UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/003
Judgment No.: UNDT/2025/063
Date: 11 September 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

KIMANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY

Counsel for Applicant:
Frederick Wambugu Kamuiru

Counsel for Respondent:
Albert Angeles, DAS/ALD/OHR, UN Secretariat
Seungyoun Seo, DAS/ALD/OHR, UN Secretariat

Introduction and Procedural History.

1. The Applicant served as an Administrative Assistant at the United Nations Environment Programme. The Applicant was separated from service of the Organization with compensation *in lieu* of notice and without termination indemnity on 8 October 2024, for serious misconduct regarding her claims for Special Education Grant for the 2019-2020 and 2020-2021 academic years.

2. On 13 January 2025, the Applicant challenged that decision before the United Nations Dispute Tribunal.

3. The Respondent filed his reply on 25 February 2025 and submitted that the contested decision was based on clear and convincing evidence; it was reasonable, fair, and legally and procedurally correct.

4. The Tribunal issued Order No. 102 (NBI/2025) in which it denied the Respondent's motion to have this matter adjudicated on the basis of the written record, allowed the Applicant to call her cousin and Mr. Mugo from Ridgewayz Cabs to testify on her behalf, and set a hearing for 29 July 2025.

5. At the hearing, the Applicant, for the first time, requested to testify herself in addition to her two other witnesses. The Respondent objected to this as his counsel was not prepared to cross-examine the Applicant. In the interest of justice, the Tribunal allowed the Applicant to testify but adjourned the testimony for three days to give Respondent's counsel time to prepare for cross-examination.

6. After the hearing, the parties requested to file written closing submissions. This request was granted, and the closing submissions were duly filed. Thus, the case is ready to be ruled upon.

Considerations

Standard of Review in disciplinary cases

7. In reviewing disciplinary cases, art. 9.4 of the Tribunal's Statute requires the Dispute Tribunal to consider the record assembled by the Secretary-General, and affords it the authority to admit other evidence to make an assessment on whether

the facts on which the disciplinary measure was based have been established by the 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.

8. The Statute generally reflects the jurisprudence of the United Nations Appeals Tribunal ("UNAT"), see e.g., *AAC* 2023-UNAT-1370, para. 38; *Mizyed* 2015 UNAT 550, para. 18; *Nyawa* 2020-UNAT-1024.

9. In *Sanwidi* 2010-UNAT-084, para. 40, the Appeals Tribunal clarified 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.

10. The Appeals Tribunal, however, 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*. at para. 40. 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.* at para. 42.

11. In disciplinary cases, "when termination is a possible outcome," 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) This is the evidentiary standard. 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."

12. In *Branglidor* 2022-UNAT-1234, the Appeals Tribunal summarised its jurisprudence in disciplinary matters thus:

> When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. Apart from exceptional cases involving major violations of due process rights, it is not sufficient for the UNDT to find procedural errors in a disciplinary process but, where necessary, it has to conduct a *de novo* review of the facts and a judicial review of the remaining aspects of the case. The requirement of a de novo review of the facts does not mean that the UNDT will necessarily have to re-hear all the witnesses of the investigation procedure or to hear new witnesses. If there is sufficient and substantial evidence in the written record, the UNDT may also base its findings on the record.

Have the facts been established by clear and convincing evidence?

13. In the contested decision, the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") listed the allegations against the Applicant, which are paraphrased as follows:

a. a. With respect to the Applicant's special education grant (SEG) claim for the academic year 2019-2020:

i. i) she submitted a claim that included false information in relation to alleged expenses, such as daily meals and transportation costs; and

ii. ii) she made arrangements for KMEC [the school, Kip McGrath Education Centres] to pay her brother for purportedly providing her child with transportation and learning support, and she claimed such expenses as part of her request for SEG;

b. b. With respect to the Applicant's SEG claim for the academic year 2020-2021:

i. i) she submitted a claim that included false information in relation to payments made to KMEC, as she could only provide proof of payment of KES 930,000.00, whereas the P.41 form from 21 January 2022 indicated payments for KES 1,660,500.00; and

ii. ii) she submitted false transportation receipts in the amount of KES 339,000.00 purportedly for services from Ridgewayz Cabs which she created herself to reflect the cost of cab rides, fuel for her car and the school administrator's Uber rides.

14. The USG/DMSPC concluded that the Applicant's actions amounted to serious misconduct in violation of staff regulations 1.2(b), 1.2(q), and staff rules 1.2(i) and 1.7.

15. During the disciplinary process the Applicant essentially admitted the acts alleged by the USG/DMSPC in her interviews with the Office of Internal Oversight Services (OIOS), her emails to OIOS, and her comments to the allegations of misconduct. In her initial comments on the allegations, the Applicant wrote to OIOS:

> The fact that I submitted 2020-2021 related documents without accurate verification, the allegation is appropriate… And during the examination period in May and June 2021 which was conducted by the British Council at Oshwal Academy, I personally decided to drop my son using my car.

16. In her first interview, the Applicant stated that at the beginning of the 2020-2021 school term, she and the school had agreed that she would manage the transport; yet she submitted two P.41 forms at the end of the school year which showed that she had paid the school for transport. Her story later changed to say that the money "was to go to the school to provide transport as they had done the previous year." The Applicant also acknowledged that the receipts she subsequently submitted from United Ridgewayz Cab were all written on the same day. She said that the school "invoice is correct [while] the receipts are not correct." The Applicant said that she told the school to "fill in the form with all the money you think we owe you and I will submit this form to HR for them to process the claims," even though she still owed the school money.

17. In her second interview, the Applicant was asked about the SEG for the 2019-2020 school year and the payments to her brother. She was shown her correspondence with the school in which she was dictating how much was to be

paid to her brother and when; and the school asked for the SEG monies to be paid in two separate ways, some to the school account and some to a separate telephone number. The Applicant said that the telephone payments were in cash because the school administrator "doesn't want that money to go to the Kenya Revenue Authority for taxes." The Applicant admitted that "at this juncture I do see it's not right...I didn't think about it then but now I think it's not right."

18. She again stated that, although she submitted a P.41 form showing that the school had provided transport, the school did not provide transportation and that she had arranged transport herself. The amount reflected "the money that I filled my car [with fuel] and I also engaged [Ridgewayz Cabs]."

19. The Applicant also said that when she called Ridgewayz Cabs to request receipts for the monies she had paid them to transport her son to and from school, the manager had asked her to come in and write the receipts herself because his handwriting was not good. However, she then admitted that the receipts were not accurate because they also included the cost to fuel her own car and some of the money transport also went to the school administrator for Uber rides. She conceded that "there was a problem with that figure" on the P.41 form.

20. In her comments responding to the formal allegations of misconduct, which were prepared with assistance from the Office of Staff Legal Services (OSLA), the Applicant wrote:

> Although I did not recognize it at the time, I now realize that I should have kept accurate records of my son's special education grant (SEG) and should not have submitted inaccurate records in support of my SEG advance. I also apologize for facilitating my brother from the SEG funds to provide learning support to my son. With the benefit of hindsight, I now see the conflict of interest in this arrangement.

21. In her application to the Tribunal, the Applicant was no longer represented by OSLA, but by private counsel. Perhaps recognizing that her prior admissions basically proved the allegations of misconduct, the Applicant changed tack and argued, *inter alia*, that she "did not have coherence of mind…. And was not mentally capable of being taken through the investigations processes."

22. In this case, the Tribunal acceded to the Applicant's request to hear witnesses in support of her claim that the impugned decision was unlawful. In so doing, the Tribunal was guided by the Appeals Tribunal in *Mbaigolmem* 2018-UNAT-819, para. 26:

> Article 16(2) of the UNDT Rules of Procedure provides that a hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure. The reasons for that provision are obvious. Firstly, cases of alleged misconduct typically require determination of disputed factual issues. This is best done in an oral hearing involving an adversarial fact-finding process which tests the credibility, reliability and probabilities of the relevant testimony. Secondly, factual findings of misconduct are of far-reaching import. A judicial finding that a staff member has committed sexual harassment, fraud, theft or the like has life-altering consequences. Hence, the determination of misconduct should preferably be done in a judicial hearing by conventional adversarial methods.

23. The Tribunal will therefore assess the "credibility, reliability and probabilities" of the testimony heard, and consider it alongside the documentary record assembled by the parties.

24. The Applicant's overarching defence is that she was "not herself," and not of sound mind during the course of the investigative and disciplinary processes.

25. The Applicant testified to her lack of sound mind. But the Tribunal finds her testimony to be entirely uncredible. While clearly intelligent and articulate, the Applicant's testimony was self-serving and clearly designed to evade both her prior statements and the other facts in the record.

26. For example, the Applicant testified that even if she told the OIOS investigators that she would tell the truth in her interviews, "I was not in my mental capacity." Asked to confirm that she answered "yes" as to whether she was happy with the way the interview was conducted, she testified "even if I said 'yes', again…". When Respondent's counsel pointed out that the question was answerable by a yes or a no, the Applicant claimed not to remember whether she said yes.

27. In another example, the Applicant testified that she had not had time to look at the folder of investigation documents shared with her. However, on 21 June 2024, she had sent an email which said

> Just to let you know that I was able to take a week to personally review all the documents issued by your office…and only managed to submit a request for legal support by OSLA on 19/06/2024. And as I was reviewing the details of the allegations and putting in my comments, as I came to conclusion of my report…. I would like to share with you, even as I wait to hear of the support by OSLA.

28. A third example is very illuminating. The Applicant testified that she was provided no orientation or training and thus had limited knowledge of HR regulations and rules "pertaining to education grant." However, in January 2023, the Applicant applied for a position in which she described herself as "highly skilled, competent, and knowledgeable in Human Resource and Administration and with over fifteen (15) years' experiences at the United Nations system." She went on to state that her experience included

> 2010 to 2016 at UN-Habitat, ST/A1/2013/1, and ST/A1/2016/1 to provide **advise staff with education grant related matters such as the process, requirements, forms, and templates to use**, … Since 2010, I have liaised with the office of Human Resources Management/Staff Pay and Benefit to review, advise and **provide support to international staff on their travel entitlements e.g., …and education grant**. For example, 2017, I supported the director of administration services at UNON to request and process for his home leave, medical claims, and **education grant. I was able to adhere to the established policy and rules**. (emphasis added)

29. In addition to showing that the Applicant had extensive knowledge regarding the forms and processes of education grants, this is a clear demonstration of the Applicant's willingness to say opposite things to suit her purpose at the moment. When knowledge of HR procedures (especially regarding education grants) is required, she said she has it; and when her knowledge is inculpatory (as in this case), she claims ignorance.

30. Accordingly, the Tribunal gives absolutely no weight to the Applicant's testimony.

31. With regard to the issue of her mental state during the investigation process, the Applicant tendered reports from various psychiatrists detailing her condition. Included in her filings were discharge summaries from when the Applicant was admitted to hospital for psychiatric care. The Tribunal has carefully reviewed these documents and find that they do establish that the Applicant has had mental health challenges at various times.

32. However, as to the issue of the Applicant's mental capacity during the investigation, the record includes numerous examples of her competence at the time. She gave thoughtful, thorough, and intelligent answers to the OIOS investigators, she provided follow-up documentation, and she consulted with the Office of Staff Legal Assistance. After each interview the Applicant affirmed that she was happy with how the interview was conducted and confirmed that the relevant documents had been provided and discussed.

33. Indeed, on 1 March 2023, one of her doctors assessed the Applicant as demonstrating eloquence, "generally good memory" and "logical and coherent thinking with no evidence of conceptual disorganization." Just a few weeks later, the Applicant was interviewed by OIOS and in that interview, when asked "Are you well enough to continue today?" the Applicant said "Yes".

34. The Tribunal finds that these are clear and convincing indicators that the Applicant was of sound and coherent mind during the course of the investigation and particularly when making her various statements.[1]

35. The Applicant seeks to also argue that she cannot be held responsible for the P.41 (Certificate of attendance and costs and receipt for payments) form because it

[1] The Applicant does not claim that she was mentally impaired at the time she submitted the special education grant applications, whether to obtain an SEG advance at the start of school or to settle the SEG claim at the end of the school year. While the record contains several reports from different psychiatrists, none of these reports make specific reference to the period 2019-2021, when the Applicant would have been preparing her special education grant advance and claim requests. While the Tribunal empathizes with the Applicant's periodic illness, the timing of the SEG submissions and the documentary record leads the Tribunal to firmly conclude that the Applicant's (mis)conduct cannot be attributed to her illness, even if she had so claimed.

was filled out by the school. As to this, ST/AI/2018/1/Rev.1 (Education grant and related benefits) expressly provides:

> 10.1 A staff member is required to provide supporting documentation for all requests for an advance or claims for payment of the education grant and related benefits. **The staff member is responsible for the completeness and accuracy of the documentation submitted.** Documentation provided by an educational institution may not be altered in any way; and
>
> 10.3 **When submitting a request for an advance or a claim for payment, staff members attest to: (a) The correctness of the information provided;** (b) Their understanding of the obligation to retain the documentation for the period specified under section 10.2 and to submit it upon request for monitoring and compliance purposes; **(c) Their understanding of the obligation to inform the Organization of any changes in the information or estimates provided in support of the request;** (d) Their understanding that the Organization may conduct a compliance review of the request or claim; (e) Their understanding of the consequences of submitting incomplete, unsubstantiated or false information as discussed in section 10.4 below. (emphasis added)

36. Furthermore, ST/IC/2018/7 makes clear that

> 14. Staff members must provide, along with their claim, written evidence of the child's attendance, **education costs and the specific amounts they paid**. Such evidence will be submitted on form P.41, which should be certified by the school…. and
>
> 16. Submission of incorrect information, including any revision or alteration of the certified form P.41 or the certificate of attendance may be cause for administrative and/or disciplinary action. (emphasis added)

37. Thus, even though the P.41 form is completed and certified by the school, when it is submitted as part of the claim, the staff member is responsible for its accuracy and attests to the correctness of the information.

38. The Applicant asserts in her defence that it was improper for the Respondent to find that payments to the Applicant's brother from the special education grant for 2019-2020 were fraudulent because her brother was assisting in the transport of her child. Specifically, she claims that her brother got her son up, bathed and fed him, then accompanied him in the taxi that transported him to and from school.

According to her, the purpose of the Special Education Grant, is "to facilitate the Applicant's mentally challenged child."

39. ST/AI/2018/2 (Special Education Grant and Related Benefit for Children with a Disability) specifically lists the expenses reimbursable by the Organisation as follows:

> 5.1 The special education grant will be computed on the basis of the following educational expenses:
>
> (a) Expenses required to provide an educational programme designed to meet the needs of a child with a disability so that he or she may attain the highest level of functional ability. Those expenses may include:
>
> (i) Expenses for special teaching or training services;
>
> (ii) Other expenses, including tuition, enrolment-related fees and the purchase of textbooks and meals at school, which are directly related to mandatory educational programmes and not related to extracurricular activities;
>
> (iii) Expenses for special equipment required to meet the child's educational needs;
>
> (iv) Expenses for full board (food and lodging), including in the case of a child attending an educational institution at the duty station when such boarding is an integral part of the educational programme;
>
> (b) Expenses incurred for local transportation required by the child with a disability as certified by the Medical Services Division.
>
> 5.2 **All other expenses that are not listed in section 5.1 above, including expenses covered or partially covered by medical insurance, shall be deemed non-admissible.** (emphasis added)

40. There is no provision in this list for a caregiver. The Tribunal finds that the Applicant must have been aware of this, which is why she listed the cost of "facilitating him" as transport costs on the P.41 form.

41. A careful reading of the application and the Applicant's closing submissions shows a subtle but clear difference. In the application, the Tribunal was told her brother was "engaged" "for a fee not necessarily from the Special Ed grant" while

in her closing submissions, she claims that "the brother to the applicant was only engaged when taking the Applicant's Son to school and there was no one particular time that any funds derived from the SEG were used to falsely" pay him.

42. At the hearing, the Applicant called her cousin to testify on the challenges she faced as a recently widowed, single-mother, who was raising a neurodivergent child. His testimony basically described that he was aware of the Applicant's situation and, as patriarch of the family, assigned her brother to "take good care of the son when he's going to school and coming back from school." The boy tended to violence and Ridgewayz Cabs threatened to stop providing transport services. He himself also drove the son to school three to four times.

43. In respect of payment, he told the Tribunal that the Applicant's family "chipped in…about 1.4 million" Kenya Shillings to provide for the Applicant and her son. He also testified that the school had made some transport arrangements as part of the school fee structure, but when her son's behaviour created a security concern for the other children, the school withdrew from that arrangement, and Ridgewayz Cabs was hired. He tried to get the school to refund what was paid for transport but was told by the school administrator that it was not refundable because the school bus still drove the same route.

44. The Applicant's cousin said nothing about whether or not the Applicant's brother was paid for the care he provided. Give that there was substantial testimony on what support the Applicant received from her family, it is curious that he made no mention of what, if anything, the brother received for his time and effort. If the witness had information to show that the Applicant's brother fulfilled his role for no remuneration, or was paid through an alternative avenue, counsel might have led the witness to tell the court as much.

45. The Applicant also called Mr. Mugo, a co-director in Ridgewayz Cabs who said he personally drove the Applicant's son each time he had to go to school from 2019 to 2022. He said that the Applicant was initially billed weekly and paid mostly in cash weekly. When she decided to get receipts for accountability, "we decided to account for her from the time that we started being given the job of carrying her

son up to the time that she requested the receipts." She wrote the receipts because "she complained that my writing was poor." When asked how he verified the amounts, he said "we counted from when I started carrying the boy up to the request for the receipts."

46. However, the receipts all list the driver as Thomas Kiamu. Asked about this, Mr. Mugo changed his testimony to say that, at first, he was not the one driving the son, but then he took that responsibility "because the drivers were complaining."

47. Mr. Mugo said that the Applicant's son became physically abusive to him so he could no longer drive him. Then one day in 2019, the Applicant told him that her son would be accompanied by his uncle so he and any cab driver in Ridgewayz no longer drove the son to school.

48. Of course, his testimony was clearly inconsistent with the receipts submitted in support of the SEG and not worthy of any consideration.

49. Neither Mr. Kiamu nor the Applicant's brother were called as witnesses by the Applicant. Given that their role in the school transport and the putative remuneration for that service formed such a critical plank of this case, it is also curious that they were not called to testify. However, the Applicant did submit a statement from her brother that says, *inter alia*, that

> [M]y major roles were to ensure that [the son] took his medications without fail…,ensure [the son] took a shower and dressed up…, ensure minimal risks to [the son's sister] and the mother…, work closely and under the instructions of the school to ensure online or virtual learning connections and supporting him in taking and finish his learning assignment….travelling to and from school…to pick learning material and also drop written assignments for review and marking by the teachers, driving [the son] from home to school in the morning and then picking him from school to home in the evening….in addition, I had a critical role to work closely with the medical doctor…in ensuring he visited hospitals during Covid-19 to pick medications for [the son] and even insured he took [the son] to the doctor in order to receive the monthly injection.

50. This confirmed his role as a general caregiver, which is not a covered expense under the SEG.

51. Additionally, it should be recalled that the 2019-2020 academic year included the COVID pandemic period. The record shows that the school closed for in-person learning just weeks after the Applicant's son enrolled and re-opened six months later. As such there was very little school-related transportation taking place.

52. Based on the record and the testimony heard in court from both the Applicant and Mr. Mugo of Ridgewayz cabs, the Tribunal finds that the Applicant wrote the receipts to claim as transport in which she included the cost of "engaging" or "facilitating" her brother as caregiver.

53. The Applicant also takes issue with the propriety of the evidence from the school administrator which she alleges was taken on the condition that it was off the record.[2]

54. This is factually incorrect as the OIOS Note says that "[the school administrator] informed that she was willing to talk off record and once agreed then she would go on record." Later, it says that she had been instructed by "her upper management" not to assist in the investigation until all school feeds had been paid.

55. In this context, the Tribunal does not find that the evidence was obtained in any improper or unfair manner. Even if it had been, "it may still be admitted in the interests of the proper administration of justice." *Thiombiano* 2020-UNAT-978, paras 39-40. The school administrator's statements were mainly corroborative of other evidence and not so "gravely prejudicial" that would require their exclusion. *Id*.

56. In sum, the Tribunal finds that the facts upon which the disciplinary measure were founded have been established by clear and convincing evidence.

Do the established facts amount to misconduct?

57. With respect to whether the evidence amounts to misconduct, as a general rule, any form of dishonest conduct compromises the necessary relationship of trust

[2] It is interesting that the Applicant seeks to exclude the school administrator's statements while simultaneously blaming the inaccurate filings on the school.

between employer and employee and will generally warrant dismissal. In *Rajan* 2017-UNAT-781, the Appeals Tribunal held that:

> 37. A failure by a staff member to comply with his or her disclosure of information obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances, or to observe the standard of conduct expected of an international civil servant, is undeniably misconduct. Staff Regulation 1.2(b) makes it clear that, as a "core value" of the Organization, staff members shall uphold the highest standards of integrity. This concept includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status. As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal.
>
> 38. Dishonest conduct by definition implies an element of intent or some element of deception. Deliberate false statements, misrepresentations and a failure to disclose required information are invariably dishonest. And, importantly, the failure to reply correctly to a prominent and very relevant question in an application form amounts to a false answer from which dishonesty normally may be inferred. Hence, a false answer in an application form is *prima facie* proof of dishonesty, shifting the evidentiary burden to the maker of the false statement to adduce sufficient evidence of innocence. […]

58. For two consecutive years, the Applicant listed false claims on the P.41 form. In the circumstances of this case, the Tribunal has no difficulty in concluding that the facts have been clearly and convincingly established as misconduct on the part of the Applicant.

Was the disciplinary sanction proportionate?

59. The Applicant argues that the USG/DMSPC ignored factors such as the stressful context of COVID with a special needs child, her own health challenges, a prior unblemished record of 18 years' service, and her contrition. It is true that the USG found no mitigating factors.

60. Of course, the entire world was under stress during the COVID pandemic, but that is not a mitigating factor. Having a special needs child entitles the Applicant to

a special education grant, but it does not excuse her abusing that entitlement by filing false claims and documentation.

61. Having heard the testimony of the Applicant and the witnesses she called, the Tribunal itself finds that any alleged "contrition" is unsupported by the record. She only apologized for poor record-keeping: "I did not recognise it at the time, I now realize that I should have kept accurate records of my son's special education grant (SEG) and should not have submitted inaccurate records in support of my SEG advance." This is not contrition for the misconduct, but an effort at minimising the conduct.

62. Moreover, given her years of experience administering EG applications, her claim of not knowing rings hollow. As for her unblemished record, even if considered, those would not have outweighed the aggravating factors. (See, e.g., the "no difference" principle *Wan* 2024-UNAT-1436, para. 40; *Samandarov,* UNDT/2025/051, para. 14.)

63. In another case concerning fraudulent education and special education grant claims, *Aghadiuno* 2018-UNAT-811, the Appeals Tribunal stated its position, citing *Rajan, Id.,* on the proportionality of the sanction of dismissal as follows:

> 103. Ms. Aghadiuno's proven behaviour in violation of the Staff Regulations and Rules is therefore in fact serious misconduct. Ms. Aghadiuno enriched herself personally by approximately USD 50,000 as a result of submitting false information in relation to the SEGs for Oakwood. *The nature of the misconduct and the manner of its execution deliver fatal blows to any chance of continuing an employment relationship of good faith and trust. The breach is made worse by Ms. Aghadiuno's dishonest persistence with the false explanation*, aimed at deliberately misleading OHRM that her daughter was permitted to attend Oakland for free while she paid her son's tuition in full. The assertion is not supported by the evidence. The officials of the school denied the existence of such an arrangement; and the contemporaneous documentation, including Ms. Aghadiuno's e-mail correspondence, reflects that fees were paid for Daughter, who also received financial aid. The inflated claim for SEG for Son One was probably applied to pay both children's fees, at a time when there was no such entitlement for Daughter. *In the face of dishonesty and impropriety of this kind, the only proportionate sanction is the ultimate penalty of summary dismissal,*

> *without any benefits. The continuation of an employment relationship would be intolerable and untenable in the circumstances.* [Emphasis added]

64. In the circumstances of this case, the Tribunal finds that the disciplinary sanction imposed on the Applicant was entirely proportionate.

Conclusion

65. For the reasons stated above, the Tribunal find the application to be completely unfounded and therefore the application is DISMISSED.

(Signed)
Judge Sean Wallace
Dated this 11th day of September 2025

Entered in the Register on this 11th day of September 2025

(Signed)
Wanda L. Carter, Registrar, Nairobi