



**Before:** Judge Sean Wallace

**Registry:** Nairobi

**Registrar:** Wanda Carter

OOKO

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:**

Self-represented

**Counsel for Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Victoria Nakaddu Mujunga, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is the Chief of Unit, Information Systems and Telecommunications working with the United Nations Integrated Transition Assistance Mission in Sudan (“UNITAMS”).
2. By an application filed on 24 August 2024, the Applicant seeks to suspend a decision dated 16 May 2024 “of my separation from the organisation pending the MAES’ completion of the evaluation.”
3. On 28 August 2024, the Respondent filed a reply submitting that the application is not receivable, but, should the Tribunal find it receivable, claims that the application lacks merit.
4. On 29 August 2024, the Applicant filed a response to the Respondent’s reply.

## **Factual background**

5. Nairobi is the Applicant’s place of home leave and recruitment.
6. Due to the ongoing war in Sudan, on 1 May 2023, the UNITAMS personnel, including the Applicant were evacuated to Entebbe-Uganda.
7. On 6 June 2023, the Applicant was assigned to Nairobi-Kenya.
8. On 24 July 2023, Nairobi became a UNITAMS’ duty station.
9. The Applicant narrates that, while in Nairobi, he was temporarily assigned to Port Sudan in Sudan, but his Sudanese residence visa had expired. UNITAMS made efforts to get it renewed without success. The Applicant, therefore, continued to work remotely from Nairobi but with Port Sudan as his duty station.
10. On 1 December 2023 the United Nations Security Council, by resolution 2715 (2023) terminated the mandate of UNITAMS.

11. On 29 January 2024, UNITAMS notified the Applicant of the decision to terminate his permanent appointment in accordance with Staff Regulation 9.3 (c) and staff rule 9.7.

12. On 19 and 21 February 2024, the Applicant requested management evaluation of the decision to terminate his permanent appointment and the suspension of the same decision.

13. On 28 March 2024, the Management Advice and Evaluation Section (“MAES”) upheld the decision to terminate his permanent appointment. The Applicant did not file a timely application with this Tribunal to review this decision to terminate his permanent appointment.

14. UNITAMS then informed the Applicant that his functions were among those required in the liquidation team, effective 1 March 2024 to 31 August 2024.

15. On the 16 May 2024, the Applicant was notified that effective 1 June 2024 to 31 August 2024, his post location was to be changed from Port Sudan to Nairobi. The Applicant was further informed that since his functions were moved to Nairobi which is his place of home leave and recruitment, he would not be entitled to travel-related entitlements and benefits including relocation grant and repatriation grant.

16. On 19 May 2024, the Applicant received a new notice of termination of his permanent appointment and his service on the liquidation team. The second notice stated that the post for which he had been retained for the liquidation team would be abolished effective 31 August 2024.

17. On 31 May 2024, UNITAMS closed the Port Sudan duty station and the following day officially moved the Applicant's post to the Nairobi duty station.

18. The Applicant requested management evaluation of the renewed decision to terminate his permanent appointment in June 2024. On 9 July 2024, MAES upheld this decision.

19. On the following day, the Applicant requested management evaluation of the decision not to pay him repatriation grant upon his separation.

20. On 11 July 2024, MAES acknowledged receipt of his request and advised him that their advice would be available by 24 August 2024. On 22 August 2024, MAES informed the Applicant that due to additional consultations required, the issuance of their elevation would be delayed.

21. Noticing that his separation date was on 31 August 2024 and the decision on his management request was delayed, the Applicant filed the present application. Seeking the suspension of his separation from the organisation pending the MAES' completion of the evaluation.

## **Consideration**

### *Receivability*

22. The Tribunal notes that in the request now pending before MAES, the Applicant seeks an evaluation of the decision to not pay him repatriation grant. However, before the Tribunal, he seeks suspension of action of the decision to separate him from the organisation pending the MAES' completion of the evaluation. These are two separate decisions.

23. As highlighted by the Respondent, there is no an ongoing management evaluation of the decision to terminate his appointment, which is the decision the Applicant now seeks to suspend. The management evaluation of the decision to separate him from the Organisation was issued on 28 March 2024 and again on 9 July 2024.

24. Accordingly, on this score, the application is not receivable because there is no pending management evaluation of the decision to separate him from the Organisation on 31 August 2024.

### *Merits*

25. Even if the Tribunal was to find the application receivable, still, it lacks merit.

26. Art. 2.2 of the Tribunal's Statute and art. 13 of its Rules of Procedure provide that the Tribunal shall be competent to suspend the implementation of a contested

administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met.

*Prima facie unlawfulness*

27. The Tribunal observes that the Applicant does not allege anything unlawful about the termination of his contract. He only challenges the decision not to pay him travel related benefits and entitlements upon that termination. As such, he has failed to demonstrate the nonpayment decision is unlawful.

*Urgency*

28. The Applicant states that he considers this matter urgent because the termination of his appointment takes effect on the 31 August 2024. If by that time the issue is not resolved, he stands to be denied entitlements for which he qualifies.

29. The Tribunal notes that the decision being contested in this case is different from the separation from service. Therefore, whether he separates, as a former staff member, the Applicant will still be eligible to pursue the contested nonpayment decision if he files a timely application on the merits.. Therefore, the Tribunal considers that, in this case, the urgency requirement was not met.

*Irreparable harm*

30. The Applicant submits that denying him the grant “would mean a loss of fortune, economic wellbeing that [he] has worked for in the organization for over 34 years.” He claims that he would be irreparably damaged psychologically, financially and economically. He “would suffer much pecuniary embarrassment, that could result in being red flagged in credit bureaus across the world.”

31. First, the loss of a financial benefit, like the ones now under challenge, are by their very nature reparable. That is, if the Applicant were to prevail on the merits, would be compensated for any wrongfully denied benefits (along with interest on those amounts as appropriate).

32. Second, the Tribunal views any additional claim of psychological damage resulting from the denial of economic entitlements as suspect on its face. Nonetheless, if the Applicant were to prevail on the merits and prove actual psychological damages, the Tribunal is authorized to award compensation for harm pursuant to Article 10.5(b) of the Dispute Tribunal Statute.

33. Accordingly, the Tribunal finds that the requirement of irreparable harm is not met.

34. Given that the Applicant has failed to demonstrate any of the required elements for suspension of action, the application must be denied.

### **Conclusion**

35. In light of the above, the application for suspension of action is denied.

*(Signed)*

Judge Sean Wallace

Dated this 30<sup>th</sup> day of August 2024

Entered in the Register on this 30<sup>th</sup> day of August 2024

*(Signed)*

Wanda Carter., Registrar, Nairobi