



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KOURA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
MOTION FOR INTERIM MEASURES**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Introduction and Procedural History

1. The Applicant served as a Conduct and Discipline Officer at the United Nations – African Union Hybrid Operation in Darfur (“UNAMID”). He held a fixed-term appointment at the P-4 level.
2. Between 30 January 2022 and 18 April 2022, the Applicant made several attempts to file this Motion for interim measures before the United Nations Dispute Tribunal (“UNDT”) sitting in Nairobi.
3. He seeks to challenge the Respondent’s decision to separate him from service of the Organisation when his contract expired on 30 November 2021.
4. The Respondent filed his response to the Motion on 28 April 2022.

Submissions

5. It is the Applicant’s case that he was separated from service unlawfully and on the basis of extraneous factors.
6. The Respondent’s submits that the Tribunal does not have the jurisdiction to consider this Motion because it cannot provide the Applicant interim relief on an impugned decision that has already been implemented.

Considerations

7. Applications for suspension of action are governed by art. 2.2 of the Statute of the United Nations Dispute Tribunal and art. 13 of the Tribunal’s Rules of Procedure.
8. The three statutory prerequisites contained in art. 2.2 of the Statute, i.e. *prima facie* unlawfulness, urgency and irreparable damage, must be satisfied for an application for suspension of action to be granted.

9. This Tribunal has previously held that¹:

A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

10. This remedy is however not available in situations where the impugned decision has been implemented. It is well established that, where a contested decision has been fully implemented, suspension of action cannot be granted.²

11. In this case, the Applicant's Motion for suspension of action would have been receivable before Tribunal had he brought it *before* he was actually separated from service. The Tribunal cannot order a stay on a decision that has already been implemented.

Order

12. The Motion is DISMISSED.

(Signed)

Judge Margaret Tibulya

Dated this 6th day of May 2022

Entered in the Register on this 6th day of May 2022

(Signed)

Eric Muli, Legal Officer for

Abena Kwakye-Berko, Registrar, Nairobi

¹ See, *inter alia*, Applicant Order No. 087 (NBI/2014); *Dalgamouni* Order Nos. 137 and 224 (NBI/2014).

² See for example, *Tadonki* UNDT/2009/016; Applicant UNDT/2011/158; *Kweka* UNDT/2011/122; *Tiwathia* UNDT/2012/109; *Laurenti* Order No. 243 (NBI/2013). See also *Pascal*, Order No. 107 (NY/2021); *Chocobar*, Order No. 94 (GVA/2020); *Harvey*, Order No. 10 (GVA/2020).