

UNI

Original: English

Before: Judge

Registry Nairobi

Registrar Abena KwakyeBerko

MIHAI

v.

## Facts and Procedural History

1. At the time of the Application, the Applicant held a ~~fixed~~ term appointment at the ~~P~~ level and served in the capacity of a Political Affairs Officer at the United Nations Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO).
2. The Applicant previously served as an expert seconded by the Swiss Government to MONUSCO following a Memorandum of Agreement (MOA) between MONUSCO and the Swiss Confederation for the contribution of personnel to MONUSCO's Stabilisation Support Unit (SSU). The contract expired on 14 April 2014.
3. In February 2014, the Applicant was asked by MONUSCO whether she would be interested in a position as a Special Assistant to the Deputy Special Representative of the Secretary General (DSRSG) for the Rule of Law.
4. On 14 February 2014, the Applicant wrote

7. The first offer was for a position at the United Nations Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA).
8. The second offer was for a position with the World Bank.
9. The Applicant declined both positions in anticipation of the position with the DSRSG for the Rule of Law in MONUSCO.
10. On 10 April 2014, the Applicant received a three-month offer to serve as Political Affairs Officer in MONUSCO. The offer of appointment was sent by Mr. Minhazur Rahman, Manager for On-Boarding and Separation Service Line, Regional Centre, Entebbe.
11. The offer of appointment was subject to the Applicant satisfying visa requirements and being medically cleared to serve.

15. On 5 May 2014, the Applicant sent Ms. Aurelius<sup>9</sup> the requested copies of the Security in the Field Certificates
16. On 14 May 2014, she sent by e-mail a copy of her previous contract as seconded Expert to Ms. Aurélius<sup>10</sup>.
17. On 6 June 2014, the Applicant received notification that she had been shortlisted for another position with MINUSMA. As the Applicant had contractually consented to her engagement with MONUSCO, she withdrew her candidacy with MINUSMA<sup>11</sup>.
18. The Applicant made repeated requests for updates to MONUSCO on her recruitment status on 19 May 2014, 10 June 2014, 23 June 2014 and 10 July 2014 by e-mail<sup>12</sup>. No reply was forthcoming.
19. In late July 2014, the Applicant received a telephone call from Ms. Ilene Cohen, Chief of Staff to the DSRSG of MONUSCO. Ms. Cohen informed the Applicant that the Offer of Appointment was void on the basis that she had previously worked as a Seconded Expert with MONUSCO. As a result, Ms. Cohen stated the Applicant was not eligible for employment with MONUSCO for six months after completion of her contract with the Swiss Government.
20. On 14 August 2014, the Applicant submitted a request for management evaluation.
21. The le172 367.2 T91.28 .-15SCOioCe

## Submissions

### Applicant's submissions

23. The Applicant submits that the Offer of Appointment from MONUSCO and the subsequent correspondence, most notably from the Recruitment Service Centre, contained all the essential terms of the ~~agreement~~

24. The Applicant accepted this Offer of Appointment unconditionally and

30. The valid contract between MONUSCO and the Applicant obliged the Respondent to organise her travel to the duty station following which a Letter of Appointment was to be issued to the Applicant.

31. The Respondent's failure to perform on his contractual obligations was due to its complete misunderstanding of the regulations governing Temporary Appointments. This was not an

36. The Applicant clearly had alternative opportunities for employment during this period which she gave up in order to maintain her unequivocal commitment to MONUSCO. At the time of refusing alternative employment, she had no reason to believe that the Respondent would not honour its contractual obligations towards her in MONUSCO.

37. The subsequent violation of the Organization's contractual obligations meant that the Applicant incurred a loss of opportunity that represents a separate yet distinct head of damages.

#### Respondent's submissions

38. The Application is not receivable *ratione personae*. At no point during the events leading up to the contested decision was the Applicant a staff member of the Organization. During the relevant time, the Applicant was employed as a consultant with the Swiss Federal Department of Foreign Affairs, which had offered her services to the Organization as *typical* personnel in accordance with the MOA.

39. In exceptional circumstances, despite the express terms of *Article 6* of the Tribunal's Statute, the United Nations Appeals Tribunal has accepted jurisdiction





a contract concluded following the issuance of an offer of employment whose conditions have been fulfilled and which has been accepted unconditionally, while not constituting a valid employment contract before the issuance of a letter of appointment under the internal laws of the United Nations, does create obligations for the Organization and rights for the other party, if acting in good faith. Having undertaken, even still imperfectly, to conclude a contract for the recruitment of a person as a staff member, the Organization should be regarded as intending for this person to benefit from the protection of the laws of the United Nations and, thus, from its system of justice and, for this purpose only, the person in question should be regarded as a staff member.

Finding otherwise would mean denying the right to an effective remedy before a tribunal in respect of acts of the Organization that may ignore rights arising from a contract... which was concluded for the appointment of a staff member.

was “already in motion”. At no time did the Respondent inform the Applicant that she was not eligible as she could only be employed six months following the expiry of her tenure with MONUSCO as a seconded officer of the Swiss Government.

51. It was only in late July five months after the offer of appointment was made, that she was informed that she could not be appointed. The Respondent submits that this was an error which he has the authority to rectify.

52. This submission is not entirely correct. The Respondent realised that issuing a letter of appointment would be contrary to section 6.3 of ST/AI/1999/6 which reads “Gratis personnel may not apply for or be appointed to posts in the Secretariat for a period of six months after the end of their service

53. A request was made for a waiver of section 6.3 of ST/AI/1999/6 “[F]acilitate the Immediate Onboarding of Gratis Personnel”. It is dated 4 June 2014 and is addressed to Mr. Chhaya Kapilashrami Director, Field Personnel Division (FPD) copied to Mr. Chaste Abimana Director, Field Personnel Division; Mr. Paulin Dpmo, Chief of East and Central African Section; Mrs. Larissa Hill, Human Resources Officer, East and Central African Section FPOS/FPD/DFS and Mr. Elker Buitrago Desk Officer, FPOS/FPD/DFS. The request for a waiver was drafted by Susan King, Human Resources Assistant and authorized by Francisca Kwasa and sent through Daniel Thomas, Chief, Human Resources Officer.

54. The request for waiver reads:

1. Request is hereby made for a waiver to the provisions of Sec.6.3 of ST/AI/1999 dated May 1999 on Gratis Personnel that prohibits the selection and hiring of Gratis Personnel before they have completed their assignment and taken a six (6) month break service.
2. MONUSCO has a Memorandum of Agreements with the Swiss Federal Department of Foreign Affairs/Director of Political Affairs and NORDEM, the Norwegian Centre for Human Rights regarding Gratis Personnel.
3. The RSCE has refused to process the onboarding of two (2)







Tribunal may, however, in exceptional cases order the payment of