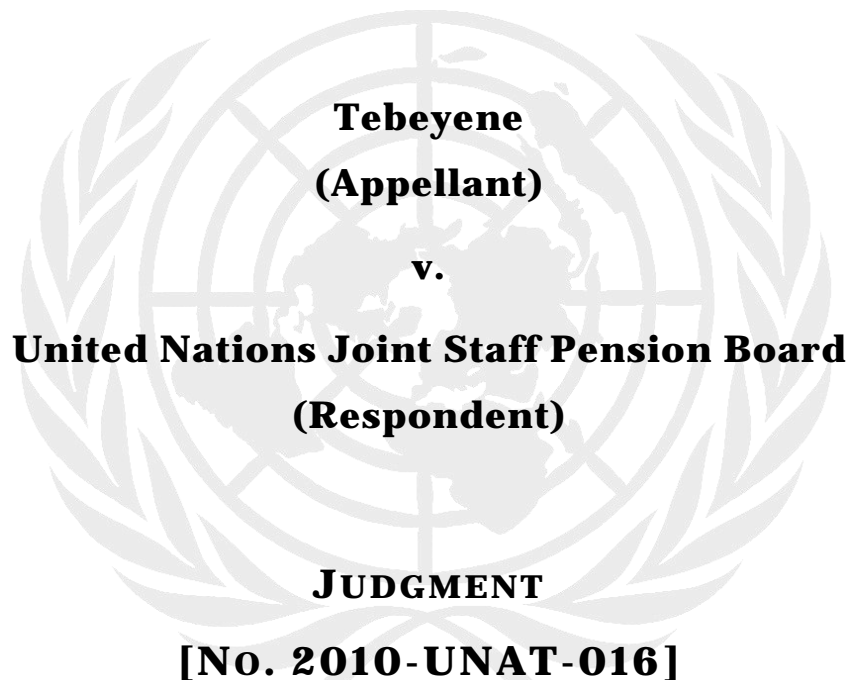




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES



**Tebeyene
(Appellant)**
v.
**United Nations Joint Staff Pension Board
(Respondent)**
JUDGMENT
[No. 2010-UNAT-016]

Before: Judge Mark Philip Painter, Presiding
Judge Kamaljit Singh Garewal
Judge Rose Boyko

Case No.: 2010-021

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: François Lorient

Counsel for Respondent: Jaana Sareva

MARK P. PAINTER, Presiding Judge.

Synopsis

1. This is a pension case. United Nations employee Augustin Mandeng (Mandeng), a native of Cameroon and resident of the United States, married Elizabeth Wagner (Wagner) in the United States in 1973. After obtaining a questionable divorce from Wagner in Cameroon, Mandeng married Tebeyene Mamo (Tebeyene) in 1989. Both claim a widow's benefit. The United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) awarded the benefit to Wagner. While we believe Tebeyene has always acted in good faith, we are constrained to affirm the decision.

Facts and Procedure

2. Mandeng became a participant of the UNJSPF in 1973 as a staff member of the United Nations Development Programme (UNDP) and remained as such until his separation from service on 31 July 2004.

3. Also in 1973, in the USA, Mandeng married Wagner. They had two sons.

4. Mandeng received an early retirement benefit from UNJSPF from August 2004 until his death in early 2005. He had retired from the UNDP.

5. Following Mandeng's death, Appellant Tebeyene, an Ethiopian and also a UNDP staff member and active UNJSPF participant, requested a widow's benefit under Article 34 of UNJSPF's Regulations and Rules, as her husband's legal spouse. To support her claim, she produced a Cameroonian marriage certificate of a monogamous marriage between her and Mandeng issued in November 1989. UNJSPF submits that it had received no prior information of this marriage, as neither Mandeng nor UNDP had reported the marriage to UNJSPF; and that it had not been provided with any evidence of a divorce between Mandeng and Wagner.

6. Mandeng's marriage to Wagner was recorded by UNDP and communicated to UNJSPF through a Personnel Action (PA) form in 1975. Wagner was also listed as his spouse in later PA forms as well as in his separation document from UNDP. All personnel actions received by UNDP in respect of the Appellant listed her marital status as "single". Though there are a few instances where references to Tebeyene appear in Mandeng's records, they are fleeting at best.

7. In January 2005, Mandeng initiated a divorce against Wagner in the Superior Court of New Jersey, USA. Mandeng died while the divorce was proceeding and his complaint for divorce was dismissed following his death. A first death certificate, issued in February 2005, listed Tebeyene as the surviving spouse. A second death certificate, issued in May 2005, named Wagner as the surviving spouse. Wagner was appointed as an administrator of Mandeng's estate in August 2005.

8. UNJSPF decided that, at the time of Mandeng's death in February 2005, Wagner was his sole, legally recognized surviving spouse. In August 2005, Wagner was informed that she was entitled to a widow's benefit under Article 34 of UNJSPF's Regulations and Rules. At the same time, Tebeyene was informed that she was entitled to receive a child's benefit under Article 36 of the UNJSPF's Regulations and Rules for a son that she had with Mandeng.

9. On 28 February 2006, the Appellant presented to UNJSPF a copy of a Cameroonian divorce decree, dated May 1989, between Mandeng and Wagner, together with a further request for a widow's benefit. UNJSPF informed her that it could not change its decision as the divorce decree had not been signed by Wagner. Tebeyene requested a review by the Standing Committee of the Fund's Board (SC).

10. At its 189th meeting on 19 July 2006, the SC decided to uphold UNJSPF's decision to recognize Wagner as the legal wife and confirmed that she was therefore entitled to the continued receipt of a widow's benefit. It also found that the Appellant would continue to be entitled to a child's benefit under Article 36 of the UNJSPF's Regulations.

11. In October 2006, Tebeyene filed her appeal with the former United Nations Administrative Tribunal (Administrative Tribunal). The UNJSPF answered in March 2007. The Appellant filed Written Observations on June 2007. The UNJSPF filed additional submissions in February 2008. Voluminous materials were continuously filed by both parties. Tebeyene asked for two continuances, resulting in the case being transferred to this Court upon the abolition of the Administrative Tribunal at the end of 2009.

12. This appeal is upon a question of fact: is Tebeyene Mandeng's surviving spouse? Though UNJSPF asserts some issues of law, we find them unpersuasive.

Submissions

Tebeyene's Appeal

13. The Appellant, Tebeyene, claims that she was Mandeng's sole spouse, in fact and in law, from 1989 until his death in 2005. She submits that Mandeng's previous marriage had been legally dissolved in May 1989, when he obtained in Cameroon an uncontested divorce from his first wife, Wagner.

14. Mandeng entered into a civil marriage with Tebeyene in Cameroon in November 1989. She claims that she and Mandeng were recognized as husband and wife by their families and their shared working place, the United Nations.

15. Tebeyene submits that according to Ethiopian law, she is entitled to claim the status of former wife and now widow of the late Mandeng. Even if the Tribunal were to find any irregularities in her marriage, she asserts that she would be entitled to claim the status of putative wife and widow of the late Mandeng under the Ethiopian Family Code. The Appellant argues that under ST/SGB/2004/13, the domestic legislation of Cameroon and Ethiopia are applicable in the present case.

16. Tebeyene further submits that in July 2004, Mandeng listed her as the sole recipient of a possible residual settlement of a pension benefit. She further submits that before his death, Mandeng also named her heir to all his property, insurance policy etc.

17. And Tebeyene alleges that the deliberations and recommendations of the SC and the subsequent decision taken by the Chief Executive Officer of UNJSPF are flawed. She claims that counsel representing UNJSPF participated in the 189th meeting of the SC while Tebeyene was not invited. She was not informed which documents had been submitted by UNJSPF's Administration, and did not receive its final report. While the letter dated 24 August 2006 refers to the SC's "decision" to consider Wagner as the widow and beneficiary of Mandeng's pension, it fails to provide any "valid, legal and reasoned explanations". Tebeyene alleges that UNJSPF's decision is arbitrary and biased and disregards the facts and applicable law.

18. Tebeyene requests the payment of widow's benefit with retroactive effect from February 2005, plus 10% annual compound interest. Furthermore, she requests the payment of legal fees in the amount of \$ 10,000.

UNJSPF's Answer

19. UNJSPF asks the Tribunal to uphold the SC's decision that Tebeyene is not entitled to a UNJSPF widow's benefit.

20. UNJSPF submits that UNJSPF Administrative Rules B.1 to B.3 provide the legal basis for its decision. Administrative Rules B.1 and B.2 establish the responsibility of employing organizations to furnish specific information related to the employment and personal data, including marital status, of their staff who are Fund participants. UNJSPF notes that UNDP never reported the divorce or a new marriage of Mandeng, when in active service.

21. Administrative Rule B.3 creates a comparable responsibility for UNJSPF participants themselves, firstly, to provide information as required in Administrative Rule B.2, and second, to notify their employing organization of any changes which occur. UNJSPF submits that Mandeng had failed to fulfill his obligation to report personal data, especially the change in his marital status, during his active UNJSPF participation as a UNDP staff member. UNJSPF learned about the purported second wife only after Mandeng's separation and death, and directly from Tebeyene herself. Similarly, Tebeyene herself had not reported through her employing organization UNDP the change in her marital status from "single" to "married".

22. In response to Tebeyene's claim that under ST/SGB/2004/13, the domestic legislations of Cameroon and Ethiopia are applicable in the present case, UNJSPF notes that UNJSPF acts on the basis of its own, self-contained UNJSPF Regulations and Administrative Rules. The marital status of UNJSPF participants and beneficiaries is determined in accordance with the UNJSPF Regulations and Rules. ST/SGB/2004/13 is therefore not relevant to the case at hand.

23. UNJSPF further submits that the marriage certificate dated 28 November 1989 and divorce decree dated 15 May 1989 were both issued in Cameroon and that it is not apparent whether the Cameroon courts had personal jurisdiction over foreign nationals.

24. UNJSPF contends that the circumstances surrounding the divorce in Cameroon raise doubts of the legal validity of the Cameroonian divorce decree. Even if there were a divorce decree, it is not established whether the United States, Mandeng's country of residence and the country of nationality of his wife, would have recognized the divorce decree as legally valid, given that their marriage was initially entered into in the United States. UNJSPF submits that the State Registrar of the State of New Jersey had corrected the original Death

Certificate in May 2005 on the basis of the marriage certificate from Cincinnati, Ohio, Hamilton Court, USA, from 1973. In addition, the State of New Jersey, Essex County Surrogate's Court, USA, appointed Wagner as the Administrator of Mandeng's estate in August 2005.

25. The UNJSPF concludes that in accordance with UNJSPF's Regulations and Rules and on the basis of the documentation provided and data reported by the former employing organization, UNJSPF's decision to assess the validity of Wagner's marriage in the same way as the employing organization was not arbitrary or unreasonable.

Tebeyene's Written Observations

26. Tebeyene claims to present new evidence from OHRM and UNDP. She submits that her personnel file contains documents attesting to the marriage between herself and Mandeng. She contends that how the information was subsequently used was beyond her control. Tebeyene points to further UNDP documents (travel authorization; personnel action) attesting to the marriage between Tebeyene and Mandeng.

27. Tebeyene further argues that she and Mandeng had trusted that their employer would transmit any required information to UNJSPF.

28. Tebeyene contends that the interpretation of Administrative Rules B.1, B.2 and B.3 suggested by the UNJSPF is so strict and narrow to the effect that it may lead to participants and beneficiaries being denied the rights and obligations arising from their own marital status if at the time of a participant's death, his or her file does not contain the relevant information. She contends that in cases where birth certificates of children of deceased participants had not been on file, before the participant's death, UNJSPF nevertheless accepted birth certificates then. The same flexibility should apply in cases where a beneficiary has several wives.

29. Tebeyene contends that the divorce decree handed down in Cameroon shows that Wagner had indeed been served with the divorce papers.

30. Tebeyene reiterates her contentions regarding her putative marriage and requests that expert advice on customary and putative marriages should be sought if this Tribunal required clarification. She requests that the costs of such expert be borne by UNJSPF contesting her marital status.

UNJSPF's Additional Submission

31. UNJSPF presents documentation received from Wagner, including a letter from *Cour d'appel du Littoral*, Cameroon, stating that the court's registry does not have the divorce judgment cited to by Tebeyene; and documents supporting the contention that Wagner had not participated in—or even known about—the alleged divorce proceedings, or that the divorce decree had never been passed by a competent court in Cameroon. UNJSPF also submits joint checking account statements and cancelled checks (September 2004 to February 2005) to confirm Wagner's marriage to Mandeng until his death in February 2005.

Tebeyene's Observations on UNJSPF's Additional Submission

32. Tebeyene contends that the documents provided by Wagner and submitted by UNJSPF in an attempt to challenge the authenticity of the divorce documents, merely constitutes “testimony based on hearsay” and can therefore not call into question the divorce documents provided.

33. Furthermore, Tebeyene submits that *Cour d'appel du Littoral*, Cameroon is not the court that had issued the divorce decree.

34. Tebeyene emphasizes that the UNJSPF is not contesting the validity of the certificate attesting the marriage between her and Mandeng.

35. Tebeyene finally submits that the bank accounts held jointly by the late Mandeng and Wagner were only kept to make maintenance payments in respect of his children.

UNJSPF's Second Additional Submission

36. UNJSPF provides additional documentation sent to UNJSPF by Wagner's counsel concerning the court proceedings related to Mandeng's estate in the Superior Court of New Jersey, USA. UNJSPF contends that the documents demonstrate that the Court found Wagner to be Mandeng's surviving spouse and accordingly accorded all rights upon her; and found the Cameroon divorce invalid.

Considerations

37. This appeal, not being from the United Nations Dispute Tribunal, presents different procedural issues. Normally, a fact-finding hearing would have been held, and this Court would review its findings. The SC's hearing was not a proper fact-finding hearing, because

Tebeyene had not been advised about this meeting nor advised of the issues and evidence to be considered. In addition, UNJSPF's counsel was present, while Tebeyene was not. Without knowing the case against her and without being given an opportunity to submit additional evidence or request an adjournment in order to do so, it is apparent now that the proceeding was unfair to her. For example, Tebeyene may not have known that the existence or validity of the Cameroon divorce may have been at issue before the SC. Without information from Tebeyene about the circumstances of her marriage and the alleged prior Cameroon divorce, the decision could not have been based on complete information. In the future, the SC must at least provide notice of the hearing and opportunity to submit written evidence.

38. Because of the voluminous additional evidence submitted by both sides—which we allow in this case as an accommodation to the transition period between courts—we are satisfied that Tebeyene has had ample opportunity to present her case. We emphasize that, in the future, the record must be developed at the lower level—only an appeal and answer are contemplated by our Rules of Procedure. But in cases filed under the old system, we allow some leeway.

39. This Court agrees with Tebeyene that UNJSPF's reliance on its own rules to place the burden upon the employing organization to submit the proper information could obviously create anomalous results. UNJSPF seems to be contending that simple clerical errors in reporting could lead to an employee's losing otherwise-proper benefits. UNJSPF submits that UNJSPF Administrative Rules B.1 to B.3 establish the responsibility of employing organizations to furnish specific information related to the employment and personal data, including marital status, of their staff who are Fund participants. But surely an error can be corrected. But here, the fact that Mandeng did not properly report his alleged marriage can be taken as some evidence of its invalidity, though not in itself conclusive.

40. The main issue in this appeal is whether notwithstanding any questionable proceedings before the UNJSPF, the evidence establishes to the satisfaction of this Court that the Wagner marriage is valid and that the Tebeyene marriage is invalid for the purpose of disposing this appeal.

41. While Tebeyene is completely innocent of any wrongdoing—and believed that her marriage would be held to be valid everywhere, based on her marriage certificate in Cameroon and the purported Cameroon divorce—we must apply the facts and rules as we find them.

42. The evidence submitted by UNJSPF from the Essex County New Jersey Probate Court, in which proceedings Tebeyene was represented by legal counsel, and the issue of the Cameroon divorce was litigated (and no evidence has been tendered by Tebeyene that she has appealed that judgment) is that a) the Cameroon divorce decree is invalid; and b) Mandeng's own submission to the New Jersey divorce court (taken into account by the Probate Court), was that he at no time commenced proceedings to dissolve his marriage to Wagner apart from the USA divorce proceeding, which was terminated by his death. Wagner was not even aware of any Cameroon divorce proceedings.

43. Though the US Probate Court finding is certainly not binding on this Court, it is evidence that we find credible. In addition to all the other evidence in this case, it convinces this Court that UNJSPF did not err in awarding the widow's benefit to Wagner.

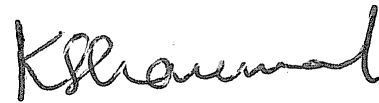
44. Given that we do not reverse UNJSPF's decision, it is unnecessary to address the issue of legal fees sought by Tebeyene. We also deny her additional request for a further continuance of the case. It has gone on long enough, and the facts in the additional documents she hopes to obtain would, even if established, not impact on the Court's decision.

Judgment

45. This Court affirms UNJSPF's decision to award the widow's benefit to Wagner. We deny all reliefs sought by Tebeyene.



Judge Painter, Presiding



Judge Garewal



Judge Boyko

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT