



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

HASSOUNA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Edwin Nhliziyo

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Elizabeth Gall, ALS/OHRM

The Application

1. The Applicant filed an Application before the United Nations Dispute Tribunal (UNDT) in Nairobi on 13 July 2012, contesting the decision of the Secretary-General to not redeploy him from the African Union/United Nations Hybrid Operation in Darfur (UNAMID) following the Government of Sudan's decision declaring him as *persona non grata* (PNG). On 27 August 2012, the Respondent filed his Reply to the Application.

Procedural History

2. On 12 November 2012, the Tribunal issued Order No. 144 (NBI/2012) seeking an update from the Parties as to the status of the Applicant's employment.

3. The Respondent filed his submissions in response to Order No. 144 (NBI/2012) stating that the Applicant's appointment had been extended through 28 February 2013; that the Applicant had been sent on a temporary duty assignment (TDY) to Syria and that the Administration was continuing to encourage the Applicant to "apply to suitable job openings".

4. The Applicant's filing in response to Order No. 144 (NBI/2012) confirmed that he was on TDY in Syria but lamented that he was being deprived of the benefits and entitlements that he would ordinarily be receiving (on a one-year fixed-term appointment (FTA)) because of the short-term extensions he was being subjected to. The Applicant informed the Tribunal that the temporary deployment to Syria was only valid up to 16 February 2013, and that his FTA with UNAMID would expire at the end of February 2013, contrary to the initial recommendation that the FTA be valid through to 30 June 2013.

5. The Applicant also advised the Tribunal that the TDY he was on was at the P3 level, significantly different from the P4/8 post he encumbered at UNAMID. A Case Management hearing was held on 7 February 2013.

6. The Respondent maintained that the Application is moot given that the Applicant's FTA had been renewed through 30 June 2013.

7. The Applicant maintained that he has the right to be deployed to a position commensurate with his grade and experience, which was not the case with his position in Syria. The Applicant also reiterated that the decision of the Government of Sudan to declare him *persona non grata* was not made th0(t)-22(h)19(0(t)-22(h)19(0h)19(-0.9981 0 0 1)-2

19. The Applicant's appointment was thereafter extended for the period 1 April to 30 June 2012.

20. The Applicant sought management evaluation of the decision to not reassign him to another mission on 1 March 2012. The impugned decision was upheld on 13 April 2012.

21. On 12 June 2012, UNAMID sent a second *Note Verbale* to the Sudanese Ministry of Foreign Affairs. UNAMID requested the Government to provide it with information on the specific acts alleged to have been committed by the Applicant and the other staff member. UNAMID also requested that the Government rescind its decision to expel the staff members and that they be permitted to continue their service in UNAMID without hindrance.

22. The Government of Sudan responded on 20 June 2012 saying that it had "legally exercised its right to protect the national security of the country".

23. The Applicant's appointment was renewed for a further three months through 30 September 2012. Following another renewal, the Applicant went on TDY to the Golan Heights from 6 November 2012 to 15 May 2013.

24. It is in evidence that the UNAMID Director of Mission Support (DMS) had recommended the extension of the Applicant's appointment (ending 30 June 2013) to 30 September 2013.

25. It is also in evidence, from the testimony of the DMS, that the Applicant's appointment would have been extended for a further twelve months but for the Government of Sudan's declaration that he was "undesirable" or *persona non grata*.

Parties' Submissions

The Applicant

26. The Charter of the United Nations prohibits the Organization from taking instruction from member states. This principle means that where a member state takes an arbitrary position against a staff member in good standing, the Secretary-General has a duty under staff regulation 1.1(c) to protect the rights of that staff member. In the case of the Applicant, the Secretary-General has failed to accord the staff member with that protection.

27. Although the Applicant has remained employed by the Organisation, he has been on a series of short-term appointments which deprives him of the security of tenure normally accorded to other staff members in good standing. He has also suffered financial losses as a result of the *persona non grata* status imposed upon him by the Government of Sudan.

28. The Applicant's career as a political affairs officer has been undermined, in that he is being made to compete afresh for positions similar to that which he has been encumbering contrary to his requests to be laterally reassigned to any other mission. The Applicant's reassignment must surely be a remedy available to him given that he is in his current position through no fault of his own. That act by the Government of Sudan was arbitrary and has neither been explained nor justified.

29. The Secretary-General has a duty under staff regulation 1.1(c) to protect the rights of the Applicant. The Secretary-General has both the power and authority to laterally re-assign the Applicant to a suitable post in any mission. In circumstances such as that facing the Applicant, the Secretary-General can and should exercise his

30. Asking the Applicant to use his own efforts to find another post is tantamount to accepting the arbitrary action by the Government of Sudan as legitimate. It should be pointed out that PNG decisions are ordinarily taken by member states against international personnel

of the fact that his initial contract with the Secretary-General was frustrated by the Host Government is evidence of the Respondent's good faith. The Applicant has no right to be reassigned to another position in the Organization. The Organization has

Receivability

39. The Applicant held a fixed term contract of one year at the time that he was declared *persona non grata* by the Government of Sudan. Had he not been declared *persona non grata*, according to the testimony of the DMS, he would have been renewed for another year.

40. The Respondent submits that the application is not receivable because the Applicant's contract had been renewed beyond 30 June 2012. The Respondent also submits that the short-term renewal is not a materially receivable issue before the Tribunal because that decision has not been subject to management evaluation.

41. But what the Respondent overlooks is that the initial contract which was for one year, was indeed extended

and would have been renewed had he not be declared *persona non grata*. In his request for management evaluation, the Applicant avers that he was contesting what appeared to him to be the temporary nature of his contract. The Applicant stated, “[i]n addition this position [assignment to RSC in Entebbe] appears to be of a temporary nature”.

45. It is this continuum of events – the repeated short-term renewal of his appointment stemming from the decision of the Government of Sudan to oust the Applicant from its territory - that the Tribunal finds the Applicant to be challenging. As a decision of “individual application” with “direct legal consequences” to the Applicant, the Tribunal finds this decision to be materially receivable.¹

46. The Tribunal is therefore not persuaded by the Respondent’s arguments as to the receivability of this Application

by the host country, the Secretary-General is entitled to request the host country for particulars leading to the PNG decision to enable him to determine whether or not the staff member was acting in his/her official capacity. The decision to remove the staff member still vests in the Secretary-General though it is triggered by a decision of the host country.

48. In the present case the Applicant was declared “undesirable” by the Government of Sudan and the only explanation given by the Sudanese government in the exercise of its sovereign powers was contained in a *Note Verbale* dated 15 December 2012 requesting that the Applicant leave the country within 72 hours on the putative basis

provides the information requested and the SG decides, pursuant to section 20 of the Convention, that the staff member acted outside his/her of

