



Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ULAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE APPLICANT'S
MOTION FOR INTERIM MEASURES**

Counsel for the Applicant:

Irene Kashindi

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Rosangela Adamo, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant holds a fixed term appointment at the FS4 level with the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo (“MONUSCO”). She serves as an Administrative Assistant and is based in Kinshasa.

2. On 3 May 2019, she filed an application with the Dispute Tribunal. The Applicant described the decision she challenges as: (a) continued harassment, unfair treatment and abuse of authority that cannot be classified as one single decision; (b) breach of several rules and regulations; (c) not being considered and bypassed for promotion on several occasions resting with a decision made on 22 January 2019; (d) not being compensated for work performed at a higher level; and (e) failure to address a claim for sexual harassment and abuse. For remedies, the Applicant requested the following:

- a. Reversal of the decision by MEU that [the Applicant’s] complaints are not-receivable.
- b. Immediate consideration for retro-active promotion to the position of FS5 as [the Applicant is] duly qualified. Having served in the FS5 position un-officially, [the Applicant has] the necessary skills, experience and competence to be promoted.
- c. Transfer to another Mission which provides the Applicant with an opportunity to recuperate in a new environment after such prolonged trauma considering that local transfers have been denied despite numerous requests.
- d. Compensation for the work performed when the Applicant temporarily held the FS5 position for the period between December 2017 and October 2018.
- e. A declaration that the failure to address serious concerns over the years, including the sexual harassment and abuse, has violated the Applicant’s rights as an employee.
- f. Proper and appropriate compensation for mental anguish, trauma and harassment which continued to negatively affect the Applicant’s health.

3. On 10 June 2019, the Respondent filed his Reply contending, *inter alia*, that the application was not receivable *ratione materiae* because the Applicant had not identified a reviewable administrative decision within the meaning of article 2.1(a) of the UNDT Statute. Regarding the allegations of abuse of authority and a failure to address a sexual harassment complaint, the application was also not receivable *ratione temporis* because the Applicant did not file the application within 90 days of receiving the 28 November 2017 outcome of her request for management evaluation.

4. On 9 January 2020, the Applicant filed a motion seeking an order for *interim* measures to reassign her to another duty station because of alleged ill-treatment by her colleagues and her Second Reporting Officer (SRO) following the filing of her application on 3 May 2019.

Submissions

5. The Applicant seeks an order from the Tribunal for her reassignment to another duty station because the hostile work environment she is currently in and the stressful working conditions have caused her health to deteriorate. She believes that a change of the work station will ameliorate the situation. She further contends that the decision not to transfer her as well as the hostile work environment, the stressful working conditions and the lack of respect from fellow staff members is causing her an irreparable emotional damage that cannot be quantified in monetary terms only.

6. The Respondent takes the position that the motion should be dismissed for reasons some of which appear in this Order's considerations.

Considerations

7. Article 10.2 of the UNDT Statute gives the Dispute Tribunal power to order an *interim* measure. The provision reads as follows:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

8. The first element that the Tribunal must determine is whether there are pending proceedings before the Tribunal? In this Tribunal's construction of this part of its mandate, the 'proceedings' must be connected to the administrative decision that is the subject of the motion for *interim* relief.

9. In this motion, it is noted that the Applicant is seeking an *interim* relief from an administrative decision that is not pending before the Tribunal for consideration.

10. The application does not contest an administrative decision not to reassign the Applicant to another duty station, which is the subject of the present motion.

11. In the motion, the Applicant has not shown firstly that there is an administrative decision denying her request to be reassigned and, secondly, that such decision has been subject to management evaluation as a first step under staff rule 11.2. The Tribunal has had recourse to the Applicant's request for management evaluation and the response from the Management Evaluation Unit and is satisfied that the Applicant has not requested management evaluation of a decision concerning re-assignment to another duty station.

12. The Tribunal concurs with the Respondent that the allegations in the motion in as far as they relate to harassment and abuse of authority, the Applicant is obliged to first follow the established administrative procedure for making such a complaint pursuant to ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).

13. The outcome of the process under ST/SGB/2019/8 may be reviewable by this Tribunal. It is therefore premature for the Applicant to bring to the Tribunal an allegation of this nature before exhausting established processes.

14. The Tribunal has no jurisdiction to order an *interim* measure on a motion that has no connection to the administrative decision forming the subject of proceedings in an application pending before it.

Order

15. The motion for *interim* relief to compel the Respondent to post the Applicant to another duty station due to a hostile working environment is denied.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 21st day of January 2020

Entered in the Register on this 21st day of January 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi