



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

OCOKORU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Stephen Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant is a former staff member who served at the United Nations Mission in South Sudan (UNMISS) as a National Professional Officer with the Civil Affairs Division (CAD) until her separation from the Organization on 31 July 2012.

2. On 21 December 2012 and 18 April 2013, she filed an Application and an amended Application respectively, contesting the administrative decision not to renew her fixed-term contract due to abolition of post.

3. The Respondent filed a Reply and a revised Reply on 7 February and 26 September 2013, respectively.

Facts

4. The Applicant joined the United Nations Mission in Sudan (UNMIS) on a fixed-term contract at the National Professional Officer (NPO) Grade NOB/2 in July 2009 as a Civil Affairs Officer.

5. In spite of being initially hired against a civil affairs post in the Abyei duty station, the Applicant was informally deployed to the Bor duty station by the CAD management. Thereafter, in August 2010, she was redeployed to the Wau duty station on the same grade and level.

6. Following the expiry of UNMIS' mandate on 9 July 2011, the Applicant was reassigned to UNMISS and remained at the Wau duty station. On 28 November 2011, a vacancy announcement was issued for the recruitment of Civil Affairs Officers at the National Officer B grade (NOB) for five UNMISS offices in different duty stations including Wau.

7. On 15 January 2012, the Applicant was informed that her contract had been recommended for termination due to an unauthorized absence from work in December 2011. The Applicant successfully contested the allegation that she had been absent from work without authorization and the decision to terminate her contract was reversed.

8. On 23 January 2012, the Applicant received an e-mail from Lance Clark, Director of CAD, informing her that her post was to be abolished. The said e-mail drew the Applicant's attention to a vacancy in Yambio, Western Equatoria, to which the Applicant applied on 27 January 2012 by e-mail.

9. By letter dated 20 June 2012, Hilda Otieno, the Chief Civilian Personnel Officer (CCPO), UNMISS, informed the Applicant that she would be separated effective 31 July 2012.

10. On 25 July 2012, the Applicant applied for an NPO Civil Affairs post in Juba.

11. She was subsequently informed by the CCPO/UNMISS that the vacancy in Yambio, Western Equatoria, to which she had applied on 27 January 2012 remained vacant. Consequently, the Applicant sent a further application for this position on 9 August 2012.

12. On 21 September 2012, the Applicant was interviewed for the NPO post in Juba but found out on 17 December 2012 that the post had been re-advertised.

13. The Tribunal held a hearing of the case on the merits from 29-30 July 2014 during which evidence was received from:

- a. The Applicant;
- b. Hilda Otieno for the Respondent;
- c. Jesse James Mutisya for the Respondent;
- d. Victor Fasama for the Respondent;
- e. Lance Clark, for the Respondent; and
- f. Juma Samuel Khamsin for the Applicant.

14. The Applicant's testimony is summarized below.

- a. The Applicant joined UNMIS on 16 July 2009 as a Civil Affairs Officer at the NOB Step 2 level on a fixed-term contract for one year which was subsequently renewed until her separation on 31 July 2012. Her duty station upon recruitment was Abyei but Lance Clark, the CAD Director, decided to send her to Bor in Jonglei State. She was to undergo an induction in Khartoum and underwent two days of it with the rest to be organized in Juba at a later date.
- b. In Juba, the Applicant spoke to the Human Resources (HR) Officer who felt that her deployment to Bor was contrary to good practice as she had been recruited to the Abyei duty station. The Principal Civil Affairs Officer in Juba, Sam Barnes, then advised her to stay in Juba until her redeployment to Bor was regularized. A few days later Ms. Barnes called her again and told her that following discussions with Mr. Clark, she should go to Bor pending the formalization of her deployment.
- c. The Applicant was later invited to Juba for training by Ms. Barnes which never took place and she returned to Bor.
- d. Due to the fact that her redeployment was not regularized, she was not on the payroll and did not receive a salary for four months. Meanwhile in Abyei, because she had not reported for duty, it had been recorded that she was absent. The HR Office in Malakal, which undertook HR duties for Bor as well, organized for her to travel to Khartoum in order to affect her formal deployment to Bor and sort out her salary issues.
- e. She then travelled to Khartoum and spent about two weeks there. Her redeployment was formalized, she underwent induction and the non-payment of salary was sorted out.
- f. While still in Khartoum, it was reported that her trip had only been authorized for two days and she was informed by Ms. Barnes, upon returning to Juba, that she had been away without proper authorization and that in the future she should put everything in writing to prevent false accusations and advised the Applicant to apply to another unit.

g. When she returned to Bor, she was asked to explain her absence and she filed a report accounting for each day which caused friction with her managers as she stated that she had the requisite permission to be away.

h. In July 2010 while returning to Bor through Juba following a surgery, the Applicant was assigned accommodation in Juba. On arrival, she found that a female staff member was already occupying the room. The occupant told her to see if the Camp Manager could organize some bedding so that she could share the room with her since she was to be there for only one night.

i. The Camp Manager gave her another key to a different accommodation which failed to work. She spoke on the phone with an internationally recruited Security Officer of the Juba duty station, "X", who promised to take her to the Camp Manager's residence to sort things out as offices were already closed at the time. She was driven by friends to X's accommodation and found him talking on the phone. X later sexually assaulted her, threw some bedding at her and told her to leave.

j. She took a phone handset which was in his room intending to call and report him. X forcefully retrieved the handset from her and threatened her saying that he knew a number of people in high positions, that he would report her and that she would lose her job in the CAD. She held on to a watch and ring which had been attached to the handset and threatened to report the Security Officer and use the items as evidence. He then said to her that he was a British officer while she was only a local staff member and that he would accuse her of theft.

k. She was hospitalized a few days later in Juba and then reported to Dianne De Guzman, Senior Civil Affairs Officer, what had happened. However during this time, X had reported that she had stolen a ring, a watch and beddings from him. At Ms. De Guzman's request, she handed

the watch and ring over to Ms. De Guzman and made a written report of the sexual assault.

l. Despite her report and being questioned by both the Office of Internal Oversight Services (OIOS) and the Conduct and Discipline Unit (CDU), there has been no outcome apart from her being referred by Ms. De Guzman for counselling.

m. When she started working in Bor she had a cordial relationship with her First Reporting Officer (FRO), Malik Ceesay, but this deteriorated over time and following negative reports by one of her colleagues she received a verbal reprimand and was placed under the supervision of a local United Nations Volunteer (UNV).

n. Mr. Ceesay lived near her at the United Nations camp in Bor and began to monitor and harass her including shouting at her in the office and threatening to give her a poor performance review.

o. She reported Mr. Ceesay to Ms. De Guzman and Mr. Clark but no action was taken until she received a poor ePAS which Mr. Ceesay refused to reconsider. She was given a rating of “partially met expectations”.

p. She was asked to go to Malakal to meet with her Second Reporting Officer (SRO), Ms. Rose Sakala, and while there she wrote a letter of grievance to HR and CAD copying it to the Deputy Special Representative of the Secretary-General (SRSG). She received a call from Ms. De Guzman who asked why she had written to the Deputy SRSG and the Applicant told her it was because there had not been any action taken with respect to her earlier report. Following this, Mr. Ceesay was asked to make a written apology to the Applicant and her ePAS was changed.

q. The Applicant was then transferred to Wau in August 2010 where she encountered similar animosity. When she first arrived in Wau, she had no supervisor up until the arrival of Walid Fahmy later in 2010. There

were rumours circulating that she was the subject of an OIOS investigation and her supervisors' attitudes towards her began to change negatively.

r. Her new supervisor, Mr. Fahmy, went as far as blaming her for the lack of projects being implemented in certain States due to her failure to present proposals for approval. This was due to her refusal to utilize her governmental contacts to investigate the disappearance of an Islamic Cleric when he requested her to do so.

s. In January 2012, she received an email from Mr. Clark that her post was being abolished and gave details of another post she could apply for. She later applied for this post but was told that it was below her grade. She also submitted a number of other applications for other posts but received no response.

t. When she returned to work on 15 January 2012, she was informed that a report had been made that she was absent from work without approval. As a result, her salary was withheld and she was given notice of the termination of her post due to abandonment and was advised to write a letter explaining her absence.

u. She had a medical condition and had to see a cardiologist during the Christmas period and was told to use her annual leave to cover the period for this referral. Her absence was fully approved.

v. She travelled to Juba and met with Mr. Clark. She asked why her post was being advertised as of November 2011 while she still encumbered the position and that as of January 2012 he was stating that it had been abolished. Mr. Clark informed her that her post was safe and that he would communicate the same to her in writing once she was in Wau.

w. She also spoke to Hilda Otieno the CCPO as well as her predecessor Martin Ojjerro, who stated that the matter would be resolved in due course.

x. Following her explanation, her salary was released and she returned to Wau. Upon arriving in Wau she received another call from HR in Juba stating that she had again been reported absent without leave. She followed up the issue with Mr. Fahmy who stated that he had been instructed by Mr. Clark to mark her as absent as Ms. De Guzman wanted her terminated. The Applicant called Mr. Clark who stated that she should follow the matter up with Mr. Fahmy as he was not her supervisor.

y. Mr. Fahmy later reported to SIU that she was aggressive towards him and she was requested to make a statement. She was also contacted by CDU and told that Mr. Fahmy had made a report of aggression against her and asked to comment on the matter.

z. Prior to her termination, around May 2012, she was asked by Victor Fasama, who was the Officer-in-Charge (OIC) of the Civil Affairs Unit in Wau at the time, to investigate the death of one Anthony Kapandu,.

15. Ms. Otieno's evidence is summarized below.

a. She is the CCPO for UNMISS and joined UNMISS in November 2011.

b. When UNMISS started, it had been on an interim budget up until December 2011. In November 2011, there was an advertisement for a number of Civil Affairs positions including one in Wau but this was done in error and the vacancy announcement was later cancelled.

c. When the new budget came into effect in January 2012, there was only an allocation for two Civil Affairs Officers in Wau whereas on the ground there were three. There was a comparative review process to determine who would be retained and it was decided that the Applicant's post would be abolished. She was not involved in the review and the criteria for it were established by Headquarters in New York.

d. When she met with the Applicant, she told her to apply for other positions and tried to support her in this regard. The Applicant applied for

a post in Yambio but withdrew her application as the post was below her grade. She also applied to another post in Juba but the process was cancelled as there were not enough candidates.

e. She does not recall having discussed with the Applicant that there were plans by her supervisors to get rid of her or advising her to make a report of any harassment by her supervisors.

16. Mr. Mutisya's evidence is summarized below.

a. He is an HR Officer at UNMISS and at the time was based in Malakal.

b. He was not party to the decision to restructure the Applicant's section and does not remember telling her that her post was safe.

c. The email he sent to the Applicant was based on her withheld salary not on her separation or non-renewal of contract and sought to ensure that the Applicant was being paid the monies that had been withheld.

17. Mr. Fasama's evidence is summarized below.

a. He is a Civil Affairs Officer at UNMISS and his duty station is Wau and has worked there since August 2011. At the time, there were three National Civil Affairs Officers and the unit was supervised by Mr. Fahmy.

b. He was aware that there was a vacancy announcement for a National Civil Affairs Officer in Wau in November 2011 but it was later said to have been a mistake and was subsequently cancelled.

c. The Applicant was already in Wau when he arrived and they enjoyed a cordial working relationship but this changed when she accused him of siding with Mr. Fahmy against her.

d. He does not know of anyone named Anthony Kapandu nor did he request the Applicant to investigate his disappearance when he was functioning as OIC in the Civil Affairs Office in Wau.

e. While acting as OIC in February 2012, he permitted the Applicant to travel to Juba to sort out some HR matters and gave her permission to be away from 1-3 February but she returned on 15 February. She had called from Juba stating that she had some meeting to attend.

f. On 17 February 2012, while he was in the office, he witnessed the Applicant being very rude to Mr. Fahmy and tried to get her to calm down.

g. He is unaware of any investigation done by the Special Investigations Unit (SIU) in regards to the Applicant and does not recall having made any statement or being present when an SIU officer came to question the Applicant.

h. He does not recall telling the Applicant that her supervisors were out to get her and did not decline to sign her contract extension as he did not have the requisite authority to do so.

18. Mr. Clark's evidence is summarized below.

a. Prior to his retirement in March 2012 he was the Director of the CAD at UNMISS.

b. The Applicant was originally posted to Bor when she joined UNMIS. The Applicant's supervisor at the time, Mr. Ceesay, felt that she had anger management issues because of the problems she was facing in Bor. He does not recall if the Applicant requested a transfer to Juba or if she did not want to go to Wau but felt that that she needed a fresh start somewhere else.

c. There was less pressure in Wau and her supervisors were aware that she had had difficulties previously and he instructed them to find a way to make things work. The Applicant seemed to be settling down well

in Wau for the first six months but later in 2011 problems arose surrounding her absenteeism.

d. Following the transition to UNMISS, there was a reduction of staff which he was consulted on and there was a period of transition prior to the new staffing table being adopted.

e. He was informed by Mr. Ojjerro that one of the posts in Wau was to be abolished and that this was the post the Applicant was encumbering. He then wrote to the Applicant informing her of this and gave her the opportunity to apply for other posts but at no point did he tell the Applicant that her job was safe.

f. He had a number of conversations with the Applicant surrounding the abolishment of her post including an allegation that she had abandoned her post.

g. He met with the Applicant while she was in Juba, told her that he would support her in trying to find a new post and authorized her stay for a few more days but she overstayed this period. He had also told her to inform her supervisor of her extended stay.

h. He discussed with Mr. Fahmy which of the three Civil Affairs posts in Wau would be abolished and looked at the performances of the three officers using the ePASes of the 2011/2012 reporting year. As of March 2012, the Applicant had not submitted her ePAS so he requested her to complete it.

i. During her time with UNMIS, he did not recall that the Applicant's performance was excellent and her ePAS for 2011/2012 put her at the bottom third.

j. He was unaware of any relationship the Applicant maintained with a State Governor and was also unaware of any reports made to OIOS and CDU in 2010 concerning the Applicant.

k. He spoke with the Applicant as regards the investigations of allegations against her and her conflict with her supervisor Mr. Ibrahim Ndiaye. He understood that CDU could not determine who was right or wrong.

l. He did not recommend the abolishment of the Applicant's post and it was his understanding that the vacancy announcement for the Applicant's post in November 2011 was a mistake by HR in making staffing decisions.

19. Mr. Khamsin's evidence is summarized below.

a. He was the president of the UNMISS National Staff Union at the time the Applicant served in the mission.

b. The Applicant was moved from Bor to Wau following accusations that she stole from a security officer's container. The matter was investigated by SIU and she in turn alleged that the security officer had sexually assaulted her. A fact finding panel, of which he was a member, was set up to investigate the matter.

c. He was later informed that the matter was being handled from New York but there was no feedback received on the outcome of the case. SIU stated that they had sent an investigation report to CDU which denied ever receiving it. When he followed up through the Ombudsman he was told that a report could not be obtained from OIOS.

d. The National staff had previously protested that complaints were not being handled properly by senior management and it was not only the Applicant's case but a number of others that he was told were being handled in New York.

e. The Applicant was informed by email in January 2012 that her post would be terminated in a month's time and she forwarded it to him. He then contacted the Director of Civil Affairs, Mr. Clark, to ask him what the process was for the abolition of posts.

f. Although the abolition of posts was due to budgetary concerns in the Mission, a notice of abolishment should properly come from HR. He was part of the group that nominated staff members to sit on the Comparative Review Panel (“the Panel”) which was to decide which staff members’ posts would be abolished following the budgetary review. This review was done based on a list forwarded by HR to the Panel; however, the Applicant’s name was not even on this list.

g. Apart from the Applicant’s name not being in the Mission’s list for the comparative review process, there had been a vacancy announcement for new recruitment on the Applicant’s post. Once she made him aware of this fact, he contacted HR asking why the Applicant’s post was being advertised. He received no explanation but the vacancy announcement was cancelled.

h. The Applicant already had problems with senior management before she arrived in Wau and he felt that there was a plot by senior management to make sure that the Applicant was separated from the Mission.

i. He was unable to get any feedback in regards to the Applicant’s complaints of sexual assault and he is not sure why her contract was not renewed.

Applicant’s case

20. The Applicant’s case as per her oral testimony and pleadings is summarized below.

21. The Applicant does not accept the purported reason for the decision to separate her from service. The Applicant submits that the decision was based on a breakdown in her relationship with those supervising her.

22. Curiously, while she encumbered the national civil affairs post in Wau, the same post was being advertised and the vacancy announcement was cancelled only after she reported it to the President of the National Staff Union. The

explanation given by Mission and Civil Affairs management was that it was done in error.

23. On 15 January 2012, she was informed verbally that her contract was to be terminated as the result of an allegation of unauthorized absence from work in December 2011. The allegation was unfounded as the only absence of the Applicant from work in that month had been properly authorized.

24. The Applicant discussed this matter with her supervisor and HR and it was confirmed that the allegation was untrue and the matter was resolved. The Applicant submits that this demonstrates a pre-meditated attempt to terminate her appointment and is evidence of bad faith on the part of her supervisors.

25. The Applicant submits that her relationship with supervisors Walid Fahmy, Victor Fasama and Ibrahima Ndiaye had broken down irrevocably. This is demonstrated by a report of aggression made by Mr. Fahmy and Mr. Fasama against the Applicant to SIU. This report followed an incident on 17 February 2012 when, contrary to what was reported by her supervisors, the Applicant's supervisors had in fact threatened her.

26. Further reports were made by the Applicant to Mr. Clark and to Human Resources on 26 and 27 February 2012 concerning a disagreement with Mr. Fahmy. These disagreements are further evidenced by the Applicant's 2011-2012 ePAS in which her First Reporting Officer (FRO), Mr. Fahmy, makes specific reference to her poor relationship with her supervisor.

27. The Applicant submits that it was this breakdown in her relationship with her supervisors that in fact led to the non-renewal of her contract. She maintains that the abolition of her post was simply a pretext to get rid of her. She further submits that the facts in this case do not support the Administration's justification as will be explained below.

28. On 28 November 2011, UNMISS circulated a vacancy announcement seeking to recruit an undisclosed number of NOB Civil Affairs Officers for the regions of Rumbek, Wau, Aweil, Bentui and Yambio. The deadline for

applications was 5 December 2011, yet the Administration claims that on 23 January 2012 it was already preparing to abolish the Wau NOB post. When the Applicant raised this issue with Civil Affairs Management, it was unable to explain the situation. Two days later the response from Human Resources was that the inclusion of Wau was an error.

29. There is therefore no doubt that a number of NOB Civil Affairs Officer posts were vacant at the time the Administration was proposing to abolish the Applicant's post. The failure of the Administration to consider continuing her employment through a lateral transfer to one of these similar vacant posts already advertised for other duty stations demonstrates that it was not in fact the abolition of her post that motivated the non-renewal of her contract but instead it was the result of the breakdown in her relationship with those supervising her.

30. The Applicant was the only NPO Civil Affairs officer to have her post abolished as a result of the restructuring. The fact that numerous other NPO Civil Affairs officers were being recruited at the same time is entirely inconsistent with the Administration's account that the post had to be abolished.

31. Staff rule 9.6 requires that the Administration have due regard to the availability of suitable posts for staff members whose posts are to be abolished. While the Applicant's contract was not terminated but instead was not renewed, it is submitted that where abolition of post is cited as the reason for non-renewal of a contract, staff rule 9.6 should apply.

32. The Applicant applied for a vacant position in Yambio, Western Equatoria, on 27 January 2012 after receiving the initial e-mail concerning the abolition of her post. There is no evidence that she was given the preferential consideration that should be afforded to an applicant whose post is subject to abolition. In addition, the Applicant learnt in August 2012 that this position was still vacant so she re-applied for it. The Applicant submits that this demonstrates that the Administration had made a decision to remove her from the Organization and that the excuse of post abolition was nothing more than a pretext.

33. The Applicant submits that she applied for an NPO post with CAD in Juba on 25 July 2012. She was interviewed for this post on 21 September 2012 but found out from HR in December 2012 that rather than hiring her, the Administration had decided to re-advertise this post.

34. Despite having an excellent e-PAS history demonstrating performance in exactly this section of the mission and despite the fact she was sitting on a post allegedly scheduled to be abolished, the Applicant was on three occasions not hired for suitable posts. In relation to at least two of these applications it appears that the Administration preferred to hire no one than to re-hire the Applicant. The Applicant submits that this is not consistent with their account of why her contract was not renewed.

35. The Applicant submits that the requirement to mitigate the impact of post abolition on staff members is entirely inconsistent with the advertising of similar posts at the same time as such abolition is being considered. The Applicant submits that the Management Evaluation Unit erred in suggesting that it was incumbent on the Applicant to apply for vacancies following the information regarding her post.

36. The Applicant submits rather that it was incumbent on the Administration to mitigate the impact of the restructuring by considering her for a lateral transfer to any appropriate post. No such consideration was made despite the fact that she was the only NPO Civil Affairs officer whose post was being abolished.

37. The Applicant submits that the Administration's complete failure to consider a lateral transfer and their failure to provide preferential treatment to her applications for vacant posts demonstrates that the non-renewal of her contract was not, as purported, a response to a situation beyond the Mission's control. Instead it was a calculated decision to terminate her employment with UNMISS.

38. The Applicant submits that between 23 January and 20 June 2012, the communications that she received from her supervisor, Human Resources, Mr. Clark and the Ombudsman gave rise to a legitimate expectation that her contract would be renewed either at the Wau duty station or through a lateral transfer to

another post. It is indeed for this reason that she would not have considered it necessary to apply for the posts advertised from 17 March and 11 July 2012. The number of suitable posts available during the period from 23 January to 20 June 2012 means that it was available to the Administration to fulfil this legitimate expectation through a lateral transfer.

39. Based on the foregoing, the Applicant seeks that the contested decision be rescinded and that she be reinstated as an NPO Civil Affairs Officer with UNMISS. In the alternative, the Applicant seeks damages to compensate her for the non-renewal of her fixed term contract and for moral damages caused by this unlawful termination of her employment.

Respondent's case

40. The Respondent's case is summarized below.

41. The Respondent admits that a procedural error was committed. It arose from the UNMISS Administration's failure to ensure that the Panel established to review national staff conducted a review of the three Civil Affairs Officers in Wau, in order to recommend who should be retained against the two Civil Affairs Officer posts for Wau in the Mission's Budget Information Circular No. 181/2012 (Formation of a Comparative Review Panel to Review National Staff).

42. Notwithstanding the Respondent's admission of a procedural error, the Respondent submits that the Applicant is not entitled to any compensation for the error as she has suffered no loss as a consequence of the error. Had a comparative review been carried out by the Panel, the Applicant would not have been recommended to be retained by the Mission.

43. Information Circular No. 181/2012 set out the main criteria for review by the Panel, namely operational requirements; performance (e-PAS) as recorded in the last two reports; gender; seniority/experience in a given field; and geographical representation.

44. Based on the Panel's application of the main criteria in other reviews it had carried out, the Panel would not have recommended that the Applicant be retained by the Mission. In particular:

- a. Mr. Lobura and Ms. Dominic received higher performance ratings than the Applicant for the 2011-2012 e-PAS performance period;
- b. Mr. Lobura and Ms. Dominic were more senior than the Applicant. As at 30 June 2012, Mr Lobura was at the NO-C, step 10, level; Ms. Dominic was at the NO-B, step 10, level; and the Applicant was at the NO-B, step 4, level; and
- c. Mr. Lobura and Ms. Dominic had more experience as Civil Affairs Officers in both UNMIS and UNMISS than the Applicant. Mr. Lobura held a position as a Civil Affairs Officer since 17 October 2006, Ms. Dominic since 19 February 2009 and the Applicant, since 16 July 2009.

45. The Respondent submits that it is well-established that a procedural error does not automatically give rise to a right to compensation and that compensation may only be awarded if an applicant demonstrates that he or she suffered loss as a direct consequence of a procedural error. In this case, the Applicant would have been separated from the Organization even if a proper comparative review by the authorized Panel had been carried out. Accordingly, the Applicant has not suffered any loss as a result of the procedural error.

46. The Respondent denies all of the allegations of a breakdown in the relationship between the Applicant and her supervisors in Wau and with the CAD Management.

47. Contrary to the Applicant's contentions, there is no link between the Applicant's unauthorized absence from work and the contested decision. The Applicant was absent from work without authorization from her supervisors for a total period of 87 days. The Administration recovered the Applicant's salary and allowances for the 87 days over the period from February to June 2012. The Applicant later provided documentation to enable 66 days to be treated as certified

sick leave. The UNMISS Administration is processing the payment of the resulting salary and allowances for the Applicant.

48. Likewise, there is no link between the Applicant's workplace disagreements with her supervisors and the contested decision. The existence of a prior workplace disagreement is not, of itself, evidence that the contested decision was motivated by an improper purpose. The decision not to renew the Applicant's appointment was based on an informal comparative review of the Applicant, Mr. Lobura and Ms. Dominic, based on the 2011-2012 e-PASes. That the UNMISS Administration did conduct a comparative review, albeit flawed, demonstrates that there was no personal animus against the Applicant.

49. Contrary to the Applicant's assertion that staff rule 9.6(e) required the Administration to accord her "preferential consideration" for positions for which she had applied, this contention is misguided since staff rule 9.6(e) does not apply to the Applicant as her appointment was not terminated. Rather, her appointment expired automatically as its term came to an end on 31 July 2012. Accordingly, as the Applicant's appointment was not terminated but instead expired, she is not entitled to any preferential consideration for vacant positions within UNMISS, at the Wau duty station, under staff rule 9.6(e) and (f).

50. The Applicant has no right to be laterally transferred to a vacant post anywhere. The Applicant has failed to identify any Staff Regulation, Rule or administrative issuance that confers such a right. The Applicant was a locally-recruited staff member at the duty station of assignment, Wau. Her appointment was limited in service to Wau, with terms and conditions specific to that duty station under staff rule 4.4.

51. In order for the Applicant to be appointed to another position with UNMISS, she must be selected for a vacant position following the completion of a selection process. The Administration encouraged the Applicant to apply for vacant positions for which she considered herself qualified. The Applicant was not selected for any of the positions she applied for.

52. Contrary to the Applicant's submissions, she had no legitimate expectation that her appointment would be renewed, or that she would be reassigned to a vacant position in UNMISS.

53. In view of the foregoing, the Respondent requests the Tribunal to dismiss the Application and not to award the Applicant any compensation.

Issues

54. Having reviewed the entire case record, the Tribunal finds that the following questions arise for consideration in this case:

- a. Was the abolition of the Applicant's post based on extraneous factors?
- b. Is the absence of an investigation report following an investigation of the Applicant's complaint of sexual assault evidence of bias against her?
- c. Was a break down in the relationship between the Applicant and CAD Management and her immediate supervisors in any way responsible for the abolishment of the Applicant's post?
- d. How did a vacancy announcement come to be issued in November 2011 for a post encumbered by the Applicant?
- e. Was the failure of the Respondent to carry out a proper Comparative Review for the Applicant's post more than a procedural error and did she have a right to a lateral transfer?

Considerations

55. The main plank of the Applicant's case is that the abolition of her post and her subsequent separation from service was due to a breakdown in her relationship with her supervisors and the CAD Management. She submitted that a series of incidents show that the abolition of her post was done for extraneous reasons and improper motives contrary to the established rules and procedures of the Organization.

56. The Respondent admitted that a procedural error was committed arising from UNMISS Administration's failure to ensure that a Comparative Review Panel set up for national staff conducted a review of all three Civil Affairs Officers in Wau in order to recommend which two should be retained.

57. He however maintained that this would have had no impact on the Applicant's chances as it would have ultimately been recommended that she not be retained. He submitted further that there was no connection between the Applicant's eventual separation and any perceived breakdown in communication between her and her supervisors.

58. Bearing in mind the case for both parties to this Application, the Tribunal shall now examine the claims made and the evidence placed before it. The Tribunal must determine whether the evidence establishes that the abolition of the Applicant's post was predicated on bias or done for any extraneous reasons. It must also decide whether the procedural error which the Respondent admits he committed make him liable to compensate the Applicant?

Is the absence of an investigation report following an investigation of the Applicant's complaint of sexual assault evidence of bias against her?

59. It is the case of the Applicant that her official complaint of sexual assault against an international security officer in UNMISS and the failure of management to take action on it led to protests by national staff on three separate occasions and resulted in management's unfavourable attitude towards her.

60. In her revised Application dated 18 April 2013, the Applicant stated that she was involved in an incident with an international security staff member at the UNMIS accommodation in Tongpiny, Juba duty station. She testified that in June 2010 while transiting to Bor following a surgery, she had to spend a night in Juba. She said she was assigned an already occupied container by the camp manager with no bed or beddings provided for her use.

61. The said international security officer, who was in Juba and known to her, spoke to her on the phone and offered to help. She was driven to his container by some friends the same evening. The Applicant told the Tribunal that while they were alone, the security officer tore her clothes and raped her. He then threw a blanket, a bed sheet and pillow cases at her and asked her to leave.

62. The Applicant said she picked up a telephone hand set which she saw in his room intending to make a distress call with it. According to her testimony, the security officer struggled with her and retrieved the phone and she was left holding a watch and ring which had been tied to the hand set. She said she told him she would report what he did to her and present the watch and ring as evidence.

63. It was the Applicant's testimony that the security officer threatened her saying he was British and the Guard Force Commander for UNMIS while she was a mere local staff and that he would report her to the Principal Civil Affairs Officer, Ms. De Guzman, and other senior officers in the mission and accuse her of stealing the items. He threatened also that he had friends in high places and that she would not survive in the Civil Affairs Division.

64. The Applicant continued that the next morning the security officer made an official complaint to SIU alleging that she stole his watch and ring including the beddings he had thrown at her to pass the night. In the course of the SIU investigation that followed the security officer's complaint against her, she told Ms. De Guzman and the investigators what had happened and upon their demand, gave them the watch and ring belonging to the security officer and they were then returned to him.

65. The Applicant said she was hospitalized for a few days in Juba following the incident and that in spite of making a formal written complaint of her rape to CDU which prompted an investigation by the said CDU and OIOS; no report came out of the said investigations. Ms. De Guzman instead then referred her for counselling and she was told to keep the incident quiet and confidential and not to make any further complaints.

66. The former Director of CAD, Mr. Lance Clark, in answer to a question in cross-examination stated that he understood that allegations of sexual assault were made by the Applicant against a security officer and that it was said that she had anger management issues but that CDU could not determine one way or the other who was right or who was wrong.

67. In his testimony, Mr. Juma Samuel Khamsin who was the President of the UNMISS National Staff Union at the times material to this Application told the Tribunal that problems started for the Applicant when she was accused of stealing from an international security officer's container. The witness continued that the Applicant had made an allegation of sexual assault against the said security officer

68. According to Mr. Khamsin, a fact-finding panel of which he was a member was set up at the mission but nothing came of the complaint as he was told that it was being handled from New York. He told the Tribunal that the inaction of the mission in the alleged sexual assault case led to protests by national staff. The witness said that SIU sent a report to CDU which then denied receiving the report. He said further that he asked the Ombudsman, but was told that no report was received from OIOS

69. At the close of hearing in this case, the Applicant with the leave of the Tribunal produced a copy of the complaint of sexual assault which she had made on 17 August 2010. The Applicant also produced a copy of a report she wrote to the Head of UNMISS on 29 August 2012 detailing her problems throughout her employment with the Mission. The Respondent did not object to the production of these documents or challenge them.

70. The Respondent, both in his Reply to the revised Application and in presenting testimony to the Tribunal, neither replied to nor rebutted the Applicant's claims of an official complaint of a sexual assault made by her the outcome of which investigations were allegedly swept under the carpet by the management of UNMISS.

71. Under staff rule 10.1, failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant may amount to misconduct and lead to institution of a disciplinary process and imposition of disciplinary measures for misconduct.

72. Misconduct includes thefts, assaults, harassment or threats to other staff members. ST/AI/371 (Revised disciplinary measures and procedures), and its amendment, regulates the disciplinary procedures and measures to be followed within the Organization in the event of a reported misconduct.

73. Its paragraph 2 provides that where there is reason to believe that a staff member has engaged in conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall initiate a preliminary fact-finding investigation.

74. It was held by the United Nations Appeals Tribunal (UNAT) in the case of *Abboud* 2010-UNAT-100, that where there are allegations of unsatisfactory conduct of a staff member, an obligation is created on the part of the Respondent to initiate a preliminary investigation¹.

75. Paragraph 3 of ST/AI/371 provides that if the preliminary investigation results in sufficient evidence which indicates that the staff member engaged in wrongdoing that could amount to misconduct, the head of office or responsible officer should immediately report the matter to the Assistant Secretary-General, Office of Human Resources Management (ASG/OHRM) giving a full account of

¹ At para. 45.

the facts that are known and attaching all documentary or other evidence relevant to the case.

76. It is further provided in paragraph 5 that the ASG/OHRM shall decide on the basis of evidence presented whether the matter should be pursued.

77. In the light of documentary and oral evidence provided by the Applicant and other witnesses and the absence of any challenge of the same by the Respondent, there is no doubt that the Applicant had made a formal complaint of sexual assault in August 2010 against an international Security Officer of UNMIS based in Juba.

78. There is no doubt too that a fact-finding panel appointed by UNMIS to look into the said complaint was prevented from conducting any fact-finding exercise by the same mission. Evidence is clear that in spite of the involvement of the Mission's CDU and SIU and of OIOS all of whom had inquired into the said complaint of sexual assault, any report produced after investigations into the complaint never saw the light of day.

79. Unfortunately, the resultant perception by UNMISS staff members that the mission leadership did not release any investigation report in order to protect the alleged perpetrator and the lack of investigation reports in other similar cases contributed to a mass staff protest.

80. Whilst noting that the Respondent failed to reply to this issue even though it was fully pleaded in the revised Application, copiously canvassed in arguments and evidence led on it; the Tribunal finds that it is indeed proper to accept the Applicant's case on this score and conclude that bias against the Applicant indeed existed on the part of UNMISS management.

81. The said bias is manifestly exhibited in the lack of transparency and unwillingness of the Mission to accept or release investigative findings pertaining to the Applicant's allegations against the international Security Officer or to act on those findings notwithstanding the demands by the Applicant and the National Staff Union in the mission.

82. Indeed the said bias was so strong that the responsible CDU, SIU and OIOS officers at the mission all defied the procedures provided for by ST/AI/371 for dealing with reports of misconduct.

Was a break down in the relationship between the Applicant and CAD Management and her immediate supervisors in any way responsible for the abolishment of the Applicant's post?

83. In both her written pleadings and testimony before the Tribunal, the Applicant gave detailed accounts of a breakdown in her relationship with CAD management and the animosity that existed between her and her supervisors in Bor and Wau duty stations where she served. She submitted that the real motivation for abolishing her post was simply to remove her from the Organization due to a breakdown in her relationship with both her supervisors at the duty station level in Wau and with the CAD management in Juba.

84. It was the Applicant's testimony that while she worked at the Bor duty station in the 2009/10 reporting cycle, she came into conflict with her manager Mr. Ceesay who threatened to give her a bad ePAS. She said that she reported his threats to the CAD management and when she was given a poor ePAS at the end of the reporting cycle; she sent a formal grievance complaint to HR, CAD management and the DSRSG. The matter was later resolved in her favour and shortly afterwards, her supervisor resigned.

85. When the Applicant was redeployed to Wau duty station in August 2010, she was to find that her supervisors and male colleagues had been warned about her. One of the supervisors made sexual advances at her and the Applicant threatened to report him.

86. Part of the Applicant's claim is that a personal relationship which she had developed with the State Governor also contributed to mistrust of her by her supervisors who believed that she would pass certain information concerning their actions to the Governor. Since they were prejudiced against her, they would repeatedly make false reports about her to the CAD Management in Juba and

inform CAD that she was frequently absent from work and also acting against their interest and the interests of the Mission.

87. The Applicant testified that on 6 February 2012, she reported to CAD Director, Lance Clark, problems she was encountering in the Wau office especially the fact that she was being marked absent by her supervisor Mr. Fahmy even when she was at work and that she was not allowed to review her own attendance sheets. She said she also reported to him that she was subjected to workplace harassment and was not copied on official reports coming out of the Wau office.

88. She continued that on 17 February 2012 an argument arose when she was again marked absent in spite of being at work in the office on that day. Following this argument, Mr. Fahmy reported her to SIU claiming she had been aggressive to him. He also caused her arrest by the Police in Wau in June 2012 by falsely telling lies to her landlord about her.

89. With regard to her difficult relationship with CAD management, the Applicant testified that while she was first recruited on a post at the Abyei duty station, she was instead informally deployed to Bor in Jonglei State by CAD management. This created problems for her as she did not receive her salary for the first four months and so contacted HR. CAD management felt that the Applicant had in this way reported their manipulation of posts to HR and this gave rise to a difficult relationship with CAD.

90. She said that senior managers at CAD were also unhappy with her because she mentioned their names in her statement to OIOS during an investigation of her allegation of sexual assault against the international security officer. The fact of her initial informal posting came out during the said investigations. Again protests against the mission by national staff members regarding its inaction in the sexual assault case she had reported further alienated her from CAD management.

91. In his testimony, Mr. Fasama, a Civil Affairs Officer in Wau, stated that while he was OIC, he approved the Applicant's travel to Juba from 1-3 February 2012 but that she instead returned on 15 February and had not asked for

permission to extend her stay. He stated that a strain had developed in his working relationship with the Applicant because she accused him of siding with Mr. Fahmy against her following an incident on 17 February 2012 in the office during which she was very rude to Mr. Fahmy.

92. CAD Director, Mr. Clark, told the Tribunal that the decision not to renew the Applicant's contract was not based on a breakdown in her relationship with her supervisors and CAD management. He said he was told that the Applicant had anger management issues and used abusive language and also engaged in aggressive behaviour towards her supervisors and other team members while she served at the Bor duty station. Following consultations with the Applicant, her then supervisor Mr. Ceesay and his Deputy at CAD, Ms. De Guzman, he transferred the Applicant to Wau in order to give her a fresh start.

93. Mr. Khamsin who was the President of the National Staff Union at the times material to this Application told the Tribunal that the Applicant had a number of problems with her supervisors in Wau particularly with Mr. Fahmy. The witness referred to an incident where the Applicant was authorized to travel to Juba but when she left, Wau staff kept calling Juba to report that she had disappeared without authorization. The witness also mentioned an incident when the Applicant was arrested by the Police following allegations made against her by the said Mr. Fahmy.

94. An examination of the evidence adduced on this score clearly establishes that the Applicant did not have good working relationships with her supervisor while in Bor and later with Mr. Fahmy in Wau. She also had an uneasy relationship with CAD management. The Tribunal is not in any doubt that CAD management saw the Applicant as a loose cannon. How much did this breakdown in working relationships contribute to the non-renewal and separation of the Applicant? This question will be considered in the following paragraphs.

How did a vacancy announcement come to be issued in November 2011 for a post encumbered by the Applicant?

95. In both her written testimony and her pleadings, the Applicant told the Tribunal that in November 2011 she became aware that a vacancy announcement had been issued by the UNMISS HR office purporting to recruit a number of NOB Civil Affairs Officers for the Regions of Rumbek, Wau, Aweil, Bentui and Yambio.

96. Upon becoming aware of the vacancy announcement which included the post she was then encumbering in Wau, the Applicant contacted the HR department who informed her that it was a mistake and would be resolved in due course.

97. Both Mr. Clark and Ms. Otieno testified for the Respondent and stated that the vacancy announcement was a mistake by HR and was subsequently retracted once the mistake was discovered.

98. Mr. Khamsin while testifying for the Applicant stated that when the Applicant brought the vacancy announcement to his attention, he contacted the HR department but received no feedback but later found that the vacancy announcement had been cancelled.

99. The Respondent apart from merely submitting that the issuance of this vacancy announcement was a mistake has offered no evidence to support this assertion from anyone directly concerned with the issuance of the said announcement. Having found that there was animosity between the Applicant and her supervisors as well as a general disdain for the Applicant as evidenced by the lack of closure regarding her sexual assault report to OIOS, the Tribunal is unconvinced by this argument

100. It is to be expected that any vacancy announcement would go through a number of checks and confirmations prior to being issued and as such it is surprising that the Human Resources department could make such a blatant error. When taken in the context of the Applicant's post eventually being abolished, it

clearly betrays a desire to separate the Applicant from the Organization by any means necessary.

101. The Tribunal finds and concludes that the issuance of a vacancy announcement for the post then still encumbered by the Applicant could not have been a simple clerical error as the Respondent sought to urge upon it. It is rather curious that in spite of this explanation, CAD management soon thereafter embarked upon its own internal comparative review process to separate the Applicant.

Was the failure of the Respondent to carry out a proper Comparative Review for the Applicant's post more than a procedural error and did she have a right to a lateral transfer?

102. The Tribunal was told that following the transition from UNMIS to UNMISS, a budget review was carried out for the period 2011/2012 in order to establish a staffing table for the new mission to take effect in January 2012. This eventually involved a reduction of staff members whose posts were not provided for in the new staffing table. At the Wau duty station, only two of the existing three NPO Civil Affairs posts were to be retained.

103. With regard to how the new staffing table affected the Applicant's post, Mr. Clark testified that in late 2011 he was told by the then head of Human Resources at the mission, Mr. Ojjerro, that of the three NPO Civil Affairs posts in Wau, the Applicant's post was the one to be abolished. He then emailed the Applicant on 23 January 2012 to inform her of this decision.

104. Mr. Clark said that in February 2012, Mr. Ojjerro told him that the decision to terminate the Applicant would not be acted upon but that instead there should be a comparative review of the three NPO Civil Affairs Officers in the Wau duty station based on their performance.

105. He said that he then consulted Mr. Fahmy who was also the Applicant's supervisor regarding which two of the three NPO staff members in the Civil

Affairs office in Wau would be retained. CAD took into account the track record of the performances as well as tenures in CAD and Wau.

106. It was Mr. Clark's account that from their review, CAD managers concluded that the two other Civil Affairs Officers were the stronger performers and had stayed longer in CAD and the Wau duty station than the Applicant. He therefore recommended the separation of the Applicant.

107. Mr. Clark said that Mr. Ojjerro upon being informed of his recommendation told him that the comparative review should be based only on the ePAS of that current year 2011/2012. The witness testified that when he left the mission in March 2012, Mr. Fahmy was still waiting for the Applicant to submit her ePAS.

108. The then National Staff Association President, Mr. Khamsin, who participated in the formation of a panel at the mission level for comparative review of national staff whose posts were being abolished, testified that the Applicant's name and post were not on the list for the exercise. He was surprised to learn later that her post had been abolished or that she was up for comparative review.

109. With regard to the internal comparative review of the three NPO Civil Affairs Officers in Wau said to have been carried out by CAD management, there is no gainsaying that the procedure adopted lacked transparency and integrity. The Respondent admitted in his pleadings and submissions that the exercise was both flawed and lacking in due process.

110. The evidence is that there were a number of vacant NOB Civil Affairs Officers posts at the time for which recruitment was then ongoing. Was this situation consistent with the Administration's account that it was necessary for the Applicant's post in Wau to be abolished?

111. Beyond a flawed comparative review, the Applicant argued that staff rule 9.6 requires that due regard be given to staff members whose posts are to be abolished. The Respondent contended that the Applicant's contract was not

terminated due to abolishment but was instead not renewed upon its expiry and that as such staff rule 9.6 was not applicable to the Applicant and she was not entitled to a lateral transfer.

112. Certain facts stand out in bold relief in the separation of the Applicant from UNMISS. The first is that CAD management and senior managers in the Mission had decided that the Applicant was to leave the mission. They took advantage of the creation of a new staffing table for UNMISS and put the Applicant's post in Wau up for abolishment.

113. Thereafter, they decided instead to conduct a comparative review of the Applicant and two of her colleagues, ostensibly to make it appear that the Applicant was afforded a level playing ground in her impending separation from the mission.

114. The Applicant was not afforded an opportunity for a transparent comparative review process by a panel set up by the mission for national officers but rather a sham and flawed comparative review was conducted internally by CAD and Mr. Fahmy, the Applicant's supervisor, who had scores to settle with her. The intention and predictable outcome was the separation of the Applicant.

115. The Respondent has struggled to urge upon the Tribunal that the Applicant was not terminated as a result of abolition of post but rather that her contract had expired so that she was not entitled to the advantages conferred by staff rule 9.6 which is preferential treatment in securing similar employment for staff members who were terminated due to abolition of post.

116. The Respondent also argued there is no Staff Regulation, Rule or Administrative Issuance that confers a right to be laterally transferred. The Applicant's assignment was limited to service in Wau with terms and conditions specific to that duty station and once it came to an end she was separated from the Organization in line with the applicable separation procedures.

117. There is no denying the convoluted efforts made by CAD and other senior managers in UNMISS to effect a smooth and trouble-free separation of the

Applicant that would guarantee that she could not return to the Mission as a staff member.

118. Mr. Khamsin, who was involved in the formation of the Comparative Review Panel at the mission, told the Tribunal that the Applicant's name and post were not on the list that was submitted to the Panel for review and he was surprised to find her post had been abolished.

119. None of the Respondent's arguments justifying the Applicant's separation from UNMISS has any merit. The Tribunal is not in any doubt that CAD and Mission Management desperately wanted the Applicant out of the mission. An official report made by the Applicant against an international staff member alleging that she was sexually assaulted was never properly investigated and closed. All that the mission had to offer her as remedy for sexual assault was a referral for counselling.

120. Was the Applicant removed from the Mission in this way because in spite of being a lowly national officer, she had stepped on powerful toes? Was she considered a nuisance for insisting on her rights to have her allegations of criminal conduct against her properly investigated and action taken? Did CAD Management consider her an embarrassment for telling the HR office about her irregular transfer to another duty station other than the one for which she was recruited?

121. The Respondent's argument and submission that the Applicant had no right to a lateral transfer is self-serving. The fact remains that whether or not such a right exists, the Applicant's supervisors, had in the past transferred her laterally from Bor to Wau indicating an ability and willingness to retain her within the Organization at that time.

122. The Appeals Tribunal held in *Hersh* 2011-UNAT-433 that:

This Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However like any other administrative

decision, the Administration has the duty to act fairly, justly and transparently in dealing with its staff members.²

123. Was it fair, just or transparent for the Applicant's supervisors to refuse to transfer her laterally to other duty stations with vacancies for her job description having already done it before or were there extraneous factors that made it inconvenient for her to remain within the Organization?

124. It is well-settled jurisprudence that an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff.³ However as decided in *Asaad* 2010-UNAT-021 this discretionary authority of the Secretary General is not unfettered.⁴

125. In *Rosenberg* UNDT/2011/045 this Tribunal noted that:

The court will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment for the complainant. However, the court would be vigilant to guard against restructuring and reorganization decisions which are made for the ulterior purpose of disadvantaging the individual applicant in a case before it. Reorganizing and restructuring of the workplace should not be used as a mechanism for getting rid of an employee whom management may regard as being troublesome or whose continued presence was no longer deemed desirable.⁵

126. It was also held in *Asaad*⁶ and later confirmed in *Hepworth* 2011-UNAT-178⁷ that the burden of proof lies with the Applicant contesting the administrative decision. Has the Applicant discharged this burden?

127. The Tribunal finds that she has manifestly discharged the burden of proof. It is clear from the manner in which her claim of sexual assault was handled as well as other evidence led that there was no love lost between the Applicant and her supervisors as well as a general disdain for her serious grievances.

² *Hersh* para 17.

³ See *Hersh* 2011-UNAT-433 para. 16, *Gehr* 2012-UNAT-236 para. 25 and *Pacheco* 2013-UNAT-236 para. 22.

⁴ *Asaad* para 11.

⁵ *Rosenberg* para 14.

⁶ At para. 10.

⁷ At para. 29.

128. When these facts are examined against the background that a vacancy announcement was being issued for a post that the Applicant encumbered and the highly irregular manner in which her post was abolished and a sham comparative review process carried out, there is no doubt that this Organization's image and integrity have been badly dented by senior managers with their private and personal agenda. The clear agenda of the Civil Affairs Management in the mission was to get rid of the Applicant as a staff member. Such should never be.

Conclusion

129. The Tribunal's findings are summarized below:

- a. There was increased animosity between the Applicant and her various supervisors both in Bor and later when she was transferred to Wau. The Tribunal finds that bias against the Applicant existed on the part of UNMISS management.
- b. The said bias was so strong that the responsible CDU, SIU and OIOS officers at the mission all defied the procedures provided for by ST/AI/371 for dealing with reports of misconduct.
- c. Contrary to the expectations of good management and good practice the Applicant was denied meaningful closure having made a serious claim of being the victim of sexual assault. This shows the disdain that her supervisors had for the Applicant and her claims.
- d. The issuance of a vacancy announcement for the post the Applicant encumbered was more than a simple clerical error as presented by the Respondent and evidences a desire on the part of CAD and UNMISS managers for the Applicant to leave the Organization.
- e. The highly irregular alternative comparative review process followed in abolishing the Applicant's post was not simply a procedural error. Coupled with CAD Management's apparent unwillingness to grant

her a lateral transfer there is no doubt of a strong resolve and desire to separate the Applicant from the Organization.

130. The Applicant has discharged the burden of proof in showing that her separation from the Organization was motivated by extraneous factors and improper motives.

Judgment

131. The Tribunal orders rescission of the administrative decision to separate the Applicant from service and orders the Respondent to reinstate the Applicant.

132. Should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to reinstate the Applicant, as an alternative he must pay compensation to the Applicant in the sum of two years' net base salary at the rate in effect at the date of Judgment.

133. The Applicant is entitled to compensation for the substantive and procedural irregularities occasioned her by the failure by the Administration to follow its own guidelines, rules and procedures and the Tribunal, accordingly:

a. Awards the Applicant three months' net base salary as compensation for the substantive irregularity.

b. Awards the Applicant three months' net base salary for the procedural irregularity.

134. If the Secretary-General decides not to perform the obligation to reinstate the Applicant, the total sum of compensation is to be paid to the Applicant within 60 days of the date that this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Nkemdilim Izuako

Dated this 15th day of January 2015

Entered in the Register on this 15th day of January 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi