| | Case No.: | UNDT/NBI/2019/168 |
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| **UNITED NATIONS DISPUTE TRIBUNAL** | Judgment No.: | UNDT/2020/045 |
| | Date: | 27 March-2020 |
| | Original: | English |

| **Before:** | Judge Agnieszka Klonowiecka-Milart |
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| **Registry:** | Nairobi |
| **Registrar:** | Abena Kwakye-Berko |

OCOKORU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**
Justin Semuyaba


**Counsel for the Respondent:**
Nicole Wynn, AAS/ALD/OHR
Rosangela Adamo, AAS/ALD/OHR

**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"). She separated from the Organization on 31 July 2012.[1]

2. On 28 November 2019, the Applicant filed an application for execution of Judgment No. UNDT/2015/004 ("the Judgment"). By way of specific pleadings, the Applicant requests for: (a) compensation and damages for the time since she separated from the Organization; (b) salary arrears from 1 August 2012 to present; (c) interest of 15% paid on the compensation and the claimed salary arrears; and (d) reimbursement of expenses she incurred on medical bills.[2]

3. The Respondent filed a reply on 18 February 2020 in which it is argued that the application should be rejected because the judgment has been fully executed.[3]

**Facts and procedure**

4. On 15 January 2015, the United Nations Dispute Tribunal ("UNDT") rendered Judgment No. UNDT/2015/004.[4] In the Judgment, the UNDT ordered the rescission of the administrative decision to separate the Applicant from service and her reinstatement. In the alternative, the UNDT awarded compensation equivalent to two years' net base salary. It further awarded three months' net base salary as compensation for the procedural irregularity and three months' net salary for the substantive irregularity.

5. The Tribunal also ordered that interest on the aggregate sum of compensation would be the US Prime Rate within 60 days of the date when the Judgment became

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[1] Reply, R/1.
[2] Application, section I.
[3] Reply, section B.
[4] Application, annex 6.

executable. Afterwards, an additional five percent should be added to the US Prime Rate until the date of the payment.[5]

6. On 6 April 2015, the Respondent filed an appeal against the judgment. On 30 October 2015, the United Nations Appeals Tribunal ("UNAT") dismissed the appeal as late.[6]

7. On 2 March 2016 and on 13 November 2017, the Respondent paid the Applicant the sum of USD94,324.16 and USD5,972.12 respectively.[7] The amount paid covered the total amount of the compensation awarded by the Tribunal, with the UNAT judgment taken as the enforceability date for the purpose of calculating interest.

*Submissions*

*Applicant's submissions*

8. The Applicant contends that she is still a staff member of UNMISS on the ground that she never checked-out of the Organization nor did she authorize any other person to check her out. Accordingly, she requests the Tribunal to direct the Respondent to release her withheld salary from 1 August 2012 until present.[8] In this connection, she claims compensation for harm suffered.

9. The Applicant also requests the Tribunal to direct the Respondent to reinstate her so that she continues to earn a salary, enjoy other emoluments and have access to the United Nations official email account.[9]

*Respondent's submissions*

10. The Respondent submits that the Judgment has been fully executed. The Respondent elected to pay the Applicant the awarded compensation in lieu of

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[5] Ibid, paras 131, 132, 133 and 134.
[6] Application, annex 7. Judgment No. 2015-UNAT-604
[7] Reply, R/2.
[8] Application, para 6.
[9] Ibid, para 7.

reinstatement. The Applicant is not entitled to both reinstatement and compensation in lieu.

11.     Contrary to her claim, the Applicant separated from the Organization on 31 July 2012. The fact that the Judgment ordered reinstatement as an electable remedy reflects the Tribunal's finding that the Applicant had been separated. Since 31 July 2012, there has been no employment contract between the Applicant and the Organization. Therefore, the Applicant is not entitled to any salaries or other requested payments other than the payment she has received as compensation as ordered in the Judgment.

12.     The Respondent, however, acknowledges that he made an error in calculation of the interest due, by taking the date of the UNAT judgment as the date when the judgment became executable. The Respondent had erroneously considered the interest at the US Prime Rate applicable during 60 days as of the release of the UNAT Judgment on 30 December 2015, i.e., until 29 February 2016.   At present, the Respondent admits that, given that the appeal had been filed out of time, the UNDT Judgment became executable on 17 March 2015, 60 days after the date of its pronouncement. Consequently, the Respondent commits to expedite the payment of any additional interest due to the Applicant based on the said error.[10]

*Considerations*

13.     Article 12(4) of the UNDT Statute provides that:

> Once a judgment is executable under article 11, paragraph 3 of the present statute, any party may apply to the Dispute Tribunal for an order for execution of the judgment if the judgment requires execution within a certain period of time and such execution has not been carried out.

14.     The Applicant had been separated, thus the Tribunal agrees with the Respondent that the Applicant is not entitled to both reinstatement and compensation in lieu, as these remedies arising from Judgment No. UNDT/2015/004 were in the

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[10] Respondent's response to Order No. 052 (NBI/2020), filed on 6 March 2020.

alternative. The Respondent opted to compensate in lieu of reinstatement and this decision of the Respondent is dispositive of the matter. The Respondent also paid compensation for damages on account of two other awards granted by the Judgment No. UNDT/2015/004. The Applicant neither disputes the fact that she was compensated nor the calculation.

15.     Regarding the Applicant's requests for compensation and damages for the time spent since she separated from the Organization, salary arrears from 1 August 2012 to present, interest of 15% on the same and reimbursement of expenses on medical bills, these claims were not awarded by the UNDT Judgment and as such cannot be claimed as part of the execution .

16.     The only issue that is relevant to the execution of the UNDT Judgment and still pending, is the interest due on awards granted therein. This matter depends on determining when the Judgment became executable.

17.     Article 7(5) of the Appeals Tribunal Statute states "filing of the appeals shall have the effect of suspending the execution of the judgment or order contested". The suspensive effect of the filing of an appeal, however, occurs only where the appeal is filed timely. In the present case, the Secretary-General appealed the UNDT Judgment, but did it out of time, as confirmed by the Appeals Tribunal's finding of non-receivability. [11] As such, the UNDT judgment became final and enforceable as of 17 March 2015. The Tribunal concurs with the Respondent that he needs to make the calculation of the outstanding interest owed to the Applicant accordingly and make necessary payments without further delay.

18.     In light of the above, the Tribunal renders a declaratory judgment as below. All other pleas for execution are lacking basis.

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[11] *Ocokoru* 2018-UNAT-826.

**JUDGMENT**

19.     The Respondent shall calculate and pay the Applicant the difference between any interest previously paid and the outstanding compounded interest on the compensation awarded by Judgment No. UNDT/2015/004, taking as basis the prime US rate from 18 March 2015 until 17 May 2015 and with additional 5% counted from 18 May 2015 until the day of payment.

20.     The application is rejected on all other grounds.

*(Signed)*
Judge Agnieszka Klonowiecka-Milart
Dated this 27th day of March 2020

Entered in the Register on this 27th day of March 2020

*(Signed)*
Abena Kwakye-Berko, Registrar, Nairobi