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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/091  
Order No.: 173 (NBI/2017)  
Date: 20 October 2017  
Original: English

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**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:**

## **Introduction**

1. The Applicant is a former Human Rights Officer (HRO) at the P-3 level, step 7, with the United Nations Organization Stabilization Mission (MONUSCO) in the Joint Human Rights Office (JHRO) in Kinshasa, the Democratic Republic of the Congo (DRC).

2.

failure to pay her salary and the failure to issue any formal contract extension since 1

pend or seeks

3. The Motion and the application on the merits were served on the Respondent on 13 October 2017 with deadlines to file replies on 16 October 2017 and 14 November 2017 respectively. On 16 October 2017, the Respondent filed a reply to the Motion.

## **Facts**

4. Facts described below are undisputed and/or result unambiguously from the submitted documents.

5. On 8 November 2014, the Applicant was issued with a Letter of Appointment (LOA) as a HRO with MONUSCO, in Kinshasa, DRC, for a one year fixed-term appointment at the P-3 level, step 6.<sup>1</sup> Her appointment was subsequently renewed until 6 February 2017.<sup>2</sup>

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<sup>1</sup> Annex 1 - application.

<sup>2</sup> Annex 2 - application.

6. On 7 February 2017, the Applicant was informed by Munga Kalenzi, MONUSCO Human Resources Assistant (HRA) may be delayed since her e-performance outcome had not been received in time.<sup>3</sup>

7. On 7 March 2017, the Applicant was informed by Rosette Ruyonga, HRA with the Regional Service Centre Entebbe (RSCE), that her appointment had been extended

12. On 10 July 2017, the Applicant received medical clearance to travel back to her duty station in Kinshasa, DRC, from the Medical Services Division (MSD).<sup>11</sup>

13. Between 10 July 2017 and 27 July 2017, the Applicant informed both RSCE and MONUSCO that she had been cleared for travel back to Kinshasa but was uncertain about her appointment and therefore, she could not travel to Kinshasa her duty station to resume her duties. On 27 July 2017, the Applicant was informed by Tinkamanyire Mugisha, HRO/MONUSCO, that her inquiries regarding her appointment had been communicated to the Mission management for review and advice.<sup>12</sup>

14. On 24 July 2017, the Applicant submitted an Off-line Appraisal Form on Performance Management and Development to the JHRO department. She received a \_\_\_\_\_ from her First Reporting Officer (FRO), Koffi Wogomebou and which was upheld by her Second Reporting Officer (SRO), Jose Maria Aranaz.<sup>13</sup> The Applicant submitted a separate document dated 23 July 2017, in which she contested the evaluation.<sup>14</sup>

15. On 4 August 2017, the Applicant requested for a rebuttal of her performance evaluation.<sup>15</sup> On 23 August 2017, Safia Boly, acting Director of Mission Support (DMS)/MONUSCO, acknowledged receipt of the rebuttal request and informed the Applicant that she would revert with the applicable procedural steps.<sup>16</sup>

16. On 24 August 2017, the Applicant requested management evaluation of the failure to pay her salary for the month of July and requested the following remedies: (a) formal contract extension; (b). immediate payment of salary and; (c) net base salary for unreasonable delay.<sup>17</sup>

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<sup>11</sup> Annex 10 - application.

<sup>12</sup> Annex 11 - application.

<sup>13</sup> Annex 12 - application.

<sup>14</sup> Annex 13 - application.

<sup>15</sup> Annex 14 - application.

<sup>16</sup> Annex 15 - application.

<sup>17</sup> Annex 19 - application.

17.

22. On 13 October 2017, one day after filing this application, a personnel action -term appointment had been retroactively extended until 16 July 2017.<sup>24</sup> Again, there is no evidence that the Applicant was informed thereof before the documents were filed as annexes to the

23. The Respondent submits that the Applicant will accordingly be paid her salary for the period 1 July 2017 to 16 July 2017.<sup>25</sup>

### **Applicant's case**

24. The facts described above underpin both the application on the merits and the Motion for interim measures. The Applicant avers that the application satisfies the three-prong test of unlawfulness, irreparable harm and urgency:

a. The contested decision is unlawful because MONUSCO has kept her in a limbo regarding her salary and contractual status; moreover, it extended her appointment only through 30 June 2017 despite the fact that beyond that date she remained on sick leave and her performance rebuttal process has not been completed.

b. The case is of particular urgency because the Applicant continues to suffer financial as well as reputational harm.

c. Irreparable harm will be caused if the inaction by MONUSCO continues. The Applicant and her family will be put into greater financial hardship and her career and reputation are being damaged by the unexplained gap of work for over three months.<sup>26</sup>

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<sup>24</sup> Annex 1 - reply.

<sup>25</sup> Para 2 - reply.

<sup>26</sup> Application, section VIII paras. 43-51.

25. The Applicant seeks to \_\_\_\_\_ s  
to act or decision not to pay her salary or issue her contract  
specify what particular action she was seeking.





*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 20<sup>th</sup> day of October 2017

Entered in the Register on this 20<sup>th</sup> day of October 2017

*(Signed)*

Eric Muli, Legal Officer, for,  
Abena Kwakye-Berko, Registrar, Nairobi