



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/126

Order No.: 118 (NBI/2023)

Date: 14 July 2023

Original: English

---

**Before:** Judge Francis Belle

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MACKIE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER ON RECEIVABILITY**

---

**Counsel for the Applicant:**

Shubha Suresh Naik, OSLA

**Counsel for the Respondent:**

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant filed an application on 27 December 2022 contesting a decision taken on 28 March 2022 by the Office of the Special Envoy of the Secretary-General for Yemen (“OSESGY”) not to extend his contract beyond November 2022, due to redundancy of his post of Senior Peace Building Officer after a staffing review.

2. The Applicant requested management evaluation on 21 May 2022. The management evaluation was completed and upheld the Administration’s decision.

3. The Applicant was of the view that the review was done to achieve the effectiveness of staffing structures and profiles. The aim was to meet the objectives of the office in the fields of the economy, political engagement and security-military issues and how gender is integrated into these areas of focus. There was no indication in the staff review that its aim was at reducing posts, rather it was focused on realignment.

4. According to the Applicant there was only one consultation done with him and no further consultation was done with him or the staff union.

5. The Respondent filed a motion on 23 January 2023 which claimed that the application was not receivable and was moot because the Applicant’s contract was extended on the day he filed the application.

6. The Respondent further argued that the contested decision did not take effect and had no direct consequences for the Applicant’s appointment as his contract of employment was not terminated. Further that the Applicant suffered no collateral consequences for the Tribunal to consider.

7. The Respondent therefore held the view that the application was moot since, from the date it was filed, the Applicant’s contract was extended to February 2023.

8. The Respondent also argued that the decision to extend the Applicant’s contract superseded the earlier decision to make the Applicant’s contract redundant and therefore rendered the application moot.

9. The Respondent relied upon the decision in the cases *Da Silveira* UNDT/2019/114 para. 17 and *Kallon* 2017-UNAT-742 where it was stated, firstly referring to *Da Silveira* the Respondent noted,

It is recalled that a judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance; thus placing the matter beyond law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect. Therefore, the doctrine of mootness recognizes that when a matter is resolved before judgment judicial economy dictates that the courts abjure decision.

10. However, the Applicant countered with reference to *Kallon* citing the following passage;

Since a finding of mootness results in the drastic action of dismissal of the case the doctrine should be applied with caution. The defendant or respondent may seek to “moot out” a case against him ... by temporarily, or expediently, discontinuing or formalistically reversing the practice of conduct alleged to be illegal. And a court should be astute to reject a claim of mootness in order to ensure effective judicial review, where it is warranted particularly if the challenged conduct has continuing collateral consequences. It is of valid concern in the determination of mootness that injurious consequences may continue to flow from wrongful, unfair or unreasonable conduct.

**Is the Applicant’s application purely academic?**

11. The Tribunal does not agree that the application is purely academic. The abolishment of the post of Senior Peace Building Officer has not necessarily ended the need for such an officer in the OSESGY office. It could be, as the Applicant alleges, that the office has simply been renamed and his files given to another officer to do the same work. Asking the Applicant to stay on in month-to-month assignments while taking away the substance of his professional and contractual responsibilities is clearly not just academic. The resolution of the matter of the complaint is therefore still of some significance. There is still an existing controversy and a remedy imposed by the Tribunal may still have some effect even

if it only allows the Applicant to know where he truly stands professionally in the Organization.

**Injurious consequences continue to flow from the challenged decision**

12. The Applicant has itemized the injurious consequences that continue to flow from the decision to make his post redundant. The issue whether the abolishment of his post of Senior Peace Building Officer was properly done is therefore still relevant. The decision taken to abolish the Applicant's post and then offer him month to month assignments may have been taken to divert attention from the true nature of the Administration's conduct being challenged. The decision essentially ends the Applicant's professional assignment and standing in the Organization.

13. The Respondent also asked the Tribunal to suspend the deadline for filing a reply in the matter.

**Conclusion**

14. The Tribunal rejects the Respondent's arguments because they ignore the substance of the circumstances which followed the abolishment of the Applicant's post. The Applicant was employed as a Senior Peace Building Officer in OSESGY. This position would have carried certain conditions of employment and provided job security for a length of time well beyond one month.

15. The Applicant has been offered month-to-month or short-term positions after he requested to be placed in a position commensurate with his qualifications and experience. He has alleged adverse consequences related to his ability to qualify for paid home leave, inability to extend a rental property for his family, removal of credentials relating to his status in Jordan *inter alia*.

16. The Applicant would be hard pressed to challenge each assignment on each occasion that it is offered in order to establish the negative impact of the said assignments after the abolishment of his post.

**Disposal**

17. The need for judicial review of the decision to abolish the Applicant's fixed-term-appointment is still very much alive. The application is receivable.

18. The application is not moot and the Respondent's motion to assess receivability is therefore dismissed.

19. The Respondent is therefore ordered to file his reply to the application in 14 days, that is by close of business on 27 July 2023.

*(Signed)*

Judge Francis Belle

Dated this 14<sup>th</sup> day of July 2023

Entered in the Register on this 14<sup>th</sup> day of July 2023

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi