

# **2023-UNAT-1321, Diana Kenoly, Carolyn Alany Rumah, Felix Kwame and Nicholas Kariuki Kinyanjui in respect of Roselyne Kayeke Oming (deceased)**

## **UNAT Held or UNDT Pronouncements**

The UNAT dismissed both the appeal and the cross-appeal.

As to the Secretary-General's cross-appeal against the UNDT's decision on receivability, the UNAT held that the UNDT was correct not to dismiss the claims as unreceivable, but to investigate their merits.

Turning to the merits, the UNAT noted that death benefits under the Rules are not payable to beneficiaries nominated by a staff member, but to designated beneficiaries as defined by the Staff Rules (i.e. the surviving spouse or dependent children). The UNAT found that Mr. Oming survived Ms. Oming and the substantial preponderance of the evidence established that their marriage still subsisted at the date of her death. The UNAT further held that the Appellants were not dependent children as defined in Staff Rule 3.6(a)(iii)a–c and as such they were not entitled in law to the United Nations death benefit. The UNAT affirmed the UNDT Judgment of the Appellants' non-entitlement to such benefits and dismissed their appeal.

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

Before the UNDT, the adult children of a deceased UNAMA staff member contested the decision to name Mr. Oming whom the Administration identified as the deceased staff member's spouse as the recipient of a death benefit pursuant to Staff Rule 9.11(vii).

The UNDT found the application receivable on grounds that the decision to consider Mr. Oming as the recipient of a death benefit pursuant to Staff Rule 9.11(a)(vii) produced direct legal consequences on the deceased staff member's contractual rights acquired during her previous employment. The UNDT held that Staff Rule 9.11(a)(vii) fell within the scope of "terms of appointment" under Article 2(1)(a) of the UNDT Statute. Therefore, the UNDT reasoned, the contested decision constituted an administrative decision within the meaning of Article 2(1)(a). The UNDT further found the application receivable, given that the Appellants were the children and potential recipients of a benefit triggered by the staff member's demise and were making claims in her name under Article 3(1)(c) of the UNDT Statute.

Turning to the merits of the application, the UNDT found that the decision to consider Mr. Oming as the recipient of a death benefit was not unlawful. The UNDT noted that the Administration based its decision on a review of the deceased staff member's official records, which listed her marital status as "legally separated", not divorced, and that in the absence of a divorce decree, Mr. Oming was the deceased staff member's legal spouse at the time of her death. The UNDT further found that the national authorities of Uganda confirmed that the deceased staff member and Mr. Oming were still legally married at the time of her death. Further, in 2015, the deceased staff member had claimed Mr. Oming as a dependent spouse based on her status as "married" to Mr. Oming and sought to reinstate him officially as her recognized spouse. The UNDT rejected the Appellants' arguments that the Omings' marriage certificate was forged, given that the deceased staff member had confirmed

the authenticity of the marriage certificate and submitted it to the Organization herself. Further, the Uganda Registration Services Bureau had provided the Administration with a letter verifying the authenticity of the marriage certificate. The UNDT thus dismissed the application on its merits.

Ms. Oming's children appealed and the Secretary-General cross-appealed.

#### Legal Principle(s)

Death benefits under the Staff Rules are not payable to beneficiaries nominated by a staff member, but to designated beneficiaries as defined by the Staff Rules, i.e. the surviving spouse and dependent children.

#### Outcome

Appeal dismissed on the merits; Cross-appeal dismissed on the merits

#### Full judgment

[Full judgment](#)

#### Applicants/Appellants

Diana Kenoly, Carolyn Alany Rumah, Felix Kwame and Nicholas Kariuki Kinyanjui in respect of Roselyne Kayeke Oming (deceased)

#### Entity

UNAMA

#### Case Number(s)

2022-1667

#### Tribunal

UNAT

#### Registry

New York

#### Date of Judgement

13 Apr 2023

#### President Judge

Judge Colgan

#### Language of Judgment

English

#### Issuance Type

Judgment

#### Categories/Subcategories

Death benefit

#### Subject matter (ratione materiae)

Oral hearings

#### Administrative decision

TEST -Rename- Benefits and entitlements-45

#### Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

#### Applicable Law

Staff Rules

- Rule 3.6(a)
- Rule 9.11
- Rule 3.1

UNAT RoP

- Article 18

#### UNAT Statute

- Article 2.1
- Article 8.3
- Article 9.4
- Article 2.1(a)

#### UNDT Statute

- Article 3.1
- Article 8.1(a)

#### UNJSPF Regulations

- Article 31

#### Related Judgments and Orders

2017-UNAT-718

2020-UNAT-987