



Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ETIKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION
PURSUANT TO ARTICLE 13 OF THE
UNDT RULES OF PROCEDURE**

Counsel for the Applicant:

Self represented

Counsel for the Respondent:

ALS/OHRM

Introduction

1. The Applicant is a medical laboratory technician with the United Nations Mission in South Sudan (UNMISS). He serves as a United Nations Volunteer, and is based in Bentiu.

The application

2. On 24 May 2018, the Applicant filed an application to suspend the Respondent's decision to terminate his contract and repatriate him.

Submissions

3. It is the Applicant's case that the decision to terminate his services with the Mission is retaliatory, in that it was made because he reported his supervisor to the Conduct and Discipline Unit.

Considerations

4. Applications for suspension of action are governed by art. 2 of the UNDT Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 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.

5. The impugned decision must be shown to be *prima facie* unlawful, that the matter must be particularly urgently and implementation of the decision would

cause the applicant irreparable harm. All three elements must be satisfied for the Tribunal to grant the injunction being sought, as the test is a cumulative one.

6. Before deliberating on the issues in this case and applying the test for suspension of action, the Tribunal must first determine whether this application is receivable pursuant to arts. 2 and 3 of its Statute.

7. Article 2.1, of the Tribunal's Statute provides that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance.

8. Article 3.1 of the Statute further provides that:

An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

9. The Applicant is a United Nations Volunteer and is not covered by art. 3 of the Statute. His request for suspension of action does not fall within the jurisdiction of the Tribunal. Accordingly, the Tribunal lacks jurisdiction to consider the allegations and contentions made by the applicant.

10. However, there would appear to be sufficient evidence on the record to suggest that but for the lack of jurisdiction, the applicable test of *prima facie*

unlawfulness, urgency and irreparable harm may well have had a reasonable prospect of being satisfied.

11. The Applicant's attention is drawn to section 18 of the International UN Volunteer Handbook on Conditions of Service on internal redress mechanisms available to him.

ORDERS

12. The application for suspension of action **FAILS**.

(Signed)

Judge Goolam Meeran

Dated this 25th day of May 2018

Entered in the Register on this 25th day of May 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi