Before: Judge Teresa Bravo

Registry: Nairobi

Registrar: Abena Kwakye-Berko

THIARE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Elizabeth Gall, AAS/ALD/OHR
Romy Batrouni, AAS/ALD/OHR

Notice: This judgment has been corrected in accordance with article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 12 December 2018, the Applicant, a former Security Officer at the FS-4 level, working with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO") in Kinshasa, filed an application before the Dispute Tribunal. He contests a disciplinary measure of dismissal imposed on him for serious misconduct.

2. The Respondent filed a reply on 18 January 2019.

3. On 15 June 2020, the Tribunal held a case management discussion ("CMD") in which the parties agreed that a hearing was not necessary and the case would be decided on the papers after closing submissions have been filed.

4. The parties filed their closing submissions on 10 July 2020.

5. By Order No. 133 (NBI/2020), the Tribunal directed the Respondent to file submissions on whether, should the Tribunal find that the sanction was disproportionate, instead of dismissal, the disciplinary sanction should have been separation from service with compensation in lieu of notice or separation from service with termination indemnity. The Respondent filed the required submissions on 29 July 2020.

Facts

6. The Applicant joined the Organization on 14 November 2006. At the time of his separation from service on 30 October 2018, he was serving on a continuing appointment.[1]

7. On 23 December 2015, the Applicant filed a complaint with the Beni Public Prosecutor's Office ("the Public Prosecutor") against one of his colleagues, "JT". The

[1] Reply, R/1.

Applicant alleged that JT had threatened to kill him.[2]

8. On the same day, the Applicant secured two armed national police officers and stationed them near his office. The Applicant states that he requested the police officers to protect him due to the fear of possible attack from JT.[3]

9. On 5 January 2016, the MONUSCO Legal Affairs Office ("LAO") received a letter dated 2 January 2016 from the Major Magistrat, at the Beni-Butembo Military Garrison ("the Military Prosecutor"), requesting the waiver of the Applicant's United Nations privileges and immunities because the Applicant had granted access to the two police officers to the MONUSCO compound without a warrant or other authorization. The Military Prosecutor sought to prosecute the Applicant for incitement of the military to commit acts contrary to the Congolese military law.[4]

10. On the same day, Mr. Germain Brindou, Officer in Charge, Political Affairs Section; Mr. Ian Sinclair, Chief of Staff; Mr. Seth Levine, Senior Legal Advisor; and Ms. Els Sohier, Legal Officer; exchanged views on how to respond to the Military Prosecutor's letter. Thereafter, Mr. Levine sent an email to Mr. Sinclair and Ms. Sohier, requesting that they "hold off" on an official response to the Military Prosecutor. However, Mr. Sinclair instructed Ms. Sohier to prepare an official response to the Military Prosecutor, so it would be ready to be sent quickly if necessary.[5]

11. Around the same period, the Applicant contacted Mr. Hamad Al Habib, MONUSCO Legal Assistant, LAO, by telephone to inform him of his possible arrest and asked him whether their office had received the correspondence from the Military Prosecutor requesting the waiver of his diplomatic immunity. Mr. Al Habib confirmed that the said letter had been received and that they were in the process of drafting a reply to it. Thereafter, Mr. Al Habib asked the Applicant to give him the chronology of events. Mr. Al Habib then prepared a draft reply which he shared with the Applicant

[2] Application, section VII, reply R/5, page 4.
[3] Application, section VII, para. 4.
[4] Application, section VII, para. 6, reply R/5, page 4.
[5] Reply, R/2, page 10.

asking him to check and confirm if all the details were well captured.[6]

12. On 8 January 2016, the Applicant learnt from one "OK", a Judicial Police Officer ("OPJ"), that JT had been in the Office of the Military Prosecutor and they were hatching a plan to arrest him. According to OK, the arrest was to be effected on 11 January 2016 and that the Military Prosecutor was of the view that nothing was to stop the arrest since MONUSCO had not replied to his letter of 2 January 2016. The Military prosecutor interpreted MONUSCO's silence as a positive response to that letter.[7]

13. On 9 January 2016, the Applicant contacted a colleague and asked him to check if the LAO had finalized the reply and whether it had been submitted to the Military Prosecutor. The colleague, informed the Applicant that Mr. Levine had decided to halt the reply.[8]

14. On 10 January 2016, the Applicant retrieved the draft reply he had received from Mr. Al Habib and decided to sign it in the name of Mr. Ian Sinclair and went on to hand-deliver it to the Military Prosecutor's private residence.[9]

15. On 21 January 2016, the Military Prosecutor sent another letter to Mr. Sinclair and expressed the fact that based on MONUSCO's letter of 10 January 2016, he had decided not pursue the prosecution of the Applicant.[10]

16. On 25 January 2016, MONUSCO sent a reply to the Military Prosecutor and informed him that the letter dated 10 January 2016 was not authentic. MONUSCO expressed its regret that the Military Prosecutor had been misled and stated that it took the matter seriously and would be conducting an internal investigation.[11]

[6] Application, section VII, para. 8; application, annex 1.
[7] Application, section VII, para. 9.
[8] Ibid, para. 10.
[9] Application, annex 3.
[10] Reply, R/5, para. 13.
[11] Ibid, para. 14.

17. On 29 May 2016, the Applicant received notification from the Office of Internal Oversight Services ("OIOS") informing him that an investigation had been commenced against him on an allegation that he may have failed to observe the standards of conduct expected of an international civil servant. OIOS, accordingly invited the Applicant for an interview on 30 May 2016.[12] The interview took place as had been scheduled and the Applicant admitted that he had signed the document without authorization; but indicated that he did so to save his life that was at risk.[13]

18. On 31 July 2017, the OIOS produced a report and concluded that the Applicant had forged the signature of Mr. Ian Sinclair. The OIOS recommended to the Department of Field Support ("DFS") to, among others, take appropriate action in relation to the Applicant's conduct.[14]

19. On 17 August 2017, the Assistant Secretary-General for Field Support referred the Applicant's case file to the Office of Human Resources Management ("OHRM") for appropriate action. On 28 March 2018, the OHRM notified the Applicant of the formal allegations of misconduct against him and invited him to submit his comments on the allegations.[15] The Applicant provided his comments on 27 August 2018.[16]

20. On 25 October 2018, the Under-Secretary General for Management ("USG/DM"), decided to impose on the Applicant the disciplinary measure of dismissal, in accordance with staff rule 10.2(a)(ix).[17] The Applicant was separated from the service of the Organization on 31 October 2018.[18]

Submissions

Applicant's submissions

[12] Application, annex 4.
[13] Reply, R/2.
[14] Ibid.
[15] Application, annex 5.
[16] Application, annex 6.
[17] Reply, R/5.
[18] Reply, R/1.

21. The Applicant submits that in imposing the sanction, the Administration did not consider the mitigating circumstances of his case. The Applicant presents his case based on a two-prong argument. First, that he was threatened with an arrest and a request for the waiver of his diplomatic immunity was submitted to MONUSCO. However, MONUSCO failed in its obligation to protect him. Therefore, MONUSCO's failure to act constitutes a mitigating circumstance in his favour.

22. Second, the Applicant maintains that he signed the letter addressed to the Military Prosecutor to save his life, especially since MONUSCO had failed to do the needful to protect him. The offence was committed because he had to protect himself from the imminent arrest by the Military Prosecutor.

23. The Applicant explains that the contested decision has placed him in a dire social-economic situation. He has lost his salary due to the separation from service. Accordingly, he is not able to finance the projects he had commenced when he was still in service. Equally, he is no longer able to support his children to attend good schools as he lost the education grant entitlement. The decision has destroyed his life and that of his family. The family is comprised of eight members, including three who are of young age.

24. As a remedy, the Applicant requests the Tribunal to find that mitigating circumstances exist in his case and do favour him. Accordingly, the Tribunal should order his reinstatement.

Respondent's submissions

25. The Respondent contends that the facts in this case are not disputed. There is clear and convincing evidence that, in January 2016, the Applicant dated and falsely signed a memorandum purporting to originate with the Organization, delivered the falsified document to member state authorities and presented the falsified document as a genuine United Nations document. Accordingly, the Applicant's action amounted to serious misconduct in violation of staff regulations 1.2(b), and 1.2(g), and staff rule 1.2(i), warranting his dismissal from service.

26. All relevant circumstances were considered in imposing the disciplinary measure, and the Applicant's procedural fairness rights were respected throughout the investigation and disciplinary process. In this respect, the Applicant's argument pertaining to purported mitigating circumstances, were fully considered.

27. Contrary to the Applicant's claim that he committed the misconduct to save his life, there is no evidence on the record that the Applicant's life was at any point in danger, as he alleges. The record only contains evidence of an employment-related dispute between the Applicant and JT. In addition, if the Applicant felt threatened by the Military Prosecutor's actions, he had an obligation to report the matter to the Mission and request appropriate support. This he did not do. Instead, he falsified the memorandum and voluntarily delivered it to the Military Prosecutor's private residence, a person he claims he was afraid of, without any form of "protection". Even if accepted that the Applicant felt threatened by JT and or the Military Prosecutor, he cannot rely on his failure to follow proper security procedures to absolve himself of accountability for his actions or blame the Organization for allegedly not supporting him. The Applicant also ignored the safety advice provided by the chief of security and disobeyed his directions requiring him to desist from engaging the local authorities.

28. The Mission took appropriate action to manage and respond to the request from the Military Prosecutor to waive the Applicant's immunity. The LOA, Chief of Staff, Chief of Security, and others, were seeking to protect the interests of the Applicant, JT and MONUSCO, whilst following the correct legal process regarding requests for waiver of immunity. A mere five days after the Mission had received the request from the Military Prosecutor, the Applicant took it upon himself to deliver in person to the Military Prosecutor the falsified LOA memorandum purportedly in response to the request for waiver of immunity.

29. The Respondent maintains that the falsification of the Chief of Staff's signature and the unauthorized use of official documentation had a reputational impact on the Organization, and adversely impacted the trust and confidence which the authorities in the Democratic Republic of the Congo ("DRC") have in the Organization.

Accordingly, the Applicant's falsification of an official document pertaining to privileges and immunities is particularly grave due to the potential negative impact on the reputation of the Organization, the relationship between the Mission and the host government, and the Organization's obligations under international law.

30. With regard to the sanction, the Respondent contends that it was proportionante and properly decided. Relying on *Portillo Moya* and *Sall,*[19] the Respondent submits that in determining the appropriateness of a disciplinary measure, the Tribunal establishes if the sanction appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. In the present case, none of the listed items do apply. The sanction adequately reflected the serious nature of the Applicant's misconduct.

31. The Respondent contends that the established facts constitute misconduct and the sanction imposed was not disproportionate. The question of reinstatement, therefore, does not arise.

Considerations

Scope of judicial review

32. It is well-established case law that the role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements:

a. Whether there is clear and convincing evidence that the facts have occurred, in cases where dismissal is at stake;

b. Whether the facts amount to misconduct;

c. Whether the sanction is proportionate to the gravity of the offence and;

[19] *Portillo Moya* 2015-UNAT-523, paras. 19-21; *Sall* 2018-UNAT-889, para. 41.

d. If the staff member's due process rights were guaranteed during the entire proceeding.

33. In the present case, it is consensual that the Applicant has not disputed the factual circumstances of the case, that those facts amount to misconduct nor does he question that his due process rights were fully observed throughout the investigation stage and the disciplinary procedure.

34. The Applicant has clearly stated, both in his filings and during the CMD, that what he was disputing was the proportionality of the sanction which was applied to him and the fact that the Organization has not considered any attenuating circumstances.

35. The Applicant has reiterated that he finds the sanction disproportionate and that the decision-maker did not take into account that his life was in danger (as he had received threats from a colleague), that there was an arrest warrant pending against him and that the Military Prosecutor in DRC had requested the Mission to waive his diplomatic immunity.

36. He has also underlined that he had been working in DRC which is a hazardous duty station and a risky place to live and work, where armed groups often attack the population and international staff.

37. As a consequence, while bearing in mind the above mentioned test (in which UNAT has established the scope of UNDT's jurisdiction) the sole issue that remains for adjudication is whether the sanction imposed on the Applicant is proportionate to the gravity of the offence.

38. The Tribunal recalls that the Applicant does not dispute the facts, nor does he deny that he did not commit the misconduct, on the contrary, he has confessed the offence and cooperated with the on-going investigation. Rather, his concern is that there are relevant mitigating factors, which, if fully considered, would play in his favour.

39. The internal jurisprudence has consistently recognized that the UNDT can interfere with the administration's discretionary powers whenever the sanction appears to be disproportionate to the gravity of the offence.[20]

40. More recently, in *Samandarov*[21], UNAT has reiterated this position and stated that the Secretary-General's administrative discretion to impose a disciplinary sanction is not unfettered and the UNDT can interfere when the sanction lacks proportionality, i.e. when it is excessive, unbalanced and unsuitable, as follows:

> With regard to the discretion of the Secretary-General to impose a sanction, the UNDT noted that this discretion is not unfettered, in that there is a duty to act fairly and reasonably in terms of which the UNDT is permitted to interfere where the sanction is lacking in proportionality. The proportionality principle limits the discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired outcome.

41. The Tribunal underlines that the purpose of proportionality is to avoid an imbalance between the adverse and beneficial effects of an administrative decision and to encourage the administrator to consider both the need for the action and the possible use of less drastic or oppressive means to accomplish the desired end.

42. The Tribunal agrees with the arguments put forward by the Administration in relation to the gravity of the facts at stake and the breach of confidence between employer and employee they have entailed. The Tribunal also agrees that this breach of trust between the parties renders the subsistence of the working relation impossible and that the Administration is best suited to select an adequate sanction within the limits stated by the respective norms.

43. Neverteheless, assessing proportionality obliges the UNDT to objectively assess the basis, purpose and effects of any relevant administrative decision.

[20] See for instance, *Applicant* 2013-UNAT-302, para. 29, citing: *Messinger* 2011-UNAT-123; *Portillo Moya* 2015-UNAT-523, paras. 17 and 19-21; *Masri* 2010-UNAT-098, para. 30; *Sanwidi* 2010-UNAT-084, para. 43; *Haniya* 2010-UNAT-024, para. 31; and *Mahdi* 2010-UNAT-018, para. 27.
[21] *Samandarov* 2018-UNAT-859.

44. In *Samandarov*[22], UNAT has held that:

> Our jurisprudence has expressed the standard for interference variously as requiring the sanction to be "blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity" or to be obviously absurd or flagrantly arbitrary. The ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline. As already intimated, an excessive sanction will be arbitrary and irrational, and thus disproportionate and illegal, if the sanction bears no rational connection or suitable relationship to the evidence of misconduct and the purpose of progressive or corrective discipline. The standard of deference preferred by the Secretary-General, were it acceded to, risks inappropriately diminishing the standard of judicial supervision and devaluing the Dispute Tribunal as one lacking in effective remedial power.

Administrative precedents

45. The Tribunal has carefully analyzed the administrative practice of the Organization in similar cases *i.e.* in cases where the staff member has forged a document or a signature in an official document and found out that, at least in two cases the administrative sanction was not dismissal but separation from service with compensation in lieu of notice without termination indemnity.[23]

46. A staff member falsified invoices for medical treatment and subsequently submitted them to the staff member's private insurance company in support of medical claims. The staff member made an early admission of the misconduct and cooperated fully with the investigation. The time taken to conclude the investigation and the subsequent disciplinary process were taken into account in determining the disciplinary measure. Disposition: Separation from service with compensation in lieu of notice but without termination indemnity.

[22] Ibid.
[23] See Practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, 1 January to 31 December 2018; report of the Secretary-General, 7 March 2019, A/74/64.

47. A staff member created a false *note verbale* on official letterhead on their United Nations computer. The staff member forged the signature of another staff member and sold the *note verbale* to another staff member in order for the latter to obtain a non-immigrant visa. Several false documents, such as fake diplomas, were found on the staff member's United Nations computer. Mitigating factors were taken into account in determining the disciplinary measure, including flaws in the investigation process and the time taken to complete the disciplinary process. Disposition: Separation from service with compensation in lieu of notice but without termination indemnity.

48. In the case at hand, there is evidence on file that that the Applicant was threatened with an arrest and a request for the waiver of his diplomatic immunity was submitted to MONUSCO.

49. There is also evidence that MONUSCO failed to answer, in due time, to the request made by the Military Prosecutor, therefore, delaying the adoption of any protective measures.

50. The Tribunal underlines that, on 5 January 2016, the MONUSCO Legal Affairs Office received a letter dated 2 January 2016 from the the Military Prosecutor, requesting the waiver of the Applicant's United Nations privileges and immunities because the Applicant had granted access to the two police officers to the MONUSCO compound without a warrant or other authorization.

51. It is undisputed in the present case that the Military Prosecutor sought to prosecute the Applicant for incitement of the military to commit acts contrary to the Congolese military law.[24]

52. The Mission was well aware of this request from the Military Prosecutor as, on the same day, Mr. Germain Brindou, Officer in Charge, Political Affairs Section, Mr. Ian Sinclair, Chief of Staff; Mr. Seth Levine, Senior Legal Advisor; and Ms. Els Sohier,

[24] Application, section VII, para 6, Reply R/5, page 4.

Legal Officer; exchanged views on how to respond to the Military Prosecutor's letter.

53. Thereafter, Mr. Levine sent an email to Mr. Sinclair and Ms. Sohier, requesting that they "hold off" on an official response to the Military Prosecutor. However, Mr. Sinclair instructed Ms. Sohier to prepare an official response to the Military Prosecutor, so it would be ready to be sent quickly if necessary.[25]

54. Around the same period, the Applicant contacted Mr. Hamad Al Habib, MONUSCO Legal Assistant, LAO, by telephone to inform him of his possible arrest and asked him whether their office had received the correspondence from the Military Prosecutor requesting the waiver of his diplomatic immunity.

55. This sequence of events shows that the Applicant was seeking help from MONUSCO as he was afraid of being arrested at any time.

56. Mr. Al Habib confirmed that the said letter had been received and that they were in the process of drafting a reply to it. Thereafter, Mr. Al Habib asked the Applicant to give him the chronology of events. Mr. Al Habib then prepared a draft reply which he shared with the Applicant asking him to check and confirm if all the details were well captured.[26]

57. Finally, on 8 January 2016, the Applicant learnt from OK that JT had been in the office of the Military Prosecutor and they were hatching a plan to arrest him. According to OK, the arrest was to be effected on 11 January 2016 and that the Military Prosecutor was of the view that nothing was to stop the arrest since MONUSCO had not replied to his letter of 2 January 2016.

58. The Tribunal underlines that the Military Prosecutor interpreted MONUSCO's silence as a positive response to that letter.[27]

[25] Reply, R/2, page 10.
[26] Application, section VII, para 8; Application, annex 1.
[27] Application, section VII, para. 9.

59. On 9 January 2016, the Applicant contacted a colleague and asked him to check if the LAO had finalized the reply and whether it had been submitted to the Military Prosecutor.

60. The colleague, informed the Applicant that Mr. Levine had decided to halt the reply.[28]

61. The Respondent has not clarified why Mr. Levine took the decision to halt the reply to the Military Prosecutor and the Tribunal is of the view that this delay had an impact on the Applicant‘s decision to act on his own volition.

62. The hesitations and delays caused by MONUSCO in handling this serious threat to the Applicant in a timely manner contributed to the fact that, on 10 January 2016, the Applicant retrieved the draft reply he had received from Mr. Al Habib and decided to sign it in the name of Mr. Ian Sinclair and went on to hand-deliver it to the Military Prosecutor’s private residence.[29]

63. On 21 January 2016, the Military Prosecutor sent another letter to Mr. Sinclair and expressed the fact that based on MONUSCO’s letter of 10 January 2016, he had decided not pursue the prosecution of the Applicant.[30]

64. The Tribunal agrees that, in the specific context of DRC (which is at the epicenter of a civil war) it is reasonable to infer that the Applicant was afraid of what could happen to him if he was, indeed, arrested by the local authorities.

65. By failing to immediately clarify the situation with the local authorities and the Applicant himself, MONUSCO’s failure constitutes a mitigating circumstance in his favour.

66. The Tribunal is of the view that it is reasonable to believe the Applicant acted under pressure, in an exceptionaly difficult context in which he feared for his life and

[28] Ibid, para. 10.
[29] Application, annex 3.
[30] Reply, R/5, para. 13.

physical well- being.

67. The Administration could not have ignored the particularities of the situation the Applicant was facing and the potential negative consequences he could have endured if arrested.

68. The Tribunal highlights the Organization's duty of care towards its staff members, in particular those who work in difficult contexts, like the case at hand.

69. The Tribunal has identified the following mitigating circumstances that should have been taken into consideration by the Administration and led to a less severe sanction:

a. The fact that the Applicant has admitted the misconduct and fully cooperated with the investigation;
b. The fact that a request for a waiver of his immunity was made to MONUSCO and the Applicant's imminent arrest by the local authorities;
c. MONUSCO's delay in answering the Military Prosecutor in due time so as to avoid the Applicant's imminent arrest and the fact that Mr. Levine had halted the reply without a proper justification;
d. The risks for the Applicant's life and well-being related to the hazardous duty station where he was working.

70. All these specific set of circumstances would have justified a more careful and efficient approach to the Applicant's situation i.e, at least, a quick reply from the Mission to the Military Prosecutor.

71. The lack of a quick reaction from the Mission should have been borne in mind by the Organization when it applied the disciplinary sanction, which could have culminated in a less severe sanction.

72. On the other hand, the Tribunal underlines that in similar situations the Organization appeared to have applied a less severe threshold.

73. For instance, in *Jaffa*[31], a staff member who was subject to an investigation and charged with misconduct for performing undue overpayments in his own benefit, was subject to separation from service with compensation in lieu of notice and with termination indemnity:

> The ASG/OHRM concluded that there was clear evidence that he failed to inform his superiors of the overpayment and subsequently took steps to prevent the recovery of said overpayments. By said failure the Applicant clearly violated the rules relating to recovery of overpayments made to staff members and acted contrary to expected standards of integrity and conduct. The Under-Secretary-General for Management considered the established misconduct was serious in nature and gravity.

74. The Tribunal is mindful that in the context of a judicial review, it cannot replace the decision-maker, that the Organization is better placed to decide which is the most appropriate sanction in disciplinary cases and deference should be given to the discretionary powers of the Secretary-General in these cases.

75. This assessment is confirmed by UNAT's case law[32], where it stated as follows:

> "It follows from the reasoning of the quoted jurisprudence that the matter of the degree of the sanction is usually reserved for the Administration, who has discretion to impose the measure that it considers adequate to the circumstances of the case and to the actions and behaviour of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration which carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures: a sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance, etc. That is why only if the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity, that the judicial review would conclude in its unlawfulness and change the consequence (i.e., by imposing a different one). This rationale is followed in the jurisprudence of this Tribunal. If that is not the case, judicial review should not interfere with administrative discretion."

[31] Jaffa 2015-UNAT-545.
[32] *Portillo Moya* 2015-UNAT-523, paras 19-21.

76. On the same token, the Tribunal agrees that, in this case, misconduct has occurred as well as a breach of trust between the parties that renders the working relationship impossible. However, the Administration must be consistent with its own administrative practices when similar situations are at stake. As the Tribunal has underlined, in cases in which staff members have forged documents or other official documents the applicable sanctions were not dismissal but, instead, separation from service with compensation in lieu of notice, without termination indemnity.

77. In the current case, the Tribunal does not see any justification to apply a harsher threshold and finds that the sanction was disproportionate and manifestly abusive in relation to the circumstances faced by the Applicant.

78. Consequently, the Tribunal has decided that the Respondent should replace the original disciplinary sanction for another one with less severe consequences-separation with compensation in lieu of notice and without termination indemnity.

JUDGMENT

79. The Respondent is ordered to replace the original sanction for another one with less gravity–separation from service with compensation in lieu of notice and without termination indemnity.

(Signed)
Judge Teresa Bravo
Dated this 7th day of August 2020

Entered in the Register on this 7th day of August 2020

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi