



**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

**TADONKI**

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for the Applicant:**  
Self Represented

**Counsel for the Respondent**  
Steven Dietrich

**Notice:** The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

## **1. APPEARANCES OF PARTIES**

**1.1 Applicant:** The Applicant represented himself, his Counsel, Mr. Duke Danquah, Esq., from the Office of Staff Legal Assistance, having withdrawn from the case.

**1.2 Respondent:** The Respondent's Counsel, Mr. Steven Dietrich, of the Administrative Law Unit, Office of Human Resources Management (ALU/OHRM) failed to participate in the hearing.

## **2. THE HEARING**

**2.1** The Tribunal decided to hold a hearing on 25 August 2009 at 4.00pm Nairobi time in order to obtain some clarifications from both parties. The statutory notice of hearing was sent out to the parties who all confirmed their attendance. The Applicant was available via a telephone link to the courtroom. The Respondent was to be represented by Mr. Steven Dietrich of the ALU/OHRM. Several attempts were made to reach him in New York on the telephone number provided to the Nairobi United Nations Dispute Tribunal (UNDT) by the Administrative Law Unit but there were no response. Unfortunately after several failed attempts to reach the Respondent at the commencement of the hearing, the Tribunal finally contacted the ALU/OHRM and was informed by Ms. Tanja Titre that the Respondent's Counsel misunderstood the time difference between New York and Nairobi and assumed the time for the hearing, 4.00 p.m. Nairobi time would be 11.00 am instead of 9.00a.m New York time. This was the reason given by the ALU/OHRM for the non-availability of the Respondent's Counsel at the time of the hearing. The Tribunal expressed its outrage at this and did not consider that the reason given for the non attendance of Respondent's counsel was a sufficient justification to accede to a request that the Tribunal should wait longer for the Respondent or his representative. Pursuant to Article 17.2 of the Rules of Procedure of the UNDT, the Tribunal proceeded to the hearing in the absence of the Respondent or his representative.

## **3. CASE BACKGROUND**

**3.1** The Applicant, a staff member of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), filed the present application seeking the order of this Tribunal to

suspend the implementation of the administrative decision of OCHA not to renew his fixed-term appointment beyond 3 September 2009 (the due date of his current contract).

**3.2** This is the second application for suspension of action that the Applicant has filed before this Tribunal since its inception on 1 July 2009. The first application for suspension of action dated 10 July 2009 was filed at the New York Registry of the Tribunal and was transferred to the Nairobi Registry of the Tribunal by virtue of an Order made by Judge Coral Shaw dated 15 July 2009. The Applicant's Counsel withdrew the Motion for Suspension of Action by his application dated 15 July 2009, the day the Motion was scheduled for hearing on the ground that since the appointment of the Applicant had been extended from 16 July to 02 August 2009, "the hearing was moot".

**3.3** The Respondent in this case is OCHA represented by ALU/OHRM of the United Nations as Counsel. The Respondent's Counsel, Mr. Steven Dietrich filed a Reply to the Applicant's application. The application was dated 20 August 2009 and was signed by Ms. Susan Maddox, Officer-in-Charge, ALU/OHRM.

#### **4. APPLICANT'S COUNSEL**

**4.1** Mr. Duke Danquah from the Office of Staff Legal Assistance was the Applicant's Counsel until his last minute withdrawal from the case some hours before the hearing, by email dated 24 August 2009 sent to the Tribunal and to the Applicant. In an addendum to his application dated 25 August 2009, the Applicant expressed regret that his Counsel had withdrawn at short notice.

**4.2** That late withdrawal of the Counsel certainly put the Applicant at a disadvantage and given the deadline for the processing of an application for suspension of action. The Tribunal would have expected Mr. Danquah to seek the leave of the Tribunal before formally withdrawing from the case. In fact, Mr. Danquah advised the Applicant not to press ahead with the application as his employment would be or had been extended. The Applicant refused and pointed out that when he applied for a suspension of action on 10 July 2009 his Counsel withdrew the application without any consultation with him and he was facing a similar situation with the current application.

## **5. EMPLOYMENT HISTORY**

**5.1** The Applicant joined the United Nations in 1999 starting with the United Nations Office of Project Services (UNOPS) and later moved to (OCHA) initially as Senior Regional Advisor for the Southern Africa Humanitarian Information Management Network in Johannesburg. In December 2007 the Applicant was recruited through a competitive process for the position of OCHA Head of Office in Harare, Zimbabwe and he entered on duty on 24 March 2008.

**5.2** The Applicant's fixed-term appointment was extended through 23 April 2009 and thereafter, his appointment has been variously extended as follows:

(a) from 24 April 2009 to 23 April 2009;

(b) from 24 April to 29 May 2009;

(c) from 30 May to 15 July 2009 but was further extended through 02 August 2009 after the Applicant filed a Suspension of Action dated 10 July 2009; and

(d) from 03 August 2009 to 03 September 2009.

## **6. SUMMARY OF FACTS**

**6.1** From the records submitted to the Tribunal, this case has been on for over a year and a number of applications and complaints have been filed by the Applicant.

**6.2** The Applicant submits that the several decisions of the Respondent not to renew his fixed-term appointment started in January 2009. According to the Applicant, he was informed by Ms. Catherine Bragg (Assistant Secretary-General, OCHA) by email dated 27 January 2009 that his contract will not be renewed based on his performance. The email stated *inter alia* ".....after discussion with senior management, OCHA does not intend to renew your contract after its expiry on 23 March, 2009." The Applicant was, by the same email, asked to move to the OCHA Regional Office in Johannesburg. The email was attached as Annex 23 to the Application for Suspension of Action. Upon receipt of the email, the Applicant filed a Request to the Secretary-General on 27 January 2009 to review the administrative decision not to renew his fixed-term appointment after

its expiry on 23 March 2009. The Applicant also filed a Request for Suspension of Action on 27 January 2009 seeking to suspend the implementation of the two administrative decisions.

**6.3** The Tribunal notes that during the oral hearing the Applicant submitted that it was wrong not to renew his contract as a result of non-performance as he had filed a rebuttal to his e-PAS rating and the Rebuttal Panel had recommended that his rating be changed from “*Partially Meets Performance Expectation*” to “*Fully Meets Performance Expectation*”.

**6.4** According to the records provided by the Applicant, the Joint Appeals Board (JAB) considered the request for suspension of action and recommended that the request be rejected on the ground,

*“that the Applicant had not made a prima facie showing that the implementation of the decision not to renew Applicant’s 200-series contract would result in irreparable harm, provided that certain conditions be met before the expiry of his appointment on 23 March 2009.”*<sup>1</sup>

**6.5** On 30 January 2009, the Secretary-General informed the Applicant that he had accepted the JAB’s findings.

**6.6** On 12 March 2009, OCHA gave an indication to the Applicant that his contract will come to an end effective 23 March 2009. The Applicant filed another request for suspension of action on 16 March 2009 but OCHA subsequently extended the Applicant’s appointment for a month through to 23 April 2009. In the light of that extension the JAB did not take any action on this second request for suspension of action.

**6.7** On 16 March 2009, the Applicant filed a rebuttal against his e-PAS of 2008-2009. On 27 May 2009, the Applicant filed an appeal before the New York JAB and on 15 July 2009 the appeal was transferred from the New York UNDT Registry to the Nairobi UNDT Registry for consideration.

**6.8** On 15 June 2009, the Applicant was informed by Human Resources, OCHA Geneva that his contract would end on 15 July 2009. The Applicant filed an application dated 10 July 2009 for

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<sup>1</sup>New York Joint Appeals Board Report No. 2061 dated 22 April 2009, paragraph 7, page 2.

suspension of action on the implementation of that decision communicated to him as aforesaid. As mentioned in paragraph 3.2 above, the application was withdrawn by the Applicant's Counsel after the Applicant's appointment was extended from 16 July 2009 to 02 August 2009.

**6.9** On 07 July 2009 and 10 July 2009, the Human Resources, OCHA informed the Applicant of the following with regard to his sick leave:

- (a) that a notification had been received from the Medical Services for the Applicant's certified sick leave for the period 13 April 2009 to 28 May 2009;
- (b) that the Applicant exhausted his entitlement to certified leave with full pay on 16 April 2009;
- (c) that from 17 April 2009, the Applicant started sick leave with half pay;
- (d) that as of 2 June 2009, the Applicant exhausted his entitlement to certified sick leave with full pay, and effective 3 June 2009 the Applicant had been placed on certified sick leave with half pay (Annex A12- email of 10 July 2009);
- (e) that the Applicant would exhaust all his entitlement to sick leave on 17 July 2009

**6.10** The Applicant's appointment was once more extended from 03 August 2009 to 03 September 2009 and the Applicant was told by Human Resources, OCHA on 28 July 2009 that:

*"...your appointment is being extended only for the purpose of utilizing your sick leave entitlement. To this end, and following notification from the Medical Services that your sick leave was approved and certified until 4 September, we will extend your fixed-term appointment until 3 September only, the date on which you will exhaust your sick leave entitlement."*

**6.11** Based on the decision not to renew the Applicant's appointment beyond 3 September 2009, the Applicant filed the present application seeking the suspension of the implementation of the

contested decision not to extend his contract beyond 3 September 2009. He is also seeking the following by way of relief:

- (a) the Dispute Tribunal orders the Respondent to grant the Applicant an extension of his appointment until 15 July 2010 to enable the Applicant to effectively maintain his cause of action against the Respondent and some reprieve from the negative consequences of the harassment he has been suffering;
- (b) the Dispute Tribunal orders the Respondent to pay immediately, and in a lump sum, all the monies earned by Applicant for which the Respondent has unjustifiably withheld payment;
- (c) the Dispute Tribunal orders the Respondent to remove the improper and defamatory reports entered in his personal files by the Respondent;
- (d) the Dispute Tribunal orders that the Respondent remove the negative and defamatory comments contained in the PAS evaluation of 2007 – 2008 and replace it with positive comments that conform with the improved rating that was recently entered in Applicant's PAS report at the instance of the Rebuttal Panel; and
- (e) the Dispute Tribunal orders that the Respondent, in view of the Applicant's illness, take appropriate measures to cease the ongoing acts of harassment against the Applicant in keeping with the findings of the Panel on Discrimination and Other Grievances report of 30 June 2009.

## **7. RESPONDENT'S REPLY**

**7.1** In his Reply to the Application for Suspension of Action, the Respondent's Counsel submits as follows:

“(a). *The Applicant, Mr. (...) Tadonki, (Applicant) has filed an Application for Suspension of Action, dated 18 August 2009, pursuant to Articles 10(2) and 14 of the United Nations Dispute Tribunal (UNDT) Statute and Rules of Procedure, respectively.*

- (b) *The Applicant requests the UNDT, Nairobi, to suspend the administrative decision dated 29 July 2009 informing him that his contract would not be extended beyond 3 September 2009.*
- (c) *The Respondent notes the Applicant's email dated 20 August 2009 to the Registrar, UNDT, that he wishes to proceed with the subject application because "so far he received no proposal from the administration" in respect of an offer of appointment beyond 3 September 2009."*
- (d) *The Respondent submits that, on 19 August 2009, the Office for the Coordination of Humanitarian Affairs (OCHA) has informed both parties that the Applicant's contract has been extended for another two months until 3 November 2009 (Annex 1).*
- (e) *Given that the Administration has agreed to extend the Applicant's appointment, the Respondent submits that the application does not meet the criteria for temporary relief as set out in Articles 10(2) and 14(1) of the UNDT Statute and Rules of Procedures, respectively.*
- (f) *In view of the foregoing, the Respondent respectfully requests the Tribunal to deny the Application as there is no cause to seek relief."*

**7.2** On 21 August 2009, the Applicant filed a Response to the Respondent's Reply. In his response the Applicant submits, *inter alia*, as follows:

- (a) that the Respondent has previously and repeatedly extended the Applicant contract in extremis to avoid the JAB hearings and even a hearing scheduled by this Tribunal on 15 July 2009 and that such extensions have failed to provide any relief promised by the Respondent;
- (b) that OCHA did not give the Applicant any offer of extension of contract in accordance with the UN rules and regulations;
- (c) the Respondent did not demonstrate good faith in its claim that the present proposal to extend the Applicant's contract through 3 November 2009 was to consider the

recommendations of the Panel on Discrimination and Other Grievances as the report of the PDOG was submitted to the Respondent since 30 June 2009; and

(d) that the Respondent argument of having offered relief to the Applicant is not valid as the contract extensions since July 2009 have been without pay and the current proposed extension through 3 November 2009 is also without pay.

## **8. LEGAL ISSUES**

### **8.1 The applicable law**

**8.1.1** The Applicant filed this application pursuant to Article 14.1 of the Rules of Procedure of the United Nations Dispute Tribunal which reads:

*“At any time during the proceedings, the Dispute Tribunal may order an interim measures to provide temporary relief, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.”*

**8.1.2** During the hearing the Applicant further relied on Article 13.1 of the Rules of Procedure which reads:

*“The Dispute Tribunal shall make an order on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage.”*

### **8.2 The requirements of compliance with international law, principles of the rule of law and due process**

**8.2.1** The core principle that guided the stakeholders involved in the reform of the administration of justice within the UN was the need to,

*“...establish a new, independent, transparent, professionalized, adequately resourced and decentralised system of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.”<sup>2</sup>*

**8.2.2** Employment gives rise to civil rights and this is recognized by various international legal instruments. This right to work is enshrined in Article 23.1 of the Universal Declaration of Human Rights:

*“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”*

**8.2.3** It is also enshrined in Article 6 the International Covenant on Economic, Social and Cultural Rights, where the right to work emphasizes economic, social and cultural development:

*“ (1) The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

*“ (2) The steps to be taken by a State party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”*

**8.2.4** The European Court of Human Rights has ruled that the right to continue in professional practice is a civil right.<sup>3</sup> There is no reason why that principle should not be applicable to all contracts of employment in any civilized society. It follows that disputes arising out of a contract of employment should be dealt with according to fair procedures and the provisions guaranteeing the right to work should be interpreted according to international human rights norms.

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<sup>2</sup> General Assembly Resolution A/Res/62/253

<sup>3</sup> *Albert and Le Compte v. Belgium*, European Court of Human Rights, 10 February 1983, A058.

**8.2.5** Due process requires that Management complies with its own rules relating to staff. The Staff Rules embody the principles that should be observed in the application of due process to staff members and they are to be found in Rule 1.1 (c)

*The Secretary-General shall ensure that the rights and duties of staff members, as set out in the Charter and the Staff Regulations and Rules and in the relevant resolutions and decisions of the General Assembly, are respected.*<sup>4</sup>

**8.2.6** The Tribunal also notes that the Heads of State and Government, who gathered at the United Nations Headquarters in New York from 14 to 16 September 2005, reaffirmed their faith in the United Nations and their commitment to the purposes and principles of the Charter of the United Nations and international law. They also resolved to ensure full respect for the fundamental principles and rights at work.<sup>5</sup>

**8.2.7** It follows therefore that the rules and regulations of the United Nations relating to employment should be interpreted and applied in a manner that takes into account the international human rights standards. They should not be narrowly construed in view of the well established principle that statutes should, if possible, be construed so as to conform to international instruments.

**8.2.8** The way in which the employment is terminated should therefore be considered in the context of the rights of the employee to due process and the compliance by the decision maker to international law and principles of the rule of law. Article 1.3 of the Charter of the United Nations enjoins the Organisation to promote and encourage respect for human rights. Compliance with the international human rights norms and the interpretation of the rules and regulations of the Organisation in compliance with international standards would therefore mean that a staff member has the right to work under the terms and conditions he agreed to and is entitled to just conditions of work and to protection against unfair dealings in the course of his employment.

## **9. NATURE OF INTERIM MEASURES**

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<sup>4</sup> Staff Rules and Regulations, Secretary General Bulletin ST/SGB/2009/7 16 June 2009, Rule 1.1 (c)

<sup>5</sup> General Assembly Resolution, A/RES/60/1, 2005 World Summit Outcome.

**9.1** In deciding whether an interim measure should be ordered, courts in most national jurisdictions are guided by the following principles:

- (i) There must be a serious issue to be tried and the claim must not be frivolous and vexatious;
- (ii) The Tribunal should consider the balance of convenience. This requires the Tribunal to consider the adequacy of damages and whether, if the Applicant were to succeed on the merits of the case, he could be adequately compensated by an award of damages for the loss he would have sustained as a result of the action of the Respondent. If the Tribunal considers that damages would be an adequate remedy and the Respondent is capable of paying such damages then an injunction will not be granted.

## **10. ISSUES CANVASSED**

**10.1** The issue canvassed by the Respondent to be considered in this ruling is whether or not the application meets the requirements for granting temporary relief in view of the contention of Respondent's Counsel in his Reply that:

*“ ...there is no cause to seek relief as the application does not meet the criteria for temporary relief as set out in Article 10(2) and 14(1) of the UNDT State and Rules of Procedures, respectively.”*

**10.2** The Respondent's Counsel, in his Reply to the Application for suspension of action, stated that the Respondent *“has agreed to extend the contract for another two months until 3 November 2009 pending the decision of OHRM on the recommendation of the PDOG and the results of the mediation that is presently being conducted by the Ombudsman's Office.”* The Respondent did not produce any evidence to show that the Applicant's appointment has in fact been extended. In his written response to the Respondent's Reply and during his oral submission at the hearing, the Applicant stated that the Respondent had not made any offer to him on the extension of his appointment beyond 3 September 2009. His stand was that the decision of the Respondent not to renew his contract beyond 3 September 2009 had not changed.

**10.3** Having regard to the fact that there is no evidence before the Tribunal to prove that the Applicant's appointment has indeed been extended, the Tribunal considers the statement in the Respondent's Reply as speculative. The Tribunal deals with facts and law and not speculations. From the submissions before the Tribunal, it is clear that the Respondent has established a tradition of extending the Applicant's contract for short periods immediately following an application for suspension of action by the Applicant. This conduct by the Respondent is an attempt to continue to postpone the final resolution of the dispute and it qualifies as an administrative decision that this Tribunal is entitled to put a stop to. Therefore, the Tribunal holds the view that it is entitled to entertain the application for suspension of the contested decision.

**10.4** By virtue of the provisions of Article 13(1) of the Rules of Procedure of the UNDT the application must satisfy the following requirements before the Tribunal can grant a suspension of the implementation of the contested decision, that is:

- (a) where the decision appears *prima facie* to be unlawful;
- (b) in cases of particular urgency; and
- (c) where the implementation of the decision will cause irreparable damage.

**10.5** In addition to the three elements above, the contested administrative decision which is being requested to be suspended must not have been implemented at the time of the Application.

## **11. PRIMA FACIE UNLAWFULNESS OF THE DECISION**

**11.1** Given the fact that the proposed non-renewal or termination of the fixed-term appointment appears to be based on the alleged non-performance of the Applicant, the Tribunal notes that the Rebuttal Panel on e-PAS allowed the appeal of the Applicant and recommended that his rating be changed from "*Partially Meets Performance Expectation*" to "*Fully meets Performance Expectation*". There is no evidence produced by the Respondent that this decision has been implemented and if implemented, what effect it will have or have had on the prospect of the continued employment of the Applicant.

**11.2** The Tribunal also notes that the Applicant filed a request for management evaluation in respect of the contested decision. The outcome of the evaluation has not yet been released. The Panel on Discrimination and Other Grievances released its decision to the following persons on 30 June 2009: Ms. Catherine Pollard Assistant Secretary General for Human Resources Management; Mr. John Holmes, Under-Secretary-General for Humanitarian Affairs; Ms. Helen Clark, Administrator, UNDP; and the Applicant. The recommendations signed by Ms. Zehra Aydin, Acting Coordinator Panel on Discrimination and Other Grievances are yet to be implemented by the Management.

**11.3** The decision not to renew the contract of the Applicant appears to be in breach of the Organization's Rules that the Management is bound to comply with and in breach of international legal norms relating to due process. The Tribunal therefore considers that any decision not to renew the fixed-term appointment of the Applicant and to resort instead to extensions of the contract when faced with applications for suspension of action is *prima facie* unlawful. The recommendation of the Rebuttal Panel and the recommendations of the Panel on Discrimination and Other Grievances were made pursuant to the rules, regulations and policies of the United Nations and the Management must respect its own rules and regulations.

## **12. THE URGENCY ELEMENT**

**12.1** On the question of urgency, the Applicant has been informed that his contract will not be renewed and will be terminated on 3 September 2009. The email from Ms. Bragg dated 20 January 2009 (Annex 23 to the Application) forms the foundation for the various non-renewal notices. The urgency in an application for suspension of action is underscored by the fact that if the decision contested is implemented before the consideration of the substantive appeal on the merits, the Applicant might be denied the chance of regaining the position he was occupying or should be occupying in the event that he or she is successful on the substantive case especially if the position were to be filled. Notwithstanding that it has allegedly been agreed that the contract will be extended after 3 September 2009, the Tribunal is of the view that the matter is urgent because this is not the first time that this particular strategy is being used by OCHA towards the Applicant.

## **13. IRREPARABLE DAMAGE**

**13.1** The well-established principle is that where damages can adequately compensate an applicant, if he is successful on the substantive case, an interim measure should not be granted. But a wrong on the face of it should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict. Monetary compensation should not be allowed to be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process. In order to convince the Tribunal that the award of damages would not be an adequate remedy, the Applicant must show that the Respondent's action or activities will lead to irreparable damage. An employer who is circumventing its own procedures ought not to be able to get away with the argument that the payment of damages would be sufficient to cover his own wrongdoing. The facts giving rise to unfair procedure in this case include the following:

- (i) the disregard of the decision of the Rebuttal Panel on the evaluation of the performance;
- (ii) the absence of a decision by management following the communication of the report of the Panel on Discrimination and Other Grievances since 30 June 2009; and
- (iii) the delay to take the appropriate action in the light of those recommendations.

**13.2** The Applicant has stated in his oral submissions in the course of the hearing that the non-renewal of his employment will impact adversely on his professional integrity, his career prospects, and on his health. On the latter, he further mentioned that his state of health has been deteriorating from the consequences and the psychological stress deriving from the discrimination, harassment and victimization that he had suffered from the genesis of this case.

## **14. CONCLUSION**

**14.1** The balance of convenience test should generate a solution that will generally cause the least injustice to the parties. Having considered the facts and legal principles applicable the Tribunal concludes that the balance of convenience lies on the side of the Applicant. The Applicant will suffer more than the Respondent if this application is not granted. The Applicant will not have a paid appointment and will suffer psychological stress that will compound his state of health.

**15. ORDER**

**15.1** Having considered the facts presented in the documents and arguments submitted by both parties to the Tribunal and having regard also to the fact that management evaluation is still pending on the contested decision and after hearing all the clarifications, explanations and submissions of the Applicant during the hearing, the Tribunal, pursuant to article 13.1 of the Rules of Procedure of the United Nations Dispute Tribunal, orders the suspension of the Respondent's decision not to renew the employment at any time from the date of the present Order pending the final determination of the substantive appeal of the Applicant.

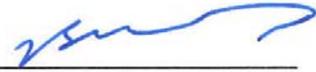
**15.2** In addition Article 14.1 of the Rules of Procedure empowers the Tribunal to make an interim measure to provide temporary relief to the parties which may include a suspension of the implementation of the administrative decision. This suspension is not linked to a management evaluation as under Article 13 of the Rules of Procedure. However the Tribunal cannot order a suspension of action in cases of appointment, promotion or termination. Terms like *termination*, *non-extension* or *non renewal* may appear in the documents and the facts submitted to the Tribunal. This by itself does not and cannot bind the Tribunal in its sovereign powers to evaluate facts and draw the appropriate legal and factual consequences. After perusing the documents and considering the facts, the Tribunal concludes that the situation gives rise to a non renewal of a contract and not to mere termination of a contract.<sup>6</sup> Therefore in the exercise of its powers under Article 14.1 of the Rules of Procedure, the Tribunal orders temporary relief as follows:

**Respondent is ordered to pay and shall pay to the Applicant half his salary from the date of this Order until the final determination of the case.**

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<sup>6</sup> See *Goddard v The Secretary General of the United Nations*, Case No. 1184, Judgment No. 1132, 30 September 2003.

Case No. UNDT/NBI/2009/36  
Judgment UNDT/2009/016



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Judge Vinod Boolell

Dated this 1<sup>st</sup> day of September 2009

Entered in the Register on this 1<sup>st</sup> day of September 2009



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Jean-Pelé Fomété, Registrar, UNDT, Nairobi