



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/024

Judgment No.: UNDT/2020/163

Date: 4 September 2020

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

DIENG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Evelyn W. Kamau, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Rosangela Adamo AAS/ALD/OHR, UN Secretariat

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Considerations

Receivability

Abolition of post based on a General Assembly resolution

21. The law as it stands is that the General Assembly is the supreme law maker in the United Nations. Its decisions are legislative in nature. Considering the principle of separation of powers, the United Nations Dispute Tribunal (“UNDT”) has no jurisdiction to interfere with those powers and therefore may not review its resolutions because they are not administrative decisions.¹¹ It was held in *Lloret Alcañiz et al.* that:

The jurisdiction of the UNDT is limited by Article 2(1) of the UNDT Statute to hearing appeals against “administrative decisions” ... Where the General Assembly takes regulatory decisions, which leave no scope for the Secretary-

23. The Tribunal finds that the decision to abolish the post of Senior Child Protection Officer in Darfur, Sudan is not subject to judicial review. That aspect of the application is non-receivable *ratione materiae*.

Non-renewal of the Applicant's contract beyond 31 December 2018

The parties' submissions

Applicant

24. The decision to abolish his post did not consider his substantive functions. While his post as Senior Child Protection Officer was abolished, the Administration did not consider its own decision reassigning him as a Senior Political Affairs Officer to the OJSR. Since he

reassigned the Applicant to serve as a Senior Political Affairs Officer in the OJSR. In

*et al.*¹⁸ that the Tribunal may not review the reasonableness or legality of the General Assembly's resolutions through the backdoor. Further, the Applicant successfully challenged the decision to reassign him from CPU to OJSR as a Senior Political Affairs Officer.¹⁹ It would be a breach of the principle of *res judicata* to reopen that case in these proceedings.

43. The Respondent

employment, his fixed term appointment expired due to effluxion of time.

46. The Applicant asserts that in the separation PA his title was listed as that of Senior Political Affairs Officer in the Office of the Deputy JSR. He does not show how this fact affected the non-renewal of his contract.

47. The Tribunal finds that the Administration did not act unlawfully by not renewing the Applicant's contract because the contract itself was clear that it was expiring on 31 December 2018. Fixed-term contracts carry no expectation of renewal.²¹ The exception to this rule is where the Applicant can show that the non-renewal is unreasonable in that it was motivated by improper motive; that the Respondent failed to act fairly, justly, and transparently in dealing with him,²² or that the Applicant had a legitimate expectation of renewal. The Applicant has shown none to the satisfaction of the Tribunal.

Conclusion

48. Article 2(1)(a) of the UNDT Statute defines an administrative decision as one alleged to be in non-compliance with the terms of appointment or contract of employment. This has been interpreted to mean an allegation of non-compliance that has a direct impact on the terms of contract of employment or appointment²³. It follows that where an administrative decision has no unlawful impact on the Applicant's terms of appointment or contract of employment, the Tribunal must find for the Respondent²⁴. This is because the Applicant has failed to successfully rebut the presumption of regularity.

²¹ *Nouinou* 2019-UNAT-902, para. 44; *Bagot* 2017-UNAT-718, para. 74; *Munir* 2015-UNAT-522, para. 24; *Badawi* 2012-UNAT-261, para. 33.

²² *Loeber* 2018-UNAT-844, para. 18.

²³ *Avramoski* 2020-UNAT-987, para. 39.

²⁴ *Ibid.*, generally, para. 42.

Judgment

49. The application is dismissed.

(Signed)

Judge