



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NEGASA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Nusrat Chagtai, AAS/ALD/OHR, UN Secretariat

INTRODUCTION AND PROCEDURAL HISTORY

1. The Applicant is a staff member of the United Nations Mission in South Sudan (UNMISS). He serves as a Security Officer at the FS-5 level. On 11 December 2018, he filed an application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi challenging the decisions to designate a staff member, who is also at the FS-5 level, as his First Reporting Officer (FRO) and the instruction for him to work for Warrior Security Limited Company, a contractor providing security services to UNMISS.

2. The Respondent filed a reply on 21 January 2019 in which he contested, *inter alia*, the receivability of the application.

3. By a motion dated 7 February 2019, the Applicant sought leave to file additional submissions. The motion included the Applicant's additional submissions and documents. The Tribunal granted his motion.

4. The Tribunal, by its Order No. 018 (NBI/2019) dated 14 February 2019, directed the Applicant to provide a response on the issue of the receivability. The Applicant complied with Order No. 018 on 1 March 2019.

5. On 22 February 2019, the Respondent sought leave to file a rejoinder to the Applicant's motion of 7 February 2019. The rejoinder was attached to the motion. The Tribunal granted the Respondent's motion and accepted the rejoinder as filed.

6. On 20 August 2019, the Applicant filed a motion informing the Tribunal that he had received his performance evaluation for 2018-2019 and that the administration had changed his FRO from the FS-5 level staff member to the Deputy/Field Security Coordination Officer, who is at the P-3 level. The Applicant filed his 2018-2019 e-PAS with his motion.

FACTS

7. The facts of this case have been garnered from the parties' pleadings and

additional submissions.

8. The Applicant joined UNMISS on 11 December 2011 as a Security Officer with the Integrated Security Section in South Sudan (Integrated Security Section).¹ An organigram for the Integrated Security Section, which was submitted by the Respondent, shows that the Applicant was assigned to the Integrated Operations Center-UN House (IOC) in May 2018.²

9. On 13 September 2018, the Applicant was reassigned within the Security Section in Juba from the IOC to the Guard Force Unit (GFU) in Tomping.³ In accordance with a September 2018 organigram for the Integrated Security Section, which was submitted by the Applicant, his new supervisor at the GFU was supposed to be the P-3 Deputy/Field Security Coordination Officer at Tomping.⁴

10. By email dated 18 September 2018, the Commander of the GFU (C/GFU) in Tomping, a Security Officer at the FS-5 level, welcomed the Applicant to the GFU and provided his work schedule commencing 19 September 2018.⁵

11. On 21 September 2018, the C/GFU emailed the Applicant again regarding his alleged “abandonment of duties” and requested that he adhere to the duty roster and requirements of GFU Tomping.⁶

12. On 24 September 2018, the Applicant emailed the UNMISS Human Resources Section (HRS) to inform them that he had been told the C/GFU, who was at the FS-5 level as was the Applicant, would be serving as his FRO. In this respect, he sought advice from HRS on the designation of First Reporting Officers (FROs) and Second Reporting Officers (SROs).⁷

¹ Respondent’s reply, annex R1.

² *Ibid*, annex R2.

³ Application, annex 2.

⁴ Applicant’s submission of 1 March 2019, exhibit 8.

⁵ Respondent’s reply, annex R3.

⁶ *Ibid*.

⁷ Application, annex 1.

13. On 12 October 2018, the Field Security Coordination Officer for Juba (Central Equatoria) responded to the Applicant's 24 September 2018 email that UNMISS HRS had confirmed that due to the absence of clear rules and regulations, a staff member could be assigned to supervise other staff members at the same level at the discretion of the administration.⁸

14. By memorandum dated 17 October 2018 from the UNMISS Chief Human Resources Section, the C/GFU was officially designated as the Applicant's supervisor with immediate effect.⁹

15. On 26 October 2018, the Applicant requested management evaluation.

CONSIDERATIONS

16. Considering the Applicant's motion and submission of 20 August 2019, the question before the Tribunal is whether the Applicant still has a live claim or should his application be deemed moot and dismissed.

17. In *Gehr*¹⁰, this Tribunal held that:

37. In cases where the Administration rescinds the contested decision during the proceedings, the applicant's allegations may be moot. This is normally the case if the alleged unlawfulness is eliminated and, unless the applicant can prove that he or she still sustains an injury for which the Tribunal can award relief, the case should be considered moot.

18. In *Kallon*¹¹, the United Nations Appeals Tribunal (UNAT/the Appeals Tribunal) held that:

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,

⁸ *Ibid.*

⁹ *Ibid.*, annex 7.

¹⁰ Judgment No. 2011/UNDT/211.

¹¹ Judgment No. 2017-UNAT-742.

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.

19. Although the Applicant is challenging two decisions in his application of 11 December 2018 (see paragraph 1 above) and his submission of 7 February 2019 contains allegations of harassment and retaliation in relation to a performance improvement plan (PIP), his sole request for management evaluation contests only one decision i.e. "the decision to appoint Mr. JP, Chief Guard Force, FS-5, who is the same Professional Grade as the staff member (i.e. FS-5), as his First Reporting Officer (FRO) for reporting line, administrative, e-performance and all other related purposes."¹².

20. Since the Applicant has not sought management evaluation of the alleged instruction for him to work for Warrior Security Limited Company or his allegations of harassment and retaliation in relation to the PIP, those claims are not properly before the Tribunal.¹³ Consequently, the decision to appoint the C/GPU as the Applicant's supervisor and FRO is the only decision that the Tribunal can entertain.

¹² Application, annex 10.

¹³ See art. 8.1(c) of the UNDT Statute and staff rule 11.2(a).

21. To determine whether there would be continuing collateral consequences for the Applicant should his application be dismissed, the Tribunal examined the remedies sought by the Applicant in his application, which are as follows: (i) rescission of the 17 October 2018 decision to appoint the C/GPU as his FRO; (ii) appointment of an FRO who is at a higher level than the Applicant to supervise him; and (iii) reinstatement of an application relating to a selection exercise, Case No. UNDT/NBI/2015/041, that he withdrew on 18 May 2015.

22. Clearly, the Tribunal cannot reinstate an application that was withdrawn by the Applicant in 2015 and has no bearing whatsoever on the decision he is contesting in his application of 11 December 2018.

23. It is also clear that UNMISS has rescinded its 17 October 2018 decision by appointing the Deputy/Field Security Coordination Officer, who is at the P-3 level, as the Applicant's supervisor and FRO. In this respect, the Tribunal notes that the Applicant's 2018-2019 e-PAS was completed by the Deputy/Field Security Coordination Officer as his FRO and by the Field Security Coordination Officer as his SRO. Since the e-PAS has been completed, the Tribunal is satisfied that the Respondent is not seeking to "moot out" the case against him by temporarily or expediently discontinuing or formalistically reversing his decision to designate the C/GPU as the Applicant's supervisor/FRO.

24. Given that the Respondent has granted the Applicant the remedies he sought, the Tribunal concludes that the Applicant no longer has a live claim and that his application is now moot.

JUDGMENT

25. The application is dismissed as irreceivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 12th day of September 2019

Entered in the Register on this 12th day of September 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi