

Introduction

1. The Applicant filed an application contesting the Administration's decision to fill a P-5 level post in the Department of General Assembly and Conference Management ("DGACM") of the United Nations Secretariat without advertising the job vacancy for the said post. The Applicant stated that had the post been advertised, she would have applied and would have been found to fulfill the eligibility requirements.
2. The Respondent submitted in his reply that the present application was not receivable as *inter alia*, the contested decision was a policy decision, not an administrative decision, and did not affect the Applicant's rights. Further, according to the Respondent, the Administration is not always required to issue a vacancy announcement to fill a post but may instead internally move a candidate to a vacant post or, as was the case here, appoint a candidate from a roster of pre-approved candidates.
3. For reason of the present application being unequivocally withdrawn, as explained below, the Tribunal will not pronounce on the merits of the Applicant's claims or of the Respondent's reply.

Proceedings before the Tribunal

4. The Applicant filed her application on 24 January 2011 and the Respondent filed his reply on 28 February 2011, contending that the application was not receivable and without merit. By Order No. 219 (NY/2012), dated 6 November 2012, the Tribunal sought the views of the parties on whether the matter could be dealt with on the papers. The Tribunal also requested further particulars and the production of documents in an redacted form from the respondent.

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party and it is accordingly not a final judgment capable of sustaining a plea of *judicata*.

11. Therefore, a determination on a technical interlocutory matter is not a final disposal of a case, and an order for withdrawal is not always decisive of the issues raised in a case. In *Monagas* UNDT/2010/074, the Tribunal dealt with a withdrawal by the applicant on the grounds that he intended to commence proceedings against the Organization in the national courts of Venezuela. The Tribunal enquired of his counsel whether the applicant was aware of the status of the United Nations before national courts, the fact that the United Nations retained discretion regarding its own immunity, and therefore the hurdles the applicant might face regarding seeking relief in such a manner. Further, notwithstanding that the matter had not been canvassed on the merits, it would be unlikely for it to be reinstated once dismissed. In that case, the Tribunal noted the judgment of Judge Cousin in *Sub-Mekour* UNDT/2010/047 where he found the application of “a general principle of procedural law that the right to institute legal proceedings is predicated upon the condition that the person using this right has a legitimate interest in initiating and maintaining legal proceedings.”

case with a view to finality of proceedings would be the most appropriate course of action.

Conclusion

13. The Applicant has withdrawn the matter fully, finally and entirely, including on the merits, with the intention of resolving the dispute between the parties with finality. There no longer being any determination to make, this application is dismissed in its entirety without liberty to reinstate.

(Signed)

Judge Ebrahim-Carstens

Dated this 7th day of December 2012

Entered in the Register on this 7th day of December 2012

(Signed)

Hafida Lahiouel, Registrar, New York