



Before: Judge Solomon Areda Waktolla

Registry: Nairobi

Registrar: Eric Muli, Officer-in-Charge

HAYDAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Edwin Nhliziyo

Counsel for the Respondent:

Fatuma Mninde-Silungwe, AS/ALD/OHR

Introduction

1. The Applicant is a Supply Officer at the P-3, step 9 level, working with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), based in Bangui.¹

2. On 25 September 2023, she filed an application for suspension of action (“SOA”) in which she describes the contested decision as:

Despite two independent UNDT recommendations [Judgment UNDT/NBI/2022/084 & UNDT/2023/022] to carry out a review and resolve disharmony issues in the mission’s General Supply Unit that resulted in Ms. Haydar’s removal as Chief, General Supply Unit, the DMS seemingly disregarded these recommendations and approved a new organigram (A/2) that pre-empts the possibility Ms. Haydar will ever be restored to her position as Chief, General Supply Unit. Clearly, the new arrangement is unlawful if done without first carrying out the UNDT recommendation.

3. The application was served on the Respondent on 26 September 2023, who filed his reply on 27 September 2023.

Background

4. Before occupying her current post, the Applicant served as the Chief of the Supply Unit and her First Reporting Officer (“FRO”) was Mr. Okay Mabhena, Chief Life Support Section, and her Second Reporting Officer (“SRO”) was Mr. Braima Jamanca, Chief Service Delivery.²

5. On 3 September 2020, the Applicant raised concerns about the improper recruitment of a United Nations Volunteer into her Unit.³ This, coupled with other factors, led to an unharmonious working relationship between the Applicant and her FRO and the SRO.

¹ Application, section I.

² Jugement No. UNDT/2022/084, para. 10.

³ *Ibid*, para. 11.

6. On 4 December 2020, the Applicant was stripped of her functions as Chief, Supply Officer.⁴

7. On 30 June 2021 and on 8 June 2022, the Applicant filed applications contesting matters relating to the stripping of her functions.

8. On 21 September 2022 and on 30 March 2023, the Tribunal issued judgments UNDT/NBI/2022/084 and UNDT/2023/022 respectively.

9. More specifically, in judgment UNDT/2023/022 at para. 80, the Tribunal partly stated:

It is recommended that the MINUSCA Administration should look into these issues objectively, as the Applicant feels let down by the HR office, to allow for a harmonious work environment.

10. On 30 May 2023, Judgment No. UNDT/2023/022 was appealed. The judgment is still pending at the United Nations Appeals Tribunal as Case No. UNAT-2023-1811.

11. On 8 September 2023, MINUSCA released a new organigram that rearranges the General Supply Unit (“GSU”).⁵

12. On 22 September 2023, the Applicant requested management evaluation of the decision to reorganize GSU.⁶ The Management Evaluation Unit is yet to respond.⁷

Submissions

13. In her submissions for the suspension of action (“SOA”) dated 25 September 2023, the Applicant claimed that the Respondent had overlooked two UNDT Judgments [Judgment Nos. UNDT/NBI/2022/084 and UNDT/2023/022]. These Judgments were intended to address and rectify the conflict within the mission’s

⁴ Application, annex 4; application, section VII, para. 1.

⁵ Application, annex 2.

⁶ Application, annex 1,

⁷ Application, section VI.

GSU, which led to her removal as the Unit's Chief. The Applicant argued that the Respondent had unjustly endorsed a new organogram that excluded any chance of her reinstatement as the Chief of the General Supply Unit. Evidently, this new structure is illegal if implemented without first adhering to the UNDT's recommendations. Consequently, the Applicant requested a suspension of this decision.

14. In his reply, the Respondent contends that the application is not receivable on two grounds. Firstly, the GSU was already reorganized, and the organogram has already been implemented. The Dispute Tribunal cannot suspend an already implemented decision. The decision to reorganize the work of GSU was implemented in December 2020, the corresponding organogram of the GSU reflecting that decision was issued by the Director of Mission Support ("DMS") on 8 September 2023. The Applicant also concedes that the contested decision has been implemented. In her application, she claims that she was notified of the change in the organogram on the date it was implemented. There is nothing to suspend. The application should be dismissed.

15. Secondly, the application impermissibly seeks an appeal or execution of a judgment through an SOA. The application is not receivable to the extent it is requesting the implementation of UNDT Judgments Nos. UNDT/2022/084 and UNDT/2023/022. Article 2(2) of the Dispute Tribunal's Statute does not grant the Dispute Tribunal jurisdiction to issue an interim order beyond preserving the *status quo*. In requesting the implementation of those Judgments, the Applicant is seeking to change the *status quo*. If the Applicant believes that the *status quo* is a violation of prior judgments, the remedy lies in an application for execution under art. 12(4) of the Dispute Tribunal Statute and art. 32 of the Rules of Procedure and not a suspension of action.

Considerations

16. Applications for suspension of action of decisions pending management evaluation are governed by art. 2.2 of the Statute of the Tribunal and art. 13.1 of the

Tribunal's Rules of Procedure.

17. Article 2.2 of UNDT statute reads as: -

The Dispute Tribunal shall be competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

18. Article 13.1 of the UNDT rules of procedure reads as: -

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.

Whether the decision in question has been implemented

19. In her submissions, the Applicant alleged that the Respondent had ignored two separate recommendations from the UNDT [Judgment Nos. UNDT/NBI/2022/084 and UNDT/2023/022] to address and rectify the disharmony within the Mission's GSU, which resulted in her removal as the Chief of the GSU. The Applicant contended that the DMS had wrongfully sanctioned a new organigram that eliminated any chance of her being reinstated as the Chief/GSU, without first implementing the recommendations of the UNDT.

20. The Tribunal reviewed the previous UNDT decisions relevant to this case. It carefully considered and evaluated the Tribunal's recommendations in *Haydar* UNDT/NBI/2022/084 and *Haydar* UNDT/2023/022 for this case's resolution.

21. As it has been clearly demonstrated by the prior Tribunal's Judgement in *Haydar* UNDT/NBI/2022/084, the Applicant was the Chief of the Supply Unit at MINUSCA in Bangui, Central African Republic. On 4 December 2020, the Respondent decided to relieve the Applicant of her supervisory functions. The Applicant challenged the legality of this decision in her application submitted to the Dispute Tribunal.

22. The Secretary-General defended his decision, stating that it was based on the Applicant's failure to perform key managerial tasks, such as the refusal to allocate work to a staff member that she supervised; her refusal to complete that staff member's performance evaluation and the delay of the contract extension process of that staff member for many days without justification; her refusal to release her supervisee to participate in a Mission taskforce thereby disregarding her supervisors' instructions; her disregarding of directions and instructions of her supervisors' selection of the United Nations Volunteer ("UNV") and her threat not to work with the UNV.

23. The Tribunal finally determined that the Applicant had refused to perform key managerial functions, as alleged, and that relieving her of her supervisory duties was a lawful, rational, procedurally correct, and proportionate decision.⁸

24. As a conclusion, the Tribunal in *Haydar* UNDT/NBI/2023/022, para. 110 asserted that:

The Tribunal finds that the Secretary-General properly exercised his broad discretion to relieve the Applicant of supervisory responsibilities after her supervisors determined that it was in the best interest of the Organization. The remedies she seeks are therefore not tenable and the Tribunal dismissed the application of the applicant.

25. In its previous ruling (*Haydar* UNDT/NBI/2023/022), the Tribunal had established that the Applicant's removal from her position as the Head of the GSU on 4 December 2020 was lawful. This resulted in a structural change in the GSU. The

⁸ *Haydar* UNDT/NBI/2023/022

reorganization of the GSU was implemented on 4 December 2020 and the DMS approved the new organogram reflecting the December 2020 decision on 8 September 2023.

26. In addition, the Applicant acknowledges that the contested decision has already been implemented. In her application, she acknowledges that she was notified of the change in the organogram on the date it was implemented. She admits that the decision was implemented on 8 September 2023. She confirms this in section V, points 5 and 6 of her application submitted on 25 September 2023.

27. One of the essential conditions for an application for suspension of action to be receivable is that the decision in question has not been implemented.

28. In *Pascal* UNDT/NY/2021/055, the Dispute Tribunal held that:

For an application for suspension of action to be receivable, a basic requirement is therefore that the relevant decision is yet to be implemented. If the decision, lawful or not, has already been implemented—in a case concerning suspension of action under art. 2.2 of the Dispute Tribunal’s Statute and art. 13.1 of its Rules of Procedure—the Tribunal is not authorized to suspend it, because neither the Statute nor the Rules of Procedure allows the Tribunal to reverse an already implemented contested administrative decision in this context.

29. Given the foregoing, the Applicant filed the application for suspension of action after the contested administrative decision was already implemented. The Dispute Tribunal has no power to suspend a decision that has been carried out. Therefore, this application for suspension of action is not receivable.

Application for a suspension of action and execution of judgments

30. In her submissions, the Applicant asserted that the Respondent had overlooked two UNDT Judgments (Judgment Nos. UNDT/NBI/2022/084 and UNDT/2023/022) aimed at resolving and correcting the discord in the Mission’s GSU, which resulted in her removal as the Chief of GSU. The Applicant contested

that the Respondent had illegitimately approved a new organigram that excluded the possibility of her being reinstated as the Chief of GSU. Clearly, the new arrangement is unlawful if done without first carrying out the UNDT's recommendations. The Applicant is seeking a remedy for the execution of judgments through a suspension of action.

31. The judgments and orders of the UNDT are binding on both parties and must be implemented and respected, as per the Statute of the UNDT.⁹ If not, the aggrieved party can seek an order of execution from the Dispute Tribunal.

32. Article 12(4) of the Statute of the UNDT reads:

Once a judgement is executable under art. 11, paragraph 3, of the present statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

33. Likewise, art. 32 of the Tribunal's Rules Procedure on execution of judgements reads:

Judgements of the Dispute Tribunal shall be binding on the parties but are subject to appeal in accordance with the statute of the Appeals Tribunal. In the absence of such appeal, it shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

Once a judgement is executable under article 11.3 of the statute of the Dispute Tribunal, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

34. The Applicant in the present case contends that the Respondent has dishonored the previous UNDT rulings [Judgment Nos. UNDT/NBI/2022/084 and UNDT/2023/022] by taking measures that endanger the Applicant's rights. Therefore, the Applicant seeks the suspension of the Respondent's action as a remedy for the execution of the judgments. The main issue to be addressed here is whether the

⁹ Article 11(3) of the UNDT Statute.

existing rules and jurisprudence of the Dispute Tribunal allow suspension of action as a remedy for the execution of the judgments.

35. Article 2.2 of the Statute of the UNDT does not grant the Tribunal the jurisdiction to issue an interim order of suspension of action to execute the judgments of the Dispute Tribunal. If the Applicant believes that there is a violation of prior judgments, the appropriate course of action is to request an execution order under art. 12(4) of the Dispute Tribunal's Statute and art. 32 of the Rules of Procedure. Under the existing rules of the Tribunal, the Applicant is not allowed to request a suspension of action as a remedy for the non-enforcement of previous judgments.

36. Therefore, the application is not receivable as it seeks the execution of UNDT Judgments No. UNDT/2022/084 and No. UNDT/2023/022.

Conclusion

37. The application for suspension of action is rejected as not receivable.

(Signed)

Judge Solomon Areda Waktolla

Dated this 2nd day of October 2023

Entered in the Register on this 2nd day of October 2023

(Signed)

Eric Muli, Officer-in -Charge