



Tebeyene
(Appellant)

v.

United Nations Joint Staff Pension Board
(Respondent)

JUDGMENT

[No. 2010-UNAT-016]

Before: Judge Mark Philip Painter, Presiding
Judge Kamaljit Singh Garewal
Judge Rose Boyko

Case No.: 2010-021

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: François Lorient

Counsel for Respondent: Jaana Sareva

MARK P. PAINTER, Presiding Judge.

Synopsis

1. This is a pension case. United Nations employee Augustin Mandeng (Mandeng), a native of Cameroon and resident of the United States, married Elizabeth Wagner (Wagner) in the United States in 1973. After obtaining a questionable divorce from Wagner in Cameroon, Mandeng married Tebeyene Mamo (Tebeyene) in 1989. Both claim a widow's benefit. The United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) awarded the benefit to Wagner. While we believe Tebeyene has always acted in good faith, we are constrained to affirm the decision.

Facts and Procedure

2.

7. In January 2005, Mandeng initiated a divorce against Wagner in the Superior Court of New Jersey, USA. Mandeng died while the divorce was proceeding and his complaint for divorce was dismissed following his death. A first death certificate, issued in February 2005, listed Tebeyene as the surviving spouse. A second death certificate, issued in May 2005, named Wagner as the surviving spouse. Wagner was appointed as an administrator of Mandeng's estate in August 2005.

8. UNJSPF decided that, at the time of Mandeng's death in February 2005, Wagner was his sole, legally recognized surviving spouse. In August 2005, Wagner was informed that she was entitled to a widow's benefit under Article 34 of UNJSPF's Regulations and Rules. At the same time, Tebeyene was informed that she was entitled to receive a child's benefit under Article 36 of the UNJSPF's Regulations and Rules for a son that she had with Mandeng.

9. On 28 February 2006, the Appellant presented to UNJSPF a copy of a Cameroonian divorce decree, dated May 1989, between Mandeng and Wagner, together with a further request for a widow's benefit. UNJSPF informed her that it could not change its decision as the divorce decree had not been signed by Wagner. Tebeyene requested a review by the Standing Committee of the Fund's Board (SC).

10. At its 189th meeting on 19 July 2006, the SC decided to uphold UNJSPF's decision to recognize Wagner as the legal wife and confirmed that she was therefore entitled to the continued receipt of a widow's benefit. It also found that the Appellant would continue to be entitled to a child's benefit under Article 36 of the UNJSPF's Regulations.

11. In October 2006, Tebeyene filed her appeal with the former United Nations Administrative Tribunal (Administrative Tribunal). The UNJSPF answered in March 2007. The Appellant filed Written Observations on June 2007. The UNJSPF filed additional submissions in February 2008. Voluminous materials were continuously filed by both parties. Tebeyene asked for two continuances, resulting in the case being transferred to this Court upon the abolition of the Administrative Tribunal at the end of 2009.

12. This appeal is upon a question of fact: is Tebeyene Mandeng's surviving spouse? Though UNJSPF asserts some issues of law, we find them unpersuasive.

Submissions

Tebeyene's Appeal

13. The Appellant, Tebeyene, claims that she was Mandeng's sole spouse, in fact and in law, from 1989 until his death in 2005. She submits that Mandeng's previous marriage had been legally dissolved in May 1989, when he obtained in Cameroon an uncontested divorce from his first wife, Wagner.

14. Mandeng entered into a civil marriage with

Certificate in May 2005 on the basis of the marriage certificate from Cincinnati, Ohio, Hamilton Court, USA, from 1973. In addition, the State of New Jersey, Essex County Surrogate's Court, USA, appointed Wagner as the Administrator of Mandeng's estate in August 2005.

25. The UNJSPF concludes that in accordance with UNJSPF's Regulations and Rules and on the basis of the documentation provided and data reported by the former employing organization, UNJSPF's decision to assess the validity of Wagner's marriage in the same way as the employing organization was not arbitrary or unreasonable.

Tebeyene's Written Observations

26. Tebeyene claims to present new evidence from OHRM and UNDP. She submits that her personnel file contains documents attesting to the marriage between herself and Mandeng. She contends that how the information was subsequently used was beyond her control. Tebeyene points to further UNDP documents (travel authorization; personnel action) attesting to the marriage between Tebeyene and Mandeng.

27. Tebeyene further argues that she and Mandeng had trusted that their employer would transmit any required information to UNJSPF.

28. Tebeyene contends that the interpretation of Administrative Rules B.1, B.2 and B.3 suggested by the UNJSPF is so strict and narrow to the effect that it may lead to participants and beneficiaries being denied the rights and obligations arising from their own marital status if at the time of a participant's death, his or her file does not contain the relevant information. She contends that in cases where birth certificates of children of deceased participants had not been on file, before the participant's death, UNJSPF nevertheless accepted birth certificates then. The same flexibility should apply in cases where a beneficiary has several wives.

29. Tebeyene contends that the divorce decree handed down in Cameroon shows that Wagner had indeed been served with the divorce papers.

30. Tebeyene reiterates her contentions regarding her putative marriage and requests that expert advice on customary and putative marriages should be sought if this Tribunal required clarification. She requests that the costs of such expert be borne by UNJSPF contesting her marital status.

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Tebeyene had not been advised about this meeting nor advised of the issues and evidence to be considered. In addition, UNJSPF's counsel was present, while Tebeyene was not. Without knowing the case against her and without being given an opportunity to submit additional evidence or request an adjournment in order to do so, it is apparent now that the proceeding was unfair to her. For example, Tebeyene may not have known that the existence or validity of the Cameroon divorce may have been at issue before the SC. Without information from Tebeyene about the circumstances of her marriage and the alleged prior Cameroon divorce, the decision could not have been based on complete information. In the future, the SC must at least provide notice of the hearing and opportunity to submit written evidence.

38. Because of the voluminous additional evidence submitted by both sides—which we allow in this case as an accommodation to the transition period between courts—we are satisfied that Tebeyene has had ample opportunity to present her case. We emphasize that, in the future, the record must be developed at the lower level—only an appeal and answer are contemplated by our Rules of Procedure. But in cases filed under the old system, we allow some leeway.

39. This Court agrees with Tebeyene that UNJSPF's reliance on its own rules to place the burden upon the employing organization to submit the proper information could obviously create anomalous results. UNJSPF seems to be contending that simple clerical errors in reporting could lead to an employee's losing otherwise-proper benefits. UNJSPF submits that UNJSPF Administrative Rules B.1 to B.3 establish the responsibility of employing organizations to furnish specific information related to the employment and personal data, including marital status, of their staff who are Fund participants. But surely an error can be corrected. But here, the fact that Mandeng did not properly report his alleged marriage can be taken as some evidence of its invalidity, though not in itself conclusive.

40.

42. The evidence submitted by UNJSPF from the Essex County New Jersey Probate Court, in which proceedings Tebeyene was represented by legal counsel, and the issue of the Cameroon divorce was litigated (and no evidence has been tendered by Tebeyene that she has appealed that judgment) is that a) the Cameroon divorce decree is invalid; and b) Mandeng's own submission to the New Jersey divorce court (taken into account by the Probate Court), was that he at no time commenced proceedings to dissolve his marriage to Wagner apart from the USA divorce proceeding, which was terminated by his death. Wagner was not even aware of any Cameroon divorce proceedings.

43. Though the US Probate Court finding is certainly not binding on this Court, it is evidence that we find credible. In addition to all the other evidence in this case, it convinces this Court that UNJSPF did not err in awarding the widow's benefit to Wagner.

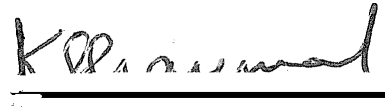
44. Given that we do not reverse UNJSPF's decision, it is unnecessary to address the issue of legal fees sought by Tebeyene. We also deny her additional request for a further continuance of the case. It has gone on long enough, and the facts in the additional documents she hopes to obtain would, even if established, not impact on the Court's decision.

Judgment

45. This Court affirms UNJSPF's decision to award the widow's benefit to Wagner. We deny all reliefs sought by Tebeyene.

[REDACTED]

Judge Painter, Presiding



Judge Garewal

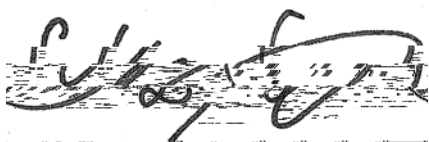


Judge Boyko

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT