

2024-UNAT-1431, Doreen Nimusiima

UNAT Held or UNDT Pronouncements

The UNAT observed that two e-mail exchanges between Ms. Nimusiima and a former UNHCR staff member (AM) were the only documentary evidence offered to establish Ms. Nimusiima's culpability in issuing a fraudulent resettlement letter in exchange for a bribe.

The UNDT had concluded that these e-mail exchanges showed that Ms. Nimusiima acted in concert with AM, but that they were nonetheless "equivocal" (unclear/vague), "purely circumstantial" and did not prove with high probability that AM had sent the fraudulent resettlement letter to the Complainant (the alleged refugee).

With regard to receipt of a bribe, the UNAT recalled that the sole evidence to prove that Ms. Nimusiima had received USD 5,000 from the Complainant emanated from the testimony of the Complainant himself. However, the learned UNDT Judge, who had the best view of the Complainant's demeanor and the coherence of his story with the surrounding facts, found that the Complainant's testimony was "completely without credibility." The UNAT confirmed that the UNDT was in a unique position to make such an assessment and that such findings are due particular deference on appeal.

The UNAT held that the evidence before the UNDT and the Appeals Tribunal was not sufficient, cogent and relevant so as to prove the elements of fraud (misrepresentation, the intent to deceive or prejudice) as to Ms. Nimusiima. The UNAT agreed with the Dispute Tribunal that the Administration has failed to prove by clear and convincing evidence that Ms. Nimusiima committed the serious misconduct alleged.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/127.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2022/127, the Dispute Tribunal rescinded UNHCR's disciplinary decision of separation from service imposed on Ms. Doreen Nimusiima on the grounds that the Administration had failed to prove by clear and convincing evidence that she had committed misconduct in the form of resettlement fraud and/or corruption.

The Secretary-General appealed.

Legal Principle(s)

In a case where there is a conflict of evidence between witnesses, and especially where documents tend to throw doubt upon one or more of the contested eyewitness accounts' of events, the UNDT is usually in the best position to assess the relevant probabilities.

The UNAT's task on appeal is not to re-decide the case that was before the UNDT. This is so because we cannot enjoy the same advantages experienced by the first instance judge, such as seeing and hearing the witnesses give their accounts of the events. The UNAT's task is to determine whether the UNDT did not apply the correct tests in a disciplinary case and whether the Dispute Tribunal could reasonably have reached the decisions it did about what happened.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Doreen Nimusiima

Entity

UNHCR

Case Number(s)

2023-1781

Tribunal

UNAT

Registry

New York

Date of Judgement

6 May 2024

President Judge

Judge Forbang

Judge Colgan

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Facts (establishment of) / evidence

Fraud, misrepresentation and false certification

Evidence

Credibility assessment

Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 10.1

UNDT Statute

- Article 2.1(b)

Related Judgments and Orders

2020-UNAT-1024

2016-UNAT-680

2020-UNAT-1033

2013-UNAT-302

2023-UNAT-1375

2023-UNAT-1340

2022-UNAT-1259

2023-UNAT-1376

2023-UNAT-1332

2020-UNAT-982

2015-UNAT-582

2011-UNAT-110

2019-UNAT-972

UNDT/2022/127