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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/073

Order No.: 110 (NBI/2018)

Date: 23 July 2018

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

COX

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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

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**Counsel for the Applicant:**  
Daniel Trup, OSLA

**Counsel for the Respondent:**  
UN-HABITAT

### **The Application and Procedural History**

1. The Applicant is the Director of the Management and Operations Division of UN-Habitat. He serves at the D2 level and is based in Nairobi.
2. On 20 July 2018, after hours at the United Nations Dispute Tribunal in Nairobi, the Registry received the subject application of the present Order, seeking an injunction against UN-Habitat's decision to withdraw the management and operational functions currently held by the Applicant, transfer those functions to two other staff members, and reassign the Applicant as "Advisor" on a temporary post, at his current level, for which classification is being sought but for which funding is insecure beyond January 2019.

### **Deliberations**

3. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 13 provides as follows:

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 on-going management evaluation, where the decision appears prima facie to be unlawful, in cases of p[ ]l. Article



satisfied for the Court to grant the injunction being sought, as the test is a cumulative one.

9. The application can only succeed where an Applicant can establish a *prima facie* case on a claim of right, or where he/she can show that *prima facie*, his/her case 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,



circumstances of any given case. When responsibility lies with the Administration for the unlawful decision, it must take upon itself the responsibility thereof and act with due expedition once alerted to the unlawful act.

16. The Tribunal strongly believes that while the Management Evaluation Unit carries out its review of the Applicant's request, the parties should engage in meaningful consultations towards having this matter resolved. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of these (and potentially future) proceedings, the Tribunal pursuant to articles 10.3 of the Statute and 15.1 of the Rules of Procedure of the Dispute Tribunal, strongly urges the parties in this matter to consult and deliberate, in good faith, on having this matter informally resolved.

17. It remains open to the Applicant to have this matter litigated on the merits should mediation be unsuccessful.

## **ORDER**

18. The application for suspension of action is accordingly **GRANTED** pend0 792 rli24(ful )-98(de)-