgency regarding both the renewal of appointment and the extension of ALWP is self-created. With regard to irreparable harm, the Respondent contends that the Applicant has not provided any evidence that she will suffer irreparable harm due to the contested decisions.

### **Considerations**

14. Article 2 of the Statute and article 13 of the Rules of Procedure of the Tribunal require that an applicant seeking suspension of action satisfies the Court that;

- a. the impugned decision is *prima facie* unlawful,
- b. the matter appears to be of particular urgency, and

c. the implementation of the decision would appear to cause irreparable damage.

15. All the three elements of the test must be satisfied before the impugned decision can be stayed.

**Whether the impugned decision is *prima facie* unlawful.**

16. The Applicant is challenging the decisions to place her on ALWP, to renew her contract for only two months until 31 December 2019, and the management decision to extend her placement on ALWP until 31 December 2019.

17. She contends that there is no specific reason to justify placing her on ALWP and later extending the ALWP. Also, that the Administration only extended her contract for two months, shortly after her post had been unlawfully filled by another staff member. That in placing her on ALWP and extending it without providing any reasons and justification; and the short renewal of her contract until 31 December 2019 demonstrate that the Administration has acted in bad faith to prevent her from returning to her post.

18. This application presents two separate but interlinked issues;

a. From 19 February 2019 to 19 September 2019 the Applicant was in New York on certified sick leave, and as early as July 2019,<sup>10</sup> the Respondent had identified someone to occupy the position, since, according to the Respondent,<sup>11</sup> the post of Deputy Representative is critical in Guinea. A detailed assignment was created only after they had no communication from the Applicant for several months after her departure on medical leave in February 2019.

---

<sup>10</sup> Application, para 7

<sup>11</sup> Reply, para 43

b. The reason the Applicant failed to take up the post related to health concerns for her baby. The Respondent was in the process of identifying a suitable work place for her when issues relating to her being investigated for misconduct surfaced.

19. The Applicant was notified about the investigations on 6 September 2019<sup>12</sup> and on 16 September 2019 she notified the Respondent about her readiness to take up the position in Guinea.<sup>13</sup>

20. The events that followed after the issue of her being under investigation came to light seem to suggest that her change of mind/position in as far as her being unable to work in Guinea bear close connection to the fact of her being investigated and do not support the view that she is being victimized by the Respondent. And, in agreement with the Respondent, the fact that the Applicant left Guinea in February 2019 and has since not returned, yet submitted an email from medical staff in Guinea indicating that she was able to return to work as of 19 September 2019, raises authenticity issues since it is unclear how such assessment was made in her absence. It is also surprising that the medical finding does not include an assessment of the medical well-being of the Applicant's young child, a primary motivating factor for the Applicant's leaving Guinea in the first place.

21. The above facts support a finding, as the Tribunal does, that the Applicant cannot be heard complaining that she was irregularly replaced and is under threat of being denied her right to work when she did not avail herself for work, and only did so when it was convenient to her.

---

<sup>12</sup> Application, annex F.

<sup>13</sup> Application, annex J.

22. About the complaint that no reason/justification was given for her to be placed on ALWP, and for its extension until 31 December 2019 contrary to Staff Rule 14.2., the Tribunal agrees with the Applicant that the Respondent did not give detailed reasons for placing her on ALWP. However, since the Applicant was aware that the position was occupied since July 2019 (and had not raised objections until the issue of her being under investigation surfaced), she must be taken to be aware that her redeployment or temporary reassignment is not feasible and/or reasonable under the circumstances.

23. The Tribunal is of the considered opinion that if the application were granted it would cause unnecessary disruption to the normal work flow and yet the Applicant's failure to take up the post in the first place is what drove the Respondent to get a temporary replacement. The balance of convenience tilts towards not granting the Application.

24. The Applicant's submissions in respect of the *prima facie* unlawfulness of the impugned decisions do not persuade the Tribunal that the decisions are tainted by the unlawful considerations and omissions/actions complained about.

### **Conclusion**

25. The application is dismissed for lack of merit.

(Signed)

Judge Margaret Tibulya

Dated this 16<sup>th</sup> day of December 2019

Entered in the Register on this 16<sup>th</sup> day of December 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi