



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

KISAMBIRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:

Lennox S. Hinds
Didier Stepho

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. On 5 February 2014, the Applicant, a Population Affairs Officer, Fertility and Family Section, Population Division, Department of Economic and Social Affairs, United Nations Secretariat, filed an application for suspension of action pending management evaluation of the decision taken by the Under-Secretary-General for Management not to afford him time release to perform staff representation duties as a result of him being elected President of the United Nations Staff Union following the December 2013 elections.

2. The application was transmitted to the Respondent on 6 February 2014 and the Respondent duly filed his reply on 10 February 2014. The Respondent submitted that the request for management evaluation having been completed on 7 February 2014 and thus no longer being pending, the application for suspension of action was not receivable.

Consideration

3. Pursuant to art. 2.2 of its Statute, the Dispute Tribunal

shall be competent to hear and pass judgment on an application filed by an individual requesting the Dispute Tribunal to suspend during the pendency of the management evaluation, the implementation of a contested administrative decision that is subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particularly urgency, and, where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

4. Article 13.1 of the Tribunal's Rules of Procedure states that

The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and

where its implementation would cause irreparable damage.

5. The Tribunal considers that for an application for suspension of action to be successful, it must satisfy the following cumulative conditions:

- a. The application is receivable because it concerns an administrative decision that may properly be suspended by the Tribunal;
- b. The contested decision has not yet been implemented;
- c. The Applicant has submitted a request for management evaluation of the contested decision, which evaluation is currently pending;
- d. The impugned administrative decision appears *prima facie* to be unlawful;
- e. The case is of particular urgency; and
- f. Its implementation would cause irreparable damage.

6. It follows from art. 2.2 of the Statute of Dispute Tribunal and art. 13 of its Rules of Procedure that the suspension of a challenged decision may only be ordered when the management evaluation of that decision is ongoing (*Igbinedion* 2011-UNAT-159 and *Benchebbak* 2012-UNAT-256).

7. The evidence before the Tribunal shows that on 7 February 2014 the Respondent informed the Applicant that the management evaluation unit had determined that the contested decision was not receivable, observing that the Arbitration Committee of the Staff Union is the sole body able to consider and rule on matters concerning the validity of the Staff Union elections.

8. The request for management evaluation having been completed, it is no longer pending and the Tribunal therefore considers that one of the cumulative conditions required for the purpose of suspending an administrative decision pending management evaluation is not fulfilled. It is therefore not necessary for the Tribunal

to further examine the remaining requirements, namely the *prima facie* unlawfulness, urgency and the irreparable damage caused by the decision.

Conclusion

9. The application for suspension of action is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 10th day of February 2014