

DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2019/098

Order No.: 090 (NBI/2019)

Date: 3 July 2019

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HARMON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Rosangela Adamo, AAS/ALD/OHR

INTRODUCTION

1. The Applicant is a Logistics Assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves on a fixed term appointment at the FS4 level and is based in Kinshasa.

The Application

2. On 2 July 2019, the Applicant moved, pursuant to art. 13 of the UNDT Rules of Procedure, to suspend the Respondent's decision to separate him from service upon expiry of his current contract on 30 June 2019. The Respondent's decision is based on the putative abolition, by the General Assembly, of the post encumbered by the Applicant.

of fact and law are subsequently considered will depend on the evidence, arguments and submissions of the parties.

6. A Tribunal's order granting suspension of action of an administrative decision cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented. The *interim* measure of an injunction will not, and indeed cannot, provide an applicant with effective relief against a decision that has already been implemented.¹

7. Therefore, before entering a discussion on whether the Applicant has met the test for the injunctive relief that is sought, the Tribunal must determine whether the impugned decision has been implemented.

8. In this case, the Respondent blithely submits:

The Applicant's fixed term appointment expired on 30 June 2019. There is no further decision pending with regard to the renewal of the Applicant's fixed term appointment. Therefore, there is no decision to suspend. The Dispute Tribunal is not competent to reverse the decision not to renew the Applicant's fixed-term appointment.

9. The facts of this case are interesting. On 18 June 2019, a Memorandum from the Director of the Field Operations Finance Division informed the Mission that the Controller of the United Nations had approved the extension of *all posts* "including those subject to the decision of the General Assembly, for a period of one month from 1 to 31 July 2019."

10. Still later, on 27 June 2019, the Tribunal made a clear statement in Order No. 083 (NBI/2019) and Order No. 084 (NBI/2019) on the putative unlawfulness of the Respondent's decision to separate staff members from service on grounds of abolition of post before the posts have in fact been abolished. Specifically, the Tribunal stated thus:

The Tribunal finds it surprising that MONUSCO is proceeding with its decision not to renew the Applicant's FTA before the General Assembly has approved the Secretary-General's final budget proposal for 2019/2020. While the ACABQ has

¹ See *Almou* Order No. 103 (NBI/2017).

recommended that the General Assembly approve the budget, this approval is still pending.

15.

(Signed)

Judge Nkemdilim Izuako

Dated this 3rd day of July 2019

Entered in the Register on this 3rd day of July 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi