

# **UNDT/2018/100, Mutune**

## **UNAT Held or UNDT Pronouncements**

In line with the jurisprudence of the Organization, the role of the Tribunal was limited to reviewing whether the candidate received full and fair consideration, the procedures were followed, improper motives were absent and relevant materials had been considered. In this regard, UNAT has held that a candidate alleging a failure to observe his or her right to full and fair consideration for selection must prove through clear and convincing evidence that procedure was violated, the panel was biased, irrelevant material was considered or relevant material ignored. Contrary to the Applicant's contention, there were no procedural irregularities in the selection exercise. Candidates who had applied to both job openings were informed that they were required to only participate in one written assessment. This was done in order to facilitate the recruitment process for which a combined one thousand nine hundred and thirty-five (1,935) applications were received. The Applicant's claim of loss of career opportunity was without merit. She bore the burden of substantiating the pecuniary and/or non-pecuniary damages that she claimed to have suffered as a consequence of the contested decision. The Applicant did not provide any evidence to show that she suffered any loss of career opportunities as a result of the contested decision. Her contention was speculative at best.

## **Decision Contested or Judgment/Order Appealed**

The Applicant challenged the recruitment process pertaining to two Generic Job Opening (GJO) Roster positions that she had applied for.

## **Legal Principle(s)**

The Secretary-General has broad discretion in the selection and appointment of staff. The basis for this discretion is found in the Charter of the United Nations which establishes the framework for staff selection through a general grant of authority to

the Secretary-General. Specifically, article 101.1 of the Charter provides that “[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly.” Staff regulation 4.1 confirms that “the power of appointment of staff members rests with the Secretary-General.” In *Toropin*, Judgment No. 1477 (2008), the former United Nations Administrative Tribunal (UNAdT) observed that “[i]t is a well-recognized tenet of the Tribunal’s jurisprudence that the Secretary-General enjoys great latitude in the selection and promotion of his workforce.” The official acts of the Respondent enjoy a presumption of regularity. The Secretary-General is vested with a wide discretion to select staff members for positions within the Organization. It is within the discretionary authority of the Secretary-General to evaluate job applicants’ qualifications for positions. The Dispute Tribunal will not substitute its own judgment for that of the Secretary-General. Selection for a position is a competitive process.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Mutune

## Entity

UNMISS

## Case Number(s)

UNDT/NBI/2016/84

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

8 Oct 2018

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Staff selection (non-selection/non-promotion)  
Full and fair consideration  
Selection decision

## Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Regulations

- Regulation 4.1