



Before: Judge Sun Xiangzhuang

Registry: Nairobi

Registrar: Wanda L. Carter

TAMINANG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alister Cumming, UNICEF
Rosangela Adamo, UNICEF

Introduction

1. The Applicant is an HIV/AIDS Officer at the United Nations Children’s Fund (UNICEF) Country Office in Cameroon. He holds a temporary appointment and is based in Yaounde.

Procedural History and Submissions

2. On 24 April 2025, the Applicant filed an application for suspension of action to stay the Respondent’s decision to terminate his appointment with the Organisation on 30 April 2025, on grounds of insufficient funding. His contract was set to expire on 21 January 2026.

3. It is the Applicant’s case that the impugned decision is tainted by extraneous factors, in that the Respondent has given three different reasons for the termination, none of which is properly documented or substantiated. He submits that at least three other colleagues on the programme have retained their positions, and that the decision to terminate him over others in the programme is arbitrary and demonstrates bias in the decision-making process.

4. The Applicant also argues that the impugned decision is “potentially retaliatory” due to his request for paternity leave.

5. The Applicant had previously sought to stay the same decision pending review by management evaluation. That application was dismissed in Order No. 039 (NBI/2025) as moot because the Respondent had himself suspended the decision pending management evaluation.

6. On 25 April 2025, the Respondent responded to the application. The Respondent moved the Tribunal to dismiss the application on grounds of receivability. It is the Respondent’s case that the Tribunal has no jurisdiction to determine this application *per art. 10.2* of the Statute of the Dispute Tribunal which expressly proscribes the suspension of administrative decisions “in cases of appointment, promotion or termination.” The Respondent’s response was silent in response to the Applicant’s submissions on the merit of this application.

7. The Applicant submitted a rejoinder to the Respondent's reply. The Applicant argues that there is "clear and well-established jurisprudence of the UNDT, which affirms that even termination decisions may be subject to interim relief where the strict cumulative test of Article 10(2) is satisfied."

Considerations

8. Art. 10.2 of the Dispute Tribunal's Statute and art. 14 of its Rules of Procedure govern the Tribunal's jurisdiction in deciding on applications to suspend implementation of a contested administrative decision pending determination of the substantive application on its merits.

9. Art. 14, which contains almost the same text as art. 10.2 of the Statute, provides in relevant part (*emphasis in italics*):

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, *except in cases of appointment, promotion or termination*.

10. To succeed on a request for interim measures, an applicant must satisfy the Tribunal that the contested decision is *prima facie* unlawful, that the case is of particular urgency and that implementation of the decision would cause irreparable damage.

11. These three requirements are cumulative. In other words, they must *all* be met in order for a suspension of action to be granted. *Hepworth* UNDT/2009/003, para. 8. The burden of proof rests on the Applicant.

12. This Tribunal held in *Applicant* Order No. 087 (NBI/2014) para. 24 that

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.

13. Before entering into a discussion on whether the Applicant has met the test for an application for suspension of action to be granted as an interim measure, the Tribunal must first determine if it has the jurisdiction to consider this application.

14. On the facts before the Tribunal, this case clearly concerns a decision to *terminate* the Applicant's appointment. The Tribunal is therefore stymied from inquiring into the propriety and putative lawfulness of the impugned decision.

15. Although the Applicant argues that there is "clear and well established" jurisprudence to support an inquiry into his allegations, he has not referred the Tribunal to any such jurisprudence.

16. Conversely, the Tribunal has held in *Stockholder* Order No. 102 (NY/2024) and *Scepanovic* Order No 66 (NY/2024) that temporary relief cannot be granted in decisions concerning appointments, promotions or terminations.

17. The Tribunal is further guided by the Appeals Tribunal in *Guzman* 2014-UNAT-455:

28. It is clear that the decision being contested was the decision informing Ms. Guzman of her separation from service prior to the expiry of her fixed-term appointment. Staff Rule 9.6(a) defines termination as a "separation initiated by the Secretary-General" and pursuant to Staff Rule 9.6(c)(i), one basis for termination may be the "abolition of posts or reduction of staff".

29. We are thus satisfied that the decision, the subject matter of the application for interim relief before the Dispute Tribunal, was a termination decision.

30. Accordingly, the Dispute Tribunal was not competent to order the suspension of action and in doing so exceeded its competence.

18. It is, of course, open to the Applicant to challenge the Respondent's decision substantively and on its merits. The Tribunal notes that the present application for interim measures is not attached to a substantive application *per se*.

19. The Tribunal also notes that the Applicant in this case is self-represented and may therefore require guidance in respect of the procedures before the Tribunal. While the Tribunal cannot be the source of that guidance, the Applicant may wish to seek the assistance of counsel at the Office of Staff Legal Assistance should he wish to take this matter further.

20. For purposes of the interim measures being sought, the Tribunal's hands are tied and the application for suspension of action can only be dismissed.

ORDERS

21. The application for suspension of action is DENIED.

(Signed)

Judge Sun Xiangzhuang

Dated this 29th day of April 2025

Entered in the Register on this 29th day of April 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi