

Introduction

1. The Applicant is a staff member of the United Nations (UN-Habitat). On 19 December 2018, she filed an application for suspension of action, pending management evaluation, with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi to suspend the decision not to renew her fixed-term appointment (FTA) beyond 31 December 2018.

2. The Respondent filed a reply on 24 December 2018.

Background facts

3. The Applicant entered into service with UN-Habitat on 7 September 2016 as a Programme Coordinator at the P-3 level in Bukavu, Democratic Republic of the Congo (DRC), for the project, *Community Participatory Land use Planning, 2016-2018, North Kivu, South Kivu and Ituri*. This Project, which was funded by the Department for International Development (DFID) and UN-Habitat, commenced on 26 June 2018 for a duration of 30 months.

4. By a memorandum dated 7 August 2018, Mr. Abel K. Walendom, Chief Technical Adviser, UN-Habitat, DRC, informed all UN-Habitat staff members in DRC that the DFID project was undergoing a performance improvement plan and that as a result appointments would not be renewed beyond October 2018.

5. On 28 August 2018, the Applicant received

her FTA to 31 December 2018. The Tribunal granted the motion and struck Case No. UNDT/NBI/2018/100 off its docket on 4 October 2018.

7. On 5 December 2018, the Applicant received a memorandum dated 29 November 2018 from Mr. Mutizwa-Mangiza informing her that her FTA would not be renewed upon its expiry on 31 December 2018 due to the absence of funding for her post.

8. On 19 December 2018, the Applicant requested management evaluation and filed the current application seeking suspension of the decision not to renew her FTA beyond 31 December 2018.

Considerations

9. Applications for suspension of action are to be decided in accordance with art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of the Tribunal's Rules of Procedure. Article 2.2:

The Dispute Tribunal shall be competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

10. ArAr n3(t)-2(o)] T.48 267.cubj5.12 Tm [(9e150(i)37(d(h)1 0.0 17)3(dur)-7(e)23(.))3(J ET Q

11. The Tribunal will grant urgent injunctive relief where the Applicant satisfies the three cumulative requirements in art. 2.2 of the Statute and art. 13 of the Tribunal's Rules of Procedure, namely that the decision appears to be *prima facie* unlawful, that the matter appears of particular urgency, and that the implementation of the decision would appear to cause irreparable damage.

12. In considering an application for urgent injunctive relief, the Tribunal is not required to make a conclusive finding but merely to apply the statutory test by forming and expressing an opinion based on the material presented in support of the application.

13. The first issue before the Tribunal is whether the decision not to renew the Applicant's FTA beyond 31 December 2018 is *prima facie* unlawful.

14. The Applicant submits that the contested decision is *prima facie* unlawful for the following reasons:

- a. Mr. Mutizwa-Mangiza's assertion in his 29 November 2018 memorandum regarding lack of funding is incorrect and unsubstantiated because the initial funding for her post allows for the extension of her appointment at least until 31 March 2019. Additionally, while the project is subject to a no-cost extension until December 2019, donors appear to have released additional funds into the project. Further, recent documents indicate that there is sufficient funding for the payment of international staff at least during the first quarter of 2019. The financial report does not envisage any downsizing in international staff positions on the project.
- b. Her post of Programme Coordinator in Bukavu is still required. This is supported by the fact that another staff member has been designated to assume her functions without any proper basis or justification.
- c. The impugned decision was vitiated by improper considerations and ulterior motives.

15. The Respondent submits that the contested decision is lawful for the following reasons:

- a. The Applicant was recruited for a DFID project that was funded for a duration of 30 months, commencing 26 June 2016 to 31 December 2018. Although she was recruited three months after the project began, on 7 September 2016, the project's end date was still 31 December 2018. Thus, her assertion that her appointment should end at the end of March 2019 is unsubstantiated.
- b. The MoU between DFID and UN-Habitat was extended, at no additional cost, up to September 2019. Since DFID is not providing any additional funding, it is not possible to extend appointments beyond 31 December 2018 for contracts ending on this date.
- c. There is no need for the programme coordinator post since only planning activities will be conducted.
- d. The Applicant's contention that donors appear to have released additional

ORDER

23. The application for suspension of action is accordingly refused.

(Signed)

Judge Nkemdilim Izuako

Dated this 27th day of December 2018

Entered in the Register on this 27th day of December 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi