



## **Introduction**

1.

8. The Applicant requested from MEU the review of the administrative decision concerning the non-extension of his contract as well as the denial, by the ICTR Chief of the Division of Administrative Support Services, of his request for an investigation into the circumstances and reasons for his non-extension.

9. On 27 June 2011, the Applicant filed an application for suspension of action of the contested administrative decision with the United Nations Dispute Tribunal in Nairobi (“UNDT”).

### **Applicant’s Submissions**

10. The Applicant frames his case as follows:

a. The Applicant avers that the decision of non-extension of his contract was not based on a fair assessment of his competence, technical capabilities and performance in relevant telecommunications activities.

b. The criteria of non-availability of funds were not transparently and consistently applied to all abolished/GTA funded international posts of other Sections/Units in Kigali. The exercise in evaluation individual technical capabilities, including the notification process, was not fact based as multiple reasons were provided by the concerned programme managers.

c. The Applicant claims that his application meets the three criteria required by the Statute and Rules of Procedure for the granting of a suspension of action. Firstly, he argues that the decision is unlawful because the functions that he performs as Telecommunications Technicians are still needed. He further avers that the criteria used to determine that he should be separated on 30 June 2011 were not clear to the extent that other staff members in similar situations were retained. Finally, there is an element of urgency as he will be separated on 30 June 2011 if the Tribunal does not grant this application.





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*extending David Kessy's contract whose details are listed below to September 30, 2011. I have requested HR in Kigali to hold off giving a letter of separation to David until we get our response on this request."*

19. The Chief further requested the extension of another staff member, Mr. James Nzuna, until the end of December 2011:

*"In addition, in the light of Section Chiefs meetings yesterday where you*





and asserts that budgetary considerations should not hamper the fair and transparent procedure in the staff retention process.

**b) Urgency of the application**

25. With regard to the second element the Tribunal notes that there was no dispute as to the urgency of the application. The application was filed a couple of days before the Applicant's contract was due to expire on 30 June 2011.

**c) Irreparable harm**

26. With regard to the third criteria, the Applicant submitted that the decision if implemented would cause him irreparable harm as he claims to be the sole "breadwinner" for his family. It would deprive them from an income and cause hardship.

27. The Tribunal notes the Applicant's contention with concern. Sympathetic the Tribunal feels in the face of such situation. The Applicant did not present any evidence of how he would suffer irreparable damage except for an assertion that his career prospects would be jeopardized.

**Final considerations**

28. An application for a suspension of action is in the nature of an injunction, the purpose of which is to maintain the *status quo*

judgment or the interim order. This strategy, it would seem, of filing an appeal has been construed as operating a stay of the suspension decision thus putting an end to the *status quo* between parties with the result that the Administration has the full power to implement the much contested decision. This new found trend of the OLA boils down to making a mockery of articles 13 and 14 of the UNDT Rules of Procedure and Article 8 of the UNDT Statute that specifically confers a power on the UNDT to suspend an administrative action if the three conditions namely, unlawfulness, urgency and irreparable damage are satisfied.

30. Two major consequences flow from this. First, the power of the Tribunal to take an interim decision is being undermined and secondly the consequences for the staff member may be catastrophic from the point of view of his or her career. However unpalatable this reason may sound it is the blunt reality that the Tribunal has to face in the light of the new strategy of OLA.

FOR THE FOREGOING REASONS

31. The application is dismissed.

*(Signed)*

Judge Vinod Boolell

Dated this 25<sup>th</sup> day of August 2011

Entered in the Register on this 25<sup>th</sup> day of August 2011

*(Signed)*

Jean-Pelé Fomété, Registrar, Nairobi