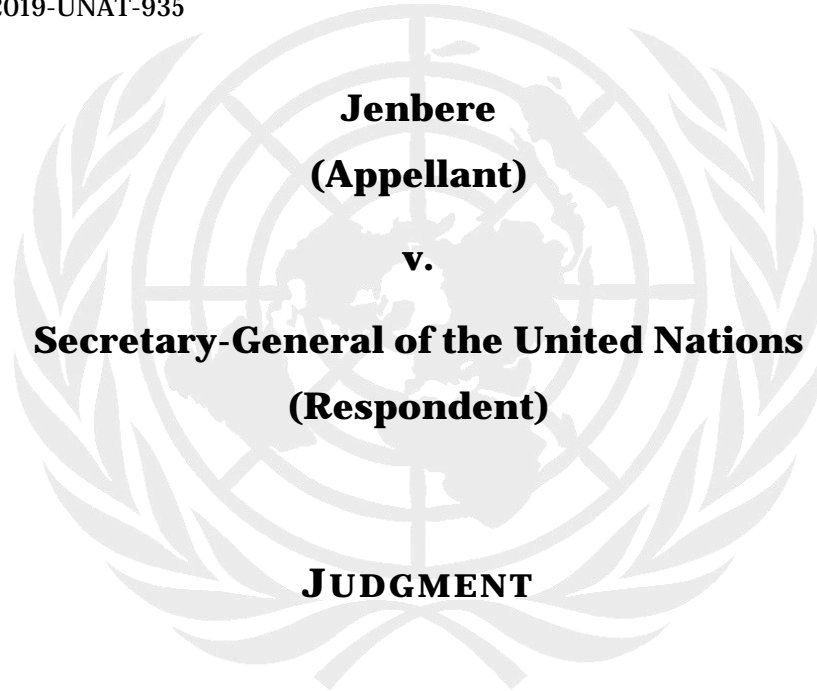




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2019-UNAT-935



**Jenbere
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Sabine Knierim Judge Deborah Thomas-Felix
Case No.:	2019-1231
Date:	28 June 2019
Registrar:	Weicheng Lin

Counsel for Ms. Jenbere:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2019/010, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 25 January 2019, in the case of *Jenbere v. Secretary-General of the United Nations*. Ms. Wagaye Teshome Jenbere filed the appeal on 6 February 2019, and the Secretary-General filed his answer on 11 April 2019.

Facts and Procedure

2. Ms. Jenbere is a former Chief Geographic Information Systems (GIS) Officer with the United Nations Operation in Côte d'Ivoire (UNOCI).

3. In mid-February 2015, in response to a call for candidates for a United Nations Volunteer (UNV) position of GIS Analyst, Ms. Jenbere submitted the *curriculum vitae* of Mr. Kebede Bogale (her husband) to Ms. Daria Ferrari, the hiring manager, for consideration, without disclosing that Mr. Bogale was her husband.

4. Ms. Jenbere was later invited as a subject-matter expert on the UNV position to participate as a panelist in the interviews of two candidates including her husband. After the interviews, she provided her opinion on the technical proficiency of both interviewed candidates, stating that Mr. Bogale had the required technical proficiency, but the other candidate was not technically or professionally sound. Again, she did not disclose that Mr. Bogale was her husband.

5. Mr. Bogale was selected for the UNV position and entered on duty on 27 April 2015. The other candidate was recruited for another position with UNOCI. During his induction, Mr. Bogale disclosed that he was Ms. Jenbere's spouse. His UNV contract was subsequently terminated effective 27 May 2015.

6. On 20 May 2015, the Conduct and Discipline Team (CDT) at UNOCI reported to the Investigations Division (ID) of the Office of Internal Oversight Services (ID/OIOS) that Ms. Jenbere had failed to disclose a conflict of interest during the recruitment exercise for the GIS Analyst position, and moreover, she had failed to disclose her marital relationship with one of the candidates as a member of the interview panel and had actively favoured Mr. Bogale's selection.

7. By memorandum dated 21 December 2015, the Chief, Human Resources Policy Service, Office of Human Resources Management (OHRM), informed Ms. Jenbere of the allegations of misconduct against her, charging her with failure to disclose her marital relationship with a candidate for a UNV position in the context of a recruitment process while sitting on the interview panel to assess the candidates on their technical proficiency and make recommendations to the hiring manager, resulting in a real or appearance of conflict of interest. Ms. Jenbere provided her comments on the allegations of misconduct on 25 February 2016.

8. On 25 May 2016, Ms. Jenbere filed a duly executed resignation letter “due to [a] health problem” with a one-month notice, with effect from 1 July 2016.¹

9. On 30 May 2016, Ms. Jenbere received a letter from the Under-Secretary-General for Management (USG/DM) informing her that the allegations of misconduct against her had been established by clear and convincing evidence, and that a decision had been taken to impose on her the disciplinary measure of demotion by one grade with a deferment for two years of eligibility for consideration for promotion together with a fine of three months’ net base salary, in accordance with Staff Rule 10.2(a)(v) and (vii).

10. Ms. Jenbere applied to the Dispute Tribunal on 21 July 2016 against the decision to demote her by one grade with a deferment for two years of eligibility for consideration for promotion and impose a fine on her. In its Judgment now under appeal, the Dispute Tribunal determined that the scope of the case was limited to the decision to impose a demotion and a fine on Ms. Jenbere and the misconduct of Ms. Jenbere’s failure to disclose her marital relationship with a candidate for the UNV position during the recruitment exercise. Consequently, it rejected Ms. Jenbere’s other claims related to her separation and her entitlements. On the merits, the Dispute Tribunal dismissed Ms. Jenbere’s application, finding that the facts had been correctly established, that the facts legally amounted to misconduct, and that the sanction of demotion in addition to a fine was not disproportionate, in light of the special circumstance created by Ms. Jenbere’s resignation.

¹ Ms. Jenbere tendered a resignation letter dated 23 May 2016 without her signature. She filed a completed resignation letter on 25 May 2016.

Submissions

Ms. Jenbere's Appeal

11. The UNDT Judgment was not fair and “as usual it is just one sided”. Ms. Jenbere requests that the Appeals Tribunal review all her comments and post-hearing brief in order to do justice for her.

12. Her husband's forced resignation should have concluded the case at UNOCI. Therefore, Ms. Jenbere was being punished twice when she received the letter of investigation from OIOS.

13. Ms. Jenbere's understanding was that the interview process was a “formality” because the hiring manager had already decided to hire her husband. She did not tell the hiring manager that Mr. Bogale was her husband “for [a] good reason” because she wanted her husband to be recruited based on his technical capability and not because of their relationship and she did not want to influence the hiring manager in her decision-making. There was no misconduct or conflict of interest on her part. It would have been a conflict of interest if the hiring manager had not wanted to hire her husband and if her husband had not been a qualified candidate.

14. The fact that Ms. Jenbere did not disclose her relationship with Mr. Bogale was her “only mistake” and “a very slight oversight” or “a very slight workload mistake”, which was blown “out of proportion”. The hiring manager and the UNV office were also responsible for the error of recruiting her husband for the GIS Analyst position.

15. A “multiple disciplinary measure” was imposed on Ms. Jenbere after she had already resigned. Ms. Jenbere questions how she could have been sanctioned on 25 May 2016 after she had already resigned on 23 May 2016. This is a proof of retaliation for her having reported about the hiring managers and discrimination at UNOCI.

16. The UNOCI mission was known for unethical acts and unfairness towards black staff members and “for its biased and racially discriminatory operations”. The OIOS' “double standard and racism” during the investigation were obvious as all the irregularities in the recruitment process committed by the hiring manager were covered up whereas Ms. Jenbere

was subjected to retaliation and financial penalties. The hiring manager knew that Mr. Bogale was related to Ms. Jenbere, though she did not know that he was Ms. Jenbere's husband.

17. Ms. Jenbere asserts that the contested decision was irrational and ran counter to human rights legislation and the United Nations law. The UNOCI Administration failed to follow its own disciplinary policy in her case, the basis on which OIOS established its decision was questionable, and the penalty of loss of one grade was "too harsh" as she did not have an improper motive. She was forced to resign while she was sick due to trauma. She had no previous record of misconduct.

18. Ms. Jenbere requests that the Appeals Tribunal award her unspecified moral damages and financial compensation for all her loss, which has affected her children's future.

The Secretary-General's Answer

19. The Dispute Tribunal correctly upheld the decision to impose a disciplinary sanction on Ms. Jenbere, after it determined that the facts on which the disciplinary measure was based had been established, that the facts amounted to misconduct, and that the sanction imposed on her was proportionate. Ms. Jenbere admitted to the facts that were material to establishing the charges of misconduct against her. A conflict of interest existed, but not once during the entire selection process did she mention that Mr. Bogale was her husband. A fair-minded observer could thus reasonably conclude that Ms. Jenbere had a conflict of interest in participating in a selection process where her husband was a candidate. The Dispute Tribunal took note of Ms. Jenbere's eight years of service without any disciplinary issues, her resort to deception in an attempt to gain advantage, her resignation, her lack of remorse and the past practice of the Organization in disciplinary matters before it decided not to intervene in respect of the imposition of a fine since it was the "only measure of actual onerousness".²

20. Ms. Jenbere has failed to establish that the UNDT made any errors in its findings, thus warranting a reversal of its decision to uphold the disciplinary sanction imposed on her. All the assertions in her appeal are reiterations of her arguments before the Dispute Tribunal. Moreover, she reiterates her claims without providing any substantiation or explanation. It is not the function of the Appeals Tribunal to review her case entirely *de novo*.

² Impugned Judgment, para. 62.

21. Ms. Jenbere has failed to show that the Dispute Tribunal erred in rejecting all her other claims. The Dispute Tribunal correctly rejected her additional claims, because she failed to identify a specific administrative decision relating to her resignation or any benefits to which she was allegedly entitled.

22. The Secretary-General requests that the Appeals Tribunal dismiss the present appeal in its entirety.

Considerations

Request for Oral Hearing

23. Ms. Jenbere has requested an oral hearing. Pursuant to Article 8(3) of the Appeals Tribunal Statute, it lies within the prerogative of the judges assigned to a case to decide whether to hold oral proceedings. Article 18(1) of our Rules of Procedure provides that the judges may decide to do so if such hearings would assist in the expeditious and fair disposal of the case. In the present case, an oral hearing would be of no such assistance as the facts and pleadings on record clearly define the issues for decision on appeal.

24. Ms. Jenbere's request for an oral hearing is therefore refused.

The Merits

25. We find that the appeal is entirely without merit. There is overwhelming evidence that the facts supporting the disciplinary measure had been established and that those facts amounted to misconduct.

26. The UNDT found that Ms. Jenbere admitted the main facts material to the allegations of misconduct, namely, that she participated as a subject-matter expert in the interviews of two candidates for the UNV position, one of whom was her husband. Her opinion was required to make a determination on the two candidates' technical proficiency. Ms. Jenbere did not disclose to the other members of the panel that one of the candidates was her husband. After the interview, she gave her opinion to the hiring manager concerning the

technical proficiency of both candidates, stating that her husband had the required technical proficiency. As a result, her husband was selected for the position.³

27. Ms. Jenbere testified before the UNDT that she had not disqualified the other candidate in the interview as there had been no genuine discussion about the candidate. However, the UNDT, after considering the statements of the co-panelists given in the investigation, and her own admissions in her response to the allegations of misconduct, found that she was not telling the truth.⁴

28. The UNDT also rejected her claim that she was unaware that she could not sit on the panel, as she was a technician and not a human resources officer. The UNDT was of the view that the matter was “so fundamental that no specific knowledge [wa]s required to appreciate the problem”.⁵ The UNDT did not accept her arguments by way of exoneration, holding that “none of the different explanations offered by [Ms. Jenbere] justify her failure to disclose that she was married to one of the interviewees. Rather, these shifting justifications indicate that she was aware that her participation in the panel would not have been accepted.”⁶

29. The UNDT was correct to find that the facts supporting the disciplinary measure had been established. We also find that the UNDT correctly concluded that those facts amounted to misconduct.

30. The UNDT found that Ms. Jenbere’s actions constituted a conflict of interest in violation of Staff Regulation 1.2(m), which explicitly states that a conflict of interest occurs when a staff member’s personal interests interfere with the integrity, independence and impartiality required by the staff member’s status as an international civil servant and that when an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization. The UNDT also found that her actions involved an inherent lack of integrity in violation of Staff Regulation 1.2(b), which requires staff members to uphold the highest standards of efficiency, competence and integrity. The UNDT considered that her personal interests, namely, to provide her husband with employment, directly

³ *Ibid.*, para. 49.

⁴ *Ibid.*, para. 50.

⁵ *Ibid.*, para. 56.

⁶ *Ibid.*

interfered with her responsibility to act with integrity and impartiality as a member of the hiring panel.

31. We support the following reasoning of the UNDT in rejecting Ms. Jenbere's attempts at exoneration:⁷

Circumstances advanced by [Ms. Jenbere] in arguing legality of her conduct, that her husband was qualified for the job and that the other candidate secured another position, do not remove the conflict of interest. The [Dispute] Tribunal reiterates that the issue lies not just in competing interests of the candidates but also in the integrity of the process as such, whose impartiality and fairness is compromised by nepotism or cronyism. Even if her spouse was the sole candidate for position, [she] was precluded from participating in his interview. This idea is expressed by staff rule 4.7(c) which provides that a staff member who bears to another staff member any of the specified relationships, including spousal relationship, shall not participate in the process of reaching or reviewing an administrative decision affecting the status or entitlements of the staff member to whom he or she is related. Most directly on point, ST/AI/273 (Employment of Spouses), requires that "staff members whose official functions would involve them in the process of reaching or reviewing any decision affecting their spouses, shall disqualify themselves from undertaking or participating in such process."

32. Ms. Jenbere's appeal is mostly a repetition of her arguments before the UNDT. She again claims that the Administration was wrong to impose a disciplinary measure on her after she had resigned. The UNDT correctly found that the disciplinary measure was imposed before her resignation became effective, so that she was still subject to the Staff Regulations and Rules when the sanction was issued.⁸

33. Moreover, she repeats claims regarding her separation and various entitlements. The UNDT correctly found that those claims "do not identify any concrete administrative decisions and have not been submitted for management evaluation. As such, they are not properly before the [Dispute] Tribunal."⁹

⁷ *Ibid.*, para. 53.

⁸ *Ibid.*, para. 48.

⁹ *Ibid.*, para. 47.

34. Ms. Jenbere portrays herself in her appeal as a victim of racism, a person unduly punished for what she calls “one slight mistake”. She refuses to concede or recognize the seriousness of the conflict of interest in which she willingly engaged. Indeed, it is difficult to imagine a more flagrant and shameless instance of such conduct.

35. Her claim of racism is totally baseless. The disciplinary sanction imposed on her had nothing to do with racism. It was imposed for her blatant misconduct in failing to disclose her marital relationship with a candidate during a recruitment exercise where she sat on an interview panel and made recommendations to the hiring manager with respect to the technical proficiency of the candidates. It was not racism which induced her to behave dishonestly, corruptly and with an appalling lack of integrity.

36. Ms. Jenbere complains that the disciplinary measure imposed upon her, namely, a demotion by one grade and a fine, was harsh and “too severe”. In our view, it was too lenient. Despite the serious nature of her misconduct, she remains unremorseful and refuses to acknowledge any fault on her part. Her misconduct compromised the objectivity and integrity of the selection process and had the potential to damage the reputation of the Organization and that of the other staff members involved in the selection exercise. The appropriate sanction should send out a strong message that serious misconduct of this kind will not be tolerated. Rather than a demotion and fine, she should have been facing summary dismissal.

37. We find that Ms. Jenbere has failed to establish that the UNDT made any errors, whether of fact or law, in dismissing her application.

Judgment

38. The appeal is dismissed and Judgment No. UNDT/2019/010 is affirmed.

Original and Authoritative Version: English

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Thomas-Felix

Entered in the Register on this 19th day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar