

2022-UNAT-1277, Betty Mukomah

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by Ms. Mukomah.

The UNAT held that Ms. Mukomah's submission that she was the spouse of the late participant at the time of his death and is therefore entitled on that basis to a widow's benefit under Article 34 of the Fund's Regulations, was not sustainable based on the evidence before the UNAT.

The UNAT found that there was insufficient evidence proving that the late participant and Ms. Mukomah lawfully entered a (second) union legally recognized by the competent authority of Kenya conferring similar legal effects as a marriage in relation to pension rights, after previously divorcing in 2014. Therefore, Ms. Mukomah is not entitled to a benefit under Article 34 and the Standing Committee did not err in reaching that conclusion.

The UNAT held that the rejection of Ms. Mukomah's claim under Article 35 bis was also correct. She was found ineligible under this provision because (accepting the legal consequences of the Kenyan divorce order) she and the late participant were married for only six years during which contributions were paid. The late participant commenced employment with UNON on 8 February 2008, the divorce was granted on 31 March 2014, and there was no evidence of any re-marriage after that date. But even if there was a re-marriage, it took place only months before the late participant died. Article 35 bis confers a benefit on a surviving divorced spouse only in cases where the divorced spouse was married to the participant for a continuous period of at least 10 years during which contributions were paid on account of the participant. Ms. Mukomah did not meet that requirement. There is accordingly no legal basis to grant Ms. Mukomah a benefit in terms of this provision.

The UNAT dismissed the appeal and affirmed the decision of the Standing Committee of the UNJSPB.

Decision Contested or Judgment/Order Appealed

Ms. Mukomah contested the decision of the Standing Committee of the UNJSPB to reject her request for a widow's benefit under the Pension Fund's Regulations.

The Standing Committee of the UNJSPB decided that Ms. Mukomah was not eligible to receive a divorced survivor's benefit in terms of Article 35 *bis* of the Fund's Regulations because she had not been married to her former husband, Mr. Anthony Mukomah (the late participant), for a continuous period of 10 years during which he paid contributions to the Fund, as required by that Article.

Legal Principle(s)

For a widow's benefit under Article 34(a) of the UNJSPF's Regulations, if the participant died in service, the spouse must have been married to him at the time of his death in service; and if the participant separated from service prior to his death, not only the spouse must have been married to him at the time of separation from service but should have remained married to him until his death.

Article 35 bis of the Pension Fund's Regulations confers a benefit on a surviving divorced spouse only in cases where the divorced spouse was married to the participant for a continuous period of at least 10 years during which contributions were paid on account of the participant.

Para. 4 of the 2016 "Guidelines to determine eligibility for spousal benefits under articles 34 and 35 of the UNJSPF", extends the meaning of "marriage" to include unions/registered partnerships lawfully entered into and legally recognized by the competent authority of the location where the status was established, as long as the union confers similar legal effects as marriage, specifically including pension rights.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Betty Mukomah

Entity

UNJSPF

Case Number(s)

2021-1622

Tribunal

UNAT

Registry

New York

Date of Judgement

23 Nov 2022

President Judge

Judge Raikos

Judge Murphy

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Survivor's benefits

United Nations Joint Staff Pension Fund (UNJSPF)

Applicable Law

UNAT Statute

- Article 2.5
- Article 2.9

UNJSPF Regulations

- Article 34