



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: Wanda L. Carter

LIKUKELA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR, UN Secretariat
Sergei Gorbylev, DAS/ALD/OHR, UN Secretariat

Introduction

1. What would you do if more than a half-million dollars mysteriously appeared in your bank account? The Applicant's answer to this question ended her United Nations career and gave rise to this case.

Background

2. On 24 May 2024, the Applicant filed an application to contest the decision to impose on her the disciplinary measure of separation from service with compensation *in lieu* of notice, and without termination indemnity, in accordance with staff rule 10.2(a)(viii).

3. The Applicant began her service with the United Nations on 21 February 2007 as a Resident Investigator with the Office of Internal Oversight Services ("OIOS"), at the United Nations Mission in Sudan ("UNMIS"). On 21 February 2008, the Applicant transferred to the United Nations Mission in East Timor ("UNMIT") as an investigator with the Serious Crimes Investigation Team, where she remained until her first separation from service on 30 June 2013.

4. On 1 August 2013, USD587,428.65 was transferred to the Applicant's savings account at the United Nations Federal Credit Union ("UNFCU").

5. The next day, the Applicant promptly began spending this money and/or transferring it to other accounts. By mid-September 2023, the Applicant had appropriated USD519,554.23 of the USD587,428.65.

6. On 13 September 2013, during a reconciliation exercise of its accounts, UNFCU discovered that a UNFCU employee made a clerical error triggering the transfer of USD587,428.65 to the Applicant's UNFCU account. According to United Nations payroll instructions that sum had been intended for the accounts of multiple United Nations staff members.

7. On 16 September 2013, the Applicant had a telephone conversation with the Vice President for Security and Investigations at UNFCU (the UNFCU VP)

regarding the erroneous funds transfer. During the phone call, the UNFCU VP requested the Applicant to return the funds to UNFCU.

8. On 18 September 2013, the Applicant informed the UNFCU VP by email that she would provide him with a repayment plan. However, the Applicant never provided a repayment plan and never returned the funds to UNFCU.

9. Subsequently, UNFCU set off the USD587,428.65 against the remaining funds in the Applicant's UNFCU accounts which, as of September 2013, totalled approximately USD99,800.00. This left USD487,628.65 still owed by the Applicant.

10. On 5 February 2014, UNFCU filed a restitution claim against the Applicant in the High Court of Zambia in Lusaka, Zambia ("High Court") to recover USD487,216.20, representing the remainder of the erroneously transferred funds after the set off.¹ The case was registered as case number 2014/HPC/0057.

11. On 20 February 2014, the Applicant filed a defence to the claim before the High Court asserting that the USD587,428.65 was an expected payment from the Organization for her separation benefits and/or for her appendix D claim (plus reimbursement of related travel and medical expenses). She also filed a counterclaim alleging that UNFCU irregularly siphoned the funds from her account, seeking repayment of the recovered funds, together with damages and interests in the total amount of USD101,270,052.00.

12. On 13 December 2020, the Applicant rejoined the Organization as Chief of the Special Investigations Unit at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO").

13. The following day, the previous Chief of the MONUSCO Special Investigations Unit reported to OIOS the Applicant's possible involvement in fraudulent activities. This report said that the Applicant and UNFCU were parties

¹ After the set off, the total amount to be recovered from the Applicant should have been around USD487,628.65. However, the statement of claim filed with the High Court only mentioned USD587,016.20. For this reason, in the case that was filed against the Applicant, UNFCU only sought to recover USD487,216.20.

to a pending legal dispute involving allegations of fraud and the erroneous transfer of a large sum of money to her UNFCU account, which UNFCU was seeking to recover.

14. On 23 February 2021, the High Court conducted an online hearing in case number 2014/HPC/0057. The UNFCU VP appeared to give testimony regarding the erroneous transfer and his efforts to recover the funds from the Applicant. The Applicant failed to appear in court, despite having received notice.

15. On 25 February 2021, the Applicant emailed the Deputy Director of the Zambia Judiciary claiming she was unable to attend the hearing two days prior and asking for the case to be decided on the papers.

16. Meanwhile, the OIOS investigation was ongoing, and on 4 March 2021, OIOS interviewed the Applicant. When asked about the status of the dispute between her and UNFCU, the Applicant stated that UNFCU failed to submit evidence in support of its defence to her counterclaim and that she had filed for a default judgment with the High Court. According to the Applicant, she won a default judgment against UNFCU, which became final in April 2017. The Applicant provided OIOS with copies of the final default judgment and said the judgment reflected the status of the case.²

17. In fact, the Zambian High Court issued its judgment on UNFCU's claim and the Applicant's counterclaim on 13 July 2022. The High Court held that UNFCU erroneously transferred the sum of USD587,428.65 to the Applicant's account and that the Applicant knew or should have known that the money she used did not represent her separation benefits. Accordingly, the High Court ordered her to make restitution to UNFCU within 30 days of the judgment, in the amount of USD487,216.20 with interest at the rate of 2% per annum from 1 August 2013. In

² On 22 May 2019, the Applicant reported to OIOS an allegation of "fraud, racketeering and money laundry". With the report, the Applicant submitted a copy of this same undated final judgment ("final default judgment") purportedly issued by the Zambian High Court. This document said the High Court dismissed UNFCU's claim and directed UNFCU to pay the Applicant USD110,089,252.00. Following an assessment of the complaint, OIOS closed the matter although the record does not recount how or when this was done.

view of the Applicant's failure to attend the hearing of the case, the High Court dismissed her counterclaim for want of prosecution.

18. OIOS requested the UNDSS Security Adviser in Zambia to assist in verifying the authenticity of both the judgments described in paras. 16-17 above. On 2 November 2023, the Zambian Chief Registrar replied that the judgment in favour of UNFCU is "the true and correct copy of the final judgment which was delivered in the [case and] [t]he Judiciary can thus vouch for its authenticity." Regarding the document provided to OIOS by the Applicant, the Chief Registrar said "the purported final judgment was never filed into our Commercial Registry, we can thus not vouch for its authenticity. Put differently, the said document was neither filed at the Judiciary, nor issued by the Judiciary." The Chief Registrar further wrote

To emphasize the point, kindly note the seal on the original Judgment ... Further find the red comments on a copy of the purported final judgment indicating that the document is alien to the Judiciary. Also attached is a Memorandum from the Registrar-high court, Commercial Division, detailing the said finds.

19. On 29 December 2023, OIOS referred the Applicant's case, together with an investigation report, to the Office of Human Resources for appropriate action. On 20 February 2024, the Applicant was notified of the formal allegations of misconduct and requested to respond. On 10 April 2024, after receiving extensions of time, the Applicant provided her comments.

20. On 20 May 2024, the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") informed the Applicant that she decided to terminate her appointment. The USG/DMSPC concluded that it had been established by clear and convincing evidence that:

- a. From 14 December 2020, [the Applicant] refused to return and/or make arrangements for the return to the UNFCU of funds totalling USD487,216.20, despite UNFCU's demand and her awareness that the funds had been erroneously transferred to her account;

b. In March 2021, in her submissions to OIOS in the context of an investigation into the legal dispute between her and UNFCU, she provided OIOS investigators with false documentation and/or misrepresented the nature of the document indicating that it was a final judgment filed with and/or issued by the High Court of Zambia to dispose of the dispute between her and UNFCU, when no such document or judgment had been filed with and/or issued by the High Court of Zambia in the case; and

c. From 13 July 2022, she failed to comply with the High Court of Zambia's lawful order to return to UNFCU the amount of USD487,216.20, which UNFCU erroneously credited to her account, with interest at the rate of 2% per annum from 1 August 2013.

21. The USG/DMSPC further found that these facts amounted to misconduct, that the Applicant had been accorded due process, and that the appropriate sanction was separation from service as described in para. 2 above.

22. On 24 May 2024, the Applicant filed the present application. and the case was heard on 21 January 2025. The Applicant gave oral testimony and was cross examined by Counsel for the Respondent.

23. The parties filed their closing submissions by 31 January 2025. On 1 February 2025, the Applicant filed a motion for leave to file a "Post Closing submission", addressing therein the Respondent's closing submission. The Tribunal grants the motion and considers the additional argument.

Consideration

Standard of review and burden of proof

24. The Tribunal's Statute, as amended on 22 December 2023, provides that in reviewing disciplinary cases:

the Dispute Tribunal shall consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure

was based have been established by evidence; whether the established facts legally amount to misconduct; whether the applicant's due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence. (Art. 9.4).

25. The Tribunal's Statute generally reflects the jurisprudence of the United Nations Appeals Tribunal ("UNAT" or "Appeals Tribunal"). See, e.g., *AAC* 2023-UNAT-1370, para. 38; *Miyzed* 2015-UNAT-550, para. 18; *Nyawa* 2020-UNAT-1024.

26. In particular, the Tribunal's Statute essentially codified the Appeals Tribunal ruling that

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. (*Sanwidi* 2010-UNAT-084, para. 40).

27. The Appeals Tribunal has underlined that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General". *Id.* In this regard, "the Tribunal is not conducting a "merit-based review, but a "judicial review" explaining that a "judicial review" is more concerned with examining how the decision-maker reached the impugned decision, and not the merits of the decision-maker's decision." *Id.*

28. In this case, the Applicant disputes the facts upon which the disciplinary sanction was issued. She also claims that her due process rights were violated as the investigation was discriminatory and biased. The Applicant does not argue that the facts do not amount to misconduct or that the sanction is disproportionate.

Whether the facts on which the disciplinary measure was based were established by clear and convincing evidence

29. In disciplinary cases “when termination is a possible outcome”, UNAT has said the evidentiary standard is that the Administration must establish the alleged misconduct by “clear and convincing evidence”, which means that “the truth of the facts asserted is highly probable” (*Negussie* 2020-UNAT-1033 para. 45). UNAT clarified that clear and convincing evidence can either be “direct evidence of events” or may “be of evidential inferences that can be properly drawn from other direct evidence.”

30. Most of the essential facts are not in dispute. The Applicant agrees that USD587,428.65 suddenly appeared in her UNFCU account and that she began withdrawing some of the money. In a telephone conversation with a UNFCU representative, she was told that this deposit was done in error. In a follow up email, sent on 18 September 2013, she wrote “I will be in touch by COB [close of business] tomorrow with the details of my repayment plan.” She also agrees that she did not return the money despite requests to do so.

31. The Applicant agrees that a judgment was entered in the Zambia High Court against her and in favour of UNFCU for USD487,216.20, and that she did not pay this judgment. She also did not appeal the judgment.

32. The Applicant agrees that she gave OIOS a document entitled “Default Final Judgment” which indicated that the UNFCU complaint was dismissed and that a judgment of USD110,089,252.00 was entered in her favour against UNFCU. The Applicant told OIOS that she drafted this document, filed it with the Zambia High Court, and it was signed by the judge. However, at the hearing on this application the Applicant testified that the judgment was not signed by the judge.

33. In sum, the Applicant admits the facts upon which the discipline was imposed. However, she raises various allegations as to why she did not reimburse the monies at issue.

34. She claims that the USD587,428.65 was either her separation benefits or for her appendix D claim for an injury which she was expecting to receive from the Organization in 2013, but provided no evidence of such entitlement.

35. At the hearing the Applicant testified that she had filed a claim to be compensated for alleged injuries with the Advisory Board on Compensation Claims (“ABCC”). The ABCC determined that she did not have service-incurred or related injuries that the Organization should compensate. The Applicant unsuccessfully appealed the ABCC’s determination to both the UNDT and to the United Nations Appeals Tribunal (*See Likukela* UNDT/2016/180, and *Likukela* 2017-UNAT-737).

36. As for her claim that the deposit reflected her separation benefits, the documents show that these benefits were paid to her separately and, in any case, did not add up to USD587,428.65.

37. Thus, the Tribunal rejects this defence.

38. The Applicant also argues that she did not repay the monies because UNFCU failed to provide her with evidence of who made the erroneous transfer and why. As an initial matter, this claim fails to recognize that who made the error, and why it was made, are irrelevant. The money clearly was not hers regardless of the details of how the erroneous transfer occurred.

39. Moreover, the High Court of Zambia’s Judgment of 13 July 2022 indicates that the UNFCU had provided her with the required evidence. The High Court held that the Applicant “knew or ought to have known that the money that she used did not represent her terminal benefits not only because of the transaction description on her account statement but because the statement of account showed that she was entitled to terminal benefits in the sum of USD28,256.30, which benefits were paid on 31 July 2013.”

40. In *Benamar* 2017-UNAT-797, the United Nations Appeals Tribunal held (at paras. 44 and 48),

although a decision of a national court may be subject to criticism by both parties (and also by a third party), it must be obeyed if and

to the extent that it is enforceable. Consequently, the parties should generally comply with an executable judicial decision; otherwise they would be taking justice into their own hands, which is not acceptable according to general principles based on the rule of law.

...

The Organization's internal justice system does not have jurisdiction over civil cases concerning the private or personal life of its staff members, much less to reconsider or ignore a judicial decision by a national court, which is immediately enforceable, albeit subject to appeal. Although this is an international tribunal, it does not have a jurisdictional function over the Member States of the Organization, nor over their nationals. Both the Dispute Tribunal and the Appeals Tribunal are administrative and internal courts, designed to deal with administrative decisions concerning the Organization's staff members and other cases within the narrow scope of competence accorded by Article 2(1) of their respective Statutes.

41. In view of the foregoing, the Tribunal is bound by the Zambian High Court's determination that UNFCU had provided the Applicant with evidence that the funds had been erroneously transferred to her account.

42. Next, the Applicant contends that the 13 July 2022 judgment could not have been validly issued by the High Court of Zambia since the final default judgment she obtained in April 2017 was the only valid judgment. This too is without merit. As mentioned above, the purported final judgment was a falsified document created by the Applicant and has no legal validity or effect.

43. The Applicant made numerous other arguments which are unsupported by evidence and without merit. She claims that this is part of a complicated conspiracy involving: her deceased child and concealment of a serious "femicide fraud and racketeering conspiracy". She also alleges that OIOS interfered to stop the African Commission for Human and People's Rights from deliberating on a complaint she had filed and that certain named citizens from the Economic Community of West African States were involved in her case. The Applicant also claims the "theft" of a 2000 job offer from the International Criminal Tribunal for Rwanda ("ICTR") which was given to somebody else. These issues are beyond the UNDT's jurisdiction, are unrelated to the contested decision, and do not constitute a defence for the Applicant's failure to reimburse the money owed to UNFCU.

44. The Applicant also relies on the privileges and immunities accorded to United Nations staff members to justify her failure to participate in the Zambian High Court proceedings and to comply with the High Court's judgment. This too is misplaced.

45. Staff regulation 1.1(f) provides:

The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who are covered by them to fail to observe laws and police regulations of the State in which they are located, **nor do they furnish an excuse for non-performance of their private obligations**. In any case where an issue arises regarding the application of these privileges and immunities, the staff member shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived in accordance with the relevant instruments (emphasis added).

46. UNFCU is a not-for-profit financial cooperative established in the United States and is subject to the laws and regulations of the United States. UNFCU can bring a legal action in its own right as it did in this case. The legal proceedings brought by the UNFCU against the Applicant were clearly against her in a private/non-official capacity, and the Applicant has an obligation to honour her private legal obligations.

47. In any event, the Applicant should have reported the matter of privileges and immunities to the Secretary-General as required by staff regulation 1.1(f) if she believed that these protections applied to the civil suit against her. Her failure to do so amounts to a waiver of this defence, even were those privileges and immunities applicable. Similarly, the Applicant waived any right to claim she is immune from the Zambian High Court's jurisdiction when she voluntarily invoked that court's jurisdiction by filing a counterclaim.

48. In sum, the Tribunal finds that the facts upon which the disciplinary sanction was issued have been proven. The proven facts are not vague at all, but are clear, convincing and very serious.

Due Process

49. The Applicant alleges that she was never interviewed regarding the allegations against her and that she was “never communicated to in writing to provide [her] side of [the] story”. This is factually incorrect.

50. The record shows that OIOS interviewed the Applicant on 4 March 2021, and she was asked about the material aspects of the case. She confirmed this in her testimony. She was also afforded the opportunity to make additional submissions relating to the allegations and availed herself of this opportunity by submitting written statements and numerous supporting documents during the investigation.

51. During the subsequent disciplinary process, the Organization informed the Applicant of the formal allegations of misconduct against her by letter dated 20 February 2024. She was also provided with all the supporting documentation and requested to comment on the allegations. She requested and received extensions of time to respond, and she ultimately did so on 10 April 2024.

52. Hence the evidence shows that this claim is completely unfounded.

53. Finally, the Applicant alleges that the contested decision was biased and crafted in a discriminatory manner. She accuses the United Nations staff members involved in the investigation and disciplinary processes leading to the contested decision of racial discrimination, harassment and abuse of authority.

54. The Applicant does not provide any evidence to support this allegation and has not filed any complaint against the individuals she accuses of harassment and discrimination. There is nothing in the case record that indicates any bias or discrimination to support the Applicant’s assertion.

55. There were no due process violations of the Applicant’s rights and there is no evidence of discrimination or bias.

56. The Applicant engaged in dishonest conduct. Her conduct is particularly egregious given her previous roles in the United Nations as an investigator and as Chief of the Special Investigations Unit.

Conclusion

57. In light of the foregoing, the Tribunal DECIDES to deny the application in its entirety.

(Signed)

Judge Sean Wallace

Dated this 7th day of February 2025

Entered in the Register on this 7th day of February 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi