



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

KAMARA-JOYNER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER OF SUSPENSION PENDING
THE CONSIDERATION OF AN
APPLICATION FOR SUSPENSION OF
ACTION UNDER ART. 2.2 OF THE
DISPUTE TRIBUNAL'S STATUTE**

Counsel for Applicant:
Natalie Dyjakon, OSLA

Counsel for Respondent:
ALS/OHRM

Introduction

1. On 14 July 2017, the Applicant, a Conflict Resolution Officer at P-4, step 13, level in the Office of the United Nations Ombudsman and Mediation Services (“UNOMS”) in New York, filed an application under art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure seeking to suspend the decision, pending management evaluation, not to select her but another candidate, for the temporary position of Regional Ombudsman at the P-5 level in Vienna. The Applicant alleges that the decision was based on the discriminatory and unlawful grounds of her ethnicity.

2. Together with her application, referring to arts. 19 and 36.1 of the Dispute Tribunal’s Rules of Procedure and the Appeals Tribunal’s judgment in *Villamorán* UNAT/2011/160, the Applicant also filed a motion requesting that the contested decision be suspended pending the Tribunal’s consideration of the suspension of action proceedings. She submits that the selected candidate “will enter into a formal contract with the Administration and begin working as a Regional Ombudsman in Vienna within the next few days”. She submits once such decision is implemented, she will have no recourse.

Consideration

3. Applications for suspension of action pending management evaluation are governed by art. 2.2 of the Dispute Tribunal’s Statute and art. 13 of the Rules of Procedure. The three statutory requisites of *prima facie* unlawfulness, urgency and irreparable harm must be satisfied for an application for suspension of action to be granted. Where an administrative decision has been implemented, a suspension of action may not be granted (*Gandolfo* Order No. 101 (NY/2013)), save where the implementation of the decision is of an ongoing nature (see, for example, *Calvani*

UNDT/2009/092; *Hassanin* Order No. 83 (NY/2011); *Adundo et al* Order No. 8 (NY/2013); *Gallieny* Order No. 60 (NY/2014)).

4. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal,

The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

5. Article 36.1 of the Rules of Procedure provides that:

All matters that are not expressly provided for in the rules of procedure shall be dealt with by decision of the Dispute Tribunal on the particular case, by virtue of the powers conferred on it by article 7 of its statute.

6. Pursuant to art. 13.3 of the Rules of Procedure,

The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

7. In *Villamoran* 2011-UNAT-160, the Appeals Tribunal upheld this Tribunal's *Villamoran* Order No. 171 (NY/2011) finding that that the Dispute Tribunal was within its competence to order a suspension of the contested decision pending a determination of the application for suspension of action on the basis of the aforesaid Rules of Procedure and without having to make a finding as to whether the requirements of a suspension of action under art 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure had been met. The Appeals Tribunal, *inter alia*, found that:

43. Where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of [the Dispute Tribunal's, "UNDT"] Rules have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to

reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

8. The Tribunal notes that although the Applicant states that she was notified of the decision on 13 June 2017, a month ago, she maintains that there were several discussions and attempts to resolve this matter following her inquiries and serious allegations of discrimination on the grounds of her ethnicity. She refers to several meetings and conversations and has attached a number of emails and correspondences setting out overtures and attempts at discussing and resolving this matter informally, including but not limited to emails between herself and the Executive Office of the Secretary-General and meetings with senior personnel of UNOMS. The Office of the Secretary-General referred the matter back to UNOMS upon whose response the Applicant states she waited in vain only to discover the impending implementation of the contested decision. The Applicant eventually resolved to refer this matter to her legal counsel only after she feared she was misled into believing there would be further discussions before any final decision.

9. The Tribunal is satisfied that the requirements for an interim order pending the Tribunal's determination of a suspension of action as set out in *Villamorán* by the Appeals Tribunal have been satisfied. The Tribunal notes that this matter is not at the merits stage, and that the Respondent has not had an opportunity to reply, and it does not have all the information before it. The Tribunal is satisfied that the urgency was not self-created and that the Applicant attempted to informally exhaust internal remedies within UNOMS (as a matter of interest, the Tribunal is unaware where staff grievances from this Office would be referred to for independent mediation in any particular case). The Tribunal also notes that there were efforts on both sides to resolve this matter—this is in the interests of all concerned and the Tribunal encourages and commends such amicable solution. According to the information before the Tribunal, the contested decision has not been implemented.

10. In accordance with arts. 19 and 36.1 of the Dispute Tribunal's Rules of Procedure,

IT IS ORDERED THAT:

11. Without prejudice to the Tribunal's determination of the application for suspension of action under art. 2.2 of the Tribunal's Statute, the implementation of the contested decision shall be suspended until the Tribunal has rendered its decision on this application, or until further order.

(Signed)

Judge Ebrahim-Carstens

Dated this 17th day of July 2017