



Before: Judge Eleanor Donaldson-Honeywell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

CHAWLA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat
Fatuma Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former staff member of the United Nations Support Office in Somalia (“UNSOS”). He served as Chief of the Supply Section at the P-5 level on a fixed-term appointment and was based in Mogadishu.

Procedural History

2. On 16 January 2022, the Applicant filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s 18 October 2021 decision to neither select nor roster him for the position of Chief of Service, Supply Chain Management, D-1, UNSOS (“Job Opening 152801”). He supplemented his application by two filings on 31 January 2022 and 9 February 2022.

3. The Respondent filed his reply on 15 February 2022.

4. The Applicant filed a response to the reply on 6 September 2022.

5. The Tribunal held a case management discussion (“CMD”) with the parties on 27 September 2022. The case was set for hearings on 15 and 16 November 2022. The Respondent was directed to file witness statements for the four interview panel members and the *ex officio* Human Resource representative at the interviews by 28 October 2022.

6. The Applicant was strongly advised to retain counsel. The Tribunal facilitated this by referring the matter to the Office of Staff Legal Assistance (“OSLA”) for this purpose.

7. The Respondent complied with an Order issued at the CMD to disclose, under seal, the Personal History Profiles (“PHPs”) of the 15 candidates who were interviewed in the impugned selection exercise by 3 October 2022.

8. On 11 October 2022, OSLA informed the Registry that the Applicant was going to “continue to represent himself.”

9. On the Applicant's motion, the Respondent further disclosed, on 12 October 2022, the Comparative Analysis Reports for the 15 rostered candidates for the job opening.

10. The Applicant filed the following documents:

a. 'Motion for leave to respond or filing submissions' with an analysis of the Respondent's disclosed documents attached thereto, filed on 18 October 2022.

b. 'Testimony of the Applicant' filed on 15 November 2022

11. The Tribunal heard the parties in oral hearings that took place on 15 and 16 November 2022. The Applicant appeared remotely from Canada. Messrs Ronved and Dhindsa¹ testified in person at the UNDT Courtroom, while three other witnesses testified remotely.

12. During the hearings, the Respondent further disclosed, with leave of the Tribunal, the Applicant's PHP. On the Applicant's request, the handwritten notes of the Applicant's interview² were also disclosed at the hearing.

13. Both parties filed their closing submissions on 29 November 2022.

Facts and Submissions

14. Between 29 March 2021 and 27 April 2021, Job Opening 152801 was advertised in *Inspira*. The Applicant applied on 31 March 2021. He was subsequently invited for a technical assessment in the form of a video interview. After the video-interview, the Panel deemed his performance unsuccessful and thus did not invite him for a competency-based interview ("CBI").

15. The Applicant held the view that he had done very well in the technical assessment. He doubted that the technical assessment was evaluated in a fair manner. This doubt was based on his view that his filing of a management

¹ Chief, Operations and Resource Management ("ORM"), UNSOS.

² Respondent's annex R/15.

evaluation request (“MER”) against his First Reporting Officer (“FRO”) Mr. Clarke Toes, who was one of the evaluators of the technical assessment, may have resulted in bias against him. The Applicant also contends that the video-assessment makes the identity of all candidates known to the hiring panel.

16. On 26 August 2021, the Applicant requested a management evaluation of the decision to exclude his candidature from the CBI, seeking:

- a. suspension of the recruitment process for the position and that
- b. a fresh technical assessment be conducted by “anonymous written test.”

17. The Applicant also filed for suspension of action (“SOA”) before the Tribunal which was granted.³ Subsequently, UNSOS informed the Management Evaluation Unit (“MEU”) that, following the opinion of the Tribunal as to the flaws in the technical assessment by video process, UNSOS decided to cancel it. The Applicant’s request that the assessment by video be replaced by a written assessment was not addressed. Instead, there was no technical assessment; the Applicant and 27 other screened candidates were invited to a CBI.

18. The Applicant was informed that his FRO would recuse himself from participating as a panel member in *his* CBI because of the allegations of bias raised by him.

19. Following these actions by UNSOS, MEU closed the Applicant’s request for review as being moot on 8 September 2021.

20. On 23 September 2021, the Applicant was interviewed by three panel members instead of four. The Applicant was therefore interviewed by a panel that was different from the rest of the candidates.

³ Order No. 179 (NBI/2021).

21. Ten of these interviews took place before the Applicant requested suspension of the recruitment process.⁴ The FRO in question was part of the panel that interviewed *all* the other candidates.

22. Sixteen candidates passed the interview, and three were recommended for selection. The Head of Mission selected a female candidate (“the selected candidate”).

23. On 6 October 2021, UNSOS forwarded the selection decision to the Field Central Review Body (“FCRB”) who endorsed the selection. There was also endorsement of the placement of the remaining 15 candidates, who passed the interview, on a roster of candidates pre-approved for similar functions at the level of the job opening⁵.

24. On 18 October 2021, the Applicant received an email from the Director of Mission Support, UNSOS, informing him that his application for the position was not successful.

25. The Applicant then filed his MER to challenge the selection exercise, specifically the decision not to select him for the position or include him in the roster.

26. On 20 October 2021, he also filed an SOA pending management evaluation, which was granted by the Tribunal in Order No. 241 (NBI/2021).

27. The period of suspension ended on 6 December 2021 when the Under-Secretary-General for Management Strategy, Policy and Compliance decided to uphold the selection decision.

28. The selected candidate assumed duties in January 2022.

⁴ Respondent’s reply, annex R/11 at para 7.

⁵ Respondent’s reply, annexes R/6 and R/7.

Considerations

29. When reviewing administrative decisions regarding appointments and promotions, the Tribunal considers: (a) whether the procedure in the Staff Regulations and Rules was followed; (b) whether the staff member was given fair and adequate consideration; and (c) whether the applicable rules were applied in a fair, transparent, and non-discriminatory manner. The Tribunal's role is not to substitute its decision for that of the Administration.⁶

30. As further explained by the Appeals Tribunal in *Rolland*⁷ the initial burden of proof on the Respondent is minimal to show that full and fair consideration was given to an applicant's candidature. The burden then shifts to the applicant to prove unfairness in the selection process.

31. Rebuttal of the presumption of regularity after the initial burden shifts from the Respondent occurs "only where clear and convincing evidence establishes that an irregularity was highly probable."⁸

32. The jurisprudence holds that

It is not enough for an applicant to claim that a procedural irregularity was committed during a selection process, s/he should also establish that this irregularity caused her/him a direct prejudice. The Applicant must therefore prove that, if no irregularity had been committed, s/he had a serious chance of being selected for the Post.⁹

33. In challenging the impugned decision, the relevant issues raised by the Applicant are his contentions that:

- a. The decision was unlawful because differently constituted panels conducted the interviews, with four persons interviewing other candidates while only three interviewed him.

⁶ Order No. 241 (NBI/2021) at para 20 citing *Savadogo* 2016-UNAT-642, para. 40.

⁷ 2011-UNAT-122 at para 5; *Ngokeng* 2017-UNAT-747 at para 35.

⁸ *Ngokeng*, *op cit.* at para. 34.

⁹ *Simmons* UNDT-2013-050 at para 119; *Duncan* UNDT-2019-078 at para 9, citing *Vangelova* 2011-UNAT-172; *Bofill* 2011-UNAT-174.

b. The selection process was tainted with irregularity from the outset when the technical assessment was abandoned instead of being replaced with a written assessment.

c. The selected candidate and those chosen for the roster failed to meet the job fit requirements.

d. The panel members who interviewed the Applicant were biased against him because he had twice challenged the selection process for the position and got it suspended and/or biased in having “a pre-determined mind to select certain candidates”.

34. If any of the concerns raised by the Applicant is established as clearly and convincingly proving irregularity in the selection process, the Tribunal must consider whether the irregularity impacted on the Applicant’s chances of selection.

35. These issues will be examined, taking into consideration the submissions of the Applicant, the Respondent’s submissions in his reply, the regulatory framework, the documents on record and the testimony of the witnesses at the hearing.

Differently constituted CBI panels and unfit selections

36. The initial burden was on the Respondent to prove that all regulatory requirements were complied with regarding constitution of the CBI panels. This was achieved by reference to ST/AI/2010/3 (Staff selection system)¹⁰ which provides that the panel must be “comprised of at least three members, with two being subject matter experts at the same or higher level of the job opening, at least one being a woman and one being from outside the work unit where the job opening is located.” The panel for all the CBIs, including the Applicant’s met, these requirements and the Respondent further disclosed the CBI certification of all the panel members.

¹⁰Section 1(c) of ST/AI/2010/3.

37. The Respondent also relied on the Staff Selection System Manual¹¹ as supporting the regularity of the panel constitution of four members for all other interviews despite the absence by recusal of one member from the Applicant's CBI. The Manual provides as follows:

The assessment panel normally comprises the same members throughout the evaluation process. However, the panel membership may differ between assessments (e.g., technical experts may grade the written assessment, while other members conduct CBI). There may also be instances where for reasons of availability of panel members, or conflict of interest, panel membership must be adjusted. The hiring manager must in all cases ensure consistency in process and equitable treatment of candidates, and document any variations or substitutions.

38. The "Final Transmittal Memo to the Central Review Body"¹² used by the hiring manager on 6 October 2021 after the CBIs appears to be a standard form. It includes a field to be filled as follows: "The description below explains any situation in which the above assessment panel may have been modified". Under this field, the hiring manager disclosed that "Mr. Clark Toes recused himself from the interview process of [the Applicant], as his first reporting officer, to avoid the appearance of bias."

39. The Staff Selection Manual is not part of the regulatory framework. Should there be any inconsistency between the manuals and the text of the Administrative Instruction ("AI") on Staff Selection, the provisions of the AI prevail.¹³ The Manual is expressly¹⁴ intended to reflect required processes and is therefore subject to change in response to amendments in the regulatory framework and to lessons learned from the jurisprudence of the Tribunals.

40. In deciding on a case where the CBI assessment included several panel changes, the Tribunal in *Mianda*¹⁵ interpreted the Staff Selection AI definition of a

¹¹ Section 9.1.3, DOS and DMSPC 'Staff Selection System' Manual (last updated on 18 January 2022), available at

https://cdn.manula.com/user/18506/22741_25661_en_1611757097.pdf?v=20220118163635

¹² Respondent's reply, annex R/6.

¹³ Section 2.6 of ST/AI/2010/3.

¹⁴ "About this Manual" at page 7 of the Manual.

¹⁵ *Mianda* UNDT-2018-060 at para. 36.

panel as excluding the possibility of replacements. The Tribunal observed that the definition section:

Provides for, in effect, the establishment of *a* panel. Literally, that can only be interpreted as being one single panel. It is “normally comprised of at least three members”. Secondly, it then provides for the role of the constituted panel, “who will undertake the assessment of applicants for a job opening”. The reference to “who will undertake the assessment” is one to “the panel” as it has been constituted for the assessment of (all) applicants for a job opening. The administrative instruction makes no reference whatsoever to a possible reconstitution of a panel or to reserve members of the panel, as there could be. There is thus no apparent right to substitute panel members, should they become unavailable.

41. At the time of *Mianda*, the Manual also included provision at section 9.3.3 premised on permissibility of changes in the members of a panel. However, the Tribunal’s position was that

[t]he apparent authorisation in the Manual to change panel members, once the processes of the assessment panel has commenced, is *ultra vires*, as there is no such right given in ST/AI/2010/3 to change the composition of an assessment panel once it has been constituted. Actions taken by such a reconstituted Panel are thus illegal. ...

If a panel member cannot continue, in exceptional circumstances—e.g. in case of death or if a Panel member ceases to work for the Organization—the whole process must recommence from the beginning, by a newly constituted panel. That means that candidates who have already been interviewed have to be interviewed anew by the newly constituted Panel. If management wishes to provide otherwise, to authorise substitution or to provide for a reserve panel member, then it should do so in the Administrative Instruction.¹⁶

42. In *Duncan*,¹⁷ the Tribunal followed *Mianda* in holding that the fact that the composition of the panel varied throughout the process constituted a procedural flaw in the selection process. However, ultimately the non-selection decision was upheld in *Duncan* because the Tribunal found that it could not be concluded that the applicant in that case would have obtained a different result had the composition of the panel been the same for all candidates.

¹⁶ *Mianda* UNDT-2018-060 paras 40 to 42.

¹⁷ *Duncan* UNDT-2019-078.

43. The Tribunal notes that in this case the irregularity in maintaining consistency in the panel was distinguishable from the cases of *Mianda* and *Duncan*. In those cases, the changes in composition reached the point where not even the core required number of three persons to make up the panel remained constant. In *Mianda* the panel dwindled to only one of the original members remaining with other new members. In *Duncan* there were only two panel members that remained constant.

44. In this case, the core number of panel members who met the requirements of the Staff Selection AI remained present for CBIs throughout the process.

45. The Applicant has not contended nor established that there were any other irregularities in the panel, whereas there were many in the *Mianda* case. In the instant case, there was a documented consistent approach to evaluating the candidates. The candidates were assessed against the same competencies. Unlike the case of *Sobier*¹⁸ relied on by the Applicant, the candidates were all asked the same questions by CBI trained panel members.

46. Another distinguishing factor is that it was the Applicant's own challenge to the impartiality of his FRO that resulted in his recusal from his interview. There is no evidence to suggest that the Applicant would have had a better chance had his FRO been present, nor that his (the FRO's) presence in the other CBIs gave them a better chance. The FRO's written statement does not reflect that it was his influence in the CBI interviews that led to selection of the chosen candidate. The Applicant decided not to cross-examine him so there was no further evidence at the hearing to prove that he had such influence.

47. The Respondent presented fully documented evidence of the responses given by all persons interviewed in the CBIs including those of the selected candidate. The Applicant is not certified in CBIs. He has not presented any evidence based on which the Tribunal can determine that the selected candidate and rostered candidates were unjustifiably determined to have passed the CBI and that the said

¹⁸ 2021-UNAT-1527 at para. 25.

decision was based on the presence of the FRO on the panel for her interview. On the other hand, the Panel Members who were all sworn witnesses for the Respondent gave cogent and clear testimony as to their assessments of the candidates' performances in the CBI's.

48. All candidates except the Applicant achieved ratings of successfully meets the requirements or exceeds the requirements in all five competencies being assessed. The Applicant did not achieve a rating of exceeds requirements in any of the competencies and was assessed as only partially meeting requirements for two competencies, namely:

- a. Leadership; and
- b. Judgment and Decision-Making

49. The Respondent's case is that the selection of the successful candidate for the position was because she exceeded all requirements in her CBI and also based on mission targets with respect to gender balance.¹⁹ At that time there were no women in UNSOS at the D-1 level.

50. At the hearing before the Tribunal, the Applicant was cross-examined about his managerial experience compared with that of the selected candidate. The evidence elicited was clear and convincing in supporting the Respondent's case that the selected candidate was more experienced at the management level. Her qualifications were at least substantially equal, or superior, to the Applicant's. Unlike the Applicant, she passed the technical assessment by video and the CBI.

51. The Applicant's contention, that had the selected candidate been made to take a written technical assessment she would have failed, is speculative and unfounded. In any event, the administration of a written test is not mandatory pursuant to the Staff Selection AI.²⁰

¹⁹ Respondent's reply, annex R/5.

²⁰ *Duncan, op cit.*, at paras. 22-23.

52. The explanation given for waiving the technical test was that it was done to avoid further delays as the exercise was already behind schedule because of the Applicant's litigation. This was a discretionary decision. The Applicant challenges its genuineness, suggesting that it would have been quick to implement a written test to be taken by all those who were already assessed by the video method. However, such a test is not required; and the Applicant has not shown that the decision to not run a test was based on any extraneous factor and so tainted the exercise of discretion.

53. The Tribunal's finding is that even if the CBI panel had remained constant and identical, with the inclusion of the FRO, the record before the Tribunal demonstrates that the selected candidate was superior in her candidature.

54. That said, whether the Applicant may have had a better chance at being rostered must be determined by considering his allegations of bias.

Bias and its impact on chances of selection

55. Following the Appeals Tribunal's observations in *Sobier*²¹ the Tribunal acceded to the Applicant's request for a hearing of the persons who conducted the CBIs. At the hearing, the three panel members and the Human Resource Officer who sat *ex-officio* on the panel as well as the FRO who recused himself testified as witnesses. All except the FRO were cross-examined by the Applicant. The said testimonies, in addition to the documentary evidence on record provide the basis for determining issues of alleged bias.

56. The nature of bias that can vitiate a selection process is explained in *Sobier*²² as follows:

29. ... a decision is not only biased if made by a decision-maker deliberately intending to favour or disadvantage the subject of it for improper reasons. Bias can also occur unintentionally on the part of the decision-maker if, considered objectively, a neutral, reasonable and informed bystander would conclude that it is likely to have been

²¹ 2022-UNAT-1208, para. 23.

²² *Ibid.*, at paras. 29-31.

made to favour or disadvantage improperly the person affected by the decision. ...

30. ... However difficult in practice it may be to make an accurate assessment of the subjective mind of the decision-maker to determine whether a decision was infected by bias, an objective consideration of all other relevant factors may nevertheless bring the tribunal to the decision that bias was established.

31. An ill-motivated decision includes not only one in which the decision-maker is deliberately motivated to maliciously deprive the staff member of what would otherwise have been the staff member's entitlement: ... "ill-motivated" can include moral wrongfulness, it can also include what might be called innocent or mistaken or negligent wrongfulness. The important element is wrongfulness, not the subjective attribution to the decision-maker's motive for its occurrence.

57. The onus is on the applicant to prove the alleged bias.

58. The Tribunal is guided by Appeals Tribunal's view in *Staedtler*

Allegations of bias and discrimination are very serious charges which should not be lightly made. They have to be established on the balance of probability by the person alleging same.²³

59. The Applicant's allegations of bias are two-fold. He claims the panel was biased against him and that they had a pre-determined mindset to select the chosen candidate.

60. The surrounding circumstances the Applicant relies on to establish the latter aspect of the alleged bias, mindset to select the chosen candidate, are neither clear nor convincing. These are examined in turn as follows²⁴:

- a. "RFR Job opening was not considered because the aim was to include the selected candidate in roster by way of PSJO". The Applicant failed to prove this argument by any clear or convincing evidence. There is no requirement that a position must be filled by recruiting from a roster. Under cross-examination the Respondent's witnesses gave clear, cogent and

²³ *Staedtler* 2015-UNAT-547 at para 33.

²⁴ Applicant's closing submission at para. 48.

convincing explanations that in opting for a PSJO, they considered the “health” of the roster, the fact that the functions of the position had changed recently, and the inadequate representation of women on the roster. It is also worth noting that the Applicant himself was not a rostered candidate.

b. “The panel was so focussed on the selection of this ineligible candidate that they overlooked required criteria of job opening for other candidates also which resulted in placement of 8 ineligible candidates in the roster”. The Applicant failed to substantiate that the chosen candidate was not qualified either academically or by way of relevant managerial and supply chain experience.

c. “By dispensing with the technical assessment, the selected candidate was considered as equally qualified and at par with other shortlisted candidates whereas the fact is that most of the shortlisted candidates particularly the rostered ones whose PHPs were reviewed by me, had more relevant education and work experience than the selected candidate.” The selected candidate had passed the technical assessment by video which the Applicant had not passed. There is no proven basis for the Applicant’s contention that she would have failed a written test on the same subject matter.

d. The Hiring Manager “did not constitute a fresh panel without Mr. Clark Toes for conducting all interviews again because there was a possibility that the selected candidate would not have received as good evaluation as was received from the old panel.” This contention is premised on the consideration that the FRO who was absent from the Applicant’s CBI was instrumental in selecting the chosen candidate. However, full records have been disclosed of all the CBI records, none of which support that the FRO had that influence on the decision.

e. The Chief ORM showed resentment against the Applicant by refusing to respond to his work-related emails around the time the Applicant was applying for an SOA concerning his unsuccessful CBI. That meant he “did

have bias against me which could be because he did not like my questioning the HR rules since he was overall in-charge of HR section OR could be because he knew the selected candidate very well who had named him as a reference in her PHP and did not like my stalling her selection.” Failure to respond to work related emails is not sufficient of itself to prove bias. The Chief ORM was not cross-examined by the Applicant about this failure. However, under re-examination, he explained that he may have acknowledged the emails verbally. The Applicant’s contentions about inferences of bias to be drawn from the selected candidate citing the Chief ORM’s as a reference are not probative in that regard. This is evident from the fact that the Applicant also cited one of the CBI panel members²⁵ as reference and later claimed he was biased against him.

f. “The only way to give her the edge over other candidates was to give her highest ratings in the Competency Based Interview which was the only assessment carried out in this recruitment exercise after compromising on her education, work experience and technical assessment.” As noted above, the assessments that led to the chosen candidate’s high ratings are fully explained and justified by the panel members. The Applicant has not proven that the high ratings were faulty in terms of the assessment of any of the managerial competencies being examined.

61. The Applicant has not proven that the panel had a pre-determined mindset to select the chosen candidate. As it relates to his allegations of bias against himself, the Applicant contends it arose when he worked remotely during the pandemic and his request to continue working remotely was denied by his FRO in April 2021. The Applicant challenged that denial by a MER.

62. The position was advertised at around the same time. The Applicant applied and was short listed. Then in August 2021, the Applicant participated in and failed

²⁵ PHP for the Applicant which was filed by the Respondent on the first day of the hearing.

the technical assessment by video, which was eventually waived following his further MER and SOA Order.

63. The Applicant contends that CBIs are quite subjective and by the time he attended he was “already a litigate in the minds of all the panel members and they had a pre-determined mind to reject me in the interview.”²⁶ He says the panel therefore used their irrational discretion to determine that his examples in two competencies did not meet expected performance indicators.

64. On the part of most of the Respondent’s witnesses at the hearing, there was no apparent ill-will against the Applicant. There was, in fact, apparent comradery and almost a positive reunion like atmosphere in the way they responded to the Applicant’s questions and exchanged pleasantries at the end. The Applicant expressed pleasure in seeing them and vice versa.

65. As aforementioned, ill-will is not a pre-requisite for a finding of bias. Surrounding circumstances that support this aspect of the bias allegation were brought out under cross-examination. The sole instance in the surrounding circumstances that provides a possible indication of bias is in the evidence of the Chief ORM. It was clear from one of his answers under cross-examination, that he assessed the Applicant based on prior knowledge of his work and not on his actual answer during the CBI.

66. Under cross-examination, the Respondent’s witnesses all agreed that there is a guideline on *Inspira* indicating that if any of the indicators under a particular competency is excluded from successful ratings, the panel may consider examples from another competency. This would be done only in clear cases.

67. The Chief ORM was asked²⁷ why the successfully rated example on entitlements of fuel rations for military troops given by the Applicant for another competency²⁸ was not also considered to assess him as successful in the

²⁶ Applicant’s response to the reply at page 2.

²⁷ Recording of cross-examination of the Chief ORM on 16 November 2022 at 47:52 to 48:54 minutes.

²⁸ Applicant’s Comparative Analysis Report at page 92 of the Trial Bundle.

competency of leadership since it could qualify as showing courage to take unpopular stands. He responded that he did not because, from his personal involvement in Mission leadership at the time, he knew that it was the Applicant's FRO and not the Applicant who made the unpopular decision.

68. The Applicant has proven that one panel member exercised a discretion not to consider an example from another competency as supporting a higher rating for leadership, based on his personal knowledge of the example. However, this admission does not provide sufficient evidence of bias as to be clear and convincing. It was a candid explanation of what was on the witness's mind. There is no indication that it was ever discussed with other panel members who independently made their own determination that the example could not be used to meet the leadership competency. Additionally, the impact of this use of prior knowledge was minimal in its effect. It impacted on only one of the eight indicators in the leadership competency.²⁹ Thus, it cannot be said that but for the said occurrence the Applicant could have been rated successful in that competency. Additionally, there would remain another competency in which he had not succeeded.

69. Another factor being assessed under leadership concerned gender perspectives. There was no bias in the unanimous assessment of the panel that the Applicant's examples concerning gender, although indicative of his empathy to staff members, were not at the strategic level expected for the D-1 level.

70. The Applicant has not clearly and convincingly established that bias against him may have had a material impact on his chances of being rostered.

71. There were 27 interviewed candidates. Even if the Applicant had been included among the 15 candidates placed on the roster there is no certainty that he would have been selected for an opening before retirement.

²⁹ Respondent's reply, annex R/11 at para. 11.

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Conclusion

72. In view of the foregoing the Tribunal DECIDES to reject the application.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 8th day of December 2022

Entered in the Register on this 8th day of December 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi