



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

RUGERINYANGE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Marisa MacLennan, UNHCR
Louis Lapicerella, UNHCR

Introduction

1. The Applicant serves as an Associate Energy/Environment Officer with the United Nations High Commissioner for Refugees (“UNHCR”) in Kigali, Rwanda. He serves on an Individual Contractor Agreement with the United Nations Office for Project Services (“UNOPS”).

The application

2. On 14 September 2020, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal in Nairobi for a stay against the Respondent’s decision to place him on administrative leave with pay during an investigation for possible misconduct.

3. The Respondent filed his reply on 2 October 2020. The Respondent submits that the Tribunal does not have the jurisdiction to consider the application before it as the Applicant is not a staff member, and therefore has no standing within the terms of arts. 2 and 3 of the Statute of the Dispute Tribunal.

4. The Applicant’s response to the Respondent’s contention is that having previously served as a staff member, he has standing before the Tribunal as provided for by art. 2(1)(b) of the UNDT Statute.

Considerations

5. The Tribunal has considered the parties’ arguments in respect of its jurisdiction, and finds that the Applicant has no standing before it.

6. While the Applicant is correct as to his status as a former staff member and the provisions of art. 2(1)(b) of the UNDT Statute, the present application is not based on violations of his terms of appointment *then*. Regardless of the provisions of

Rwandan labour law and the arguments made by the Applicant in that regard, what the Applicant is challenging is the Respondent's decision to place him on administrative leave with pay *now*; when he is, for all intents and purposes, an independent contractor.

7. The Applicant entered into an Individual Contract Agreement dated 20 December 2019. However, he signed the said Agreement on 30 December 2019.

Paragraph 6 of the Annex to the said agreement states:

6.1 The Individual Contractor shall have the legal status of an independent contractor vis-à-vis UNOPS, and shall not be regarded for any purpose, as a staff member of UNOPS or any other entity of the United Nations (hereinafter referred to as "UN") under the Staff Regulations and Rules of the UN or as an "official" of UNOPS or other entity of the UN for the purposes of Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the UN on 13 February 1946 (hereinafter referred to as "General Convention"). Accordingly, nothing within or relating to the Agreement shall be interpreted as establishing a relationship of employer and employee or Principal and agent between UNOPS and the individual contractors.

8. Paragraph 17 titled Amicable Settlement of Disputes states:

17.1 Amicable Settlement

In the event of a dispute arising out or in relation to the Agreement, or the breach termination or invalidity thereof (the "Dispute"), UNOPS and the Individual Contractor shall resolve the dispute amicably.

17.2 Arbitration

In the event the parties are unable to resolve the Dispute amicably, the dispute may be referred by either of the Parties to arbitration in accordance with the UNCITRAL Arbitration Rules then in effect.

9. The application for suspension of action is not receivable *ratione personae* and is therefore dismissed in its entirety.

(Signed)

Judge Francis Belle

Dated this 9th day of October 2020

Entered in the Register on this 9th day of October 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi