



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/044

Order No.: 088 (NBI/2015)

Date: 18 March 2015

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KUBWIMANA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON AN APPLICATION FOR
SUSPENSION OF (N)-20E88()-2IONN ET Q q BT /F2 11.28 Tf 0 0 0 rg 0.9

Introduction

1. The Applicant is a Senior Electoral/Political Affairs Officer at the United Nations Assistance Mission in Somalia (“UNSOM”). He serves at the P-5 level on a fixed-term appointment.
2. On 12 March 2015, he filed an Application for Suspension of Action, pending management evaluation, seeking the suspension of the United Nations Support Office for AMISOM’s (UNSOA) decision to deduct USD6,000 from his salary and transfer the same into the account of his former spouse’s lawyer on the basis of a court Order issued by the Children’s Court in Nairobi, Kenya.
3. The Respondent filed a Reply to the Application on 13 March 2015 in which it was asserted that the Application was not receivable.

Facts

4. On 12 August 2013, the Children’s Court in Nairobi issued a judgment in respect of Children’s Case No. 1205 of 2012 in which the Applicant and his former spouse were parties. The Children’s Court, inter alia, ordered the

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- a. The Applicant does not challenge an administrative decision within the meaning of art. 2.1(a) of the Dispute Tribunal's Statute.
- b. A staff member may not challenge the intermediate or preparatory steps of an administrative decision; only the "final decision," which carries direct legal consequences for the staff member's legal rights and obligations is receivable before the Tribunal. Preparatory decisions can only be disputed in light of the final decision.
- c. Conditional decisions, notifying a staff member that a decision will be taken in the future in the event that certain events transpire are not administrative decisions.
- d. The contested decision is not a final administrative decision. It does not have direct legal consequences on the Applicant's terms of appointment. Instead, the contested decision is a notification under section 2.2(a) of ST/SGB/1999/4 to the Applicant that should he fail to take action to set aside the court order and should the order be final, the Administration will be obliged to take action under section 2.2(b) of ST/SGB/1999/4 to comme

decision,” which carries direct legal consequences for the staff member’s legal rights and obligations is receivable before the Tribunal.

15. Article 2.1(a) of the Tribunal’s Statute provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General of the United Nations:

To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance [...].

16. The current Application purports to challenge the decision of the former CCPO of UNSOA and UNSOA’s Legal Officer requesting the United Nations Headquarters to make deductions to his salary based on the disputed Order of the Children’s Court of Kenya.

17. Section 1 of ST/SGB/1999/4 provides that one of the fundamental duties of all staff members is that they must comply with local laws and honour their private legal obligations i()-9Odi31(e)-2-11(n)-9 tn oblhairports to chaid all relevabes

(a) The staff member will be requested to comply with the order immediately and to submit proof of compliance to the Organization within 30 calendar days from the date of receipt of the request from the Organization;

(b) If the staff member does not submit the proof of compliance within 30 days, the Organization will commence deductions from

- b. The Applicant should submit the divorce judgment showing the order for custody and maintenance of his children issued by the Rwandan Court to the Organization.
- c. He should submit an affidavit stating all the relevant and material facts to the Organization.
- d. He should show that there is no judgment upon which the disputed garnishee Order from the Kenyan Children's Court is based.
- e. He should submit proof to the Organization that he does not owe any arrears of payment for the period from 12 August 2013 when the Kenyan Children's Court issued its Ruling to 12 June 2014 when the Rwandan Court issued the divorce judgment.

22. The Tribunal makes the following recommendations with respect to the Respondent:

- a. The Respondent must ensure that a proper examination of the competence and validity of the Court Order is thoroughly done.
- b. In the instant case, the Respondent should have sought proof on what judgment the disputed Order was based.
- c. The Respondent should also have sought proof as to what the relevant period for the arrears claimed was.
- d. Also to be questioned was whether the disputed Order had been superseded by a later one issued by the Rwandan Courts.
- e. Finally, the Respondent should have questioned the Kenyan Children's Court officials as to why the disputed Order required the alleged arrears to be paid to the Kenyan Children's Court yet the Applicant's former spouse's lawyers had requested the alleged arrears to be paid into the law firm's bank account.

Conclusion

23. In view of the foregoing, the Tribunal concludes that the current Application is premature, not receivable and is therefore refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 18th day of March 2015

Entered in the Register on this 18th day of March 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi