

# **2023-UNAT-1354, James Okwakol**

## **UNAT Held or UNDT Pronouncements**

The UNAT first dismissed Mr. Okwakol's appeal of the UNDT Order, finding that Mr. Okwakol's complaints about what the UNDT decided it would admit into evidence and what submissions it would consider in deciding his substantive case, were remediable as part of his appeal on the merits if they were wrongly decided.

The UNAT agreed that the UNDT was correct to admit the audio-recording made by the SEA victim because this evidentiary material was relied upon by the Administration in taking the decision to impose the disciplinary measure of separation from service. The audio-recording needed to be available to the UNDT so that it could decide on the lawfulness of the Administration's decision. The UNAT also held that the UNDT was correct to deny Mr. Okwakol's motion to strike certain written submissions of the Secretary-General.

The UNAT affirmed the UNDT's finding that there was clear and convincing evidence that Mr. Okwakol failed to report the alleged rape of the victim, and failed to report that a MONUSCO colleague knew of this rape allegation earlier and had not reported it. The UNAT did not accept Mr. Okwakol's defense that his failure to report was excused because the rape was not proven, or that the victim had supposedly designed an extortion scheme with respect to this incident. The UNAT also found that the UNDT correctly concluded that Mr. Okwakol had pressured the victim to withdraw her rape complaint and encouraged her request for compensation for doing so. Further, the UNAT shared the UNDT's assessment that Mr. Okwakol committed misconduct by interfering with the investigation of these events.

The UNAT concluded that there was no infringement of Mr. Okwakol's due process rights during the investigation, or in the use of the audio-recording of the meeting between the victim and Mr. Okwakol and other MONUSCO colleagues. Finally, the UNAT observed that Mr. Okwakol did not make a specific challenge to the sanction of separation from service for misconduct established, and denied his request for a termination indemnity.

The appeal was dismissed.

## Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2022/082, the UNDT dismissed Mr. Okwakol's application in which he challenged the termination of his employment due to his failure to file a report with respect to a complaint of sexual exploitation and abuse (SEA), and his interference with an official investigation. In Order No. 082 (NBI/2022), the UNDT also dismissed Mr. Okwakol's motion to strike an audio-recording that was secretly made by the alleged victim of SEA.

Mr. Okwakol appealed the Judgment and the Order.

## Legal Principle(s)

Only one appeal is to be filed after the final judgment has been delivered. Interlocutory appeals on matters of evidence, procedure, and trial conduct are not receivable.

Staff members are not required to have objective or sufficient evidence that sexual exploitation and abuse (SEA) occurred before reporting a concern or suspicion of possible SEA.

Due process rights of a staff member are complied with as long as s/he has a meaningful opportunity to mount a defense and to question the veracity of the statements against him.

An audio-recording of a conversation, made secretly, was admissible given the factual parameters of the case, and that the content of the conversation was extensively and thoroughly examined in hearings before the UNDT.

## Outcome

Appeal dismissed on merits; Appeal dismissed on receivability

## Full judgment

[Full judgment](#)

## Applicants/Appellants

James Okwakol

## Entity

MONUSCO

## Case Number(s)

2022-1714

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

13 Jul 2023

## President Judge

Judge Raikos

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Evidence

Investigation

Jurisdiction / receivability (UNAT)

Sexual exploitation and abuse

## Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.2(c)
- Rule 1.2(e)

UNDT RoP

- Article 19

## Related Judgments and Orders

2019-UNAT-948Corr.1

2012-UNAT-266

2013-UNAT-280

2011-UNAT-121

2010-UNAT-076

2021-UNAT-1116

2015-UNAT-560

2010-UNAT-005

2014-UNAT-423

2020-UNAT-1058

2019-UNAT-960

2017-UNAT-762

2019-UNAT-956

2017-UNAT-718

2016-UNAT-700

2013-UNAT-302

2015-UNAT-550

2012-UNAT-207

2020-UNAT-982

2022-UNAT-1280

UNDT/2022/082

2010-UNAT-054