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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/011

Judgment No.: UNDT/2022/126

Date: 30 November 2022

Original: English

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Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NDERITU

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS



truck for delivery of those goods. The Applicant never disclosed his relationship with the truck owner to UNHCR.

11. In February 2020, the IGO began investigating these allegations.

12. The Applicant was interviewed on 9 and 10 July 2020.

13. During the course of the investigation, the IGO was informed that the Applicant spoke of the investigation to another UNHCR staff member on at least two occasions. This led to the Applicant being also charged with breaching the confidentiality of the investigative process in an ongoing investigation.

14. The Applicant was interviewed by the IGO on this last count on 23 October 2020.

15. On 16 November 2020, the Applicant provided his comments on the draft on 30 November 2020.

16. The Investigation Report was finalised on









decision failed to take into account relevant evidence pointing to ownership of the truck by Allied. The contention that in Kenya actual ownership of vehicles is not only determined based on official records of the relevant authorities, was a bald assertion by the Applicant, not supported by any evidence.

36. The Tribunal finds that there was a heavy preponderance of evidence that the Applicant had the required knowledge to be aware of his duty to disclose his

ample justification for the Applicant breached his obligation to disclose an actual, or possible, conflict of interest. Although only evidence on a balance of probabilities was required, the evidence presented surpassed that standard and was clear and convincing.

*Breached the confidentiality of an official IGO investigation*

37. The second charge against the Applicant arises from information given by a colleague, Ms. RK, that he contacted her both before and after his IGO interview. In the latter call she says the Applicant told her that he had the interview with the IGO and that the IGO might approach her as he had mentioned her as having access to certain documents. She told the investigator that the Applicant

that he says you were interested in finding its ownership. He told me that he does not own the truck and had also told the same to our former supervisor, IM, who is no longer with the organization. [the Applicant] further said that the truck was purchased by Allied from an individual, but since the original owner had not paid off a bank loan taken to purchase the truck, the logbook remained in his names and not Allied.<sup>14</sup>

38. The challenge to the finding that he breached the integrity of the investigation by communicating with Ms. RK is that there was no basis for acceptance of her word against his that such communication occurred. In commenting on the Draft Investigation Report, the Applicant told the investigator that he believed Ms.

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<sup>14</sup> Annex R/1A to the reply at para 78 and annex R/1J Email dated 27 July 2020.





possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization. [Emphasis added]

*The Breach of Confidentiality of the Investigation*

UNHCR/AI/2019/15 UNHCR Administrative Instruction on Conducting Investigations provides<sup>16</sup>

28 Investigation participants, including the subject and



aspect of the matter.<sup>18</sup> Thereafter, the Applicant was only called upon to respond to the two more minor allegations of non-disclosure of conflict of interest and breach

to act fairly and reasonably in terms of which the UNDT is permitted to interfere where the sanction is lacking in proportionality. The proportionality principle limits the discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result.

55. The disciplinary measure of loss of one step in grade pursuantu(re)-v( )] TJETQ.000008871 0 3