

2022-UNAT-1205, Roger Kuate

UNAT Held or UNDT Pronouncements

Mr. Kuate appealed. UNAT dismissed Mr. Kuate's contention that there was no basis until 1 April 2019, date of the final divorce decision, for the recovery of the allowances on grounds that the Cameroonian judgments were not final until that date. UNAT found that Order No. 791 contained an enforceability clause and therefore the measures provided in that order went into force with immediate effect. Consequently, Mr. Kuate and his wife legally separated on 26 November 2015 when the order was issued. Also, on the basis of this order, from this day on Mr. Kuate had legal custody for (only) two of his children. Accordingly, Mr. Kuate, under Section 1.7 of ST/AI/2011/5, was only entitled to receive dependency benefits for the two children for whom he had legal custody while his wife was entitled to receive dependency benefits for the other two children for whom she had legal custody. Mr. Kuate, after 26 November 2015, received dependency benefits for all four children and he was thus overpaid; the dependency benefits for two of the children rightfully belonged to his wife under Section 1.7 of ST/AI/2011/5 because she was legally separated from Mr. Kuate and had the legal custody for those two children. As for the decision to award legal custody for all four children to the mother by Judgment No. 730 dated 8 September 2017, UNAT agreed with the UNDT that the formal nullification of this judgment by Judgment No. 095/CIV did not affect the order on legal custody which was in force until the issuance of the appellate judgment on 1 April 2019. Judgment No. 095/CIV nullified Judgment No. 730 for formal reasons only (because the brief initiating the proceedings was not reproduced in the decision taken) but repeated all orders taken by the first instance tribunal, namely to pronounce the divorce, to award custody of all four children to the mother and to order Mr. Kuate to pay child support to his ex-wife. UNAT noted that while the appeals judgment did not expressly state that it had retroactive effect, it was evident that the appellate tribunal did not want to set aside or vacate the measures on custody and child support taken by the first instance tribunal. Otherwise, it would have ordered Mr. Kuate's ex-wife to pay back the child support she had received after the issuance of Judgment No. 730. UNAT held that this understanding was in

accord with Section 1.7 of ST/AI/2011/5, the purpose of which was to ensure that in case of divorce or legal separation of two staff members, dependency benefits for their children are paid to the parent with whom the children are staying and who bears the costs for their living expenses-typically the parent who has legal custody of the children; therefore, Section 1.7 of ST/AI/2011/5 links the payment of dependency benefits to legal custody. Mr. Kuate's ex-wife, by order of Judgment No. 730, was awarded custody for all four children effective 8 September 2017. Such legal custody was exercised by Mr. Kuate's ex-wife until and beyond the issuance of Judgment No. 095/CIV on 1 April 2019. UNAT noted that in cases like the one at bar, it is the task of the Administration to decide to which parent dependency benefits will be paid, a decision which can only be taken on the basis of court decisions which are already issued at that moment. In other words: When MONUSCO, in September 2018, had to decide whether and since when Mr. Kuate and his wife had been legally separated and who had legal custody of the children, it could only base its decision on the court orders which had been issued at the time. As Judgment No. 730 had awarded custody for all four children to the mother on 8 September 2017, and she exercised her custody on the basis of this judgment from that moment on, it was her who was entitled to receive the dependency benefits under Section 1.7 of ST/AI/2011/5 and not Mr. Kuate. UNAT dismissed the appeal.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Kuate, a Conduct and Discipline Officer at the P-3 level, working with MONUSCO, contested the decision to make deductions from his salary to be paid to his wife to satisfy child support obligations, as well as the decision to recover dependency allowance and other related entitlements made by the Organization. The UNDT found that the recovery decision was lawful as Mr. Kuate was not entitled to receive dependency benefit for two of his children effective 26 November 2015 and for any of his children effective 8 September 2017. The UNDT reasoned that Mr. Kuate and his wife had legally separated based on Order No. 791 dated 26 November 2015. While this order granted him legal custody for (only) two of his children, Judgment No. 730 conferred legal custody for all four children to the mother. As Order No. 791 contained an immediate enforceability clause, the UNDT found that it modified previous arrangements resulting from Judgment No. 77 with immediate effect. While Judgment No. 730 did not contain an enforceability clause, the UNDT found that the Tribunal de Grande Instance du Wouri had power to issue

provisional orders based on Articles 238 and 240 of the Civil Code of Cameroon, and that such provisional measures stayed in force until otherwise decided by the court before which the case was pending. Particularly, any appeals filed against Order No. 791 and subsequently, Judgment No. 730, did not have any suspensive effect as this would belie the notion and purpose of provisional measures and immediate enforceability. The UNDT further noted that on the ground of the Civil Code of Cameroon, revoking alimony obligations by the appellate court did not affect the validity of provisional measures thus far applicable. Accordingly, the UNDT held that the formal nullification of Judgment No. 730 did not affect the provisional measures that were in force until the issuance of the appellate judgment. The UNDT ordered rescission of a decision issued on 18 September 2018 for legal clarity but dismissed all other parts of the application.

Legal Principle(s)

Receivability of an application is essential for a Tribunal's authority to review the merits of the case. The UNDT may and will not review the merits of the case if the application is not receivable

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Roger Kuate

Entity

UN Secretariat

Case Number(s)

2021-1554

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Dependency benefits

Spousal/child support

TEST -Rename- Benefits and entitlements-45

Private legal obligations

Applicable Law

Administrative Instructions

- ST/AI/2000/12
- ST/AI/2011/5

Secretary-General's bulletins

- ST/SGB/1999/4

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.3

UNDT Statute

- Article 10.5(b)