



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MATHEW

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Manuel Calzada

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Special Political Adviser, working with the United Nations Assistance Mission for Iraq (“UNAMI”). He serves on a continuing appointment at the D-1 level.¹

2. On 7 April 2022, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal (“UNDT”) in Nairobi. He seeks suspension of the decisions which he describes as “the recruitment under temporary job opening (“TJO”) for the position of Chief of Office, Political Affairs, UNAMI, and involuntary re-assignment to an officially contrived position” (“the contested decision”).

3. The Respondent filed a reply on 11 April 2022 and the Applicant, with leave of the Tribunal, filed a rejoinder on the same day.

Background

4. Between 1 March 2021 and 28 February 2022, the Applicant served on a temporary assignment in the United Nations Support Mission in Libya (“UNSMIL”).² While in UNSMIL, the Applicant maintained a lien on his position in UNAMI.³

5. While the Applicant was serving in UNSMIL, his post in UNAMI was filled on a temporary assignment arrangement.⁴

6. On 1 March 2022, the Applicant returned to UNAMI to occupy his position.⁵

7. On 19 March 2022, Ms. Jeanine Hennis-Plasschaert, the Special Representative of the Secretary-General for Iraq (“SRSG”) informed the Applicant that while he was away in UNSMIL, his post had been filled on a temporary

¹ Application, section I, application, annex 2(a).

² Application, annex 3.

³ Ibid.

⁴ Application, annex 2(a).

⁵ Ibid.

assignment and as such she assigned the Applicant to assume the role of Special Political Adviser, D-1.⁶ The SRSG emphasized that her guidance would have immediate effect.⁷

8. On 24 March 2022, UNAMI advertised the TJO for the post of Chief of Office, Political Affairs, D-1, whose closing date was on 7 April 2022.⁸

9. On 30 March 2022, the Applicant requested management evaluation of the contested decision.⁹ The Management Evaluation Unit is yet to respond.¹⁰

Considerations

10. The application is made under art. 2.2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure.

11. Basing on the memorandum of 19 March 2022¹¹ under which the Applicant was informed that his post **had been filled** (emphasis added) on a temporary assignment in his absence, and that he consequently and with **immediate effect**¹² (emphasis added) had been assigned to assume the role of Special Political Adviser, D-1, the Respondent argues that the contested decisions have already been implemented and cannot, therefore, be suspended.

12. The Applicant on the other hand contests the above assertions and argues that he was in fact not reassigned to another position since he remained on the same post number, but that there was an illegal reclassification of his post. First of all, the word “reassignment” was the one used by the Applicant in his application.¹³ He cannot, therefore, be heard to introduce a different nature of contested action. Added to that, the

⁶ Application, annex 2(a).

⁷ Ibid.

⁸ Application, annex 2(b).

⁹ Application, annex 3.

¹⁰ Application, section VI.

¹¹ Ibid.

¹² Ibid.

¹³ Application, section V, para. 1(b), p. 3.

Applicant's arguments do not answer the crucial question of whether or not the contested action has already been implemented and seem to go to the merits of the case.

13. The 19 March 2022 memorandum by which the impugned decisions were communicated to the Applicant support the finding that the contested action, (a reassignment as far as the Respondent is concerned and a reclassification as far as the Applicant is concerned) has already been implemented. And, since the established jurisprudence¹⁴ is that an order for suspension of action cannot restore or reverse a decision which has already been implemented, the Tribunal finds that the application for suspension of the decision to reclassify the Applicant's post or reassign him to another position is not receivable

14. The application for suspension of the recruitment under a TJO for the position of Chief of Office, Political Affairs, UNAMI, is not receivable as well. If by the phrase "suspension of the recruitment" the Applicant is referring to the recruitment process, that decision was implemented once the TJO was issued on 24 March 2022 and cannot therefore, be reversed or rescinded through these proceedings.

15. If, on the other hand the Applicant is seeking to have the recruitment decision rescinded, then as the Respondent submitted, rescission may only be granted pursuant to an application on the merits as envisaged under art 10.5(a) of the Tribunal's Statute which provides thus:

As part of its judgement, the Dispute Tribunal may only order one or both of the following: (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph.

¹⁴ See, e.g., *Schwalm*, Order No. 046 (NBI/2021) para. 27-29; *Al-Baker et al*, Order No. 099 (NY/2013), para. 14; *Kallon*, Order No. 84 (NY/2013), para. 17.

16. The Tribunal further agrees with the Respondent's submissions that the only contestable decision regarding the TJO is the selection decision which has however, not yet been made. It is also true that the issuance of the TJO and the various steps in the recruitment are intermediate or preparatory steps and do not constitute a final administrative decision under art. 2.1(a) of the Statute. The Applicant cannot, therefore, seek the suspension of the implementation of the outcome of an ongoing selection exercise.¹⁵

Conclusion

17. The application for suspension of the two decisions is not receivable, and it is rejected.

(Signed)

Judge Margaret Tibulya

Dated this 12th day of April 2022

Entered in the Register on this 12th day of April 2022

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi

¹⁵ *Abdellaoui* 2019-UNAT-928, para. 17.