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Case No.: AUAT/2016/003
Order No.: AUAT/2019/003

M.Y.

v.

Chairperson of the African Union Commission

FOR APPLICANT: *Pro se*

FOR RESPONDENT: Office of the Legal Counsel, African Union Commission

BEFORE: Hon. Andrew K.C. NYIRENDA, Hon. Shaheda PEEROO and Hon. Sylvester S. MAINGA¹

ORDER

1. On 9 October 2019, the Respondent filed “Motion for A Stay of Execution of the Summary Judgment,” seeking suspension of execution of the judgment in this matter, Judgment No. AUAT/2019/001 issued on 10 September 2019.
2. According to the Motion, the Respondent seeks “... *a period of six (6) months in order to carefully study the judgment and all implications, including the possibility of filing an application for review or annulment of the judgment, in accordance with Articles 20 and 21 of the Statute of the Administrative Tribunal.*”
3. Together with the Motion, the Respondent filed a “Status Report,” in which he provided a list of steps the Organization has taken in executing Judgment No. AUAT/2019/001, including the implementation of the order requiring the Applicant’s upgrade to the D-1 salary grade. The Status Report also states that “all sums due to the Applicant ... have been duly computed and payment would be made to the Applicant as expeditiously as possible...”
4. The Applicant opposes the granting of a stay on various grounds serialized in his Response filed on 16 October 2019.

¹ Judge Sylvester Salufu Mainga was sworn-in as Administrative Tribunal Judge on 10 July 2019. He joins Judges Nyirenda and Peeroo in this order, as in Judgment No. AUAT/2019/001, to permit disposition of this matter under Article 4(i) of the Statute of the Administrative Tribunal.

Discussion

5. Judgments of the Tribunal are final.² The doctrine of *res judicata* dictates that once the Tribunal has fully adjudicated on an application, it cannot be re-litigated.³ We note that the purpose of *res judicata* is to prevent abusive and duplicative litigation and to maintain finality of proceedings.
6. Neither the Statute nor the Rules of Procedure of the Administrative Tribunal specifically provide for the authority to consider a stay of execution request made after the issuance of a final judgment. Under the discretionary authority granted to us under Rule 22, however, we consider it to be an essential element of the Tribunal's inherent power to manage its docket by retaining continuing jurisdiction over cases and, in its discretion, give directions with respect to the enforcement of a judgment or an order.⁴
7. As far as we can discern from the Respondent's conflicting presentation, the Respondent asks that the underlying judgment be stayed for a period of six months, while at the same time apprising the Tribunal of the steps taken to implement the very same judgment which he seeks stayed. The reason provided for the request is that the Respondent wishes to study the case to determine future application(s) to have the judgment reviewed or annulled.
8. A request to stay a final judgment is generally considered in connection with an ongoing appellate review and in order to preserve the status quo during the pendency of such review. Consequently, a motion for stay may not be admissible if it does not follow or coincide with the filing of a request for review from the underlying judgment.⁵ Moreover, if we were to borrow the approach of many national legal systems, the party moving for a stay would generally be expected to show: (1) likelihood of success on the merits of their appeal or request for review; and (2) likelihood of harm if such relief is not granted.
9. We cannot consider any motion for stay that is predicated on a hypothetical request to review or to annul the underlying judgment that the Respondent may or may not file in the indeterminate future. Even if we were to overlook this deficiency, the Motion does not provide any basis upon which to assess the prospects of Respondent's anticipated challenge to the underlying judgment nor does it tell us anything about the injury likely to befall the Organization if the stay is not granted.
10. We also observe that it is unclear to us if the status quo between the parties remains unchanged given the Respondent's own statement that he had already begun implementing the judgment *expeditiously*. The Motion does not specify the part(s) of the underlying judgment it seeks stayed, and if we are to take the Respondent's representations in the Status Report at face value, it appears to us that at this point in time there may be nothing for the Tribunal to preserve by way of granting a stay.⁶
11. Having read and considered the Respondent's Motion and the opposition filed by the Applicant and for the reasons above, the Motion for Stay is DISMISSED, and the Respondent is

² Administrative Tribunal Statute Art. 17(vi).

³ *ILOAT Judgment* No. 2993; *ILOAT Judgment* No. 1824; *In re Sethi* (No. 4); *Judgment* No. 2010-UNAT-0266i.

⁴ *ILOAT Judgment* No. 3003, para 28-29.

⁵ For example, a request for suspension of action under Article 2.2 of the UNDT Statute must be predicated upon an ongoing and pending management evaluation. See *Igbinedion*, 2014-UNAT-410; see also Order No. 123 (NY/2016); *Siri*, Order No. 304 (NBI/2015); Art. 13, UNDT Rules of Procedure. Similarly, under Art. 9.4 of UN Appeals Tribunal Statute, “[a]t any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal.” (Our emphasis).

⁶ See e.g. *Tiwathia*, UNDT/2012/109, paras. 29, 39, *aff'd*, 2013-UNAT-327; *Nwuke*, UNDT/2012/002, para. 29, *aff'd*, 2013-UNAT-330; *Laurenti*, Order No. 243 (NBI/2013), paras. 14, 17, 23; *Riecan*, Order No. 089 (NBI/2014), paras. 15-17. (holding the UN Dispute Tribunal cannot review an application for suspension of action if the contested administrative decision has already been implemented.)

ORDERED to proceed, without further delay, with the execution of any unimplemented aspects of Judgment No. AUAT/2019/001.

Date: 15 November 2019

/signed/

Hon. Andrew K. C. NYIRENDA, President
Hon. Shaheda PEEROO
Hon. Sylvester S. MAINGA

Secretary: 