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**DECLARATION FOR  
SUSPENSION PENDING  
MATERIAL EVALUATION**

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Counsel for the Applicant:  
Self-represented

Counsel for the Respondent:  
DAVALE HR

## **Introduction**

1. The Applicant is a Security Officer, working with United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), based in Goma. He serves on a fixed-term appointment (“FTA”) at the FS-5 level.<sup>1</sup>
2. On 12 August 2020, the Applicant filed before the United Nations Dispute Tribunal in Nairobi an application for suspension, pending management evaluation, of a decision to separate him from service.
3. The Tribunal considered that a reply from the Respondent was not necessary for the determination of the case.

## **Facts**

4. On 1 June 2020, following several months of dispute, MONUSCO notified the Applicant that his FTA would not be extended beyond 30 June 2020.<sup>2</sup>
5. On 8 June 2020, the Applicant requested management evaluation of MONUSCO’s decision of 1 June 2020. On 15 June 2020, in Order No. 113 (NBI/2020), this Tribunal granted the Applicant’s motion for suspension of action pending management evaluation.<sup>3</sup>
6. On 6 August 2020, the MEU informed the Applicant that the contested decision not to renew his FTA beyond 30 June 2020 was taken in compliance with the requisite procedures and relevant legal framework and, therefore, the decision to separate him from service was upheld.<sup>4</sup>

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<sup>1</sup> Application, section I.

<sup>2</sup> Ibid.

<sup>3</sup> It is noted that according to the present motion, on 18 June 2020, the Applicant also requested management evaluation of a separate matter that relates to his other complaint of abuse of authority

<sup>4</sup> MEU decision, dated 6 August 2020.

7. On 7 August 2020, MONUSCO informed the Applicant that following the MEU's upholding of the contested decision, the suspensive effect of the Tribunal's Order of 15 June 2020 came to an end and, thus, the Applicant was being separated from the Organization effective 22 August 2020.<sup>5</sup>

8. On 11 August 2020, the Applicant filed an application on the merits before the Tribunal challenging the decision to not extend his appointment beyond 30 June 2020.<sup>6</sup>

9. On 12 August 2020, the Applicant filed the present application.

### **Considerations**

10. There are various confused indications of the impugned decision in the present application. On the one hand, in section V the Applicant indicated the decision of 29 May 2020 communicated on 1 June 2020 on non-extension of appointment as well as the management evaluation of 6 August 2020; on the other hand, the document attached by way of the impugned decision is the 7 August 2020 memo from MONUSCO, setting a new separation date, as a result of the 6 August management evaluation of the decision from 29 May 2020. No matter which decision to adopt as the subject of the present application, the request must be denied.

11. The application is made under art. 2.2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure, which allow the Tribunal to suspend the implementation of the impugned decision pending management evaluation. The matter of non-extension of appointment has passed that stage because an application on the merits was filed on 11 August 2020, after the MEU pronounced itself. It is also apparent that the notification of 7 August 2020 does not constitute a new decision in the matter of non-extension of appointment, it only sets a new date of separation as a result of developments in the pending litigation.

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<sup>5</sup> Application, annex I.

<sup>6</sup> UNDT/NBI/2020/063.

12. Should the Applicant have wished to contest the designation of the separation date as a discrete administrative decision, he should have requested a separate management evaluation.

13. Consequently, the Tribunal has no jurisdiction under art. 2.2 of the UNDT Statute over any of the decisions indicated by the Applicant.

14. The Tribunal notes that in the case on the merits the Applicant is represented by Counsel and it strongly suggests that henceforth the Applicant consult with his Counsel on the need, the merits and the timing of any intended filings. Otherwise, in accordance with art. 10.6 of the UNDT statute, the Applicant may risk being charged for the costs incurred through manifest abuse of proceedings.

**Conclusion**

15. The application is dismissed.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 18<sup>th</sup> day of August 2020

Entered in the Register on this 18<sup>th</sup> day of August 2020

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi