UNITED NATIONS DISPUTE TRIBUNAL	Case No.:	UNDT/NBI/2019/033
	Judgment No.:	UNDT/2021/018
	Date:	5 March 2021
	Original:	English

Before: Judge Agnieszka Klonowiecka-Milart

Introduction

1. The Applicant is a Conduct and Discipline Officer at the P-3 level, working

No. 265, the Court of Appeal dismissed the Applicant's appeal.[7] The Applicant's wife requested MONUSCO to implement execution of the child support order.[8]

5. While the child support proceedings were still in progress, on 7 May 2015, the Applicant also initiated divorce proceedings before the Tribunal de Grande Instance du Wouri in Cameroon. On 26 November 2015, the same Tribunal issued Order No. 791 authorizing the couple to live separately. The Tribunal also awarded custody of two children to each parent and ordered that each parent provide support for the two children in their care.[9] The Order included an immediate enforceability clause ("*par provision*").[10] The Applicant informed MONUSCO accordingly.[11] Although the case documents mention an appeal against Order No. 791 filed by the Applicant's wife, the Tribunal has not succeeded in obtaining from the Applicant any information on the result.[12] It transpires, however, that the appeal still had not been heard nearly two years later, at the date of the issuance of the divorce judgment,[13] whereupon it may have become moot.[14]

6. On 6 June 2017, the Applicant received a letter from MONUSCO, Chief Human Resources Officer ("CHRO") reminding him of his responsibility to provide child support in the ordered amount and requested him to immediately comply with the court order of 14 August 2015 (i.e., Judgment No. 265, upholding Judgment 778). By the same letter, the CHRO indicated that within 30 calendar days, the Applicant was to provide the Organization with proof (i) that he was paying the child support as per the Court's order; (ii) that he had amicably resolved the matter with the mother of the children; or (iii) the court order in question had

he fail to provide the evidence in the stated timeframe, the Organization could honour Judgment No. 265, including deductions from his emoluments.[15]

7. On 10 July 2017, the Applicant responded, stating that Judgment No. 77 was not executable because of the pendency of a divorce case that he had filed on 7 May 2015. He enclosed a memorandum from his attorney who set out that the child support order arising from Judgment No. 77 was not executable under Cameroonian law pending divorce proceedings, as the divorce court was the only one competent to decide such matters under art. 240 of the Cameroonian Law on Divorce Procedure, and the divorce court in the Applicant's case decided by Order No. 791 that the custody of the children was to be divided between the parents, with no financial obligation between the parents.[16] The attorney also indicated that under the laws of Cameroon, as well as regional regulations, in disputes like the present one, it was not permitted to seize salary.[17]

8. On 8 September 2017, the Tribunal de Grande Instance du Wouri issued Judgment No. 730 in the divorce case. It awarded custody of the couple's four children to their mother and ordered the Applicant to pay the amount of CFA 150,000 (an equivalent of approximately USD 270) monthly to his former spouse by way of child support.[18] The judgment, however, does not contain an immediate enforceability clause in its operative part.

9. On 18 October 2017, the Applicant appealed Judgment No. 730 before the Littoral Court of Appeal in Douala, Cameroon.[19] By Judgment No. 095/CIV dated 1 April 2019 (divorce appeal judgment), the Littoral Court of Appeal annulled Judgment 730 for its failure to adhere to the prescribed form but did not, however, remand the case for re-trial, but ruled afresh on the matters under dispute. It mirrored Judgment 730 regarding the divorce, custody over the children and the child support obligation

[15] Reply, annex 5.
[16] Reply, annex 6.
[17] Ibid.
[18] Judgment No. 730, reply, annex 7.
[19] Application, annex 16.

from his salary for the payment of child support obligations.[22] The

16. On 22 November 2018, the Applicant requested management evaluation challenging the deductions from his salary.[28] The Management Evaluation Unit first informed him that management evaluation would be late because it required analysis of a large volume of documents[29] and on 8 March 2019, i.e., over two months beyond the statutory deadline, it informed the Applicant that his request was not receivable as it was time-barred.[30]

17. By Order No. 179 (NBI/2020), issued on 16 September 2020, the Tribunal directed the Applicant to state the result of the appeal in Judgment No. 730 and to file a copy of the appellate judgment or any other court decision finally disposing of that case, which resulted in the submission of Judgment No. 095/CIV.

18. By Order No. 190 (NBI/2020), the Tribunal requested from the Respondent clarification of the apparent contradiction between his communication of 18 September 2018 and the invoked basis for the deductions, that is Order No. 791, which had divided the custody over the children without attaching any financial obligations between the parents. In response, the Respondent admitted that the communication of 18 September 2018 had been issued in error, informed that the actual recoveries had been made in recognition of the fact that Order No. 791 had divided the custody over the children between the parents, and that deductions on account of child support had only begun prospectively as of July 2018.[31]

1-8 .0 30764 Tm [(t)-2(h)19(e)2(8)] TJ ET Q q BT /F1 10.08 Tf 0.0 0.0 0.162(o)-1.rg 0.0 0.n2 Tm [6 744x/NBI/20

consider the Applicant separated.

20. The summary of the Applicant's case with the Respondent, illustrating the Respondent's positions, is provided in Table 2.

Table 2 - Timeline for the United Nations litigation

6 June 2017	10 July 2017	14 June 2018	27 June 2018	5 July 2018	July 2018	18 Sept 2018	24 Sept 2018
MONUSCO HR calls upon the Applicant to provide proof of compliance or settlement or setting aside Judgment 77	Applicant's counsel informs MONUSCO that Judgment 77 was not executable pending divorce case filed on 7 May 2015 and informs of Order No 791	Deductions for child support approved by Under Secretary-General based on upheld Judgment 77	MONUSCO HR notifies the Applicant of the approval of deductions on account of child support	Applicant's counsel informs MONUSCO of appeal pendency in the divorce case and the applicable law in Cameroon which renders Judgment 730 not enforceable	Commencement of deductions of USD 2700 per month.	MONUSCO notifies the Applicant of deductions of entirety of dependency allowances based on Order 791; retroactive deduction of child support since Order 791 and all dependency allowances as of Judgment 730 forward	Memo informing that the Applicant is considered "separated" based on Order 791 and Judgment 730 and liable to a recovery of dependency allowances of USD 40,385.60
Reply, annex 5	Reply, annex 6	Reply, annex 10	Application, annex 7	Application, annex 8		Application, annex 4	Application, annex 6

Table 2-continuation of the United Nations litigation

22 Nov 201	8 March 2019	22 March 2019	26 April 2019	20 Oct 202	4 Dec 202	22 Dec 202
Applicant requests						

Receivability

Respondent's submissions on receivability

21. The Respondent submits that the challenge relating to the child support is not receivable *ratione materiae*. The Applicant did not request management evaluation of the decision within 60 days. The Applicant was informed on 27 June 2018 that the USG/DM had granted approval for child support deductions from his salary. The decision was unequivocal. The child support decision was implemented with the July

of starting implementation in Umoja. Moreover, the Applicant himself recognized that the email conveyed a decision stating in his application (Section VII.2.):

> En date du 27 juin 2018, le requérant reçois un email de son point focal, Mme Marie Bertha Legagneur (Ressources Humaines), l'informant que *NY (USG) a décide de faire des prélèvements* sur mon salaire pour le payement des obligations familiales des enfants (Child support obligations) [emphasis added]

26. Lastly, it is undisputed that the implementation of the decision commenced with the July 2018 payslip. Therefore, the Tribunal concludes that the application, inasmuch as it is directed against the June 2018 decision on deductions of child support from July 2018 till the date of the application, is not receivable.

27. As concerns communication on retroactive deductions on account of child support since 26 November 2015, express 37(o)-2.0 rg 0.9e

Tribunal refers to the June 2018 decision on child support deductions, it is by way of illustration and to provide context of intertwined issues.

30. The Tribunal, first, observes that the Respondent's first duty as employer is to

of reference in establishing *in casu* whether a definition from section 2.3 of ST/SGB/1999/4 or section 1.7 of ST/AI/2009/1 is met, remains the municipal law. Therefore, deference is owed to it where the Organization purports to deplete a staff member's salary in execution of municipal court orders. At the outset, the persons concerned, and especially the one requesting deductions, should be obligated to furnish all the pertinent information and documents. Moreover, specifically for the purpose of sorting out competing legal titles, ST/SGB/1999/4, section 2.4 foresees means of cooperation within the Organization as well as interim relief. Ultimately, a failure to effectively obtain the relevant information should not be held against the staff member. Rather, it is this Tribunal's considered opinion that lacking clarity as to the disputed court order, the Organization should err on the side of refraining from deductions. An example of the Organization acting uninformed of the content and legal significance of court orders in the present case, in addition to the unusual course of deciding the deductions of the child support in the memorandum of 18 September 2018, as well as the failure to carry out management evaluation timely and completely.

32. Third observation is that no administrative issuance can explicitly foresee all relevant situations arising on the ground of municipal law or, for that matter, in any

foresees. The fact is that the Applicant indeed did not submit any of the expressly listed document; he, nevertheless submitted subsequent court decisions pronouncing in the very same matter of child support, which, in appearance, effectively set aside an earlier decision, as such, at minimum, deserved attention and inquiry. In response, the Respondent indeed deferred deductions for child support for nearly three years, but only then to commence them when the appellate proceedings in the divorce case, involving child support issues, were still pending with a justification that the Applicant did not conform to the letter of section 2.3 of the "old" title of Judgment No. 77. The timing of the child support deductions and unclear considerations underpinning it give an impression of a decision dictated by impatience with the protracted litigation rather than by any principled consideration, whereas the justification ultimately given is officious and does not accord with the spirit of the Bulletin.

Submissions

Applicant's submissions

33. Regarding the deduction of child support, both parties rely on ST/SGB/1999/4 section 2.3, which refers to a final decision to mean one that has become executable". With respect to the child support issue, the Applicant's consistent position was that Order No. 791 rendered Judgment No. 77 moot. As it concerns the child support decision of 18 September 2018, the Applicant maintains that it contradicts Order No. 791, even though it invokes it as its basis.

34. Further, the Applicant's case is that MONUSCO's decision to make deductions from his salary was based on a non-final court decision, i.e., the divorce Judgment No. 730. In Cameroonian law, for a decision to be accepted as final, the plaintiff must produce both a copy of the entire judgment and the certificate of non-appeal. This is not the case here. On the other hand, he, through Counsel, had submitted to MONUSCO a certificate of appeal in the divorce proceedings. He argues that under Cameroonian law, where a right to appeal is exercised within the prescribed time limit, the enforcement of the contested decision is suspended until the appeal body rules

38. The Respondent admits that the decision contained in the 18 September 2018 memorandum was in error and has not been implemented. The current position of the Respondent is that the child support deduction decision was lawful executing a final Judgment No. 77.

39. The Respondent maintains that recovery decisions are lawful. Section 2.2 of ST/AI/2009/1 provides that when the Organization discovers that an overpayment has been made, the office responsible for the determination and administration of the entitlement shall immediately notify the staff member and the overpayments shall normally be recovered in full. This procedure was followed.

40. As for the basis for

> of payment of salary and post adjustment at the dependency rate, which shall apply to the spouse having the higher salary level. The other spouse shall be paid at the single rate.

42. In line with the above, the Organization considered the Applicant legally separated effective 26 November 2015 based on Order No. 791. Also, based on the same order,

2.3. of ST/SGB/1999/4 is express about this understanding, there is a need to qualify the Respondent's statement that section 1.7 of ST/AI 2011/5 does not require finality of a separation decision in order to consider a staff member legally separated. The Tribunal considers that the requirement of "legal separation" in section 1.7, as opposed to factual dissolution of the marital ties, denotes a formal act which takes legal effect within the legal system in which it emerged. Different arrangements falling under the notion of separation may be concerned; for example, while Order No. 791 authorized the spouses to live separately, it was a provisional measure regarding the residence, which did not amount to "*séparation de corps*" in the sense of the civil code of Cameroon.[37] Therefore, the crux of section 1.7 of ST/AI 2011/5 lies not in a separation decision, but rather in a legal division of custody between the parents. As recognized by the Respondent, this provision envisions that there may be a change in dependency status as a result of an interim step of legal separation or temporary custody while divorce proceedings may be ongoing.[38] However, where custody is regulated by a non-final court order, its legal significance must derive from immediate enforceability. In child custody and family support matters, municipal laws as a rule foresee immediate enforceability clause, in order not to leave the situation of minors in a v

the provisions invoked by the Applicant; and it would systematically contradict the principle of protecting the interest of the child. The Tribunal further takes note that on the ground of the Civil Code of Cameroon, revoking alimony obligations by the appellate court does not affect the validity of provisional measures that are applicable[42], and considers that, accordingly, the formal nullification of Judgment No. 730 did not affect the provisional measures that were in force until the issuance of the appellate judgment.

51. Accordingly, on the information provided to the Tribunal, the basis for the disputed decisions should have been, as of the date of their issuance, Order No. 791; subsequently - Judgment No. 730; and ultimately - Judgment No. 095/CIV.

52. It follows that between the date of Order No. 791 and the date of Judgment No. 730, the Applicant had no child support obligations toward his wife, who was entrusted with custody over two of their children, who were his dependents in the sense of ST/AI/2011/5. As of Judgment No. 730, the Applicant's child support obligations returned to the same arrangement as it had been previously determined under Judgment No. 77 whereupon he had no dependents in the sense of ST/AI 2011/5. The latter arrangement was confirmed (re-established) on appeal, which means that the status of child support obligations and no dependents remained unchanged.

53. The question of child support deductions based on applicability of Judgment No. 77, that is during the period from 6 March till 14 November 2015, does not arise in the case. It follows that the Respondent had incorrectly invoked Judgment No. 77 as the basis for deductions of child support from July 2018 onward, whereas the order controlling the situation was Judgment No. 730, and he incorrectly invokes it at present whereas the matter is controlled by Judgment No. 095/CIV. However, in substance (e)3(d)-10(u)-20(n)19

54. As concerns the decision contained in the memorandum of 18 September 2018, it fundamentally misconstrued the terms of Order No. 791 in determining retroactive deductions of child support for the period when they were not due, as well as incorrectly suggest the recovery of the "entirety" of the dependency allowances. The decision has not been implemented and it is presently admitted that it was erroneous. However, the Respondent did not revoke it, used it as reference in the subsequent communication, and

(Signed)
Judge Agnieszka Klonowiecka-Milart
Dated this 5th day of March 2021

Entered in the Register on this 5th day of March 2021

(Signed)
Abena Kwakye Berko, Registrar, Nairobi