

# UNDT/2020/109, Habamungu

## UNAT Held or UNDT Pronouncements

Having proposed closure of the Kamina site to the General Assembly and the corollary budgetary reductions, the Respondent proceeded with the implementation of his proposal. The natural consequence of this process was that the Applicant was left with no tasks to perform. The decision did not amount to a de facto termination by cutting; short the Applicant's appointment. The appointment continued until the expiration date on 30 June 2019 but was not renewed due to the abolition of the post. There was nothing in the parties' submissions to show that the decision was perverse or tainted so as to trigger an inquiry into whether it was based on extraneous factors. The Respondent's decision in this case was not illegal, irrational, procedurally incorrect or disproportionate.

## Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's decisions to: place him on Special Leave with Full Pay ("SLWFP") until the expiration of his fixed-term contract when his contract was "de facto terminated" on 30 May 2019; and deny him termination indemnity after his de facto termination from MONUSCO.

## Legal Principle(s)

Staff regulation 9.3 is worded such as to make a decision to terminate discretionary. The Secretary-General may choose to terminate a staff member's appointment for several reasons including where the necessities of service call for the abolition of posts or the reduction of the staff. When judging the validity of the Administration's exercise of discretion in administrative matters, the Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Tribunal to consider the correctness of the choice made by the administration amongst the various courses of action open to it.

## Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Habamungu

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2019/155

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

2 Jul 2020

Duty Judge

Judge Honeywell

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

Staff Regulations

- Regulation 9.3
- Regulation 9.6