

Case No.: UNDT/NBI/2019/120

Order No.: 123 (NBI/2019)

Date: 20 August 2019

Original: English

TRIBUNAL

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NSEREKO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION
PURSUANT TO ARTICLE 10.2 OF
THE UNDT STATUTE**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
AAS/ALD/OHR

Introduction

1. The Applicant is a staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves on a on fixed-term appointments (FTA) as Heavy Vehicle Operators at the GL-3/10 level in Entebbe, Uganda,

2. On 29 May 2019, the MONUSCO Chief Human Resources Officer (CHRO) informed the Applicant that his post had been proposed by the Secretary-General for abolition and thus, his FTA would not be renewed beyond 30 June 2019 because his post was being subjected to a “dry cut”.

3. The Applicant wrote to the Management Evaluation Unit (MEU) requesting suspension of action and management evaluation of the non-renewal decision on 14 June 2019. On 19 June, MEU informed the Applicant that his request for suspension of action pending management evaluation was under consideration and that a decision would be made in “due course”. MEU further informed the Applicant that the management evaluation in his case would be completed no later than 29 July 2019.

4. On 21 June 2019, the Applicant filed an application for suspension of action pending management evaluation with the United Nations Dispute Tribunal (UNDT) in Nairobi challenging MONUSCO’s decision not to renew his FTA beyond 30 June 2019 due to the proposed abolition of his post in the mission’s 2019-2020 budget proposal.

5. The Tribunal, having taken note of the fact that the mission’s 2019-2020 budget proposal was still pending approval by the General Assembly, granted the Applicant’s request for suspension of action by its Order No. 083 (NBI/2019) dated 27 June 2019.

6. The General Assembly approved MONUSCO’s 2019-2020 budget 6(n)19(t) 0.0 0.0 rg 0.999

7. The Applicant received a response to his request for management evaluation from the Under-Secretary-General for Management Strategy, Policy and Compliance on 9 August 2019. The Under-Secretary-General informed him that the decision not to renew his FTA would be upheld.

8. On 15 August 2019, the Applicant filed an application under art. 2.1 of the UNDT Statute challenging the decision by MONUSCO not to renew his FTA due to the abolition of his post. At section IX of the application, the Applicant requests “suspension of the implementation of the contested decision not to renew [his] Fixed Term Appointment” as a remedy.

9. The Registry transmitted the application to the Respondent on 19 August 2019. Since there is no requirement, either under art. 10.2 of the UNDT Statute or art. 14 of the Rules of Procedure for the Tribunal to await the Respondent’s response before the applicant’s request for suspension of action is considered, the Tribunal has decided to determine the current request for suspension of action solely on the application and supporting documentation presented by the Applicant.

Considerations

10. The application is made under art. 10.2 of the UNDT Statute and art. 14 of the UNDT Rules of Procedure, which allow the Tribunal to suspend the implementation of the impugned decision pending proceedings where the decision appears *prima facie* to be unlawful, where it is a case of particular urgency and where the implementation would cause irreparable damage. The Tribunal, however, is not competent to suspend implementation of the contested administrative decision in cases of appointment, promotion or termination.

11. The United Nations Appeals Tribunal (UNAT/the Appeals Tribunal) has consistently held that cases of separation following non-renewal constitute a case of appointment and fall under the exclusionary clause of art. 10.2 of the UNDT Statute.¹ The Appeals Tribunal has found that in these cases, “the reversal of the underlying contested decision results in the issuance of a new appointment

¹ *Siri* 2016-UNAT-609, para 33; *Benchebbak* 2012-UNAT-256, paras. 12 and 34.

reflecting ‘expressly or by reference all the terms and conditions of employment’ as provided for in Staff Rule 4.1”.²

12. In the current case, the Applicant is challenging the non-renewal of his FTA with MONUSCO due to the dry cut/abolition of his post by the General Assembly. The Tribunal is satisfied that the subject matter of the application for interim relief is an appointment decision and therefore falls under the exclusionary clause of art. 10.2 of the UNDT Statute and art. 14 of the Rules of Procedure.

13. In light of the foregoing, the Tribunal is not competent to grant the remedy sought by the Applicant in his application.

ORDER

14. This application for suspension of action is accordingly refused.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 20th day of August 2019

Entered in the Register on this 20th day of August 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi