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Date: June  
City: Nairobi  
Registrar: Abena Kwakye-Berko

KRA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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JUDGMENT

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Counsel for the Applicant:  
Self-represented

Counsel for the Respondent:  
Nicole Lynn, AAS/ALD/OHR  
Rosalia Adamo, AAS/ALD/OHR

## Introduction

1. The Applicant is a former staff member of the United Nations - African Hybrid Operation in Darfur (UNAMID), where he served as a Child Protection Officer, at the P-3 level.<sup>1</sup>

2. On 26 June 2018, he filed an application contesting the decision to terminate his fixed-term appointment (FTA) following the abolition of the post which he held. He seeks compensation for the loss suffered; in the alternative, he prays to the Tribunal to find that the procedure followed to terminate his appointment was defective and thus order for his reinstatement at an equivalent post within UNAMID.<sup>2</sup>

3. The Respondent filed a reply on 2 August 2018 in which it is argued that the claim is not receivable *ratione materiae* in part. If found receivable, then the contested decision was lawful.

## Facts

4. The facts laid out below are uncontested and supported by the parties' pleadings and submitted documents.

5. Since 15 May 2016, the Applicant served as a Child Protection Officer with UNAMID at the P-3 level.<sup>3</sup>

6. On 18 May 2017, the United Nations Secretary-General and the Chairperson of the African Union Commission submitted their joint report on the strategic review of UNAMID to the United Nations Security Council.<sup>4</sup> The report took note of the improved security situation in Darfur, recommended a drawdown of the mission and called for a comprehensive civilian staffing review (CSR) with a view to implementing

personnel.

11. On 24 December 2017, the General Assembly endorsed the recommendations of the Advisory Committee on Administrative and Budgetary Questions on staff changes and the reductions at UNAMID.<sup>13</sup>

12. On 28 March 2018, the Applicant received a response to his management evaluation request upholding the decision to terminate his fixed-term appointment.<sup>14</sup> On 2 April 2018, the Chief Human Resources Officer (CHRO), UNAMID notified the Applicant that his appointment would end on 8 April 2018.<sup>15</sup>

## Submissions

### *Applicant's submissions*

13. The Applicant maintains that the termination of his appointment was vitiated by bias, which extended against the whole Child Protection Section. Moreover, the CSR recommendation to reduce the mandate of the Child Protection Section was in violation of the relevant Resolutions of the United Nations Security Council on children and armed conflicts and, in particular,

find that the procedure followed to terminate his appointment was defective and thus order for his reinstatement at an equivalent post within UNAMID.

*Respondent's submissions*

*Receivability*

16. To the e

20. The Applicant's claim that the 4 December 2017 formal notice does not meet the required time frame of 30 calendar days is without merit. The Applicant was separated effective 9 April 2018, four months after UNAMID had given him official notice of the issue.

21. The Organization had no obligation to laterally re-assign the Applicant. The comparative review considered the type of appointment that each staff member held, giving priority for retention to those holding a continuing or permanent appointment in accordance with staff rule 9.6(e). The USG/DFS has the discretion to place staff members outside the normal recruitment process, but is not required to do so.<sup>18</sup>The USD/DFS may reassign staff affected by downsizing "with priority to those holding a permanent or continuing appointment, to suitable positions in the existing missions outside of the regular recruitment exercise."<sup>19</sup> In this case, given the number of staffing reductions, it was not possible to retain the Applicant, who held a fixed-term appointment.

### Considerations

22. Regarding the question of receivability, the Tribunal agrees that the CSR Report and its Final Recommendations including recommendation on reducing staff in the Child Protection Section, no matter how possibly controversial as a policy decision, did not produce direct effect on the Applicant's terms and conditions of service. The application, however, although the CSR Report is in the centre of the argument, is

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In the process, the Applicant's post was so selected, which entailed the decision on termination of his appointment. The Tribunal's cognizance extends over reviewing the appropriateness of the steps which led to this decision, however, in so far only as they are attributed to the Secretary-General.

24. In line with the aforesaid, the question boils down to whether the comparative review was carried out in accordance with the applicable law and in a rational and fair manner. In this regard, it is apparent that the review had been undertaken in anticipation of the General Assembly's endorsement of the CSR Report and its recommendations, which however does not render its results unlawful. Prima facie, the Tribunal finds no reason to question the composition of the panel, the criteria used and the points assigned, which appear to have properly favoured seniority and performance evaluation. In this regard, it is noteworthy that the Tribunal twice called upon the Applicant to provide his submissions regarding the matter of comparative review, however, to no avail. The Tribunal accepts thus that the Applicant had scored the lowest in his category and, accordingly, selecting him for reduction was meritorious.

25. The Tribunal further agrees with the argument presented by the Respondent that the Organization was not under the obligation to re-assign the Applicant through a lateral move. The Tribunal finds, moreover, that the notice of the final date of separation given to the Applicant was appropriate under the circumstances.

#### Conclusion

26. The application is dismissed.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 31<sup>st</sup> day of July 2019

Entered in the Register on this 31<sup>st</sup> day of July 2019

*(Signed)*

Abena Kwakye-Berko