



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/088

Order No.: 166 (NBI/2017)

Date: 29 September 2017

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HOUENON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:
Robbie Leighton, OSLA

Counsel for the Respondent:
Nusrat Chagtai, ALS/OHRM

Introduction

1. The Applicant is a staff member at the United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSCA). He was hired on a temporary appointment, at the P4 level, to serve as a Sites Engineer/Architect in Bouar.

The Application

2. On 27 September 2017, the Applicant filed for a stay of the Respondent's decision to "curtail [his] appointment and separate by non-renewal."

3. The Respondent filed his Reply to the application on 28 September 2017.

Submissions

4. It is the Applicant's case that there are serious and reasonable doubts as to the lawfulness and propriety of the impugned decision; that a stay should be granted as a matter of urgency and that the Applicant will suffer irreparable harm if the Respondent is not estopped from implementing the impugned decision.

5. The Respondent takes the position that the impugned decision is lawful, that "any alleged urgency [was] created by the Applicant" and that implementation of the decision to separate the applicant will not cause him irreparable harm.

Order

6. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Art. 13 provides as follows:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears **prima facie to be unlawful, in cases**

of particular urgency and where its implementation would cause irreparable damage.

2. [...]

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

7. In making his case, the Applicant is required to satisfy the Court that the impugned decision is *prima facie* unlawful, is urgent and will cause him/her irreparable harm if implemented. All three elements of the test must be satisfied before the impugned decision can be stayed.

8. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by the Applicant to show that there is a triable issue before the court.¹

9. Having reviewed the Parties' submissions and annexes to their respective filings, the Tribunal is not persuaded by the Respondent's submissions as to the propriety and lawfulness of the impugned decision. The Tribunal is particularly concerned about the manner in which the Applicant's appointment was "renewed" and subsequently "curtailed."

10. The Tribunal takes the view that there are questions of legality which the Respondent must respond to, and finds that an oral hearing of this matter will be useful for a proper review of the impugned decision.

11. **NOTICE** is hereby issued that the matter of *Houenon v Secretary-General of the United Nations* (UNDT/NBI/2017/088) is set down for hearing at **0930hrs (Nairobi time) on 2 October 2017** in the **UNDT Courtroom (CR-12)**.

12. The Parties are also **DIRECTED** to file their respective witness lists, *if any*, by **29 September 2017**. Should the list include witnesses who will be

¹ See also: *Hepworth* UNDT/2009/003 at para. 10, *Corcoran* UNDT/2009/071 at para. 45, *Berger* UNDT/2011/134 at para. 10, *Chattopadhyay* UNDT/2011/198 at para. 31; *Wang* UNDT/2012/080 at para. 18.

testifying remotely, Parties are requested to provide the Registry with the relevant contact details.

13. The impugned decision is therefore **STAYED** until the matter is heard and determined.

(Signed)

Judge Nkemdilim Izuako

Dated this 29th day of September 2017

Entered in the Register on this 29th day of September 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi