

# UNDT/2022/017, Applicant

## UNAT Held or UNDT Pronouncements

The Tribunal concluded that based on the totality of evidentiary material, the electronic fuel monitoring system (EFMS) transaction records, Vivo Energy transaction logs, and the identification by witnesses heard in the investigation, it was satisfied that the Applicant's participation in the fraudulent scheme had been shown by clear and convincing evidence. On the due process prong, the Tribunal noted that the Applicant faulted the conduct of the investigation on the ground that the investigators favoured inculpatory evidence and ignored potential exculpatory factors. The Tribunal observed that the Applicant did not allege any specific procedural right to have been infringed nor any exculpatory fact ignored. All the specific averments of the Applicant were addressed when examining the sufficiency of evidence. The Tribunal, therefore, did not entertain procedural matters any further. Regarding misconduct, the Tribunal agreed with the Respondent that the Applicant improperly used United Nations property for his personal gain in a matter affecting financial interests of the Organization. Accordingly, the Tribunal found that the Applicant's acts constituted a misconduct. On whether the sanction was proportionate to the offence, the Tribunal found that the sanction letter dated 19 May 2020 demonstrated a proper consideration of the nature of the Applicant's actions. The Tribunal concurred that retaining the Applicant in service would be irreconcilable with the values of the Organization. The practice in the past cases was consistent in that disciplinary measures have been imposed at the strictest end of the spectrum, namely, separation from service or dismissal in accordance with staff rule 10.2(a). Therefore, the Tribunal found that the disciplinary measure of separation from service with compensation in lieu of notice and with 25% of the termination indemnity in accordance with staff rule 10.2(a)(viii) was proportionate to the offence committed.

## Decision Contested or Judgment/Order Appealed

The Applicant contested a disciplinary measure of separation from service with compensation in lieu of notice and with 25% of the termination indemnity otherwise applicable, in accordance with staff rule 10.2(a)(viii).

## Legal Principle(s)

Pursuant to the jurisprudence, the role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements: i. Whether the facts were established by clear and convincing evidence; ii. Whether facts amount to misconduct; iii. Whether the sanction is proportionate to the gravity of the offence; and iv. If the staff member's due process rights were guaranteed during the entire proceeding.

## Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

MINUSMA

Case Number(s)

UNDT/NBI/2020/38

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

28 Feb 2022

Duty Judge

Judge Milart

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 10.1(a)