



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/063

Judgment No.: UNDT/2020/124

Date: 22 July 2020

Original: English

**Before:** Judge Rachel Sophie Sikwese

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

DORE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Marcos Zunino, OSLA

**Counsel for the Respondent:**

Rebecca Britnell, UNHCR

Elizabeth Brown, UNHCR

## **Background**

1. In this application, the Applicant is challenging the United Nations High Commissioner for Refugees (“UNHCR”) High Commissioner’s decision finding him guilty of misconduct and the imposition of two disciplinary measures; the loss of two steps in grade and a written censure, a copy of which was placed in his official status file (“the impugned decision”). The Respondent urged the Tribunal to dismiss the application. It is dismissed in its entirety.

## **Facts and Procedure**

2. The Applicant holds a fixed-term appointment at the GS-6 level, as a Field Associate with UNHCR in Melkadida, Ethiopia. On 19 June 2018, he filed an application contesting the UNHCR High Commissioner’s decision finding him guilty of misconduct and imposing two disciplinary measures: (i) the loss of two steps in grade; and (ii) a written censure, a copy of which was placed in his official status file.

3. The Respondent filed his reply on 19 July 2018.

4. The Tribunal held a hearing on the merits from 11 to 12 March 2020. During the hearing, oral testimony was received from the Applicant.

5. The Applicant joined UNHCR as a Field Officer at the UNHCR Melkadida Sub-Office on 23 March 2011 in Ethiopia at the G-6 level. He continues to hold this position.<sup>1</sup>

6. Before the UNHCR sub office was relocated to Melkadida in September 2014, the office was initially situated at Dollo-Ado. Following the change of the physical location of the office, many national staff often travelled back to Dollo-Ado for the weekend to spend time with their families. To facilitate the transportation of national staff to Dollo-Ado, Senior Management at the Melkadida Sub office

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<sup>1</sup> Reply, para. 4.

authorised two vehicles to be used every Friday by national staff.<sup>2</sup>

7. The transport arrangements often caused misunderstandings between local staff and management because of the condition of the vehicles and the large numbers of staff travelling.<sup>3</sup> One such misunderstanding between the Applicant as a member of the local staff travelling on that day and the Complainant who for confidentiality purposes<sup>4</sup> the Tribunal shall call “Ms. K” or “the Complainant” led to the current proceedings.

8. In a nutshell, as per practice, it was a Friday, 13 May 2016 and local staff members gathered to board the assigned two vehicles to Dollo Ado for the weekend. However, it transpired that two vehicles were not adequate to take all the passengers. There was need for a third or a bigger vehicle. The practice was that in such circumstances a select committee of the local staff association headed by a Chairman would make arrangements with the management to release a third or bigger vehicle. The Chairman responsible for this activity was Mr. Adow and he was present on this Friday. He and a colleague, Mr. Kuresh, went to Ms. K’s office who was responsible for transport logistics to demand a third or bigger vehicle to supplement the two vehicles. Ms. K reminded them that she was not responsible for issuing a third or bigger vehicle without authority from her superiors. She advised them to speak to her superiors as she could not release the vehicle without that authorisation. Instead of seeking authorisation from the superior officers as informed, the Applicant in the company of Mr. Adow and others followed Ms. K, who had by then left the office for her house located within the compound. They went to her house demanding that she release the third vehicle. She declined until the members of staff sought authorisation from Ms. K’s superior, the Officer-in-Charge, Mr. Dicko, upon who’s authorisation she released the key.

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<sup>2</sup> Mr. Dicko’s interview of 23 January 2017, application, annex 1 (Investigation Report), page 150.

<sup>3</sup> Mr. Abdisalam Kuresh, Protection Associate’s interview of 21 March 2017, *ibid.*, page 93.

<sup>4</sup> Victims of misconduct need anonymity. As the purpose of anonymity is to protect the privacy of victims of misconduct and also to ensure their safety, see for example in *Oh* 2014-UNAT-480, para. 23.

9. The bone of contention is that while at Ms. K's house the Applicant had conducted himself in a manner that constituted harassment. She reported the incident to management who, on 16 May 2016, invited the parties for a discussion that ended in the Applicant apologising to Ms. K for the incident. Thereafter management instituted disciplinary proceedings. An investigation was conducted where more than 12 members of staff were interviewed. The Applicant was charged and found guilty of misconduct leading to the imposition of the sanctions.

### **Submissions**

#### *The Applicant*

10. The Applicant argues that the misconduct was not proved through clear and convincing evidence and that the decision should be rescinded. He argues that the Administration failed to apply the correct evidentiary standard applicable in disciplinary matter under ST/AI/371 Amend.1, (Revised disciplinary measures and procedures) and that there was a lack of corroborated evidence regarding the alleged harassment.

11. He refers to the sanction letter and submits that the High Commissioner merely referred to "holistic assessment" in arriving at the impugned decision. This holistic assessment is a clear misrepresentation of the content of the case file and does not in any event flow from the analysis of the available documentation.

12. The Applicant submits that the Respondent attributed decisional weight on the testimony of non-direct witnesses, who were not in a position to observe the event and disregarded the testimony of the Applicant who produced pictures (photographs of the distance and obstacles that should have prevented some of the witnesses from viewing and/or hearing what was being discussed between the Applicant and Ms. K at her door step).

13. The Applicant further submits that the Respondent attributed weight to two minor inconsistencies in the Applicant's testimony during investigations or in the

alternative not attributing weight to the third-party witnesses who testified that the Applicant's role during the exchange with Ms. K was passive and not confrontational. This reflects a biased approach on the part of the Respondent, particularly because the evidence collected contained significant discrepancies and these were not addressed in the sanction letter.

14. The sanction letter, he argues, lacked specificity and substantiation and failed to accord the Applicant the opportunity to confront the evidence adduced against him.

15. He concludes that due to the inconsistencies in the witnesses' statements, the evidence was not sufficient to establish misconduct, therefore the decision must be rescinded.

*The Respondent*

16. The Respondent on the other hand submits that the alleged facts have been established on the balance of probabilities, and that the established facts constitute misconduct within the meaning of the United Nations Staff Regulations and Staff Rules. Consequently, the disciplinary measures imposed were proportionate. In specific reference to the Applicant's submissions, the Respondent arguments are summarised below:

17. The Respondent argues that where the disciplinary measure does not lead to the staff member's separation from service, the facts can be established on the preponderance of evidence or balance of probabilities.

18. He submits that the varying accounts in the number of staff that visited Ms. K's residence and the nature of the exchange that happened at the house was assessed and the UNHCR Inspector General's Office ("IGO") was satisfied that there was sufficient evidence to substantiate on the balance of probabilities that the Applicant engaged in harassment.

19. The Respondent affirms that from the High Commissioner's "holistic

assessment” of the facts, the Applicant played a key and active role in leading a group of men to Ms. K’s residence and engaging in a confrontation with her on 13 May 2016; and in doing so, he engaged in improper and unwelcome conduct which could reasonably be and was perceived as harassment by Ms K.

20. The Respondent submits that in arriving at the decision, the testimony of witnesses who did not have direct view of the events were not considered.

21. He avers that the facts constituted misconduct because the Applicant violated his basic obligations under the United Nations staff regulation 1.2(b) and staff rule 1.2(f) and the UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/2014/4).

22. Regarding the investigation process, the Respondent submits that the Applicant’s due process rights were respected because he was accorded a right to make his comments regarding the draft investigation findings.<sup>5</sup> The Applicant provided his comments and the IGO finalized its investigation report. The Applicant was then served with a letter containing allegations of misconduct. He was invited to provide his comments and observations within a period of two weeks.<sup>6</sup> He submitted his response to the allegations and thereafter the UNHCR High Commissioner issued the impugned decision.

23. The Applicant was informed of the disciplinary measures imposed on him.

24. In determining the proportionality of the disciplinary sanction, the High Commissioner took into account as a mitigating circumstance that the Applicant had no prior disciplinary record, and his overall satisfactory performance. His apology during the staff meeting of 16 May 2016 and he also considered the parity principle, which requires equality and consistency in the treatment of employees.

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<sup>5</sup> Application, annex 1, page 17.

<sup>6</sup> Application, annex 2.

## Considerations

### *Preliminary Issue: Oral hearing*

25. The Tribunal conducted a case management discussion on 11 December 2019 where the parties agreed that the Applicant would be granted an oral hearing because he wanted to clarify some facts as the investigators had alleged that he had given contradictory accounts of his role on 13 May 2016.

26. The Applicant did not at this discussion or at any point request the Respondent to produce any witness, in particular, to produce the Complainant to be cross-examined at the hearing which took place on 11 and 12 March 2020.

### *Standard of proof in disciplinary cases*

27. The parties were not in agreement on the standard of proof required in a case of this nature. The Applicant submitted that the Respondent was obliged to prove the alleged misconduct through clear and convincing evidence, meaning that the truth of the facts is highly probable. The Respondent on the other hand submitted that in this case where the sanction was not separation from service, the standard of proof to be applied was on a preponderance of evidence.

28. It seems to the Tribunal that indeed the Applicant's position is consistent with the United Nations Appeals Tribunal ("UNAT") jurisprudence prior to *Suleiman*<sup>7</sup>. For instance, the standard of proof confirmed both in *Nadasan* and *Siddiqi*<sup>8</sup>, is described in a similar fashion word for word by the UNAT to be that:

In disciplinary cases under Article 2(1)(b) of the UNDT Statute, the UNDT will examine the following: i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of evidence, but where termination is a probable sanction, the facts must be established by clear and convincing evidence)...

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<sup>7</sup> *Suleiman* 2020-UNAT-1006, para. 10.

<sup>8</sup> *Nadasan* 2019-UNAT-918, para. 38 and *Siddiqi* 2019-UNAT-913, para. 28.

29. This Tribunal notes the significant and substantive departure from the above standard when the UNAT held in *Suleiman* that:

In disciplinary cases, the Tribunals will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (**where termination is the sanction imposed, the facts must be established by clear and convincing evidence; in all other cases preponderance of the evidence is sufficient...**)<sup>9</sup> (Emphasis added).

30. The Tribunal further observes that when setting this standard, the UNAT had cognizance of and in fact cited *Nadasan* and *Siddiqi*. In line with the principle of precedent which governs judicial systems that have a hierarchy of tribunals, the lower tribunal is obliged as a matter of law to follow the higher tribunal's decisions. In this regard UNAT held that:

24. There can be no doubt that the legislative intent in establishing a two-tier system was that the jurisprudence of the Appeals Tribunal would set precedent, to be followed in like cases by the Dispute Tribunal. The principle of *stare decisis* applies, creating foreseeable and predictable results within the system of internal justice. The Appeals Tribunal has the power of judicial review of the Dispute Tribunal's decision making, and the Dispute Tribunal should recognize, respect and abide by the Appeals Tribunal's jurisprudence<sup>10</sup>.

31. As a matter of fact in *Suleiman*<sup>11</sup>, UNAT's holding on the standard of proof to apply in disciplinary cases that do not result in termination is emphatically presented as such:

The UNRWA did not err in law or fact in holding that the facts on which the disciplinary measure was based had been established. As the disciplinary sanction imposed in this matter was not termination but a fine and a written censure, it is sufficient that the Tribunals find that there was a preponderance of evidence. We agree with the UNRWA DT that the preponderance of the evidence shows that Mr. Suleiman hit a student forcefully on the back during the 25 October 2016 during

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<sup>9</sup> Para. 10.

<sup>10</sup> *Igbinedion* 2014-UNAT-410, para. 24.

<sup>11</sup> At para. 10.

distribution of school bags.

32. Accordingly, the Tribunal finds that because in the instant case, separation is not the sanction imposed on the Applicant, the applicable standard of proof is one on a preponderance of evidence. This standard is lower than clear and convincing evidence which the Respondent must prove to show that the Applicant committed misconduct as alleged<sup>12</sup>.

33. There are four elements that the Tribunal must evaluate and make a decision on. These are (i) whether the facts on which the disciplinary measure is based have been established; (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and (iv) whether staff member's due process rights were respected.<sup>13</sup>

*1. Whether the facts on which the disciplinary measure is based have been established*

34. The allegations levelled against the Applicant are (i) leading a group of male staff members and (ii) while there, engaging in a confrontation with the Complainant. The Complainant filed a complaint of harassment and upon carrying out investigations, the Respondent found that these acts constituted misconduct and sanctions imposed. The Tribunal must analyse the facts in order to determine the first element.

35. The facts as discerned from the documentary and oral evidence can be summarised as follows:

*(a) Leading a group of staff members*

36. To begin with, Ms. K through her window, saw a group of staff members, about 10, acting in an unruly manner approaching her house and requesting in an

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<sup>12</sup> *Molari* 2011-UNAT-164, paras. 2 and 30.

<sup>13</sup> *Suleiman* 2020-UNAT-1006, para. 10, citing *Nadasan* 2019-UNAT-918, para. 38; *Siddiqi* No. 2019-UNAT-913, para. 28.

aggressive tone that she come out to talk to them.<sup>14</sup> She identified the Applicant and two other staff members as leading this group.

37. The Applicant denied leading any group of staff members to engage in the alleged misconduct but conceded that he had a way of talking things through with international staff and that because of that he was asked by his colleagues to accompany Mr. Adow to the Complainant's house to secure an extra vehicle.

38. It was also the Applicant's view that he had to go to the Complainant's house because in his opinion, Mr. Adow did not possess good leadership qualities.<sup>15</sup> The relevant part of the transcript is reproduced below:

I was advised by the other staff members to join him (Mr. Adow) (to Mr. Mambu's house to get authorization for the vehicle, and Mr Mambu advised them to go to the Complainant's house) because given that I served as staff association chairperson for two terms before Mr. Adow and I -- so I had a good understanding with international staff, so I'm -- I'm normally called to help when they ask a question. So I had to join Mr. Adow, based on his invitation and the suggestion of the staff.

Counsel: I see. In your opinion, was Mr. Adow a good person to chair the staff association?

Applicant: **In my judgement, the qualities that a chairperson requires was not fully observed in Mr Adow.**<sup>16</sup> (Emphasis added).

39. The Applicant said that it was not him that knocked on the door of the Complainant's house, he seems to understand 'leading' as being physically in front of the group. However, from the Complainant's clear evidence, she said three men including the Applicant led the group. 'Lead' in this sense means; as a leader chosen by others to advance interests of that group. The meaning ascribed by the Applicant is over-stretching the matter and is inconsistent with his own testimony that he was a man of better leadership qualities than Mr. Adow and that he has experience in

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<sup>14</sup> Reply, para.25(b).

<sup>15</sup> Because Mr. Adow was not called upon to testify and defend himself against this assertion, this Tribunal is only using this excerpt to show inconsistency on the part of the Applicant based on his own testimony and not as the truth of the assertion regarding Mr. Adow's character.

<sup>16</sup> Transcript of proceedings, 11 March 2020, page 12, paras. 10-15.

handling international members of staff. Regardless of whether the Applicant was standing in front or behind Mr. Adow, or whether it was him or not that knocked on the door, or whether he addressed the Complainant first or at all, it is evident from the facts that he and at least one other person, Mr Adow, led this group. It follows that the Applicant played an active role in the alleged harassment. This fact is proved to the requisite standard.

(b) *Engaging in confrontation*

40. The Applicant on the one hand denies that there was an acrimonious exchange of words with the Complainant while on the other he admits that the situation had gotten out of hand. As a matter of fact, this exchange got so bad that the Applicant had to physically restrain Mr. Adow by taking his hand and leading him away from the Complainant's house. This was the Applicant's version at page 17 of the trial transcript.

I spoke as I was grabbing his hand and asking him to leave. Because I judged the situation was not good. I had to diffuse it so that they don't converse wrongly anymore. So it was like I once - a few steps ahead, grabbed his hand as I spoke and then we left.

41. This admission corroborates the Complainant's version of events and the Respondent's finding after assessing other witnesses' statements that there was confrontation at the house. The Tribunal finds that the Respondent has proved this allegation to the required standard.

42. One further area of controversy that needs a finding on this point is whether the Applicant had said anything to the Complainant or remained silent throughout the exchange. He said it was Mr. Adow who spoke to the Complainant. He went to the Complainant's house in peace, to ensure that there was no problem, just to get the key to the extra vehicle. This is contrary to the Applicant's own statement in court where he said:

I did not talk that much, except that -- that words I said and from this distance, no-one can hear (page 22 transcript).

At that time I was two, three steps behind Mr Adow and I said, “We only came to pick up the keys for the log base, but we have no intention of offending you. Sorry, if that is not okay.” (Page 35 transcript).

A Yes, this is not a conversation with Ms K.. As you can see, I was behind, two, three steps from Mr Adow, when I heard her shouting and, “What are you doing at my house.” I had to go forward, as I say this, I was getting Mr Adow -- I was not directly conversing with her. As I said, it was general. I did not -- make direct conversation with Ms K.. It’s just the -- the (*indistinct*) the way the sentence is put and is may look that we were conversing, but it’s not. I was two-to-three steps behind Mr Adow. I can clearly remember. I was -- I was not talking to her. She was not talking to me as well. She was talking to Mr Adow. When I saw her shouting and saying this, I have to go immediately saying this, we only -- while we came to the general, including to Mr Adow, I was looking to Mr Adow and took by his hand and we asked him to leave. Did not even wait to hear any other thing. This what happened (page 36 transcript).

43. The Applicant acknowledges in these statements that there was shouting but that it was the Complainant who was shouting not him. He also admits that he spoke at this meeting and it was during the time that the Complainant was shouting when he intervened by saying the words that are quoted.

44. The Applicant challenged the evidence of other staff members who alleged that he was shouting at this meeting. He said although they could observe, but because of the distance they could not hear what was being said.

45. The Applicant did not give any evidence to show why the Complainant could have wrongly accused him of talking to her in a threatening manner prompting her to shut the door in his face. Therefore, based on her testimony and the testimony of the Applicant that there was acrimonious exchange of words, the Tribunal finds that this aspect of the allegation is proved to the requisite standard.

46. The Applicant urged this Tribunal to discredit the testimony of the Complainant because it was not consistent, in particular the Complainant had mentioned one member of staff as being in the group of the those that threatened her and yet it was proved that the staff member was not in the compound on the day in

question and that the Complainant had said the Applicant had threatened to kill her and yet this evidence was not proved and was not taken into account by the Respondent when charging the Applicant.

47. In essence, the Applicant is trying to show that there was no group of staff that went to the Complainant's house. It was just Mr Adow and himself. However, there is overwhelming evidence that at least five and not two members of staff went to the Complainant's house. Mr Sargo, one of the witnesses who gave evidence during the investigations, ran into four or five national staff, including the Applicant, who were at that time looking for the Complainant. Mr Mambu's said that five-to-six national staff including the Applicant went to his residence asking for vehicles, he told them to visit the Complainant. This is consistent with the Applicant's testimony that from Mr. Mambu's house they proceeded straight to the Complainant's residence. The testimony of Mr. Gonzaga, another witness who gave evidence to investigators, was that he was on his way back to his residence, not far from the Complainant's house, when he saw a group of national staff, who, he estimated, to be more than five, standing at the Complainant's house with the Applicant speaking loudly. Mr. Dicko, had testified that around the same time, a group of at least 10 men had gone to his house to report that they had been to the Complainant's house but she had refused to release a third vehicle. Mr. Dicko, refused to discuss with the whole group so he asked them to chose two people among them to get inside his house and discuss the issue with him while the rest waiting outside. The Applicant was chosen to speak with Mr. Dicko.

48. The Tribunal is inclined to believe that a group of at least five local staff members led by the Applicant went to the Complainant's house where they confronted the Complainant by exchanging bitter words with her and causing her fear.

*What is the effect of the inconsistencies in the Complainant's testimony?*

49. The minor inconsistencies in the testimony of the Complainant do not affect

her credibility as a witness. Her account of events is largely corroborated by independent witnesses who held no ill motive against the Applicant. There are undisputed facts showing a sequence of events that culminated into the unfortunate incident at the Complainant's house that prove on a preponderance of the evidence that the incidents described by the Complainant occurred. Although based on a lower standard of evidence, the instant application is similar on this issue to what UNAT held in *Mbaigolmem*<sup>17</sup>; that the UNDT erred in its conclusion when considering inconsistencies in Complainant's testimony, holding that:

The undisputed facts, the evidence of the first report, the coherent hearsay evidence pointing to a pattern of behaviour, the internal consistency of the witness statements, the unsatisfactory statement of Mr. Mbaigolmem and the inherent probabilities of the situation, taken cumulatively, constitute a clear and convincing concatenation evidence establishing, with a high degree of probability, that the alleged misconduct in fact occurred.

50. The element of gender harassment although not argued specifically and not the basis of Ms. K's complaint, came out clearly in the testimony of Mr. Gonzaga who was an international member of staff. In his opinion, which was not challenged by the Applicant, Ms. K faced resistance due to the paternalistic culture within which she operated. Mr Gonzaga said in relation to this culture:

Ms. K. did not have a good rapport with national staff. She did not have a cordial relationship with the drivers during the initial stages of her assignment in the management transport affairs. Later on some of the drivers had eventually begun to like her. Ms. K. was bossy and was considered overly authoritative. He had witnessed Ms. K. giving orders to drivers in a commanding tone/manner. Her commanding tone did not resonate well **in the conservative community of Melkadida where men are not keen on being directed or ordered by women. She is also younger than the drivers**, an aspect which could have exacerbated the situation. She also did not listen to their views. Ms. K. is a very emotional person. (Emphasis added).

51. The above environment, according to Mr. Gonzaga, contributed to the hostile

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<sup>17</sup> 2018-UNAT-819, para. 32.

and intimidatory atmosphere under which Ms. K operated on 13 May 2016. It is easy to conclude that Ms. K operated under an apprehension of fear of local staff and that the Applicant's behaviour did not help to alleviate that fear.

*Whether the established facts qualify as misconduct under the Staff Regulations and Rules*

52. It is clear from the Tribunal's analysis of the uncontroverted evidence that the Applicant violated the Staff Regulations and Rules and the policy on discrimination through his unwelcome and improper conduct. The acts constitute harassment.

53. The Applicant violated staff regulation 1.2(b), staff rule 1.2(f) and UNHCR's Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/204/4 which defines harassment as:

Any improper and unwelcome conduct that might reasonably be expected to be perceived to cause offence or humiliation to another. Harassment includes- but is not limited to- words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle or cause personal humiliation or embarrassment to another or that cause an intimidating, hostile or offensive work environment. It includes harassment based on any grounds such as race, religion, colour, creed, ethnic origin, physical attributes, gender or sexual orientation. It can include a one off incident or a series of incidents. Harassment maybe deliberate, unsolicited and coercive. Harassment may also occur outside the workplace and/or outside working hours.

54. The Tribunal finds and holds that the Respondent has demonstrated that the Applicant's conduct was inconsistent with a staff member's basic obligations set out in staff regulation 1.2(b) stipulating that "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". He also breached staff rule 1.2(f) which stipulates that "any form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited".

55. According to staff rule 10.1(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 of misconduct.

56. Therefore, the Respondent was entitled to invoke staff regulation 10.1(a) which compels the Secretary-General, in appropriate cases, to impose disciplinary measures on staff members who engage in misconduct.

*Whether due process rights were observed*

57. The allegations against the Applicant contained in the letter dated 30 October 2017 are clear and consistent with the preliminary investigation report to which the Applicant had access and could comment on. He gave his side of the story to the allegations of misconduct. His comments were considered when arriving at the decision. The Respondent considered all the factors in a holistic manner by using only relevant pieces of evidence and factors and ignoring or disregarding irrelevant testimonies and factors, for example, the allegation that the Applicant had threatened to kill the Complainant was ignored. There is no proof that the Applicant's due process rights were violated.

58. Further, the Applicant had the right of appeal to this Tribunal where he clarified his version of events and had an opportunity to confront witnesses if he had chosen to.

*Whether the sanction is proportionate to the offence*

59. The sanction is proportionate to the offence because the Respondent considered the parity principle, which requires equality and consistency in the treatment of employees. The Applicant's mitigating factors were also taken into account. There were no aggravating factors.

**Judgment**

60. The application is dismissed in its entirety.

*(Signed)*

Judge Rachel Sophie Sikwese

Dated this 22<sup>nd</sup> day of July 2020

Entered in the Register on this 22<sup>nd</sup> day of July 2020

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi