



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

WANJALA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Rosangela Adamo, AAS/ALD/OHR, UN Secretariat

INTRODUCTION AND PROCEDURAL HISTORY

1. The Applicant is an Aviation Safety Officer with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). He filed an application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi on 13 March 2019 challenging the decision to “[discontinue] his onboarding process after being selected for a post with MONUSCO and condemnation never to serve or compete for any position with MONUSCO.”

2. The Respondent filed a reply on 15 April 2019 in which he submitted that the application is moot because the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) had rescinded the contested decision.

3. The Applicant filed observations on the Respondent’s reply on 29 April 2019.

4. The Tribunal has decided, in accordance with art. 16.1 of the Tribunal’s Rules of Procedure, that an oral hearing is not required in determining the issues raised in this case and will rely on the parties’ pleadings.

FACTS

5. The facts laid out below are an abstract of the parties’ pleadings and additional submissions.

6. The Applicant entered service with MONUSCO in Entebbe, Uganda, as an Aviation Safety Officer at the NPO-C level in May 2013. He was placed on the roster for GJO Aviation Safety Officer at the P-3 level in September 2015 after being cleared by the Field Central Review Board (FCRB).¹

7. Upon learning that he could be considered for selection as international staff in the same mission only if he applied as an external candidate, he submitted his

¹ Application, page 5.

resignation from MONUSCO on 26 May 2017 and was separated from service on 6 June 2017.²

8. On 1 June 2017, Job Opening (JO) 80008 for the position of Aviation Safety Officer at the P-3 level with MONUSCO, in Goma, was advertised in Inspira. The Applicant applied for JO 80008 on 8 June 2017.

9. On 3 July 2017, the Applicant was informed by a MONUSCO Human Resources Officer that he had been selected for JO 80008.³ This was followed up by the Onboarding and Separation Service Line at the Regional Service Centre in Entebbe (RSCE) with a Letter of Offer dated 11 July 2017, which the Applicant accepted on 20 July 2017.⁴

10. According to the Applicant, he commenced pre-deployment training at the RSCE on 21 August 2017 but was directed to stop and await further guidance.⁵

11. On 19 October 2017, the Applicant received an interoffice memorandum from the Officer-in-Charge (OiC) of the MONUSCO Human Resources Section (HRS) informing him of the nullification of his application for JO 80008 because locally recruited mission staff could only be recruited as international staff through a normal recruitment process in which they compete for international posts in another mission along with other external candidates. He was further informed that he would be reinstated to his old position as an Aviation Safety Officer at the NPO-C level effective 7 June 2017. The Applicant accepted the reinstatement offer on 24 October 2017.⁶

12. On 25 October 2017, the Applicant applied for Generic JO (GJO) 87574 for the post of Aviation Safety Officer with MINUSMA. He was appointed to this position in March 2018.

13. On 21 November 2017, the Applicant requested management evaluation of the

² *Ibid.*

³ *Ibid*, annex 3.

⁴ *Ibid*, annex 4.

⁵ *Ibid*, page 6.

⁶ *Ibid*, annex 7.

decision to nullify his offer of appointment for JO 80008. He did not receive a response from the Management Evaluation Unit.

14. On 14 February 2018, he filed an application with the Tribunal to challenge the nullification of his offer of appointment for JO 80008. This was registered as Case No. UNDT/NBI/2018/024. The Applicant withdrew his application on 14 April 2018 following informal settlement with Administration.⁷

15. On 18 August 2018, the Applicant applied for GJO 101990 for the post of P-3 Aviation Safety Officer with MONUSCO in Goma. He was informed on 17 October 2018 by MONUSCO that he had been selected for GJO 101990.⁸ On 25 October 2018, the Applicant provided the RSCE with additional information and documentation that had been requested to process his appointment.⁹

16. By email dated 6 December 2018, a Human Resources Officer at the RSCE informed the Applicant that his onboarding with MONUSCO for GJO 101990 would not continue because former local staff were deemed ineligible to be appointed as international staff in the same mission they had served as national staff.¹⁰

17. The Applicant requested management evaluation of the decision to discontinue his onboarding process for GJO 101990 on 21 December 2018 and when he did not receive a reply, he filed the current application with the Tribunal on 13 March 2019.

18. On 29 March 2019, the MONUSCO HRS informed the Applicant that the mission was preparing to proceed with his onboarding process for GJO 101990 and asked him to confirm his continued interest in the position.¹¹

19. On 31 March 2019, the Applicant informed the MONUSCO HRS that he had decided to stay in his current position with MINUSMA. MONUSCO HRS confirmed

⁷ Order No. 062 (NBI/2018).

⁸ Application, annex 10.

⁹ *Ibid.*

¹⁰ *Ibid.*, annex 12.

¹¹ Respondent's reply, annex R/1.

receipt of his response on 4 April 2019.¹²

SUBMISSIONS

20. The Respondent submits that the application is moot and should be dismissed because MONUSCO has rescinded the contested decision thus there is no longer a justiciable matter before the Tribunal. The Respondent also submits that the application is not receivable to the extent that the Applicant seeks to re-litigate Case No. UNDT/NBI/2018/024, which was settled informally and the Applicant withdrew his application. The Respondent objects to the Applicant's request for moral damages since he has not adduced any evidence of harm and there is no dispute for the Tribunal to adjudicate.

21. The Applicant contends that his application is still live because MONUSCO's email of 29 March 2019 is merely an implied rescission of the contested decision and that unless the basis for the contested decision is clarified with the RSCE, he could be subjected to further harassment. He submits that the administration's failure to provide a decision in respect to the denial of his on-boarding violates ST/AT/2010/3 (Staff selection system) and is an abuse of process. He further submits that the decision communicated to him on 29 March 2019 was only made after he filed an application with the Tribunal and therefore amounts to harassment, especially since a similar case had been withdrawn after management accepted it had made a mistake. The Applicant requests the following remedies:

- a. A declaration from the Tribunal that the decision by administration to indefinitely exclude him from appointment with MONUSCO is unlawful, unfair and illegal.
- b. Reinstatement of his entitlement and freedom to fairly compete for posts within other missions, including MONUSCO.
- c. That MEU be held accountable for failing to provide timely guidance to RSCE

¹² *Ibid.*

and MONUSCO Human Resources Section on the policies in question.

- d. Compensation in the amount of six months' salary for the mental stress and agony he has suffered because of the unfair treatment meted out to him by the Organization.
- e. That the Tribunal issue "broader instructions to management so that such uncalled-for harassment does not go unrecognized".

CONSIDERATIONS

22. The Respondent is seeking the dismissal of the current application on the basis that the decision to discontinue the Applicant's onboarding with MONUSCO for GJO 101990 was rescinded on 29 March 2019 and thus, the application is moot. The Applicant contends that his application remains live until the RSCE clarifies the basis for the impugned decision. Is the Respondent's assertion of mootness correct?

23. In *Kallon* 2017-UNAT-742, the United Nations Appeals Tribunal (the Appeals Tribunal) made the following observations on the mootness doctrine:

44. A judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance; thus placing the matter beyond the law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect. The mootness doctrine is a logical corollary to the court's refusal to entertain suits for advisory or speculative opinions. Just as a person may not bring a case about an already resolved controversy (*res judicata*) so too he should not be able to continue a case when the controversy is resolved during its pendency. The doctrine accordingly recognizes that when a matter is resolved before judgment, judicial economy dictates that the courts abjure decision.

45. Since a finding of mootness results in the drastic action of dismissal of the case, the doctrine should be applied with caution. The defendant or respondent may seek to "moot out" a case against him, as in this case, by temporarily or expediently discontinuing or formalistically reversing

the practice or conduct alleged to be illegal. And a court should be astute to reject a claim of mootness in order to ensure effective judicial review, where it is warranted, particularly if the challenged conduct has continuing collateral consequences. It is of valid judicial concern in the determination of mootness that injurious consequences may continue to flow from wrongful, unfair or unreasonable conduct.

24. Although the phrasing of the Applicant's remedies is convoluted and confusing, the decision communicated to him on 29 March presents essentially the relief sought by the Applicant in his application dated 4 March 2019 and while the Applicant is still insisting on clarification from the RSCE as to the basis for the impugned decision, this neither minimizes nor negates the fact that the administration acceded to his request and rescinded the impugned decision altogether. Once the rescission decision was communicated to him, his claim against the discontinuance of his onboarding became moot.

25. In the same spirit as the holding of *Kallon*, cited above, it is noteworthy that already in *Gehr*, this Tribunal held that in cases where the Administration rescinds the contested decision during the proceedings, the applicant's allegations may be moot unless the applicant can prove that he or she still sustains an injury for which the Tribunal can award relief.¹³ Likewise, this Tribunal specified in *Lahoud* that it will consider "an application moot insofar as either the matter is resolved in a manner consistent with the thrust of the application, e.g., the Administration withdrew from the decision or the claim was otherwise satisfied to the effect there is no *gravamen* on the part of the applicant, or the claim cannot be satisfied for objective reasons.[...] However, the question needs to be analyzed in relation to the nature and extent of the claim [...] The application certainly does not automatically become moot in relation to a claim for compensation."¹⁴

26. The Applicant alleges abuse of authority and harassment and requests compensation in the amount of six months' salary for "mental stress and agony". The Applicant wants the Tribunal to accept: (i) his assertion that he has been subjected to

¹³ *Gehr* UNDT/2011/211, confirmed by 2013-UNAT-328;

¹⁴ *Lahoud* UNDT/2017/009 at para 23.

harassment because the administration rescinded the impugned decision only after he filed his application with the Tribunal; and (ii) his speculation that unless the RSCE clarifies the basis for the impugned decision, he could be subjected to further harassment.

27. The Tribunal recalls the Appeals Tribunal's further holding in *Kallon*¹⁵ that for a breach or infringement to give rise to moral damages, especially in a contractual setting, where normally a pecuniary satisfaction for a patrimonial injury is regarded as sufficient to compensate a complainant for actual loss as well as the vexation or inconvenience caused by the breach, then, either the contract or the infringing conduct must be attended by peculiar features, or must occur in a context of peculiar circumstances.

28. In the present case, the Applicant has not tendered any particulars or evidence to support, prove and/or explain his allegations of harassment, abuse of authority and mental stress and agony. In any event, the Tribunal finds that the disputed matter was contractual in nature, the breach was unintentional, resulting from an error in interpreting rules rather than from negligence, and short-lasting, as the Respondent corrected himself within three months. The magnitude of financial or other inconvenience caused to the Applicant must not have been great given that he voluntarily withdrew from the move to MONUSCO. As such, the facts do not form the basis for moral damages.

29. Accordingly, the Tribunal finds the application to be moot as to the main claim and unfounded in relation to the claim for damages.

JUDGMENT

30. The application is dismissed in its entirety.

¹⁵ 2017-UNAT-742, para. 62.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 25th day of July 2019

Entered in the Register on this 25th day of July 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi