



Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HANDY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Natalie Puchalka, OSLA

Counsel for the Respondent:

Christine Graham, AAS/ALD/OHR

Rosangela Adamo, AAS/ALD/OHR

Introduction

1. The Applicant, a staff member of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), filed an application on 26 December 2019 seeking suspension of the decision not to renew his appointment beyond 1 January 2020 (“Contested Decision”). The Applicant also requests: (i) suspension of the contested decision pending the art. 13 suspension of action proceedings pursuant to articles 19 and 36 of the UNDT Rules of Procedure; and (ii) referral for accountability against the MINUSCA Director of Mission Support (“DMS”) pursuant to art. 10.8 of the UNDT Statute.

Facts

2. On 13 December 2019, the Applicant received a personnel action form that extended his appointment for one day i.e. from 1 January 2020 to 1 January 2020. The Applicant claims that he was informally notified that this one day extension would be the final renewal of his appointment and that no further extensions would be issued. He submitted a request for management evaluation of the Contested Decision on 26 December 2019.

Considerations

3. This interim order relates solely to the Applicant’s motion that was filed under articles 19 and 36 of the UNDT Rules of Procedure.

4. Pursuant to art. 13 of the UNDT Rules of Procedure, the Tribunal is under an obligation to consider an application for suspension of action within five working days of the service of the application on the respondent. Since the current application for suspension of action will be served on the Respondent today, 27 December 2019, the Tribunal has until Monday, 6 January 2020, to render its final decision. The Tribunal notes, however, that Tuesday, 31 December 2019, is the last working day before the Contested Decision will be implemented.

5. Having considered the submissions of the Applicant in light of the prevailing law and jurisprudence on applications seeking an Order of this nature also known as a *Villamoran* Order¹, the Tribunal has noted that the application fails to address one important element which is a determinant in an application of this nature namely, timeliness.

6. The Applicant states that he was notified on 13 December 2019 that his contract would be renewed for one day on 1 January 2020. In *Jitsamruay*² this Tribunal held that;

[I]f an Applicant seeks the Tribunal's assistance on 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. The onus is on the Applicant to demonstrate the particular urgency of the case and the timeliness of her or his action.

7. In this case, the Applicant was under an obligation to show the Tribunal in the application, why it took him more than ten days from 13 December to 26 December to file this application when he was aware or ought to have known that the Tribunal is allowed five working days and no more to decide on a suspension of action case after service on the Respondent, art. 13(3) of the UNDT Rules of Procedure.

8. It was his duty to show the Tribunal why filing the application was not the first thing to do after the notification. His failure to supply the justification considering the circumstances of his case, to wit, falling within United Nations official public holidays which were eminent and well known to him, renders his application inadmissible because the urgency that is acceptable in *Villamoran* 'should not be self- created'³

9. The Tribunal, in exercise of its powers under articles 19 and 36 of the Rules of Procedures, refuses to grant an interim suspension of the contested administrative

¹ *Villamoran* 2011-UNAT-160.

² *Jitsamruay* UNDT/2011/206.

³ *Dougherty* UNDT/2011/133.

decision for five working days pending the receipt and review of the Respondent's reply.

ORDERS

10. The Respondent shall file a reply to the application for suspension of action by noon (**UTC +3 Nairobi Time**) on Tuesday, **31 December 2019**.

11. Implementation of the Contested Decision is NOT suspended.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 30th day of December 2019

Entered in the Register on this 30th day of December 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi