



**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** René M. Vargas M.

OMING

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PENDING  
MANAGEMENT EVALUATION**

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**Counsel for Applicant:**

Ana Giulia Stella, OSLA

**Counsel for Respondent:**

Natalie Puchalka, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. By application filed on 16 September 2021, the adult children of Ms. Roselyne Kayeke Oming (the Applicants) request suspension of action, pending management evaluation, of the decision to consider Mr. Aburaruma Oming as the surviving spouse of their mother to whom death benefit is payable under staff rule 9.11.a(vii) (“the contested decision”).

2. The application for suspension of action was served on the Respondent, who filed his reply on 21 September 2021.

## **Facts**

3. Ms. Roselyne Kayeke Oming, a former FS-5 Administrative Assistant with the United Nations Assistance Mission in Afghanistan (“UNAMA”), died on 29 June 2021. She had four adult children who have filed the present application in her name.

4. On 14 August 2021, the Team Leader, Human Resources (“HR”), UNAMA informed the Applicants *inter alia* that according to the information in the HR records, they had been “designated beneficiaries of [Ms. Oming]] under the Staff Rules to all amounts (salary, allowances, commutation of leave) standing to her credit at the time of death, but not to the death benefit payable under the Rules to a surviving spouse and/or dependent children [under] the age of 21”. The Team Leader also indicated that their mother’s marital status at the time of her death was “legally separated” and not “divorced” and that under such circumstances, “the spouse would be entitled to the death benefit as they would still be considered legally married”. As per its records, the Administration identified Mr. Aburaruma Oming as Ms. Oming’s spouse.

5. Between 18 August 2021 and 2 September 2021, several emails were exchanged between the Applicants and the Administration in relation to the marital status of their mother.

6. On 16 September 2021, the Applicants requested management evaluation of the contested decision.

7. On 20 September 2021, the Chief Human Resources Officer, HR Section, UNAMA, informed the Applicants *inter alia* that “no decision [had] been made to date regarding [their mother] death benefits”. He also indicated that “this matter is currently pending internal review” and confirmed that UNAMA “will not make any death benefits payment to Mr. Aburaruma Oming pending the outcome of [the] management evaluation request”.

### **Consideration**

8. Art. 2.2 of the Tribunal’s Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative; in other words, they must all be met in order for a suspension of action to be granted.

9. In the instant case, the Tribunal has identified the contested decision as per para. 1 above. The Respondent submits that the Applicants do not contest an administrative decision as no decision has yet been made to pay any death benefit entitlements to Mr. Oming and that the application is moot.

10. Having reviewed the case record, the Tribunal considers that a decision was made on 14 August 2021 to consider Ms. Oming’s surviving spouse as the recipient of her death benefits under staff rule 9.11a(vii).

11. The Tribunal notes that the matter is currently under internal review and UNAMA is conducting due diligence with respect to Ms. Oming’s marital status at the time of her death. The Respondent has indicated that UNAMA is seeking authentication of the Applicant’s marriage certificate (dated 1982 and not 1989 as originally indicated by the Parties) by the national authorities in Uganda.

12. In this context, the Tribunal notes that on 20 September 2021, UNAMA decided to suspend the implementation of the contested decision “pending the outcome of the management evaluation”.

13. The Tribunal sees no reason to consider that such a commitment emanating from the Chief Human Resources Officer, HR Section, UNAMA, would not be respected.

14. Therefore, since the contested decision has already been suspended by UNAMA, the Tribunal can only conclude that the Applicants request for suspension of action has become moot.

15. It follows that it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure, namely *prima facie* unlawfulness, urgency and irreparable damage are met in the case at hand.

### **Conclusion**

16. In view of the foregoing, the present application for suspension of action is moot and there is no need to further decide on the Applicants’ request.

Judge Francesco Buffa

*(Signed)*

Dated this 24<sup>th</sup> day of September 2021

Entered in the Register on this 24<sup>th</sup> day of September 2021

*(Signed)*

René M. Vargas M., Registrar, Geneva