



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

KALLON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR INTERIM
MEASURES UNDER ART. 10.2
OF THE STATUTE**

Counsel for Applicant:
Robbie Leighton, OSLA

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

Application on the merits

1. On 28 March 2013, the Applicant, a staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”), filed an application contesting the decision taken on 28 November 2012 by the Assistant Secretary-General for Central Support Services to remove his designation as Chief Procurement Officer, Procurement Section, MINUSTAH. The application was registered under Case No. UNDT/NY/2013/019.

2. Following the contested decision, the Applicant was removed from the Procurement Section and, on 6 December 2012, reassigned to the Office of the Officer-in-Charge for Administrative Services, MINUSTAH. Subsequently, on 6 March 2013, the Applicant was reassigned to the post of Chief of Staff Counseling and Welfare Unit, MINUSTAH.

Motion for interim measures

3. Along with his application on the merits, the Applicant filed a motion for interim measures under art. 10.2 of the Tribunal’s Statute. The Applicant submits that MINUSTAH is currently taking steps to recruit candidates for the post of Chief Procurement Officer. He seeks “an appropriate order to suspend any recruitment of a P-4 Chief Procurement Officer at MINUSTAH pending the outcome of the Tribunal’s deliberations concerning the disputed removal of the Applicant’s designation as a Procurement Officer”.

4. The Applicant submits that the Administration was required to provide clear and lawful reasons for the decision to remove his designation, which it failed to do. He submits that there is no proper justification for the decision to remove his designation and that the alleged procurement-related issues, given as the grounds for

the contested decision, cannot be properly attributed to his performance because for the most part they related to actions taken prior to his arrival or to more general weaknesses in MINUSTAH. The Applicant submits that the matter is urgent “[g]iven the serious implications for [him] should anyone be recruited to the position of Chief Procurement Officer and the fact such a recruitment appears to be underway”. He states that the implementation of the contested decision would cause him irreparable harm as he would have no post to which he can return and would thus be deprived of any meaningful relief in relation to the decision to remove his designation. He further submits that should the recruitment for the post be completed, it may impact on the renewal of his contract which currently expires on 30 June 2013.

5. The Respondent submits that, under art. 10.2 of the Tribunal’s Statute, the Applicant may only seek suspension of the contested decision, being the decision to remove his designation as Chief Procurement Officer, MINUSTAH. The Respondent submits that the Applicant requests suspension of a recruitment process, which is a separate administrative decision the implementation of which is not capable of being suspended during the current proceedings (*El-Komy* Order No. 78 (NY/2013)). The Respondent further submits that the removal of designation and reassignment of the Applicant have already been implemented and cannot be suspended. The Respondent further submits that the conduct of a recruitment exercise is not an administrative decision but only a preliminary step leading up to a future administrative decision. The Respondent submits that, following reassignment within MINUSTAH in December 2012, the Applicant continues to perform P-4 level functions and, in the event he prevails on the merits, appropriate relief can be granted.

Background

6. The Applicant became a staff member in 2001 and, save for a six-month break in 2005–2006, has held various positions in the area of budget, finance, and

procurement. In July 2010, he was reassigned as Chief Procurement Officer (P-4 level) at MINUSTAH. No formal request was made for his designation to perform procurement functions at MINUSTAH as he had been cleared for similar functions previously when he was Officer-in-Charge of the Procurement Section at the United Nations Organization Mission in the Democratic Republic of the Congo (“MONUC”) in 2008–2010, during which period he was a P-4 Procurement Officer serving on special post allowance at the P-5 level.

7. For the period of 2010 to 2011, the Applicant’s performance was rated as “exceeding performance expectations” at MONUSCO and “competent performance” at MINUSTAH. For the period of 2011 to 2012, the Applicant’s overall performance was rated as “exceeding performance expectations”. In the evaluation report for the period 2011 to 2012, which was finalized in May 2012, the Applicant’s first reporting officer described him as “an outstanding procurement professional [who] achieves results and [is] very capable”. The Applicant’s second reporting officer (Director of Mission Support, MINUSTAH) provided the following comments in the Applicant’s evaluation report:

A good performance in a difficult environment where procurement section was located away from its clients. This situation has been addressed and the division will be relocated in Port au Prince. Performance of the section shall therefore [be] improved in the coming year, and attention will be given to planning and quality assurance.

8. On 5 December 2012, the Applicant was provided with a note from the Assistant Secretary-General for Central Support Services, dated 28 November 2012, informing him of the Assistant Secretary-General’s decision to remove his designation as Chief Procurement Officer for MINUSTAH with immediate effect. The memorandum also referred to four documents (three of which were already in the Applicant’s possession) that raised various procurement-related issues that were considered by management as reasons for the removal of the Applicant’s designation and his reassignment.

9. On the same date (5 December 2012), the Applicant was also provided with a memorandum from the Director of Mission Support, MINUSTAH, dated 5 December 2012, informing him that his designation had been removed.

10. As a result of the contested decision, the Applicant was removed from the Procurement Section and, on 6 December 2012, reassigned to the Office of the Officer-in-Charge for Administrative Services, MINUSTAH. The Applicant was subsequently reassigned to the post of Chief of Staff Counseling and Welfare Unit on 6 March 2013.

11. On 10 December 2012, the Applicant requested management evaluation of the decision to remove his designation to carry out procurement functions, communicated to him on 5 December 2012.

Consideration

12. Article 10.2 of the Tribunal's Statute provides:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

13. Pursuant to art. 10.2 of its Statute, the Tribunal may order an interim measure to provide temporary relief to either party, only if it is satisfied that all three requirements of that article have been met—i.e., that the case is of particular urgency, that the implementation of the contested decision would cause irreparable damage, and that the decision appears *prima facie* to be unlawful.

14. Prior to considering whether the Tribunal can suspend the contested decision, the Tribunal has to determine the scope of the case presently before it and identify the contested decision (see *Planas* 2010-UNAT-049 and *O'Neill* 2011-UNAT-182).

15. In his request for management evaluation and in his application on the merits the Applicant clearly contests the decision to remove his designation as Chief Procurement Officer. In his motion for interim measures, however, he seeks suspension of the recruitment process for a P-4 Chief Procurement Officer at MINUSTAH.

16. The Applicant has not sought suspension of the decisions to remove the designation of his functions or to reassign him first to the Administrative Services and then to the Staff Counseling and Welfare Unit. Instead, he seeks suspension of the “recruitment of a P-4 Chief Procurement Officer at MINUSTAH pending the outcome of the Tribunal’s deliberations”.

17. The Tribunal finds that the present motion is misguided. At this stage and based on the current papers, it appears that the legal issue for determination on the merits is whether or not the removal of the Applicant’s designation was lawful. The decisions to remove the Applicant’s designation and to reassign him to the Administrative Services and later to the Staff Counseling and Welfare Unit have long been implemented and their suspension was not sought by the Applicant.

18. The Tribunal is also not persuaded, for the reasons stated above, that the Applicant has satisfied the requirement of demonstrating that the carrying out of a recruitment exercise would cause him irreparable harm.

19. Consequently, the Tribunal finds that, within the ambit of the present case, the relief sought by the Applicant cannot be granted.

Observation

20. The Tribunal notes that, although the Applicant, represented by the Office of Staff Legal Assistance (“OSLA”), used the correct form for the filing of the present motion, he made significant amendments to the structure and the content of the form. As a result, the form used by the Applicant was, in effect, not the form approved by the Tribunal. The parties are reminded that they are expected to use the template forms as adopted by the Tribunal and posted on the Tribunal’s website.

Conclusion

21. The present motion for interim measures is rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 4th day of April 2013