



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

Judgment No. 2022-UNAT-1301

**Koffi Gilles Wilfried Amani
(Appellant and Respondent on Cross Appeal)**

v.

**Secretary-General of the United Nations
(Respondent and Appellant on Cross-Appeal)**

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2021-1653
Date of Decision:	28 October 2022
Date of Publication:	23 December 2022
Registrar:	Juliet Johnson

Counsel for Mr. Amani:	Ericson Hermann Dirabou
Counsel for the Secretary-General:	Amanda Stoltz

JUDGE MARTHA HALFELD, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Koffi Gilles Wilfried Amani contested the decision to separate him from service on disciplinary grounds with compensation in lieu of notice and 25 per cent of the termination indemnity that would ordinarily be due to him. His purported misconduct took the form of (1) violating local laws relating to fraud by accepting payment from two Ivorian nationals in exchange for fake passports and (2) knowingly submitting false information on his Personal History Profile (PHP) that he had never been indicted, fined or imprisoned for an offence other than a traffic violation.
2. In Judgment No. UNDT/2021/137 (the impugned Judgment) of 23 November 2021, the UNDT dismissed Mr. Amani's application.
3. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an appeal of the Impugned Judgment submitted by Mr. Amani and a cross-appeal submitted by the Secretary-General.
4. For the reasons below, we dismiss the appeal and the cross-appeal.

Facts and Procedure

5. Mr. Amani was an engineer at the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). He held a fixed-term appointment at the P-3 level, and was based in Bamako, Mali, having previously served with the Organization in Côte d'Ivoire in 2006 – 2008.
6. The following summary of relevant facts is taken from the impugned Judgment¹:

... According to the Applicant, in 2007 he was informed by a friend about opportunities for Ivorians to migrate to Belgium with residency status and work permits. In his OIOS interview the Applicant said that these arrangements were through the Belgian Embassy. In the instant application, he said that the opportunity was to be arranged by a law firm that specialized in Immigration. The law firm was not named.

¹ *Amani v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/137, paras. 28-55 (footnotes omitted).

... At the oral hearing, the Applicant was cross-examined about this inconsistency as to whether it was the Belgian Embassy or an immigration law firm making the arrangements. He responded that during his OIOS interview he may have forgotten some aspects of the process. These events happened years before the interview, and when being interviewed he had not yet returned to Ivory Coast. He later returned, checked documents, and spoke to people who clarified things. Hence the new information about an immigration law firm that appeared in his application.

... The Applicant, who then worked at UNOCI, was approached in 2007 by two Ivorian nationals; Mr. TA [“the Complainant”] and Mr. AB whose travel to Europe the Applicant was to facilitate for this project.

... As participants in the project, Messrs. TA and AB paid the Applicant, respectively 4 million and 4.9 million West African CFA francs. The Applicant collected their photos and birth certificates. In his interview with OIOS, he stated that he would have received a gift of 500,000 West African CFA francs if the project had succeeded. Under cross-examination before this Tribunal, the Applicant admitted that the value of the gift would be around USD853, which was the equivalent of about one month of his salary at that time.

... The Applicant’s case is that he was surprised when instead of Ivorian national passports with Belgian visas, his childhood friend Mr. SO received from his contact Belgian passports for Messrs. TA and AB. The Applicant did not at any time during the OIOS investigation give the name of the contact who his friend liaised with to receive the travel documents. That name has not been disclosed to date.

... The Applicant stated in his OIOS interview that he saw the receipt of Belgian passports as a problem. In his application, he says he later discovered the immigration law firm was fake. However, although the Applicant realized there was a problem and sought to discourage use of the false passports, Mr. TA insisted on using his for travel.

... The Applicant said in the OIOS interview that he gave the false Belgian passports to Messrs. TA and AB. In his application, the Applicant gives a different version of events. He says Messrs. TA and AB got in touch with his friend Mr. SO, who handed over the fake passports to them.

... The Applicant was cross-examined about this inconsistency. The Applicant’s more recent version of the passport delivery was not on record during the disciplinary proceedings. The Tribunal accepts as factual his prior admission, during his OIOS interview: that he personally handed the passports over although he suspected they were fake and they were not the visas he expected.

... On 27 December 2007, while travelling from the Ivory Coast to Belgium, via Accra, Ghana, with the fake passport, the Complainant was stopped at the airport by the Ghanaian immigration. He was detained until 14 January 2008. Mr. AB did not attempt to travel using the fake passport.

... The Complainant requested reimbursement of the money he had paid to the Applicant. The Applicant claims he tried to chase his contact to get the money back but failed. When the Applicant failed to reimburse him, the Complainant filed a complaint with the Ivorian Criminal Investigation Police, in Plateau, not far from the courthouse.

... According to the Applicant, on or around February/March 2008, he received a summons to appear before the Criminal Investigation Police. On that day, when the Applicant arrived at work at UNOCI, a police officer was waiting for him in front of the then UNOCI compound. The police officer asked the Applicant to follow him to the Criminal Investigation Police, where, according to the Applicant, discussions were held.

... There was an agreement that the Applicant would reimburse the Complainant. On the same day, the Applicant reimbursed him 1.95 million West African CFA francs. The Applicant was assisted in settlement negotiations by a friend, Mr. DS. He claims he was released; the case was closed and there were no charges.

... After the Applicant failed to repay the rest of the money, the Complainant filed a second complaint. This second complaint was filed with the Ivorian *gendarmerie* in Abidjan. The Applicant received a summons on 22 April 2008, to appear before the *gendarmerie*. On that same day, the Applicant paid the Complainant an additional amount. He also agreed to a reimbursement plan for the amount that remained outstanding, which was to be paid by the end of August 2008. The Applicant claims that once again, he was released, the case was closed and there were no charges.

... According to the Applicant, he thought the matter had been resolved based on the payment plan. He left the Organization to pursue a position at the World Bank. However, unknown to him, the matter was not resolved.

... The Complainant filed a disciplinary complaint in July 2008 against the Applicant with the Conduct and Discipline Team at UNOCI. UNOCI investigators' attempts to contact the Applicant failed. Internal investigations were discontinued in 2008 as the Applicant was no longer a United Nations staff member. It was felt that the matter should be handled by the Ivorian police where the Complainant had already made a report.

... The Applicant later was made aware that in July 2008, the Complainant filed a third complaint in the Ivorian criminal justice system. This time it was with the Ivorian Court and it resulted in conviction, the 2 March 2009 Judgment.

... The case for the Respondent is that on 2 March 2009, the Ivorian Court of First Instance of Abidjan rendered Judgment No. 1048/2009. In the Judgment it was noted that the accused person, who was the Applicant, was neither served nor present for the trial. However, a lawyer purporting to represent the Applicant was present so the Court deemed it fit to proceed to judgment, criminal conviction, and sentence. There is a summons document dated 28 July 2008 on file but there is no proof of service.

... According to the judgment, the Applicant had been indicted for fraud. The Court found the Applicant guilty of fraud, sentenced him to 12 months' imprisonment and a fine of 100,000 CFA francs. The Complainant's civil claim for reimbursement was included as part of the trial proceedings. The Court ordered the Applicant to pay the Complainant 2.1 million francs. He was also ordered to pay the legal costs of the case in the amount of 400 francs plus stamp duty, registration fees and the cost of serving the judgment.

... A bailiff notified the Applicant of the judgment sometime after it was delivered. The Applicant then went to see the *gendarme* and the Prosecutor who had been in charge of the case. He claims he was told that the decision handed down had no legal effect, the sentence did not apply and would not be entered on his criminal record, as there was a payment plan in progress.

... The Applicant did not appeal the Judgment. He continued with his payment plan. He paid the Complainant as ordered by the Court, in five installments, between 30 December 2009 and 1 June 2010, in the presence of a bailiff. The Applicant was however not called upon to pay the fine nor serve the prison sentence imposed in the judgment.

... The Applicant was re-employed with the Organization in July 2009. The matter of the events of 2007 to 2009 were never raised until April 2019 when he was invited to an OIOS interview. The Applicant contends that this was in retaliation for a complaint he made against a former OIOS staff member in 2017.

... In 2013, the Applicant applied for the position of Engineer at MINUSMA, using the Inspira online application system. This required him to complete a PHP. The PHP contained the following question: "Have you ever been indicted, fined or imprisoned for the violation of any law (excluding minor traffic violations)?" The PHP specified that if the answer was "Yes", he was to provide the reason, the resolution, and a brief explanation. The Applicant answered "No".

... Before submitting his application, the Applicant certified as follows:

I certify that all of the statements made in this application are true, complete and are made in good faith. I understand that falsifying or intentionally withholding information will be grounds for rejection of my application or the withdrawal of any offer of appointment or, if an appointment has been accepted, for its immediate cancellation or termination.

... By memorandum of 30 August 2019, the Director, ID/OIOS referred the Applicant's matter to the Office of Human Resources ("OHR") for appropriate action. The referral was based on an investigation report, also dated 30 August 2019, prepared by ID/OIOS, together with supporting documentation.

... In his OIOS interview, the Applicant explained his reason for withholding information about the judgment in his PHP in 2013. He stated that he thought he was not required to give information regarding his conviction, as the sentence of imprisonment had not been executed and he had reimbursed the Complainant. The Applicant further contended that the Judgment was “not noteworthy” and that it was rendered in the context of an “amicable settlement”.

... By memorandum of 16 October 2019 (“allegations memorandum”), formal allegations of misconduct were sent to the Applicant. The Applicant was asked to provide, within one month of receipt, any written statement or explanation in response to the allegations made against him. The Applicant received the allegations memorandum on 22 October 2019.

... After several extensions of time, the Applicant provided his response to the allegations memorandum on 31 January 2020. The issue of a lack of validity or authenticity of the judgment was first raised in this response.

... By sanction letter dated 22 April 2020, the Applicant was informed that based on a review of the entire dossier, including his comments, the Under Secretary-General of the Department for Management Strategy, Policy and Compliance (“USG/DMSPC”) had concluded that the allegations against him were established by clear and convincing evidence. The USG/DMSPC had decided to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with 25% of the applicable termination indemnity.

The UNDT Judgment

7. The UNDT found that there was not clear and convincing evidence in the record that Mr. Amani breached Ivorian Law or committed fraud in 2007.²

8. The UNDT found that the Secretary-General’s decision to dismiss Mr. Amani from service in the Organization was justified by clear and convincing evidence on the ground of submitting false information in his PHP.³

9. The UNDT found that Mr. Amani engaged in misconduct as per Staff Regulation 1.2(b) because his negative answer on his PHP with regard to prior indictments was “neither truthful nor honest”.⁴

² *Ibid.*, para. 78.

³ *Ibid.*, para. 106.

⁴ *Ibid.*, para. 108.

10. The UNDT found that Mr. Amani was afforded his due process rights because he was advised of the matters being investigated, fully heard during an interview, and given extra time to provide further responses in writing.⁵

11. The UNDT found that there was nothing absurd, arbitrary, or excessive about the sanction imposed and that it was proportionate to the offence.⁶

12. The UNDT dismissed the application.⁷

Procedure before the Appeals Tribunal

13. On 23 February 2022, Mr. Amani filed an appeal of the impugned Judgment with the UNAT and, on 25 April 2022, the Secretary-General filed an answer and cross-appeal. On 25 June 2022, Mr. Amani filed an answer to the cross-appeal.

Submissions

Mr. Amani's Appeal

14. Mr. Amani submits that the UNDT erred on a question of law and on a question of fact, resulting in a manifestly unreasonable decision.

15. Mr. Amani claims that he did not purposefully submit false information in his PHP. Mr. Amani submits that he was never in a position to contest the credibility of the proceedings and the Ivorian Court judgment against him, had not been served any indictment and did not participate in the trial. Moreover, Mr. Amani argues that, despite the summonses received from the police and gendarmerie being referred to as court documents, under Ivorian law, they would never have been considered indictments.

16. Mr. Amani submits that as the PHP was only in draft form, it could not be considered false certification. He states that his final application was made by forwarding the PHP to his hiring manager and was not made through Inspira, therefore there was no such certification or declaration made.

⁵ *Ibid.*, para. 110.

⁶ *Ibid.*, para. 120.

⁷ *Ibid.*, para. 121.

17. Mr. Amani submits that if misconduct occurred, it was neither intentional nor deliberate.

18. Mr. Amani asserts that the Ivorian Court judgment was not pronounced in court and was a forgery and invalid.

19. Mr. Amani argues that because he was unable to attend the trial or appeal the Ivorian Court judgment, maintaining the sanction against him violates what he describes as the “fair justice principle”. Mr. Amani submits that the UNDT should not have found that he should have answered “yes” to the question: “Have you ever been indicted, fined or imprisoned for the violation of any law (excluding minor traffic violations)?”

20. On proportionality of the sanction, Mr. Amani provides details of similar cases where staff members were given a written censure, rather than separated from service, and sets out a number of mitigating factors which he does not consider were taken into consideration in his case.

21. On his due process rights, Mr. Amani submits that acts against him have been retaliatory and are linked to his complaint against another staff member. Further, Mr. Amani sets out a number of alleged violations of his rights as a staff member during the disciplinary process and the post-separation phase. Finally, Mr. Amani challenges the use of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) to govern his disciplinary process, given that the preliminary investigation into his case took place in October 2008.

22. Mr. Amani requests rescission of the contested administrative decision.

The Secretary-General’s Answer

23. The Secretary-General submits that the UNDT correctly concluded that the contested decision was lawful.

24. The Secretary-General submits that the UNDT correctly concluded that the facts upon which the sanction were based had been established by clear and convincing evidence and that the facts qualified as misconduct.

25. The Secretary-General contends that the UNDT did not err in finding that there was clear and convincing evidence that Mr. Amani had submitted false information in his PHP and that this constituted misconduct.

26. The Secretary-General submits that the UNDT correctly concluded that Mr. Amani's due process rights were respected, which was fully supported by the record before it. Further, the Secretary-General maintains that the UNDT did not err in finding that Mr. Amani failed to prove his complaints of delay or improper motive.

27. The Secretary-General submits that the UNDT correctly concluded that the sanction imposed was proportionate and its approach was fully consistent with the jurisprudence of the UNAT.

28. The Secretary-General asserts that Mr. Amani has failed to establish that the UNDT erred in finding the contested decision to be lawful.

29. On Mr. Amani's claim that the UNDT erred in finding that there was clear and convincing evidence of the facts upon which the sanction was based and that the established facts amounted to misconduct, the Secretary-General points out that, on Mr. Amani's own admission, he was aware of the Ivorian Court judgment when he completed his PHP, and he deliberately chose not to disclose it, thus his conduct was both deliberate and dishonest. The Secretary-General submits that a false answer in an application form is *prima facie* proof of dishonesty (*Payenda*⁸).

30. Further, the Secretary-General submits that, while Mr. Amani takes issue with the UNDT's findings regarding the relevance of the summonses, Mr. Amani was sanctioned by the Administration for failing to disclose the Ivorian Court judgment in his PHP, therefore issues related to the summonses are not dispositive to the lawfulness of the contested decision. In response to Mr. Amani's allegations regarding the validity of the Ivorian Court judgment, the Secretary-General submits that Mr. Amani did not raise any such concerns during his interviews with OIOS; that he complied with said judgment and paid the ordered amount, thus acknowledging its validity, and made no attempt to appeal or rectify the judgment prior to 2019.

⁸ *Ahmad Shuaib Payenda v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1156, paras. 38-39.

31. With respect to Mr. Amani's argument that he never certified that the information provided by him in his PHP was true as his application was not submitted through Inspira, the Secretary-General submits that this was not raised by Mr. Amani before the UNDT and therefore he is precluded from doing so before the UNAT.

32. The Secretary-General submits that Mr. Amani failed to establish that the sanction was disproportionate to the offence. The Secretary-General asserts that Mr. Amani's arguments in this regard are not receivable because they were not raised before the UNDT and should be rejected on that ground alone. The Secretary-General submits that, in any event, Mr. Amani does not identify any error on the part of the UNDT in its consideration of the proportionality of the sanction and those aspects of the appeal should therefore be dismissed.

33. The Secretary-General claims that Mr. Amani has failed to establish that the UNDT erred in finding that there had been no breach of his due process rights. The Secretary-General notes that, in pursuing his due process claims, Mr. Amani repeated arguments made before the UNDT and introduced new claims not raised before the UNDT. Specifically, the Secretary-General submits that, contrary to the repetitious argument of Mr. Amani, the UNDT considered the correct legal framework (ST/AI/2017/1) as the OIOS investigation was not a continuation of the 2008 investigation by a Special Investigations Unit. In addition, the Secretary-General contends that Mr. Amani's repetition of his unsupported claims regarding improper motive do not establish any error by the UNDT and he is not entitled to introduce new allegations in this regard.

34. The Secretary-General submits that Mr. Amani alleges a number of other purported breaches of his rights which must be rejected as not receivable as they were not raised before UNDT.

35. The Secretary-General requests that the UNAT dismiss the appeal.

The Secretary-General's Cross-Appeal

36. The Secretary-General submits that the UNDT erred in fact and in law in finding that there was insufficient evidence that Mr. Amani had violated Ivorian laws.

37. The Secretary-General submits that the UNDT reached this conclusion based on its own findings of perceived flaws in the procedures of the Ivorian Court. He submits that the UNDT exceeded its jurisdiction by conducting a detailed review of and making findings regarding the procedure and contents of the Ivorian Court judgment.

38. The Secretary-General submits that the UNDT erred in fact and in law by concluding that there was insufficient evidence as to the authenticity or genuineness of the Ivorian Court judgment. He submits that it was a proper exercise of discretion for the Administration to rely on a judgment issued in a criminal proceeding before a national court in a Member State of the United Nations (Côte d'Ivoire) to establish, by clear and convincing evidence, that Mr. Amani violated the local laws of that Member State.

39. The Secretary-General submits that the evidence before the UNDT indicated that a court hearing took place and that a judgment was issued, setting out in detail the records of the summons, the summary of the sentence, Mr. Amani's awareness of the Ivorian Court judgment in 2009 and his application for interpretation and rectification of the judgment, by which he implicitly accepted the judgment's authenticity.

40. Accordingly, the Secretary-General submits that the UNDT erred in fact and in law and exceeded its jurisdiction in concluding that the Ivorian Court judgment was an insufficient basis upon which to sanction Mr. Amani for violating local laws. The Secretary-General requests that this portion of the impugned Judgment be reversed and that UNAT find that there was clear and convincing evidence that Mr. Amani violated local Ivorian laws.

Mr. Amani's Answer to the Cross-Appeal

41. Mr. Amani submits that the UNDT is competent and within its jurisdiction to review and examine national court orders based on paragraph 44 of the Standards of Conduct for the International Civil Service⁹ and linked to the broader principles contained in ST/AI/299 (Reporting of Arrest or Detention of Staff Members, Other Agents of the United Nations and Members of their Families).

⁹ Mr. Amani cites to Article 44 of ST/SGB/2016/1 (at para. 15 of his answer to the cross-appeal), but quotes para. 44 of the Standards of Conduct for the International Civil Service. It is reasonable to assume he is relying on the quote, but that it is simply cited incorrectly.

42. Mr. Amani submits that the UNDT lawfully concluded that there was insufficient evidence that he had violated local laws. UNDT lawfully and duly conducted an examination of surrounding circumstances and of the Ivorian Court judgment. The evidence and irregularities rendered the judgment less than clear and convincing. Mr. Amani submits a list of alleged irregularities in the case file and archives of the Ivorian case.

43. Mr. Amani submits that the letter sanctioning him shows that the Secretary-General took the decision based solely on the “alleged court document” and “without performing the necessary and due checks” or applying the “principle of innocence”, and that all decisions based on this document are “distorted”.

44. Mr. Amani submits that a number of facts in the cross-appeal are “highly questionable” and counters them as follows:

- a. There was no proof that the summons was served on Mr. Amani, therefore it was invalid;
- b. Mr. Amani admitted to OIOS that he was aware of the Ivorian Court judgment, but that the prosecutor was “surprised” at its existence because he had previously closed the case and told Mr. Amani that it could never be enforced;
- c. Mr. Amani appears to take issue with the Secretary-General’s reliance on the fact that Mr. Amani made payments to the other party in the Ivorian Court case, because these payments occurred as the result of an amicable agreement and before the trial occurred; and
- d. Mr. Amani has made a recent application to the Ivorian Court for interpretation and rectification of the Ivorian Court judgment which is to be directed to a higher national court for decision, a step which Mr. Amani considers should have been taken by the Secretary-General.

Considerations

Receivability of cross appeal – when the UNDT order is beneficial to the Appellant.

45. Before considering the merits of the arguments on receivability, it is necessary as a preliminary matter to determine if the appeal of the Secretary-General is itself receivable. The Secretary-General was the successful party before the UNDT and hence his right to appeal against the impugned Judgment is constrained. In *Sefraoui*,¹⁰ this Tribunal held that a party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds. The rule is, however, not absolute.

46. In *Ngoma-Mabiala*,¹¹ this Tribunal permitted an appeal by the Secretary-General even though the UNDT had dismissed the staff member's application as not receivable on the grounds that he had not exhausted the mandatory first step of requesting management evaluation. The Secretary-General had appealed against a discrete issue (namely that the UNDT did not have jurisdiction to make certain observations recorded in its judgment) and sought the redaction of these observations. The Appeals Tribunal held that although the Secretary-General was "the beneficiary" of the judgment on the receivability issue, he was entitled to appeal regarding the contested observations since there were two factors which distinguished the appeal from the Appeals Tribunal's holding in *Sefraoui*.

47. Firstly, the Dispute Tribunal's observations in *Ngoma-Mabiala* were made even though the Secretary-General had specifically limited his reply to the application to the issue of receivability and had sought and obtained leave, in terms of Article 19 of the UNDT Rules of Procedure, to have receivability considered as a preliminary issue, and had reserved the right to file a further submission addressing the merits of the claim. Secondly, notwithstanding the Secretary-General's reservation, the UNDT effectively embarked on consideration of the merits of the application and purported to make findings of fact and analysed those factual findings against the then-applicable Staff Rules.

¹⁰ *Sefraoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-048, para. 18.

¹¹ *Ngoma-Mabiala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-361, paras. 17-25.

48. This Tribunal has since provided further clarification of the principles on which a successful party may file an appeal in *Saffir and Ginivan*.¹² Before an appeal may be allowed, the judgment of the UNDT must entail a concrete and final decision which generates “the harm that constitutes the condition *sine qua non* of any appeal”.¹³ Therein, the Appeals Tribunal held:¹⁴

... It is not enough to claim that the grievance comes from the reasoning of the judgment, from all or part of its motivation or from the rejection of certain or all of the arguments submitted by a party.

... The right to appeal arises when the decision has a negative impact on the situation of the affected party. That means that a judgment can contain errors of law or fact, even with regard to the analysis of the tribunal’s own jurisdiction or competence and yet, be not appealable.

... If the errors attributed to the judgment do not have an impact on the final outcome of the process, an appeal concerning those errors would become moot because it would be merely academic or theoretical, since the adopted decision itself was taken in favour of the appellant without generating damage to the impugning party.

49. Article 2(1) of the Appeals Tribunal Statute provides for appeals against judgments in which it is, *inter alia*, asserted that the UNDT has exceeded its jurisdiction or competence or has erred on a question of law or fact leading to a manifestly unreasonable decision. In *Ngoma-Mabiala*, the Secretary-General was allowed to appeal because the UNDT had erred in law and exceeded its jurisdiction in commenting upon the merits of the case, although it had dismissed the application as not receivable.¹⁵

50. However, the present cross-appeal is distinguishable since the Secretary-General does not claim that the UNDT may have erred in law or exceeded its jurisdiction or competence by receiving the application when it might not be receivable *ratione materiae*. Rather, the Secretary-General contends that the UNDT erred on a question of fact when it found that there was insufficient evidence that Mr. Amani had violated local laws, *even though the final determination in the merits was favourable to the Secretary-General*. Therefore, because the possible error in the assessment of the facts by the UNDT had no bearing on the outcome of the

¹² *Saffir and Ginivan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-466.

¹³ *Ibid.*, para. 16.

¹⁴ *Ibid.*, paras. 17-19.

¹⁵ *Ngoma-Mabiala* Judgment, *op. cit.*, para. 25.

case, the cross-appeal cannot be received. It would indeed have no impact on the final determination on of the case.

51. The Appeals Tribunal thus dismisses the Secretary-General's cross-appeal and addresses his contentions therein as part of his answer to Mr. Amani's appeal.

The merits of the appeal

52. The crux of the matter before this Appeals Tribunal is whether the UNDT erred when it found that the decision to terminate Mr. Amani's appointment was justified on the grounds of his withholding of pertinent information about his background in his PHP, which was specifically required in his application process for the position of Engineer at MINUSMA in 2013.¹⁶

53. The applicable legal framework is as follows:

Staff Regulation 1.2

Basic rights and obligations of staff

Core values

...

(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 and status;

Staff Rule 10.1

Misconduct

(a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

(b) Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial

¹⁶ Impugned judgment, para. 119.

loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be wilful, reckless or grossly negligent.

(c) The decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

Standards of Conduct for the International Civil Service

44. Violations of the law can range from serious criminal activities to trivial offences, and organizations may be called upon to exercise judgement depending on the nature and circumstances of individual cases. *A conviction by a national court will usually, although not always, be persuasive evidence of the act for which an international civil servant was prosecuted; acts that are generally recognized as offences by national criminal laws will normally also be considered violations of the standards of conduct for the international civil service.*¹⁷

54. It is undisputed that the letter terminating his service with the Organization (the sanction letter) referred to two facts before concluding that the disciplinary measure of separation from service, with compensation in lieu of notice, and with 25% of the termination indemnity otherwise applicable, should be imposed on Mr. Amani. These two facts are as follows:

- a) In 2007, while a staff member with the United Nations Operation in Côte d'Ivoire (UNOCI), he violated local laws relating to fraud by accepting payment from two Ivorian nationals in exchange for providing them with passports that were not genuine; and/or
- b) In 2013, when submitting his PHP through the Inspira system in relation to a job application with the Organization, he knowingly submitted false information that he had never been indicted, fined or imprisoned for an offence other than a traffic violation.¹⁸

55. The sanction letter, however, made no reference to the Ivorian Court judgment, dated 2 March 2009, according to which Mr. Amani, after having been indicted for fraud, was found guilty and sentenced to 12 months' imprisonment and a fine of CFA 100,000 francs. The Ivorian Court had further ordered Mr. Amani to pay the Complainant CFA 2.1 million francs.

¹⁷ Emphasis added.

¹⁸ Sanction letter dated 22 April 2020.

He was also ordered to pay the legal costs of the case in the amount of CFA 400 francs plus stamp duty, registration fees and the cost of serving the judgment.

56. Although the Ivorian Court judgment was not cited in the sanction letter, which would have been recommended in order to add *gravitas* to the disciplinary measure of separation from service, this is inconsequential for the purposes of the present case because it is clear from the record that Mr. Amani was aware of the judgment when in 2013, he applied for the new position in MINUSMA and completed the PHP specifying “no” to the question whether he had “ever been indicted, fined or imprisoned for the violation of any law (excluding minor traffic violations)?” His previous knowledge concerning the judgment is demonstrated from Mr. Amani’s own arguments that he went to seek information about the judgment’s consequences, together with his tentative assertion that the judgment was not “noteworthy”, given that he had paid the amount stipulated by the Ivorian Court, continuing the payment plan he had previously agreed with the Complainant in that case.¹⁹

57. Furthermore, it is undisputed that Mr. Amani was notified of the Ivorian Court judgment by a bailiff²⁰, but did not appeal against the judgment. Instead, he contented himself with unsubstantiated verbal explanations (by the gendarmerie and another person he claims was the criminal prosecutor) that the case with the Complainant had been settled with a payment of instalments. Furthermore, the fact that Mr. Amani also claimed that he never served time in prison, or paid any fine, does not mean that the Ivorian Court judgment was not valid. Rather, it simply means that it was not implemented for reasons which remain unclear. Moreover, criminal offences are of a public nature and are not ordinarily subject to settlements, while the private nature of recovering undue payments would normally be amenable to civil settlements.

58. In general, national courts are sovereign to determine whether or not there was a criminal offence based on local laws. In this sense, Paragraph 44 of the Standards of Conduct for the International Civil Service which was relied upon by Mr. Amani to support his argument, rather supports the case against him. It is not clear under which conditions the Ivorian Court pronounced its judgment. Mr. Amani claims that he had not been served a summons for the trial, even though there was a lawyer purporting to represent him before the Ivorian Court, and this is why it proceeded with its judgment. However, regardless of the proceedings before the

¹⁹ Impugned judgment, paras. 40, 46 and 97.

²⁰ *Ibid.*, paras. 44-47.

Ivorian Court, it is undisputable that Mr. Amani was informed of its judgment and conviction. He did not undertake any legal action to reverse this judgment until August 2021, when he filed an application before the Ivorian Court seeking rectification of the judgment, which remained pending as of the time the UNDT rendered its judgment.²¹

59. Furthermore, the possible procedural errors relied upon by the UNDT to cast doubt on the Ivorian Court judgment (e.g., whether or not Mr. Amani was ever served a summons to attend a court hearing) are insufficient grounds for invalidating the Ivorian Court judgment. More importantly, the UNDT reasoning and finding amounts to unlawful interference with the decision of a national jurisdiction. If there are reasons for a finding of consequential procedural errors in the Ivorian Court judgment, it is not for the UNDT to pronounce on the issue. Rather, it would be incumbent upon the party suffering the adverse effects of such a judgment to request its modification or annulment in the national court system, which Mr. Amani eventually did, after having the disciplinary measure been imposed on him. Yet, insofar as there is no decision on this request for rectification of the national judicial decision, it must stand.

60. Mr. Amani's dispute against the nature of the Ivorian Court documents and the validity of its judgment is therefore without merit. On the surface, the judgment of conviction is legal and effective. The UNDT thus exceeded its jurisdiction when it conducted a detailed review of the procedure of the Ivorian Court judgment, before concluding that there was clear and convincing evidence that Mr. Amani had breached Ivorian Law or committed fraud in 2007.²² When it comes to administrative disciplinary sanctions based on decisions by national courts, the role of the UNDT and of this Appeals Tribunal is limited to assessing whether the disciplinary sanction based on the national court was lawful. However, this error by the UNDT was inconsequential to the outcome of the case, since the Dispute Tribunal considered that there was clear and convincing evidence to justify the disciplinary measure on the grounds of submitting false information in the PHP.

61. Concerning the alleged submission of false information in the PHP, Mr. Amani states that this was not done deliberately. He further claims that there was no false certification/declaration as he did not apply through Inspira and never had to answer the question as to whether he had been indicted, imprisoned, etc. Mr. Amani submits that if misconduct

²¹ *Ibid.*, para. 13.

²² *Ibid.*, para. 78.

occurred, then it was neither intentional nor deliberate. On Mr. Amani's argument that he did not apply through Inspira, the Appeals Tribunal agrees with the Secretary-General that this is a new argument not put before the UNDT and therefore must be dismissed. Indeed, a party cannot raise a new argument for the first time on appeal, since this would be a violation of the two-tier United Nations system for the administration of justice.

62. Regarding the dishonesty in his PHP, this Tribunal held in *Rajan*²³ that failure by a staff member to comply with his or her disclosure of information obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances, or to observe the standard of conduct expected of an international civil servant, is undeniably misconduct. Staff Regulation 1.2(b) makes it clear that, as a "core value" of the Organization, staff members shall uphold the highest standards of integrity. This concept includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status. As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal.

63. In light of the above, the Appeals Tribunal reiterates that dishonest conduct by definition implies an element of intent or some element of deception. Deliberate false statements, misrepresentations and a failure to disclose required information are invariably dishonest. And, importantly, the failure to reply correctly to a prominent and very relevant question in an application form amounts to a false answer from which dishonesty normally may be inferred. Hence, a false answer in an application form is *prima facie* proof of dishonesty, shifting the evidentiary burden to the maker of the false statement to adduce sufficient evidence of innocence. Having established the facts by clear and convincing evidence and upon evaluating the alleged misconduct against the applicable legal standards, the UNDT was correct in determining that Mr. Amani's failure to disclose relevant information amounted to misconduct, which of course carried the possible sanction of termination of appointment.²⁴

64. Mr. Amani further contends that the sanction was not proportionate to the offence, as it was too severe a sanction and that there were a number of mitigating factors that were not taken into consideration. In this regard, the Secretary-General correctly submits that Mr. Amani's arguments are not receivable as they were not raised before UNDT, and that in any case, he does not identify any error on the part of the UNDT with respect to proportionality.

²³ *Rajan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-781, para. 37.

²⁴ *Payenda* Judgment, *op. cit.*, para. 39.

Moreover, as this Appeals Tribunal previously held, since the misconduct occurred at the very start of the selection exercise, by virtue of the misrepresentation of substantial information in the application process, there was no way to circumvent or fix this wrongdoing. The application itself was tarnished *ab ovo*. Moreover, since it constituted a single fact that vitiated the very basis upon which Mr. Amani's new appointment was secured, it was pointless for the Administration to try and use any sort of didactic measure in order for the appointment to continue, as there would be no other opportunity for the staff member to demonstrate that he had learned from his previous error. Mr. Amani's action was unique and substantial, and it has proven to be irredeemable, leading to his lawful dismissal as correctly found by the UNDT.²⁵

65. Finally, concerning the claim of whether the Mr. Amani's due process rights had been respected, he sets out a number of alleged violations of his rights. However, these contentions are mere repetitions of his arguments before the UNDT or new claims that were not presented there, and the appeal process is not an opportunity for a party to either reargue their case or raise new issues. In this regard, Mr. Amani has not established any error on the part of the UNDT in finding that there were no violations of due process.

66. In light of the above, the appeal fails.

²⁵ *Ibid.*, para. 53.

Judgment

67. The appeal and cross-appeal are hereby dismissed, and Judgment UNDT No. UNDT/2021/137 is affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Judgment published and entered into the Register on this 23rd day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar