



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KELAPILE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION FOR SUSPENSION OF
PROCEEDINGS**

Counsel for the Applicant:

Daniel Trup, OSLA

Counsel for the Respondent:

Sandra Baffoe-Bonnie, OES/ECA

Amboko Wameyo, OES/ECA

Introduction

1. The Applicant was appointed Chief of Staff in the Office of the Executive Secretary (ES) in the United Nations Economic Commission for Africa (UNECA) on 1 August 2014. He serves at the D1 level on a fixed term appointment.

2. On 24 September 2015, the Registry of the United Nations Dispute Tribunal (UNDT) in Nairobi received the Applicant's application for suspension of action, challenging the Respondent's decision to "strip him of his core functions as Chief of Staff". The Applicant contends that the impugned decision is inconsistent with the United Nations Staff Regulations and Rules as well as with the jurisprudence of the UNDT.

3. On 1 October 2015, the Applicant filed a motion to withdraw his request for interim measures "pursuant to the terms and conditions of a recently concluded interim settlement between the Parties".

4. The Tribunal issued Order No. 310 (NBI/2015) on the same day, granting the Applicant's motion and striking the matter off the court's docket.

5. On 3 November 2015, the Applicant filed a substantive Application pursuant to art. 2.1(c) of the UNDT Statute and an Application for Suspension of Action pursuant to art. 14 of the Rules of Procedure. The Applicant is challenging the Respondent's decision to "not comply with the intent, letter and spirit of the Settlement Agreement reached on 1 October 2015 through mediation".

6. Both Applications were served on the Respondent on the same day. The Respondent was directed to file his Reply to the motion for interim relief by 4 November 2015.

7. On 4 November 2015, the Tribunal received the Respondent's Motion for Extension of Time.

8. On 4 November 2015, the Tribunal issued Order No. 358 (NBI/2015) partially granting the Respondent's Motion.

9. The Respondent filed his Reply to the Application for interim relief on 5 November 2015.

10. The Tribunal sought the Applicant's response to the Respondent's Reply, particularly on the issue of receivability. The Applicant filed his response on 6 November 2015.

11. On 9 November 2015, the Tribunal issued Order No. 365(NBI/2015) dismissing the application for suspension. The Tribunal also directed service of the Order on the Office of the Ombudsman and Mediation Services (OMS) to facilitate "meaningful consultations towards having this matter resolved" and informed the Parties that a notice of hearing will issue shortly after the filing of the Respondent's Reply.

12. On 30 November 2015, the Respondent filed a Motion for Directions. The Respondent is asking the Tribunal to "allow the Parties [to] comply with the Tribunal's observations on Order No. 365 (NBI/2015)" and to "suspend proceedings to allow the Parties to make full efforts and focus at mediation for the fair and expeditious disposal of the case."

13. The Applicant responded to the Respondent's Motion on 1 December 2015, and urged the Tribunal to "reject the request of the Respondent to admit into evidence any mediation documentation."

Deliberations

14. In Order No. 365 (NBI/2015), the Tribunal observed as follows:

The Tribunal has carefully reviewed both Parties' submissions on this matter, and strongly believes that the Parties should engage in meaningful consultations towards having this matter resolved. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of proceedings, the Tribunal, pursuant to arts. 10.3 of the UNDT Statute and 15.1 of the Rules of Procedure, ***firmly urges*** the Parties in this matter to consult and deliberate in good faith, with the assistance of the Ombudsman, towards having this matter informally resolved.

15. The Tribunal believes this advice to be that much more relevant now given the deterioration of the situation facing the Applicant.

16. The circumstances described to the Tribunal by the Parties paints a picture of a bad working environment. Staff members cannot be expected to work effectively and productively while being marginalised and humiliated. It makes for poor morale. From the Organisation's perspective, it is equally poor form to have a staff member on payroll with no functions to perform. It is a waste of the Organisation's resources, which cannot be condoned.

17. The Tribunal therefore **GRANTS** the Respondent's Motion for suspension of proceedings.

18. Pursuant to art. 10.3 of the Statute of the Tribunal, and art. 19 of the Rules of Procedure, the matter of *Kelapile v Secretary-General of the United Nations* (Case No. UNDT/NBI/2015/112) is hereby **SUSPENDED**.

19. The Parties are **DIRECTED to jointly** advise the Tribunal of the status of their consultations by **11 January 2016**.

20. The deadline for the filing of the Respondent's Reply is likewise extended to **11 January 2016**.

(Signed)

Judge Vinod Boolell

Dated this 3rd day of December 2015

Entered in the Register on this 3rd day of December 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi