



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/040
Order No.: 113 (NBI/2020)
Date: 15 June 2020
Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BASSEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Sètondji Roland Adjovi

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Joseph Kavoi, AAS/ALD/OHR

9. On 29 May 2020, Ms. Catherine Pollard, Under-Secretary-General for Management Strategy, Policy and Compliance endorsed the MEU's recommendation.²

10. By letter dated 29 May 2020, the MONUSCO Chief, Human Resources Section informed the Applicant that, in accordance with the MEU's recommendation, he would be separated from the Organization upon the expiry of his appointment on 30 June 2020.³

11. The Applicant sought management evaluation of the 29 May 2020 decision on 2 June 2020.

12. On 8 June 2020, the Tribunal issued Judgment No. UNDT/2020/085 in which it dismissed the application in Case No. UNDT/NBI/2020/028 as moot.

Considerations

13. Applications for suspension of action are governed by art. 2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure. Article 13 provides as follows:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears **prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage [emphasis added]**.

2. [...]

3. The Dispute Tribueee hœllD

14. The impugned decision must be shown to be *prima facie* unlawful, the matter must be particularly urgently and it must be evident that implementation of the decision would cause the applicant irreparable harm. All three elements must be satisfied for the Tribunal to grant the injunction being sought, as the test is a cumulative one.

15. 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/she has made out is one which the opposing party would

continuing appointment of Mr. [D], effective 1 July 2019, who had not been retrenched.”⁶ Further, the Respondent did not rebut the Applicant’s arguments that,

The PSA has built fake grounds for the non-renewal of the appointment. For instance, he was told that his post was abolished while it was not. He was then told that the loaned post he was transferred onto was needed back in the office of the Director of Mission Support (“DMS”) yet the DMS uncompromisingly stated the contrary.

.. The claim by the Respondent that based on the terms of the comparative review exercise it was determined that no comparative review was required and that the post he was encumbering was to be abolished as a dry cut is not supported by the facts as the references tgthe as th t1 0 0 1 266.5 6 51

that the decision may have been based on improper motives. The Tribunal finds that based on the foregoing a *prima facie* case of unlawfulness had been established.

Irreparable Harm

21.