



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NARTEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Victor Rodriguez
James Ochieng Oduol
Miller Wanjala Bwire

Counsel for the Respondent:

Sarahi Lim Baró, ALS/OHRM

Introduction

1. This Application was filed on 26 November 2012. The Applicant contested primarily the decision by the United Nations Office at Nairobi (UNON) not to grant a lien on his post to enable him undertake a mission assignment to the African Union/United Nations Hybrid Operation in Darfur (“UNAMID”). It was

6. On 16 February 2010, the Tribunal issued Order No. 025 (NBI/2010) in response to a motion by Mr. Kasmani. The said Order was reaffirmed by the Tribunal's three-Judge panel on 26 April 2012 ordering that witnesses testifying

plus provision of replacement post or GTA funding to allow UNON to secure a temporary replacement.

11. The MINURSO offer had lapsed by then and no response was received from the mission.

12. The Applicant was informed on 5 March 2012 by Ms. Isabelle Kadjo, Human Resources Assistant at UNAMID, that he was under review for the position of Procurement Officer at the P-4 level. The formal offer was made to him by UNAMID on 30 March 2012.

13. On 30 March 2012, Mr. Tinkamanyire Mugisha, the Officer-In-Charge (OIC) Human Resources Section at UNAMID also sent a memo to the UNON Chief, Human Resources Management Services (HRMS), Mr. Suleiman Elmi, informing him that the Applicant had been selected “for reassignment on promotion to UNAMID as Procurement Officer.” The letter indicated that the offer was subject to receipt of medical clearance and Mr. Elmi’s confirmation of release of the staff member within 60 days of receipt of the request. The same memo was sent to the Applicant on the same date.

14. The Applicant then wrote to the UNON Chief, Administrative Staff Section, HRMS, Ms. Deborah Ernst, on 13 April 2012 requesting advice on the position of UNON in relation to the offer made by UNAMID and a clarification as to what return rights he would have after his Mission service.

15. Ms. Ernst responded on the same day stating that the Applicant’s move from UNON to UNAMID would be a ‘reassignment’ and not a ‘temporary assignment’ and therefore he could not maintain a lien on his post at UNON.

16. On 23 April 2012, Mr. Aggrey Kedogo, Chief Civilian Personnel Officer, (CCPO) UNAMID sent a letter to Mr. Elmi revising the offer to the Applicant. He indicated that the Applicant’s move to UNAMID would be on an “assignment with the Mission.”

17. In the same letter, Mr. Kedogo stated that the Applicant’s release from

“assignment” would only be extended for a maximum period of two years. UNAMID also requested confirmation that upon return from his Mission assignment, the Applicant would be reabsorbed into UNON service.

18. Mr. Elmi replied to UNAMID on 29 April 2012 stating that UNON would not release the Applicant on a temporary mission assignment. Part of his letter read:

Please note that UNON was prepared to release [the Applicant] on transfer basis in response to your request of 12 April. However, it seems that while the request was being discussed, UNAMID decided to send us another request asking for his release on mission assignment. We are unable to meet your second request of April 25 and release [the Applicant] on one year mission assignment to UNAMID.

19. On 30 April 2012, Ms. Kadjo, emailed Mr. Elmi indicating that the offer would be amended and sent back to him shortly. Subsequently, UNAMID submitted a third letter dated 2 May 2012 to UNON and to the Applicant stating that the Applicant’s movement would be a transfer for an indefinite period with

provision of testimony fall outside the scope of the Ethics Office's protection against retaliation mandate.

29. On 26 November 2012, the Applicant was selected to serve as Chief, Technical Service in the United Nations Integrated Peace building Office in the Central African Republic ("BINUCA") on a temporary assignment for a period of six months.

30. On the same day, he filed this Application in which, among other claims, he challenged UNON's earlier refusal to grant him a lien on his post when he was to undertake a mission assignment to UNAMID.

31. On 4 December 2012, UNON approved the Applicant's assignment to BINUCA and the placement of a lien against his post. The Applicant's assignment to BINUCA was to expire on 17 August 2013.

32. As at the date of the Application, the Applicant had been unable to transfer to UNAMID due to difficulties in obtaining a Sudanese visa.

33. On 2 April 2013, the Director-General, UNON, communicated to the Applicant her decision on his complaint of harassment submitted to her office on 6 September 2012. Based on the findings and conclusions of the Senior Legal Officer of the United Nations Environment Programme (UNEP), she concluded that no further action was required on the matter and that the matter was closed.

34. On 23 April 2013, UNAMID withdrew its offer of appointment to the Applicant "due to the long delay in approval of the Sudanese visa as well as the Mission's budget constraints."

Applicant's case

35. The Applicant's case as deduced from his pleadings and oral testimony is summarized below.

36. The retaliation, harassment and abuse of authority he suffered started in early 2008 when he refused to provide damaging information and/or testimony regarding a staff member in the Office of the Director-General.

37.

a. The statements made by Mr. Barabanov at a meeting on 12 February 2008, referring to the Applicant as a petulant child following his repeated requests to represent UNON at the annual Chief Procurement Officer (CPO) conference in New York. The Applicant's referral of the matter to the then Director-General of UNON, Ms. Anna Tibaijuka, was interpreted as an expression of disloyalty towards Mr. Barabanov.

b. The Applicant's reassignment from the Procurement Unit to the Finance Section in January 2010 even though he was not interested in the said re-assignment as it was not within his career path for advancement. This was done in a bid to 'punish' and 'banish him into exile.' This assignment which initially was to last for three months, kept on being extended and it was only after one year that he was granted permission to return to the Procurement Unit. This return to the Procurement Unit came only after he had written various letters requesting his return to his previous functions. As a result of this, he lost one year of procurement experience.

c. The inclusion into his Official Status File (OSF) in 2010 of negative correspondence from his former supervisor at the International Criminal Tribunal for Rwanda (ICTR) even before the matter could be verified or proved. Despite many requests, Mr. Elmi and HRMS refused to help the Applicant resolve the issue. Instead the correspondence was placed on his OSF.

d. Both Mr. Elmi and Ms. Vibeke Glavind, Chief, Support Services Section, UNON, had advised him to ignore the former supervisor's allegations stating that in so far as they were concerned, the matter was closed. It was therefore surprising that the matter was re-ignited in 2010 at a time when the Applicant was being considered for a permanent appointment.

e. The failure of Mr. Barabanov to act in time to release him for TDY to MINURSO in 2010 on the excuse that it had "slipped through the cracks" which caused him to miss that opportunity.

f. Directives given by Mr. Barabanov to prevent the Applicant from assuming responsibility as OIC on the departure of the then Chief Procurement Officer in May 2011; and in July 2011 when a junior P-2 Officer was appointed in his stead. On each of these occasions when the Applicant was to be appointed as OIC, the decision was overruled by Mr. Barabanov.

g. Further to this, the limitations imposed by the Chief of Procurement, Ms. Eckerstrom, as to the exercise of the Applicant's duties when acting as OIC in February 2012 left the Applicant in a role subordinate to a junior officer with much less experience.

41. The impugned decision when read along with all these other retaliatory actions taken against him commencing from when, at the instance of the Applicant, the former Director-General, UNON, overruled Mr. Barabanov's decision on attendance at the 2008 Procurement conference in New York and his testimony before the Tribunal in the *Kasmani* case in 2009 leaves no doubt of its abusive and retaliatory nature.

42.

45. The failure by UNON to give any reasons to UNAMID for the refusal to send him on “assignment” was in breach of the principle of procedural fairness.

46. The Applicant’s testimony before the Tribunal in *Kasmani* was no different from “reporting misconduct” or “having cooperated with a duly authorized audit or investigation” and therefore falls within the mandate of the Ethics Office as ordered by the Tribunal.

47. The Applicant prayed the Tribunal to order the following reliefs:

a. Rescission of the decision refusing to grant him a lien or a right to return to his duty station UNON.

b. That measures be taken to ensure that Mr. Barabanov refrains from

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that is consistently applied to all staff members, the Applicant cannot assert that he was discriminated against or treated differently from other staff members.

51. The Applicant did not have any legal expectancy or right to have a lien placed against his post while he proceeded on mission assignment.

52. None of the Applicant's rights had been violated by the failure to grant a lien on his post and neither did he establish a factual legal basis for any of his claims. In particular, the claims of harassment, abuse of authority and retaliation are irrelevant and without merit and should be dismissed.

53.

56. The findings made on the Applicant's complaints to the Director-General, UNON, disprove the claim that the lien was denied as part of a retaliatory pattern meted out against him by UNON Administration.

57. These findings further demonstrate that the Applicant's claims under ST/SGB/2008/5 (Prohibition of discrimination, harassment, and abuse of authority) are not receivable since any appeal alleging harassment or retaliation must be based on the Director-General's decision. The Applicant must first exhaust administrative remedies by requesting a management evaluation of the Director-General's decision but he has not done so and as such the Applicant's claims of retaliation and harassment are not properly before the Tribunal.

58. All the other claims are not receivable by reason of the fact that they were not submitted for Management Evaluation within the 60 day time limit. Having been filed after the statutory deadline, they are time barred. These are the claims regarding:

- a. an unsolicited extended assignment in the Finance Section in 2010,
- b. untimely response to the request for release of the Applicant to MINURSO in October 2010,
- c. decisions concerning non-appointment of the Applicant as OIC in July 2011,
- d. claims of the Applicant's authority as OIC being limited in February 2012; and
- e. the alleged placement of negative correspondence in his official status file in July 2010.

59. In view of the foregoing, the Respondent prayed the Tribunal to reject the Application.

his powers when subsequently appointed as OIC; (g) the entry into his file of the negative performance review from the ICTR are all time-barred and should be rejected by the Tribunal.

62. The Respondent submitted that the claims ought not to be considered because the Applicant did not request management evaluation for each of these as they arose; and in addition the Management Evaluation Unit (“MEU”) determined that these claims were not receivable as they were submitted outside of the 60-day statutory limit under staff rule 11.2(c).

63. Further to this, Counsel for the Respondent argued that the Application is now moot as the assignment opportunity with UNAMID had been withdrawn following the delay in the issuance of a Sudanese visa to the Applicant. It was the Respondent’s case that the question as to whether or not the refusal of a lien is unlawful has therefore ceased to be an issue as there is no position to grant a lien against following the said withdrawal of offer by UNAMID.

64. For his part, the Applicant contended that all his claims are receivable as they go towards establishing a pattern of prohibited conduct on the part of the Respondent’s agents and does not each constitute a separate application in and of itself. The conduct complained of spans a period of a number of years culminating in the management decision not to grant him a lien on his post at UNON upon the offer of a mission assignment to UNAMID.

65. It is clear from the Respondent’s arguments and submissions that his objection to the receivability of this case has at its core the failure of the Applicant to request management evaluation of each of his allegations within the prescribed time limit of sixty days.

66. In the case of *Costa* UNDT/2009/051, Shaw J. noted that the Statute of the Dispute Tribunal contains an express prohibition in relation to the variation of management evaluation deadlines by the Tribunal.

67. Much as a request for management evaluation is a *sine qua non* in most cases for bringing an Application to the Tribunal, it must be understood that its

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76. As observed by the Tribunal in *Porter*, “the principle of access to7(l)c16(t 37546tica)-4.77o16(t(5

retaliatory activities to thwart every move I make and to block every promotion and all aspects for advancement and career development which have come my way.

81. In his response to the Application, the Respondent made a blanket denial of any allegations of harassment, abuse of authority and retaliation. Further, Counsel for the Respondent submitted that the claims of prohibited conduct are not properly before the Tribunal as the Applicant failed to bring these claims before MEU and also failed to exhaust the administrative remedies available to him under ST/SGB/2008/5.

82. The Tribunal is of the view that it is unnecessary for a staff member to go

colleague in the Procurement Unit that at least one person from the Unit attend with Ms. Glavind was refused by Mr. Barabanov.

86. The Applicant said he followed up his request by appealing to the Chief of SSS to ask Mr. Barabanov to reconsider his decision not to send anyone from the Procurement Unit to the New York meeting. Ms. Glavind replied by email reminding him that Mr. Barabanov would be angry if the matter was raised again and would not change his earlier decision.

87. The Applicant then wrote to the then UNON Director-General, Ms. Tibajiuka, who went on to approve the attendance of one officer from the Procurement Unit as she felt it was the right thing to do since the procurement meeting in New York was geared towards operational not policy issues. Her intervention enabled the Applicant to attend the meeting in New York.

88. During a meeting held on 12 February 2008 between the Applicant, his other professional colleague in the Procurement Unit with Ms. Glavind and Mr. Barabanov to discuss UNON's representation at the up-coming meeting in New York, the latter told the Applicant and his colleague that their behaviour in appealing his decision to the Director-General UNON was like that of his three year old children while Ms. Glavind referred to it as evidence of their disloyalty.

89. The Applicant told the Tribunal that at a hearing in the case of *Kasmani* on 2 September 2009, he had testified as a witness for Mr. Kasmani. He had temporarily recruited Mr. Kasmani while he was OIC of the Procurement Unit and he believed that Management wanted Kasmani out in order to get back at him.

90. Following his testimony in the *Kasmani* case, the Applicant attended a

91. Mr. Barabanov also said that by testifying in the *Kasmani* case, the

97. The Applicant continued that in July 2010, he was contacted by Mr. Elmi, concerning an unsigned performance review received from his previous place of employment, the ICTR. It was his testimony that Mr. Elmi then told him that he

109. Ms. Eckerstrom, the Chief of the Procurement Unit and the Applicant's FRO, testified on 24 September 2013 for the Respondent. She stated that there was no need for the Applicant to serve as OIC before she arrived because she was already in Nairobi on 20 May 2011 which was the last day in office of her predecessor Ms. Mills-Aryee.

110. Still on the matter of appointment of OIC in her unit, the witness told the Tribunal that Mr. Barabanov told her in June not to make the Applicant OIC when she went on annual leave in July 2011 and rather proposed that she appoint a P2 officer who was junior to the Applicant as OIC. She agreed but asked Mr. Barabanov if he minded her telling the Applicant that it was his decision and he said he did not mind and so she told the Applicant about it when he asked.

111. In response to a question by the Tribunal, the witness said she did not seek Mr. Barabanov's views on who to make the OIC of her unit while on leave but that he merely instructed her on what to do, that she did not know why he gave the instruction and she did not ask him.

112. The witness testified also that she made the Applicant OIC on about six other occasions and that the only time she had put a limitation on his functions as OIC was when he was to hold the position for only two days and another junior officer was to continue for seven days. The limitation was directed at the other junior officer who would be there for a longer period.

113. With regard to the refusal to grant the Applicant a lien on his post on the offer of his temporary assignment to UNAMID in April 2012, she said she did not agree that the Applicant be given the lien he wanted because she was concerned about losing staff in the section.

114. The witness said that a temporary appointment which was what could be

120. With regard to the allegation that he had in 2010 placed an incomplete 2006 performance appraisal (“ePAS”) sent by the Applicant’s former FRO in ICTR on the Applicant’s file, the witness said he had no choice but to do so and that he had advised the Applicant that the proper thing to do was to initiate a rebuttal process if he was not happy with the ePAS.

121. Mr. Barabanov also testified for the Respondent. He denied the allegation that the decision not to grant the Applicant a lien on his post in UNON following the offer from UNAMID was based on bad faith and retaliation.

122. As to the allegation that he was intent on seeing the Applicant leave the Organization and had led a campaign of intrigues against him to that effect, the witness said it was not true. He added that in his position as DAS, he would not engage in such action with regard to a very junior member of staff. He also denied any knowledge of or involvement with the OIOS investigations against the Applicant.

123. When examined about the meeting he held with the Applicant and the then Chief of Procurement on 14 October 2009 following the Applicant’s testimony before the Tribunal in the *Kasmani* case at which he was alleged to have asked the Applicant to leave the Organization, he said that he did not threaten him but expressed serious concern about the Applicant’s insubordination because he did not follow the instructions of his supervisor. The witness said he had asked the

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ePASes made no mention of insubordination or immaturity, he said he was not looking at the Applicant's ePASes.

130. In answer to the question that in spite of claiming not to have any dealings with P3 level staff members, he had instructed Ms. Eckerstrom not to appoint the Applicant OIC; the witness admitted that he told Ms. Eckerstrom not to appoint the Applicant OIC. He added that in the past, the Applicant undermined his supervisors and bad-mouthed them to him. This led him to form the impression that the Applicant was immature and so he asked Ms. Eckerstrom not to leave him in charge of the section.

131. When the witness was asked if he knew that in spite of his objections to the Applicant attending the conference in New York in 2008, some of the Applicants recommendations at the said conference were adopted and became part of policies and processes to improve procurement in UNON; he replied that he was not aware of that and did not know if the Applicant represented UNON satisfactorily at the conference.

132. Still in cross-examination, Mr. Barabanov was asked whether at the time that the MINURSO request for the release of the Applicant on assignment was made, he had held the unflattering views of him and his answer was that he did.

133. The Tribunal asked Mr. Barabanov if he ever noted that the recruitment of Mr. Kasmani which he continually cited as the instance of the Applicant's insubordination, the Dispute Tribunal, the Appeals Tribunal and even the Management Evaluation Unit were all in agreement in the *Kasmani* case that the recruitment was not irregular. The witness replied that he was ignorant about the judgments of the Tribunals.

134. When the Tribunal asked him if apart from the recruitment of Mr. Kasmani which he believed amounted to insubordination, there were other instances to support his claim that the Applicant tteS (teS)59Sbjectionsectcast e psectascar3()

140. Article 17 of the Tribunal's Rules of Procedure provides that the parties to a case may call witnesses to testify. It goes without saying that the testimonies of witnesses are often crucial and critical to determining the justice of any case and as such witnesses are routinely offered protection by the court if they face any kinds of threats in any way.

141. It was observed in the Order of the Dispute Tribunal made on 16 February 2010 in respect of an *ex parte* application in *Kasmani*¹¹ that although the Statute and Rules of Procedure of the Dispute Tribunal are silent on the protective measures for witnesses testifying before it, art. 36 of the Rules gives the Tribunal the broad power to issue any order or give any direction that appears appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

142. The Tribunal ordered in respect of that *ex parte* application that witnesses testifying before it in the substantive application not be in any way subjected to intimidation, threats or retaliation within the Organization. In that Order, the Tribunal sent a clear message and affirmed the universal and fundamental principle that testifying before a Tribunal is indeed as protected an activity within the Organization as those provided for in ST/SGB/2005/21.

143. In determining whether the Applicant's claim that he was a victim of prohibited conduct and retaliation at UNON in a campaign led by Mr. Barabanov is established; the Tribunal will examine whether there were any actions, inactions utterances and/or *series of incidents* which point in that direction.

144. Firstly, there is the unrebutted evidence of the Applicant that on 12 February 2008 after Mr. Barabanov's refusal to allow the participation of a Procurement Officer from UNON at the Chief Procurement Officers conference in New York had been overruled by theu6

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Tribunal that he made the said directive. Mr. Barabanov's directive to the new Chief of Unit who did not ask his views on the subject was harassing and also constituted abuse of authority in respect of the Applicant as it could only serve to

Whether in regard to UNAMID's revised offer to the Applicant on 23 April 2012 for mission assignment UNON abused its authority in refusing to release the Applicant and grant him a lien on his post? Did the fact of the withdrawal of UNAMID's offer due to the non-grant of a Sudanese visa to the Applicant render the Application moot or an academic issue?

153. It was the Applicant's case that UNON's decision not to grant him a lien on his post when he was offered a temporary mission assignment to UNAMID on 23 April 2012 was unlawful. He submitted that it was customary practice in UNON and in other United Nations organizations that a staff member taking up a

157. Four out of the Respondent's witnesses gave testimony touching on the refusal by UNON Administration to grant the Applicant a lien when he received the revised offer of assignment to UNAMID.

158. The Applicant's FRO, Ms. Eckerstrom, told the Tribunal that when the Applicant received the first offer from UNAMID, the Procurement Unit had staffing difficulties and that the Applicant was the only staff on a fixed term appointment. She said that she recommended to Mr. Barabanov on 12 April 2012 that the Applicant be granted a transfer with no return rights to his post.

159. With regard to the Applicant going to BINUCA, she said that he was released to BINUCA on a temporary basis. In answer to a question in cross-examination, she said that she was not fully in the picture as to how the BINUCA assignment request came or how it was approved. In answer to another question put by the Tribunal, she said that her views and recommendation were not sought when the Applicant was to go to BINUCA.

160. Mr. Elmi for his part told the Tribunal that in cases of mission assignment, it is temporary and the staff member is away for a short period and can hold a lien on his or her post. When the request from UNAMID came, it was passed on to Ms. Eckerstrom as the Applicant's FRO for her response. She refused the grant of a lien and her position was supported by Mr. Barabanov. He said that UNON agreed to the Applicant's temporary assignment to BINUCA but that he did not know why it was extended.

161. In answer to a question put to him by the Tribunal, the witness said that there is no policy but there is a practice at UNON for not releasing a staff member if a manager thinks it will affect the section adversely. The manager has discretion to refuse grant of a lien to a staff member proceeding on a mission assignment.

162. Ms. Ernst testified that when the UNAMID request came, the Applicant sought to maintain a lien on his post and that since it was a discretionary decision, it was unlikely that he would be released on an assignment. She said that UNON had approved several inter-organizational movements on secondment basis with return rights for up to a period of five years because it is likely that the seconded

staff members would find higher positions and not return. According to the

to be filled only through temporary recruitment of replacement staff, if necessary, or through temporary staff redeployment

discretion in the circumstances of the Applicant. Rather its case is that UNON had adopted a policy and practice which clearly is in total conflict with the Organization's policy!

178. The question that naturally follows from UNON's stated position here is

189. The Tribunal also directed the Registrar of the Nairobi Registry of the Dispute Tribunal to serve a copy of the Order on the Ethics Office and reminded the parties of the seriousness of the matter so that any breach of the Order by either of the parties or the Ethics Office may trigger the application of the accountability provision in article 10.8 of the Tribunal's Statute. The said Order was accordingly served on the Ethics Office.

190. On 3 August 2012, the Applicant submitted a "Report of Discrimination, harassment, Abuse of Authority and Retaliation by UNON" to the Ethics Office requesting that measures be taken to ensure that the Division of Administrative Services in UNON refrain from retaliatory, discriminatory and career-impeding actions against him. On 12 November 2012, Ms. Joan Elise Dubinsky, the Director of the Ethics Office responded to the Applicant's request. The relevant part of her response is reproduced below:

Regarding the issue of your 2 September 2009 testimony before the UNDT, the Ethics Office notes that, pursuant to Section 2 of Secretary-General's Bulletin ST/SGB/2005/21, the organization's protection against retaliation policy strictly applies to staff members who allege retaliation as a consequence of (a) having reported misconduct or (b) for having cooperated with a duly authorized audit or investigation. As testimony before the UNDT does not constitute a protected activity under ST/SGB/2005/21, retaliation allegations attributed to the provision of UNDT testimony fall outside of the scope of the Ethics Office protection against retaliation mandate.

Having administered ST/SGB/2005/21 since its entry into force in January 2006, the Ethics Office has identified procedural and substantive deficiencies with the Organization's protection against retaliation policy. In pursuit of making the policy more robust and effective, the Ethics Office will be initiating an expert review of the current programme. ST/SGB/2005/21 entered into force prior to the establishment of the UNDT. The issue of extending the policy's coverage to those who provide UNDT testimony, including identification of any required conditions to ensure conformity with whistleblower best practices, will be examined in the course of this expert review process.

191. While testifying before the Tribunal in this case, Ms. Dubinsky stated that following the relevant protection order made by the Dispute Tribunal in 2010 and reaffirmed by the Appeals Tribunal, the Ethics Office implemented the orders,

acting within the limited mandate of the office. The Office did so by ensuring that the Applicant received the appropriate advice and counsel to bring forward his concerns to the appropriate authority which is the head of office. She stated that it was the Ethics Office's understanding that the ultimate issue was whether the Applicant was subject to abuse of power which is a matter within ST/SGB/2008/5 and that the Ethics Office had not received a report from the Applicant on his concerns of discrimination, retaliation or abuse of office subsequent to making a complaint to his head of office.

192. The question of whether testifying before the Tribunal amounts to an "activity protected by the present policy" within the scope of section 1.4 of ST/SGB/2005/21 was canvassed in *Kasmani*.

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been entrusted in its Statute by the General Assembly. When faced with willful disobedience of its orders, the Tribunal must vindicate the integrity of its jurisdiction by exercising its necessarily inherent power.

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ST/SGB/2005/21 also entitles the Applicant to compensation for failure to accord him due process. The Tribunal finds the said disobedience to be so serious a matter as to warrant the attention of the Secretary-General and the case is accordingly referred to the Secretary-General under article 10.8 of the Statute of the Tribunal for the purpose of considering what action should be taken in respect of the conduct of the Director of the Ethics Office in disregarding the Tribunal's Order.

Conduct of Mr. Barabanov

198. The claims of prohibited conduct and retaliation made by the Applicant in this Application are largely based on the attitude, actions and conduct of UNON's Director of Administrative Services, Mr. Barabanov, towards the Applicant in the workplace and how he had used and influenced UNON management to act against the said Applicant over a period of about four years, 2008-2012.

199. Staff regulation 1.2 spells out the core values that every staff member of the United Nations Organization is expected to possess and exhibit as follows:

(a) Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them.

(b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work or status.

200. The fore-going core values are the principles on which the work of the Organization is based and must accordingly guide the actions and behaviour of its staff members. Additionally, staff members must possess certain core competencies.¹⁶ Those who are managers are required to among other

¹⁶ "United Nations Competencies for the Future," Booklet Code 99-93325-November-18M, Specialist Services Division, OHRM.

competencies, possess the attributes of leadership, empowering others, building trust and making good judgment.¹⁷

201. It is against this background that the Tribunal will briefly examine the un rebutted evidence of certain actions of Mr. Barabanov and other conduct which were either raised in this Application or which emerged in the course of the proceedings in this case.

202. At a meeting held between Mr. Barabanov, Ms. Glavind, the Applicant and his colleague on 12 February 2008 after the then UNON Director-General had overruled the DAS' decision not to allow a Procurement officer to attend the New York Chiefs of Procurement meeting; the Applicant and his colleague were told by the DAS that they had behaved like three year-old children by approaching the Director-General. This comment has already been found to be unprofessional, belittling and demeaning.

203. In spite of telling the Tribunal on more than two occasions in the course of his testimony that it was not his 'habit, nature or track record to engage in the harassment of very junior people', Mr. Barabanov had, during another meeting

preferred to cling to his own personal judgment than subscribe to any lessons to be learnt from the pronouncements of properly constituted courts.

205. The directive to a newly-recruited Ms. Eckerstrom in June 2011 not to appoint the Applicant as OIC of the Procurement unit when she was on leave, even when he was the most senior officer in the unit, was not only unduly meddlesome but also exhibited discrimination on the part of the DAS and lack of respect for the views of others. Far from being altruistic, he in fact used the occasion to impose his own biased judgment of the Applicant on the new Chief of Procurement who actually testified that she did not even ask Mr. Barabanov why he gave the directive before complying with it.

206. The DAS claimed that UNON administration led by him had adopted a non-documented policy to not approve any assignment to peace-keeping missions with lien on posts for staff members. This claimed policy of UNON was said to be implemented for years in spite of the Organization's clear policies embodied in administrative instructions requiring mobility of staff for career progression and prescribing mission assignment to gain experience and give service. The core

must build trust in the workplace by, among other things, providing an environment in which others can talk and act without fear of repercussion.²²

212. Unfortunately, the evidence shows that in February 2008, when the Applicant had appealed to the Chief of SSS, Ms. Glavind, to ask Mr. Barabanov to reconsider his decision not to send anyone from the Procurement unit to the New York meeting; she had warned the Applicant about incurring the anger of the DAS as follows:

[Mr. Barabanov] hates to repeat his decision – be prepared for
a) his anger, or b) him ignoring your e-mail.

213. Also, when Ms. Eckerstrom was instructed by the DAS not to make the Applicant, who was the most senior officer in her unit OIC whilst she was on leave, she carried out the instruction without asking him why. Clearly, this was not Mr. Barabanov's call to make considering that he was several levels senior to the Applicant and was not a reporting officer for him. It is difficult in the circumstances to conclude that the DAS provided a work environment in which those under him could talk or act without fear of repercussion.

214. Staff regulations 1.2(a) and (b) already reproduced above enjoin all staff members to uphold the highest standards of integrity. In other words, the Organization demands that its staff and especially managers act with fairness and impartiality and not bestride the workplace like giants in whose presence other staff members would cower. The DAS had testified that he had the final say with regard to such issues as the approval of mission assignment with lien for staff

Case No. UNDT/NBI/2012/062

Judgment No. UNDT/2014/051

Signed

Judge Nkemdilim Izuako

Dated this 14th day of May 2014

Entered in the Register on this 14th day of May 2014

Signed

Abena Kwakye-Berko, Registrar, Nairobi