



Judgment No. 2022-UNAT-1205

Before: Judge Sabine Knierim, Presiding
Judge Dimitrios Raikos
Judge Martha Halfeld

Case No.: 2021-1554

Date: 18 March 2022

Registrar: Weicheng Lin

Counsel for Appellant: Jean-Jacques Kouembeu Tagne

Counsel for Respondent: Angélique Trouche

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Mr. Jean-Roger Kuate, a Conduct and Discipline Officer at the P-3 level, working with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) contested the decision to make deductions from his salary to be paid to his wife to satisfy child support .9 (i)2.5(O))TJ.3 (e)-24 (a)7 (r(l)17.3gU)-9.8a(s)-0. (o)-1.4 (n)1 (d)-112.9 s(o)-1.4n

6. On 6 June 2017, Mr. Kuate received a letter from MONUSCO, Chief Human Resources Officer (CHRO) reminding him of his responsibility to provide child support in the ordered amount and requested him to immediately comply with the court order of 14 August 2015. By the same letter, the CHRO indicated that within 30 calendar days, Mr. Kuate was to provide the Organization with proof that he was paying the child support as per the Court's order; that he had amicably resolved the matter with the mother of the children; or the court order in question had been set aside, vacated or stayed by a competent court pending appeal. The CHRO also reminded Mr. Kuate that should he fail to provide the evidence in the stated timeframe, the

parallel, Mr. Kuate sent an e-mail referencing his attorney's letter and objecting to the deductions from his

14. By Order No. 190 (NBI/2020), the UNDT requested from the Secretary-General clarification of the apparent contradiction between his communication of 18 September 2018 and

23. Mr. Kuate submits that the UNDT committed several errors of fact leading to a manifestly unreasonable decision:

- The UNDT erred in fact in failing to discuss Judgments Nos. 77 and 265 in its Judgment.
- The UNDT erred in fact by stating that Mr. Kuate abused proceedings by not providing material information in a timely manner.
- The UNDT erred in fact in finding that Mr. Kuate presented unfounded submissions.
- The UNDT did not fully draw conclusions from the provisional execution of Cameroonian court decisions.
- The UNDT erred in fact in failing to consider that Mr. Kuate had been ordered to pay CFA 1,500,000 in child support, from the date of the Judgment. The UNDT failed to consider that the Court had ordered prospective payment only, and it should not have found that he was making unfounded submissions.

24. Mr. Kuate challenges the findings of the UNDT on the non-receivability of his claims against the decision of 27 June 2018 on child support. He claims that the UNDT has failed to consider that Judgment No. 095/CIV annulled Judgment No. 730. The implementation of the decision should therefore not have started with the July 2018 payslip, but from the issuance of Judgment No. 095/CIV on 1 April 2019. The Secretary-General requires that in matters of child support, the executable decision must be final. In the case at bar, however, the UNDT implemented a provisional decision without immediate enforceability clause which was subject to appeal and which therefore had suspensive effect.

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It was not necessarily capricious or intended to cause harm to Mr. Kuate. Mr. Kuate has also failed to demonstrate why the Secretary-General should bear the costs of the proceedings and to identify which are such costs. Mr. Kuate does not show that the UNDT erred and his claim for damages and costs must be dismissed.

41. The Secretary-General requests that UNAT uphold the Judgment and dismiss the appeal.

Request for an oral hearing

42. Mr. Kuate requests an oral hearing. Oral hearings before the Appeals Tribunal are governed by Article 8(3) of the UNAT Statute which provides: “The judges assigned to a case will determine whether to hold oral proceedings”. Article 18(1) of its Rules of Procedure provides: “The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.”

43. In the present case the legal issues are clear and straightforward, and we do not find that an oral hearing would assist in the expeditious and fair disposal of the case. Mr. Kuate’s request is rejected.

Merits of the appeal

Deductions on account of child support (27 June 2018 decision)

44. The UNDT dismissed as not receivable Mr. Kuate’s application as far as it was directed against the 27 June 2018 decision on deductions for child support from July 2018 until the date of the application. The UNDT held that by e-mail dated 27 June 2018, Mr. Kuate had been notified of the approval of a deduction for child support from his salary. Also, the implementation of the deduction commenced with his July 2018 payslip. However, Mr. Kuate filed a request for management evaluation only on 22 November 2018 which is outside the statutory time limit of 60 days.

