



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2021/029

Order No.: 088 (NBI/2021)

Date: 28 April 2021

Original: English

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**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ARMAND

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:**  
Julia Kyung Min Lee, OSLA

**Counsel for the Respondent:**  
AAS/ALD/OHR

## **Introduction**

1. The Applicant is a Movement Control Assistant at the FS-5 level working with the United Nations Support Office in Somalia (“UNSOS”).<sup>1</sup>

2. On 23 April 2021, the Applicant filed before the United Nations Dispute Tribunal in Nairobi an application for suspension of action (“SOA”), pending management evaluation, of a decision, directed against UNSOS’s refusal to rescind its decision of 10 November 2020 to deduct a sum of USD5,032.33 on a monthly basis from his salary in child support, including retroactive child support and arrears. The case was registered as Case No. UNDT/NBI/2021/029.

3. In accordance with art. 13 of the UNDT Rules of Procedure, the Tribunal transmitted a copy of the application to the Respondent and is required to issue a decision within five days thereof. The Tribunal finds, nevertheless that Respondent’s reply is not needed as the application may be adjudicated on its content alone.

## **Facts**

4. The Applicant has a case pending before this Tribunal since 6 January 2021, registered as Case No. UNDT/NBI/2021/002 where he contests UNSOS’ decision to make deductions from his salary under sec. 2.2(b) of ST/SGB/1999/4 (Family and child support obligations of staff members), pursuant to which the Organization deducts a sum of USD5,032.33 from his salary based on a judgment in Case No. 2017-021520-FC-04 issued by the Miami-Dade County Court in Florida.<sup>2</sup>

5. On 10 February 2021, the Third District Court of Appeal of the State of Florida overturned the Judgment in Case No. 2017-021520-FC-04 and remanded the case, having found that the subject matter jurisdiction was not properly ascertained.<sup>3</sup>

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

<sup>2</sup> Ibid. and section VII.

<sup>3</sup> Application, annex 2.

6. On 11 February 2021, the Applicant sent a copy of the Florida Appeals Court Judgment to UNSOS and informed them of the reversal of the Miami-Dade County Court Judgment on which the Administration had based the deductions.<sup>4</sup> He reiterated the same on 23 February 2021.<sup>5</sup>

7. On 24 February 2021, UNSOS replied to the Applicant, stating that the matter was being dealt with in the proceedings currently underway before the Dispute Tribunal; that it was not a party to the proceedings that were handled by the Administrative Law Unit of the Department for Management, Strategy, Policy and Compliance; and that UNSOS would wait for the outcome of those proceedings and act in accordance with the relevant instructions (“the impugned decision”).<sup>6</sup>

8. On 28 March 2021, the Applicant requested management evaluation of the decision.<sup>7</sup> The Management Evaluation Unit is yet to respond.<sup>8</sup>

9. The Tribunal has *ex officio* information that on 23 April 2021 in the pending Case No. UNDT/NBI/2021/002 the Applicant filed an application for an interim measure under art. 10.2 of the Tribunal’s Statute, requesting suspension of the impugned decision of 10 November 2020 to deduct USD5,032.33 from his salary in child support, including the retroactive child support and arrears on a monthly basis.<sup>9</sup>

### **The Applicant’s case**

10. The Applicant contends that all the premises required by art. 2.2 of the UNDT Statute are met: The impugned decision is *prima facie* unlawful, because the judgment which formed the basis of the salary deductions was entirely reversed on 10 February 2021. The test of urgency has been satisfied because the impugned decision is being implemented indefinitely - if the SOA is not granted, the Administration will not cease

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<sup>4</sup> Application, annex 2, p. 3.

<sup>5</sup> Ibid, p.2.

<sup>6</sup> Ibid, p.1.

<sup>7</sup> Application, annex 5.

<sup>8</sup> Application, section VI.

<sup>9</sup> Applicant’s motion for interim measures pending proceedings, filed on 23 April 2021.

to deduct USD5,032.33 from his salary on a monthly basis. The irreparable harm test is met because the loss of over half of his salary affects his ability to provide for basic food and housing for his family; which harms their physical and mental health and well-being. The deductions are sent to a third party, as to whom there is no certainty that the UNSOS Administration or the Applicant will be able to recover from them any undue payments.

### **Considerations**

11. Under art. 2.2 of the Dispute Tribunal's Statute, a suspension of action pending management evaluation is possible where the Applicant makes the showing that: (i) the contested decision was *prima facie* unlawful; (ii) there is particular urgency; and (iii) implementation of the decision would cause irreparable harm. The Tribunal concedes that the response obtained from UNSOS presents an administrative decision not to act on the Applicant's request; notes that the assertion that "UNSOS is not a party to the proceedings" is misplaced as, obviously, the decision on child support deductions had been made on behalf of the Secretary-General who is also a party to the proceedings; and finds that the Applicant requested management evaluation within the prescribed time-limits. The question, however, whether the decision could be subject to an SOA application under art. 2.2 of Dispute Tribunal's Statute must be answered in the negative.

12. Analysis of the UNDT Statute demonstrates that an SOA application is a recourse available in the phase preceding litigation before the UNDT. Whereas the avenue for requesting interim relief while the matter is pending before the Tribunal, is art. 10.2 of the UNDT Statute. Among others, there is a possibility of suspension of the implementation of the impugned decision. An applicant cannot, however, through provoking an administrative refusal to satisfy the claim already put before the Tribunal, launch a parallel formal dispute in the same matter.

13. Child support deductions from the Applicant's salary is the matter pending in Case UNDT/NBI/2021/002. The present application is, therefore, precluded by *lis*

*pendens*. Recalling that the Applicant has also filed a motion for suspension of the implementation of the impugned decision under art. 10.2 of the UNDT Statute, the Tribunal will address that application in due course.

### **Conclusion**

14. The application is rejected as not receivable.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 28<sup>th</sup> day of April 2021

Entered in the Register on this 28<sup>th</sup> day of April 2021

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi