

currently serves as the High Commissioner's Representative in Abidjan, Côte d'Ivoire, a position at the D-1 level.

10. In 2009, the Applicant married Ms. Nadia Nsabimbona (hereinafter Ms. N) a

appeal does not impact the enforceability of the judgment. No documentary evidence was provided to that effect.

14. UNHCR also wrote to the Applicant on 11 December 2015 to inform him of the notification received from Ms. N's solicitors and to remind him of his obligation to comply with family support obligations. The Applicant responded on the same day noting that the marriage and divorce declared by him to UNHCR took place in Mauritania in 2009 and 2014 respectively and, therefore, contested the competence of the Ghanaian court to pronounce upon the marriage that took place in Mauritania.

15. On 9 February 2016, UNHCR responded to Ms. N's counsel noting that the Ghanaian judgment does not coincide with UNHCR's records regarding the Applicant, and highlighting that according to UNHCR's records, Ms. N and the Applicant were married in 2009 in Mauritania and were granted a divorce in Mauritania in 2014. Ms. N responded on 16 February 2016 and alleged that she was not informed nor notified of any marriage or divorce in Mauritania, nor was she present or represented at a marriage or divorce ceremony. Ms. N further alleged that the marriage took place on 8 August 2009 in Burundi. Ms. N further noted that she filed for divorce in Ghana as she was a resident there, and that the Applicant was served all court documents related to the proceedings in Ghana but the Applicant never responded nor appeared. Ms. N accordingly asserted the validity of the Ghanaian judgment and sought UNHCR's support in facilitating compliance by the Applicant.

16. UNHCR's Personnel Administration and Payroll Section sent a memorandum to the Applicant dated 14 April 2016 referring to Ms. N's request in relation to the Ghanaian judgment, and noting that UNHCR would apply the provisions of ST/SGB/1999/4 of 20 May 1999 on Family and Child Support Obligations of Staff Members. This memorandum recalled the fundamental duty of all staff members in United Nations Staff Rule 1.2(b) to comply with local laws and honour their private legal obligations, including the obligation to honour orders of competent courts. The

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29. The test is conjunctive, namely, if the Applicant fails to meet any one part of the test, his application cannot succeed.

30. Additionally, a suspension of action application will only succeed where an applicant can establish a *prima facie* case on a claim of right, or where he can show that *prima facie*, the case he has made out is one which the opposing party 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*.¹

Has the Applicant satisfied the tripartite test?

31. At this stage, the Applicant need only show *prima facie* unlawfulness. The legal 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.² The Applicant bears the burden of showing such irregularity in the impugned decision, and/or the circumstances surrounding it, so that there is doubt as to the lawfulness of the process.

1. *Prima Facie* Unlawfulness

32. To conclude that the impugned decision is *prima facie* unlawful "the Tribunal need not find that the decision is incontrovertibly unlawful."³ The threshold required is that of "serious and reasonable doubts" about the lawfulness of the impugned decision⁴ The Applica

33. According to Staff Rule 1.2 (b1 14Q q B,0(2)371((saff 91(m)163(-163m)163b(-1637(d)-

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However, he failed to do so, or to demonstrate that any steps had been taken in this regard.

39. Deductions commenced only with the Applicant's July 2018 salary and a further deduction was made from the Applicant's August 2018 salary. Instead of immediately pursuing his challenge following the July decision, the Applicant waited over one month before filing a Management Evaluation Request and an Application for Suspension of Action. The Applicant's delay in applying for a suspension of action in a timely manner undermines the credibility of any allegation of urgency.

3. Irreparable Harm

40. In *Fradin de Bellabre*,⁹ this Tribunal held that "harm is irreparable if it can be shown that suspension of action is the only way to ensure that the Applicant's rights are observed." Mere financial loss is not enough to satisfy this requirement.¹⁰

According to the jurisprudence of this Tribunal, harm nas a1 0] TJ2.06()--Tm [(s)8()na1 0] TJ2.0(c)3(e)

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More specifically, the contested decision is not prima facie unlawful, there is no particular urgency involved and the Applicant will not suffer irreparable harm if this Application is dismissed.

Observations

46. In the event that the Management Evaluation Unit upholds the impugned decision, and the Applicant files a substantive challenge before the Tribunal, the Tribunal will use its best endeavours to schedule the matter for an expedited consideration and disposal.

47. The Applicant is also advised to seek the assistance of counsel for effective representation before the Tribunal, should he wish to file a substantive application.

Conclusion

48. The application for a stay of enforcement of the periodic maintenance provision of the Ghanaian divorce judgment pending management evaluation is hereby rejected.

(Signed)

Judge Alexander W. Hunter, Jr.
Dated this 7th day of September 2018

Entered in the Register on this 7th day of September 2018

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi