



Before: Judge Francis Belle
Registry: Nairobi
Registrar: Abena Kwakye-Berko

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Omar Josef Shehabi, OSLA

Counsel for the Respondent:

Kevin Browning, UNICEF

Introduction

1. Prior to being summarily dismissed, the Applicant served the United Nations Children’s Fund (“UNICEF”) on a fixed-term appointment at the P-4 level. He was based in Sudan.

Procedural History

2. The Applicant was separated from service of the United Nations for misconduct in violation of staff rules 1.2(a) and (b) on 22 March 2019. The disciplinary process was conducted in accordance with paragraphs 4.3 – 5.1 of CF/EXD/2012-005 which governs UNICEF’s Disciplinary Process and Measures. UNICEF also applied paragraph 22 of DHR/PROCEDURE/2018/003 on Personnel Files.

3. The Applicant filed his application to challenge that decision on 12 June 2019 at the United Nations Dispute Tribunal sitting in Nairobi.

4. The Respondent filed his reply to the application on 11 July 2019.

5. This case was assigned to new Counsel by the Office of Staff Legal Assistance in August 2020.

6. The parties attended a case management discussion (“CMD”) before the Tribunal on 18 August 2020.

7. On 6 October 2020, the parties jointly submitted on the facts and issues in dispute and provided the Tribunal with their respective witness lists. The Respondent objected to the Applicant’s calling of the two investigators to testify.

8. On 26 October 2020, the Respondent filed a motion for protective measures to be instituted by the Tribunal to protect the Complainant’s privacy. The Tribunal granted the motion in part, in Order No. 221 (NBI/2020).

9. At the start of the oral hearing, Counsel for the Applicant moved for the

Applicant to be granted reciprocal anonymity. This motion was objected to by the Respondent, but granted by the Dispute Tribunal.

10. On 12 November 2020, the Applicant filed for disclosure of “any and all documents” pertaining to the Complainant’s complaint against her then supervisor at UNHCR. The Applicant also sought disclosure of draft forms of the Complainant’s statement to the UNICEF Office of Internal Audit and Investigations (“OIAI”) and “any and all documents related to the production of” that statement.

11. On 26 November 2020, the Tribunal issued Order No. 233 (NBI/2020) dismissing the motion for disclosure and directing the parties to file their closing submissions by 9 December 2020.

The Hearing

12. The matter was heard over four trial days; on 11-13 November and 23 November 2020. The Complainant testified on 11 and 12 November 2020. Her testimony was followed by that of three other witnesses; one called by the Respondent, and two investigators called by the Applicant.

13. The parties filed written closing submissions, as directed, on 9 December 2020.

14. The Respondent’s motion to have the Complainant testify without being seen was dismissed. The Tribunal explained that it was important that she be visible to the Tribunal for the assessment of her demeanor and for the overall integrity of the proceedings.

15. The Applicant moved for his identity to be anonymized given the sensitive nature of these proceedings and the potential for damage to his reputation. This motion was granted.

Deliberations

16. On 22 December 2017, the Inspector General’s Office (“IGO”) of United

Nations High Commissioner for Refugees (“UNHCR”) referred the Complainant’s report of sexual harassment by a staff member of the UNICEF Field Office in Kadugli, Sudan, to UNICEF. The Complainant reported the matter on 19 November 2017.

17. Specifically, she alleges having been touched inappropriately by the Applicant when he grabbed one of her breasts while dancing in a group at a party. The Complainant maintains that she made it clear to the Applicant that his advances were not welcome and that she was not interested in him; he disregarded her sentiments and continued to contact her.

18. In January 2018, the Complainant resigned from UNHCR.

19. The Applicant, was a long-standing staff member of UNICEF; having commenced service with the Organization in July 2006.

20. In her complaint to UNHCR, she alleged as follows: while the other attendees were in the kitchen, the Applicant approached her from behind, hugged her, and whispered in her ear: “I like you. You are beautiful. I want you. I will be waiting for you, ok?” The others re-entered the room, began dancing in a circle, and pulled the Complainant and the Applicant into the dance, next to one another. Whereas the others were “hugging each other in a respectful way and simply jumping and having fun”, the Applicant grabbed both her breasts with both his hands from behind, and made a second attempt to grab her breasts. Thereafter, she went outside and cried. Her friend, RdN, came out a few minutes later, consoled her, and urged her to confront the Applicant. Upon re-joining the party, the Complainant indeed confronted the Applicant – not about grabbing her breasts, but about his earlier comments. She asked him to clarify what he had meant. He replied: “I meant that I would wait for you in my room, I want you.” When she advised these comments made her uncomfortable, he replied: “still I will wait for you”. She told him not to speak to her again, except at work for work purposes; she returned to her friends, and he left about five minutes later.

21. The Complainant, who testified before the Tribunal over the course of several hours, gave a detailed, coherent and consistent account of the events. She described

how, on 12 October 2017, while preparing food with the Applicant at his accommodation prior to a dinner gathering, he told her that she had “beautiful eyes” and that, at the dinner, he made comments of a sexual nature, including that she was beautiful, that he wanted her, and that he would be waiting for her. The Complainant confronted the Applicant about his comments, making it clear that he should stop saying such things, but he persisted. The Applicant also touched her breast while dinner guests were dancing. The Applicant’s behaviour was so disturbing to the Complainant that she asked RdN, who was present at the gathering, if they could speak outside and, once outside, the Complainant broke down crying and told RdN that the Applicant had been sexually harassing her. In the days immediately following 12 October 2017, the Applicant continued communicating and attempted to add her as a friend on various social media platforms; this was unwelcome and made her feel uncomfortable. Even after explicitly telling the Applicant that she did not want any contact with him that was not strictly work related, on or about 22 October 2017, he asked if she could feed his cats while he was away.

22. In the witness statement produced following her 13 March 2018 interview with UNICEF OIAI, less than five months after her IGO complaint, the Complainant’s narrated the events differently, as follows: the Applicant made the unwelcome comments to the Complainant, which caused her to leave the room and cry. RdN, rather than telling the Complainant to confront the Applicant, told her not to let the Applicant ruin her night. Thereafter, while the group was dancing in a circle, with arms wrapped over one another’s shoulders, the Applicant hugged the Complainant from the side and grabbed one of her breasts. Thereupon, the Complainant neither confronted the Applicant, nor again left the room distraught. Rather, RdN simply changed her position in the circle so as to stand between the Complainant and the Applicant.

23. RdN testified that she saw the Applicant with his arm around the Complainant’s shoulder, sensed that the Complainant was uncomfortable dancing with the Applicant, and took it upon herself to dance in between them. But she did not see the Applicant touch the Complainant’s breast. Furthermore, contrary to the Complainant, RdN

testified that the attendees “certainly” were not dancing in any form of communal dancing, but were dancing “completely individually”, when she interspersed herself between the Complainant and the Applicant. Far from corroborating the breast-touching allegation, the testimony of RdN cast doubt on the context in which it allegedly occurred.

24. It is uncontroverted that no one, including RdN, saw the Applicant touch the Complainant’s breast; that the Complainant does not recall telling RdN about the alleged breast-touching during what Respondent characterises as the Complainant’s ‘confession’ to RdN; and the Complainant stayed at the party until it ended at approximately 3:00 a.m., long after the Applicant and RdN had left.

25. Against the Applicant’s denial of the alleged breast-touching and in the absence of witnesses to it, the inconsistency in the Complainant’s accounts is absolutely significant because the two accounts are not equally plausible. “A measure of common sense, logic and human experience” should guide the Tribunal’s assessment of the facts.¹ Human experience dictates that someone who is brought to tears by unwelcome comments (which, as alleged, were suggestive but not explicit or profane) would be as distraught, and likely more so, if the same person subsequently groped her. Human experience also dictates that if the victim of verbal and physical sexual harassment were to confront the perpetrator, she would not confront him regarding his words (which, again, were not sexually explicit) while allowing the groping to pass without comment. The same goes for confiding in a friend regarding the sexual harassment: if the Complainant told RdN about the Applicant’s comments, surely she also would have mentioned that he touched her breast, had the latter event occurred. The Applicant’s account of the breast touching incident is not as straight forward as the Applicant’s counsel argues. Indeed, the Applicant said the following in his interview:

[The Applicant] said that he did not tell [the Complainant] that she was beautiful or that he would be waiting for her, since he was “just treating her like a child, you know, colleagues-- I had no such kind of intention in my mind”. He also denied touching her intentionally or accidentally.

¹ *Cateaux* 2013-UNDT-027, para. 56.

He did remember they were making some sort of circle when dancing all together. He then stated: “it cannot happen, you know you touch each other’s when you are making round. And, seven, eight people in a circle in a container and you are pulling, you know, this neck like this, like this, and moving in a circle and you are drunk. So, absolutely people were touching each other’s, but not intentionally”. He did not remember if he was next to [the Complainant] or not.

26. The Tribunal finds that this is an admission of touching, possibly accidentally.

27. The Tribunal finds that it is not very useful to argue about whether anyone saw the Complainant being touched when the Applicant himself admits that the group was dancing in a circle, everyone was drunk and there was touching “but not intentionally.” RdN does not even recall that there was dancing in a circle that evening. But she did recall placing herself in a position between the Complainant and the Applicant. The Tribunal considers this important evidence of the consistency of the Complainant’s account of what happened the night of the alleged sexually loaded words and touching of the breast.

28. But the Complainant clarifies how she thought of the entire circumstances of sexual harassment. This is how she summarized the episode:

She tried to solve the situation informally by talking to [the Applicant] but instead of refraining from approaching her, he continued to contact her and not show any regret for what he had done.

29. This was said in response to allegations that she had ulterior motives for bringing the complaint against the Applicant and when she would have been forced to explain that other persons who knew the Applicant better than she did suggested that it might have been useful to speak to him and to try to settle the matter which could be very damaging otherwise.

30. The Tribunal also finds that it is a valuable indicator of determination to be forthright about the incident that the Complainant gave evidence and was not in difficulty explaining her evidence or accounting for the discrepancy which had shown up. The Complainant was not a weak, flighty personality who did not take time to

ensure that justice was done. She fielded the questions that were asked by Counsel for the Applicant and answered them without any difficulty.

31. In addition to what is stated above, the Complainant's evidence was supported by other witnesses such as RdN who gave the following account of the incident at the party.

32. RdN, who was at the gathering of 12 October 2017, stated to OIAI that those gatherings are regularly organized over the weekend to share a meal. She remembered that in mid-October 2017, at one of the gatherings that was attended by the Complainant, Mr. B, Mr. A, the Applicant, and herself, after having dinner outdoors, while they were dancing inside the room, the Complainant approached her and asked her if she could speak with her. They went to the garden and the Complainant burst into tears and told her that she was being sexually harassed by the Applicant, and that she did not know what else to do to make it clear that his advances were not welcome. The Complainant was considering leaving the party, but RdN asked her not to, that she would keep an eye on the situation.

33. When they re-entered the room, the Applicant was sitting on the bed/sofa and a short while after laid completely down and fell asleep. RdN added that she had the impression that during that night, the Applicant was under the influence of alcohol. When he woke up, the rest of the attendees were dancing in the middle of the room. The Applicant stood up and started dancing very close to the Complainant, and as she moved away, he moved closer to her. RdN remembered that at one point, when she was putting music in her phone, the Complainant looked at her as if to call for help, so she moved across the room to stand in between her and the Applicant. RdN stated that the Applicant was trying to touch the Complainant while dancing, that she saw the Applicant holding the Complainant around the shoulder, while the Complainant kept raising her hand to put some distance between them. RdN recounted that she was trying to continually stand and dance between them discretely, so as not to make it obvious to others how uncomfortable the situation was and spoil the night. After a short while, the Applicant gave up and left the room. RdN said that it was clear to her that the

Complainant was not sending any messages of encouragement to the Applicant. RdN told OIAI that at no point in the evening did she see the Applicant taking his shirt off or the Complainant trying to take his shirt off. Neither did she see any of the other male participants doing so; they behaved respectfully.

34. Mr. U said that he attended the gathering in October 2017, and he remembered that there was a little bit of dancing, that they were in a circle. He said that he did not see the Complainant trying to remove the Applicant's T-shirt, and what he remembered was that at some point when he came back to the container he saw the Applicant lying on the bed without his T-shirt. Mr. U told the Applicant that he did not have his shirt on and the Applicant replied that the ladies had taken his shirt off.

35. In his initial reply to the allegations, the Applicant stated that the following day, on 13 October 2017, the same people who attended the gathering the night before, got together again, had a dinner which he also participated in but left early. He said that caused the Complainant to express her anger at him for leaving early. He also stated that he never asked her to meet him, she was the one who wanted to meet further. However, during the interview with OIAI, the Applicant stated that he did not attend the gathering the following night.

36. The Applicant also argued that the Complainant wanted him to support her efforts to get her way in the UNHCR programmes in Sudan. Part of this strategy had to do with her alleged poor performance at work. But this allegation is rebuffed by Mr. K who would have been the Complainant's direct reporting manager. Mr. K is reported as having stated that he did not know of any adverse finding against the Complainant at work.

37. The fact that the Complainant states that she told investigators that she had told Mr. K about the sexual harassment complaint and he did nothing about it cannot be in any way linked to her work performance and the Applicant's failure to assist her. Any

argument linking the reported sexual harassment to the Applicant's failure to deliver in response to requests made by the Complainant for favours is in my view, debunked.

38. It is also clearly proven that the Applicant lied to investigators about his behaviour. He denied contacting the Complainant after the night of 12 October. This was proven to be untrue. He also denied that he attended another party, the following night, stating that he did not want to be with that group again. But there was clear evidence that he did attend the event and did not remain at home as had been indicated.

39. Indeed, when the investigators drew his attention to the evidence that he had sent the Complainant a message the day after the touching incident this was the response:

NM: This is NMI 0 is your phone number there. There's a picture of an old phone. And it says, "Should I make breakfast?" This was a text message you sent to her on 13 October last year. Do you remember now?

The Applicant: Yeah it should be.

NM: Yeah. So, you before told us you were trying to avoid her. Why if you were trying to avoid her would you ask her this?

The Applicant: Because, you know, I thought she is new and she doesn't have, you know, proper cooking arrangement or food and she also wanted to join. So, that's why in a good gesture I was just -she asked me to come before. So, I was just checking if she want to come.

NM: If she wanted to join you for breakfast in your cabin?

40. The evidence of RdN is consistent with most of that of the Applicant. Although she did not see any touching by the Applicant, she did attest to the fact that there was dancing and the Applicant was trying to get close to and was reaching out to the Complainant. She had to get between the two of them.

41. According to RdN this occurred after the initial complaint from the Complainant about the Applicant's sexual harassment and the discomfort it was causing her. RdN noted that the Complainant who is a pale skinned person was pink when she came to speak to her about the harassment. According to RdN, she did not

mention being touched by the Applicant. But this is logical if the touching happened after the initial complaint to RdN.

42. Taken objectively, RdN's evidence is consistent with that of the Complainant and leads to the conclusion that the Complainant is telling the truth.

43. The consistency of the evidence is also confirmed by the evidence of Mr. U. Mr. U did not sign a statement but based on the answers he gave in the interview with the investigator he confirmed that there was dancing in the party. Although he did not see any touching and like RdN thought that dancing was respectful and people kept a socially acceptable distance. But he contradicted the Applicant who had claimed that during the dancing some people were taking off their t-shirts. This was denied by Mr. U.

44. The final witnesses were investigators Mr. KC and Ms. M. Mr. KC was a former Chief Investigator of OIAI who vouched for the skill and professionalism of the investigator Ms. M who conducted the investigation. This was important because part of the defence strategy was to discredit the Complainant and the investigators. The Tribunal finds that this strategy failed to have the desired impact.

45. Indeed, there was nothing said by the investigators which undermined the evidence of the Complainant. Both investigators referred to the inconsistency in the Complainant's evidence in relation to the timing of the touching incident. But there is no evidence from the investigators which put into question the Complainant's truthfulness.

46. The Tribunal must determine whether there was sexual harassment consistent with the Complainant's complaint and the definition of sexual harassment being applied by UNICEF standards in relation to their employee.

47. The second matter to be determined is whether there is clear and convincing evidence of the sexual harassment and then finally if there was sexual harassment whether the punishment imposed was in keeping with the UNICEF guidelines and rules

and whether it was proportionate based on the nature of the sexual harassment.

49. Sexual harassment can be defined as follows pursuant to ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)²:

Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. While typically involving a pattern of behaviour, it can take the form of a single incident. Sexual harassment may occur between persons of the opposite or same sex. Both males and females can be either the victims or the offenders.

48. The Tribunal has considered the evidence in this case and applied the relevant law and arrived at the conclusion that the Applicant sexually harassed the Complainant.

49. The Tribunal considers that not all sexual harassment is the same. Some may include actual sexual assault or physical contact and others may not. Some may involve the direct application of coercive power and others may be less direct. Some may involve few actual instances of harassing behaviour while others may involve several instances.

50. This is a case in which the physical touching is not the only evidence of the harassing behaviour of the Applicant. Counsel for the Applicant submitted that the touching was not proved. The Tribunal considers that there is clear and convincing evidence not only of the Complainant but of her supporting witness which demonstrates that the opportunity for such touching existed during the dancing that took place at the party. The confusion of the Complainant about the sequence of events

² Superseded by ST/SGB/2019/8 issued on 10 September 2019. Investigations initiated prior to the entry into force of ST/SGB/2019/8 continued to be handled in accordance with the provisions of Secretary-General's bulletin ST/SGB/2008/5.

in no way nullifies the powerful evidence of the witness RdN who felt it necessary to get between the Complainant and the Applicant to prevent unwanted touching.

51. Apart from the breast touching incident, which was initially referred to as breasts being grabbed is properly explained as a linguistic error, there are other relevant factors. In any event, even if the touching was accidental which is a real possibility based on the facts of this case, it occurred in a context of reckless unwanted behaviour by the Applicant which the witness RdN reported seeing at the party.

52. The Applicant's Counsel appeared to be of the view that the touching was the major issue involved in sexual harassment and cited the case in which a number of physical acts of sexual touching did not result in the Applicant's dismissal. This can be explained on the basis that the circumstances were not the same. A sexual assault can occur when both parties are inebriated, and one takes too many liberties in the circumstances but attaches no nuances of power relations to the behaviour either because he/she is unable to do so or because the perpetrator is not interested in exploiting any power imbalance.

Are all of the elements of sexual harassment present?

53. In this case, the exercise of power is implied by the disparity in the positions held by the respective parties and the words used in his advances, if the Complainant is to be believed. The Tribunal also finds the evidence of the Complainant credible and convincing, and the persistence of continuing to call and attempt to establish a relationship when it was clearly unwelcome is an important element of sexual harassment in this case.

54. In this regard, the Tribunal cannot ignore how the Applicant's conduct made the Complainant feel. She stated that the Applicant behaved as if her wishes expressed to him were being ignored.

55. The Tribunal is satisfied based on the evidence of the Complainant, and other persons who although not providing witness statements provided information for the

case against the Applicant which can lead to the conclusion that he was prepared to use his power and influence to make life in the United Nations difficult for the Complainant if she pursued her complaint against him.

56. Indeed, the Tribunal considers that Mr. U's attempt to mediate in the matter was not a disinterested exercise of discretion but was based on a request to quieten the Complainant. The factual inference to be drawn from the evidence that even after the Applicant knew of the complaint against him, he still continued trying to contact the Complainant, and even asked her to take care of his cats, is sufficient to demonstrate that the Applicant paid little attention to the Complainant's express sentiments.

Clear and convincing evidence

57. The Tribunal is satisfied that the evidence of sexual harassment is clear and convincing. There is sufficient evidence consistent with the events of the night of 12 October 2017 to the effect that the Applicant was pursuing the Complainant for a sexual relationship. Indeed, even if the touching was accidental, the indication by the Complainant of her disinterest should have been enough to bring his advances to a halt. But it was not. The Complainant was made to feel that her desire to be left alone outside of a professional relationship, was of no moment.

58. The Tribunal was told in argument that the Applicant did not lie to investigators and that the Respondent had partially backed-off from the allegation. The Tribunal finds however that the Applicant did lie to the investigators in an attempt to discredit the Complainant and the most striking incidence of such a lie was the statement that the Complainant was, by bringing this case, trying to find a way to have her job performance appraisal changed. However, Mr. K from whom the Applicant claimed to have received such information denied sharing any such information with the Applicant.

59. Clear and convincing evidence is not as high a threshold as "beyond reasonable doubt."

60. In *Negussie* 2020-UNAT-1033, the United Nations Appeals Tribunal (“UNAT/Appels Tribunal”) opined as follows:

What is the nature of “clear and convincing” evidence? Clear and convincing evidence of misconduct, including as here, serious misconduct, imports two high evidential standards. The first (“clear”) is that the evidence of misconduct must be unequivocal and manifest. Separately, the second standard (“convincing”) requires that this clear evidence must be persuasive to a high standard appropriate to the gravity of the allegation against the staff member and in light of the severity of the consequence of its acceptance. Evidence, which is required to be clear and convincing, can be direct evidence of events, or may be of evidential inferences that can be properly drawn from other direct evidence.

61. The Tribunal finds that the evidence of the perpetration of the alleged breach of staff rule 1.2(a) and (b) is clear and convincing.

Due process in the investigation

62. The evidence provided by the investigators clearly showed that the Applicant was afforded the due process rights he was entitled to. He was informed about the investigation and asked some questions before being informed of the specific allegations. After being informed of the allegations against him, he was allowed to tender his own evidence to rebut and cast doubt upon the complaint. He was allowed to have someone of his choice present while he was being interviewed, and not prevented from providing his own version of events. He opted not to testify during the oral hearing before the Tribunal.

63. The approach to the investigation was based on the standards of the time and did not include electronically recorded statements in all cases. While such recordings would have been helpful, it is speculative to assume that they would have been conclusive in the matter. Indeed, the technique described by the witnesses from the investigative arm of UNICEF, as described by the witnesses, in particular Mr. C, showed that the process was one which was based on an initial interview, interjection of information from statements of others and other information gathered, which the

maker, including the Complainant in this case, could confirm or deny and finally a prepared statement reflecting all of these inputs would be signed and returned by the maker.

64. The Tribunal ensured that the two main investigators were brought to give evidence at the hearing. Counsel for the Applicant was able to cross-examine the witnesses and put the Applicant's views to them to identify any discrepancies and finally the Applicant's Counsel was permitted to address the Tribunal and file written submissions.

Disciplinary measures were proportionate.

65. As stated earlier the Tribunal was made aware of other decisions in disciplinary cases which involved sexual harassment. The Tribunal is not entitled to challenge any of the findings in those decisions and is not desirous of doing so since as earlier stated the facts of each case of sexual harassment may be different, giving rise to different conclusions, in relation to aggravating and mitigating factors of the offence and the offender.

66. However, it should be stated that in citing the case of *Conteh* 2020-UNDT-189, the Applicant relied on decisions that were made well before the administration adopted the strong stance it has more recently adopted against sexual harassment; for example the cases *Yisma* UNDT-2011-061 and *Koutang* UNDT-2012-158. It is evident that in those days, matters of alleged sexual harassment may have been treated with greater leniency.

67. *Conteh* partly relies on *Yisma* and *Koutang* where it was held that "a disciplinary action should not be a knee-jerk reaction and there is much to be said for the corrective nature of progressive discipline. Therefore, ordinarily separation from service or dismissal is not an appropriate sanction for a first offence which may be

followed unhesitatingly today in a case not involving sexual harassment but is less likely to be applied in a case involving sexual harassment”.

68. The Tribunal holds the view that the imposition of a sanction has to take into account the degree of odium with which the misconduct of sexual harassment is regarded today. The Tribunal therefore cannot without pause apply a decision made in 2011 or 2012 to today’s circumstances without considering all of the relevant new thinking on the subject matter.

69. In this case, it is true that the Applicant was not able to use his power to enforce any discriminatory or harsh action or sexual abuse. This is a case in which the perpetrator, being the Applicant, the most senior UNICEF official in the area, persisted with sexual advances when he was told by the victim that she was not interested and that she was disturbed by it. Although they may not have worked for the same agencies their respective offices relied on each other for support. It is in this area of mutual cooperation and support that the danger resided. The Applicant’s persistence showed that he was determined to get what he wanted nevertheless, and he demonstrated little or no concern for the Complainant’s rights or feelings in the circumstances. This behaviour continued even after the Complainant had reported the matter to the relevant authorities. Professional standards would have dictated that he should cease contact with the Complainant until the matter was resolved in his favour and if not, never contact the Complainant again. But he disregarded such standards.

70. In the circumstances, the Tribunal finds that the disciplinary action of summary dismissal in this matter was justified and rejects the Applicant’s application.

71. The application is therefore dismissed.

(Signed)

Judge Francis Belle

Dated this 31st day of December 2020

Entered in the Register on this 31st day of December 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi