



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

AKELLO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for the Applicant:**

Esther Shamash, OSLA

**Counsel for the Respondent:**

Thomas Elftmann, UNDP

## **Introduction**

1. The Applicant joined the United Nations Department of Safety and Security (UNDSS) on 4 June 2007 under a four-month, fixed-term contract at the G-4 step 1 level issued by the United Nations Development Programme (UNDP) as a Radio Operator in Moroto, Uganda. Her contract was regularly renewed thereafter.

2. On 17 May 2010, the Applicant was summarily dismissed on the basis of findings that she had committed misconduct by having engaged in an unauthorized outside activity. The Applicant is contesting the decision to summarily dismiss her.

## **Facts**

3. Due to the security situation in the Moroto region, it is mandatory for all UN official travel to be under escort of manned military personnel in privately-owned vehicles. These vehicles are hired and coordinated through the UNDSS office in Moroto. A private local company and UN approved vendor named *Blessed Seasons* was one of those that provided escort vehicle services to the UN agencies.

4. In March 2009, UNDSS/Moroto received various complaints from other UN vendors who also provided the aforementioned escort services to the Organization. The complainants stated, *inter alia*, that the Applicant was a Director of *Blessed Seasons* and that UNDSS owned some of the vehicles that were hired by the UN agencies.

5. On 28 April 2009, the Local Security Assistant, UNDSS/Moroto, addressed an email to the Applicant informing her that he had been informed that she was the owner of *Blessed Seasons* and that this represented a direct

conflict of interest with her employment with the United Nations. He also required her to provide a written explanation as to why action should not be taken against her for involving herself in such activity.

6. A Board of Inquiry (BOI) was constituted to look into the allegations of conflict of interest against the Applicant on 5 May 2009. On 6 and 7 May 2009, the BOI conducted interviews and assessed evidence in respect of the complaints. On 8 May 2009, the BOI issued a preliminary report containing its findings concluding, *inter alia*, that there was sufficient evidence to suggest that the Applicant was possibly part of the management of *Blessed Seasons*.

7. The UNDSS Internal Affairs Unit (“IAU”) subsequently conducted an investigation into the complaints and issued an investigation report on 6 July 2009. The investigation report contained the following findings:

a. From 24 July 2008 until 9 May 2009, the Applicant and a World Food Programme staff member served as signatories of the *Blessed Seasons* bank account.

b. The Applicant wrote and signed invoices on behalf of *Blessed Seasons* and submitted them to Office of the High Commissioner for Human Rights (OHCHR) and also collected checks from OHCHR on behalf of *Blessed Seasons*.

c. On 14 April 2009, the Applicant signed a letter addressed to the US Embassy in support of the request for an entry visa. The Applicant signed the letter as “Managing Director” of *Blessed Seasons* and stamped it with the company’s official stamp.

8. Ultimately, the IAU found that the Applicant was guilty of misconduct, and recommended that appropriate action be taken against her.

On 12 January 2010, the Applicant was issued with a charge letter. The Applicant was charged with misconduct for:

- a. Engaging in unauthorized outside activities, through her active involvement in the running of *Blessed Seasons*;
- b. Engaging in a serious conflict of interest, in light of her position with UNDSS and her concurrent involvement in *Blessed Seasons*;
- c. Bringing the Organization into disrepute, as the Applicant's behaviour created the perception that UNDSS (staff) owned vehicles that competed with other vendors in the running of the escort duties; and
- d. Breaching the highest standards of integrity, given that, in the addition to the above, she also misrepresented facts to the IAU investigators.

9. In a letter dated 17 May 2010, the UNDP Associate Administrator dismissed the Applicant from service, pursuant to UN staff rule 10.2 (a) (ix), for engaging in,

an unauthorized outside activity which raised a serious conflict of interest in light of the Applicant's position, causing the image and reputation of the Organization to suffer as a result of the said actions and engaging in deceitful and misleading actions in order to conceal her unauthorized actions.

10. The present Application was filed on 20 August 2010 and transmitted to the Respondent via email on the same day. On 21 October 2010, Counsel for the Respondent informed the Tribunal that he had not received the email transmitting the Application. The Application was resent to the Respondent on 22 October 2010 with a new deadline to file a response by 23 November

2010. A Reply was subsequently filed on 23 November 2010. The case was heard on 16 August 2011.

11. During the hearing, the Tribunal ordered the Respondent to disclose a letter dated 23 May 2008 from Kemal Dervis, the then UNDP Administrator to the Minister of Foreign Affairs of the Kingdom of the Netherlands by 27 August 2011. The said letter was eventually produced by Counsel for the Applicant. The Parties filed their written closing submissions on 26 August 2011.

### **Applicant's Submissions**

12. The Applicant's case is summarized below:

13. The Respondent has unfairly "double-counted" the allegations against her, charging her with charges that should arguably have been swallowed up in each other and has then proceeded to punish her on the basis of these inflated charges.

14. The Respondent claims to have viewed the case "holistically", but in reality he dismissed the Applicant because she "engaged in unauthorized outside activities", by placing herself in an "apparent conflict of interest" and because she "brought the organization into disrepute". This is double counting. The unauthorised outside activities were the same activities that created the Applicant's conflict of interest, they were not separate unauthorised outside activities.

15. Situations of conflict of interest will often include an unauthorised outside activity, the conjunction of which, with the staff member's work at the UN, creates a conflict of interest. It could not be otherwise, since if a staff member's outside activities are authorised, this is only after they have been judged as activities which do not conflict with the staff member's work at the

UN. Seen in this light, misconduct born of being in a conflict of interest is a graver sub-set of the wider type of misconduct which consists of engaging in unauthorised outside activities. The Applicant was in a potential conflict of interest between her obligations as a Radio Dispatcher and her involvement in *Blessed Seasons*; almost by definition she was equally engaging in outside activities. One flows from the other, but they cannot form separate bases for the ensuing sanction.

16. The charge of “bringing the Organization into disrepute” is in this case a still wider catch-all, which flowed naturally from the staff member’s conflict of interest.

17. The most serious of these three charges is that of the potential conflict of interest. The Applicant does not dispute that the Respondent may sanction the Applicant on this basis. The question remaining is only what a proportionate sanction for a potential conflict of interest from which the Applicant obtained no personal gain would be. Even though the Applicant was in a situation where she arguably could perhaps have given preferential treatment to the *Blessed Seasons* truck, she did not do so, and the Respondent has not even alleged that she did.

18. The Tribunal’s jurisprudence shows that the material factors in cases where staff members engaged in conflicts of interest are: how high the staff member’s job level was; whether the staff member worked in procurement; and whether the staff member obtained personal gain as a result of the conflict of interest. The higher the staff member’s job level, the higher the standard of conduct expected of that staff member. It is wrong to aver that the same level of conduct is to be expected from a low level general service staff as from a high level professional staff member. Additionally, the questions of whether the staff member was a Procurement Officer and whether the staff member

actually obtained personal financial gain, both impact on the severity of the appropriate sanction.

19. The Respondent has failed to prove that the Applicant's outside activities interfered with her work as a Radio Dispatcher. He has not submitted that the Applicant deviated from the strict rota according to which she dispatched vehicles. There is no evidence that the Applicant's outside activities interfered in any way with her work as a Radio Dispatcher.

20. The Applicant submits that according to the prevailing jurisprudence, her dismissal without indemnity or notice was disproportionate.

21. The decision to dismiss the Applicant without termination indemnity or payment in lieu of notice was discriminatory, and therefore unlawful. The Respondent referred to a few cases in which UNDP allegedly dismissed staff members in situations similar to that of the Applicant. The Respondent failed, however, to provide full details of these cases so the Applicant is not in a position to compare these cases to the instant case. Even if in these cases the Respondent took a harsh line, this still fails to clarify why such a markedly different approach was taken in the case of Eveline Herfkens.

22. In a letter dated 23 May 2008, Kemal Dervis wrote that during the period Eveline Herfkens was employed as a staff member by UNDP, the Government of the Netherlands provided her with financial benefits in the form of rent of a three room apartment in Manhattan, relocation from the Netherlands to New York in November 2002 and from New York to Maryland in January 2006, and a continuation of her enrolment with the Netherlands national pension scheme.

23. Kemal Dervis further noted that UNDP had provided Eveline Herfkens with a copy of the applicable UN Staff Regulations and Rules relating to her

appointment and that she had signed an acknowledgement of having received them. Despite this, UNDP found that

Ms. Herfkens appear[ed] to have unknowingly breached the Staff Regulations, in good faith and without mal-intent.

and that

Ms. Herfkens [would] remain an advocate in the global effort to achieve the MDGs, and [that UNDP would] count on her continued support in this effort.

24. The Applicant submits that in contrast to Eveline Herfkens, she was a low level general service staff member, and that unlike Eveline Herfkens, she obtained no personal gain. In light of this, to excuse Eveline Herfkens, while dismissing the Applicant without termination indemnity or payment in lieu of notice, is discriminatory and unlawful.

25. The Respondent cannot rely on the Applicant's failure to comply with her obligations during the investigation when the Respondent failed first to comply with his. From the outset of the investigation, she was considered a possible wrongdoer and the Organization was obliged to advise her that she had the right to secure the assistance of counsel. This omission amounted to a violation of her right to due process.

26. Had the Applicant had the benefit of access to counsel, as was her due process right, she would have been advised on how to conduct herself during the investigation. In light of this breach of the Respondent's obligations vis-à-vis the investigation, the Applicant contends that the Respondent cannot now be heard in his argument that the Applicant failed to comply with her obligations vis-à-vis the same investigation, in that she was not immediately fully honest and candid with the investigators.

27. In light of the above, the Applicant requests the Tribunal to find that the sanction of dismissal without indemnity or payment in lieu of notice was

disproportionate, to rescind the decision to dismiss the Applicant and to order her reinstatement.

### **Respondent's Submissions**

28. The Respondent's case is summarized below:

29. The issue in this case is whether the decision of the Respondent to dismiss the Applicant from service was lawful. The Respondent submits that the imposition of the contested decision was a proper exercise of the Organization's administrative discretion in view of the gravity of the Applicant's misconduct.

30. The Applicant, a Radio Operator tasked with dispatching escort security vehicles to UN agencies based in Moroto, Uganda, was involved in the management of *Blessed Seasons*, a company providing such escort vehicle services to the UN, for almost a year, from July 2008 to May 2009. In this connection, the Applicant issued invoices and collected payments on behalf of *Blessed Seasons*. Moreover, she signed a letter as "Management Director" of *Blessed Seasons* and acted as a bank signatory of the enterprise.

31. Despite the fact that no evidence was found that the Applicant gave preferential treatment to *Blessed Seasons* when discharging her duties, the Applicant nevertheless had a substantial private interest in the company.

32. This situation created an apparent conflict of interest, in violation of the then applicable staff regulation 1.2 (m). The Respondent submits that an apparent conflict of interest exists where it could be perceived that a staff member's private interest could improperly influence the performance of his or her duties. By contrast, a potential conflict of interest refers to a situation that may develop into an actual or apparent conflict of interest.

33. The Applicant, as part of her duties, assigned escort vehicles to UN agencies, while at the same time, holding a personal interest in a private company that provided escort vehicle services to the UN. This situation gave rise to a perception in the public that the Applicant's private interest in *Blessed Seasons* could improperly influence the performance of her duties. Consequently, the Applicant positioned herself in an apparent conflict of interest, as confirmed by the UNDP Ethics Office.

34. As the Applicant did not seek the approval of the UNDP Administrator to carry out her outside activity with *Blessed Seasons*, the Applicant's conduct also contravened the then applicable staff regulation 1.2 (o).

35. Various complaints were received from UN vendors who claimed *inter alia*, that staff of the UN Department for Safety and Security (UNDSS), including, but not limited to the Applicant, owned vehicles that were hired by various UN agencies and that the Applicant was a Director of *Blessed Seasons*. This shows that the wrongdoing of the Applicant had an adverse external effect which negatively affected the reputation of the UN.

36. Since it was perceived by vendors that the Applicant was a Director of *Blessed Seasons* and that UNDSS owned some of the vehicles that were hired by the UN agencies, the Applicant's conduct also brought the Organization into disrepute. The image and the reputation of the Organization suffered as a result of the vendors' perception. The Applicant's conduct was therefore in breach of section 23 (q) of the then applicable UNDP Legal Framework for Addressing Non-compliance with UN Standards of Conduct ("the Legal Framework").

37. As international civil servants, UN staff members must be seen to uphold public interests above private interests. This is especially significant

for UNDP, an organization whose development activities and delivery depend on voluntary contributions from member states. UNDP receives a budget of over USD5 billion per year, of which approximately 80% is funded through such voluntary contributions which, in themselves, stem from public funds. UNDP is, thus, under the increasingly stricter scrutiny of donors and member states and very dependent on the positive image it strives to project to attract public interest and funds in what is now a very competitive environment. As a consequence, UNDP has to hold its staff members to higher standards of conduct than private sector employees. Conversely, this also means a higher level of accountability for wrongdoing.

38. The Applicant, before admitting to her misconduct, attempted to conceal her association with *Blessed Seasons* in the course of the investigation. As an international civil servant, the Applicant's conduct demonstrated a lack of integrity leading to a breach of trust, in violation of UN staff regulation 1.2 (b), as then applicable.

39. Contrary to the Applicant's contention that her due process rights were breached during the UNDSS investigation as she was not notified of her right to Counsel during the investigation, neither the then applicable Legal Framework nor the then applicable Investigation Guidelines of the UNDP Office of Audit and Investigations (OAI), which were followed by the UNDSS investigators in the case at hand, stipulate an obligation to notify subjects of investigations of their right to be assisted by Counsel during investigations. Such notification requirement does not derive from general principles of law in the context of administrative fact-finding and has not been established through the case law of the administrative tribunals. The Respondent submits that it was not required to notify the Applicant of a right to secure the assistance of Counsel in the course of the UNDSS investigation.

40. The Respondent did not double-count accusations. Engaging in an apparent conflict of interest does not necessarily mean bringing the Organization into disrepute. The Respondent submits that an apparent conflict of interest exists where it could be perceived that a staff member's private interests could improperly influence the performance of his or her duties, regardless of whether this is, in fact, the case. However, as the UN vendors perceived, the Applicant's private interests in *Blessed Seasons* interfered with her responsibilities.

41. The Applicant's apparent conflict of interest was perceived as an actual conflict of interest by the UN vendors, which, as a consequence, brought the Organization into disrepute. In order to highlight this fact, the Respondent additionally charged the Applicant with bringing the Organization into disrepute. The Applicant was charged with engaging in unauthorized outside activity because she did not seek the approval of UNDP with respect to her involvement in the management of *Blessed Seasons*, which is distinguished from the fact that the Applicant was in an apparent conflict of interest.

42. The determination of what disciplinary measure is appropriate in any given case does not depend on the number of charges. Such determination is made on the basis of a holistic view of the case, taking into account all the relevant circumstances and facts. Consequently, the Respondent did not count the "accusations" in the case of the Applicant.

43. The Respondent did not apply double-standards. According to the letter dated 23 May 2008, sent by the then Administrator, UNDP, to the Minister of Foreign Affairs of the Kingdom of the Netherlands, the UNDP OAI finalized an investigation concerning Ms. Eveline Herfkens on 20 May 2008 who reportedly accepted financial benefits from her government while being a staff member with UNDP. In this connection, the Applicant claimed

that Ms. Herfkens was found to be in a conflict of interest, but that no disciplinary action was taken against her. According to the Applicant, this demonstrated that the Respondent applied double-standards.

44. The Respondent submits that the Applicant's reference to the letter is of limited relevance in the context of her case. Ms. Herfkens' appointment expired on 31 October 2007 and was not subsequently renewed. Ms. Herfkens was no longer a staff member when the investigation report of 20 May 2008 was purportedly issued. Thus, in light of the foregoing, UNDP could not possibly have initiated disciplinary proceedings against Ms. Herfkens as she was no longer a staff member.

45. The Respondent has wide discretion in disciplinary cases. The UN Appeals Tribunal has held that both the UN Appeals Tribunal and the UN Dispute Tribunal do not interfere in the Administration's execution of its discretionary authority in this context, unless there is evidence of major impropriety. The process leading to the imposition of the contested decision complied with the requirements of the UNDP Legal Framework and was conducted in accordance with the due process rights of the Applicant.

46. The Respondent submits that the Applicant did not adduce any evidence showing that the investigation or the subsequent disciplinary process in her case were tainted by error of fact or law. It was, thus, legitimate for the Respondent to weigh the different circumstances related to the Applicant's case and to conclude that the protracted period over which the Applicant engaged in misconduct, its significant effect on the Organization's reputation and the lack of trust in the Applicant as a result of her dishonesty during the investigation warranted her being dismissed from service. As the Respondent took all case facts and relevant case law into account and thus exercised its discretion based on proper reasoning, the Respondent was within its discretionary right to impose the disciplinary measure of dismissal.

47. In light of the foregoing, the Respondent submits that the decision to dismiss the Applicant was proportionate, rational and lawful. The Respondent, therefore, requests the Tribunal to reject the Application in its entirety.

### **Considerations**

48. The legal issues arising from the facts in this case are the following:

- a. Whether the Applicant engaged in unauthorized outside activity?
- b. If so, whether this unauthorized outside activity created a conflict of interest situation for the Applicant?
- c. Whether the UNDSS investigators had an obligation to notify the Applicant of her right to assistance of Counsel during investigations?
- d. Proportionality of disciplinary sanctions and equality of treatment of all UN staff members.

### ***Did the Applicant engage in unauthorized outside activity?***

49. Former staff regulation 1.2(o), which was applicable at all material times, provided as follows:

Staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General.

50. It is in evidence in this case and has been conceded by the Applicant that she was involved in the running of a private company, *Blessed Seasons*, without having received the approval of the Secretary-General to do so. The Tribunal finds that the Applicant was engaged in an unauthorized outside activity.

***Did this unauthorized outside activity create a conflict of interest situation for the Applicant?***

51. Former staff regulation 1.2(m) defined “conflict of interest” as follows:

Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for the staff member or the profit-making, business or other concern to benefit from such association or financial interest by reason of his or her position with the United Nations.

52. Whereas the Applicant was associated with the management of and held a financial interest in *Blessed Seasons*, there is no evidence before the Tribunal to show that she used her position with the United Nations to benefit the business. In particular, the Applicant was not involved in the procurement process that awarded the contract to *Blessed Seasons* to provide escort vehicle services to UN Agencies and there was no evidence that she improperly influenced the said procurement process in any manner.

53. The evidence before the Tribunal is that the Applicant gave no preferential treatment to *Blessed Seasons* when discharging her duties even though it is very likely that she obtained personal gain from the company’s profits derived from the provision of services to the UN agencies. The Tribunal, therefore, finds that the Applicant’s unauthorized outside activity whilst providing her personal financial gain, did not result in an actual conflict of interest as defined by the applicable rule.

***Did the investigators have an obligation to notify the Applicant of her right to assistance of Counsel during investigations?***

54. The Applicant asserts that having been identified as the subject of an investigation, the Organization was under the obligation to apprise her of her right to secure counsel. The failure by the investigators to advise her that she had the right to counsel meant that she did not know how to conduct herself during the investigation. The Respondent argues that neither the then applicable Legal Framework nor the then applicable Investigation Guidelines of the UNDP Office of Audit and Investigations (OAI), which were followed by the UNDSS investigators in this case, stipulate an obligation to notify subjects of investigations of their right to be assisted by Counsel during investigations.

55. Notwithstanding the Respondent's contentions, the circumstances of this case and the alleged violations at issue mediated in favour of informing the Applicant to avail herself of Counsel in line with principles of natural justice. It cannot be conceived that an Organization such as the United Nations would have intended that a staff member subject to an internal investigation stands alone like an alleged criminal suspect against several investigators, facing prolonged questioning on issues related to complex Staff Regulations and Staff Rules.

56. Such a situation would only lead such a staff member to making involuntary confessions or becoming unnecessarily defensive or evasive in order to end such an ordeal as quickly as possible. The charge that the Applicant had breached the highest standards of integrity because she lied or attempted to lie to investigators before admitting to her business interests in *Blessed Seasons* is not sustainable.

57. Access to counsel during investigations would have helped her to present and articulate her role in *Blessed Seasons* better. What is important is that she admitted her involvement with *Blessed Seasons* to investigators. For an Organization such as the United Nations which champions human rights, the interrogation of a staff member suspected of wrong doing by investigators ought to comply with recognised human rights standards and best practices. That the UNDP Investigation Guidelines at the time did not provide for these cannot discharge that obligation.

58. The Tribunal finds that the investigators had an obligation, in accordance with the universal principles of natural justice, to inform the Applicant of her right to the assistance of Counsel during investigations.

***Proportionality of disciplinary sanctions and equality of treatment of all UN staff members.***

59. In *Sanwidi* UNDT/2010/036, this Tribunal held that:

Equality of treatment in the workplace is a core principle recognized and promoted by the United Nations. Simply presented, the principle of equality requires that those in like cases should be treated alike.

60. There was evidence before the Tribunal that the Respondent had investigated a highly placed international UNDP staff member who was found to have collected financial benefits from her home Government in the form of rents and relocation allowances for work which she was doing for the United Nations. She also continued to be enrolled in the Netherlands national pension scheme. This was in spite of her having received the applicable UN Staff Regulations and Rules relating to her appointment. Although it was found that she collected double allowances from her Government and the Organization, no disciplinary action was taken against her and instead, in a letter to the Government of the Netherlands, the UNDP Administration stated that the

implicated staff member had “unknowingly breached the Staff Regulations in good faith and without mal-intent”.

61. In *Doleh* 2010-UNAT-025 and *Sanwidi* 2010-UNAT-084, the UN Appeals Tribunal held that the doctrine of proportionality can be relied upon to reduce a summary dismissal to a written censure. In the latter case, UNAT held that some of the factors that should be considered in determining the proportionality of the sanction include; the seniority of the staff member and the type of position occupied by the said staff member such as a procurement related position.

62. The Secretary-General’s Report to the General Assembly on “Practice of the Secretary-General in disciplinary matters and possible criminal behaviour”, A/66/135 for the period 1 July 2010 to 30 June 2011, at paragraphs 62-64 reports actions taken against staff members who were found to have engaged in outside activities:

62. A staff member worked as a consultant for a private company for three years while employed with the United Nations, without the authorization of the Secretary-General. *Disposition*: censure and a fine of one month’s net base salary. *Appeal*: none.

63. A staff member co-founded a company for the purpose of providing certain services for remuneration. *Disposition*: censure, loss of step in grade, and deferment for one year of eligibility for within-grade increment. *Appeal*: none.

64. A staff member engaged in private legal occupation, while employed by the Organization, without the approval of the Secretary-General. *Disposition*: censure and a loss of step in grade. *Appeal*: none.

63. UNDP’s equivalent Report titled “2011 UNDP Annual Report of the Administrator on Disciplinary Measures and Other Actions Taken in Response to Fraud, Corruption and Other Wrongdoing “ provides as follows:

### **Failure to cooperate with an investigation**

15. By deliberately providing false statements to the OAI investigators, a senior staff member failed to fully cooperate with an official investigation. Sanction: *Written Censure*.

16. By refusing to attend a fact-finding interview, a senior staff member failed to cooperate with an official investigation. Sanction: *Demotion with deferral for one year of eligibility for consideration for promotion*.

### **Unauthorized Outside Activities**

23. A senior staff member was found to have engaged in short-term, paid outside employment without approval from the Organization while being on Special Leave Without Pay. Sanction: *Written Censure*.

64. In the above-referenced Report, UNDP listed several cases of former staff members involving conflict of interest and it was indicated that had they remained in the employ of the Organization, a recommendation would have been made to charge them with misconduct.

65. The Tribunal has already found that there was no conflict of interest in this case therefore UNDP's practice in that regard is not particularly relevant. In addition, the Tribunal has found that the investigators had an obligation, in accordance with the universal principles of natural justice, to inform the Applicant of her right to the assistance of Counsel during investigations and that as she was found to have denied certain wrongdoings before admitting to them to investigators, she should only have been imposed the sanction of a written censure. The Applicant engaged in an unauthorized outside activity and should not therefore have received a sanction exceeding a written censure or denial of an in-grade increment for a stipulated period.

66. There is no evidence before the Tribunal of an instance where the Secretary-General or the UNDP Administrator have imposed the sanction of summary dismissal against a staff member for involvement in unauthorized

outside activity. The Applicant's case appears to be the first instance. This is not fair and tends to import a double-standard.

67. Having carefully considered the facts of this case and applied the relevant law, the Tribunal concludes:

- a. The Applicant, a G-4 level staff member working as a Radio Operator, was imposed on a grossly disproportional disciplinary sanction of summary dismissal.
- b. The doctrine of proportionality is applicable in this case to reduce the Applicant's summary dismissal to a written censure in line with the Secretary-General's practice in disciplinary cases.

## **Judgment**

68. In view of the foregoing, the Tribunal:

- a. Rescinds the Applicant's summary dismissal and holds that until the date of this judgment the Applicant remains lawfully in the service of UNDP.
- b. Orders the Respondent to reinstate the Applicant in service of the UNDP with retroactive effect.
- c. Since the Applicant's dismissal is a termination within the meaning of art. 10.5 (a) of the Statute, the Tribunal must, pursuant to that article, set an amount of compensation that the Respondent may elect to pay as an alternative to the reinstatement of the Applicant. An appropriate compensation in lieu of reinstatement is to be the amount of two years' net base salary of the Applicant.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 9th day of August 2012

Entered in the Register on this 9th day of August 2012

*(Signed)*

Jean-Pelé Fomété, Registrar, UNDT, Nairobi