



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

ALABSSI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for the Applicant:**  
Kalaycia Clarke, OSLA

**Counsel for the Respondent:**  
Jan Schrankel, UNHCR  
Sandra Lando, UNHCR

## **Introduction and summary of the relevant facts**

1. The Applicant is a Driver with the United Nations High Commissioner for Refugees (“UNHCR”) based in Ibb, Yemen.
2. He joined UNHCR as a staff member on Temporary Appointment serving as a Driver at the G-2 level in Ibb, Yemen on 1 April 2020. On 1 July 2022, he was appointed on a one-year fixed-term appointment (“FTA”) to the same position.<sup>1</sup>
3. The Applicant’s *ad hoc* performance evaluation document (“Evolve”) for the period 1 July 2022 to 31 December 2022 was rated as “Performance Achieved”.<sup>2</sup>
4. According to the Applicant, his performance evaluation, which had already been closed, was reopened on 27 June 2023 and his performance rating was changed to “Did Not Achieve” by the same manager.<sup>3</sup>
5. On 3 July 2023, the Applicant rebutted the revised performance appraisal.<sup>4</sup>
6. According to the Respondent, pending the outcome of the rebuttal process, the Applicant’s FTA was administratively extended for two months until 31 August 2023 and subsequently for one additional month until 30 September 2023.<sup>5</sup>
7. On 7 September 2023, the Rebuttal Panel issued an outcome report in which it changed the rating from “Did Not Achieve” to “Partially Achieved”.<sup>6</sup>
8. On 28 September 2023, the Applicant was notified of the non-renewal of his FTA beyond 30 September 2023 for unsatisfactory service (“the impugned decision”).<sup>7</sup>

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<sup>1</sup> Reply, para. 6; application section VII(1).

<sup>2</sup> Unnumbered annex to the application titled “*ALABSSI, Abdulaziz Taha Ad Hoc Evolve 16\_05\_2023*”.

<sup>3</sup> Application, section VII(3) and unnumbered annex to the application titled “*ALABSSI, Abdulaziz Taha Ad Hoc Evolve 03\_08\_2023*”.

<sup>4</sup> Reply, para. 7; application, section VII(6).

<sup>5</sup> Reply, para. 8.

<sup>6</sup> Application section VII(6) and unnumbered annex to the application titled “*ALABSSI, Abdulaziz Taha Ad Hoc Evolve 29\_09\_2023*”.

<sup>7</sup> Application, annex 2.

He was informed of that the non-renewal was recommended based on the following Policies:

- a. Section 15 of the Policy on the Administration of Fixed-Term Appointments (UNHCR/HCP/2015/09 Rev.1).
- b. Section 1.12 of the Policy on Performance Management (UNHCR/HCP/2022/05).

9. The Applicant requested for management evaluation of the impugned decision on 29 September 2023.<sup>8</sup>

10. On Friday, 29 September 2023, at 10.05 p.m. (Nairobi time), he filed an application for suspension of action pending management evaluation before the United Nations Dispute Tribunal (“UNDT”) in Nairobi. He sought suspension of the impugned decision.

11. Because the application was filed outside the Registry’s working hours, the Tribunal was only seized of it on Sunday, 1 October 2023, which was also outside the Registry’s working hours.

12. The application was served to the Respondent on 1 October 2023 with a deadline to file a reply by 12.00 p.m. on Tuesday, 3 October 2023. The Respondent was informed that the Tribunal had granted a “*Villamorán* Order” in this case, pursuant to arts. 19 and 36(1) of the UNDT Rules of Procedure, suspending the implementation of the impugned decision for five days, that is, until Friday, 6 October 2023.

13. On 3 October 2023, the Tribunal formally issued the “*Villamorán*” Order No. 152 (NBI/2023). The Order also advised the Applicant to seek the assistance of counsel and directed the Applicant to the Office of Staff Legal Assistance.

14. The Respondent filed a reply to the suspension of action application on 3

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<sup>8</sup> *Ibid.*, annex 3.

October 2023 as directed.

15. On 5 October 2023, Counsel from the Office of Staff Legal Assistance (“OSLA”) informed the Tribunal that OSLA was now representing the Applicant and sought leave to file additional submissions.

16. On the same date, the parties were informed that the Tribunal had granted the Applicant’s motion to file further submissions and invited the Respondent to file a response to the Applicant’s motion by 10.00 a.m. (Nairobi time) on Friday, 6 October 2023

17. In response to the Tribunal’s communication of 5 October 2023, UNHCR’s Senior Legal Adviser, Deputy Head, Legal Affairs Service, informed the Registry as follows:

... The Respondent acknowledges receipt of your e-mail informing us that [the] Judge [ ] has granted the Applicant’s motion to file further submissions and directing the Respondent to file a response to the Applicant’s motion by tomorrow morning, 10.00 am Nairobi time (which is 9am Geneva time).

The Respondent was served with the Applicant’s motion and further submissions today at 15.45. Your below e-mail was received at 17.39 Geneva time, (18.39 Yemen time), and tomorrow is not a working day in Yemen. It is simply not feasible for the Respondent to provide any considered response to the Applicant’s submission in the time allocated.

Nevertheless, in light of the Applicant’s further submissions, the Respondent agrees to voluntarily suspend [the Applicant’s] separation pending the outcome of his request for management evaluation.

## **Conclusion**

18. Considering the Respondent’s undertaking to suspend the Applicant’s separation pending the outcome of his request for management evaluation, the Tribunal finds that Applicant has been granted the relief he seeks, and the application has been

rendered moot.<sup>9</sup>

19. The application is therefore rejected.

*(Signed)*

Judge Sean Wallace

Dated this 6<sup>th</sup> day of October 2023

Entered in the Register on this 6<sup>th</sup> day of October 2023

*(Signed)*

Eric Muli, Officer-in-Charge, Nairobi

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<sup>9</sup> See *Toson* 2021-UNAT-1161, para. 27; *Guetgemann* 2022-UNAT-1201, para. 22; *Mboob* 2022-UNAT-1215, para. 33.