



Before: Judge Francesco Buffa
Registry: Nairobi
Registrar: Abena Kwakye-Berko

AL-MASSA'ABI

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:
United Nations Development Program ("UNDP")

Introduction

1. On 27 February 2023, the Applicant, a Common Services Associate Officer with the UNDP, serving at the G-7 level on a fixed-term appointment and based in Yemen, filed an application before the Dispute Tribunal sitting in Nairobi requesting suspension of the Respondent's decision to abolish her post and thus not renew her appointment when it expires on 28 February 2023. She also requested "a Villemoran order suspending the separation until your request for suspension has been decided".

Consideration

2. Articles 2.2 of the Dispute Tribunal's Statute and 13 of the Tribunal's Rules of Procedure govern the Tribunal's jurisdiction in deciding on applications for suspension of action. An applicant must satisfy the Tribunal that the contested decision is *prima facie* unlawful, that the case is of particular urgency and that implementation of the decision would cause irreparable damage.

3. The Tribunal must therefore consider the Applicant's submissions against the *cumulative* test stipulated in art. 2.2 of the Statute and art. 13 of the Rules of Procedure. In other words, the application will not succeed should the Applicant fail to satisfy *any one* limb of the test.

4. This Tribunal has previously held that a request for interim relief shall be rejected if the urgency of the matter is caused by the Applicant's own makings and is therefore self-inflicted.

5. As recalled in *Jitsamruay* UNDT/2011/206, paras. 25 and 26,

the Dispute Tribunal has held in several instances that the requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (Applicant Order No. 164 (NY/2010), *Corna* Order No. 90 (GVA/2010), *Lorand* Order No. 93 (GVA/2010), *Yisma* Order No. 64 (NY/2011), *A-Ali et al.* Order No. 220 (NY/2011), as well as *Dougherty* UNDT/2011/133). The Tribunal has also held in *Sahel* UNDT/2011/023 and *Patterson* UNDT/2011/091 that informal

attempts at settlement and mediation, if any, do not absolve an applicant from acting timeously.

Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account. The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions.

6. In the circumstances of that case, the Tribunal found that the applicant could not seek its assistance as a matter of urgency on an imminent decision when he had had knowledge of the decision for more than three weeks; it further found that the urgency in the matter was created or caused by the Applicant, who did not act timely in filing the application with sufficient urgency and who failed to provide any explanation for the delay of more than three weeks.

7. In *Maloka Mpacko* UNDT/2012/081, para. 19, where the applicant filed the application immediately prior to the implementation of the contested decision, although she was aware of it at least six weeks before, the Tribunal stated that an application for a suspension of action pending management evaluation, filed at the very last minute, deprived the Respondent of a real opportunity to exercise his due process right to make meaningful submissions in response to the Applicant's case. The Tribunal noted also that an application for suspension of action, which disrupts the normal day-to-day business of the Tribunal and the parties' schedules and diverts the Tribunal's attention from considering other cases filed under standard application procedures, some of which are long outstanding, is justified only if there is a,

genuine urgency basis which is not self-created, and with sufficient information for the Tribunal to, preferably, decide the matter on the papers before it.

8. The Tribunal also stated in *Maloka Mpacko*, para. 22, that

if an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista*

UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133, *Jitsamruay* UNDT/2011/206).

9. In *Majoul-Hunter* UNDT/2012/117, paras. 16 and 17, the applicant was informed of the decision not to extend her appointment and waited almost five weeks before she filed her application; she did not provide any reason to explain why she filed her application on the very day of the expiry of her appointment. The Tribunal concluded that in the circumstances the urgency was self-created and that the applicant had failed to meet the test of urgency.

10. With reference to the case at hand, the Applicant refers that in the Operations Management Team (“OMT”) meeting, the Service Centre Team leader presented the 2023 budget for the OMT without including the Applicant’s position in the office organigram due to alleged budget cuts. She adds that her contract is to expire effective on 28 February 2023 (that is the day following the date of the application), and that, on 31 January 2023, she received notice from the Human Resources Unit that her contract would not be renewed. She alleges that the non-renewal of the contract was related to a conflict at the workplace started with her supervisor after she came back to work from maternity leave in 2021 and lasted till now.

11. In the circumstances of the case, the Tribunal notes that the Applicant alleges that at the origin of the non-renewal of her post there is a purported long lasting working situation and that for this situation, neither specific facts are even alleged nor any evidence is offered; it further notes that the Applicant came to know of the impugned decision on 31 January 2023 and that she waited until the day before the impugned decision is to be implemented to seek a judicial remedy which is urgent in nature.

12. The Tribunal observes that the Applicant had knowledge of the impugned decision more than one month before the moment of its effects. In the circumstances of this case, the Tribunal finds that the urgency in the matter is created by the Applicant,

who did not act timely in filing the application with sufficient urgency and waited till few hours before the decision naturally produces its effects.

13. In the said situation, the Applicant does not provide any explanation for not filing timely the application with the Tribunal, except she was waiting for Management Evaluation to respond; ME is, however, a condition for the ordinary course of action and not for the urgent application filed, and thus could not be considered as a justification to the Applicant's inactivity.

14. In light of the foregoing, the Applicant cannot seek the assistance of the Tribunal as a matter of urgency on an imminent decision.

15. As the Applicant has not satisfied the limb of urgency, there is neither need for the Tribunal to further inquire into whether the impugned decision was *prima facie* unlawful nor if it would cause irreparable harm.

ORDER

16. The application for suspension of action is dismissed.

(Signed)

Judge Francesco Buffa

Dated this 28th day of February 2023

Entered in the Register on this 28th day of February 2023

(Signed)

Eric Muli, Legal Officer for

Abena Kwakye-Berko, Registrar, Nairobi