



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MOMAND

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:**

Self-represented

**Counsel for the Respondent:**

Nicole Wynn, AAS/ALD/OHR

Maureen Munyolo, AAS/ALD/OHR

## **Introduction**

1. The Applicant is a Conduct and Discipline Officer, working with the United Nations-African Union Hybrid Operations in Darfur (“UNAMID”), Sudan. He serves on a fixed-term appointment (“FTA”) at the P-3 step 10 level.<sup>1</sup>

2. On 3 March 2021, the Applicant filed before this Tribunal an application for suspension, pending management evaluation, of a decision not to select him for the position of Conduct and Discipline Officer, with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), in Bangui.<sup>2</sup>

3. The Respondent filed a reply on 4 March 2021.

## **Facts**

4. In anticipation of the closure of UNAMID, on 29 November 2020, the Applicant registered his personal history profile (“PHP”) in the Horizon System so that he could be considered by other missions.<sup>3</sup> On 14 December 2020, the Applicant received a confirmation from UNAMID Human Resources Office that his submitted documents were uploaded in his profile in the Horizon.<sup>4</sup>

5. By resolution S/RES/2559 (2020) of 22 December 2020, the Security Council decided to terminate the mandate of UNAMID effective 31 December 2020. The Secretary-General was requested by the Security Council to commence the drawdown of UNAMID personnel on 1 January 2021 and to complete the withdrawal of all uniformed and civilian UNAMID personnel by 30 June 2021, other than those required for the Mission’s liquidation.<sup>5</sup>

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

<sup>2</sup> Application, section V.

<sup>3</sup> Application, annex 1, p. 23.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid, p. 22.

6. On 14 January 2021, the Applicant received a letter from the Director of Mission Support, UNAMID, informing him that owing to the closure of UNAMID, his position has been abolished and his FTA would not be extended beyond its expiry date of 30 June 2021.<sup>6</sup>

7. On 2 February 2021, the Applicant applied, through Inspira, for an advertised position of Conduct and Discipline Officer, P-3, within MINUSCA, with the duty station in Bangui, Central African Republic.<sup>7</sup>

8. The Applicant avers that he became aware that during the week of 15 February 2021, a Field Staff (“FS”) staff member, who currently works in the MINUSCA Conduct and Discipline Team Office as an Administrative Assistant on an FTA, but who has never worked as a Conduct and Discipline Officer, has been selected for the P-3 Conduct and Discipline Officer position for which the Applicant had applied.<sup>8</sup>

9. On 23 February 2021, the Applicant requested management evaluation of the contested decision. The Management Evaluation Unit is yet to respond.<sup>9</sup>

## **The Submissions**

### ***Applicant’s submissions***

#### *Unlawfulness*

10. The Applicant contends that the decision not to select him is unlawful as it violates staff rule 9.6(e) and the Under-Secretary-General’s directives on prioritizing staff serving on FTA and from downsizing missions. The Organization has a specific obligation to give staff members from downsizing/liquidating missions preferential consideration for existing and future vacancies in United Nations missions and entities for which they are suitable. It is abundantly clear that qualified staff from

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid, p. 25.

<sup>8</sup> Application, section VII, para. 7.

<sup>9</sup> Application, annex 1, p. 2; Application, section VI.

liquidating missions, who are at risk of losing their jobs and thus being separated from the Organization, must be preferred over staff members already employed by the Organization, and/or candidates from outside the United Nations system.

11. In addition, the Under-Secretary-General for Operational Support, (“USG/OS”) Mr. Atul Khare, sent a code cable, dated 26 April 2019, to all United Nations missions and entities with instructions to recruit staff from downsizing and liquidating missions.<sup>10</sup>

12. The Applicant maintains therefore, that MINUSCA’s selection of a staff member, who is not from a downsizing mission and has no relevant experience, over him, is in contravention of staff rule 9.6(e) and the USG/OS’s directives in respect of the preference to be accorded to FTA staff members from downsizing missions.

#### *Urgency*

13. The Applicant submits that this matter is urgent because his position has been abolished and with effect from 30 June 2021, he will permanently be separated from the Organization. On 13 January 2021, the USG/OS reiterated this issue and reminded the United Nations missions and entities of the Organization’s specific and mandatory obligation to give preferential consideration to staff members from downsizing and liquidating missions.<sup>11</sup>

#### *Irreparable harm*

14. The Applicant submits that if the selection process for the post is not reviewed and staff rule 9.6(e) complied with, he will be permanently separated from the United Nations on 30 June 2021. This action, if taken, will cause him irreparable harm because it would permanently deny him the opportunity of being recruited in the post in question as the post will have been occupied.

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<sup>10</sup> Application, annex 1, p. 26.

<sup>11</sup> Ibid, p. 30.

### ***Respondent's submissions***

15. The Respondent primarily contends that the Application is not receivable *ratione materiae* because the Applicant does not contest a reviewable administrative decision. The recruitment process is still ongoing and there has been no selection.<sup>12</sup> In accordance with the jurisprudence, only a final administrative decision taken at the conclusion of the selection exercise constitutes an administrative decision under art. 2(1)(a) of the Dispute Tribunal's Statute.

16. Whereas the Respondent offers specific arguments as to why the three-prong test for suspension of action is not met, in light of the receivability issue, the Tribunal does not consider it necessary to recite them.

### **Considerations**

17. Under art. 2(1)(a) of the Dispute Tribunal's Statute, the Applicant may only challenge an administrative decision that is alleged to be in non-compliance with the terms of his appointment or contract of employment. The decision must produce direct consequences for the legal situation of the staff member<sup>13</sup>, whereas challenges against decisions forming only intermediate or preparatory steps are not receivable.<sup>14</sup> The same criteria of what constitutes a reviewable administrative decision necessarily apply for the question of receivability of an application for suspension of action under art. 2.2 of the Dispute Tribunal's Statute.

18. In regard to recruitment processes, it has been accepted that an unsuccessful candidate may challenge a non-selection decision; however, where the recruitment process for the position is still ongoing, no relevant administrative decision has been taken.

19. The Applicant has not submitted any proof of a decision subject to judicial review; he only states that in the week of 15 February 2021, he "became aware" that

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<sup>12</sup> Reply, annex 1.

<sup>13</sup> *Hammand* 2012-UNAT-269, para. 23; *Andati-Amwayi* 2010-UNAT-058, para. 17.

<sup>14</sup> *Lee* 2014-UNAT-481, para. 49; *Avramoski* 2020-UNAT-987.

another candidate was selected for the position. This is denied by the Respondent, who has availed to the Tribunal documentary proof showing that the selection process has not been completed.<sup>15</sup> The Tribunal has no basis to accept that the Applicant's information as to the existence of the decision is correct. Accordingly, it finds itself not competent to examine the application.<sup>16</sup> The application ought to fail as it is not receivable *ratione materiae*.

20. In view of the above, the Tribunal will not entertain arguments on the merits.

### **ORDER**

21. The application is not receivable and is **DISMISSED**.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 8<sup>th</sup> day of March 2021

Entered in the Register on this 8<sup>th</sup> day of March 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>15</sup> Reply, annex 1.

<sup>16</sup> See *Farzin* 2019-UNAT-917, paras. 36-37 and *Argyrou* 2019-UNAT-969, para. 32.