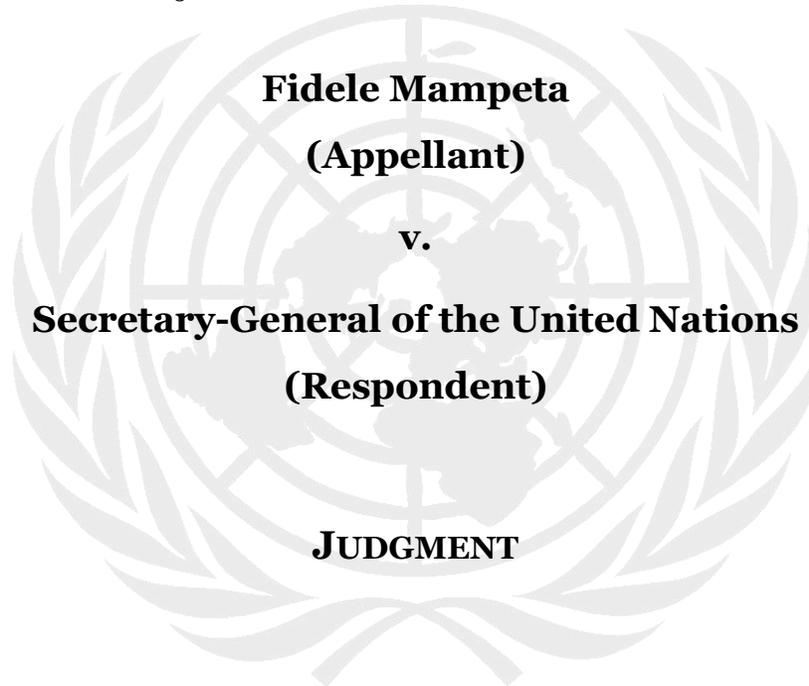




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1115



**Fidele Mampeta
(Appellant)**

v.

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

JUDGMENT

Before: Judge Sabine Knierim, Presiding
Judge Graeme Colgan
Judge Dimitrios Raikos

Case Nos.: 2020-1440

Date: 25 June 2021

Registrar: Weicheng Lin

Counsel for Appellant: Julia Kyung Min Lee, OSLA

Counsel for Respondent: André Luiz Pereira de Oliveira

JUDGE SABINE KNIERIM, PRESIDING.

1. Fidele Mampeta (Mr. Mampeta) contested the decision of the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO or the Mission) not to pay him a termination indemnity when his fixed-term appointment (FTA) was allegedly terminated. The United Nations Dispute Tribunal (Dispute Tribunal or UNDT) by Judgment No. UNDT/2020/100 found Mr. Mampeta's application receivable but dismissed it on the merits, finding that the challenged administrative actions were lawfully taken.¹ For reasons set out below, we affirm that Judgment.

Facts and Procedure

2. Mr. Mampeta is a former staff member who served on a FTA as a Field Security Guard at the GS-3 level. He joined MONUSCO on 23 February 2009 and was first stationed in Goma, Democratic Republic of the Congo (DRC) before he was moved to Kisangani, DRC, in 2018.

3. On 29 March 2019, Security Council resolution 2463 (2019) extended the mandate of MONUSCO until 20 December 2019 to enable a coordinated and sustainable exit of the Mission from the host country. On the same date, the Secretary-General submitted his 2019-2020 budget for MONUSCO (the Budget) and proposed the closure by 30 June 2019 of seven field offices, which were unaffected by armed conflict, including the Kisangani site.

4. To this end, the Administration set 31 May 2019 as the provisional date for closure of the Kisangani site. Staff at said location were kept informed and were offered assistance to find alternative employment.

5. On 2 April 2019, Mr. Mampeta was notified that his contract would not be renewed when it comes to expire on 30 June 2019. This decision was reiterated in a subsequent communication dated 29 May 2019.

¹ *Mampeta v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/100 dated 29 June 2020 (Impugned Judgment).

6. On 30 May 2019, the Kisangani site closed down and all staff members, including Mr. Mampeta, were sent home. Mr. Mampeta did not perform any work for MONUSCO during the last month of his FTA.
7. On 26 June 2019, Mr. Mampeta filed a request for management evaluation to contest: (a) the decision to place him on Special Leave With Full Pay (SLWFP); (b) the *de facto* termination of his contract on 30 May 2019, and (c) the decision to deny him termination indemnities (the Contested Decisions).
8. Mr. Mampeta separated from service on 30 June 2019.
9. On 3 July 2019, the General Assembly approved the Secretary-General's proposed budget to close seven field offices and to abolish 43 Field Security Guard (FSG) posts within the General Service category, which included Mr. Mampeta's post.
10. On 30 August 2019, in accordance with Staff Rule 9.6(b), Mr. Mampeta received the decision from the Management Evaluation Unit (MEU) upholding the Contested Decisions.
11. On 28 November 2019, Mr. Mampeta filed an application before the Dispute Tribunal, and the Secretary-General filed his answer on 30 December 2019.
12. On 29 June 2020, the UNDT issued its Judgment finding that the application was receivable, despite the Secretary-General's claims that it was time-barred. Notably, the tribunal reasoned that the staff member was not challenging the abolition of his post, which he was informed of on 2 April 2019, but he was rather challenging the administrative act that caused him to be sent home on 30 May 2019. He characterized it as a *de facto* termination of his contract under the guise of SLWFP.
13. On the merits, however, the UNDT found that the Contested Decisions were lawfully taken. The tribunal explained:²

Having proposed closure of the Kisangani site to the General Assembly and the corollary budgetary reductions, the [Secretary-General] proceeded with the implementation of his proposal. The natural consequence of this process was that [Mr. Mampeta] was left with no tasks to perform. Rather than reduce the term of his appointment, the [Secretary-General] opted instead to lighten his footprint in the

² Impugned Judgment, para. 20.

Kisangani site asking those whose services were no longer necessary to go home but without it having any effect on their benefits and entitlements. While this may have been an unorthodox arrangement, and the [Secretary-General's] submission that this was not "any kind of leave" is curious, nothing in the parties' submissions suggests that the decision was perverse or tainted so as to trigger an inquiry into whether it was based on extraneous factors.

14. The tribunal thus could not find that the Secretary-General's decision in this case was illegal, irrational, procedurally incorrect or disproportionate.

15. On 28 August 2020, Mr. Mampeta filed an appeal against Judgment No. UNDT/2020/100, which was registered with the Appeals Tribunal as Case No. 2020-1440. On 2 November 2020, the Secretary-General filed his answer.

Submissions

Mr. Mampeta's Appeal

16. The UNDT erred in law by failing to exercise jurisdiction. It did not make a finding on whether Mr. Mampeta was lawfully placed on SLWFP, whether his appointment was *de facto* terminated, and whether he was entitled to termination indemnities. The UNDT also did not address the legality of implementing the abolition of Mr. Mampeta's post prior to the approval of the Budget by the Fifth Committee and the General Assembly.

17. Additionally, Mr. Mampeta submits that the UNDT did not analyze the break of the contractual relationship between the Organization and the staff member. He was no longer providing a service in consideration for his salary. He argues that is a *de facto* termination. The procedures laid out under Staff Regulation 9.3 and Staff Rules 9.7 and 9.8 in cases of termination were thus not followed.

18. The UNDT also erred in fact in finding that nothing in the parties' submissions suggest that the Contested Decisions were perverse or tainted so as to trigger an inquiry into the whether they were based on extraneous factors. Mr. Mampeta argues that the Contested Decisions were unlawful because their sole purpose was to deny him termination indemnity. By keeping the staff member on payroll without giving him any work, while also refraining from terminating his appointment, it was an abuse of discretion as the sole purpose of the administrative acts were to deny Mr. Mampeta termination indemnities and legal safeguards.

To allow the Administration to proceed in this fashion would circumvent the safeguards that are provided to staff members whose appointments are cut short prior to expiration and would defy the purpose of Staff Regulation 9.3 and Staff Rules 9.7 and 9.8.

19. Finally, Mr. Mampeta submits the UNDT erred in fact and in law by denying him termination indemnities. Given that he was *de facto* terminated, he was entitled to termination indemnities pursuant to Staff Regulation 9.3 and Staff Rules 9.7 and 9.8. As the staff member had completed over 10 years of service, he would have been entitled to 9.5 months' net base salary. By allowing his appointment to expire in the one month period, Mr. Mampeta collected only one month's net base pay.

The Secretary-General's Answer

20. The UNDT correctly dismissed the application. Mr. Mampeta's FTA was set to expire on 30 June 2019, which was also the official closing date of the Kisangani office. During the last month, only staff members tasked to implement closure activities were allowed into the office, and as such Mr. Mampeta did not have work during the wind-down period. Although Mr. Mampeta did not perform his core functions at the time, he still had to perform tasks related to the completion of his contract and had to do his check-out. During that time period, he received his full pay and benefits. Mr. Mampeta was never placed on any type of leave, and he completed his FTA and separated upon expiration of his contract. Rather than reduce the term of the contract, the Secretary-General opted instead to have those whose services were no longer needed to go home, without it having any impact on their benefits and entitlements.

21. The UNDT thoroughly addressed all the matters raised by the staff member. The UNDT did issue a ruling regarding whether Mr. Mampeta was placed on SLWFP and whether his appointment was *de facto* terminated. The tribunal found that it was a lawful exercise of discretion.

22. Furthermore, the tribunal found nothing perverse or tainted in the decision that would warrant an inquiry into "extraneous factors." Regarding the closure of the site prior to the approval of the Budget by the Fifth Committee and the General Assembly, the Secretary-General argues that the facts of the present case are distinguishable from the

authority cited by the staff member, which analyzed the lawfulness of the abolishment of the post itself.

23. Finally, even if Mr. Mampeta was *de facto* placed on SLWFP, this would not alter the outcome of this case. The Secretary-General argues such a finding would not suffice to vacate the Judgment because Mr. Mampeta's FTA had expired anyway, and there is no right to termination indemnities when an appointment expires on its own course. In other words, there is no such provision in the administrative framework that provides staff members with the right to have their FTA terminated so they can receive a termination indemnity.

Considerations

24. The facts and issues of this case are identical to those in Judgment No. 2021-UNAT-1098, *Mwetaminwa v. Secretary-General of the United Nations*, and we refer to our reasoning in that Judgment.³ As the Impugned Judgment of the UNDT is clearly in full accordance with our jurisprudence, there is no need to address each and every one of Mr. Mampeta's contentions but sufficient to state the following.

25. The applicable law on this matter is: Under Staff Regulation 9.3(a)(i), the Secretary-General may terminate a staff member's appointment (temporary, fixed-term or continuing) in a limited set of circumstances, among them, "if the necessities of service require abolition of the post or reduction of the staff". Should the Secretary-General elect to terminate an appointment, the staff member is entitled to notice and "such indemnity payment as may be applicable under the Staff Regulations and Rules."⁴ As such, termination may happen through an authoritative act of the Administration or contractually; in any event, it is "coterminous with early cessation of the employment relation."⁵

26. Mr. Mampeta submits that the UNDT committed an error of law in accepting the Secretary-General's argument that there was no legal basis for unilateral termination when his team site closed down at the end of May 2019, prior to the expiry of his FTA. At that time,

³ See also *Altayb Garbo v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1051; *Abdeulrazig Mohamed Hamdan v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1050.

⁴ Staff Regulation 9.3(c).

⁵ *Justin Mwetaminwa v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1098, para. 21 citing *Mwetaminwa v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/056, para. 29.

the abolition of his post had not yet been endorsed by the Fifth Committee and the General Assembly. He further argues that the Dispute Tribunal erred in fact and in law in finding that his case could not be qualified as “disguised termination”.

27. We do not find merit in these submissions. For Mr. Mampeta’s ultimate goal, which is to receive termination indemnity, it is not sufficient to find that the Secretary-General could have terminated his appointment with effect from the end of May 2019. In order to reach this goal, it is necessary to find that Mr. Mampeta’s appointment actually was terminated. However, the UNDT correctly held that Mr. Mampeta’s appointment was not terminated. The Administration, by memorandum dated 2 April 2019, informed Mr. Mampeta that his post had been proposed for abolition in the Budget and that, in anticipation of the General Assembly’s approval of the Budget, MONUSCO would not extend his FTA beyond its expiry on 30 June 2019. So, Mr. Mampeta remained on the payroll of the Organization and his appointment expired without further extension, as foreshadowed in that memorandum.

28. In the present case, the Secretary-General clearly did not terminate Mr. Mampeta’s appointment. The administrative decision in question, cannot be regarded as a “disguised termination.” According to Staff Rule 9.6(a), a termination within the meaning of the Staff Regulations and Rules is a separation from service initiated by the Secretary-General. Mr. Mampeta was not at all separated from service with effect from the end of May 2019. His FTA continued until its expiry on 30 June 2019; until then, he retained the full position, rights and entitlements of a staff member of the United Nations. The fact that he was not able to fulfill his obligation to work because the site had already been closed, and the Administration did not deem it possible to have him work from another site or from home is not sufficient for a finding that he was separated from service, when he clearly remained a staff member receiving his salary and all other entitlements.

29. Mr. Mampeta also contends that the Dispute Tribunal erred in fact and in law by denying him remedies related to termination indemnities resulting from the effective abolition of his post and the *de facto* termination of his appointment. However, a staff member cannot request termination indemnity while, at the same time, keeping the advantages and benefits of remaining a staff member. As laid out above, termination is, by definition, a separation from service, that is, the end of all employment relations between a staff member and the United Nations. Had Mr. Mampeta’s appointment been terminated

with effect from the end of May 2019, he would, for example, not have been under the Organization's health insurance system in June 2019, and that month would not have counted for his pension benefits. In some cases, even more benefits and entitlements could result depending on a person's continuing position as a staff member, such as education grants and allowances etc.

Judgment

30. The appeal is dismissed, and the UNDT Judgment is confirmed.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 6th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar