UNDT/2016/088, Ngokeng

UNAT Held or UNDT Pronouncements

The Tribunal was unable to conclude that the presumption of regularity in the selection process had been rebutted by the Applicant. There was nothing to suggest that the Respondent was motivated by any improper factors in selecting a candidate other than the Applicant. The Applicant did not, even on a preponderance of evidence, establish that the selection process was not fair. The Tribunal could not conclude that the Applicant was subjected to any discrimination or that the selection exercise was tainted.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the ICTR Registrar to not select him for the position of Chief of LSS and the selection of an ineligible candidate for that position.

Legal Principle(s)

It is well established in law that in civil litigation the burden of proving an assertion to the required degree of certainty (that is, the standard of proof) normally lies on the party bringing the matter or making the allegation. In civil cases, the standard of proof is on a “preponderance of the evidence” or on a “balance of probabilities”. In matters of selection of staff, the role of the Dispute Tribunal is to review the challenged selection process to determine whether a candidate has received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration. There is always a presumption that official acts have been regularly performed. But this presumption is a rebuttable one. The presumption of regularity is rebutted by evidence of a failure to follow applicable procedures, bias in the decision-making process, and consideration of irrelevant material or extraneous factors. The party making the allegation must establish a prima facie case or a case that, on its face,

amounts to discrimination. If the applicant is able to establish a prima facie case, then the burden of proof shifts to the other party to show, on the balance of probabilities, that its actions were not discriminatory.

Outcome

Dismissed on merits

Full judgment

Full judgment

Applicants/Appellants

Ngokeng

Entity

ICTR

Case Number(s)

UNDT/NBI/2014/2

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

22 Jun 2016

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Procedure (first instance and UNAT)
Oral hearings
Staff selection (non-selection/non-promotion)
Full and fair consideration

Applicable Law

Staff Regulations

- Regulation 4.2

UN Charter

- Article 101.3

Related Judgments and Orders

2017-UNAT-747