

# **UNDT/2018/106, Kinyanjui**

## **UNAT Held or UNDT Pronouncements**

The Applicant's allegations of abuse of power arose from an understandable and reasonable suspicion but are not substantiated by the evidence heard by the Tribunal.; The re-advertisement of the contested position including a description of the operational context does not constitute a procedural flaw and the explanations provided are sufficient to conclude that it was not prompted by an ulterior motive.; The Applicant has not demonstrated that he was subjected to a detriment by any procedural or substantive error in respect of the first advertised JO. The Tribunal finds that the Applicant's candidacy for the first advertised JO was fully and fairly considered. However, the post was subsequently re-advertised under a different JO with an operational context for which the Applicant was no longer the candidate recommended by the manager, who preferred another candidate who was subsequently appointed.; The application fails and is dismissed.

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

The Applicant, a staff member of the Office of the High Commissioner for Refugees ("UNHCR"), filed an application contesting the decision not to select him for a P-5 position.

## **Legal Principle(s)**

Like the Secretary-General, the High Commissioner has broad discretion in matters of appointment and promotion. When reviewing such decisions, the Tribunal shall examine whether the procedure as laid down in the applicable rules was followed, and whether the staff member was given "fair and adequate consideration".; When a staff member alleges that the contested decision was based on extraneous reasons, the burden of proving improper motives, such as abuse of authority, ... rests with the person making the allegation.; The correct approach where a

procedural irregularity had been identified is to examine whether any such error of procedure was causally linked to the decision not to promote the applicants.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Kinyanjui

## Entity

UNHCR

## Case Number(s)

UNDT/GVA/2017/66

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

25 Oct 2018

## Duty Judge

Judge Meeran

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Staff selection (non-selection/non-promotion)

## Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR Procedure on Assignments (UNHCR/HCP/2015/2/Rev.1)

## Related Judgments and Orders

2011-UNAT-110

2012-UNAT-200

2012-UNAT-265

2015-UNAT-506

2011-UNAT-175

2011-UNAT-174