
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/032

Judgement No.: UNDT/2011/122

Date: 7 July 2011

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

KWEKA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON AN APPLICATION FOR
SUSPENSION OF ACTION

Counsel for applicant:
Self-Represented

Counsel for respondent:

The Application

1. On 30 June 2011, the Applicant filed a motion for suspension of action with the United Nations Dispute Tribunal (UNDT) in Nairobi seeking a suspension of the decision by the United Nations International Criminal Tribunal for Rwanda (ICTR) not to extend his appointment beyond the expiry of his current contract on 30 June 2011 (“impugned decision”).

2. The Applicant’s motion was served on the Respondent on the same day with a deadline for any submissions in response to be filed Monday, 4 July 2011.

3. In accordance with the terms of Article 2 of the Statute and Article 13 of the Rules of Procedure of the UNDT, the Tribunal issued Order 068 (NBI/2011) suspending the impugned decision until Thursday, 7 July 2011.

Facts

4. The Applicant joined ICTR in 1997 on a fixed-term appointment as a Labourer in Building Management Services (BMS), which was part of the General Services and Support Section (GSSS) consequently having served with the ICTR for a total of 14 years. The Applicant was placed against a post funded by General Temporary Assistance (GTA) funds. The Applicant’s E-PAS records show that the he ac0.1trooine 55 ti

4. On 30 June 2011, the UNDT issued Order 068 (NBI/2011) suspending the impugned decision until Thursday, 7 July 2011.

7. On 6 June 2011, the Applicant wrote to the Chief of the Division of Administrative Support Services (DASS), requesting a one-year extension of his appointment to enable him to become eligible to receive additional pension benefits at the 15-year mark of his employment with the ICTR on 30 June 2012.

8. On 23 June 2011, the Applicant was informed by a Memorandum dated 8 June 2011 by the Chief of Staff Administ

Even though the staff member does not have a right to the renewal of his or her contract that decision may not be taken for improper motives. The Dispute Tribunal is therefore required to consider whether the motives for the decision were proper.⁵

23. The Tribunal has also examined whether other countervailing circumstances existed, including a legitimate expectancy of renewal of the appointment; abuse of discretion in not extending the appointment; discrimination; or whether the decision was motivated by extraneous factors.⁶

24. The Applicant in this case has alleged no countervailing circumstances. He does not argue that the decision to separate him at the end of June 2011 was made with extraneous motives, in that it was tainted with bad faith or was arbitrary or that a legitimate expectancy of renewal was created and subsequently breached.

25. The Applicant singular contention is that the impugned decision is unlawful because the staff retention process, as applied to him, did not properly take into account his pension eligibility, length of service and seniority, and the on-going need for his services.

26. Pursuant to Security Council resolution 1503(2003), in 2003, the ICTR formalized a Completion Strategy. The Co

whether the staff retention exercise was properly carried out in accordance with the set criteria.

28. At the outset, the Tribunal notes that in applying the established criteria, the Applicant was awarded for length of service. Note was also made to indicate that

herefore fails on the

retention criteria in respect of the Applicant. This Application th

limb of *prima facie* unlawfulness therefore

Compensation

Under Article 11 of the Constitution, every person who has suffered loss or damage as a result of the actions of the State is entitled to compensation. The State is liable to compensate a person who has suffered loss or damage as a result of the actions of the State.

11. The Applicant has submitted evidence in support of his claim for compensation. The evidence submitted includes a copy of the Applicant's bank statement showing a withdrawal of US\$ 10,000 on 12/12/2010. The Applicant has also submitted a copy of the Applicant's bank statement showing a withdrawal of US\$ 10,000 on 12/12/2010.

12. The Applicant has also submitted evidence in support of his claim for compensation. The evidence submitted includes a copy of the Applicant's bank statement showing a withdrawal of US\$ 10,000 on 12/12/2010. The Applicant has also submitted a copy of the Applicant's bank statement showing a withdrawal of US\$ 10,000 on 12/12/2010.