



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

OMING

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Yehuda Goor, AAS/ALD/OHR, UN Secretariat

Introduction

1. The adult children of a deceased staff member of the United Nations Assistance Mission in Afghanistan (“UNAMA” and “the Applicants”, respectively) contest the Administration’s decision to name Mr. Oming, whom the Administration identified as the deceased staff member’s spouse, as the recipient of a death benefit pursuant to staff rule 9.11(a)(vii).

Facts and procedural background

2. On 5 August 1982, Ms. Oming, a former FS-5 Administrative Assistant with the UNAMA, married Mr. Oming in Uganda.

3. Since 10 October 1989, Ms. Oming was legally separated from her spouse until her death on 29 June 2021.

4. On 15 January 2015, Ms. Oming submitted to the Administration a form on “Request for Change in Dependency Status”, in which she reinstated Mr. Oming officially as her recognized spouse and claimed spousal dependency allowance for him.

5. On 14 August 2021, the Team Leader, Human Resources (“HR”), UNAMA informed the Applicants *inter alia* that according to the information in the HR records, they had been “designated beneficiaries of [Ms. Oming]] under the Staff Rules to all amounts (salary, allowances, commutation of leave) standing to her credit at the time of death, but not to the death benefit payable under the Rules to a surviving spouse and/or dependent children [under] the age of 21”. The Team Leader also indicated that their mother’s marital status at the time of her death was “legally separated” and not “divorced” and that under such circumstances, “the spouse would be entitled to the death benefit as they would still be considered legally married”. As per its records, the Administration identified Mr. Oming as Ms. Oming’s spouse.

6. On 16 September 2021, the Applicants requested management evaluation of the decision identified in para. 1 above.

7. On the same day, the Applicants filed an application for suspension of action pending management evaluation requesting the suspension of the decision to consider Mr. Oming as their mother's beneficiary at the time of her death.

8. On 20 September 2021, the Chief Human Resources Officer, HR Section, UNAMA, informed the Applicants *inter alia* that "no decision [had] been made to date regarding [their mother's] death benefits".

9. By Order No. 145 (GVA/2021) dated 24 September 2021, the Tribunal found that the application for suspension of action was moot.

10. By letter dated 29 October 2021, the Management Evaluation Unit, Office of the Under-Secretary-General for Management Strategy, Policy and Compliance, upheld the contested decision.

11. On 14 December 2021, the Applicants received a letter from UNAMA stating that it will implement the decision to pay Mr. Oming the death benefit.

12. On the same date, the Applicants filed an incomplete application mentioned in para. 1 above.

13. In the same application submission, the Applicants also filed a motion for interim measures pending proceedings ("Interim Motion") seeking the suspension of the contested decision mentioned in para. 1 above.

14. On 16 December 2021, the application was completed further to the Tribunal's instructions and was served on the Respondent.

15. On the same date, the Tribunal instructed the Respondent to file his reply to the Interim Motion by 20 December 2021 and to indicate in the reply whether the death benefit had already been paid.

16. On 20 December 2021, the Respondent filed his opposition to the Applicants' Interim Motion, and he also filed a motion for summary judgment.

17. On 23 December 2021, the Respondent informed the Tribunal that the death benefit at issue had not been paid.

Consideration

Motion for summary judgment

18. Art. 9 of the Tribunal's Rules of Procedure provides that "[a] party may move for summary judgment when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law".

19. In the present case, the Respondent moved for summary judgment on the grounds that both the application and the Interim Motion are manifestly not receivable as a matter of law. While it will reject the Respondent's submission in relation to receivability for the reasons elaborated upon in the section below, the Tribunal finds that the material facts of the case are very clear, and that it is fully informed on the matter.

20. Therefore, the Tribunal grants the motion for summary judgment pursuant to art. 9 of its Rules of Procedure and disposes the present matter by way of a summary judgment.

Receivability

21. The Respondent avers that both the application and the Interim Motion are manifestly not receivable as a matter of law. He specifically argues that even assuming the Applicants have standing before the Tribunal, the application and the Interim Motion are not receivable under art. 2.1(a) of the Tribunal's Statute because the contested decision does not have any direct impact or direct legal consequences on the Deceased or her estate.

22. In this respect, the Tribunal recalls that art. 2.1(a) of its Statute provides that:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant

administrative issuances in force at the time of alleged non-compliance;

23. It follows that the key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment; the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member (see, e.g., *Lee* 2014-UNAT-481, para. 49).

24. In the present case, the Applicants contest the Administration's decision dated 14 August 2021 to consider Mr. Oming, whom the Administration identified as the spouse of the deceased staff member, as the recipient of a death benefit pursuant to staff rule 9.11(a)(vii). In this respect, the Tribunal recalls that the extension of its jurisdiction to deceased staff members is intended to permit resolution of disputes concerning contractual rights acquired during previous employment by staff members whose contracts have expired (see *Arango* 2021-UNAT-1120, para. 28). The Administration's decision to consider Mr. Oming as the recipient of a death benefit pursuant to staff rule 9.11(a)(vii) indeed produces directly legal consequences on the deceased staff member's contractual rights acquired during her previous employment. Therefore, the Tribunal finds that there is no merit in the Respondent's submission that the contested decision does not have any direct impact or direct legal consequences on the deceased staff member.

25. The Tribunal further considers that staff rule 9.11(a)(vii) falls within the scope of "terms of appointment" under art. 2.1(a) of the Tribunal's Statute. Therefore, the contested decision constitutes an administrative decision within the meaning of art. 2.1(a), and, accordingly, the application is receivable *ratione materiae*.

26. Moreover, art. 3.1 (c) of the Tribunal's Statute provides that:

An application under article 2, paragraph 1, of the present statute may be filed by:

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United

Nations Secretariat or separately administered United Nations funds and programmes.

27. In the present case, the Applicants, who are the children and heirs of a deceased staff member, are making claims in her name. Therefore, the application is receivable *ratione personae*.

28. In light of the foregoing, the Tribunal finds that both the application and the Interim Motion are receivable.

Whether the contested decision is lawful

29. The Applicants submit that the contested decision is unlawful because the Administration rendered the decision based on non-reliable information regarding the deceased staff member's marital status. They specifically argue that the marriage certificate relied upon by the Administration is forged.

30. The Tribunal finds that there is no merit in the Applicants' submissions for the reasons outlined below.

31. First, the Tribunal notes that the Administration based its decision on a review of the deceased staff member's official records, including her Personnel Action, which lists her marital status as "legally separated", not divorced. Indeed, in the absence of a divorce decree, Mr. Oming was the deceased staff member's legal spouse at the time of her death. Moreover, national authorities of Uganda confirmed that the deceased staff member and Mr. Oming were still legally married at the time of her death. In addition, the evidence on record shows that, in 2015, the deceased staff member has claimed Mr. Oming as a dependent spouse based on her status as "married" to Mr. Oming and sought to reinstate him officially as her recognized spouse.

32. Second, the Tribunal is not persuaded by the Applicants' argument that the marriage certificate is forged. The deceased staff member had confirmed the authenticity of the marriage certificate and submitted it to the Organization herself. Moreover, further to the Administration's request, the official entity responsible for

registration of marriages – the Uganda Registration Services Bureau – provided the Administration with a letter verifying the authenticity of the marriage certificate.

33. Therefore, the Tribunal finds that the Administration’s decision to consider Mr. Oming as the recipient of a death benefit pursuant to staff rule 9.11(a)(vii) is not unlawful.

Motion for interim measures

34. Interim measures during the proceedings are governed by art. 10.2 of the Tribunal’s Statute and art. 14.1 of its Rules of Procedure. The latter, which replicates almost completely the former, provides that:

At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

35. For the Tribunal to consider interim measures, the cumulative conditions set forth in the above-mentioned provisions must be met (see *Nadeau* Order No. 116 (NY/2015), *Awomeyi* Order No. 165 (GVA/2015), *Kazagic* Order No. 20 (GVA/2015), *Auda* Order No. 156 (GVA/2016, and *Andrysek* Order No. 111 (GVA/2019)):

- a. The motion for interim measures must have been filed in connection with a pending application on the merits before the Tribunal and at any time during the proceedings;
- b. The order for interim measures requires an administrative decision directly impacting the actual or former applicant’s terms of employment;
- c. The required temporary relief must not concern appointment, promotion or termination;
- d. The contested administrative decision appears *prima facie* to be unlawful;

- e. There is particular urgency in requesting the interim measures; and
- f. The implementation of the contested administrative decision would cause irreparable damage.

36. Having determined that the contested decision is not unlawful, the Tribunal finds that the condition enumerated in para. 35.d above to order a temporary relief in this matter is not met. Since the above-mentioned requirements are cumulative and one of those – *prima facie* unlawfulness – is not met, the Tribunal does not consider it necessary to examine other conditions.

37. Consequently, the Tribunal finds that the Interim Motion cannot succeed.

Conclusion

38. In view of the foregoing, the Tribunal DECIDES that:

- a. The Respondent's motion for summary judgment is granted;
- b. The application is receivable;
- c. The Applicant's Interim Motion is rejected; and
- d. The application on the merits fails.

(Signed)

Judge Teresa Bravo

Dated this 23rd day of December 2021

Entered in the Register on this 23rd day of December 2021

(Signed)

René M. Vargas M., Registrar, Geneva