
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/121

Judgment No.: UNDT/2019/141

Date: 12 September 2019

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

INTRODUCTION AND PROCEDURAL HISTORY

1. The Applicant is a staff member of the United Nations Mission in South Sudan (UNMISS). He serves as a Security Officer at the FS-5 level. On 11 December 2018, he filed an app

additional submissions.

8. The Applicant joined UNMISS on 11 December 2011 as a Security Officer with the Integrated Security Section in South Sudan (Integrated Security Section).¹ An organigram for the Integrated Security Section, which was submitted by the Respondent, shows that the Applicant was assigned to the Integrated Operations Center-UN House (IOC) in May 2018.²

9. On 13 September 2018, the Applicant was reassigned within the Security Section in Juba from the IOC to the Guard Force Unit (GFU) in Tomping.³ In accordance with a September 2018 organigram for the Integrated Security Section, which was submitted by the Applicant, his new supervisor at the GFU was supposed to be the P-3 Deputy/Field Security Coordination Officer at Tomping.⁴

10. By email dated 18 September 2018, the Commander of the GFU (C/GFU) in Tomping, a Security Officer at the FS-5 level, welcomed the Applicant to the GFU and provided his work schedule commencing 19 September 2018.⁵

11. On 21 September 2018, the C/GFU emailed the Applicant again regarding his alleged “abandonment of duties” and requested that he adhere to the duty roster and requirements of GFU Tomping.⁶

12. On 24 September 2018, the Applicant emailed the UNMISS Human Resources Section (HRS) to inform them that he had been told the C/GFU, who was at the FS-5 level as was the Applicant, would be serving as his FRO. In this respect, he sought advice from HRS on the designation of First Reporting Officers (FROs) and Second Reporting Officers (SROs).⁷

¹ Respondent’s reply, annex R1.

² *Ibid*, annex R2.

³ Application, annex 2.

⁴ Applicant’s submission of 1 March 2019, exhibit 8.

⁵ Respondent’s reply, annex R3.

⁶ *Ibid*.

⁷ Application, annex 1.

13. On 12 October 2018, the Field Security Coordination Officer for Juba (Central Equatoria) responded to the Applicant's 24 September 2018 email that UNMISS HRS had confirmed that due to the absence of clear rules and regulations, a staff member could be assigned to supervise other staff members at the same level at the discretion of the administration.⁸

14.

there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect. The mootness doctrine is a logical corollary to the court's refusal to entertain suits for advisory or speculative opinions. Just as a person may not bring a case about an already resolved controversy (*res judicata*) so too he should not be able to continue a case when the controversy is resolved during its pendency. The doctrine accordingly recognizes that when a matter is resolved before judgment, judicial economy dictates that the courts abjure decision.

45. Since a finding of mootness results in the drastic action of dismissal of the case, the doctrine should be applied with caution. The defendant or respondent may seek to "moot out" a case against him, as in this case, by temporarily or expediently discontinuing or formalistically reversing the practice or conduct alleged to be illegal. And a court should be astute to reject a claim of mootness in order to ensure effective judicial review, where it is warranted, particularly if the challenged conduct has

21. To determine whether there would be continuing collateral consequences for the Applicant should his application be dismissed, the Tribunal examined the remedies sought by the Applicant in his application, which are as follows: (i) rescission of the 17 October 2018 decision to appoint the C/GPU as his FRO; (ii) appointment of an FRO who is at a higher level than the Applicant to supervise him; and (iii) reinstatement of an application relating to a selection exercise, Case No. UNDT/NBI/2015/041, that he withdrew on 18 May 2015.

22. Clearly, the Tribunal cannot reinstate an application that was withdrawn by the Applicant in 2015 and has no bearing whatsoever on the decision he is contesting in his application of 11 December 2018.

23. It is also clear that UNMISS has rescinded its 17 October 2018 decision by appointing the Deputy/Field Security Coordination Officer, who is at the P-3 level, as the Applicant's supervisor and FRO. In this respect, the Tribunal notes that the Applicant's 2018-2019 e-PAS was completed by the Deputy/Field Security Coordination Officer as his FRO and by the Field Security Coordination Officer as his SRO. Since the e-PAS has been completed, the Tribunal is satisfied that the Respondent is not seeking to "moot out" the case against him by temporarily or expediently discontinuing or formalistically reversing his decision to designate the C/GPU as the Applicant's supervisor/FRO.

24. Given that the Respondent has granted the Applicant the remedies he sought, the Tribunal concludes that the Applicant no longer has a live claim and that his application is now moot.

JUDGMENT

25. The application is dismissed as irreceivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 12th day of September 2019

Entered in the Register on this 12th day of September 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi