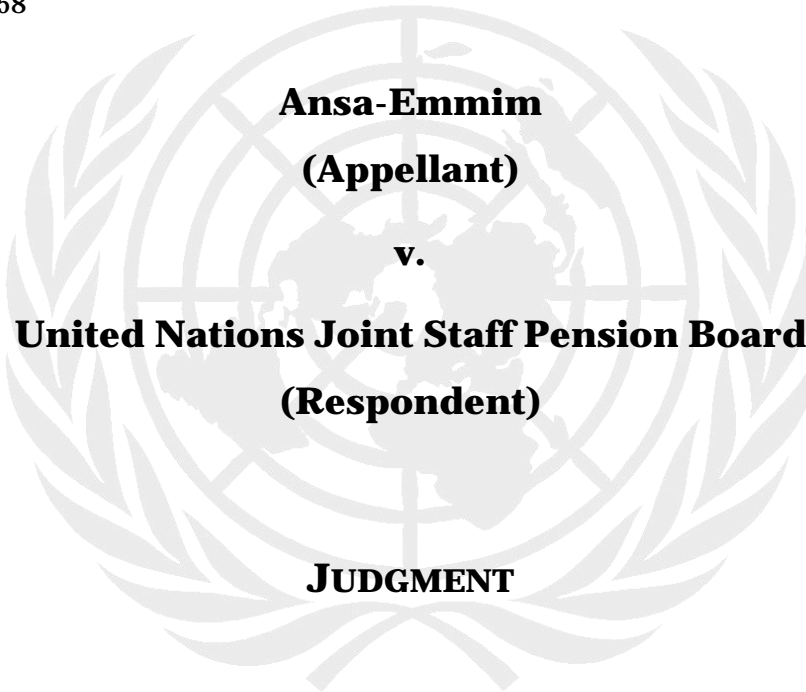




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-158



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**Before:** Judge Kamaljit Singh Garewal, Presiding  
Judge Jean Courtial  
Judge Mary Faherty

**Judgment No.:** 2011-UNAT-155

**Date:** 8 July 2011

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Victor Essien

**Counsel for Respondent:** Bernard Cochemé

**JUDGE KAMALJIT SINGH GAREWAL, Presiding.**

**Synopsis**

1. Michael Ansa-Emmim (Michael) was a participant in the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund). He separated from the Food and Agriculture Organization (FAO) upon his retirement on 31 January 1998 and passed away on 5 January 2008. Michael married Eva Nancy Bunnah (Eva) on 16 April 1977. Eva obtained a divorce by final decree from the Bromley County Court, United Kingdom, on 30 July 1993. At the time of his separation from service on 31 January 1998, Michael was married to Jacqueline Lopez Ansa-Emmim (Jacqueline). They had married on 20 September 1986. After Michael's death Jacqueline began to draw a widow's benefit.

2. The Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively) cancelled Jacqueline's benefits on the ground that, on the date of their marriage, Michael was not divorced from Eva resulting in Jacqueline's marriage to Michael being invalid.

3. The record reflects that Michael and Jacqueline married in 1986 and lived as husband and wife. Jacqueline was Michael's wife on the date of his separation from service in 1998 as well as on the date of his death in 2008. Jacqueline is entitled to a widow's benefit under Article 34 of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund (UNJSPF Regulations).

**Facts and Procedure**

4. Michael was a Ghanaian national and a participant in the UNJSPF while he worked for FAO from 13 September 1977 until his separation from service on retirement on 31 January 1998. He died on 5 January 2008.

5. Michael was married three times. The first marriage to Mary Ansa-Emmim (Mary) was entered into on 26 December 1965 and dissolved in Ghana on 8 December 1975. The second marriage to Eva was entered into in Accra, Ghana, on 16 April 1977 and dissolved by final decree in the Bromley County Court, United Kingdom, on 30 July 1993. The third marriage to Jacqueline, a Senegalese national, was concluded in Senegal on 20 September 1986.

6. Jacqueline and Michael had a daughter, Cristine Ekna Ansa-Emmim, born 20 May 1987. Michael registered Jacqueline as his lawfully wedded wife. She, as well as their daughter and her son from a prior relationship, were, under the terms of his employment with FAO, entitled to all benefits including transportation to and from Michael's duty stations, health insurance, tuition fees, child benefits, commissary card as spouse of an FAO employee, as well as diplomatic laissez-passer.

7. After Michael's retirement from FAO in 1998, Michael and Jacqueline settled in Senegal during which time Jacqueline continued to enjoy spousal benefits flowing from their marriage. Furthermore, Michael's monthly pension payments were deposited into a joint account shared with Jacqueline who was a named account-holder.

8. Following Michael's death, the UNJSPF recognized Jacqueline as Michael's widow and processed a widow's benefit to be paid to her under Article 34 of the UNJSPF Regulations effective 1 February 2008.

9. In June 2008, Eva wrote a letter to FAO, which forwarded it to the Pension Fund, stating that she had been married to Michael and that she had not heard anything from the Pension Fund following her former husband's death.

10. The status report dated 14 July 1989 showed that Michael had divorced from his second wife. The Pension Fund initially did not have Eva's divorce documents on file. It subsequently received Eva's divorce certificate which showed that her marriage to Michael had been dissolved in the Bromley County Court in the United Kingdom on 30 July 1993. It also showed that they had been married on 16 April 1977. Eva did not provide a marriage certificate to the Pension Fund before the impugned decision was taken by the Standing Committee.

11. By letter dated 27 July 2009, the Pension Fund informed Jacqueline that it had received a document that raised questions regarding the legal standing of her marriage to Michael; and that as a result it had suspended, until further notice, payment of her widow's benefit. The Pension Fund noted that it had obtained a divorce decree which stated that Michael had been married to another woman in 1977 until their divorce in 1993. The Pension Fund therefore "need[ed] to determine the basis on which

[Jacqueline] married [Michael] on 20 September 1986, as it appear[ed] that he was still married at that time”.

12. In response to the Pension Fund’s request for any information that would assist it in confirming her legal right to receive a widow’s benefit under Article 34 of the UNJSPF Regulations, Jacqueline provided her Senegalese issued marriage certificate, which was already in the Pension Fund’s file, as well as the divorce document relating to Michael’s first marriage.

13. By letter dated 26 January 2010, the Pension Fund informed Jacqueline that it could no longer recognize her as Michael’s legal widow for purposes of payment of the UNJSPF benefits, since she could not have been legally married to Michael in 1986 who, at that time, was still married to Eva. It also requested that Jacqueline return to the Pension Fund the amount of USD 37,538.08, in response to which Jacqueline requested a review of the UNJSPF’s decision.

14. By letter dated 30 July 2010, the Pension Fund informed Jacqueline that the Standing Committee of the Pension Board had considered her request and upheld the decision of the Pension Fund to terminate the payment of her widow’s benefit seeing that she was not legally married to Michael at the time of his separation from service in January 1998. It noted that until Michael’s second marriage was ended legally, he could not enter into another valid marriage. The Standing Committee however found that the application of Article 43 of the UNJSPF Regulations requiring that the Pension Fund recover overpayments should be waived in her case and that she was not required to return to the Pension Fund the amount of USD 37,538.08.

15. Jacqueline appeals the decision of the Standing Committee to terminate the payment of her widow’s benefits.

### **Submissions**

#### **Jacqueline’s Appeal**

16. Jacqueline submits that there is insufficient evidence on record to support the validity of the purported marriage between Michael and an unidentified person in Accra, Ghana, on 16 April 1977 and that, even assuming that her marriage to Michael was

preceded by a subsisting marriage, she had a legitimate legal expectancy to obtain a widow's benefit. She contends that the United Nations Appeals Tribunal (Appeals Tribunal) previously recognized the principle of equitable estoppel and that her case must be distinguished from *El-Zaim*.<sup>1</sup>

17. Jacqueline contends that since her marriage to Michael in 1986, she has enjoyed many of the spousal benefits and entitlements afforded to the spouse of a staff member, including the provision of a diplomatic laissez-passer and payment of retirement benefits into a joint bank account.

18. Jacqueline also contends that the purported pre-existing spouse is not entitled to Article 34 widow's benefits since she was divorced from Michael at the time he separated from FAO and that, in the absence of the divorce decree and/or divorce settlement evidencing that she had not renounced the UNJSPF benefits, she is not automatically entitled to a divorced surviving spouse's benefit under Article 35*bis* of the UNJSPF Regulations.

19. Jacqueline further contends that, based on Article 42 of the UNJSPF Regulations, seeing that the Pension Fund did not request a full disclosure since 1986, it cannot now decline the payment of widow's benefits.

20. Jacqueline requests that the Appeals Tribunal compel the Pension Fund to produce proof of the purported prior marriage and to set aside the decision of the Standing Committee that Jacqueline's widow benefits should be terminated.

#### **UNJSPF's Answer**

21. The Pension Fund recalls that spousal benefits are potential survivor's benefits. The Pension Fund is only able to review available documentation, and determine the status of each individual requesting a benefit, at the time of death of the UNJSPF participant or former participant. Consequently, the Pension Fund is not bound by the fact that FAO recognized Jacqueline as Michael's spouse in a 1989 FAO status report.

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<sup>1</sup> *El-Zaim v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-007.

22. The Pension Fund initially paid Jacqueline a widow's benefit based on the status report issued by FAO in 1989 which had recorded Michael's divorce from Eva and the remarriage to Jacqueline. While considering Eva's claim for a divorced surviving spouse benefit under Article 35*bis* of the UNJSPF Regulations, the Pension Fund received a copy of a divorce decree which indicated that Michael's divorce from his second spouse had taken place almost seven years after the marriage to Jacqueline. Therefore, Michael could not have entered into a valid marriage with Jacqueline without first dissolving his second marriage.

23. The Pension Fund submits that, seeing that Michael reported his marriage to Eva at the time of his entry into service with FAO in September 1977, there is no basis for denying it. The Pension Fund was further provided with proof of the divorce in July 1993 that has not been refuted by Jacqueline. Therefore, the marriage between Jacqueline and Michael could not have been legal.

24. The Pension Fund concludes that Jacqueline does not meet the requirement of Article 34(a) of the UNJSPF Regulations since she was not legally married to Michael at the time of his separation as well as at the time of his death. The Pension Fund requests that Jacqueline's appeal be rejected.

### Considerations

25. A widow of a participant in the Pension Fund receives a widow's benefit as the surviving female spouse on the basis of Article 34 of the UNJSPF Regulations:

A widow's benefit shall...be payable to the surviving female spouse of a participant who was entitled to a retirement, early retirement, deferred retirement or disability benefit at the date of his death, or who died in service, if she was married to him at the date of his death in service or, if he was separated prior to his death, she was married to him at the date of separation and remained married to him until his death.

26. What we have to consider is whether, in the particular circumstances of Jacqueline's case, she is entitled to receive a widow's benefit. Jacqueline married Michael in 1986 and remained married to him until his death in 2008, ten years after his separation from service, and there is nothing on record to indicate the contrary. The mention of the date of Eva's marriage in the divorce decree produced by her, in the absence of a valid marriage certificate, does not make Jacqueline's marriage to Michael

invalid for the purposes of determining her rights under Article 34 of the UNJSPF Regulations.

27. We have gone through all the documentary evidence placed on the record, including Jacqueline's marriage certificate, and find that Jacqueline had married Michael in good faith on 20 September 1986 in Dakar, Senegal; whereas Eva has not been able to produce the marriage certificate showing her marriage to Michael on 16 April 1977. The divorce decree is no proof of marriage even though the date of the marriage is mentioned therein. Furthermore, it appears that, on the basis of a statement made by Michael, the FAO status report dated 14 July 1989 indicated that Michael had divorced Eva prior to his marriage to Jacqueline. Following an inquiry by the Pension Fund, Eva produced the divorce decree of 1993. We have no way of knowing Michael's version and the divorce decree cannot be the sole basis of declaring Jacqueline's marriage to Michael invalid.

28. The Pension Fund heavily relies on this Tribunal's judgment in *El-Zaim*.<sup>2</sup> However, that case is clearly distinguishable from the present one. El-Zaim was a Syrian national who married his first wife Narwal, also a Syrian national, in France in 1962 under French law. He later married Ariolla, a Mexican national, under Sharia law at the Syrian Embassy, Yemen in 1993, prior to divorcing Narwal under Sharia law, also at the Syrian Embassy in Yemen, in 1994. It was only in 2000, after his separation from service in 1998 that El-Zaim registered the divorce from his first wife as well as his marriage to his second wife. In the present appeal, to the contrary of El-Zaim's case where there was no evidence that the first marriage had come to an end prior to El-Zaim's death or that El-Zaim had entered into a valid second marriage, the marital status of Jacqueline was clear on the date of the separation.

29. At the time of Michael's separation from service in 1998 Jacqueline was his legal wife. Consequently, Jacqueline is entitled to the widow's benefit under Article 34 of the UNJSPF Regulations.

30. While communicating the Standing Committee's decision to Jacqueline on 26 January 2010, the Pension Fund did not include a copy of the order detailing its decision, thereby seriously affecting Jacqueline's due process rights in filing her appeal.

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<sup>2</sup> *El-Zaim v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-007.

This Tribunal has not been shown the order as issued by the Standing Committee detailing the impugned decision; therefore we are unable to determine the reasoning adopted by the Standing Committee. We find that the Standing Committee erred in declaring the marriage between Michael and Jacqueline invalid and in withdrawing the benefits to which Jacqueline was entitled.

31. We would like to iterate that all proceedings which culminate in appealable decisions must be conducted in a reviewable manner, by observing the principles of natural justice. The affected party must get a proper hearing, and the order detailing a decision must contain sound reasons which can be judicially scrutinized upon appeal. Failure to record the order or provide a copy of the order to the party concerned is a grave violation of due process rights as it deprives the concerned party of the proper opportunity to file an appeal.



**Judgment**

32. This appeal is allowed, and the decision of the Standing Committee of the UNJSPB is set aside. Jacqueline shall receive a widow's benefit under Article 34 of the UNJSPF Regulations.

33. Jacqueline widow's benefits shall be reinstated from the date on which the UNJSPB originally suspended the distribution of her widow's benefits. In accordance with the Appeals Tribunal's ruling in *Warren*<sup>3</sup> the Appeals Tribunal decides to award interest at the US Prime Rate applicable from the date on which Jacqueline's widow's benefits were suspended to the date of the payment of the suspended benefits. The Appeals Tribunal further holds that this Judgment shall be executed within 60 days from the date of its issuance to the parties. If this Judgment is not executed within 60 days, five per cent shall be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment of the suspended widow's benefits.

Original and Authoritative version: English

Dated this 8<sup>th</sup> day of July 2011 in Geneva, Switzerland.

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Courtial

*(Signed)*

Judge Faherty

Entered in the Register on this 29<sup>th</sup> day of August 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

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<sup>3</sup> *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.