



**Before:** Judge Francis Belle  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

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v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**CASE MANAGEMENT ORDER**

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**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. The Tribunal issued Order No. 013 (NBI/2020) dismissing the motion for *interim* measures.

### **Considerations**

5. The Tribunal has reviewed the submissions of the parties and is of the view that the case is suitable for determination on the papers filed. In so doing there are clear issues to be determined that can be identified by the Tribunal. However, in order to facilitate the fullest consideration of all issues, the views of the parties will be considered. As such the relevant issues to be determined, identified by the parties as in dispute in this matter, are to be clearly and jointly agreed upon and delineated.

6. In the process of those discussions, the parties should also consider their respective positions on the likelihood of this dispute being resolved *inter partes*.

7. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of proceedings, the Tribunal, pursuant to articles 10.3 of the UNDT Statute and 15.1 of the Rules of Procedure and being mindful of paragraph 27 of General Assembly resolution 69/203 (Administration of justice at the United Nations),

strongly urges the parties in this matter to consult and deliberate in good faith on having this matter informally resolved or mediated.<sup>1</sup>

8. To this end, the Tribunal issues the following orders. The parties are **DIRECTED to JOINTLY submit a concise statement on the following:**

- a) the facts relevant for determination of the case, both **agreed and disputed**, listed in chronological order;
- b) the legal issues identified as arising from those facts, for determination by the Tribunal;
- c) whether this matter may be decided by the Tribunal on the basis of the parties' written submissions filed to date;
- d) whether the parties are amenable to considering an alternative resolution to the dispute.

9. The parties are directed to file their submissions by **Wednesday, 5 August 2020**.

10. Alternatively, the parties may indicate whether they would prefer to attend a Case Management Discussion to discuss the matters itemized at paragraphs 8 a) to d) above on **Thursday, 30 July 2020 at 230pm (Nairobi time)**.

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<sup>1</sup> Paragraph 27 states: “Recalls the emphasis placed by the General Assembly on the resolution of disputes and requests the Secretary-General to report on the practice of proactive case management by the judges of the United Nations Dispute Tribunal in the promotion and successful settlement of disputes within the formal system in his next report”.

*(Signed)*

Judge Francis Belle

Dated this 23<sup>rd</sup> day of July 2020

Entered in the Register on this 23<sup>rd</sup> day of July 2020

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi