



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/031

Judgment No.: UNDT/2020/147

Date: 18 August 2020

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KHAMIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Godfrey Mpandikizi

Counsel for the Respondent:
Elizabeth Brown, UNHCR
Francisco Navarro, UNHCR

Introduction

1. The Applicant, a former staff member of the United Nations High Commissioner for Refugees (“UNHCR”), is contesting the High Commissioner’s decision finding him guilty of misconduct and the imposition of the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity (“the impugned decision”). The application succeeds.

Facts and Procedure

2. At the time of the impugned decision, the Applicant held a fixed-term appointment at the P-3 level, as a Health Information Systems Officer with UNHCR in Kampala, Uganda. On 18 March 2019, he filed an application contesting the impugned decision.

3. The Respondent filed his reply on 19 July 2018 and, pursuant to the Tribunal’s Order, an amended reply on 13 July 2020.¹

4. The Applicant joined UNHCR on 25 January 2009 as an Epidemic Response Coordinator in Nairobi, Kenya. On 1 November 2016, he was appointed as a Field Officer in Adjumani, Uganda and, on 8 August 2018, he was temporarily reassigned to Kampala as a Health Information Systems Officer.

5. When the facts that gave rise to the disciplinary process occurred, the Applicant was a Field Officer in Adjumani. In that position, he acted as the UNHCR Team Leader in Kitgum, a deep-field location. He was in charge of 27 staff members.

6. Between July 2017 and 14 February 2018, the Applicant was engaged in a romantic relationship with a Ugandan lady, “JA” with whom he cohabited. The Applicant ended the relationship on 14 February 2018 after he discovered that JA had

¹ To comply with the requirement to submit the reply in the appropriate form as per UNDT Practice Direction No. 4.

other sexual partners and asked her to leave the home they shared. JA left the house and went to the local police station, where she complained to Detective Robert Emuna, that the Applicant had forced her to have anal sex with him. JA also claimed that the Applicant owed her money.²

7. On 14 March 2018, Ms. Beatrice Anywar, a Ugandan Member of Parliament (“MP”), held a press conference on JA’s pending complaint with the Ugandan Police. Ms. Anywar’s statements were relayed by a Ugandan news outlet on 15 March 2018. The news outlet article stated that the Applicant, a UNHCR staff member, was picking, harassing and sodomizing girls in Kitgum, that nothing was being done because he was a diplomat and that Ms. Anywar would call for locals to mobilize if no action was taken.³

8. On 15 March 2018, different Ugandan news outlets published multiple articles alleging that the Applicant had engaged in sexual exploitation and abuse (“SEA”) of refugee women. Some articles also stated that he had engaged in anal sex, which is considered an “unnatural”, and a criminal offence under Ugandan law. On 16 March 2018, the UNHCR Inspector General’s Office (“IGO”) was apprised of this information and opened an investigation. The IGO conducted an investigative mission to Uganda and interviewed 10 witnesses between 21 and 24 March 2018, including the Applicant as the subject of the investigation.⁴

9. On 22 March 2018, the Applicant was arrested by Ugandan police who opened an investigation into the allegation that he had engaged in anal sex with JA. He was released on 26 March 2018.⁵

10. On 5 July 2018, the Uganda Police Force issued a report on their investigation. It concluded that the evidence was not sufficient to sustain charges that the Applicant had engaged in “unnatural offences” and advised that the case be

² Amended reply, para. 26.

³ Ibid., para. 28.

⁴ Ibid., paras. 7-9.

⁵ Ibid., para. 10.

closed.⁶

11. On 13 August 2018, the Applicant received a letter from the then Director of the Division of Human Resources (“DHR”), (dated 17 July 2018), containing allegations of misconduct.⁷ It was specifically alleged that:

- a. he behaved in a manner that discredited UNHCR and undermined public confidence in the Organization;
- b. the fact that he had romantic relationships with two local women created a risk for UNHCR operations;
- c. the evidence gathered by the IGO including multiple media articles tarnishing the reputation of UNHCR indicated that the image and interests of UNHCR in Uganda were compromised because of his conduct; and that
- d. even though the articles included allegations that ‘have not been substantiated by the Uganda Police Force or the IGO’, his relationship with at least one of the women was a key part of the chain of events leading to the publication of the articles.

12. The Applicant responded to the allegations on 12 October 2018. He denied any misconduct.⁸

13. After reviewing the investigation report, the evidence gathered by the IGO and the Applicant’s submissions, the High Commissioner concluded that the alleged facts had been established on clear and convincing evidence and that they constituted misconduct. Therefore, on 14 December 2018, the High Commissioner issued the impugned decision. The Applicant was notified of the decision on 18 December

⁶ Application, annex 5.

⁷ Application, annex 3.

⁸ Application, annex 4.

2018.⁹

Parties submissions

The Applicant

14. The investigation failed to assess Ms. Anywar's credibility. Ms. Anywar went to the media alleging that the Applicant was abusing refugees and taking them to different hotels in Kitgum. This triggered the IGO's investigation the result of which was no evidence to the allegations made but a claim that the UNHCR image had been damaged due to the negative media attention. When interviewed by the IGO Ms. Anywar stated that the newspaper had made up this allegation, and she was not aware of them.

15. There are several factual inconsistencies that came to light because of the IGO interview with JA. The IGO listed nine inconsistencies demonstrating JA was consistently lying. This raises concerns of the credibility, reliability or probabilities of the evidence proffered on the source of information. The case was investigated by the Ugandan Police and closed due to insufficient evidence.

16. The media articles falsely and maliciously alleged that the Applicant sexually abused refugees or sodomized girls. This conduct was determined by the IGO and the Uganda Police to have been unfounded. The only other 'conduct' which remained, was the Applicant's relationship with JA. This too was not and could not have been an issue since the relationship was consensual between two adults in cohabitation for more than six months residing under the same roof amounting to a presumption of marriage as per Ugandan laws on marriage.

17. The local media did not focus on the Applicant's relationship but abuse of refugees and local girls. The UNHCR Administration passed judgment on the Applicant's relationships as inappropriate, yet the relationships do not contravene any

⁹ Application, annex 2, amended reply, para. 18.

United Nations rules or policies. A determination of whether UNHCR's reputation was tainted would have to be looked at objectively based on the circumstances and the context. Since in Uganda acquiesced traditional relationships are legal and permitted, it would be hard to say that such a relationship would taint the reputation of the Organization.

18. The IGO investigation only interviewed a few people and left out several others that were mentioned including the top leadership of the two districts of Kitgum and Lamwo that are within the UNHCR's area of operation. Those mentioned and left out include the Resident District Commissioner, the District Police Commander and an activist who is also mentioned as a guardian to JA. Others who could have been interviewed include the District Chairman of Kitgum and Lamwo, the Resident District Commissioner of Lamwo and a sample of other community leaders.

19. The allegations also unfairly hold the Applicant accountable for something which he has no control over - what others think about relationships and what those people choose to do with their thoughts is an individual matter; since everyone has the right to freedom of thought, opinion and expression. This is especially concerning where the IGO confirmed from Ms. Anywar that the press had concocted the allegations that the Applicant had sodomized local refugees.

20. The Respondent raised the issue of power differential in his relationship with JA, however, this does not fall within the interpretation of staff rule 10.1(a). The Tribunal should determine whether age difference, education status, type of work, income and nationality are factors that come into play in relationships as argued by the Respondent. In any solid intimacy relationship couples support each other in all situations and this could be moral or financial support.

21. In Uganda, the prevailing legal traditions are common law and customary law, with Islamic law exerting a significant influence for the Muslim population. The laws governing the various matrimonial regimes in Uganda are: The Marriage Act, the Customary Marriage (Registration) Act, the Hindu Marriage and Divorce Act, the

Marriage and Divorce of Mohammedans Act and the Marriage of Africans Act. A Government official determined that the cohabitation relationship between him and JA was entered legally, with full consent of the spouses and does not violate minimum age of marriage requirements. In recognizing the cohabitation relationship in Uganda, Courts hear arguments on cohabitation relationship with the presumption that marriage existed despite the lack of registration.

22. The imposed disciplinary measures are disproportionate, excessive, too severe and therefore unlawful to be imposed on the unsubstantiated allegations with subjectively developed evidence. From the very beginning, the allegations levelled against him were malicious and intended for reasons best known to those who made them, to ruin his name and career, and this has been proven by the IGO and Ugandan police. The disciplinary measure was taken under pressure to appease media and donors as evidenced by a Times Newspaper of London article.

23. The Applicant submits that there was nothing unlawful in this case as proved by the IGO and Ugandan police investigations. The finding of misconduct by the IGO is very subjective and based on extremely weak evidence as there is no breach of national law or United Nations Staff Rules. The case was decided solely on the High Commissioner's broad discretion which in this case was unfairly exercised and illegal.

The Respondent

24. The Respondent submits that the Applicant was sanctioned for breaching his obligations to conduct himself always in a manner befitting his status as an international civil servant and to refrain from any action that may compromise the image and interests of UNHCR by engaging in a transactional sexual relationship, under deeply unequal power dynamics, with JA, a young woman from a village in the Applicant's area of responsibility, which caused harm to UNHCR's reputation and interests.

25. The High Commissioner correctly concluded that the Applicant engaged in a

transactional sexual relationship, under deeply unequal power dynamics, with JA, considering their respective ages, personal backgrounds, professional and financial situations, the fact that the Applicant paid JA a salary as live-in house help and gave her other monies, the length of the relationship and the way it ended and the fact that the Applicant had another girlfriend in a nearby town.

26. The High Commissioner correctly concluded that there was a causal link between the Applicant's relationship to JA and the statements by Ms. Anywar, Member of Parliament representing the Kitgum Municipality, as well as the various articles published in Ugandan media.

27. The High Commissioner correctly concluded that the fact that the Applicant could no longer perform his functions and had to be removed from his position as Team Leader in Kitgum for his own safety damaged UNHCR's interests.

28. The High Commissioner correctly concluded that the articles published in Ugandan media damaged UNHCR's image, also considering the persistent follow-up by foreign media and donor countries, including the Applicant's country of nationality.

29. The High Commissioner's finding that the Applicant's conduct constituted misconduct was a lawful exercise of discretion. It was not befitting of a UNHCR international staff member and Team Leader in a deep field location to engage in a transactional sexual relationship, under deeply unequal power dynamics, with a young woman from the local community. The Applicant's conduct risked causing, and in fact caused an adverse impact on his status as an international civil servant and negatively affected the image and interests of UNHCR.

30. The disciplinary measure imposed by the High Commissioner, which was not the most severe that could have been taken by UNHCR is proportionate to the Applicant's misconduct.

31. The High Commissioner has the discretion to weigh aggravating and

mitigating circumstances when deciding upon the appropriate sanction to impose. The Applicant's position as the most senior UNHCR official in Kitgum, leading a team of 27 staff members, constituted an aggravating factor. The Applicant's lack of remorse for his conduct or for the damage it caused to UNHCR's image and interests, despite the number and the content of the articles published by Ugandan media, the fact that he had to be removed from his duty station, and the persistent follow-up by donors, was an aggravating factor.

Considerations

32. In disciplinary cases, the Tribunals will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (where termination is the sanction imposed, the facts must be established by clear and convincing evidence; in all other cases preponderance of the evidence is sufficient); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and (iv) whether the staff member's due process rights were respected.¹⁰

33. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. When termination is the outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable.¹¹

Whether the facts on which the disciplinary measure is based have been established and whether they constitute misconduct

34. According to the Respondent,¹² the impugned decision was imposed for the

¹⁰ *Suleiman* 2020-UNAT-1006, para. 10, citing *Nadasan* 2019-UNAT-917, para.38; *Siddiqi* 2019-UNAT-913, para. 28.

¹¹ *Bagot* 2017-UNAT-718 at para. 46 citing *Mizyed* 2015-UNAT-550, para. 18, *Applicant* 2013-UNAT-302, para. 29; see also *Diabagate* 2014-UNAT-403, paras. 29 and 30; *Molari* 2011-UNAT-164, paras. 29 and 30.

¹² Amended reply, para. 33; application, annex 2, Sanction Letter.

Applicant's breach of his obligation to conduct himself at all times in a manner befitting his status as an international civil servant and to refrain from any action that may compromise the image and interests of UNHCR. The High Commissioner concluded that it had been established based on clear and convincing evidence that the Applicant was in breach of staff regulation 1.2(f), paragraph 42 of the International Civil Service Commission's Standards of Conduct for the International Civil Service ("ICSC Standards")¹³. In the Respondent's closing submissions, he also refers to principles 2 and 8 of the UNHCR Code of Conduct which were never mentioned in the sanction letter dated 17 December 2018. In arriving at this conclusion, the High Commissioner found that there was a "causal link" between the Applicant's unsatisfactory conduct and the harm caused to the reputation of UNHCR. Had the Applicant not engaged in a relationship with JA, none of the ensuing events would have taken place.

35. The IGO investigation concluded that the Applicant had engaged in multiple concurrent relationships with local women which attracted negative attention from the press. However, the undisputed findings from the investigation were that the Applicant was engaged in consensual, romantic relationships with JA who lived in Kitgum and TA who lived in Gulu which is approximately a one-and-a-half-hour drive from Kitgum. The Applicant rented houses in both locations and JA and TA were known to each other. The three had an arrangement whereby the Applicant lived with JA during the week in Kitgum and with TA in Gulu on weekends.

36. The Respondent submits that, as held in *Ogorodnikov* 2015-UNAT-549, the jurisprudence of the Appeals Tribunal is that misconduct must be viewed in terms of the nature of the mission, purpose and principles of the United Nations and the impact which this type of misconduct can have on the Organization's reputation, credibility and integrity. It is uncontested that the negative press attention originated from Ms. Anywar's press statement, following a parliamentary press conference she

¹³ July 2013.

held on 14 March 2018, which the IGO found to be unsubstantiated. Ms. Anywar later disowned other statements attributed to her such as allegations of SEA of refugees by the Applicant.

37. Neither JA nor TA were refugees, or beneficiaries of UNHCR assistance or fell within the prohibitions stipulated in staff rule 1.2(e). The Tribunal does not agree with the Respondent that unsubstantiated and scandalous allegations made against a staff member are conclusive evidence that the staff member is responsible for the reputational damage caused thereby to the Organization.

38. The Respondent has argued, citing *Jenbere* 2019-UNAT-935, that conduct amounts to serious misconduct when it has the potential to damage the reputation of the Organization and, citing *Al Saleh* 2018-UNAT-888, that Mr. Al Saleh's conduct in outside activities caused serious reputational damage to the Agency, particularly when media sources reported armed clashes in the EEHC and mention was made of Mr. Al Saleh's name and his "employment as CSO at the Agency". The Tribunal notes that in both *Jenbere and Al Saleh*, the applicants were found to have engaged in the misconduct that was alleged, which is not the case in the instant matter therefore these cases are distinguishable.

39. Where alleged conduct is assessed by the Administration as having caused reputational damage, the alleged conduct must be established by clear and convincing evidence that it occurred and that it constitutes misconduct to justify disciplinary sanction of separation against a staff member. A different interpretation would negate the presumption of innocence which is enshrined in the internal laws of the Organization.

40. In *Sanwidi*, UNAT held that when judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered and

also examine whether the decision is absurd or perverse.¹⁴ In the instant case, the High Commissioner has admitted to having been influenced to taking the impugned decision by the sensationalized media reports, concerns by UNHCR donor countries and by the fact that “a corruption scandal that touched on UNHCR in Uganda had already broken out in early February 2018”.¹⁵ The media reports were relevant insofar as they brought to the attention of the UNHCR Administration the allegations against the Applicant. However, following the IGO investigation, the UNHCR Administration should have established that the media reports were not substantiated. The Applicant had no control over what the media chose to report. Hence, basing its decision on these facts was unlawful as they were extraneous to the case at hand and irrelevant.

41. The High Commissioner improperly concluded that the Applicant’s relationship with JA was inconsistent with the standards of conduct expected of an international civil servant because it was a “transactional”, deeply and fundamentally unequal relationship because, *inter alia*, he earned more money than her and because of their age difference. The High Commissioner cites staff regulation 1.2(f) and paragraph 42 of the ICSC Standards in support of his conclusion that a staff member cannot engage in an intimate relationship with a consenting adult who earns lower wages and of a specified age-gap. Staff regulation 1.2(f) stipulates:

While staff members’ personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

¹⁴ 2010-UNAT-084, para. 40.

¹⁵ Revised reply, paras. 36 and 44.

It is not the Applicant's views and convictions that resulted in the unsubstantiated and scandalous allegations made against him by JA, Ms. Anywar and the media. The investigations did not establish violation of any of the elements in this provision, namely, (i) having adverse effects on duties and interests of the United Nations, (ii) being incompatible with proper discharge of duties and (iii) adversely reflecting on staff member's status or integrity, independence and impartiality of the United Nations. On the contrary, the record shows that the Applicant was an excellent staff member who was consistently assessed successfully.¹⁶ It follows that the High Commissioner's reliance on this staff regulation is misguided as it has no bearing on the conduct of the Applicant. In particular, the status in the organisation, society, earnings, education and age of the Applicant have no adverse consequence on a customary relationship that the Applicant maintained with the two women, nor does it make the relationships transactional. It is only where the woman is underage that the relationship would violate both United Nations and local laws. As it were, the facts are not established and no breach of the regulation is disclosed to constitute misconduct.

42. Paragraph 42 of the ICSC Standards states,

The private life of international civil servants is their own concern and organizations should not intrude upon it. There may be situations, however, in which the behaviour of an international civil servant may reflect on the organization. International civil servants must therefore bear in mind that their conduct and activities outside the workplace, even if unrelated to official duties, can compromise the image and the interests of the organizations. This can also result from the conduct of members of international civil servants' households, and it is the responsibility of international civil servants to make sure that their households are fully aware of this.

This paragraph should be read in the context of paragraph 40 of the ICSC Standards which among others requires respect for diversity.

¹⁶ Application, annex 6, page 2 of the Sanction letter. As a mitigating factor, in taking the impugned decision, the High Commissioner considered the Applicant's eight years of satisfactory service as a UNHCR staff member and his unblemished disciplinary record.

The world is home to a myriad of different peoples, languages, cultures, customs and traditions. A genuine respect for them all is a fundamental requirement for an international civil servant. Any behaviour that is not acceptable in a particular cultural context must be avoided. However, if a tradition is directly contrary to any human rights instrument adopted by the United Nations system, the international civil servant must be guided by the latter. International civil servants should avoid an ostentatious lifestyle and any display of an inflated sense of personal importance.

43. In the instant case, the High Commissioner failed to establish that the Applicant's "polygamous"¹⁷ lifestyle was contrary to any "human rights instrument adopted by the United Nations system" or that it compromised the image and interests of the Organization. Further, the IGO investigators had opportunity to interview community leaders in the area to establish the facts in line with the cultural context of the area but they failed without good reason to do so.¹⁸ The Applicant, on the other hand, cited verse 4:3 of the Quran to support his averment that "many Muslim communities in Sub Saharan Africa adhere to the belief that polygamy is freely permitted. Polygamous marriages are common in the region".¹⁹ Apart from the Muslim faith, most customary laws in this region permit polygamous relationships, hence all customary relationships are potentially polygamous.

44. The High Commissioner disregarded, without justification, the statements of witnesses who considered the Applicant's relationship with JA to be that of a "husband and wife". Mr. Jimmy Okot told the investigators that the Applicant had told him that he and JA were living together in Kitgum as "husband and wife".²⁰ Another witness, Ms. Caroline Mbui described to the investigators how she once witnessed an altercation at the Bomah Hotel between JA and some UNHCR colleagues.²¹ JA had wrongly suspected the Applicant of having an affair with Ms. Mbui and was attempting to accost her seemingly out of jealousy. TA on the other

¹⁷ Applicant's closing submissions, para. 18.

¹⁸ Applicant's closing submissions, para. 7.

¹⁹ Applicant's closing submission, para. 18.

²⁰ Application, annex 6, para. 46.

²¹ Ibid., para. 58.

hand, told the investigators that she was aware that the Applicant was in a relationship with JA and lived with him as husband and wife in Kitgum.²² Had the High Commissioner considered these pieces of evidence, he would not have arrived at the impugned decision.

45. The Respondent submits that, in assessing the available evidence, including the testimonial evidence provided by JA, Mr. Okot, Detective Emuna and the Applicant, the Tribunal should follow the standard set by the Appeals Tribunal in *Hallal* 2012-UNAT-207, *Siddiqi* 2019-UNAT-913, *Sall* 2018-UNAT-889 and *Mbaigolmem* 2018-UNAT-819. These cases, however, can be distinguished from the case at hand because unlike in the cited jurisprudence, in the instant case, the facts are not established to the requisite standard.

46. The Respondent submits that with regards to the standards of conduct expected of international civil servants, the Dispute Tribunal should follow the holdings in *Kuruc* UNDT/2015/008, *Gisage* UNDT/2020/121 and *Muteeganda* UNDT/2020/050. In all these instances the Administration proved that the facts were established and that they constituted misconduct, contrary to the findings in the application at bar.

47. With respect to the Applicant's submission that the Ugandan Police concluded that he had not committed any crime, the Respondent submits that, as held in *Toukoulon* 2014-UNAT-407, the United Nations is empowered by its written law to take disciplinary measures against its staff members in cases of misconduct, irrespective of whether the misconduct is referred to a local court or the accused person is convicted in such proceedings. The Tribunal agrees with this submission, however, in this case, after the Applicant was cleared by the Ugandan Police, the Administration was obliged to conduct its own investigation to establish the facts by clear and convincing evidence and that the established facts constitute misconduct. In *Toukolon* the Respondent found by clear and convincing evidence that the applicant's

²² Ibid., para. 94.

actions amounted to misconduct, the same cannot be said of the instant case.

48. The Tribunal finds that the Administration has failed to prove that the facts on which the allegations were made are established. The Applicant has not committed any misconduct because he has not breached any regulation, rule, administrative issuance or policy under his terms of appointment or contract of employment.

Whether due process rights were observed

49. The Tribunal agrees with the Applicant that the investigations were flawed. It has found that relevant matters were ignored and irrelevant matters accorded weight. The High Commissioner in arriving at the impugned decision failed to consider a number of factors including the cultural context as required by paragraph 40 of the ICSC Standards and ignored all exonerating evidence such as: the consensual nature of the relationship between the Applicant and JA and the sensationalized and unsubstantiated media reports. Instead he placed weight on damage to the reputation of the Organization without addressing the issue whether the Applicant had any hand in what the media chose to report on and how it was reported and how members of the public interpreted the media articles.

50. The Respondent considered related media events that apparently affected the Organisation's reputation in Uganda without attributing any fault to the Applicant for those events. The Respondent considered the Applicant's status and standing in the Organization and the society without disclosing how he abused it to the detriment of the Organization or his own performance as an international civil servant. This application comes out as an example of failure by the Administration to protect its own staff members against third party retaliation, blackmail and malicious damage to reputation. This is clear because the Respondent has conveniently not discussed the role of JA in the events leading to the press statement by the MP and subsequent media reports, *to wit*, the Applicant severed the relationship with JA for personal reasons and JA retaliated by laying charges against the Applicant which turned out to be false and prejudicial to the Applicant.

51. The Tribunal finds that UNHCR Administration failed to act fairly by basing its decision on extraneous and discriminatory considerations.²³ It is trite that; “..[a]s a matter of fair process, there is no room for extraneous considerations such as bias, prejudice and discrimination”.²⁴

Conclusion

52. When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse.²⁵

53. The Tribunal finds that in arriving at its decision the Respondent ignored relevant matters and considered irrelevant matters. The facts have not been established by clear and convincing evidence resulting in an illegal decision.

Remedies

54. The impugned decision is rescinded. At the time of his dismissal on 14 December 2018, the Applicant held a fixed-term appointment, which was due to expire on 31 October 2020. The Respondent may opt to pay compensation in lieu of rescission.

55. The compensation limit is normally two years’ net base salary, in accordance with art. 10.5(a) of the Statute. Only in exceptional circumstances can an enlarged quantum be considered. The Applicant’s fixed-term appointment may not have been renewed or may have been terminated for a number of reasons, the compensation awarded under art. 10.5(a) will therefore be limited to 23 months’ net base salary, representing the unfinished period to the end of his contract.

²³ See generally *Lemonnier* UNAT-2017-762.

²⁴ *Finiss* UNAT-2014-397. Para 20

²⁵ *Sanwidi*, para 40.

Moral damages

56. Compensation may be ordered for harm after the existence of such harm is proved to the requisite standards as set out in *Kallon*²⁶:

Compensation may only be awarded for harm, supported by evidence. The mere fact of administrative wrongdoing will not necessarily lead to an award of compensation under Article 10(5)(b) of the UNDT Statute. The party alleging moral injury (or any harm for that matter) carries the burden to adduce sufficient evidence proving beyond a balance of probabilities the existence of factors causing harm to the victim's personality rights or dignity, comprised of psychological, emotional, spiritual, reputational and analogous intangible or non-patrimonial incidents of personality.

Sufficient evidence requires that the Applicant's testimony be "corroborated by independent evidence (expert or otherwise) affirming that non-pecuniary harm has indeed occurred".²⁷ The Applicant has not proved that he has suffered moral injury. This claim is declined.

Judgment

57. The impugned decision was unlawful. The Applicant is awarded 23 months' net base salary as compensation for the reasons explained above.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 18th day of August 2020

²⁶ 2017-UNAT-742.

²⁷ *Ross* 2019-UNAT-926, para. 57.

Entered in the Register on this 18th day of August 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi