



**Before:** Sean Wallace  
**Registry:** Nairobi  
**Registrar:** Eric Muli, Officer-in-Charge

ALABSSI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER PURSUANT TO ARTICLES 19  
AND 36 OF THE UNDT RULES OF  
PROCEDURE (VILLAMORAN)**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
UNHCR

## **Introduction**

1. The Applicant is a Driver with the United Nations High Commissioner for Refugees (“UNHCR”) based in Ibb, Yemen.
2. On Friday, 29 September 2023, at 10.05 p.m., he filed an application for suspension of action pending management evaluation before the United Nations Dispute Tribunal (“UNDT”) in Nairobi. He seeks suspension of the decision to not renew his fixed-term appointment beyond 30 September 2023.
3. The application was filed outside the Registry’s working hours and the Tribunal was only seized of it on Sunday, 1 October 2023.

## **Considerations**

4. Pursuant to art. 19 of the UNDT Rules of Procedure, the Tribunal may at any time issue an order or give any direction which appears to be appropriate for the fair and expeditious disposal of a case and to do justice to the parties. Article 36(1) of the UNDT Rules of Procedure stipulates that all matters that are not expressly provided for in the UNDT’s Rules of Procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by art. 7 of its Statute.
5. The Applicant claims that:
  - a. His performance evaluation for the period 1 July - 31 December 2022 was “performance achieved” on 30 April 2023 but then reopened and changed to “did not achieve” on 27 June 2023;
  - b. He filed a timely rebuttal, and the Rebuttal Panel changed the rating to “partially achieved” on 7 September 2023; and
  - c. On 28 September 2023, he was notified that, based on the Rebuttal Panel rating, his contract would not be renewed beyond its 30 September 2023

expiration.

6. On 29 September 2023, the Applicant filed a request for management evaluation and also filed an application for suspension of action with the UNDT.

7. Reopening and downgrading a performance evaluation appears *prima facie* to be unlawful, especially nearly six months after the end of the performance cycle. Given that the Applicant was provided just two days' notice that his contract would not be renewed beyond its expiration on 30 September 2023, this seems to be a case of particular urgency and where the implementation of the non-renewal decision would cause irreparable damage to the Applicant.

8. Further, the implementation of the non-renewal decision was imminent (30 September 2023), through no fault or delay on the part of the Applicant, and before the five days provided for under art. 13 of the UNDT Rules of Procedure have elapsed, and the UNDT is not in a position to take a decision under art. 2(2) of the UNDT Statute, i.e., because it requires further information from the Respondent and time to reflect on the matter. Therefore, it is just for the Tribunal to exercise its discretion to grant a suspension of action for those five days. The Respondent was accordingly informed of this decision by the Tribunal on 1 October 2023.

**ORDERS:**

9. The implementation of the contested decision is suspended until Friday, 6 October 2023.

10. The Respondent shall file a reply to the application by or before 12.00 p.m. today, Tuesday, 3 October 2023.

11. The Tribunal also notes that the Applicant is self-represented. The Tribunal strongly advises the Applicant to seek the assistance of counsel in this matter. To hasten the process, the Tribunal will refer the matter to the Office of Staff Legal Assistance for their consideration.

*(Signed)*

Judge Sean Wallace

Dated this 3<sup>rd</sup> day of October 2023

Entered in the Register on this 3<sup>rd</sup> day of October 2023

*(Signed)*

Eric Muli, Officer-in-Charge, Nairobi