



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2021/008  
Order No.: 030 (NBI/2021)  
Date: 3 February 2021  
Original: English

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**Before:** Judge Rachel Sophie Sikwese

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

SALONE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for the Applicant:**

Endah Indini, OSLA

**Counsel for the Respondent:**

Jérôme Blanchard, LPAS/UNOG

## Introduction

1. The Applicant is a Humanitarian Affairs Officer, working with the United Nations Office for the Coordination of Humanitarian Affairs (“OCHA”) in Dakar, Senegal. He serves on a fixed-term appointment (“FTA”) at the P-4 step 11 level.<sup>1</sup> Due to his medical situation and travel logistics occasioned by Covid-19, the Applicant is presently teleworking from his home in Singapore.<sup>2</sup>

2. On Friday, 29 January 2021 at 1.47 p.m. (Nairobi time), the Applicant filed before this Tribunal an application for suspension, pending management evaluation, of “a decision not to renew his FTA without providing any lawful basis for this decision”. The FTA was expiring on Sunday, 31 January 2021.<sup>3</sup>

3. At the request of the Tribunal, the Respondent filed a reply on Monday, 1 February 2021 asserting, *inter alia*, that the application is not receivable *ratione materiae* because no decision not to renew the Applicant’s FTA had been made.

4. Further, the Respondent asserted that as at 29 January the Applicant’s FTA had been extended to 28 February 2021.<sup>4</sup>

5. The Respondent urged the Tribunal that as there is no express decision not to renew the Applicant’s appointment and considering the renewal of Applicant’s FTA through 28 February 2021, this application for suspension of action is moot and should not be entertained.

## Considerations

6. Article 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of the Tribunal’s Rules of Procedure, provide that the Tribunal may suspend the implementation of a

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<sup>1</sup> Application, section I.

<sup>2</sup> Application, section VII, para. 19.

<sup>3</sup> Application, annex 1.

<sup>4</sup> Reply, annex 2 and annex 3.

contested administrative decision during the pendency of management evaluation where the decision appears prima facie to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage.

7. The Respondent has argued rightly so in this Tribunal's view, that the Applicant has not submitted with his application any decision subject of judicial review. The Tribunal is not competent to receive an application where the staff member fails to prove that there is an administrative decision.<sup>5</sup> This application ought to fail as not receivable *ratione materiae*.

8. The Respondent further, provided to the Tribunal, a communication from OCHA to the Applicant informing him that his FTA has been extended until 28 February 2021.<sup>6</sup>

9. As there is no express decision not to renew the Applicant's appointment and considering the renewal of Applicant's FTA through 28 February 2021, this application for suspension of action is moot and cannot be entertained by the Tribunal.

## **ORDER**

10. This application for suspension of action is **DISMISSED**.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 3<sup>rd</sup> day of February 2021

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<sup>5</sup> See *Farzin* 2019-UNAT-917 and *Argyrou* 2019-UNAT-969.

<sup>6</sup> Reply, annex 2 and annex 3.

Entered in the Register on this 3<sup>rd</sup> day of February 2021

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi