
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/001/R1

Judgment No.: UNDT/2016/197

Date: 1 November 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KHISA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:

Terhemem Iber

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Alister Cumming, ALS/OHRM

Introduction and procedural history

1. The Applicant is a Protection Officer with the Child Protection Unit in Torit, one of the duty stations of the United Nations Mission in the Republic of South Sudan (UNMISS). She filed an Application with the Dispute Tribunal on 4 January 2012 contesting both the decision to evict her and her actual eviction on 11 November 2011 from residential accommodation provided her by the former United Nations Mission in Sudan (UNMIS) from which UNMISS inherited the said accommodation in July 2011.

2. On 11 March 2013, the Dispute Tribunal issued a Summary Judgment in favour of the Applicant.¹ The Respondent filed an appeal against the said Judgment. On 2 April 2014, the United Nations Appeals Tribunal (UNAT) vacated the Summary Judgment and remanded the case for retrial by a different Judge.²

3. The Tribunal held a case management discussion on 4 March 2015.

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14. On 19 October 2011, the affected national staff members were informed that due to an agreement between the South Sudan Ministry of Foreign Affairs (MoFA) and the DMS, they had until 10 November 2011 to vacate their various United Nations accommodations. On 31 October 2011, they wrote to the UNMISS Chief of Staff (CoS) and sought a reconsideration of the decision that they vacate their accommodation on 10 November 2011.

15. On 4 and 8 November 2011, they also wrote to the Management Evaluation Unit (MEU) requesting management evaluation of the decision by UNMISS that national staff vacate the UNMISS accommodation effective 10 November 2011. The MEU upheld the national staff members as such on 17 November 2011.

16. Early in the morning of 11 November 2011, the Applicant was forcefully evicted from her accommodation by a team made up of four male national staff members, one male international staff and one international female Volunteer. Her accommodation was locked and she was prevented access to her personal effects, money and office keys for a prolonged period of time. She reported the incident to UNMISS senior managers the same day.

17. By a memorandum dated 14 November 2011, the DMS reminded the Applicant of the previous notices to vacate her accommodation and informed her that 16 November 2011 would be the final deadline for implementation of the decision. She was informed that if she vacated the premises by 16 November, she would not incur the daily accommodation fee of USD82.00 per day.

18. In a response dated 17 November 2011, the Applicant protested against her the method of eviction. She complained about still being locked out of her accommodation with no access to her possessions and demanded an apology and

her locks would be changed on that day if she did not leave. A number of emails were exchanged between the Applicant and the DMS regarding her forced eviction until 1 December 2011. The Applicant also sent a written complaint of her eviction to the Senior Legal Officer at the Mission on 25 November 2011.

20. The summary of the Applicant's case is:
- a. Her redeployment in the first instance from her original place of recruitment (Juba) was against the rules.
 - b. Her eviction from a lawful tenancy was forceful, selective and prejudicial.
 - c. The increases in rent were oppressive, vindictive, arbitrary and unilateral.
 - d. The UNMISS staff trespassed on her person, property and premises.
 - e. Her human rights to fair hearing, human dignity, privacy and freedom from discrimination were violated.
 - f. Her eviction was a reckless violation of the core United Nations principle of gender sensitivity and was repugnant to natural justice, equity and good conscience.
 - g. In evicting her, the UNMISS Administration acted as a judge in its own cause.
21. The Applicant sought reliefs as follows:
- a. A declaration that the actions of the Respondent in forcefully evicting her from her lawful tenancy without due process are unlawful and therefore null and void.
 - b. A declaration that the arbitrary and unilateral increase in the rent of the tenancy by the Respondent in violation of all known parameters and procedures is oppressive, vindictive, unlawful and therefore null and void.

- c. A directive requiring the Respondent to restore the Applicant to her lawful tenancy unconditionally.
- d. An order of perpetual injunction restraining the Respondent by himself or acting through his servants, agents, privies, or assigns from forcefully evicting the Applicant from her lawful tenancy without due process.
- e. An order of perpetual injunction restraining the Respondent from arbitrarily and unilaterally increasing rent without recourse to the laid down parameters.
- f. An order for the Respondents to release the salary forthwith.
- g. The Tribunal to award the sum of USD 10,000,000 as damages.

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- a. The Respondent does not Thl050>20050004 0 1 171.3 TJ6

qualify for accommodation would be charged US\$5 per day which sum would be deducted from their monthly salaries.

29. A legal contractual relationship exists when one party agrees to give property owned by him or her (landlord/lessor) to another party (tenant/lessee). The contractual relationship guarantees the tenant/lessee the use of property owned by the landlord/lessor for a specified period or a period determinable at the will of either party in consideration of rent or other compensation. Such a legal contractual relationship may be in writing or implied.

30. While the Applicant has continuously referred to the existence of a tenancy between her and UNMIS in this case, the Respondent has stridently argued that there was no tenancy. With regard to the question as to whether a landlord/tenant relationship actually existed between the Applicant and UNMIS at any time, the simple answer is

recruitment or residence. The said allocation of accommodation to the Applicant had taken place before the new Mission, UNMISS, came into being.

34. It is clear from the records that the new Mission which had inherited the assets of UNMIS did not intend to continue with the policy of allocating accommodation to any national staff members. While in the process of liquidation, UNMIS gave written notices to the Applicant and other national staff occupying official accommodation in Torit to vacate the premises and return possession, ostensibly to make way for the new mission.

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accommodation. According to her pleadings, the eviction took place early in the morning of 11 November 2011. Six people (four male national officers, one male international staff and a female international volunteer at the Mission) had charged into her accommodation while she was ill on bed rest and half-clad.

36. They proceeded to push her out amid verbal abuses and then locked the door of her accommodation while she was only able to pick up a dress to cover herself. The intruders did not allow her to take personal effects such as hygiene accessories, clothes, money, office keys or any of her property. The Applicant was later assisted by another staff member who arranged and paid for hotel accommodation in town for her.

37. The Respondent does not deny the forced eviction of the Applicant. Rather the said Respondent pleaded in his Reply that on 11 November 2011, the Applicant

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pleaded further that he accepted that the Administration should not have removed the Applicant from the accommodation in the way that it did.

38. Even where a proper tenancy exists, a landlord can lawfully recover possession of his/her premises for good reason. But in seeking to recover

39. In the instant case, there is no doubt that at least three notices to vacate the official accommodation were given to the Applicant and other affected national staff members between 1 June and 10 October 2011. There were also correspondences from the Applicant and other affected staff members to the new UNMISS and a management evaluation request

Did the forced eviction occasion any injury to the Applicant or constitute a breach of her human rights?

44. It was argued on behalf of the Respondent that even though the forced eviction and the manner of the said eviction of the Applicant from UNMISS official accommodation on 11 November 2011 was wrong, the said Applicant is not entitled to any compensation. the Applicant did not provide evidence that she suffered moral injury or any long-term consequences arising from the incident of the forced eviction. According to Counsel, all that the Applicant suffered was some embarrassment arising from the manner of her forceful eviction.

45. The Applicant submitted on her part that the circumstances and manner of her forced eviction constituted trespass to her person and property and occasioned a breach of her human rights to privacy and dignity of the human person, among other human rights breaches.

46. The Tribunal has reviewed the circumstances and manner of the forced eviction of the Applicant which is admitted by the Respondent. It is shocking that it can be argued for the Secretary-General of the United Nations that a half-clad sick woman who is forcefully evicted by a group of six people in the early hours of the morning amid verbal abuses and not allowed to take her clothes and hygiene accessories suffered only some embarrassment. This argument in itself is not only a huge embarrassment to the Organization but is wholly irresponsible.

47. Even though this Tribunal has no criminal jurisdiction, it makes no hesitation in holding, considering the evidence before it that what happened to the Applicant in the process of her forced eviction by the agents of UNMISS in the morning of 11 November 2011 constituted not only human rights violations but also criminal and civil wrongs. The thug-like invasion by six strange people who amid verbal abuses physically pushed the sick and half-clad Applicant out of the accommodation in order to take possession of it amounted to criminal assault and battery. It constituted also the

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She also suffered assault and battery in circumstances so scandalous that they should never have happened under the watch of the UNMISS Administration. Due to the egregiousness of the violations, the Respondent is ordered to pay the Applicant three months net base salary, at the rate applicable when she was unlawfully evicted, as compensation.

54. This sum shall be paid within 60 days from the date the Judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

55. All other pleas are rejected.

(Signed)

Judge Nkemdilim Izuako

Dated this 1st day of November 2016

Entered in the Register on this 1st day of November 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi