



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**

Counsel for Applicant:

Jacqueline Lule, OSLA

Counsel for Respondent:

AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant holds a fixed-term appointment at the P-5 level at the United Nations Support Office in Somalia (“UNSOS”).

Facts and Submissions

2. On 26 May 2021, the Applicant filed a request for management evaluation of the Respondent’s decision to deny his request for extension of the Flexible Working Arrangements (“FWA”) and requiring his return to Mogadishu.

3. On 25 July 2021, the Mission wrote to the Applicant:

Noting that your request for Flexible Working Arrangements (FWA) has not been approved, and your physical return to your duty station in Mogadishu is overdue, this is to give you up to three weeks from date of this memo, i.e. 14 August 2021 to return to your duty in Mogadishu, failing which you will be considered absent in line with Staff Rule 5.1 (e)(ii).

4. On 27 July 2021, the Applicant applied to be placed on sick leave and provided the Mission with the necessary documentation; including the additional information that the Mission sought.

5. On 7 August 2021, his request to be placed on sick leave was rejected.

6. On 13 August 2021, the Applicant applied for suspension of action, pursuant to art. 13 of the UNDT Rules of Procedure, of the Respondent’s decision to deny his request for extension of the FWA, so that he can continue to carry out his functions from Vancouver, Canada, until 30 September 2021 while his medical issues are resolved. As at the time of the filing of his application, the Applicant had not received a response from the Management Evaluation Unit.

7. On 20 August 2021, the Respondent replied to the application and informed the Tribunal that the Mission had suspended implementation of the impugned decision pending management evaluation.

8. On 23 August 2021, following a decision by the Management Evaluation Unit upholding the impugned decision, the Respondent amended his reply. The

Respondent takes the position that the matter is no longer receivable because “management evaluation is no longer pending.”

Considerations and Order

9. This application has been filed pursuant to art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Art. 13 provides, in the relevant part:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

10. The Statute and Rules of Procedure therefore provide for the Tribunal’s jurisdiction to suspend the implementation of an administrative decision “during the pendency of the management evaluation” if certain conditions are met.

11. In this case, however, events have overtaken the application. The Management Evaluation Unit has decided to uphold the impugned decision so that the “pendency of management evaluation” element no longer exists, thus rendering the application under art. 13 moot.

12. The Tribunal does not therefore need to examine if the three statutory requirements specified in art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure have been met.

Conclusion

13. The Application is DISMISSED as moot.

Case No. UNDT/NBI/2020/070

Order No. 171 (NBI/2021)

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 24th day of August 2021

Entered in the Register on this 24th day of August 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi