



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/030

Order No.: 035 (NBI/2019)

Date: 19 March 2019

Original: English

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**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ALEMA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON A MOTION FOR INTERIM  
MEASURES**

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**Counsel for the Applicant:**  
Lucas Dagadu

**Counsel for the Respondent:**  
AAS/ALD/OHR

## **Introduction**

1. The Applicant is a Water and Sanitation Technician at the United Nations - African Union Hybrid Operation in Darfur (UNAMID).
2. In his application on the merits filed on 16 March 2019, he contests the decision communicated to him by Ms. Joyce Kinyolo, UNAMID Human Resources Officer, on 11 November 2018, that his post had been identified for abolition by 1 April 2019 and that his fixed-term appointment would not be renewed beyond 31 March 2019 pending approval of the UNAMID budget by the General Assembly.
3. At paragraph nine of his application, the Applicant prays the Tribunal to issue an interim order/injunction to stay the execution of the decision to abolish his post pending disposal of this case on the merits. The Applicant's submission at paragraph nine is necessarily construed as a motion for interim measures filed in connection with the currently pending application on the merits.
4. The Tribunal does not deem it necessary to receive a response from the Respondent on the motion for interim measures and will rule on it *proprio motu*.

## **Facts**

5. The facts below arise from the documents filed by the Applicant in support of his application.
6. The Applicant has been working as a Water and Sanitation Technician at the FS-4 level at El-Daein, Sector East, Darfur, since 1 February 2009 to date.
7. On 11 November 2018, he received notice of non-renewal of his fixed-term appointment effective 31 March 2019. The notification was signed by the UNAMID Director of Mission Support (DMS). The content of the notification letter advised him that he had been rated against Vehicle Technicians at the FS-4 level in the

Comparative Review Process (CRP).<sup>1</sup>

8. On the same date, upon seeking clarification, he received a second notice indicating that the earlier notice had incorrectly indicated that he was a Vehicle Technician whilst in fact his functions had been comparatively reviewed as a Water and Sanitation Technician and that it had been concluded that his appointment could not be extended beyond 31 March 2019 subject to approval of the revised 2018/2019 UNAMID budget by the General Assembly.<sup>2</sup>

9. On 10 January 2019 the Applicant requested management evaluation of the decision not to renew his appointment beyond 31 March 2019.

10. On 6 February 2019, the Applicant received notification of the non-extension of his appointment following approval of the revised 2018/2019 UNAMID budget by the General Assembly.

11. On 8 February 2019, the Applicant received the management evaluation which found:

a. That there was no dispute that the post he encumbered along with hundreds of other had been abolished in the revised UNAMID 2018/2019 budget.

b. That the Applicant scored 64 points in the comparative review of the four Water and Sanitation Technicians and that he was ranked lowest.

c. Two of the four available posts of Water and Sanitation Technicians at the FS-4 level were abolished, one effective 31 March 2019 and the other effective 30 June 2019. As he scored lowest among the Water and Sanitation Technicians, his post was identified for abolition effective 31 March 2019.

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<sup>1</sup> Annex 3 to the application- Applicant's management evaluation request.

<sup>2</sup> Ibid.

## Considerations

12. Article 10.2 of the Dispute Tribunal’s Statute provides,

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, 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.

13. Article 14.1 of the Dispute Tribunal’s Rules of Procedure is similarly couched,

At any time during the proceedings, the Dispute Tribunal may order 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.

14. The afore-mentioned provisions clearly establish exclusions from the right to seek suspension of the impugned decision, one of them being “termination”.

15. The Applicant’s request for interim measures relates to the decision not to extend his fixed-term appointment beyond 31 March 2019. Regarding the question of interpreting the notion of “termination”, the Tribunal recalls that it was interpreted by the Appeals Tribunal as extending over other cases of non-voluntary separation from service. Most directly on point, in *Auda* 2016-UNAT-671, the Appeals Tribunal ruled that the Dispute Tribunal correctly found that it had no jurisdiction to grant an application for suspension of action under art. 10.2 of its Statute in a case of non-extension of appointment. It held:

The Tribunal finds that, pursuant to art. 10.2 of its Statute and the Appeals Tribunal’s rulings in *Benchebbak* and *El-Komy*, a request to suspend the implementation of a contested administrative decision

pending proceedings cannot be granted in this case as [Mr. Auda's] fixed-term appointment expires on 31 December 2015, and, under the Staff Rules, its extension would require a new letter of appointment. Thus, this case falls under the exclusionary provision of art. 10.2 of the [Dispute] Tribunal's Statute, and the Tribunal does not have jurisdiction to suspend the contested decision pending determination of the case on its merits.

16. Pursuant to art. 10.2 of its Statute and the above-referenced jurisprudence, the Tribunal has no jurisdiction to grant the Applicant's request for suspension of the non-renewal decision pending a determination of the case proper.

**IT IS ORDERED THAT:**

17. The motion for interim measures is rejected.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 19<sup>th</sup> day of March 2019

Entered in the Register on this 19<sup>th</sup> day of March 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi