

Introduction

1. The Applicant was a Senior Protection Officer with the United Nations High Commissioner for Refugees (UNHCR). He served at the P-4 level and was temporarily assigned to serve at the UNHCR Office in Lilongwe, Malawi

2. On 9 August 2022, he filed an application before the Dispute Tribunal asking for P-4 to be reinstated to his position. The Tribunal found that the Applicant was dismissed from service of the Organization pursuant to staff rule 10.2(a)(ix). The

8. On 13 September 2021, the Applicant received a memorandum from the Director of the Division of Human Resources (DFJ Tö) indicating that she had received information which is tantamount to committing serious misconduct. The alleged fraud was an offence, which if established, would warrant separation from service or dismissal, she also decided that the Applicant be placed on administrative leave without pay.

9. A separate investigation into unrelated allegations of fraud by another staff member, Davies Ndambuki, revealed that the Applicant may have colluded with him and other staff members to obtain rental subsidy.

10. The Applicant has owned an apartment in Sub-City Woreda Addis Ababa, Ethiopia since February 2008.

11. The investigators found emails indicating that the Applicant had rented out his flat in Addis Ababa to Mr. Ndambuki and Ms. Murun. The lease indicated an amount which was used to claim rental subsidy, but the amount actually paid to the Applicant was substantially less.

12. On 15 September 2021, the Applicant received a Notice of Investigation which informed him that a formal investigation into his conduct had been opened and that the Ethiopian Human Rights Commission (EHRC) would be seeking to interview him.

13. The Applicant was interviewed on 2 November 2021 and also submitted written comments on 15 December 2021.

14. On 14 January 2022, the Applicant was served with a memorandum containing Allegations of Misconduct. The Applicant was invited to respond to the charges therein. Attached to the memorandum was the Investigation Report.

¹ Cr r necpvu Cppgz 5.

² Cr r necpvu Cppgz 9.

³ Cr r necpvu Cppgz 32.

15. The Applicant responded to the charges on 5 February 2022.

16. On 11 May 2022,⁴ the DHR wrote to the Applicant to inform him that after a careful review of the evidence gathered by IGO, including their interview with the Applicant and his written response to the interview and the charges, the High Commissioner of the IGO decided to take a disciplinary measure of dismissal pursuant to staff rule 10.2(a)(x) as the Applicant was found to have:

- (i) Engaged in fraud by knowingly assisting Mr. Davies Ndambuki in submitting a fraudulent claim for rental subsidy in December 2017, in connection with the lease of [his] apartment in Addis Ababa, as a result of which Mr. Ndambuki received USD 44,219.26

20. Ms. Murungi was a tenant of the property from July 2014 to December 2016 and again, from January to May 2020. Rent was USD600 a month.

21. Between 27 November 2017 and 31 December 2019, the property was tenanted by Mr. Ndambuki for USD3,500 a month. There was an oral agreement between the tenant and the landlord that USD2,222 was to be paid to the Applicant in the United States, and the balance of USD1,278 was to be paid to Mr. Ndambuki in Ethiopia. Mr. Ndambuki sometimes paid large amounts in advance.

22. The Applicant explains that Ms. Murungi was supposed to move back into the apartment in January 2020. However, she did not do so. In January 2020, the Applicant found Ms. Murungi alternative housing and the apartment fell vacant.

23. The Respondent maintains that there is clear and consistent evidence to show that Mr. Ndambuki did not pay USD3,500 in monthly rent and that the Applicant had knowingly provided a false lease and a false rent receipt to Mr. Ndambuki so that he could claim and obtain rental subsidy from UNHCR to which he was not entitled. In other words, the Applicant committed fraud when he knowingly assisted Mr. Ndambuki to submit a fraudulent rental subsidy claim in December 2017.

24. The Respondent submits that multiple communications between the Applicant and Mr. Ndambuki corroborate that Mr. Ndambuki only paid the Applicant USD2,000 per month in rent. Throughout the duration of the lease, the Applicant and Mr. Ndambuki referred exclusively to that amount and never mentioned other payments. On 1 February 2018 and 19 February 2018, the Applicant asked Mr. Ndambuki to pay him USD8,000. Mr. Ndambuki paid the Applicant USD8,000 and asked for another month to transfer the remaining USD4,000. On 3 May 2018, the Applicant asked Mr. Ndambuki to confirm that he had paid the remaining rental balance of USD4,000. On 18 December 2018, the Applicant asked Mr. Ndambuki to pay him USD12,000 as six

o qpj uøcf xcpegf tgpv Qp 5 Cr tk423; , vj g{ alsodiscussed a ñmissed rent payment for the month of February 2019 in the amount of USD2,000.

25. By misrepresenting the amount of rent in his application for rental subsidy, Mr. Ndambuki obtained rental subsidy to which he was not entitled. At the time of his application for the subsidy, his gross income was WUF 8,222.76. His individual threshold amount was thus USD1,200.11. A monthly rent of USD3,500 meant that the excess amount was USD2,298.65 of which - USD1,839.91 was reimbursed to the Applicant.

26. Had Mr. Ndambuki applied for rental subsidy based on USD2,000 that he was clearly paying the Applicant, the excess amount would have been USD799.89, and he would have received USD699 in rental subsidy. He was not entitled to the USD1,839.91 that he was being paid. The record, the Respondent submits, is replete with evidence that the Applicant engaged in this transaction in the full knowledge that it was fraudulent.

27. There is no evidence that the Respondent submits that a further USD1,500 was paid to the Applicant or his family in cash, anywhere. The evidence adduced by the Applicant purporting to be a statement by Mr. Kshay dated 29 January 2022 reads as follows:

At the end of December Mr. Davies, departed Ethiopia, after his departure, again Ms. Stella, moved in January to ~~2020~~, with monthly rent \$3600, this time I was receiving between \$1500-1000. At Berhane, at different, when we were in Yemen, I was visiting Stella, at UNHCR to collect money from Stella, for our families in Tigray region.
(sic)

28. The Respondent submits that the statement is entirely incredible. The document is largely unintelligible, it is a haphazard collation of a power of attorney and factual statements prepared to address the allegations of misconduct. It is not clear who prepared the document. No proof of identity is attached to it, the name is not the same as in all other documents on record, including three leases and one rent receipt submitted by Ms. Murungi in 2015 and 2016, and the signature is entirely different.

field-services position in Addis Ababa between June 2017 and December 2019. On 21 December 2017, he applied for rental subsidy, specifying that monthly rent was WUF 5,722 per month in rental subsidy from UNHCR between March 2018 and January 2020.

55. However, it results from the records that Mr. Ndambuki did not pay USD3,500 in monthly rent and that the Applicant had knowingly provided a false lease and a false rent receipt to Mr. Ndambuki so that he could claim and obtain a higher rental subsidy from UNHCR to which he was not entitled.

56. Indeed, it results from the record that on 26 March 2018, Mr. Ndambuki wrote to the Applicant:

Dear [Applicant], I have transferred 8k. Allow me to put the balance next month since if I do the full amount, I will be left without food. I used the bank routing number below; Routing number: 021000089. I believe it is the correct bank routing number as seen online for Citibank. Thank you. [Signature]

57. And the Applicant replied:

Thank you for help. I will put the balance next month since if I do the full amount, I will be left without food.. I will see you on Friday (11/03/2018) and I will give you a call. Again thank you so much. Berhanie

58. On 4 December 2017, in the same email where the Applicant shared the lease with Mr. Ndambuki for his signature, the Applicant wrote:

Regarding my rental subsidize application to mention that, you paid the real estate one month rent for the amount of \$5722.. My name is [Name]. Ask your sister she will give you the name of the person.

59. During his interview, Mr. Ndambuki stated that he did not recall the Applicant's name and that he did not recall the Applicant's signature.

60. Two days later, on 6 December 2017, the Applicant sent an email to Mr. Ndambuki with the rental subsidy application form. In his email, the Applicant wrote:

Davies, Attached please find the rental Subsidize application. I fill the part that ask you if you did you pay a fee to a licensed agent or broker to obtain the accommodation,, you will say yes amount \$3500SD.. divided by three 3500/3 +\$1160 .. each.. Thanks

61. The email exchange

withdrew USD1,500 per month in Kenya and flew back into Ethiopia with the money
notes that the Applicant did not offer any evidence on these additional payments.

66. While for the receipt dated 4 February 2018, not signed by the apparent author, the Applicant and Mr. Ndambuki provided wholly inconsistent and contradictory accounts (highlighted in detail in para. 40-41 and 44 of the reply), also for the
equivocal content and form raised many doubts (well highlighted by the Respondent
separa. 46 of the

Applicant would have had almost half of the rent (USD1000 instead of USD3,500) and the tenant would have paid more from his pocket (about USD1609 instead of USD160).

70. In other terms, the parties to the rental agreement unlawfully profited by misconceiving the real amount of the rent, from the mechanism of partial reimbursement in force at UNHCR, where the more rent a staff member pays above the individual threshold, the greater the rental subsidy to the maximum amounts provided in the AI) he/she receive

71. The communications between the Applicant and Mr. Ndambuki on 26 March 2018 show that the Applicant was fully cognizant of the fraud and of the fact that they shared the advantages of the fraudulent scheme.

72. In addition, the email exchange on record shows that the three staff members among themselves.

73. On 19 March 2018, after Mr. Ndambuki shared with the Applicant an email amounted to USD1,839.91, the Applicant wrote to Mr. Ndambuki and Ms. Murungi:

According to the rule you should be full agent fee when receiving the
please divided between the two of you. each will get USD 920. just
deposit the rent amount into my account.

74. The emails from the Applicant to Mr. Ndambuki and Ms. Murungi are manifest

hcevu cuugtvgf ku j ki j n(r tqdcdrg.ö (Molari 2011-UNAT-164, para. 30). The Appeals
Vtdwpcnj cu cnuq ur gellkf vj cvðergctö o gcpu vj cv, ðgxkf gpeg qh o kueqpf wevo wuv dg
manifaavcu qrr qugf vq uwr r qukkpccrö cpf vj cvðeqpxkpekpi ö tgs wktgu, ðvj cv vj ku erget
gxkf gpeg dg r gtuwculxg vq c j ki j ucpfctf.ö D{ vj g uco g vqngp, ð[e]vidence, which is
required to be clear and convincing, can be direct evidence of events, or may be of
evidenknkphgtpegu vj cvecp dg r tqrgtn(ftcy p hqo qvj gt f kgevgxkf gpeg.ö (Negussie
2020-UNAT-1033, para. 45).

83. In this case, the Tribunal is of the view that the documents on record
demonstrate by clear and convincing evidence that the Applicant had rented out his
flat in Addis Ababa to Mr. Ndambuki and Ms. Murungu based on a lease with an
inflated rent (cpf y kj qww

Forging of documents, preparing false entries in UNHCR systems or making false statements to obtain a financial or other benefit to which a person is not entitled.

86. Therefore, the established facts constitute misconduct.

c) whether the disciplinary measure is proportionate to the offence.

87. Considering previous practice and the jurisprudence of the Tribunals, each of the allegations for which the Applicant was sanctioned would thus individually warrant dismissal.

88. UNHCR applies a zero tolerance approach to fraud and corruption pursuant to the Strategic Framework. This means that there is no place for fraud or corruption in UNHCR and that, where established, such misconduct attracts severe disciplinary sanctions.

89. The Appeals Tribunal has held in *Mayenda* 2021-UNAT-1156, at para. 38 that

As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal

(d) whether due process was respected

90. It is not disputed that the investigation and disciplinary process fully complied with the requirements set out in UNHCR/AI/2019/15 Administrative Instruction on Conducting Investigations in UNHCR and UNHCR/AI/2018/18. Indeed, the

Conclusion

91. In light of the foregoing, the application is dismissed.

