



action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

6. The Tribunal must therefore consider the Parties' submissions against the test stipulated in art. 2.2 of the Statute and art. 13 of the Rules of Procedure.

7. It has been variously held that the Respondent's exercise of its broad discretionary authority must not be "tainted by forms of abuse of power such as violation of the principle of good faith in dealing with staff, prejudice or arbitrariness, or other extraneous factors that may flaw his decision".²

8. The Applicant bears the burden of showing that the Respondent did not properly exercise his discretion. The Tribunal is not required at this stage to resolve

11. The Tribunal therefore finds itself in the uncomfortable situation of having to allow a *prima facie* unlawful act to stand because it has already been implemented. An offer has been made to, and accepted by, the selected candidate.

12. The propriety of the recruitment process as a whole can be determined if and when the Applicant decides to challenge it as a substantive application.

13. The Application for Suspension of Action is DISMISSED.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 1st day of July 2020

Entered in the Register on this 1st day of July 2020

(Signed)

Abena Kwakye-Berko, Registrar, UNDT, Nairobi