

2017-UNAT-747, Ngokeng

UNAT Held or UNDT Pronouncements

UNAT held that the UNDT's suggestion that the standard of proof required to rebut the presumption of regularity should be one of preponderance of evidence, was not correct and that the rebuttal of the presumption should occur only where clear and convincing evidence establishes that an irregularity was highly probable. UNAT held that the Appellant's version did not support an inference of corruption of the process or that he was not fully and fairly considered. UNAT held that although the Appellant met all the educational, work experience, and language requirements of the position, he failed to challenge the evidence of the Panel's findings in relation to his interview, including its conclusion that he lacked the required competencies. UNAT held that the Appellant's uncontested shortcomings evidenced before the Panel excluded him from appointment, and the decision to appoint the selected candidate did not result in a loss to the Appellant of a fair chance of promotion. UNAT dismissed the appeal and upheld the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the Registrar of the International Criminal Tribunal for Rwanda (ICTR) not to select him for a position. UNDT dismissed the application.

Legal Principle(s)

A selection decision must be reasonable, lawful, and procedurally fair. The Secretary-General is vested with wide discretion in reaching a decision on staff selection. Promotions and selections are presumed to be regular if management shows that an applicant's candidature was given full and fair consideration. The presumption is rebuttable if the applicant shows through clear and convincing evidence that an irregularity was highly probable and that he or she was denied a

fair chance of promotion.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ngokeng

Entity

ICTR

Case Number(s)

2016-960

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Evidence

Staff selection (non-selection/non-promotion)

Full and fair consideration

Interview

Related Judgments and Orders

UNDT/2016/088