



## **Introduction**

1. The Applicant holds a fixed-term appointment at the P-3 level. He serves at the United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic (MINUSC(h)30.9981 0 0 1 108.45(a)-9(ge)14( )] TJ ET Q q BT /F1 10..08 Tf 0 C

9. On 2 April 2017, the Applicant was given a further one month extension through 31 May 2017.

10. On 13 May 2017, a Personnel Action notification was raised extending the Applicant's appointment to 31 May 2018.

11. On 17 May 2017, the Applicant was informed that that Personnel Action was raised in error and that the correct date for the expiry of his contract was 31 May 2017. A corrected Personnel Action was raised and the Applicant was informed as much.

12. On 18 May 2017, the Applicant received a memorandum pertaining to his separation from service on 31 May 2017.

## **Submissions**

### ***Applicant***

13. The Applicant case is that the decision not to renew his appointment with the Mission was "discriminatory and arbitrary." The Applicant also argues that a mistaken Personnel Action does not absolve the Respondent from the contractual obligations he has undertaken.

### ***Respondent***

14.

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears **prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.**

2. [...]

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

16. All three elements of the test must be satisfied before the impugned decision can be stayed.

17. The Applicant in this case seeks a temporary order to maintain the *status quo* between the parties while the impugned decision is reviewed by the Management Evaluation Unit (MEU).

18. Within the United Nations internal justice system, a suspension of action order under article 2 of the UNDT Statute and article 13 of its Rules of Procedure, can only be obtained to maintain the *status quo* until the MEU concludes its review.

19. A Tribunal's order granting suspension of action of an administrative decision cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

20. To grant an application for suspension of action, the Tribunal must be satisfied that there is a serious question to be tried on the merits and that damages would not adequately compensate the Applicant in the event that his or her application succeeds at trial. The application would therefore normally fail where a



temporarily encumbered is currently subject to a recruitment process, and the Applicant is not a candidate in the selection exercise for the post.

26. The Applicant cannot properly rely on a mistakenly raised Personnel Action as a basis for his claim that the Respondent has contractual obligations beyond what he knew was intended for him. While it behoves the Respondent to be more careful in raising such important documents, the mistake in this case was quickly corrected.

27. Given what is available on the record, the Tribunal is not persuaded that the decision to separate the Applicant is tainted by the extraneous factors alleged.

28. Having found that the impugned decision has not been shown to be *prima facie* unlawful, and given that the test for suspension of action applications is a cumulative one, it is unnecessary for the Tribunal to proceed to assess this Application on the ground of urgency and irreparable harm.

29. The Application for Suspension of Action is **accordingly REFUSED**.

(Signed)

Judge Nkemdilim Izuako

Dated this 29<sup>th</sup> day of May 2017

Entered in the Register on this 29<sup>th</sup> day of May 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi