



**Before:** Judge Sean Wallace  
**Registry:** Nairobi  
**Registrar:** René M. Vargas M., Officer-in-Charge

RUDOLF JOCONDO

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 Applicant:**

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**Counsel for Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat  
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## **Introduction**

1. The Applicant serves as the Chief of Office of the Director General, United Nations Office in Nairobi (“UNON”). He holds a continuing appointment at the D-1 level and is based in Nairobi, Kenya.

## **Procedural History**

2. On 11 June 2024, the Applicant filed an application for suspension of action before the United Nations Dispute Tribunal sitting in Nairobi challenging the selection decision for Job Opening No. 222830 (“JO 222830”), for the position of Head of Office (D-2 level), Political Affairs, with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”).

3. The Respondent filed his reply on 14 June 2024. The Respondent moved the Tribunal to dismiss the application as not receivable because the impugned decision was implemented on 6 June 2024.

4. On the same day, the Applicant filed a motion for leave to respond to the Respondent’s reply, which included his arguments in response to the reply. The Tribunal considered these arguments below.

## **Consideration**

5. Articles 2.2 of the Dispute Tribunal’s Statute and 13 of its 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.

6. This Tribunal has previously held that<sup>1</sup>

A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the status quo between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

7. The Tribunal must therefore consider the Parties' submissions against the test stipulated in art. 2.2 of its Statute and art. 13 of its Rules of Procedure.

8. It has been long held that the Respondent's exercise of its broad discretionary authority must not be "tainted by forms of abuse of power such as violation of the principle of good faith in dealing with staff, prejudice or arbitrariness, or other extraneous factors that may flaw his decision" UN Administrative Tribunal Judgment No. 885, *Handelsman* (1998).

9. The Applicant bears the burden of showing that the Respondent did not properly exercise his discretion. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by the Applicant to show that there is a triable issue before the court. See *Hepworth* UNDT/2009/003, para. 10; *Corcoran* UNDT/2009/071, para. 45; *Berger* UNDT/2011/134, para. 10; *Chattopadhyay* UNDT/2011/198, para. 31; and *Wang* UNDT/2012/080, para. 18.

10. Before entering into a discussion on whether the Applicant has met the requirements for the test of suspension of action, the Tribunal must first determine whether or not the impugned decision can properly be stayed.

11. Granting an injunction in this case would affect more than just the Applicant. The candidate selected for JO 222830 has been notified as much and has accepted the position.

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<sup>1</sup> See *inter alia* Applicant Order No. 087 (NBI/2014).

12. The Applicant, relying on art. 10.2 of administrative instruction ST/AI/2010/3/rev.3 (Staff selection system) (“AI”), contends that since the contested decision was made on 6 June 2024, the selected candidate is internal and his selection will be treated as a promotion, the contested decision cannot be implemented until 1 July 2024. In the Applicant’s view, the application is receivable because the contested decision has not yet been implemented.

13. The Tribunal, notes that the Applicant is confusing implementation of the decision and the effective date of assuming office. Section 10.2 of the AI clearly states that a selection decision is “implemented upon its official communication to the individual concerned”. The AI then sets forth that if the “selection entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision”.

14. When properly read in context, the AI makes it clear that the decision was implemented the day the selected candidate was notified, i.e., 6 June 2024. Therefore, the court cannot provide effective and meaningful injunctive relief on a process that has already been concluded.

**Conclusion**

15. In view of the foregoing, it is ORDERED that the application for suspension of action pending management evaluation is Denied.

*(Signed)*

Judge Sean Wallace

Dated this 18<sup>th</sup> day of June 2024

Entered in the Register on this 18<sup>th</sup> day of June 2024

*(Signed)*

René M. Vargas M., Officer-in-Charge, Nairobi