



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1667

**Diana Kenoly, Carlyne Rumah, Felix Kwame and Nicholas Kinyanjui
as Claimants to a**

Death Benefit entitlement re Roselyne Kayeke Oming (Deceased)

(Appellants)

v.

Secretary-General of the United Nations

(Respondent)

Order No. 446 (2022)

1. On 29 June 2021, Roselyne Kayeke Oming, then a staff member of the United Nations Assistance Mission in Afghanistan (UNAMA), died in Nairobi, Kenya. Her death triggered an entitlement to a death benefit payable by the Secretary-General under the United Nations' Staff Regulations and Rules. There is a dispute about the lawful recipient of this death benefit. The Appellants, Diana Kenoly, Carlyne Rumah, Felix Kwame and Nicholas Kinyanjui are Roselyne Oming's adult children. Although his marital status is disputed by the Appellants, I will refer to Aburaruma Oming as Roselyne Oming's husband. The Secretary-General takes the view that because Roselyne Oming and Aburaruma Oming were still married, albeit long separated at the date of her death, he is the lawful beneficiary of this payment.

2. In a Summary Judgment issued on 23 December 2021 (Judgment No. UNDT/2021/162) (the Impugned Judgment), the UNDT agreed with the Secretary-General and dismissed the Appellants' challenge to that entitlement.

3. On 18 February 2022, the Appellants filed an appeal with the United Nations Appeals Tribunal (Appeals Tribunal) challenging the UNDT's Summary Judgment.

4. On 23 February 2022, the Appellants filed a “Motion for Interim Measures,” (the Motion) in relation to their appeal against the Impugned Judgment seeking to preserve the disputed funds and requiring their retention and non-distribution until their appeal can be heard and decided.

5. On 2 March 2022, the Respondent filed his comments opposing the Appellants’ motion. Summarised, these grounds of opposition include that: the temporary relief claimed is inconsistent with the UNDT’s Summary Judgment; the test for interim relief under Article 9(4) of the UNAT’s Statute is not met, and in particular that, judged on a balance of probabilities standard, there is a real likelihood of irreparable harm unless the temporary relief is granted and that such temporary relief granted is consistent with the UNDT’s Judgment; that the temporary relief is for the protection of a party likely to succeed on appeal.

6. Article 9(4) states: “At 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.”

7. The harm caused to the Appellants if the Respondent were to pay out the death benefit to Mr. Oming would not be irreparable because the true nature of the claim is that the Appellants are entitled to this benefit and not that Mr. Oming should be deprived of it. While the Respondent may choose not to pay out Mr. Oming while this appeal is pending, even if he does so, that will not irreparably harm the Appellants. If the Appellants are ultimately successful in their appeal, the Respondent has the resources to meet their claims. Any overpayment to Mr. Oming will be a matter for the Respondent in those circumstances. The statutory requirements for an order being cumulative, a conclusion does not require a consideration of the second limb of Article 9(4).

8. The Motion is therefore dismissed.

9. I have, however, directed the amendment of the entitling to these proceedings. They were said to have been brought in the name of Ms. Oming, although she is deceased and the real claimants (and now the Appellants) are her adult children. They are

substituted as Appellants but with the added descriptor “as claimants to a Death Benefit entitlement re Roselyne Kayeke Oming (Deceased)”.

IT IS HEREBY ORDERED that the “Motion for Interim Measures” pending proceedings is **DENIED**.

Original and Authoritative Version: English

Dated this 9th day of March 2022 in
Auckland, New Zealand.

(Signed)
Judge Graeme Colgan,
President

Entered in the Register on this 9th day of
March 2022 in New York, United States.

(Signed)
Weicheng Lin,
Registrar