



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HANDY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Natalie Puchalka, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Rosangela Adamo, AAS/ALD/OHR

FACTS AND PROCEDURE

1. The Applicant is a Political Affairs Officer, working with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”).¹ On 2 July 2019, he was notified by MINUSCA of the decision not to renew his fixed-term appointment beyond 31 July 2019.² On 15 July 2019, the Applicant requested management evaluation of the contested decision.³ Effective 1 August 2019, however, the Applicant’s appointment was being renewed every month.⁴

2. Having not received a response to his management evaluation request in time⁵, on 16 September 2019, the Applicant filed an application with the United Nations Dispute Tribunal seeking rescission of the contested decision.⁶ The Management Evaluation Unit (“MEU”) responded on 23 September declining evaluation on the basis that the extension of the Applicant’s appointment rendered the request moot. The same communication informed him of MINUSCA’s decision that his appointment would be extended on a monthly basis pending the outcome of the rebuttal procedure.⁷

SUBMISSIONS

3. The Respondent filed a reply on 21 October 2019 where it is argued that the application is not receivable *ratione materiae* on the basis that the Applicant’s appointment has been renewed. As such, the Applicant has been granted the relief that he requested and thus the application has become moot and should be dismissed.

4. The Applicant maintains that the application is receivable because the Administration has not exhibited a genuine intention of renewing his fixed-term appointment; the decision to renew his appointment on a monthly basis belies a reality

¹ Application, section I.

² Application, para 4, annex 1.

³ Application, annex 2.

⁴ Reply, annexes 1-3.

⁵ Application, section II, para. 9.

⁶ Application, section V.

⁷ Reply, R/4.

that a decision has been made not to renew his appointment. He submits that he suffered material harm as a result of the short-term extensions as they have caused him stress and anxiety and affected his ability to make long term plans and financial commitments.⁸

CONSIDERATIONS

5. The Tribunal recalls that the application is directed against a specific decision of the Administration not to renew the Applicant's fixed-term appointment beyond 31 July 2019. This is also the only grievance that the Applicant had presented to MEU.⁹ Both before the MEU and the Tribunal, the Applicant had requested for a single remedy, namely, to have the decision to not renew his fixed-term appointment rescinded.¹⁰ As such, the Tribunal agrees with the Respondent that the application is moot because the contested decision has been effectively rescinded and superseded by subsequent renewals of the Applicant's appointment beyond 31 July 2019.¹¹

6. As this Tribunal held in *Lahoud*¹², an application is 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 that there is no *gravamen* on the part of the applicant, or the claim cannot be satisfied for objective reasons. In *Gehr*, this Tribunal held, as was subsequently confirmed by the United Nations Appeals Tribunal (UNAT), 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 This was more recently confirmed by UNAT in *Kallon*.¹⁴

⁸ Response pursuant to the Tribunal's Order No. 168 (NBI/2019).

⁹ Application, annex 3, para. 1.

¹⁰ Application, section V and annex 3.

¹¹ Reply, R/1, R/2 and R/3.

¹² *Lahoud* UNDT-2017-009.

¹³ *Gehr* UNDT/2011/211, confirmed by 2013-UNAT-328; see also *Lahoud* UNDT-2017-009.

¹⁴ *Kallon* 2017-UNAT-742 para. 44.

7. In the present case, the Applicant had requested the Tribunal to order a rescission of the decision not to renew his fixed-term appointment beyond 31 July 2019. This request was, effective 1 August 2019, satisfied by the Administration. The requested relief having been fully granted, there is no longer a justiciable matter before the Tribunal.

8. To the extent the Applicant's most recent filing indicates that he is not satisfied by short-term renewals of his appointment either, and that he suffered material harm as a result of short-term extensions, the Tribunal considers these grievances to be directed against a discrete decision, communicated to the Applicant expressly through the memorandum by MEU dated 23 September 2019, to refuse him a longer-term appointment. A new application to this effect might be hypothetically receivable, under the condition that the Applicant articulates the claim as such, indicates the requested duration of appointment and identifies a decision refusing it, moreover, that he follows the applicable procedure starting with submitting so identified decision for management evaluation. The present application, however, does not allow the Tribunal to extend its cognizance over the short-term extensions without transgressing the identity of the contested decision; it is directed against a decision of different content, issued on a different date, it is alleging a different injury and calling for a different remedy.

9. To the extent it might be taken that the Applicant's most recent averment of material damage through stress and the inability to make long-term financial commitments relates also to the rescinded decision on non-extension of appointment – which appears as a last-minute attempt to keep the application alive - the Tribunal considers it unfounded. The impugned decision, having never been implemented, moreover, suspended by this Tribunal as of 22 July 2019,¹⁵ was incapable of causing material loss. As concerns moral injury, the Tribunal recalls the Appeals Tribunal holding in *Kallon*, that for a breach or infringement to give rise to moral damages, either the contract or the infringing conduct must be attended by peculiar features, or

¹⁵ Application, annex 5.

must occur in a context of peculiar circumstances.¹⁶ The Tribunal does not find peculiar circumstances of the impugned decision, given that it never took effect and even as a purely formal matter was short-lived, as the system of correction worked promptly. In any event, the Applicant, invited by the Tribunal to submit evidence, did not offer any.¹⁷

10. Considering the aforesaid, the application is moot as to the main claim and unsubstantiated in respect of causing any damage.

JUDGMENT

11. The application is dismissed in its entirety.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 7th day of November 2019

Entered in the Register on this 7th day of November 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

¹⁶ *Kallon* 2017-UNAT-742, at para. 62.

¹⁷ Response pursuant to the Tribunal's Order No. 168 (NBI/2019).