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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/068

Order No.: 104 (NBI/2018)

Date: 29 June 2018

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ATUYA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION  
PURSUANT TO ARTICLE 13 OF THE  
UNDT RULES OF PROCEDURE**

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**Counsel for the Applicant:**

Edwin Nhliziyo

**Counsel for the Respondent:**

ALS/OHRM





would be called upon to answer and that it is just, convenient and urgent for the Tribunal to intervene and, without which intervention, the Respondent's action or decision would irreparably alter the *status quo*.<sup>2</sup>

***Prima Facie* Unlawfulness**

10. At this stage, the Applicant need only show *prima facie* unlawfulness. The presumption of regularity may be rebutted by evidence of failure to follow applicable procedures, the presence of bias in the decision-making process, and consideration of irrelevant material or extraneous factors.<sup>3</sup> The Applicant bears the burden of showing such irregularity in the selection exercise that creates doubt as to the lawfulness of the process.

11. Put another way, does it appear to the Tribunal that, unless it is satisfactorily rebutted by evidence, the claim of unlawfulness will succeed?

15. As there is little that cannot be monetarily compensated for, the Tribunal has previously held that the concept is a little more nuanced than the question of money