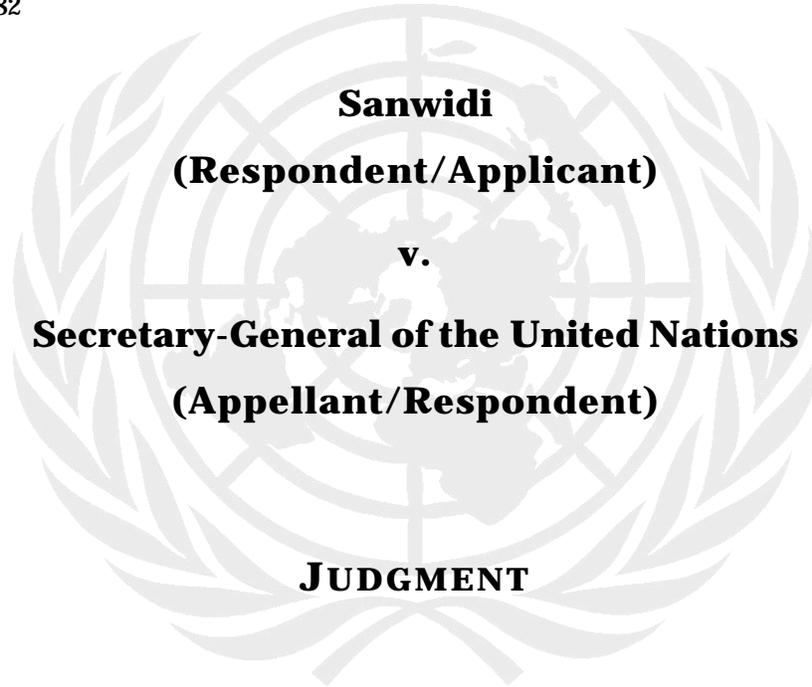




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-082



**Sanwidi
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before: Judge Kamaljit Singh Garewal, Presiding
Judge Inés Weinberg de Roca
Judge Luis María Simón

Judgment No.: 2010-UNAT-084

Date: 27 October 2010

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Edwin Nhliziyo

Counsel for Appellant/Respondent: John Stompor

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. Joel Sanwidi (Sanwidi) (deceased on 7 August 2010, now represented by his father Ignace Sanwidi) was a Procurement Officer with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC). On 22 July 2005, Sanwidi entered into a currency exchange transaction with the owner of Maison Mukoie Fils (MMF) in order to buy a car in Kinshasa. The owner of MMF lent Sanwidi USD 7,000 in cash, which Sanwidi repaid on 10 August 2005 by transferring funds from his bank account in France to MMF's bank account in Belgium. MMF was a vendor in business with MONUC for the charter of boats and was paid USD 3.4 million by MONUC between 2002 and 2007.

2. Based on this transaction, Sanwidi was summarily dismissed for serious misconduct. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that his acts did not amount to serious misconduct and that the penalty of summary dismissal was disproportionate to the misconduct. In the UNDT's view, Sanwidi deserved a much milder disciplinary sanction.

3. We hold that the UNDT is competent to carry out a judicial review of the Secretary-General's decision to impose the disciplinary measure of summary dismissal, and the UNDT applied the correct judicial principles in carrying out its review of the decision. The UNDT did not substitute its own judgment for that of the Secretary-General. However, while exercising appellate jurisdiction we hold that, on the facts of this particular case, the UNDT erred in finding that Sanwidi's actions did not amount to serious misconduct or misconduct deserving of summary dismissal. Sanwidi was a Procurement Officer who occupied a senior position in the Procurement Section and was aware that MONUC did a lot of business with MMF. By accepting a benefit from a MONUC vendor, he gave the impression that the vendor may receive favourable treatment during the procurement process. Sanwidi's misconduct was serious and the disciplinary measure of summary dismissal was proportionate. Accordingly, the Judgment of the UNDT is overruled.

Facts and Procedure

4. Sanwidi joined the United Nations in 1994 as a Procurement Assistant with the United Nations Assistance Mission for Rwanda. He was later appointed a Procurement Officer with the International Criminal Tribunal for Rwanda.

5. In March 2003, Sanwidi was appointed as a Procurement Officer at the P-4 level with MONUC, where shortly thereafter he began to serve as Chief of the Contracts Unit. He later became Chief of the Supplies and Services Unit. From October 2006 until the arrival of a new Chief Procurement Officer in May 2007, Sanwidi served as Officer-in-Charge of the Procurement Section.

6. In July 2005, Sanwidi asked the owner of MMF for USD 7,000 in cash to buy a car in Kinshasa. This company was a vendor which did business with MONUC, worth about USD 3.4 million from July 2002 to June 2007, in connection with the charter of boats. Sanwidi received USD 7,000 in cash from the owner of MMF on or about 22 July 2005. Sanwidi repaid this sum on 10 August 2005 through a bank transfer from his account with Crédit Lyonnais in France to MMF's account with Belgolaise in Belgium.

7. An investigation concerning irregularities in MONUC's Procurement Section was launched in 2007 by the Procurement Task Force (PTF) of the Office of Internal Oversight Services (OIOS). Sanwidi's computer was seized and a document "Dc26.doc" created on 3 August 2005 was recovered. This document revealed instructions for a bank transfer of USD 7,000 from Sanwidi's account to the account of MMF.

8. The PTF interviewed Sanwidi in February and May 2007. Sanwidi made full voluntary financial disclosure to the PTF in April 2007. Certain unnamed witnesses were also interviewed by the PTF. The owner of MMF was examined; he recalled that Sanwidi had called him over a year before and asked for USD 7,000 in cash to buy a car, but the sum was immediately repaid by Sanwidi in full via a bank transfer.

9. When Sanwidi was asked about the transaction, he stated that "he didn't consider it as a bribe or corrupt practice" and that he "didn't even see a conflict of interest" as he gave the money back and had nothing to do with the MONUC contracts with MMF.

10. On 24 July 2007, Sanwidi was formally charged with “having solicited, received and accepted a sum of money from Maison Mukoie Fils, a vendor who did business and sought to do business with MONUC”. Sanwidi was suspended with full pay on 13 August 2007. After he provided written comments on the charges, he was informed by the Office of Human Resources Management (OHRM) by letter dated 11 January 2008 that he was summarily dismissed for serious misconduct. His conduct violated his obligations as a staff member, set out in Staff Regulations 1.2(b), (e), (f), (g) and (l), Financial Regulation 5.12 and Sections 4.2(1) and (2) of the Procurement Manual.

11. A request for review of the decision was submitted by Sanwidi and a Joint Disciplinary Committee (JDC) panel was established on 15 December 2008. After a hearing in January 2009, the JDC concluded in its report of 7 April 2009 that the factual record was insufficient to establish that Sanwidi had engaged in serious misconduct. The JDC found as follows:

[B]ased on the record, there is no evidence to sustain the characterization by the PTF that he engaged in corrupt or unlawful activity. The charge that he solicited received and accepted a sum of money implies in the context of this characterization that he asked for and was paid a bribe or kickback. He did not. He solicited and accepted a service from MMF whereby he exchanged his own money for the equivalent of another currency. More specifically, he did not solicit payments of monies in the amount of \$ 7000 belonging to MMF; he solicited their assistance with exchanging that amount of his own money.

The JDC concluded that this conduct represented a conflict of interest that would call into question any United Nations procurement exercises with the vendor, MMF. The panel advised that the decision to summarily dismiss Sanwidi be rescinded, and recommended his separation from service “effective the date of expiration of his last contract with the UN or the date of his summary dismissal 11 January 2008, with all salary and entitlements including restoration of pension rights up to that date”.

12. By letter dated 3 June 2009, the Deputy Secretary-General informed Sanwidi that the Secretary-General had decided not to accept the JDC’s recommendation of rescission of his summary dismissal. In the opinion of the Secretary-General, Sanwidi had solicited, received, and accepted money from MMF, which did business with MONUC. The purpose for which the money was obtained was not relevant, and Sanwidi’s actions had harmed the reputation of the United Nations.

13. Sanwidi took his case to the UNDT. The learned Judge considered the nature of the Dispute Tribunal's control over the Administration's disciplinary powers and in paragraph 7.1.3 of the Judgment held:

As the first tier of the formal component of the internal justice system of the United Nations, the Tribunal is competent to entertain applications as provided for by the Statute creating it. In entertaining such an application, the Tribunal as a judicial body shall receive evidence that is relevant and evaluate such evidence for a just determination of the case or application. Nothing and no-one shall constrain or limit the Tribunal's power in its judicial functions to grant full equality to the parties in a fair and public hearing, to be independent and impartial in the determination of rights and obligations of any party as required by the most basic of the UN's instruments – the Universal Declaration of Human Rights.

14. After a hearing, the UNDT found, inter alia, that the transaction in question was a currency exchange and that it did not amount to serious misconduct deserving summary dismissal. The UNDT found that the transaction with a MONUC vendor had the potential to create a possible conflict of interest situation for Sanwidi in the future, and that Sanwidi had exhibited poor judgment by putting himself at risk that others could labour under the perception that he may favour the vendor, if any opportunity presented itself to do so. The conduct of Sanwidi called for some kind of disciplinary sanction, but much milder than what he got.

15. The UNDT went on to hold that the investigation was not conducted with an open mind. The standards of objectivity, impartiality, and fairness were not maintained. The unnamed witness, CW-3, was found to be unreliable and his or her evidence untenable. In conclusion, the UNDT found that the investigation report was “prejudiced, full of innuendos, riddled with ridiculous findings and completely and unjustly tars [Sanwidi] with a brush of criminality”.

16. The UNDT rendered Judgment No. UNDT/2010/036 on 1 March 2010, which directed the parties to provide submissions as to the appropriate form of relief in view of the Tribunal's findings. The UNDT issued Judgment No. UNDT/2010/061 on compensation on 12 April 2010. The UNDT ordered rescission of the decision to summarily dismiss Sanwidi; reinstatement of Sanwidi; payment of lost earnings plus interest, less a monthly deduction; service of a written reprimand on Sanwidi, to be placed in his official status file; and, in the event that the Secretary-General elects not to reinstate Sanwidi, awarded compensation of two years' net base salary, plus interest.

17. On 16 April 2010, the Secretary-General filed an appeal against Judgment No. UNDT/2010/036. On 11 May 2010, Sanwidi filed an answer to the appeal, together with a “Motion to dismiss appeal of Judgement UNDT/2010/036”.

18. On 21 August 2010, counsel for Sanwidi informed the Registry of the death of his client on 7 August 2010 in Burkina Faso and provided a copy of the death certificate. He subsequently submitted an unsigned letter from Ignace Sanwidi, the deceased’s father, authorizing counsel “to continue to represent my son’s estate in this matter and all other UN related matters under the same terms and conditions agree [sic] to with my son”.

19. On 24 September 2010, five staff members from the Office of Staff Legal Assistance filed a “Joint application to file a friend-of-court brief” under Article 17 of the Rules of Procedure of the Appeals Tribunal (Rules). By Order No. 14 (2010), the President of the Appeals Tribunal rejected the application.

20. On 11 October 2010, the Staff Union of the International Criminal Tribunal for the Former Yugoslavia (ICTY) filed an “Application to file a friend-of-the-court brief” under Article 17 of the Rules. On 12 October 2010, Sanwidi filed observations by e-mail stating that he did not object to the application. On 14 October 2010, the Secretary-General filed observations in which he opposed the application and, in the alternative, sought 30 days to respond to the brief.

Submissions

Secretary-General’s Appeal

21. The Secretary-General submits that the judicial authority of the UNDT is circumscribed by the Charter of the United Nations (Charter), which establishes the authority of the Secretary-General in appointing and administering staff. Under Article 101(1) of the Charter, responsibility for the appointment of staff is vested in the Secretary-General, who is required by the Charter to give paramount consideration to employing staff of “the highest standards of efficiency, competence, and integrity”.

22. Under Staff Regulation 10.2, the Secretary-General has the authority to impose disciplinary measures on a staff member whose conduct is unsatisfactory and to summarily dismiss a staff member for serious misconduct. The former Administrative Tribunal held that the discretion of the Secretary-General is, and must remain, necessarily extensive.

23. In view of the Secretary-General's broad discretion, the former Administrative Tribunal deferred to the determinations made by the Secretary-General regarding the evaluation of facts, whether the impugned conduct constituted misconduct, and the appropriate disciplinary measure to be imposed. In reviewing whether the facts were established, the former Administrative Tribunal examined whether the findings of fact against the appellant were supported by the evidence. In doing so, the former Administrative Tribunal did not substitute its own judgment for that of the Administration.

24. The Secretary-General argues that the reports of the JDC are advisory only and he was entitled to reach a different conclusion. The UNDT substituted its own judgment for that of the Secretary-General in concluding that it shared the JDC's view that the transaction was a "currency exchange". The Dispute Tribunal may only consider whether the findings of fact made by the Secretary-General are reasonably justifiable and supported by evidence. Therefore, the Dispute Tribunal erred on a question of law and exceeded its competence by substituting its own judgment regarding the facts for that of the Secretary-General.

25. The Secretary-General submits that the UNDT erred on a question of law in characterizing Sanwidi's actions as not amounting to serious misconduct. Sanwidi used his office to obtain a private gain in breach of Staff Regulation 1.2(g): had he gone to a local bank to exchange currency, he would have been charged approximately USD 700 for the transaction. Further, Sanwidi's personal transaction with a MONUC vender created the impression that he was influenced or could be influenced in his official procurement capacity, in breach of Section 4.2(1) of the Procurement Manual.

26. The Secretary-General contends that the UNDT erred on a question of law and exceeded its competence in substituting its own judgment for that of the Secretary-General regarding the appropriate disciplinary sanction. The former Administrative Tribunal consistently declined to substitute its own judgment for that of the Secretary-General regarding the appropriate sanction.

27. The Secretary-General submits that the Judgment places the Secretary-General in an untenable position: on one hand he is expected by the General Assembly and the public to hold staff members to the highest standards of integrity. However whenever the Secretary-General tries to punish misconduct appropriately, he risks being second-guessed by the UNDT. Ultimately, it is the Secretary-General who is accountable to the Member States of the United Nations.

28. The Secretary-General requests that the Appeals Tribunal make a number of findings and reverse the Judgment in its entirety.

Sanwidi's Answer

29. Sanwidi contends that the Secretary-General's argument that the UNDT exceeded its competence in substituting its own judgment for his own are not consistent with the competence of the Dispute Tribunal as set out in its Statute (UNDT Statute). If the Secretary-General's arguments are accepted, the new internal justice system would be unnecessary as the Secretary-General has the ultimate authority to administer the staff of the United Nations as he sees fit. The role of the independent judicial system created by General Assembly resolution 63/253 is to oversee decisions by the Secretary-General in disciplinary matters.

30. Sanwidi argues that the Secretary-General's submissions regarding the scope of review of decisions in disciplinary matters do not accord with the principles established by the former Administrative Tribunal in UNAT Judgment No. 942, *Kiwanuka* (1999).

31. The Secretary-General's assertions are based on the Administration's persistent refusal to accept the findings of both the JDC and the UNDT that the transaction was a currency exchange and the misconduct did not support the disciplinary sanction of summary dismissal. Sanwidi denies the assertion by the Secretary-General that he was able to obtain USD 7,000 through a local bank in Kinshasa and that there is evidence that he saved approximately USD 700 in charges as a result of his currency exchange transaction with the owner of MMF.

32. Sanwidi makes several arguments which largely repeat his main argument that the JDC and the UNDT found that there was no serious misconduct which justified the disciplinary sanction of summary dismissal. Therefore, the Secretary-General's decision to summarily dismiss Sanwidi was rightly rescinded by the UNDT.

33. Sanwidi requests that the Appeals Tribunal reject the appeal and award damages to him on the basis that the appeal is frivolous and an abuse of process. In his motion to dismiss the appeal, Sanwidi argues that the appeal is designed to delay the implementation of the Judgment.

Considerations

34. As a preliminary matter, this Tribunal permits Ignace Sanwidi to represent his deceased son, Joel Sanwidi, in this appeal in the interests of justice.

35. This Tribunal has before it an application by the Staff Union of the ICTY for leave to file a friend-of-the-court brief under Article 17 of the Rules. The brief would address two issues, the scope of review of the Secretary-General's decisions in disciplinary proceedings and the standard of proof in disciplinary proceedings. No issue regarding the standard of proof arises in this case as Sanwidi admitted the facts which led to the charges of misconduct. The facts and the legal issues in this case are not so complex such that the proposed brief would assist the Tribunal in its deliberations. Accordingly, the application is rejected.

36. The Secretary-General contends that the Dispute Tribunal erred on a question of law and exceeded its competence in substituting its own judgment for that of the Secretary-General concerning the evaluation of facts and the appropriate disciplinary action. This case raises an important question of law, one which often arises when a disciplinary measure imposed by the Secretary-General is varied or set aside by the Dispute Tribunal. In doing so, does the Dispute Tribunal consider the merits of the decision of the Secretary-General and whether it is correct in fact and law (in effect, a review of the decision through an appeal) or does the Dispute Tribunal conduct a judicial review of the decision of the Secretary-General to determine if it is lawful or not?

37. The Dispute Tribunal and Appeals Tribunal established under the new system of administration of justice are a marked improvement on the earlier system on account of their independence, transparency, and professionalism. The Statutes creating the Tribunals do not provide that the judgments of the former Administrative Tribunal shall be treated by the new Tribunals as binding precedent. The new system of justice will naturally have a fresh approach on the legal issues, and new jurisprudence will develop over time, which may or may not be different from that of the former Administrative Tribunal. Consequently, the jurisprudence of the former Tribunal, though of persuasive value, cannot be binding precedent for the new Tribunals to follow. We can understand the argument that the earlier judgments provide consistency, clarity and continuity of jurisprudence, but binding precedents they are not.

38. Administrative tribunals worldwide keep evolving legal principles to help them control abuse of discretionary powers. There can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion.

Principle of proportionality

39. In the present case, we are concerned with the application of the principle of proportionality by the Dispute Tribunal. In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective. This entails examining the balance struck by the decision-maker between competing considerations and priorities in deciding what action to take. However, courts also recognize that decision-makers have some latitude or margin of discretion to make legitimate choices between competing considerations and priorities in exercising their judgment about what action to take.

40. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

41. While administrative review (through management evaluation) of an administrative decision is in progress, the staff member does not yet possess any judicial cause of action. At this stage he or she can get relief only from the Secretary-General by seeking a management evaluation of the contested decision under provisional Staff Rule 11.2. Management evaluation is not required if a staff member contests certain decisions as specified in provisional Staff Rule 11.2(b), including a decision to impose a disciplinary measure. Judicial review of an administrative decision may begin only after the administrative review process, where applicable, has come to an end.

42. In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker's administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.

Sanwidi's case

43. In *Mahdi*,¹ this Tribunal held that

[i]n reviewing disciplinary cases this Court has to examine the following:

- i. Whether the facts on which the disciplinary measure was based have been established;
- ii. Whether the established facts legally amount to misconduct under the Regulations and Rules; and
- iii. Whether the disciplinary measure applied is proportionate to the offence.

44. An analysis of the evidence against Sanwidi need not detain us because the facts are not at all in dispute. All along, Sanwidi accepted that he obtained money from the owner of MMF, a MONUC vendor, as part of a currency exchange transaction which he repaid after approximately 19 days. The question which arises for determination is whether the disciplinary measure of summary dismissal was disproportionate or not. In view of Sanwidi's admissions concerning his transaction with the owner of MMF, we are not required to decide which standard of proof should be applied in disciplinary proceedings or whether the charges against him were proved in accordance with that standard.

45. The UNDT found that “[b]y approaching a MONUC vendor for a currency exchange, [Sanwidi] exhibited poor judgment and put himself at ... risk that others could labor under a perception that he may favor the vendor if any opportunity presented itself to do so”. The UNDT did not make any reference to the applicable provisions of the Financial Regulations and Rules, Staff Regulations and Rules, or the Procurement Manual.

46. The UNDT held that in Sanwidi's case there was an absence of fraud or motive for personal gain, and his conduct did not amount to serious misconduct or conduct deserving of summary dismissal. The UNDT examined the case from the angle of proportionality and referred to a number of disciplinary cases decided by the former Administrative Tribunal.² Equality required that like should be treated alike. The UNDT found that it was therefore reasonable, just, and proportionate that Sanwidi be given a much milder form of disciplinary sanction than summary dismissal.

¹ *Mahdi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-018, para. 27.

² UNAT Judgment No. 1011, *Iddi* (2001); UNAT Judgment No. 1175; *Ikegame* (2004); UNAT Judgment No. 1391 (2008); and UNAT Judgment No. 1414 (2008).

47. Keeping in mind the matters outlined above, we hold that the UNDT, in exercising judicial review, may interfere with the exercise of the Secretary-General's discretion in disciplinary proceedings against a staff member on the ground that the disciplinary measure is not proportionate to the misconduct. The UNDT is not bound by the jurisprudence of the former Administrative Tribunal, although in appropriate cases its judgments concerning disciplinary proceedings may have non-binding persuasive value. However, while exercising judicial review, due deference must be shown to the Secretary-General's administrative decisions because Article 101(3) of the Charter requires the Secretary-General to hold staff members to the highest standards of integrity and he is accountable to the Member States of the United Nations in this regard.

48. The doctrine of proportionality was relied upon by the Appeals Tribunal in its Judgment in *Doleh* to reduce the disciplinary measure from summary dismissal to written censure. This Tribunal held that

UNRWA's decision is legal, rational, procedurally proper and, therefore, not covered by any of the above grounds for judicial review. However, this is an exceptional case where the doctrine of proportionality should be invoked. With due deference to the Commissioner-General, the decision to terminate Doleh's services is altogether disproportionate. The decision is more drastic than necessary. It is like taking a sledgehammer to crack a nut. Decision-makers enjoy a wide discretionary area of judgment. Into this area a court applying the test of proportionality will never intrude. We have shown due deference to the decision taken by UNRWA, but we strongly feel that the decision is, on the facts of the case, disproportionate. An innocuous act of indiscretion shall leave a huge impact on the reputation and livelihood of Doleh, if the decision is not reversed.³

49. In *Abu Hamda*,⁴ this Tribunal held that the disciplinary measure of demotion with loss of salary was disproportionate to the offence. Accordingly, the disciplinary measure of demotion with loss of salary and transfer was set aside, and substituted with a written censure. The principle of proportionality was also relied upon by this Tribunal to uphold the impugned disciplinary measures in *Haniya*, *Maslamani*, and *Aqel*.⁵

³ *Doleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-025, para. 20.

⁴ *Abu Hamda v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-022.

⁵ *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024; *Maslamani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No.

50. In this case, we cannot overlook the fact that Sanwidi was a Procurement Officer, at the P-4 level, in the Procurement Section of MONUC and held senior positions as Chief of the Contracts Unit and later Chief of the Supplies Service Unit. He occupied a position of trust and great financial responsibility and he was called upon to take important financial decisions. Therefore, a high standard of conduct and integrity was expected from him.

51. Entering into the currency exchange transaction with a MONUC vendor was a serious breach of the Staff Regulations and the Procurement Manual. Under Staff Regulation 1.2(g), staff members are prohibited from using their office for private gain, financial or otherwise. Sanwidi personally negotiated the exchange of currency with the owner of MMF. The currency exchange involved the amount of USD 7,000, a substantial sum of money. In his statement to the PTF investigators, Sanwidi explained that he needed to make an immediate cash payment to buy a vehicle, however the amount of money he could withdraw using his credit card was limited and there were commission costs associated with exchanging money at a local bank. These difficulties were avoided by entering into the transaction with the owner of MMF. Sanwidi therefore obtained a private gain in contravention of Staff Regulation 1.2(g).

52. Under Staff Regulation 1.2(b), Sanwidi was required to uphold the highest standards of efficiency, competence and integrity. Further, Section 4.2(1) of the Procurement Manual provides as follows:

It is of overriding importance that the staff member acting in an official procurement capacity should not be placed in a position where their actions may constitute or could be reasonably perceived as reflecting favourable treatment to an individual or entity by accepting offers or gifts and hospitality or other considerations. The staff member should have regard not simply as to whether they feel themselves to have been influenced, but to the impression that their actions will create on others.

53. Sanwidi occupied an important position in the Procurement Section of MONUC and the person with whom he exchanged money was the owner of a vendor. He was required to be especially aware of the financial relationships between MONUC and its vendors. He was required to maintain a very high standard of integrity, objectivity, and aloofness in the conduct of his duties, in order not to appear to be influenced or exploited by those vendors. Sanwidi was to perform an honest service for MONUC. He was not to be seen conducting

himself in such a way that may give the impression that he was working against the interests of MONUC and favouring one of its vendors. Sanwidi did not meet the standards expected of a staff member involved in procurement. Accordingly, in these circumstances we hold that Sanwidi's misconduct was serious and the disciplinary measure of summary dismissal was not disproportionate.

Judgment

54. This appeal is allowed, the Judgment is set aside and the Secretary-General's decision to summarily dismiss Sanwidi is affirmed.

Dated this 27th day of October in New York, United States.

Original and authoritative version: English

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Simón

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar