



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

---

Judgment No. 2024-UNAT-1485

**Betty Mukomah  
(Applicant)**

**v.**

**United Nations Joint Staff Pension Board  
(Respondent)**

**JUDGMENT ON APPLICATION FOR REVISION**

---

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Gao Xiaoli Judge Katharine Mary Savage
Case No.:	2023-1867
Date of Decision:	25 October 2024
Date of Publication:	20 November 2024
Registrar:	Juliet E. Johnson

---

Counsel for Applicant: Self-represented

Counsel for Respondent: Rosemarie McClean

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Ms. Betty Mukomah, a former spouse of a participant in the United Nations Joint Staff Pension Fund (UNJSPF or Fund), appealed the decision of the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB or Pension Board) rejecting her request for a widow's benefit as she was divorced from the late participant. The Fund also determined that Ms. Mukomah was not eligible to receive a divorced survivor's benefit under Article 35 *bis* of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund (Regulations) because she had not been married to the late participant for a continuous period of 10 years prior to the divorce during which he paid contributions to the Fund.
2. By Judgment No. 2022-UNAT-1277 (UNAT Judgment),<sup>1</sup> the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) dismissed Ms. Mukomah's appeal and affirmed the decision of the Standing Committee of the Pension Board.
3. Ms. Mukomah filed an application for revision of the UNAT Judgment on the basis of Letters of Administration of the late participant's estate that were issued in Kenya naming her as the administrator of his estate.
4. For the reasons set out below, the Appeals Tribunal dismisses the application for revision.

**Facts and Procedure<sup>2</sup>**

5. In response to Ms. Mukomah's request for a divorced surviving spouse's benefit, the Fund determined that she was not entitled to it because she had not been married to the late participant for a period of ten years during the subsistence of their marriage.<sup>3</sup>
6. On 31 October 2019, the Fund advised her that she had failed to provide any proof of a re-marriage between her and the late participant and, according to the dates recorded in the documents on file, she had only been married to the participant for six years one month and 18 days, from 8 February 2008 to 27 March 2014, during which the late participant had contributed

---

<sup>1</sup> *Betty Mukomah v. United Nations Joint Staff Pension Board*, Judgment dated 23 November 2022.

<sup>2</sup> Summarized from the UNAT Judgment as relevant to the application for revision.

<sup>3</sup> UNAT Judgment, paras. 12 and 17-18.

to the Fund. On 12 April 2020, the Fund once again confirmed that Ms. Mukomah did not meet the conditions for the divorced surviving spouse's benefit.

7. At its meeting on 14 July 2021 the Standing Committee of the Pension Board considered the case and determined that Ms. Mukomah was not eligible to receive either a widow's benefit, because she had not provided proof of re-marriage, or a divorced surviving spouse's benefit, as she did not fulfil the conditions precedent for it.<sup>4</sup>

8. Ms. Mukomah appeals the decision of the Standing Committee to the Appeals Tribunal.<sup>5</sup>

*The prior UNAT Judgment*

9. In the prior UNAT Judgment, the Appeals Tribunal dismissed Ms. Mukomah's appeal.

10. The Appeals Tribunal noted that after the divorce of the late participant and Ms. Mukomah in 2014, the late participant had been legally married under Kenyan customary law to his common-law spouse (CLS)<sup>6</sup>; therefore, the Fund determined that the widow's benefit was payable to CLS.<sup>7</sup> The Appeals Tribunal found that the customary union had continued to subsist in law at the time of the participant's death and had been recognized as such in Kenya and Canada.<sup>8</sup>

11. However, the Appeals Tribunal found that the evidence confirmed that the late participant had probably ended his relationship with CLS in the months prior to his death and had re-established some kind of relationship with Ms. Mukomah.<sup>9</sup> The Appeals Tribunal held that in this instance, for the purpose of determining her entitlement to a widow's benefit under Article 34, it was incumbent on Ms. Mukomah to prove that she had re-married or formed a similar union legally recognized by the competent authority (Kenya) with the late participant after their divorce, which the Tribunal held Ms. Mukomah failed to prove. In addition, the Appeals Tribunal noted that as Ms. Mukomah had been married to the late participant for only six years before their divorce, she was ineligible to receive a widow's benefit.

---

<sup>4</sup> *Ibid.*, para. 20.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, paras. 3 and 8-9.

<sup>7</sup> *Ibid.*, paras. 12 and 15.

<sup>8</sup> *Ibid.*, para. 36.

<sup>9</sup> *Ibid.*, paras. 39, 41 and 51.

## Submissions

### Ms. Mukomah's Application for Revision

12. Ms. Mukomah requests the Appeals Tribunal, in essence, to reconsider the UNAT Judgment.

13. With regard to any decisive fact that was unknown, Ms. Mukomah submits that (i) the High Court of Kenya has "awarded" her Letters of Administration and a Certificate of Confirmation of Grant, authenticated and notarized for use outside of Kenya by the Kenyan Ministry of Foreign and Diaspora Affairs (MFDA), and (ii) the Letters of Administration were not contested by CLS.

14. Ms. Mukomah explains that she became aware of these facts (i) when the Certificate of Confirmation of Grant was issued on 24 July 2023, and (ii) when a virtual hearing was held, respectively. She was not able to submit the documents without having them authenticated and sealed by the court that has jurisdiction different from the jurisdiction she is in.<sup>10</sup>

15. With respect to the facts being decisive to warrant a revision of the UNAT Judgment, Ms. Mukomah argues first that the Letters of Administration, uncontested by CLS, were issued to Ms. Mukomah as the participant's widow. Second, the movables under succession are governed by the law of the country of the deceased which is Canada. Third, she and the participant were both issued diplomatic identification cards through the Canadian Ministry of Foreign Affairs in Nairobi as he was a Canadian citizen. Fourth, the Fund's guidelines to determine whether a foreign divorce or re-marriage would be accepted were not observed and she did not renounce her right to the benefit. Fifth, several documents submitted to the Organization were not properly verified. Sixth, the alleged spouse or widow should be required to adduce documentation on asserted rights to a pension.

### The Pension Board's Comments

16. The Pension Board requests the Appeals Tribunal to dismiss the application for revision.

17. First, the Pension Board argues that Ms. Mukomah has failed to submit her application within 30 days of her discovery of the alleged decisive facts. She has failed to comply with the

---

<sup>10</sup> Ms. Mukomah has attached a letter dated 4 September 2023 from the MFDA to demonstrate the authenticity of the documents.

time limit, even if 4 September 2023, when the MFDA issued the certification, were to be taken as the date of the discovery of the facts.

18. Second, the Pension Board submits that the alleged decisive fact that a Kenyan court had issued the Letters of Administration did not exist at the time the UNAT Judgment was rendered and cannot therefore serve as a basis for revision.<sup>11</sup> The issuance of that document on 24 July 2022 post-dates the UNAT Judgment.

19. The Pension Board contends that, even if the application for revision were receivable, the alleged facts are neither relevant nor decisive to the issues that were under appeal. Contrary to Ms. Mukomah's assertion, the Letters of Administration do not recognize her as the participant's widow. In essence, she disagrees with the analysis of the Appeals Tribunal in the UNAT Judgment. To revise it would counter the principle of *res judicata*.

### Considerations

20. The issues in the application are whether the application is receivable pursuant to Article 11(1) of the Appeals Tribunal Statute (Statute) and if so, whether a decisive fact has been identified that would require revision of the UNAT Judgment.

21. Article 11(1) of the Statute provides:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

22. In her application, Ms. Mukomah says that she became aware of the "decisive fact", i.e. the issuance of the Certificate of Confirmation of Grant, on 24 July 2023. However, she filed the application for revision on 27 October 2023, some three months after her becoming aware of the "decisive fact". We find that the application for revision was filed beyond the 30-day time limit, contrary to the requirements in Article 11(1) and, therefore, is not receivable.

---

<sup>11</sup> The Pension Board cites *Carolina Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2022-UNAT-1193.

23. In any event, we find that the other “decisive fact” identified by Ms. Mukomah (namely, the issuance of Letters of Administration by the court in Kenya and its non-contestation by CSL) was not in existence at the time of the UNAT Judgment nor decisive in reaching a decision in the appeal.

24. In order to be successful in an application for revision, an applicant must show or identify the decisive facts that at the time of the Appeals Tribunal Judgment were unknown to both the Appeals Tribunal and the party applying for revision; that such ignorance was not due to the negligence of the applicant; that the facts identified would have been decisive in reaching the decision; and that the decisive facts existed at the time when the judgment was given and discovered subsequently.

25. Ms. Mukomah identifies the “decisive fact” as (i) the High Court of Kenya has “awarded” her Letters of Administration<sup>12</sup> and a Certificate of Confirmation of Grant<sup>13</sup>, authenticated and notarized for use outside of Kenya by the MFDA, and (ii) the Letters of Administration were not contested by CLS. She says that she became aware of these “facts” (i) when the Certificate of Confirmation of Grant was issued on 24 July 2023, and (ii) when a virtual hearing was held in those national proceedings.

26. The Letters of Administration were issued subsequent to the issuance of the UNAT Judgment in November 2022. This is not an instance of Ms. Mukomah “discovering” a decisive fact that was unknown at the time the UNAT Judgment was rendered. We have consistently held that facts which occur after a judgment has been given are not decisive facts within the meaning of Article 11(1) of the Statute and Article 24 of the UNAT Rules of Procedure.<sup>14</sup>

27. Finally, we find that the Letters of Administration are not relevant or decisive to the issues in the appeal.

28. In the UNAT Judgment, the Appeals Tribunal upheld the determination of the Standing Committee of the Pension Board that Ms. Mukomah was not entitled to a widow’s benefit under

---

<sup>12</sup> Issued on 19 December 2022, the Letters of Administration state that “all the estate [was] granted by this Court to Betty Jepkoskey Kipruto and [another administrator of the estate], (...) having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law to do so”.

<sup>13</sup> Dated 24 July 2023, the Certificate of Confirmation of Grant states that “it has been directed that the decea[s]jed’s estate be distributed as follows: (...) Betty Jepkoskey Kipruto[:] Pension and UN Benefits”.

<sup>14</sup> *Larriera* Judgment, *op. cit.*, para. 29.

Article 34 of the Regulations because she was not married to the late participant at the time of his death. For the purpose of determining her entitlement to a widow's benefit, the Appeals Tribunal found that it was incumbent on Ms. Mukomah to prove that after the High Court of Kenya granted a decree of divorce in 2014, she re-married or formed a similar union with the late participant. She failed to do so.

29. The Letters of Administration do not refer to the relationship between Ms. Mukomah and the late participant at the time of his death. For example, they do not recognize her as the late participant's widow but simply appoint her as an administrator of the late participant's estate. They do not prove that Ms. Mukomah formed a marriage or civil union with the late participant after their divorce.

30. For the reasons above, we find that the application for revision does not comply with the requirements of Article 11(1) of the Statute but is an attempt to re-litigate the appeal. The Appeals Tribunal has consistently held that "any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfils the strict and exceptional criteria established by Article 11 of the Statute of the Appeals Tribunal".<sup>15</sup> Also, an application for revision is not a substitute for an appeal of the Tribunal's judgment and a party cannot seek revision of a judgment merely because he or she is dissatisfied with it and wants to reargue the case.

31. In summary, the application fails to meet the strict and exceptional criteria established by Article 11(1) of the Statute.

---

<sup>15</sup> *Ibid.*, para. 25 (internal citations omitted).

**Judgment**

32. Ms. Mukomah's application for revision of Judgment No. 2022-UNAT-1277 is dismissed.

Original and Authoritative Version: English

Decision dated this 25<sup>th</sup> day of October 2024 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Savage

Judgment published and entered into the Register on this 20<sup>th</sup> day of November 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar