

046 (NBI/2024), Bubega

UNAT Held or UNDT Pronouncements

1. The decision by MONUSCO Human Resources to withhold the P.35 form was unlawful because the authority to withhold said form is expressly delegated solely to the USG/DMSPC.
2. The Administration failed to act swiftly in this matter.
3. The application floundered on the requirement of irreparable damage. Mere economic loss only is not enough to satisfy the requirement of irreparable damage.
4. The consequential damages that the Applicant claimed as a result of the economic loss (his alleged inability to pay for food, housing and education) are all damages that could be recovered should the Applicant prevail in a merits case challenging the lawfulness of the contested decisions.
5. The failure to conclude investigations harms both the Organization and its staff members.
6. This was a case of urgency since the Applicant had been denied thousands of dollars in earned entitlements and benefits for months since he retired from the Organization.
7. In the limited context of this SOA, there was insufficient evidence to refer the matter to the Secretary-General for enforcement of accountability.

As one of the requirements for suspension of actions was not met, the application for suspension of action was denied.

Decision Contested or Judgment/Order Appealed

The Applicant sought to suspend the decisions dated 24 January 2024 and 5 April 2024 to delay the issuance of his personnel payroll clearance action form ("P.35

form”) and his separation notification (“PF.4 form”) to the United Nations Joint Staff Pension Fund (“UNJSPF”).

Legal Principle(s)

For a Suspension of Action (SOA) to succeed, an applicant must show that all the following conditions have been met: (i) the decision appears to be unlawful on its face; (ii) there is particular urgency; and (iii) implementation of the decision would cause irreparable damage to the applicant.

Mere economic loss only is not enough to satisfy the requirement of irreparable damage.

Outcome

Suspension of action denied

Outcome Extra Text

Full order

[Full order](#)

Individual Party

Bubega

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2024/024

Tribunal

UNDT

Registry

Nairobi

Date of Order

18 Apr 2024

Duty Judge

Wallace

Language of Order

English

Issuance Type

Order

Categories/Subcategories

Interim measures

Applicable Law

Administrative Instructions

- ST/AI/155/Rev.2
- ST/AI/2017/1

UNDT Statute

- Article 2.2