



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CAIOMBO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**DECISION ON THE APPLICANT'S
APPLICATION FOR SUSPENSION OF
ACTION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Bart Willemsen, UNICEF

Chinonyelum Esther Uwazie, UNICEF

Introduction

1. The Applicant held a fixed-term appointment with UNICEF. He served as a Senior Driver at the Country Office in Luanda, Angola until he was separated on 31 December 2017.

Procedural History

2. On 27 February 2018, the Applicant filed an application for suspension of action “pending management evaluation” to challenge the Respondent’s decision to separate him from service with the Organization.

3. The Registry received the Respondent’s reply to the application on 28 February 2018.

4. The Management Evaluation Unit (MEU) had issued its decision upholding the impugned decision of the Respondent on 24 November 2017.

Submissions

5. It is the Applicant’s case that the impugned decision was taken in violation of staff rule 9.4 which stipulate to the expiry of fixed-term appointments, and which the Applicant distinguishes from separation from service. The Applicant contends that the decision to separate him from service is being disguised as a non-renewal, when it is in fact a termination.

6. The Respondent submits that the application is time barred as the Applicant’s submission has not complied with the stipulated 90-day time line.

Deliberations

7. The Applicant moves the Tribunal to suspend the impugned decision “pending management evaluation,” which is provided for in art. 2 of the Statute and art. 13 of the Rules of the Procedure. The application pursuant to those provisions is, however, misconceived because management evaluation has already decided on the review sought so that there is no longer a matter that is “pending” before them.

8. It is settled law that “[a] n application is only receivable when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines.”¹

9. In this case, the Applicant has already sought a review of the impugned decision by management evaluation. This process resulted in the Respondent’s decision being upheld and the Applicant being separated from service on 31 December 2017. Consequently, there is no decision for the Tribunal to suspend under art. 2 of the Statute and art. 13 of the Rules of the Procedure.

10. A Tribunal’s order granting suspension of action of an administrative decision cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented. The *interim* measure of an injunction will not, and indeed cannot, provide an applicant with effective relief against a decision that has already been implemented.²

11. Additionally, should the current application be considered as one on the merits, articles 8.1(c) and 8.1(d)(i)(a) of the Statute of the Dispute Tribunal and 7.1(a) of its Rules of Procedure require an applicant to submit his or her application to the Dispute Tribunal within 90 calendar days of receipt of the management evaluation decision.

¹ See, for example, *Ajdini* 2011-UNAT-108.

² See *Almou* Order No. 103 (NBI/2017).

12. The applicant filed his application on the e-filing portal on Sunday 25 February 2018, which is 93 calendar days from the date he received the management evaluation decision.

13. It is settled law that timelines as stipulated in article 7.1 of the UNDT Rules of Procedure and article 8.1 of the Statute must be strictly observed. The United Nations Appeals Tribunal (UNAT) has consistently stressed the necessity of strict adherence to filing deadlines.³

14. Should this have been an application on the merits, it would fail as being time-barred. As an application for suspension of action, it also fails as the Tribunal is not able to *suspend* the contested administrative decision when there is no pending management evaluation and the decision has already been implemented.

Order

15. The Application for Suspension of Action is therefore **DISMISSED**.

(Signed)

Judge Nkemdilim Izuako

Dated this 6th day of March 2018

Entered in the Register on this 6th day of March 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

³ *Cooke* 2012-UNAT-275 referring to *Mezoui* 2010-UNAT-043; *Tadonki* 2010-UNAT-00.