



Case No. UNDT/NBI/2017/022

Judgment No. UNDT/2017/061

9. The Applicant was granted a continuing appointment with the Secretariat of the United Nations effective 30 September 2014.

10. UNDP responded to MONUSCO on 30 September 2014 that a transfer would not be possible but that it would recruit the Applicant after his resignation from MONUSCO. UNDP sent this response to the Applicant on 1 October 2014 and on the same day, the Applicant wrote to UNDP for further clarification.

11. On 2 October 2014, UNDP replied to the Applicant that neither a secondment nor a transfer from MONUSCO would be possible in his case. The Applicant sought further clarification from UNDP on his contractual status on 6 October 2014.

12. UNDP provided further clarification to the Applicant on 10 October 2014 that since he was neither being transferred nor being seconded, his recruitment was being treated as an initial appointment. Hence his benefits and entitlements would not be carried over.

13. By an inter-office memorandum dated 17 October 2014, the MONUSCO CHRO informed the Applicant that due to his selection by UNDP to serve as the Peace and Development Advisor, his appointment with MONUSCO would be “curtailed effective 24 October 2014” and that his separation from MONUSCO would take effect on the same date. A personnel action form (PA) was initiated on 24 October 2014 indicating the Applicant’s separation from service with MONUSCO and reappointment with UNDP.

14. The Applicant accepted UNDP’s offer of a one year fixed-term appointment and signed a letter of appointment on 8 November 2014. His appointment became effective on 25 October 2014 with an expiry date of 24 October 2015.

15. On 27 April 2015, MONUSCO paid the Applicant USD17,302.58 for his unused annual leave.

16. On 25 October 2016, the Applicant wrote to FPD/DFS seeking advice on his continuing appointment.

17.



This was clearly spelled out in UNDP's inter-office memorandum of 30 September 2014, which was sent to the Applicant on 1 October 2014.

28. Upon receipt of the 30 September 2014 inter-office memorandum, the Applicant wrote to UNDP for clarification on 6 October 2014 as follows:

Dear K,

I don't know whether I do have a specific query. I just want to

31. One week later, on 17 October 2014, MONUSCO sent the Applicant an inter-office memorandum that stated:

This is to inform you that following your selection by UNDP to serve with the Office of the Special Envoy for the Great Lakes in Nairobi as Peace and Development Advisor at the P-5 level, your appointment with MONUSCO will be curtailed effective 24 October 2014. Accordingly, your separation with MONUSCO will take effect on the same date.

In this connection, please contact the Check-In-Check-Out (CICO) Office at the Regional Services Centre Entebbe (RSCE) on ext. 198-xxxx as soon as possible, to enable them to initiate this process.

...

32. A separation PA was issued on 24 October 2014 indicating that the Applicant's appointment had been "curtailed" by MONUSCO effective 24 October 2014 and that he was to be reappointed by UNDP. He was then paid USD17,302.58 for his unused annual leave in April 2015.

33. The Applicant has not denied receiving the 17 October 2014 inter-office memorandum, the 24 October 2014 separation PA

was not a possibility as of 1 October 2014, the Applicant knew or should have known that he would be severing his contractual relationship with MONUSCO, which is part of the Department of Peacekeeping Operations and the United Nations Secretariat, once he signed a letter of appointment with UNDP, which is a Programme that is separate and distinct from the United Nations Secretariat.<sup>2</sup>

36. The Tribunal will now review the correspondence between the Applicant and MONUSCO, which is the cornerstone of this application. With respect to the 17 October 2014 inter-office memorandum from the CHRO to the Applicant titled “Curtailement of your appointment”, the Applicant submits that:

The Administration relied on Annex 7 of the Application as an evidence of the decision made in October 2014. However that is quite misleading because the document produced in that Annex 7 is a standard letter sent to all staff moving from one mission of the UN to another without any regard to their long-term contractual status. Indeed, it does not mention anywhere the contractual status of the Applicant as a holder of a continuing appointment. It is limited to the appointment within MONUSCO and not within the UN Secretariat in general.

37. This submission by the Applicant can only be characterized as mischievous. The Tribunal is battling to understand how the Applicant can argue that the 17 October 2014 memorandum was a “standard letter sent to all staff [...]” when it is specifically addressed to him and refers to his selection by UNDP for the post of Peace and Development Advisor at the P-5 level. Obviously, a standard letter to all staff members would not have included this level of detail.

38. The Tribunal also does not accept the Applicant’s submission that he was not separated from service with MONUSCO when the record shows that he was. Firstly, he officially communicated his intention to “relinquish” his position with MONUSCO to the CHRO on 4 August 2014 upon his selection for the UNDP post. Secondly, UNDP informed MONUSCO that neither a secondment nor a transfer would be possible so it would recruit the Applicant after his resignation from MONUSCO. Thirdly, MONUSCO informed the Applicant of his separation on the basis that he had been selected for a position with UNDP. Lastly, the

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<sup>2</sup> See the United Nations System Chart at





cannot be considered as a confirmative decision (see for example judgment No. 1301 (2006) of the former UN Administrative Tribunal, as well as judgment UNDT/2010/155, *Borg-Oliver*, by

48. Article 8.1(c) of the UNDT Statute provides that an application shall be receivable if an applicant has previously submitted the requested administrative decision for management evaluation where required.

49. Additionally, pursuant to art. 8.3 of the UNDT Statute, “[t]he Dispute Tribunal shall not suspend or waive the deadlines for management evaluation”. Accordingly, the Tribunal cannot entertain an application if the underlying request for management evaluation is time-barred.<sup>6</sup>

50. Since this Tribunal has found that the 17 October 2014 inter-office memorandum was the administrative decision relating to the curtailment of the Applicant’s continuing appointment, the Applicant should have requested management evaluation on or before 16 December 2014. The Applicant however did not request for management evaluation until 3 January 2017.

51. The Tribunal holds that the application is time-barred because of the Applicant’s failure to file his application within the established time limits. The Tribunal also holds that the Applicant has failed to articulate any exceptional circumstances justifying the delay.

### **Conclusion**

52. Not only is this application not receivable, the Tribunal considers it to be frivolous, vexatious and an abuse of process. Nonetheless, it will refrain from ordering costs against the Applicant and his counsel. Instead, the Tribunal will reiterate relevant portions of the observations it made in *Haydar* UNDT/2017/050:

68. [...], the Tribunal needs to reiterate here that it is committed to dealing with genuine applications that come to it with a view to granting necessary reliefs to wronged and diligent applicants.

69. It is expected at all times that all applicants, especially those who have legal representation, present their applications with a good degree of articulation and a high sense of responsibility. This Tribunal is properly set up by law and has legal parameters for the applications it entertains. It is therefore not the forum for

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<sup>6</sup> See *Costa* 2010-UNAT-036, *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, and *Adjini et al.* 2011-UNAT-108.



Entered in the Register on this 24<sup>th</sup> day of July 2017

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi