
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/064

Order No.: 101 (NBI/2018)

Date: 26 June 2018

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LUCCEUS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION
PURSUANT TO ARTICLE 13 OF THE
UNDT RULES OF PROCEDURE**

Counsel for the Applicant:
Aleksandra Jurkiewicz

Case No. UNDT/NBI/2018/064

Order No.

9. Additionally, a suspension of action application will only succeed where an applicant can establish a *prima facie* case on a claim of right, or where he can show that *prima facie*, the case he/she has made out is one which the opposing party would be called upon to answer and that it is just, convenient and urgent for the Tribunal to intervene and, without which intervention, the Respondent's action or decision would irreparably alter the *status quo*.²

***Prima Facie* Unlawfulness**

10. At this stage, the Applicant need only show *prima facie* unlawfulness. The presumption of regularity may be rebutted by evidence of failure to follow applicable procedures, the presence of bias in the decision-making process, and consideration of irrelevant material or extraneous factors.³ The Applicant bears the burden of showing such irregularity in the selection exercise that creates doubt as to the lawfulness of the process.

11. Put another way, does it appear to the Tribunal that, unless it is satisfactorily rebutted by evidence, the claim of unlawfulness will succeed?⁴

12. On the facts before it, the Applicant appears to be suffering the effects of a decision that is tainted by extraneous factors. The bad working relationship between him and his supervisor, coupled with what he was told in respect of his putative redeployment to Kananga and the budgetary implication in respect of his post, paints an opaque picture of the decision-making process.

Urgency

13. The urgency of this application is obvious given that the Applicant's contract of employment with the Mission ends on 30 June 2018.

Irreparable Harm

² See for example Order No. UNDT/NBI/O/2010/017 *Omondi*; Order No. 494 (NBI/2016) *Newland*.

³ *Rolland* 2011-UNAT-122. See also *Simmons* 2014-UNAT-425; *Zhuang Zhao and Xie* 2015-UNAT-536; *Tintukasiri* 2015-UNAT-526, *Landgraf* 2014-UNAT-471.

⁴ *Wilson* Order No. 327 (NY/2014).

14. Irreparable harm is generally defined as harm that cannot be compensated for.

15. As there is little that cannot be monetarily compensated for, the Tribunal has previously held that the concept is a little more nuanced than the question of money alone. In *Tadonki*, the court held as follows:

a wrong on the face of it should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict. Monetary compensation should not be allowed to be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process.⁵

16. In the circumstances presented by the Applicant in this case, the Tribunal finds that the requirement of irreparable damage is satisfied.

ORDER

17. The application for suspension of action is **GRANTED** pending management evaluation.

(Signed)

Judge Nkemdilim Izuako

Dated this 26th day of June 2018

Entered in the Register on this 26th day of June 2018

(Signed)

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