



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NANTUMBWE

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:
AAS/ALD/OHR

Introduction

1. The Applicant is a former Administrative Assistant, working with the United Nations Regional Service Centre Entebbe (“RSCE”), based in Entebbe, Uganda. She served on a temporary appointment at the GS-5 level.¹
2. On 9 April 2021, she filed an application for suspension of action before the United Nations Dispute Tribunal in Nairobi. She seeks to suspend the decision dated 15 March 2021, by Ms. Martha Helena Lopez, the Assistant Secretary-General for Human Resources (“ASG/HR”), refusing to grant an exception under staff rule 4.7 to allow the Applicant to be regularized from a temporary to a fixed term contract by the RSCE within the framework of the ongoing regularization exercise of long service staff on temporary appointments.
3. The Tribunal considered that reply from the Respondent was not necessary.

Facts

4. The Applicant was recruited in February 2019 on a temporary appointment in accordance with the guidelines issued by the Department of Management Strategy, Policy and Compliance (“DMSPC”) on the temporary measures put in place to mitigate the potential impact of the reform involving Global Service Delivery Model (“GSDM”).²
5. On 5 February 2020, the ASG/HR approved an exception to staff rule 4.7 and allowed the recruitment on a fixed-term appointment of the Applicant’s sister, Ms. Prossy Namale, as Gender Affairs Officer in the Department of Political and Peacekeeping Affairs (“DPPA”).³

¹ Application, section V.

² Application, annex 6.

³ Ibid.

6. In March 2020, DMSPC lifted the temporary measures and RSCE began to regularize long service staff on temporary appointments.⁴ As part of the exercise, a number of positions were posted to regularize RSCE General Service Staff and Global General Service Tests (“GGST”) were administered. The Applicant participated in the tests and she emerged successful in the process.⁵

7. On 8 February 2021, Mr. Paulin Djomo, Director *a.i.*, RSCE sought clarification from ASG/HR as to whether the latter’s decision of 5 February 2020 allowing the recruitment of Ms. Namale would suffice for the purpose of regularization from temporary to fixed-term appointment for the Applicant.⁶

8. On 15 March 2021, ASG/HR responded to the Director *a.i.*, RSCE by way of the impugned decision. It stated as follows:

Ms. Namale was hired in DPPA against a P-3 position in 2020 through a selection process in accordance with staff rule 4.15 and she is currently serving there on a fixed-term appointment. Staff rule 4.7(a) is clear in not allowing two individuals with family relationships such as mother, father, sister, brother to work for the Organization irrespective of reporting lines or location.⁷

9. On 18 March 2021, the Applicant requested management evaluation of the ASG/HR’s decision. The Management Evaluation Unit is yet to respond.⁸

Submissions

Applicant’s submissions

Unlawfulness

10. The Applicant contends that the contested decision is unlawful because RSCE’s request for clarification from ASG/HR was redundant, since there was an

⁴ *ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Application, annex 1.

⁸ Application, annex 2; Application, section VI.

already existing exception regarding her sister Ms. Namale, which had been granted after consideration of all the merits of the matter. The Office of Human Resources (“OHR”) has contravened a major legal principle of *res judicata*. The OHR, which considered the matter regarding the status of her sister as per the Secretary-General’s Bulletin on Status, Rights and Duties of the United Nations Staff Members, was precluded from considering the same matter afresh.

11. The Applicant also avers that the decision went against her legitimate expectations to pursue a career with the Organization in parallel with her sister.

12. The Applicant further submits that the OHR’s decision of 15 March 2021 was taken on discriminatory grounds because of the type of appointment. A temporary appointment which she has held, was the only type which could be offered at the time, as per the guidelines of DMSPC.

Urgency and irreparable harm

13. The Applicant submits that her case is urgent because the regularization of the long serving staff on temporary appointments by the RSCE is a fast-moving exercise. The 45 days within which the Management Evaluation Unit is to provide their response, may prove too long for her to advance into the next and final stage of the recruitment. If she does not move to the next and final stage of the ongoing recruitment process, she will have lost out on the opportunity to be regularized as an incumbent staff member.

Considerations

14. Under art. 2.2 of the Dispute Tribunal’s Statute, the Applicant must establish that: (i) the contested decision was *prima facie* unlawful; (ii) there is particular urgency; and (iii) implementation of the decision would cause irreparable harm. All three statutory requirements must be satisfied in order for the implementation of a contested decision to be suspended. In the present case, the Tribunal considers that the requirement of *prima facie* unlawfulness has not been made out.

15. Staff rule 4.7 (a) is categorical in not allowing two individuals with family relationships such as mother, father, sister or brother to work for the Organization irrespective of reporting lines or location. The Tribunal is unaware of the legal basis and motives for the exception that allowed granting an appointment to the Applicant's sister. However, the decision was clearly taken in the context of the temporary employment on the part of the Applicant and the consequences of such an exception are to be interpreted narrowly rather than by extending them beyond the status quo at the time of the decision. The approval granted exceptionally in the specific context did not create legitimate expectation that a parallel employment of the sisters will be maintained for as long as they wish to remain with the Organization.

16. The impugned decision is not *prima facie* unlawful. This entails refusal of the application. The Tribunal needs not address the remaining arguments.

ORDER

17. The application is refused.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 13th day of April 2021

Entered in the Register on this 13th day of April 2021

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi