



Before: Judge Rachel Sophie Sikwese
Registry: Nairobi
Registrar: Abena Kwakye-Berko

HANDY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

AND

**A MOTION FOR
ACCOUNTABILITY PURSUANT TO
ARTICLE 10.8 OF THE STATUTE
OF THE DISPUTE TRIBUNAL**

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 an art. 13 suspension of action proceedings pursuant to articles 19 and 36 of the UNDT Rules of Procedure; and (ii) a referral for accountability against the MINUSCA Director of Mission Support (“DMS”) pursuant to art. 10.8 of the UNDT Statute.

2. The Applicant’s application to suspend the contested decision pending the art. 13 suspension of action proceedings pursuant to articles 19 and 36 of the UNDT Rules of Procedure was considered and dismissed under Order No; 228 (NBI/2019) where the Dispute Tribunal found that the Applicant had failed to justify the delay in filing the application.

Facts

3. The Applicant alleges that on 13 December 2019, he 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.

4. The Respondent replied on 31 December 2019 and in his reply contends that the application is not receivable *ratione materiae*. Article 2(2) of the UNDT Statute authorizes the Dispute Tribunal to pass judgment on an application to suspend the implementation of an administrative decision that is the subject of an ongoing management evaluation.

5. In the instant case, there is no administrative decision subject of an ongoing management evaluation because on 27 December 2019, the Applicant received the outcome of his 26 December 2019 request for management evaluation of the contested decision.

6. The Respondent further contends that due to a typo on the Applicant's extension of appointment personnel action ("PA"), the contract expiry date reads 1 January 2020 instead of 31 January 2020. As a corrective action, the Organization has raised a new PA, which indicates 31 January 2020 as the expiration date of the Applicant's appointment.

7. Furthermore, it is noted from the application and confirmed by the Respondent that there is no administrative decision 'not to renew Applicant's appointment beyond 1 January 2020' as alleged by the Applicant.

Considerations

8. Article 13 of the UNDT Rules of Procedure provides that:

The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

9. The starting point is that there must be an impending action due for implementation over which the Dispute Tribunal has power to suspend.

10. One of the conditions to suspend such action is for the Applicant to show that the impugned administrative decision is before the Management Evaluation Unit ("MEU") for consideration. Consequently, the Dispute Tribunal cannot order the suspension of an impugned decision beyond the pendency of management evaluation¹. This Tribunal is concerned only with live disputes and not those that are rendered moot

¹ *Igbinedion*, 2014-UNAT-410

through subsequent administrative action² such as completion of the management evaluation process as is the case in the present action.

11. The Applicant has failed to satisfy the Dispute Tribunal that there is a pending administrative decision for consideration before the MEU. On that basis alone the application must be and is hereby dismissed as the Dispute Tribunal has no competence to adjudicate on it.

12. It follows that this Tribunal has no jurisdiction to consider the Applicant's application to refer for accountability against the MINUSCA DMS pursuant to art. 10.8 of the UNDT Statute because power to order interim remedies granted to this Tribunal does not extend to making findings of fact and judicial pronouncements on the merits without following due process. The Tribunal is persuaded by the reasoning in a like case where it found that³:

[A] referral for accountability, if any, is not part of the temporary measures which can be requested on an urgent basis prior to an application on the merits being filed. The Tribunal has the discretion to order such a measure only as part of a judgment issued on an application (appeal) on the merits of a case filed before it based on the substantive evidence presented by the parties, and not in the context of an application for suspension of action in which temporary relief pending the Secretary-General's review of the contested decision is sought.

13. It follows that ordering a referral for accountability as applied by the Applicant would be acting *ultra vires* and offend art. 2 of the UNDT Statute that grants the Dispute Tribunal competence on matters. On the other hand, art. 10.8 of the UNDT Statute is concerned only with orders that the Dispute Tribunal may make after properly assuming its jurisdiction.

² *Finniss*, 2016-UNAT-708,

³ Order No.: 275 (NY/2016) para 20

Orders

14. The application for suspension of action is refused.
15. The application for an order for accountability is denied.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 3rd day of January 2020

Entered in the Register on this 3rd day of January 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi