

# **UNDT/2012/058, Khambatta**

## UNAT Held or UNDT Pronouncements

The UNDT found that the Applicant had previously resigned from a temporary appointment and was reemployed on the understanding given to her by MINUSTAH that the period of 364 days, following which she may have to take a break in service, would start running on the date of her new temporary appointment. The UNDT found that the conditions for a suspension of action were met and ordered suspension, during the pendency of the management evaluation, of the implementation of the decision. Outcome: The UNDT ordered suspension of action on the contested decision pending management evaluation.

## Decision Contested or Judgment/Order Appealed

The Applicant, a Planning Officer in the Office of the Special Representative of the Secretary-General, United Nations Stabilization Mission in Haiti ("MINUSTAH"), filed an application for suspension of action, pending the outcome of management evaluation, of the implementation of the decision not to extend her temporary appointment beyond 1 May 2012 and to require her to take a break in service starting 2 May 2012.

## Legal Principle(s)

Reply to application for suspension of action: Although art. 13 of the Rules of Procedure requires that such an application be transmitted to the Respondent, there is no obligation to require a response from the Respondent before deciding the application. Prima facie unlawfulness: The Tribunal is not required to make a finding that the impugned decision is, in fact, unlawful. For the prima facie unlawfulness test to be satisfied, it is enough for an applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's

obligation to ensure that is decisions are proper and made in good faith.Particular urgency: Urgency should not be self-created.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Khambatta

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2012/027

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

26 Apr 2012

## Duty Judge

Judge Meeran

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Suspension of action / interim measures

Irreparable damage

Particular urgency

Prima facie unlawfulness

## Applicable Law

Administrative Instructions

- ST/AI/2010/4/Rev.1

UNDT RoP

- Article 13

UNDT Statute

- Article 2.2

## Related Judgments and Orders

UNDT/2011/126

UNDT/2011/176