



Before: Judge Agnieszka Klonowiecka-Milart
Registry: Nairobi
Registrar: Abena Kwakye-Berko

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

AND

**ORDER ON THE REQUEST FOR
ANONYMITY**

Counsel for the Applicant:
Dorota Banaszewska, OSLA

Counsel for the Respondent:
Alan Gutman, AAS/ALD/OHR
Clémentine Foizel, AAS/ALD/OHR

Introduction

1. The Applicant is a former staff member of the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”), based in Bamako.¹ The extension of her appointment is currently under dispute.
2. On 5 August 2021, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal in Nairobi contesting MINUSMA’s decision to not pay her salary and emoluments starting from April 2021.
3. The Respondent filed a reply on 7 August 2021.

Facts

4. On 1 March 2017, the Applicant worked on a loan from MINUSMA to the Department of Peace Operations (“DPO”). On 29 April 2019, the Applicant signed a Memorandum of Understanding (“MOU”) with MINUSMA, pursuant to which her loan to DPO was extended. At the same time, the Applicant relinquished a specific lien against her post at MINUSMA.²
5. Under paragraph 4 of the MOU, the Applicant was to retain her fixed-term appointment while serving with DPO on temporary assignment through 29 February 2020.³
6. On 31 January 2020, the Applicant was notified by DPO that her loan would not be renewed due to lack of funding for her post.⁴
7. On 12 February 2020, MINUSMA, citing the provisions of the MOU signed in April 2019, notified the Applicant of the separation procedures and availed her the

¹ Application, section I; Reply, para. 18.

² Application, annex A.

³ Ibid, part 4.

⁴ Application, annex B.

separation documents.⁵ This action gave rise to the Applicant's claim before the UNDT in the case UNDT/NBI/2020/039.

8. On 21 February 2020, the Applicant was placed on sick leave.⁶ She subsequently remained on sick leave until 11 March 2021. Her appointment was extended on humanitarian grounds pending certifications from the Medical Services. On 11 March 2021, the Medical Services rejected the Applicant's further request for certification of her sick leave.⁷

9. On 30 March 2021, the Applicant requested MINUSMA for a final extension of her appointment on humanitarian grounds through May 2021, as her next medical appointment was scheduled for May 2021.⁸

10. On 14 May and 22 May 2021, MINUSMA indicated that the Applicant would be separated effective 31 May 2021 because her medical condition no longer required her to be on sick leave, whereas there were no options available to retain her on other vacant posts.⁹

11. On 17 May 2021, the Tribunal issued Judgment No. UNDT/2021/055, holding that the Applicant did not relinquish her general right to return to MINUSMA and that the Administration was under an obligation to fulfil its duties of reabsorbing her or finding suitable alternative posts for her. The Tribunal rescinded the MINUSMA's decision to not renew the Applicant's appointment.¹⁰

12. On 16 July 2021, the Administration appealed Judgment No. UNDT/2021/055.¹¹ The Appeals Tribunal is yet to issue its judgment.¹²

⁵ Application, annex C.

⁶ Application, para. 12.

⁷ Application, para. 65.

⁸ Application, annex 0.

⁹ Application, para. 71; Application, annex K.

¹⁰ Application, para. 73.

¹¹ Application, para. 78.

¹² Reply, para.9.

13. In May and June 2021, the Applicant reached out to MINUSMA requesting the payment of her salary and emoluments effective April 2021. The Applicant also requested to be given work in compliance with Judgment No. UNDT/2021/055.¹³

14. On 29 June 2021, the Applicant requested management evaluation of the contested decision. The Management Evaluation Unit is yet to respond.¹⁴

Submissions

Receivability

Respondent's submissions

15. The Respondent submits that the application for suspension of action is not receivable *ratione materiae*. The jurisdiction of the Tribunal is limited to preserving the *status quo*. The *status quo* is that the Applicant's appointment with MINUSMA expired on 31 March 2021. As a result, MINUSMA stopped remunerating the Applicant. By seeking the suspension of the non-payment of salaries and emoluments from April 2021 onwards, the Applicant is requesting the Dispute Tribunal to change the *status quo*, as such an order would require the Organization to appoint the Applicant for the contested period. Further, such an order would also result in final relief to the Applicant in the form of payment of the contested amounts. The Tribunal may not grant an interlocutory order which will result in the final disposition of the application.

Applicant's submissions

16. The Applicant submits that given the continuous effect of the decision not to pay her salary and emoluments since April 2021, her situation both *de facto* and *de jure* is no different than a situation of a staff member placed on administrative leave without pay. In both instances an employee, while still being a staff member, is

¹³ Ibid. para.75.

¹⁴ Application, section VI.

deprived of income and means of livelihood-the only difference being that the Applicant is not subject of a disciplinary investigation. Therefore, the Applicant maintains that her application to suspend the implementation of the contested decision is receivable.

Considerations

17. The decision impugned here is to refuse payment of the salary and emoluments. Contrary to the Respondent's argument, the Applicant is not formally seeking to change the *status quo*; rather, the Applicant's claim is based on an assumption that she remains in employment with the Organization. Notwithstanding the question whether or not the Applicant can demonstrate such a legal relation throughout the period since April 2021, the legally relevant fact is that the present application for suspension of action seeks to satisfy the principal claim. As such, the Tribunal agrees with the Respondent that it is not receivable.¹⁵

ORDERS

18. The application is dismissed;

19. The Applicant's name shall be removed from the published version of the Order.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 10th day of August 2021

¹⁵ *El-Awar* UNDT/2017/023, para.22; *Faye* Order No. 115 (NY/2015), para. 21; *Lane* Order No. 31 (NY/2014), para. 12.

Entered in the Register on this 10th day of August 2021

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi