



Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CAUCCI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

AND

**ORDER ON MOTION FILED PURSUANT TO
ARTICLES 19 AND 36 OF THE UNDT RULES
OF PROCEDURE (VILLAMORAN)**

AND

**ORDER ON THE REQUEST FOR
ANONYMITY**

Counsel for the Applicant:

Dorota Banaszewska, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR
Rosangela Adamo, AAS/ALD/OHR

Introduction

1. The Applicant is a Child Protection Officer, working with United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), based in Bamako; but serving on a loan to the Department of Peace Operation (DPO) in New York. She serves on a fixed-term appointment at the P-3 level, step VII.¹

2. On 24 February 2020, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal in Nairobi. On 25 February 2020, the Applicant filed an updated version of the same application. She seeks: (i) suspension of the decision to separate her from service on 29 February 2020 pending management evaluation; (ii) 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 (iii) to have her name anonymized in any final order.

3. The Respondent filed a reply on 26 February 2020.

Facts

4. On 1 March 2017, the Applicant was loaned from MINUSMA to DPO. On 29 April 2019, the Applicant signed a Memorandum of Understanding (MOU) with MINUSMA, pursuant to which her loan to DPO was extended. At the same time, the Applicant relinquished a specific lien against her post at MINUSMA.²

5. Under paragraph 4 of the MOU, the Applicant was to retain a fixed-term contract while serving with DPO on temporary assignment through 29 February 2020. However, no specific lien was to be maintained against a MINUSMA post.³

¹ Application, section I

² Application, Annex A.

³ Ibid, part 4.

6. On 31 January 2020, the Applicant was notified by DPO that her loan would not be renewed due to lack of funding for her post.⁴

7. On 12 February 2020, MINUSMA, citing the provisions of the MOU signed in April 2019, notified the Applicant of the separation procedures and availed her the separation documents.⁵

8. On 20 February 2020, the Applicant requested for certified sick leave until 26 June 2020. On 21 February 2020, the United Nations Medical Services Division certified the Applicant's sick leave only for the period 28 February 2020 to 30 April 2020.⁶

9. On 24 February 2020, the Applicant requested management evaluation of the contested decision. The Management Evaluation Unit is yet to respond.⁷

Applicant's submissions

10. The Applicant contends that the contested decision is unlawful.⁸ It is trite law that a staff member seconded to another agency retains what is termed rights of employment with the releasing organization. The Applicant considers the matter to be urgent because her current contract will come to an end on 29 February 2020 and thereafter, she will be separated from service.⁹ The Applicant submits that if the contested decision is implemented, she will lose the opportunity to advance her career within the Organization. Such harm cannot be compensated for by a monetary award.¹⁰

11. In addition, pursuant to section 4.9 of the ST/AI/2013/1 (Administration of fixed-term appointments), if a staff member on a fixed-term appointment is

⁴ Application, annex B.

⁵ Application, annex C.

⁶ Application, annex E.

⁷ Application, annex G2.

⁸ *ibid.*

⁹ Application, section IX.

¹⁰ Application, section X.

incapacitated for service by reason of an illness that continues beyond the date of the expiration of the appointment, he or she shall be granted an extension of the appointment, after consultation with the Medical Director or a designated medical officer, for the continuous period of certified illness up to maximum entitlement to sick leave at full pay and half pay.

Respondent's submissions

12. In the relevant parts, the Respondent's submissions can be summarized as follows: The Applicant's appointment will be extended for the duration of her certified sick leave pursuant to section 4.9 of ST/AI/2013/1, *Administration of fixed-term appointments*.

Considerations

13. On 27 February 2020, the Respondent filed further submissions to the application attaching Annex R/3 to confirm that the Applicant's appointment has been extended until 30 April 2020 pursuant to section 4.9 of ST/AI/2013/1.

14. In view of the change in the circumstances of the application and status of the Applicant's appointment, especially considering that the main issue under contestation which is separation from service on 29 February 2020 has been resolved by the parties themselves, it is not necessary to consider other issues, for instance, whether or not the applicant's application to contest the separation is receivable or not or whether or not to issue a *Villamorán* order or indeed whether to issue an order for anonymity or not.

15. The application has been rendered moot and is accordingly refused.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 28th day of February 2020

Entered in the Register on this 28th day of February 2020

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi