



UNITED NATIONS DISPUTE T

Case No.: UNDT/NBI/2019/031

Judgment No.: UNDT/2020/147

other sexual partners and asked her to leave the home they shared. JA left the house and went to the local police station, where she complained to Detective Robert Emuna, that the Applicant had forced her to have anal sex with him. JA also claimed that the Applicant owed her money.²

7. On 14 March 2018, Ms. Beatrice Anywar, a Ugandan Member of Parliament (“MP”), held a press conference on JA’s pending complaint with the Ugandan Police. Ms. Anywar’s statements were relayed by a Ugandan news outlet on 15 March 2018. The news outlet article stated that the Applicant, a UNHCR staff member, was picking, harassing and sodomizing girls in Kitgum, that nothing was being done because he was a diplomat and that Ms. Anywar would call for

articlas2939.45 Tm0 -19(m)18(e)g69(d)-19(i)18(n)20(g)-249(t)-21(h)20(a)4(t)] TJETQq0.00000912 0 61

closed.⁶

11. On 13 August 2018, the Applicant received a letter from the then Director of the Division of Human Resources (“DHR”), (dated 17 July 2018), containing allegations of misconduct.⁷ It was specifically alleged that:

- a. he behaved in a manner that discredited UNHCR and undermined public confidence in the Organization;
- b. the fact that he had romantic relationships with two local women created a risk for UNHCR operations;
- c. the evidence gathered by the IGO including multiple media articles tarnishing the reputation of UNHCR indicated that the image and interests of UNHCR in Uganda were compromised because of his conduct; and that
- d. even though the articles included allegations that ‘have not been substantiated by the Uganda Police Force or the IGO’, his relationship with at least one of the women was a key part of the chain of events leading to the publication of the articles.

12. The Applicant responded to the allegations on 12 October 2018. He denied any misconduct.⁸

13. After reviewing the investigation report, the evidence gathered by the IGO and the Applicant’s submissions, the High Commissioner concluded that the alleged facts had been established on clear and convincing evidence and that they constituted misconduct. Therefore, on 14 December 2018, the High Commissioner issued the

United Nations rules or policies. A determination of whether UNHCR's reputation was tainted would have to be looked at objectively based on the circumstances and the context. Since in Uganda acquiesced traditional relationships are legal and permitted, it would be hard to say that such a relationship would taint the reputation of the Organization.

18. The IGO investigation only interviewed a few people and left out several others that were mentioned including the top leadership of the two districts of Kitgum and Lamwo that are within the UNHCR's area of operation. Those mentioned and left out include the Resident District Commissioner, the District Police Commander and an activist who is also mentioned as a guardian to JA. Others who could have been interviewed include the District Chairman of Kitgum and Lamwo, the Resident District Commissioner of Lamwo and a sample of other community leaders.

19. The allegations also unfairly hold the Applicant accountable for something

Case No.: UNDT/NBI/2019/031

Judgment No.: UNDT/2020/147

also examine whether the decision is absurd or perverse.¹⁴ In the instant case, the High Commissioner has admitted to having been influenced to taking the impugned decision by the sensationalized media reports, concerns by UNHCR donor countries and by the fact that “a corruption scandal that touched on UNHCR in Uganda had already broken out in early February 2018”.¹⁵ The media reports were relevant insofar as they brought to the attention of the UNHCR Administration the allegations against the Applicant. However, following the IGO investigation, the UNHCR Administration should have established that the media reports were not substantiated. The Applicant had no control over what the media chose to report. Hence, basing its decision on these facts was unlawful as they were extraneous to the case at hand and irrelevant.

41. The High Commissioner improperly concluded that the Applicant’s relationship with JA was inconsistent with the standards of conduct expected of an international civil servant because it was a “transactional”, deeply and fundamentally unequal relationship because, *inter alia*, he earned more money than her and because of their age difference. The High Commissioner

It is not the Applicant's views and convictions that resulted in the unsubstantiated and scandalous allegations made against him by JA, Ms. Anywar and the media. The investigations did not establish violation of any of the elements in this provision, namely, (i) having adverse effects on duties and interests of the United Nations, (ii) being incompatible with proper discharge of duties and (iii) adversely reflecting on staff member's status or integrity, independence and impartiality of the United Nations. On the contrary, the record shows that the Applicant was an excellent staff member who was consistently assessed successfully.¹⁶ It follows that the High Commissioner's reliance on this staff regulation is misguided as it has no bearing on the conduct of the Applicant. In particular, the status in the organisation, society, earnings, education and age of the Applicant have no adverse consequence on a customary relationship that the Applicant maintained with the two women, nor does it make the relationships transactional. It is only where the woman is underage that the relationship would violate both United Nations and local laws. As it were, the facts are not established and no breach of the regulation is disclosed to constitute misconduct.

42. Paragraph 42 of the ICSC Standards states,

The private life of international civil servants is their own concern and organizations should not intrude upon it. There may be situations, however, in which the behaviour of an international civil servant may reflect on the organization. International civil servants must therefore bear in mind that their conduct and activities outside the workplace, even if unrelated to official duties, can compromise the image and the interests of the organizations. This can also result from the conduct of members of international civil servants' households, and it is the responsibility of international civil servants to make sure that their households are fully aware of this.

This paragraph should be read in the context of paragraph 40 of the ICSC Standards which among others requires respect for diversity.

¹⁶ Application, annex 6, page 2 of the Sanction letter. As a mitigating factor, in taking the impugned decision, the High Commissioner considered the Applicant's eight years of satisfactory service as a UNHCR staff member and his unblemished disciplinary record.

51. The Tribunal finds that UNHCR Administration failed to act fairly by basing its decision on extraneous and discriminatory considerations.²³ It is trite that; “..[a]s a matter of fair process, there is no room for extraneous considerations such as bias, prejudice and discrimination”.²⁴

Conclusion

52. 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.²⁵

Moral damages

56. Compensation may be ordered for harm after the existence of such harm is

Entered in the Register on this 18th day of August 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi