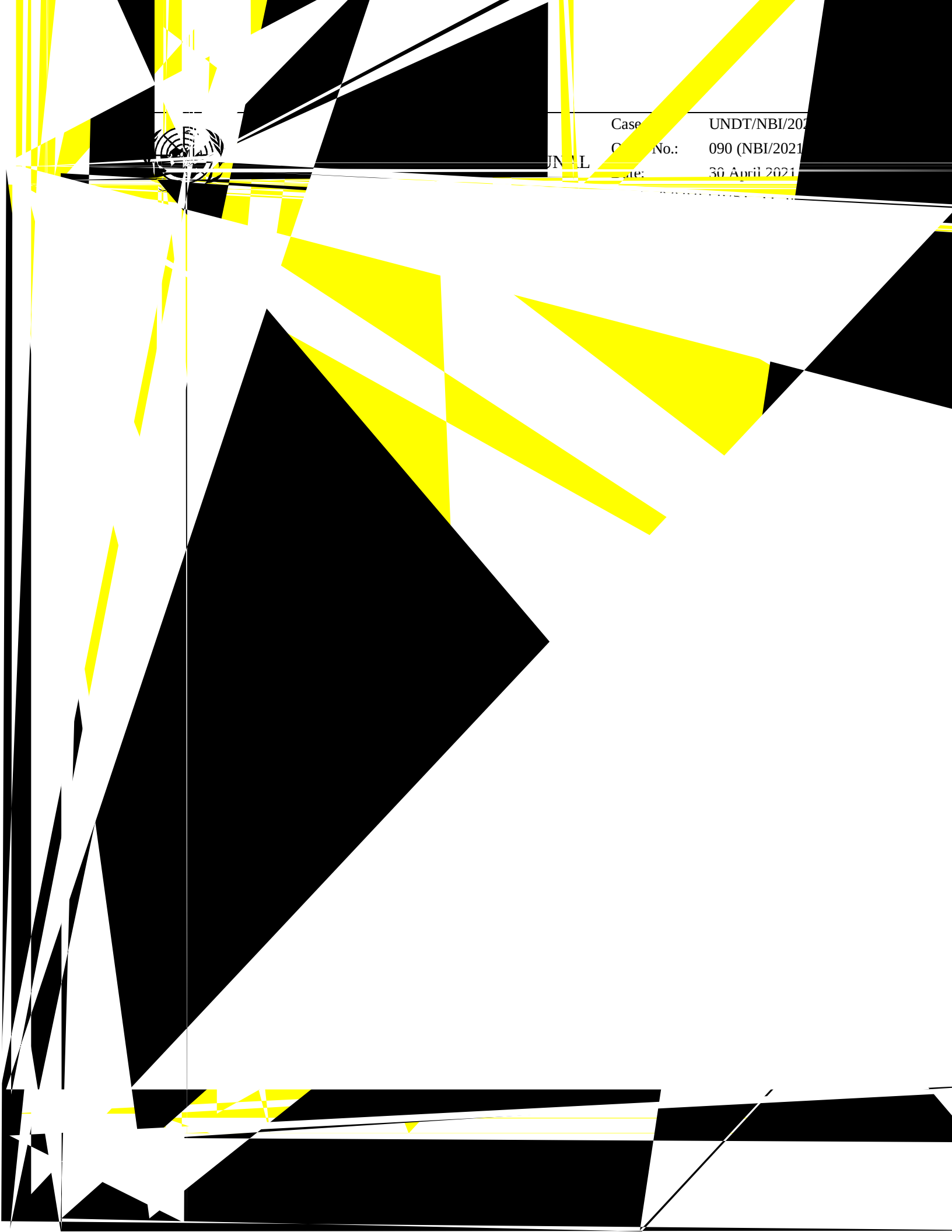

Case UNDT/NBI/202
No.: 090 (NBI/2021
Date: 30 April 2021

Introduction

1. The Applicant is a Movement Control Assistant at the FS-5 level working with the United Nations Support Office in Somalia ("UNSOS").[1]

2. On 6 January 2021, the Applicant filed before the United Nations Dispute Tribunal in Nairobi an application on the merits challenging the United Nations Administrative decision to deduct from his salary a sum of USD5,032.33 monthly, which was, as he termed it, "based on a misrepresentation of his salary and without a proper exercise of discretion, pursuant to staff rule 3.18(c)(iii)".[2]

3. On 23 April 2021, he filed a motion for interim measures pending proceedings claiming that the court judgment on which the decision was based, has been reversed. He is accordingly seeking:

a. suspension of the Administration's decision of 10 November 2020 to deduct USD5,032.33 from his salary in child support, including retroactive child support and arrears on a monthly basis; and

b. Repayment of the deductions of USD5,032.33 since 10 February 2021 from his salary.

4. On 26 April 2021, the motion was served on the Respondent, who filed his reply on 28 April 2021. On the same day, 28 April 2021, the Applicant filed the

9. In filing an application of the merits, the Applicant signaled that he was appealing the Final Judgment of Dissolution of Marriage and attached a copy of the appeal.[9]

10. On 10 February 2021, the Third District Court of Appeal of the State of Florida reversed the Judgment in Case No. 2017-021520-FC-04 and remanded the case, having found that the subject matter jurisdiction had not been properly ascertained.[10]

11. On 10 February 2021, the Applicant sent a copy of the Florida Appeals Court Judgment to UNSOS and informed them of the reversal of the Miami-Dade County Court Judgment on which the Administration had based the deductions.[11] He reiterated the same on 23 February 2021.[12] On 24 February 2021, UNSOS replied to the Applicant, stating that the matter was being dealt with in the proceedings currently underway before the Dispute Tribunal; that the proceedings were handled by the Administrative Law Unit of the Department for Management, Strategy, Policy and Compliance; and that UNSOS would wait for the outcome of those proceedings and act in accordance with the relevant instructions.[13]

Applicant's submissions

12. The Applicant contends that all the premises required by art. 10.2 of the UNDT Statute are met: The impugned decision is prima facie unlawful, because the judgment which formed the basis of the salary deductions was entirely reversed on 10 February 2021. The Applicant's matrimonial case was remanded for an entirely new hearing on subject matter jurisdiction to determine whether the court that issued the judgment even has the jurisdiction to pronounce on the Applicant's child support obligations, including the qualification of the amount of child support that he needs to pay his former spouse.

[9] Ibid, exhibit 11.
[10] Applicant's motion for interim measures pending proceedings, filed on 23 April 201, exhibit 2.
[11] Ibid, p.3.
[12] Ibid.
[13] Ibid.

the ST/SGB/1999/4. The Applicant has presented no basis for the Organization to discontinue the current salary deductions prior to final adjudication of the case on the merits.[14]

18. The Respondent

21. The Applicant has not demonstrated that the decision will cause him irreparable harm. It is generally accepted that mere economic loss does not satisfy the requirement of irreparable damage. Further, there is no merit in the Applicant's allegation that the decision would cause irreparable harm as the Organization could not recover the third-party deductions. The Respondent argues that should the Applicant prevail on the merits of this case, the Dispute Tribunal may award compensation that the Organization would be obligated to pay to the Applicant, regardless of its ability to recover the third party's deductions.

22. With regard to the Applicant's request for repayment of the deducted amount from his salary since 10 February 2021, the Respondent maintains that such a request is premature given that the Applicant has not 20216(n)19( )-90(t)-22(h)19(a)3(t)-22( )-70(t)-22(h)1nature

court order, and defines it to mean one that has "become executable". In the present case, the title relied upon by the Respondent in the issuance of the impugned decision is the Judgment of Miami-Dade County Court. The primary question for the matter at hand is whether this Judgment constituted a final, alternatively-non-final but executable, order in the sense of ST/SGB/1999/4, section 2.3.

26. The Tribunal finds no indication that the Judgment of Miami-Dade County Court was executable upon issuance, neither does the issue seem to have been investigated by the administration in the proceedings leading to the impugned decision. Rather, all pertinent documents focus on the finality, apparently presumed from the title 'Final judgment of dissolution of marriage'. The Tribunal considers that the title should not have been relied upon. It posits that, at minimum, an issue whether a divorce and derivative orders on division of property, alimony, child custody and child support may be at all pronounced without a right of appeal warranted a reflection – indeed displayed by the UNSOS Chief Legal Officer. Moreover, a basic internet search provides information that in the Florida legal system the expression 'final order' denotes appealable decisions.[17] Furthermore, in the application on the merits, at the latest, the Applicant informed of the fact that he had filed an appeal.

27. Turning to the new fact of the matter, that is the issuance of the appellate judgment by the Third District Court of Appeal of the State of Florida, the Tribunal does not find any indication of it being limited to a divorce decision only. The orders of the Judgment of Miami-Dade County Court on child support were issued in the regime of a divorce case, where the County Court assumed to have jurisdiction. It is noted that the appellate court reversed and remanded the "final judgment of dissolution of marriage" for the question of jurisdiction, citing, among other, that "A judgment entered by a court which lacks subject matter jurisdiction is void…" It also noted that it did not address Armand's remaining arguments on appeal as they are were not

[17] E.g., https://rules.floridaappellate.com/rule-9-030/

necessary to the resolution of this case.[18] Finally, it was alive of child support issues, citing that "If a question of existence or exercise of jurisdiction […] is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously." The Respondent's narrowing "interpretation" of the Judgement of the Third District Court of Appeal is lacking basis.

28. Regarding the Respondent contention that the Third District Court of Appeal only "proposed" to reverse and remand, while in itself was not final, the Tribunal finds that the discussion about the finality of the appellate judgment does not remove a doubt about initial executability of the 'Final judgment of dissolution of marriage'. Be it as it may, of note is the most recent filing by the Applicant, which documents that a motion by the Applicant's (former) wife ("the appellee") was refused. The aspect of the finality of the appellate judgment is now clarified. Whatever had been taken as premise for accepting that the Judgment of the Miami-Dade County Court was executable, it is not anymore.

29. The Respondent's argument that the remand of the Miami0 0.0 0.0 rg 0.9981 0.0 0.0 1.0 398.64 4

examination of the text of the law of Cameroon which had been put before the Tribunal, and where there was no dispute about existence of subject matter jurisdiction. It cannot be *verbatim* transferred to the present context. Whereas the general rule of interpretation consistent with the interest of the child is teleologically valid here as well, the goal might be possibly achieved within the proceedings after remand, as noted in the appellate judgment ("If a question of existence or exercise of jurisdiction […] is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously". There is no basis to presume a revival of a temporary order from three years ago.

31. However, the impugned decision has as the executive title the Judgment of the Miami-Dade County Court. Should the Secretary-General grant authorization to proceed with child deductions upon a different title, this would require an amendment to the decision in both the formal and substantive aspect, the latter necessarily examining the enforceability and the extent of obligation stated in the order (significantly lower than presently executed by the Respondent). Presently, the Respondent does not make any such showing.

32. In conclusion, the impugned decision is *prima facie* unlawful.

33. Once on *Kuate*, however, the Tribunal wishes to recall its general observations stated therein, which show to be fully relevant to this case as well. The Tribunal, first, observes that the Respondent's first duty as employer is to pay the staff members their salary and entitlements in return for the work rendered. It is not a primary role of the Respondent to execute family support orders, as is expressed by the controlling legal act, ST/SGB/1999/4 (Maintenance, education and other support obligations of officials), whose section 2 establishes authorizing deductions as discretionary. This reflects the fact that making relevant determinations on the interface of municipal private law, in which the Organization has no expertise, may prove overly cumbersome and time-consuming, and still be erroneous in the end. It follows that a decision to

authorize deductions must be based on a court order that is unequivocal. This, in the present case, is not present.

34. Second observation is that it is the municipal law that controls the family status of a staff member and finality or executability of court orders in the context of ST/SGB/1999/4 and ST/AI/2009/1 (Recovery of overpayments made to staff members). In the event where the Organization chooses to define the meaning of any such elements specifically for the purpose of its own operations, such definition must be express, as in section 2.3 of ST/SGB/1999/4. Still, the ultimate plane of reference in establishing in casu whether a definition from section 2.3 of ST/SGB/1999/4 or section 1.7 of ST/AI/2009/1 is met, remains the municipal law. Therefore, deference is owed to it where the Organization purports to deplete a staff member's salary in execution of municipal court orders. At the outset, the persons concerned, and especially the one requesting deductions, should be obligated37(o)-20((t)-22(h)19(e)( )-19(e)( )-19(e)( )-19(

phrased identically as section 2.3. The example of mechanistic, unfavorable interpretation in this case is the Respondent's insistence that the

(Signed)
Judge Agnieszka Klonowiecka-Milart
Dated this 30th day of April 2021

Entered in the Register on this 30th day of April 2021

(Signed)
Abena Kwakye-Berko