45. On appeal, Mr. Kuate does not at all challenge these findings of the UNDT. Instead, he submits that the 27 June 2018 decision was unlawful (for various reasons, inter alia violation of Secretary-General’s Bulletin ST/SGB/1999/4 (Family and child support obligations of staff members) and ST/AI/2000/12, nullification of Judgment No. 730 by Judgment No. 095/CIV).

8 September 2017, the same tribunal had pronounced the divorce and had awarded custody of the couple's four children to their mother.

53. Relying on Section 1.7 ST/AI/2011/5 and the order and judgment mentioned above, the UNDT found that the recovery decision was lawful as Mr. Kuate was not entitled to receive dependency benefit for two of his children effective 26 November 2015 and for any of his children effective 8 September 2017. The UNDT reasoned that Mr. Kuate and his wife had legally separated based on Order No. 791 dated 26j-1 -1.717 Td(s)2 c57-1 (and)-17.27.2 (1)-0 ln(9)e

56. Further, we find no fault in the UNDT's findings. ST/AI/2011/5 provides in relevant part:

1.6 When a staff member is married to, or has a child or children with, another staff member or a staff member of another organization of the United Nations common system, only one may claim dependency benefits for dependent children emanating from that relationship. The recipient of dependency benefits shall be the spouse having the higher salary level, unless the contract type is temporary. Either or both spouses may claim for a secondary dependant.

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reproduced in the decision taken) but repeated all orders taken by the first instance tribunal, namely to pronounce the divorce, to award custody of all four children to the mother and to order Mr. Kuate to pay child support to his ex-wife. While the appeals judgment does not expressly state that it has retroactive effect, it is evident that the appellate tribunal did not want to set aside or vacate the measures on custody and child support taken by the first instance tribunal. Otherwise, it would have ordered Mr. Kuate's ex-wife to pay back the child support she had received after the issuance of Judgment No. 730.

60. This understanding is in accord with Section 1.7 ST/AI/2011/5. The purpose of this provision is to ensure that in case of divorce or legal separation of two staff members, dependency benefits for their children are paid to the parent with whom the children are staying and who bears the costs for their living expenses. This is typically the parent who has legal custody of the children; therefore, Section 1.7 of ST/AI/2011/5 links the payment of dependency benefits to legal custody. Mr. Kuate's ex-wife, by order of Judgment No. 730, was awarded custody for all four children effective 8 September 2017. Such legal custody was exercised by Mr. Kuate's ex-wife until and beyond the issuance of Judgw(J)Tj-0.5.4 (8)48 (e)5TJO TJO Tc 0 Tc 0.048 Tww 0.2

63. On appeal, while Mr. Kuate requests USD 60,000 as compensation, he does not address the UNDT's reasoning and explain why it should be erroneous. The UNDT applied Article 10(5)(b) of its Statute which provides:

5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

64. The UNDT's finding, that Mr. Kuate did not present evidence for harm, as required by Article 10(5)(b) of the UNDT Statute, is not contested on appeal.

65. We note, further, that the only administrative decision on which a claim for compensation could be based is the 18 September 2018 decision which was found unlawful and rescinded by the UNDT. As the 24 September 2018 decision is lawful and other claims of Mr. Kuate are dismissed as not receivable, Mr. Kuate must present evidence not only that he suffered moral harm but that this harm was caused specifically by the 18 September 2018

18 September 2018 memorandum, did not repeat this decision on child support but only ordered recovery of overpaid dependency benefits and other related allowances. On inquiry of the UNDT by Order No. 190 (NBI/2020), the Secretary-General clarified that the 18 September 2018 communication had been issued in error. It was evident from that moment that the 18 September 2018 decision would not be implemented, and the UNDT rescinded this decision for clarity reasons only. As all other claims of Mr. Kuate's application were rejected by the UNDT, and this decision is affirmed by the Appeals Tribunal, there is no basis to award costs against the Secretary-General.

Other claims and submissions on appeal

Abuse of proceedings by Mr. Kuate

69. As to Mr. Kuate's submission that he did not abuse the proceedings we find this is legally irrelevant because no costs were awarded against him. The documents (annexes 3 and 3bis) he proffered for the first time on appeal are not admitted by the Appeals Tribunal.

Sick leave for adequate medical/psychological treatment

70. On appeal, Mr. Kuate requests to be awarded sick leave for adequate medical/psychological treatment. However, as this claim was not part of Mr. Kuate's request for management evaluation and of his application to the UNDT, the Appeals Tribunal has no authority to deal with it.

71. Mr. Kuate's appeal is dismissed and UNDT Judgment No. UNDT/2021/018 is affirmed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Sandhu, Presiding
Vancouver, Canada

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 26th day of April 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar