

# UNDT/2016/216, Muwambi

## UNAT Held or UNDT Pronouncements

The Applicant, a former P-3 level staff member of MINUSTAH, sought rescission of the decision not to renew his fixed-term contract. The Respondent asserted that non-renewal was lawful since the Applicant was provisionally reassigned to MINUSTAH when MINURCAT was downsized and his provisional reassignment was contingent upon him receiving FCRB clearance. As the Applicant never received FCRB clearance, his contract was not renewed. The UNDT found that, following his initial offer, the Applicant received 12 subsequent letters of appointment which did not expressly or by reference refer to him being “provisionally reassigned” or condition his employment upon FCRB clearance. The UNDT found that the Applicant was not provisionally reassigned and his employment was not conditioned upon him being cleared by a review board as such conditions were not part of his contract of employment. The UNDT found that the Organization’s policy could not supersede the terms of the Applicant’s contracts. The UNDT concluded the reason proffered by the Administration could not have formed a lawful basis for the non-renewal of his contract. The UNDT ordered the Administration to pay pecuniary loss for one year’s net base salary, with pre- and post-judgment interest, and denied moral damages.

## Decision Contested or Judgment/Order Appealed

The decision not to renew his fixed-term contract

## Legal Principle(s)

Letter of appointment superseding terms of original offer: If a certain material provision was not incorporated into the letter of appointment, expressly or by reference, it follows from staff rule 4.1 and Annex II to the Staff Regulations that it did not form part of the contract of employment between the Applicant and the Organization. The signing of the letter of appointment by both parties subsequently to the initial offer demonstrates, in and of itself, the parties’ intent to supersede any prior agreed terms. Once the parties in this case agreed on a new contract of employment, the terms stipulated in the new letter of appointment superseded any prior agreement between them. After the Applicant had been employed on twelve different letters of appointment in the four years after April 2011 containing no special conditions or restrictions, the Administration’s proposed imposition of such special conditions and restrictions amounts to a unilateral decision to vary the terms of the Applicant’s contract of employment. It would be untenable to suggest that the Administration may unilaterally impose certain unstipulated contractual terms limiting the Applicant’s rights and interests when such conditions were not included in any of the numerous letters of appointment signed over a four-year period. Nor can it be accepted that policy considerations override express contractual terms. Mitigation: Both the Dispute Tribunal and the Appeals Tribunal have said that there is a duty to mitigate losses and the Tribunal should take into account the staff member’s earnings, if any, during the relevant period of time for the purpose of calculating compensation. The Tribunal finds that, given the Applicant’s experience, skills, good performance record, relatively young age (48 years) and his continued efforts to find alternative employment, it can be expected that he will be gainfully employed at some point in the foreseeable future. In view of the above, the Tribunal assesses the Applicant’s pecuniary loss at one year’s net base salary. Moral injury: The Applicant did not seek to adduce any evidence to substantiate his claim for compensation for moral injury, nor does the Tribunal consider that the breach of his rights was of such a fundamental nature that it should give rise, in and of itself, to an award in addition to compensation for his pecuniary loss. Accordingly, the claim for an award for moral injury is dismissed. Pre- and post-judgment interest: The Tribunal has considered the Applicant’s request for pre-judgment interest on his pecuniary damages, with interest accruing from the date each salary payment would have been made. As the

Applicant's salary would have been paid to him in monthly installments, the Tribunal finds it appropriate to order pre-judgment interest at the U.S. Prime Rate in effect at the time each salary payment would have been due. The interest shall be compounded on each monthly salary payment he would have received from the date each such salary payment would have been due.

#### Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Muwambi

Entity

MINUSTAH

Case Number(s)

UNDT/NY/2015/61

Tribunal

UNDT

Registry

New York

Date of Judgement

8 Dec 2016

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Non-renewal

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Secretary-General's bulletins

- ST/SGB/2013/3

Staff Regulations

- Regulation 4.1

Staff Rules

- Rule 4.1
- Rule 9.6

UNDT Statute

- Article 10.5

- Article 10.7