



Judgment No

Counsel for Mr. Sawenja: Self-represented

Counsel for Secretary-General: Maryam Kamali

6. On 13 April 2016, Mr. Sawenja resigned from UNDP Kenya.
7. Mr. Sawenja's ICA with UNOPS was subsequently renewed twice for a total of two years from 1 July 2016 through 30 June 2018.
8. Under cover of a letter dated 20 July 2017, the Deputy Director, OAI/UNDP, sent Mr. Sawenja two draft OAI investigation reports with related exhibits regarding the allegations of educational entitlements fraud and allegations of procurement fraud, and invited him for his comments. Mr. Sawenja provided his comments on 22 August 2017 and 15 September 2017.
9. In a memorandum dated 29 November 2017 to Mr. Sawenja, the Deputy Executive Director, UNOPS, referred to the conclusions in the two UNDP investigation reports that Mr. Sawenja had committed procurement fraud and forgery while in UNDP Kenya's employ. Noting that Mr. Sawenja had been involved in the procurement exercises for UNOPS' award of contracts to two of the vendors mentioned in the UNDP investigation reports, the Deputy Executive Director of UNOPS decided to place Mr. Sawenja on administrative leave with pay, as his conduct might pose a threat to the best interest of the Organization.
10. In a letter dated 14 March 2018, UNOPS charged Mr. Sawenja with committing procurement fraud, breaching conflict of interest rules, and committing entitlements fraud while he was employed by UNDP. UNOPS noted that the alleged misconduct had occurred while Mr. Sawenja worked for UNDP, but because he had subsequently moved to UNOPS, it was UNOPS' responsibility to conduct the disciplinary proceedings. On 11 April 2018, Mr. Sawenja submitted his response to the allegations of misconduct.
11. In a letter dated 26 March 2018, the Director, Legal Office, UNDP, informed Mr. Sawenja of the outcome of the review of the investigation into the allegations of fraud, misrepresentation, forgery and false certification against him. UNDP found that Mr. Sawenja had failed to maintain the standards of integrity required of him as a staff member in connection with seeking to receive the Educational Assistance Programme funds from UNDP by certifying that he had completed academic work that he knew was not his own. However, as he was no longer an UNDP staff member, Mr. Sawenja was not subject to disciplinary proceedings. Nonetheless, the Director advised Mr. Sawenja that UNDP would recommend a

recovery of USD 1,095.96 from him, which represented 50 per cent of his tuition fees for the fraudulently submitted dissertation subject.

12. By letter dated 4 May 2018, the UNOPS Deputy Executive Director informed Mr. Sawenja of the decision to terminate the ICA between UNOPS and him with immediate effect, given the serious nature of his misconduct, having considered, *inter alia*, his 14 years of service, the letters of recommendation and his performance evaluation, among other things.

13. On 31 July 2018, Ms. Sawenja filed with the Dispute Tribunal an application contesting two decisions: the termination by UNOPS of his ICA, and the “deduction of money” by UNDP. He did not request management evaluation of those two decisions.

14. In Judgment on Receivability No. UNDT/2019/082 issued on 13 May 2019, the Dispute Tribunal rejected Ms. Sawenja’s application as not receivable. Regarding UNOPS’ decision to terminate Mr. Sawenja’s ICA, the UNDT found that his application was not receivable, because he was an individual contractor, and not a staff member of UNOPS or any other entity of the Organization, and therefore had no *locus standi* before the Dispute Tribunal in relation to the termination decision. As for the decision to recover money from Mr. Sawenja, the Dispute Tribunal found that his application was also not receivable, because he, as a former UNDP staff member, had failed to request management evaluation of the contested decision, and the UNDT could not consider the

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(ii) *ratione materiae*, since he had not requested management evaluation of the decision to deduct money as a result of the investigation report by the UNDP.

Receivability *ratione personae* of the application (11/93/T/24) (E31.1158/02/74/01028/T/27) (ETD/11/03)

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Judgment

38. The appeal is dismissed and Judgment No. UNDT/2019/082 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of March 2020.