

# **UNDT/2009/016, Tadonki**

## **UNAT Held or UNDT Pronouncements**

The decision not to renew the Applicant's contract was prima facie unlawful because it appeared to be in breach of the Organization's Rules and in breach of international legal norms relating to due process. On the question of urgency, the Applicant had been informed that his contract would be terminated on 3 September 2009. Notwithstanding that it had allegedly been agreed that the contract would be extended after 3 September 2009, the matter was still urgent because this was not the first time that this particular strategy had been used by the Respondent towards the Applicant. Having considered the facts and legal principles applicable, the Tribunal concluded that the balance of convenience lay on the side of the Applicant because he would suffer more than the Respondent if the application was not granted. The Applicant would not have a paid appointment and would suffer psychological stress that would compound his state of health.

## **Decision Contested or Judgment/Order Appealed**

The Applicant challenged the decision to not renew his fixed-term appointment.

## **Legal Principle(s)**

The Tribunal considers the following in deciding whether an interim measure should be granted: (i) whether there is a serious issue to be tried and the claim is not frivolous and vexatious; (ii) the adequacy of damages and whether, if the Applicant were to succeed on the merits of the case, he could be adequately compensated by an award of damages for the loss he would have sustained as a result of the action of the Respondent. If the Tribunal considers that damages would be an adequate remedy and the Respondent is capable of paying such damages then an injunction will not be granted. An application for suspension of action must satisfy the following requirements before the Tribunal can grant a suspension of the implementation of

the contested decision: (a) the decision appears prima facie to be unlawful; (b) there's particular urgency; and (c) implementation of the decision will cause irreparable damage. Disputes arising out of a contract of employment should be dealt with according to fair procedures and the provisions guaranteeing the right to work should be interpreted according to international human rights norms. Due process requires that Management complies with its own rules relating to staff. The way in which the employment relationship is terminated should therefore be considered in the context of the rights of the employee to due process and the compliance by the decision maker to international law and principles of the rule of law. The urgency in an application for suspension of action is underscored by the fact that if the decision contested is implemented before the consideration of the substantive appeal on the merits, the Applicant might be denied the chance of regaining the position he was occupying or should be occupying in the event that he or she is successful on the substantive case especially if the position were to be filled. Where damages can adequately compensate an applicant, if he is successful on the substantive case, an interim measure should not be granted. But a wrong on the face of it should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict. Monetary compensation should not be allowed to be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process.

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The Tribunal ordered suspension of the non-renewal decision from the date of its judgment until the final determination of the substantive appeal of the Applicant. The Tribunal ordered the following temporary relief under Article 14.1 of the Rules of Procedure: Respondent is ordered to pay the Applicant half his salary from the date of the Order until the final determination of the case.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Tadonki

## Entity

OCHA

## Case Number(s)

UNDT/NBI/2009/36

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

1 Sep 2009

## Duty Judge

Judge Boolell

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Performance management

Rebuttal

Separation from service

Expiration of appointment (see also, Non-renewal)

Suspension of action / interim measures

## Applicable Law

UNDT RoP

- Article 13.1
- Article 14.1

## Related Judgments and Orders

2010-UNAT-005