



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.:	UNDT/NBI/2025/060
Judgment No.:	UNDT/2025/101
Date:	2 December 2025
Original:	English

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**Before:** Judge Sean Wallace

**Registry:** Nairobi

**Registrar:** Wanda L. Carter

GBUNDO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Deng Kuol Reng  
Chol Alier Ateng  
Chol William Deng

**Counsel for Respondent:**

Sergei Gorbylev, DAS/ALD/OHR, UN Secretariat  
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## **Introduction**

1. By application filed on 12 June 2025, the Applicant, a former Administrative Assistant with the United Nations Mission in South Sudan (“UNMISS”), challenges a decision to impose upon him the disciplinary sanction of separation from service for misconduct, and to place his name in ClearCheck.

## **Factual background**

2. The Applicant joined UNMISS on 4 May 2006, based in Yambio, South Sudan.

3. Between 18 and 22 August 2022, the Applicant bought two motorcycles from Mr. Stephen Puok at a cost of USD2000. Mr. Puok gave him two separate receipts for the purchases.

4. On 23 August 2022, the Applicant sold one of the two motorcycles to an UNMISS colleague and kept the other one for himself.

5. On 25 August 2022, while riding the motorcycle he kept, the Applicant was arrested by a South Sudan national police officer. He was taken to Yambio police station and informed that his motorcycle was suspect because Mr. Puok had acquired them using counterfeit money.

6. When the Applicant produced the receipt for his purchase from Mr. Puok, the police released him from custody. However, his motorcycle was retained at the police station.

7. The Applicant then called his colleague to inform him that there was an issue with the motorcycle he sold to him. The colleague was on an official mission travel when he got the phone call, but when he came back to town, he returned the motorcycle to the Applicant.

8. On 20 October 2022, the Applicant was re-arrested. The police told him that the re-arrest was because he still had the second motorcycle in his possession. On

the same day, the Applicant was produced in court, charged with possession of stolen property, convicted and sentenced to six months imprisonment.

9. On 31 October 2022, the UNMISS Conduct and Discipline Team (“CDT”) received a report of possible unsatisfactory conduct against the Applicant relating to the motorcycles. CDT promptly referred the matter to the Office of Internal Oversight Services (“OIOS”), but on 9 November 2022, the OIOS referred the case back to UNMISS stating it would be best handled by the mission.

10. On 13 February 2023, the Special Representative of the Secretary-General referred the matter to the UNMISS Special Investigations Unit (“SIU”) for investigation of the allegations against the Applicant.

11. As part of its investigation, SIU interviewed the Applicant on 18 May 2023.

12. SIU produced its investigation report on 21 June 2023. SIU concluded that the Applicant kept the second motorcycle in his possession even after he was arrested by the police and informed that the motorcycles had been bought using counterfeit money.

13. Based on the investigation report, on 7 February 2025, the Organization issued allegations of misconduct against the Applicant. The Applicant submitted his comments on the allegations on 7 March 2025.

14. On 12 May 2025, the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) decided to impose the disciplinary measure of separation from service and to place the Applicant’s name in the Clear Check database.

15. On 12 June 2025, the Applicant filed the present application.

16. The Tribunal held a hearing on the merits on 30 October 2025, at which the testimony of the Applicant and his one witness, an advocate in Yambio, was taken.

17. The parties filed their closing submissions on 12 and 13 November 2025 respectively. Thus, the case is ripe for decision.

## Consideration

### *Standard of review and burden of proof*

18. Under art. 9.4 of the Tribunal’s Statute, 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.

19. 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, para. 48.

20. In *Sanwidi* 2010-UNAT-084, para. 40, UNAT 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.

21. UNAT emphasised 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.” *Sanwidi*, 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.” *Sanwidi*, para. 42.

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

22. In disciplinary cases, “when termination is a possible outcome,” 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.” 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” (*Negussie* 2020-UNAT-1033, para. 45).

23. In *Hallal* (UNDT/2011/046, para. 55), the Dispute Tribunal also held that “[a]s is always the case, any witness testimony should be evaluated to determine whether it is believable and should be credited as establishing the true facts in a case.”

24. The disciplinary measure in this case is based on the following factual allegations, which the USG/DMSPC found to be established by clear and convincing evidence:

a. Although [the Applicant] became aware as early as August 2022 that the two motorcycles that [he] had obtained from Mr. Stephen Pouk were stolen property, [the Applicant] retained the motorcycles until [his] arrest by the South Sudan National Police Service (“Police”) on 14 October 2022.

b. [The Applicant] violated local laws by receiving and retaining stolen property in contravention of Article 297 of the 2008 South Sudanese Penal Code.

25. Initially, the Tribunal notes that the facts as set forth in paras. 2-8 above are not in dispute. The Applicant does not dispute that Mr. Puok obtained possession of the motorcycles by paying counterfeit money for them. The Applicant’s case is that he lawfully and unknowingly purchased the two motorbikes from Mr. Puok for USD2000 cash.

26. The Applicant argues that both the High Court of South Sudan and UNMISS ignored the evidence of his lawful purchase, to wit: the receipts showing proof of payment. He also contends that the Organization relied on his unlawful conviction by the National Court.

27. In his testimony before the Tribunal, the Applicant reiterated the undisputed facts. According to this testimony, he “bought two motorcycles from Stephen Puok. I paid 2000 for both and got receipts from the seller...I sold one to my colleague and used the other for my own transport.”<sup>1</sup> He also testified that he was riding the motorcycle he kept to the market on 25 August 2022 when the police stopped him saying “we have suspicion on this motorbike”. The Applicant responded, “this is mine, what’s the problem?” The police had him come to the police station to discuss it further, and at the station told him that the motorcycles were brought from a shop in Yambio using fake money. The Applicant replied that he had not bought the motorcycle from a shop owner but from Stephen Puok. When asked for proof, the Applicant showed a receipt for the motorcycle he was riding. Then the police said that he could go, but they would detain the motorcycle and call him back later. According to the Applicant, he told his colleague that there was a problem, and the colleague returned the other motorcycle.

28. The Applicant also testified that in October he was re-arrested at his house. At the police station, the police told the Applicant that they had been told that he still had another motorcycle kept at his house. The Applicant said that he did not have a chance to respond to this allegation. “They were furious already,” and took him straight to the court. The judge asked him one question: “how did you acquire the motorbike?” The Applicant explained to the judge that he purchased it from Mr. Puok. The judge then said, “this is a stolen property” and sentenced the Applicant to six months imprisonment. According to the Applicant, he was not allowed to present the receipts, had no opportunity to have legal counsel, was sentenced on the

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<sup>1</sup> The Applicant told SIU that he sold the motorcycle to his colleague in October. When cross-examined at the hearing he admitted that “I was referring to August, my attention slide off on that because the whole thing was in August. I was talking about August. I don’t know how I mentioned that October.”

same day, not informed of his right to appeal, and not given an option for either a fine or bail instead of imprisonment.

29. Next, the Applicant called his only witness, an advocate and Legal Consultant based in Yambio, South Sudan. This witness testified that he keenly followed the Applicant's trial in Yambio court. He stated that "the proceedings were hasty, the trial took just one week, the Applicant was not given a chance to defend himself, no witnesses called. The Applicant's conviction was not justified." The advocate testified that the conviction was appealed against, but the judgment was upheld by the appeals court. The judgment has since been appealed again to the Supreme Court of South Sudan.

30. In assessing the credibility of these witnesses, the Tribunal found the Applicant's testimony to be confusing and contradictory, particularly as to dates. His testimony also differed from statements he had previously made, which were themselves contradictory.

31. Regarding the advocate witness, the Tribunal found his testimony to be unusually curious. He claimed that he only knew of the Applicant's case because he happened to be present in court when it occurred. He claimed to have no professional or personal involvement in the case and was only testifying because he felt that an injustice had occurred. He concluded that the Applicant was denied due process and wrongly convicted.

32. It is curious that, having observed what he thought to be an injustice, this advocate did nothing to correct that injustice. He did not step in during the court proceedings to protest the lack of due process; he did not file a motion for bail; and he did not file an appeal on the Applicant's behalf. Instead, his role seemed only to assist the Applicant in this case to save his job by writing an opinion letter and testifying before the Tribunal.

33. Moreover, his testimony contradicted the Applicant's testimony. For example, the Applicant testified that the court proceedings were extremely short and all took place on the same day. By contrast, the advocate said that he followed the Applicant's case from beginning to end and that the trial was "very short"

because it started on Monday and ended on Thursday. Later he clarified that the trial started on Monday, was “brought back” on Wednesday, and the verdict was issued on Thursday, “and [the Applicant] was imprisoned throughout.” However, either version sharply contradicts the Applicant’s version (and the court record).

34. Additionally, it is the advocate’s testimony that an appeal was filed within days of the conviction, the conviction was upheld by the appeals court and was appealed again to the Supreme Court of South Sudan. This is contrary to the court records which show no appeal was filed.

35. In sum, the Tribunal gave no credibility to the testimony of the Applicant or his witness, the advocate, at least to the extent that they contradict the other evidence.

36. Additionally, the Tribunal notes that the witness’ testimony amounted to no more than his own personal opinion about the trial. Such second-guessing of the trial judge and the appellate court (which by his own testimony, affirmed the trial court conviction), is improper and will not be relied upon by the Tribunal.

37. The essential facts are very clear from the testimonies and the record. The Applicant admits that he was first arrested on 25 August 2022 and informed by police that the motorcycles in question had been stolen because they were purchased by Mr. Puok with counterfeit money. Based on that knowledge, he called his colleague and advised him to be careful because the motorcycle he had sold to him had an “issue”. Consequently, the colleague returned the motorcycle to the Applicant on 30 August 2022.

38. Despite his knowledge that the motorcycles were stolen property, and one motorcycle was retained by the police, the Applicant kept the other motorcycle in his possession, leading to his re-arrest on 20 October 2022. Assuming, *arguendo*, that the Applicant did not know at the time he bought the motorcycles that they were stolen, no reasonable and honest person would retain a property once he or she has been informed by the police that it was stolen.



39. Regarding the Applicant's averment that the Organization relied on his unlawful conviction by the National Court; the sanction letter indicates the contrary. The Administration relied on the established facts that the Applicant retained one of the two motorcycles until his arrest in October 2022, even though he was aware in August 2022 that the motorcycles were stolen.<sup>2</sup> Thus, the sanction was imposed on him because of his conduct, and not the conviction arising from that conduct.

40. Although the annex to that sanction letter mentions the conviction, it clearly sets out independent material facts underpinning the allegations. If all references to the South Sudanese court conviction were excised, there still remains clear and convincing evidence to support the disciplinary decision.

41. Indeed, the Tribunal has ignored all references to the national court conviction, for reasons other than those argued by the Applicant. Applicant's annex 9 is a Note from the Legal Affairs Unit ("LAU") which appears to be directed to UNMISS Human Resources. The note refers to para. 51 of the Status of Forces Agreement between the United Nations and the Government of the Republic of South Sudan ("SOFA") which "sets out the steps to be taken by both the Government and the mission in cases where the Government considers that an UNMISS member has committed a criminal offence." The LAU concluded that the Applicant's arrest and conviction were "inconsistent with the procedures set out under the SOFA." Accordingly, LAU recommended that:

the conviction of Mr. Gbundo in the national court in Yambio, should not be used as the basis to subject him to any United Nations internal disciplinary process....Rather UNMISS Human Resources is advised to promptly refer the case to the Mission's Conduct and Discipline Team (CDT) to determine which United Nations internal investigative entities will most appropriately conduct formal United

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<sup>2</sup> The sanction letter also lists as an additional factual allegation found established by clear and convincing evidence that Mr. Gbundo violated local laws by receiving and retaining stolen property in contravention of Article 297 of the 2008 South Sudanese Penal Code." This is actually a legal conclusion drawn from the established facts recounted above. It is a correct conclusion, given that Article 297(2) of the South Sudan Penal Code provides that "Whoever receives or retains any stolen property knowing or having reason to believe the same is stolen property, commits the offence of receiving stolen property".

Nations internal administrative investigation into the matter. The outcome of such United Nations internal administrative investigation would determine whether or not disciplinary action would be taken against Mr. Gbundo by the Mission.”

It appears that this advice from LAU was followed since the record indicates that the recommended procedure was followed, as recounted in paras. 9-14 above.

42. Based on this note, and the jurisprudence regarding the privileges and immunities of United Nations staff, the Tribunal concludes that it would not be appropriate to consider the Applicant’s national conviction as evidence supporting the disciplinary sanction.

43. Additionally, the Tribunal recalls that the case law is clear that the Organization “is empowered by its written law to take disciplinary measures against its staff members in cases of misconduct, irrespective of whether the conduct in question is referred to a local court or the accused person is convicted or acquitted in such proceedings.” *Toukolon* 2014-UNAT-407, para. 23. See also, *Abu Ghali* 2013-UNAT-366, para. 43; *Ganbold* 2019-UNAT 976, paras. 32-34.

44. All evidence and circumstances considered, the Tribunal finds it established by clear and convincing evidence that the Applicant intentionally and knowingly retained the stolen motorcycle.

*Whether the established facts qualify as misconduct.*

45. The Applicant contends that since the facts on which the sanction was based were not established by clear and convincing evidence, they thus do not amount to misconduct as alleged. Of course, the premise of this argument has been rejected by the Tribunal in its finding in the preceding paragraphs. Nonetheless, the Tribunal will assess whether the established facts qualify as misconduct.

46. Staff regulation 1.2 (b) provides that:

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is

not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

47. Staff regulation 1.2(f) partly requires staff members to conduct themselves at all times in a manner befitting their status as international civil servants and not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations.

48. Judged against these provisions, it is clear that the Applicant's actions as established by the evidence qualify as misconduct and the Applicant's actions violated the relevant provisions of the staff regulations.

*Whether the Applicant's due process rights were observed during the entire process.*

49. The Applicant submits that his due process rights were violated by the South Sudanese court.

50. However, the requirement of due process in this proceeding relates to actions of the Organization, not those of a national court. See, e.g., Staff Rule 10.3 (Due process in the disciplinary process); *Cabrera* 2012-UNAT-215, para. 47; and *Powell* 2013-UNAT-295, paras. 23-24.

51. The Applicant does not allege violation of his due process rights in relation to the investigation and disciplinary process by the Organization. To the extent that the Applicant implicitly argues that the Organization violated due process by relying on a national court conviction that lacked due process, this argument has already been disposed of by the Tribunal's finding that the Organization's decision is not reliant on the national conviction.

52. The Tribunal agrees with the Respondent that the Organization's disciplinary process is distinct and independent from the national criminal proceedings in South Sudan. Accordingly, the Tribunal finds no violation of the Applicant's due process rights, at least as concerns the contested decision.

*Whether the sanction was proportionate to the offence.*

53. The Applicant submits that the disciplinary measure of separation from service is disproportionate to the nature and gravity of the alleged misconduct. He argues that the Administration failed to consider as mitigating factors that the Applicant:

- a. Has a clean unblemished record of 19 years of dedicated service to the United Nations;
- b. Lawfully purchased the motorbikes from Mr. Stephen Puok in presence of a witness; and
- c. Undeservedly suffered injustice for staying in jail for a period of six months as a result of a criminal trial that was flawed, unjust, unfair, procedurally defective and unlawful.

54. Regarding first factor, the sanction letter in its annex states “The USG/DMSPC also considered Mr. Gbundo’s long service with the Organization in the mission setting as a mitigating factor.” Thus, the Applicant’s claim is simply wrong as a factual matter.

55. As for the second alleged factor, the Organization and the Tribunal have determined that whether or not the Applicant purchased the motorcycles lawfully is irrelevant since he continued to possess one of the motorcycles for months after learning that it had been stolen. Thus, this claim lacks merit.

56. With respect to the third factor, it does not appear that this was raised by the Applicant to the USG/DMSPC. Moreover, the Tribunal notes that the proper forum for challenging allegations of injustice in the national trial court is through the recognized appellate process of South Sudan. According to the Applicant and his witness, he filed an appeal and the trial court conviction was affirmed.<sup>3</sup> Thus, the Tribunal rejects this claim.

57. The Tribunal finds that the Organization considered all the relevant factors in determining the sanction. In this regard, the decision-maker took into account the

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<sup>3</sup> According to the investigation report, neither the appellate court nor the Supreme Court of South Sudan have any record of such an appeal.

nature of the Applicant's actions, and whether any aggravating or mitigating factors applied to his case. One of the aggravating factors considered was that the Applicant's actions risked reputational damage to the Organization. The mitigating factor was his long service in the mission.

58. The Tribunal, therefore, finds that since both mitigating and aggravating factors were considered, the sanction imposed was proportionate to the offence.

*Placing the Applicant's name in Clear Check.*

59. By his application, the Applicant also challenges the placement of his name in the Clear Check database. The Tribunal notes that Clear Check entry is a consequence of the disciplinary measure imposed on the Applicant for theft-related criminal behaviour. The lawfulness of the disciplinary measure, as established above, is sufficient to justify the entry of the Applicant's name in the database. Accordingly, the decision to include his name in Clear Check was lawful.

**Conclusion**

60. In light of the foregoing, the Tribunal DECIDES to affirm the contested decision and reject the application in its entirety.

*(Signed)*

Judge Sean Wallace

Dated this 2<sup>nd</sup> day of December 2025

Entered in the Register on this 2<sup>nd</sup> day of December 2025

*(Signed)*

Wanda L. Carter, Registrar, Nairobi