



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ARMAND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Rosangela Adamo, AAS/ALD/OHR

Introduction

1. The Applicant is a Movement Control Assistant at the FS-5 level working with the United Nations Support Office in Somalia (“UNSOS”).¹
2. On 17 November 2020, the Applicant filed before the United Nations Dispute Tribunal in Nairobi an application for suspension, pending management evaluation, of a decision by UNSOS to deduct from his salary a sum of USD5,032.33.²
3. Article 13 of the UNDT Rules of Procedure requires only that the Tribunal transmit a copy of the suspension of action (“SOA”) application to the Respondent and to issue a decision within five days thereof. Since there is no requirement under art. 2.2 of the UNDT Statute or art. 13 of the Rules of Procedure, for the Tribunal to await the Respondent’s response before the Applicant’s request is considered, the Tribunal decided to adjudicate the current SOA application without the Respondent’s reply.

Facts

4. The Applicant joined UNSOS on 11 January 2016 in Somalia, where he still serves as a Movement Control Assistant.³
5. Since 2018, the Applicant has had proceedings in court in Florida, the United States of America, relating to divorce with his spouse and child maintenance.⁴
6. On 2 April 2018, the Court in Miami-Dade County, Florida, granted a provisional order directing the Applicant to pay child maintenance. The calculations were made based on the monthly gross salary of the Applicant of USD22,125.91 and a net income of USD15,748.99, the amounts which, according to the Applicant, were not correct.⁵

¹ Application, section I.

² Application, section V.

³ Application, section VII, para 1.

⁴ Application, section VII.

⁵ Application, section VII, para. 9.

7. On 31 August 2018, the Organization directed the Applicant to comply immediately with the Court order with regard to child maintenance.⁶

8. On 3 March 2020, the Court in Miami-Dade County, Florida, issued a final judgment. The Court judgment requires the Applicant to pay a total of USD5,032.33 in child support, including retroactive child support and arrears.⁷

9. On 10 November 2020, UNSOS informed the Applicant that since he had not showed how he had complied with the Court judgment in accordance with its directive dated 31 August 2020; the Under-Secretary-General for Management, Strategy, Policy and Compliance has granted authorization for recoveries to be made from his salary pursuant to sec. 2.2(b) of ST/SGB/1999/4 (Family and child support obligations of staff members). The Applicant was also informed that with effect from the November 2020 payroll and subsequent months thereafter, the Organization will deduct a sum of USD5,032.33 from his salary and that in compliance with the Court judgment, the amount will be forwarded to the Florida State Disbursement Unit.⁸

10. On 17 November 2020, the Applicant requested management evaluation of the contested decision.⁹ The Management Evaluation Unit is yet to respond.¹⁰

Considerations

11. Applications for suspension of action pending management evaluation are to be decided in accordance with art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of the Tribunal's Rules of Procedure. The Dispute Tribunal must, under art. 2.2 of its Statute decide whether the Applicant satisfies three cumulative requirements, namely that the decision appears to be *prima facie* unlawful, that the matter appears to be of

⁶ Ibid, para 4.

⁷ Application, annex 1.

⁸ Ibid.

⁹ Application, annex 2.

¹⁰ Application, section VII.

particular urgency and that the implementation of the decision would appear to cause irreparable damage.

Whether the decision to deduct a sum of USD5,032.33 from the Applicant's salary with effect from the November 2020 payroll is prima facie unlawful.

12. It is not in dispute that a Florida Court entered a judgment against the Applicant for payment of a monthly sum of USD5,032.33 for child maintenance. The Applicant maintains that the amount payable was calculated inaccurately on a monthly gross salary of USD22,125.91 and a net income of USD15,748.99 when his actual monthly gross salary is USD17,050.99 and his net income is USD 13,298.70. He therefore argues that the administrative decision of 10 November 2020 to deduct a sum of USD 5,032.33 from his salary with effect from the November 2020 payroll is *prima facie* unlawful and inconsistent with the application of staff rule 3.18 (c) (iii).

13. The Applicant also argues that the Respondent's failure to exercise his discretion to determine the amount to be deducted from his salary and to take relevant considerations into account, including but not limited to the impact of the monthly deductions on the needs of his three other minor children as well as the Organization's duty of care to him must, in and of itself, lead to the illegality of the administrative decision of 10 November 2020.

14. This application must fail since the impugned decision is neither unlawful nor inconsistent with the application of staff rule 3.18(c) (iii) as it is alleged. Section 2.1 of ST/A1/2000/12 (Private legal obligations of staff members) and sec. 1 of ST/SGB/1999/4 (Family and child support obligations of staff members) place a duty on staff members to comply with local laws and honour their private legal obligations, including the obligation to honour orders of competent courts. Such orders include orders against a staff member to make payments for the support of his or her spouse or former spouse and/or dependent children ("family support court orders").

15. The Secretary-General may under sec. 2.1 of ST/SGB/1999/4 authorize deductions from staff members' salaries, wages and other emoluments for indebtedness to third parties. Family support court orders create indebtedness to third parties, such as the staff member's spouse, former spouse and/or dependent children.

16. The Tribunal notes that the Court order in issue is authentic and final in terms of sec. 2.3 of ST/SGB/1999/4. In addition, it is not inconsistent with staff rule 3.18 (c)(iii) which provides for authorized deductions from salaries and other emoluments to satisfy indebtedness to third parties. The Organization is therefore, under an obligation to honour and enforce it in terms of sec. 2.1 of ST/SGB/1999/4. The impugned decision has legal basis, and is therefore, not unlawful. Since one of the three statutory conditions for a suspension of action has not been met by the Applicant, the application for suspension of action pending management evaluation is rejected.

Conclusion

17. The application is dismissed.

(Signed)

Judge Margaret Tibulya

Dated this 19th day of November 2020

Entered in the Register on this 19th day of November 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi