



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2022-UNAT-1205

**Jean-Roger Kuate**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT**

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

Case No.: 2021-1554

Date: 18 March 2022

Registrar: Weicheng Lin

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Counsel for Appellant: Jean-Jacques Kouembeu Tagne

Counsel for Respondent: Angélique Trouche

**JUDGE SABINE KNIERIM, PRESIDING.**

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 obligations since November 2015 to present, as well as the decision to recover dependency allowance and other related entitlements made by the Organization. In Judgment No. UNDT/2021/018, the UNDT ordered rescission of a decision issued on 18 September 2018 for legal clarity but dismissed all other parts of the application.
2. Mr. Kuate has filed an appeal. For the reasons set out below, we dismiss the appeal and affirm the UNDT Judgment.

**Facts and Procedure**

3. Mr. Kuate joined the Organization on 16 February 2006 as a P-3 Training Officer. On 8 July 2014, he was appointed as a P-3 Conduct and Discipline Officer on a fixed-term appointment (FTA) with MONUSCO. On 14 September 2014, his spouse joined the United Nations as a staff member serving at the FS-4 level. The couple has four children.
4. On 6 March 2015, the *Tribunal de Grande Instance du Wouri* in Cameroon issued Civil Judgment No. 77 ordering Mr. Kuate to pay his spouse child support in the amount of Central African CFA Francs (CFA) 1,500,000 (approximately USD 2,700) monthly. On 28 April 2015, Mr. Kuate appealed Judgment No. 77 before the Littoral Court of Appeal in Cameroon. On 14 August 2015, by Judgment No. 265, the Court of Appeal dismissed Mr. Kuate's appeal. Mr. Kuate's wife requested MONUSCO to implement execution of the child support order.
5. While the child support proceedings were still in progress, on 7 May 2015, Mr. Kuate initiated divorce proceedings before the *Tribunal de Grande Instance du Wouri* in Cameroon. On 26 November 2015, the same *Tribunal* issued Order No. 791 authorizing the couple to live separately. The *Tribunal* also awarded custody of two children to each parent and ordered that each parent provide support for the two children in their care. The Order included an immediate enforceability clause (*par provision*). Mr. Kuate informed MONUSCO accordingly.

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 Organization would honour Judgment No. 265, including deductions from his emoluments.

7. On 10 July 2017, Mr. Kuate responded, stating that Judgment No. 77 was not executable because of the pendency of a divorce case that he had filed on 7 May 2015. He enclosed a memorandum from his attorney which set out that the child support order arising from Judgment No. 77 was not executable under Cameroonian law pending divorce proceedings, as the divorce court was the only one competent to decide such matters under the Cameroonian Law on Divorce Procedure, and the divorce court in Mr. Kuate's case decided by Order No. 791 that the custody of the children was to be divided between the parents, with no financial obligation between the parents. The attorney also indicated that under the laws of Cameroon, as well as regional regulations, in disputes like the present one, it was not permitted to seize salary.

8. On 8 September 2017, the *Tribunal de Grande Instance du Wouri* issued Judgment No. 730 in the divorce case. It awarded custody of the couple's four children to their mother and ordered Mr. Kuate to pay the amount of CFA 1500000 (an equivalent of approximately USD 2,700) monthly to his former spouse by way of child support. The judgment did not contain an immediate enforceability clause in its operative part. On 18 October 2017, Mr. Kuate appealed Judgment No. 730 before the Littoral Court of Appeal in Douala, Cameroon.

9. On 14 June 2018, the Under-Secretary General for Management (USG/DM) approved the ASG/OHRM's request to undertake salary deductions from Mr. Kuate. The approval pertained to the execution of Judgment No. 77. On 27 June 2018, the MONUSCO Human Resources Office informed Mr. Kuate by e-mail that the USG/DM had approved the decision to make deductions from his salary for the payment of child support obligations. On 5 July 2018, Mr. Kuate's attorney sent a reply to MONUSCO opposing the deductions and informing that the divorce judgment, including its dispositions on child support, had been appealed. As such, he argued, the judgment was not enforceable and there existed no valid title for the child support claim. In

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

10. Since the July 2018 payroll, the Organization has deducted approximately USD 2,700 monthly from Mr. Kuate's salary to satisfy his child support obligations and to pay to his former spouse.

11. On 18 September 2018, MONUSCO informed Mr. Kuate that it would recover all the dependency allowances and related entitlements, as well as undertake deductions on account of child support, with a retroactive effect as of the issuance of Order No. 791. By subsequent memorandum dated 24 September 2018, MONUSCO informed Mr. Kuate that the dependency allowance had been discontinued effective 26 November 2015 in respect of two of his daughters and effective 8 September 2017 in respect of his other two daughters; and his marital status had been changed in Umoja from married to divorced effective 8 September 2017. The memorandum continued that Mr. Kuate was liable to the recovery of USD 40,385.60 paid as dependency allowance and other related entitlements during the period from 26 November 2015 "to date" and provided specification of the amounts of recovery for each entitlement.

12. On 22 November 2018, Mr. Kuate requested management evaluation challenging the deductions from his salary for child support and the recovery of USD40,385.60 dependency allowance and related entitlements. The Management Evaluation Unit first informed him that management evaluation would be late because it required analysis of a large volume of documents and on 8 March 2019, i.e., over two months beyond the statutory deadline, it informed Mr. Kuate that his request was not receivable as it was time-barred. On 22 March 2019, Mr. Kuate filed an application to the UNDT challenging the deductions from his salary for child support and the recovery of dependency allowance and related entitlements.

13. By Order No. 179 (NBI/2020), issued on 16 September 2020, the UNDT directed Mr. Kuate to state the result of the appeal in Judgment No. 730 and to file a copy of the appellate judgment or any other court decision finally disposing of that case, which resulted in the submission of Judgment No. 095/CIV. In that judgment dated 1 April 2019, the Littoral Court of Appeal annulled Judgment No. 730 for its failure to adhere to the prescribed form. It did not remand the case for re-trial, but repeated the orders already contained in Judgment No. 730: it pronounced the divorce, awarded custody over the four children to the mother and ordered Mr. Kuate to pay child support.

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 the invoked basis for the deductions, that is Order No. 791, which had divided the custody over the children without attaching any financial obligations between the parents. In response, the Secretary-General admitted that the communication of 18 September 2018 had been issued in error; informed that the actual recoveries had been made in recognition of the fact that Order No. 791 had divided the custody over the children between the parents; and that deductions on account of child support had only begun prospectively as of July 2018.

15. By Order No. 230 (NBI/2020), the Dispute Tribunal requested information on what basis the Secretary-General accepted that Judgment No. 730 had been enforceable with respect to separation and child support obligations, despite the fact that it had been appealed and did not include an immediate enforceability clause. The Secretary-General explained that a query had been made with the Permanent Mission of Cameroon but remained unanswered, however, finality of Judgment No. 730 was not required to consider Mr. Kuate separated.

16. On 5 March 2021, the UNDT issued Judgment No. 2021/018. The UNDT firstly found not receivable the application as far as it was directed against the 27 June 2018 decision on deductions of child support from July 2018 until the date of the application, in the absence of a timely request for management evaluation. Also, it found not receivable the application against the 24 September 2018 decision insofar as Mr. Kuate's status in Umoja was changed from married to divorced on grounds that Mr. Kuate did not suffer any negative consequences from the disputed entry in Umoja. The UNDT found receivable the challenge of the memoranda of 18 and 24 September 2018.

17. The UNDT considered that with the issuance of Judgment No. 095/CIV by the Littoral Court of Appeal in Douala, Cameroon, pronouncing in a final manner the divorce and awarding the custody of all children to the mother, the remaining question was whether past deductions had been made based on executable court decisions. The UNDT found that an enforceable court decision, although not necessarily final, should be the basis to appreciate the custody and dependency of the children.

18. The UNDT found that an immediate enforceability clause was found in both Judgment No. 77 and Order No. 791; and that it could be inferred from Cameroonian law that Judgment No. 730 also provided for immediately enforceable measures, which remained in force until

Judgment No. 095/CIV. The UNDT concluded that between Order No. 791 and Judgment No. 730, Mr. Kuate had no child support obligation towards his wife, as he had the custody of two of their four children. With Judgment No. 730, his child support obligations returned to the arrangement similar to Judgment No. 77. This arrangement, following which Mr. Kuate had no dependents in the sense of Administrative Instruction ST/AI/2011/5 (Dependency status and dependency benefits) was ultimately confirmed by Judgment No. 095/CIV.

19. The UNDT found that the Administration mistakenly relied on Judgment No. 77 which was not relevant for child support deductions from July 2018 onward. The correct basis at the time was in fact Judgment No. 730 and subsequently Judgment No. 095/CIV. However, the UNDT concluded that in substance, the child support deductions conformed to amounts determined by the controlling judgments. Regarding the recoveries made, the UNDT found that the Secretary-General did not err in determining Mr. Kuate's dependency status by deriving consequences from Order No. 791, and, subsequently, from Judgment No. 730 as of the dates of the issuance. The UNDT concluded that the decision of 24 September 2018 in the matter of recoveries conformed to the controlling judgments.

20. The UNDT also found that the memorandum of 18 September 2018 fundamentally misconstrued the terms of Order No. 791 in determining retroactive deductions of child support for the period when they were not due, as well as incorrectly suggesting the recovery of the "entirety" of the dependency allowances. Considering that the Secretary-General had indicated during the proceedings before the UNDT that it was erroneous and had not been implemented, but that it had not been annulled, the UNDT decided to rescind that decision for legal certainty.

21. In the absence of demonstrated harm the UNDT did not award compensation. It also found no basis for awarding costs of proceedings.

22. On 4 May 2021, Mr. Kuate filed an appeal of the Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). On 12 July 2021, the Secretary-General filed his answer.

## Submissions

### Mr. Kuate's Appeal

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.

25. Mr. Kuate argues that the UNDT committed several errors in law; in particular, Mr. Kuate's right to be heard was violated. Judgments Nos. 77 and 265 were not discussed at a hearing. Moreover, Mr. Kuate only discovered in the UNDT Judgment that his former wife had asked MONUSCO to execute the child support order without him having seen her request.

26. Mr. Kuate further claims that the Judgment is “unfair”, because it does not correctly reflect the Cameroonian court decisions.

27. Mr. Kuate contends that his right to salary was violated because child support could not be deducted from his salary based on Judgment No. 77, when Order No. 791 later decided that he had no child support obligations.

28. Mr. Kuate claims that there was no basis until 1 April 2019, date of the final divorce decision, for the recovery of various allowances. He argues that the Cameroonian judgments were not final until that date.

29. Mr. Kuate argues that the UNDT should have drawn consequences from its findings that the Secretary-General’s memorandum of 18 September 2018 was “capricious”. He also claims the costs of proceedings.

30. Mr. Kuate requests that:

- UNAT grant his appeal and vacate the UNDT Judgment;
- Find that Mr. Kuate did not abuse the proceedings or present unfounded submissions;
- Find that his right to be heard was violated;
- Find that the Secretary-General abused the proceedings;
- Find that the Secretary-General chose to implement Judgment No. 77, Order No. 791, and Judgment No. 730, the latter having no immediate enforceability clause;
- Find that Judgment No. 095/CIV annulled Judgment No. 730, and consequently Judgment No. 77 and Order No. 791;
- Find that the divorce became effective 1 April 2019 and that the implementation of the decision should have started 1 April 2019 and not with the July 2018 payslip;
- Find that there was a violation of ST/SGB/1999/4 and ST/AI/2000/12 (Private legal obligations of staff members);
- Find that there was a violation of national law;

- Order compensation in the amount of USD 40,385 (representing the amounts withheld since 1 July 2018);
- Find that Mr. Kuate had custody of his children until 1 April 2019;
- Find that he retained the status of being married until 1 April 2019;
- Award him USD 60,000 in damages;
- Find that Mr. Kuate should be awarded sick leave for adequate medical/psychological treatment; and
- Award “exceptional costs” for the proceedings before both the UNDT and UNAT.

### **The Secretary-General’s Answer**

31. Mr. Kuate has failed to demonstrate that the UNDT erred on receivability. While he seems to challenge the non-receivability of his claims against the decision of 27 June 2018 on child support, his arguments focus on the merits of whether deductions should have been made from his salary. As explained before the UNDT, Mr. Kuate did not seek management evaluation within 60 days of the decision of 27 June 2018. He requested management evaluation on 22 November 2018. The UNDT noted that this decision was immediately implemented on the July 2018 payslip. As a result, the UNDT correctly concluded that the claims against the decision of 27 June 2018 were not receivable.

32. Mr. Kuate has failed to demonstrate that the UNDT erred in fact. Mr. Kuate claims that the UNDT erred in fact concerning Judgment No. 77 and Judgment No. 265. He however has not identified any error in the UNDT’s findings, identified contrary evidence or showed that the UNDT’s findings were unreasonable. In fact, the UNDT hardly relied on these judgments, since the case was taken over by Order No. 791, Judgment No. 730 and Judgment No. 095/CIV. Mr. Kuate’s argument is therefore unsupported and must be dismissed.

33. As to Mr. Kuate’s claim that the UNDT also erred in fact by stating that he abused proceedings by not providing material information in a timely manner and that he presented outright unfounded submissions, a review of the record of the case reveals that Mr. Kuate only provided information on Judgment No. 095/CIV in September 2020, nearly one and a half years after its issuance and only following Order No. 179 (NBI/2020). MONUSCO had asked

about the status of this appeal on 24 April 2019, but Mr. Kuate did not answer. Also, while Mr. Kuate argues that he could not provide information about the appeal against Order No. 791 as the matter was still pending, he failed to present any element on a possible appeal, despite Order No. 230 (NBI/2020) directing him to do so. Mr. Kuate now presents new documents in Annexes 3 and 3bis to the appeal. These documents were not filed before the UNDT while they were available. The new evidence must therefore be rejected as not receivable.

34. As to Mr. Kuate's contention that the UNDT did not fully draw conclusions from the provisional execution of Cameroonian court decisions, he has failed to demonstrate how his argument is relevant to the instant case. The UNDT covered the matter of provisional execution by finding that the formal nullification of Judgment No. 730 did not affect the provisional measures in force until the issuance of that judgment. The UNDT based this finding on the jurisprudence cited in the commentary to the Cameroonian civil code. Mr. Kuate has failed to show that the Cameroonian case law referred to by the UNDT was inapplicable and that the UNDT misconstrued the effect of provisional execution in Cameroonian law. As a result, his claim is unsupported and must be dismissed.

35. Mr. Kuate's claim that the UNDT should have taken into consideration that Judgment No. 095/CIV was not retroactive when it sentenced him to CFA 1,500,000 in child support, is unclear since the UNDT never considered that Judgment No. 095/CIV was retroactive. This unclear argument can only be rejected. Based on the above, Mr. Kuate has failed to demonstrate that the UNDT erred in fact, leading to a manifestly unreasonable decision.

36. Furthermore, Mr. Kuate has failed to demonstrate that the UNDT erred in law. While he argues that Judgment No. 77 and Judgment No. 265 were not discussed at the hearing, he has failed to point out which elements of these judgments should have been discussed and how such a discussion would have influenced the outcome of the case. Moreover, there was no hearing before the UNDT, only a case management discussion. Mr. Kuate does not claim that he requested a hearing. Mr. Kuate also claims that his wife's request that MONUSCO "execute" the child support order was not communicated to him. However, the request of his wife for MONUSCO's assistance in the execution of the Cameroonian court decisions was communicated at an early stage to Mr. Kuate by e-mail. This claim must also be dismissed.

37. Contrary to Mr. Kuate's argument that the Judgment is "unfair" because it does not correctly reflect the Cameroonian court decisions, the UNDT did note that Judgment No. 095/CIV annulled Judgment No. 730 for its failure to adhere to the prescribed form. However, Judgment No. 095/CIV did not "remand the case for re-trial but ruled afresh on the matters under dispute" and came to the same conclusions on custody and child support as Judgment No. 730. While Mr. Kuate claims that his status as divorcee is "inconsistent", he does not present any argument to further this claim. His arguments on the alleged unfairness of the Judgment are unsupported and must be dismissed.

38. Moreover, contrary to Mr. Kuate's argument that his right to salary was violated because child support could not be deducted from his salary based on Judgment No. 77, when Order No. 791 later decided that Mr. Kuate had no child support obligations, the UNDT found that Order No. 791 had indeed modified the child support obligations resulting from Judgment No. 77. The UNDT pointed out that the applicability of Judgment No. 77 did not arise in the instant case; that the child support deductions decided in June 2018 should have been based on Judgment No. 730 rather than Judgment No. 77, but that the child support deductions were still in line with the Cameroonian judgments. In fact, Judgment No. 77 and Judgment No. 730 came to the same conclusions on custody and child support. Mr. Kuate's contention must therefore be rejected.

39. Mr. Kuate's claim that the recovery of allowances was incorrect must be dismissed. In particular, Mr. Kuate has failed to show that the UNDT misconstrued the Cameroonian judgments and erred in applying ST/SGB/1999/4 and ST/AI/2011/5. The UNDT found that the Administration was correct to base its allowances recovery on Order No. 791, and later Judgment No. 730, which both were immediately enforceable. This is in line with UNAT's case law, which requires the UNDT to consider national judicial decisions which are immediately enforceable, even if they are subject to appeal.

40. Mr. Kuate has failed to demonstrate that the UNDT erred by not awarding damages and costs. The Appellant argues that the UNDT should have drawn consequences from its findings that the Secretary-General's memorandum of 18 September 2018 was "capricious" and also claims the costs of proceedings. The UNDT saw no ground for awarding compensation, in particular considering Mr. Kuate's abuse of proceedings. Further, Mr. Kuate does not present evidence of harm linked to the decisions of the Administration, as rightly noted by the UNDT. In fact, while the memorandum of 18 September 2018 was sent in error, it was never implemented.

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.

### **Considerations**

#### *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).

However, the lawfulness of an administrative decision will not be reviewed by the Tribunals if the application is not receivable.

46. Mr. Kuate has not shown, nor can we see, that the UNDT's findings on receivability were erroneous. It follows that his appeal, in this respect, must fail.

*Change of the Appellant's status in Umoja from "married" to "divorced"*

47. The UNDT dismissed as not receivable the application with respect to its challenge of the 24 September 2018 memorandum informing Mr. Kuate that his status in Umoja had been altered from "married" to "divorced". The UNDT noted that a staff member may only appeal when an incorrect entry causes concrete negative consequences for the terms of appointment or contract of employment; and in the present case, Mr. Kuate did not suffer any negative consequences from the disputed entry in Umoja.

48. Mr. Kuate does not challenge this finding on appeal but submits that the alteration was unlawful because he was only divorced on 1 July 2019 with the issuance of Appeals Judgment No. 095/CIV.

49. As stated above, receivability of an application is essential for a Tribunal's authority to review the merits of the case. The UNDT may and will not review the merits of the case if the application is not receivable.

50. Mr. Kuate has not shown, nor can we see, that the UNDT's findings on receivability were erroneous. It follows that his appeal, in this respect, also remains without success.

*Recovery of dependency allowances and related entitlements (24 September 2018 decision)*

51. By memorandum dated 24 September 2018, MONUSCO discontinued Mr. Kuate's dependency allowance in respect of two children effective 26 November 2015 and in respect of the two remaining children effective 8 September 2017, and recovered the accrued overpayment in the amount of USD 40,385.60.

52. By Order No. 791 dated 26 November 2015, the *Tribunal de Grande Instance du Wouri* in Cameroon had authorized Mr. Kuate and his wife to live separately and had divided the legal custody for the four children equally between the parents. By Judgment No. 730 dated

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 26 November 2015. While this order granted him legal custody for (only) two of his children, Judgment No. 730 conferred legal custody for all four children to the mother. As Order No. 791 contained an immediate enforceability clause, the UNDT found that it modified previous arrangements resulting from Judgment No. 77 with immediate effect. While Judgment No. 730 did not contain an enforceability clause, the UNDT found that the *Tribunal de Grande Instance du Wouri* had power to issue provisional orders based on Articles 238 and 240 of the Civil Code of Cameroon, and that such provisional measures stayed in force until otherwise decided by the court before which the case was pending. Particularly, any appeals filed against Order No. 791 and subsequently, Judgment No. 730, did not have any suspensive effect as this would belie the notion and purpose of provisional measures and immediate enforceability. The UNDT further noted that on the ground of the Civil Code of Cameroon, revoking alimony obligations by the appellate court did not affect the validity of provisional measures thus far applicable. Accordingly, the UNDT held that the formal nullification of Judgment No. 730 did not affect the provisional measures that were in force until the issuance of the appellate judgment.

54. On appeal, Mr. Kuate contends that there was no basis until 1 April 2019, date of the final divorce decision, for the recovery of the allowances. He argues that the Cameroonian judgments were not final until that date.

55. This is not sufficient to put the UNDT's finding into doubt. Mr. Kuate does not at all deal with the thorough reasoning of the UNDT which examined Order No. 791 and Judgment No. 730 and found that the measures of legal custody taken in those decisions stayed in force during the appeals process and were not affected by the formal nullification of Judgment No. 730 (by Judgment No. 095/CIV). For this reason alone, Mr. Kuate's appeal must fail.

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.

1.7 When a staff member is divorced or legally separated from another staff member, the determination of who will receive the dependency benefit for the child(ren) will be based on which of the staff members has legal custody of the child(ren).

57. Order No. 791 contained an enforceability clause. It follows that the measures provided in that order went into force with immediate effect. Consequently, Mr. Kuate and his wife legally separated on 26 November 2015 when the order was issued. Also, on the basis of this order, from this day on Mr. Kuate had legal custody for (only) two of his children. Accordingly, Mr. Kuate, under Section 1.7 ST/AI/2011/5, was only entitled to receive dependency benefits for the two children for whom he had legal custody while his wife was entitled to receive dependency benefits for the other two children for whom she had legal custody. It is not disputed that Mr. Kuate, after 26 November 2015, received dependency benefits for all four children and was thus overpaid; the dependency benefits for two of the children rightfully belonged to his wife under Section 1.7 of ST/AI/2011/5 because she was legally separated from Mr. Kuate and had the legal custody for those two children.

58. Mr. Kuate's allegation that the UNDT should have held an oral hearing and considered and discussed Judgment No. 77 dated 6 March 2015 and Judgment No. 265 dated 14 August 2015 is misplaced. Mr. Kuate does not show, and we cannot see, how these judgments would ameliorate Mr. Kuate's legal situation. Judgment No. 77 awarded custody of all four children to the mother, and Judgment No. 265 dismissed Mr. Kuate's appeal against Judgment No. 77.

59. As for the decision to award legal custody for all four children to the mother by Judgment No. 730 dated 8 September 2017, we agree with the UNDT that the formal nullification of this judgment by Judgment No. 095/CIV did not affect the order on legal custody which was in force until the issuance of the appellate judgment on 1 April 2019. Judgment No. 095/CIV nullified Judgment No. 730 for formal reasons only (because the brief initiating the proceedings was not

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 Judgment No. 095/CIV on 1 April 2019.

61. We note, further, that in cases like the present, it is the task of the Administration to decide to which parent dependency benefits will be paid. This decision can only be taken on the basis of court decisions which are already issued at that moment. In other words: When MONUSCO, in September 2018, had to decide whether and since when Mr. Kuate and his wife had been legally separated and who had legal custody of the children, it could only base its decision on the court orders which had been issued at the time. As Judgment No. 730 had awarded custody for all four children to the mother on 8 September 2017, and she exercised her custody on the basis of this judgment from that moment on, it was her who was entitled to receive the dependency benefits under Section 1.7 of ST/AI/2011/5 and not Mr. Kuate.

#### *Request for compensation*

62. The UNDT rejected Mr. Kuate's claim for compensation stating that he did not suffer financial harm and there was no ground for awarding compensation for moral harm even considering the illegality of the decision of 18 September 2018. Mr. Kuate did not present evidence of harm stemming from any particular decision; rather, the documents presented by him pertained to problems caused by the divorce proceedings.

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 decision. This was not done by Mr. Kuate.

#### *Costs*

66. Mr. Kuate requests that costs be awarded against the Secretary-General.

67. The UNDT found "abuse of proceedings in the Respondent's capricious act which was the memorandum of 18 September 2018" but also considered that "the Applicant abused proceedings by not providing material information timely and making outright unfounded submissions".<sup>1</sup> Therefore, the UNDT found no basis for awarding costs of proceedings.

68. While we agree with the UNDT's result that there was no basis for awarding costs of proceedings (against the Secretary-General) we find that the Secretary-General did not abuse the proceedings and therefore, costs cannot be awarded against him. It is not disputed that the 18 September 2018 decision was unlawful with regard to the recovery of child support obligations. However, the 24 September 2018 memorandum, while referring to the

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<sup>1</sup> Impugned Judgment, para. 62.

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.

**Judgment**

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

Original and Authoritative Version: English

Dated this 18<sup>th</sup> 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 26<sup>th</sup> day of April 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar