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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/057

Judgment No.: UNDT/2019/111

Date: 18 June 2019

Original: English

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**Before:** Judge

## **Introduction**

1. The Applicant was an Administrative Assistant at the FS-4/09 level working with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in Goma, attached to the Gender Advisory Section.<sup>1</sup>

2. By an application filed on 9 May 2018, which was registered under Case No. UNDT/NBI/2018/057, the Applicant contests implied decisions on: (i) the refusal by the administration to transfer her to a duty station where the supply of electricity is stable; or (ii) the refusal to grant her an agreed termination of her appointment with indemnity due to the harassment she had suffered.<sup>2</sup>

3. The Respondent filed a reply on 14 June 2018 in which it is argued that the claim is not receivable *ratione materiae*. The Respondent also argued that should the Tribunal find that the application is receivable, it is still without merit and should be dismissed.

## **Facts**

4. The Applicant took her first appointment with MONUSCO on 14 June 2006 as an Administrative Assistant at the FS-4 level and on 1 July 2015, she was posted in the Gender Advisory Section.<sup>3</sup>

5. The Applicant maintains that since October 2015, she has had problems with the Head of the Gender Advisory Section, Ms. Jamila Seftaoui.<sup>4</sup>

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<sup>1</sup> Application, section I, p.2



(a) The transfer of the Applicant to a country where the electricity supply is stable, or

(b) In the alternative, an agreed termination of her appointment.<sup>11</sup>

14. On 21 September 2017, the OIC, MONUSCO HRS addressed a letter to the Applicant entitled “Unauthorized Absence” informing her that she had been absent from duty since 17 January 2017.<sup>12</sup>

15. On 12 January 2018, the Applicant requested for management evaluation from the Office of the Under-Secretary-General for Management citing the letter of 20 September 2017 that had been sent to the ASG/OHRM.<sup>13</sup>

### ***Submissions***

#### *Respondent’s submissions*

16. The Respondent contends that for an application to be receivable, the decision being challenged must be an “administrative decision”. In the present case, no decision has been made denying the Applicant’s request to be transferred to another duty station. The request remains pending. Similarly, no decision denying the A

or to grant her an agreed termination of her appointment with indemnity, the Tribunal  
has

issue lies in the nature of the claim, which, in the event of restoring the Applicant in her position, could be brought again, should the circumstances persist. Alternatively, should the Respondent elect a pay-off option, the claim will be rendered moot. Accordingly, the question of suspending the proceedings until final resolution of Case UNDT/NBI/2018/105 does not arise.

## **JUDGMENT**

21. The Application is moot and thus irreceivable.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 18<sup>th</sup> day of June 2019

Entered in the Register on this 18<sup>th</sup> day of June 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi