



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

GOGO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
ALS/OHRM

## **Introduction**

1. The Applicant is a former staff member at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He was serving on a continuing appointment at the P-5 level as a Senior Judicial Affairs Officer in Goma.

## **The application**

2. On 21 November 2017, the Applicant filed an application for suspension of the decision to terminate his employment with MONUSCO effective 31 October 2017. The application was served on the Respondent on 23 November 2017.

3. On 24 November 2017, the Respondent filed his reply. The Respondent noted that the contested decision had been implemented because the Applicant's appointment ended on 31 October 2017.

4. On 25 November 2017, the Applicant filed his comments on the Respondent's reply. The Applicant noted that the decision had not yet been implemented because he was on rest and recuperation (R&R) leave from 30 October 2017 to 3 November 2017.

5. On 27 November 2017, the Respondent filed a request for leave to file a rejoinder. The Respondent noted that the UN Regional Service Center Entebbe's belated approval on 13 November 2017 of the Applicant's request for R&R leave did not obviate the fact of the termination of his appointment and separation effective 31 October 2017.

## **Considerations**

6. Article 2.2 of the UNDT Statute and article 13.1 of the UNDT Rules of Procedure provide that 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.

7. The evidence submitted by the Respondent in support of his reply shows that the Applicant's appointment was, indeed, terminated on 31 October 2017 and that he was separated from the Organization on 1 November 2017. The Tribunal notes that the Applicant also indicated in his application that the contested decision had been implemented on 31 October 2017.

8. This Tribunal has previously held that<sup>1</sup>:

A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

9. While the contested decision was implemented during the Applicant's R&R leave, the evidence shows that he became aware of the imminent termination of his continuing appointment on 26 October 2017, that is, before he proceeded on R&R leave. It is regrettable that the Applicant only filed an application for suspension of action on 21 November 2017 when the decision had already been implemented. Indeed, an application for a suspension of action cannot be granted if the impugned administrative action has been implemented simply because there is no pending decision to suspend. Consequently, the Tribunal cannot entertain the current application.

10. However, the fact that the application for suspension of action cannot avail the Applicant the relief sought in the present circumstances, does not extinguish his right to challenge the termination of his appointment. In other words, if the Applicant wishes to challenge the decision to terminate his continuing appointment, he is at liberty to properly file an application on the merits.

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<sup>1</sup> See *inter alia* Applicant Order No. 087 (NBI/2014) and Applicant Order No. 167 (NBI/2014).

**Order**

11. This matter is accordingly struck out.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 28<sup>th</sup> day of November 2017

Entered in the Register on this 28<sup>th</sup> day of November 2017

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi