



**Before:** Judge Sean Wallace

**Registry:** Nairobi

**Registrar:** Eric Muli, Officer-in-Charge

IRAMBONA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Robbie Leighton, OSLA

**Counsel for the Respondent:**

Maureen Munyolo, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. On 14 April 2022, the Applicant filed an application in which he contests: (a) the implied decision to refer allegations of theft, of which he was accused, to Burundian national authorities; (b) the implied decision to waive his immunity in relation to the theft case of which the Applicant was accused; (c) the decision to retain monies paid by the Applicant to the United Nations in relation to a theft which has not been investigated and in relation to which no disciplinary finding was ever made; and (d) the decision not to pay his last month's salary and separation entitlements.

2. On 23 May 2022, the Respondent filed his reply in which he contested the receivability of the application and asserted that should the application be found receivable by the Tribunal, the Applicant's claims have no merit.

3. The Tribunal held oral hearings from 6 to 7 September 2023, and, on 21 September 2023, the parties filed their closing submissions.

## **Facts**

4. The following facts are not disputed by the parties (unless otherwise stated).

5. The Applicant is a former staff member with the now-closed Office of the Special Envoy of the Secretary-General for Burundi ("~~OSESG~~B"). He was separated from service on 30 June 2021 upon the closure of OSESG-B.<sup>1</sup> At the tim74 Tm074 Tm074 Tm074 cl



13. The CMS called the Applicant repeatedly, including by video call, for his assistance since he frequently opened the safe. When all attempts to open the safe failed, the CMS called the Applicant requesting his presence at the premises. The Applicant arrived on site at around 10:30 a.m.

14. When all efforts to open the safe using the keys and combination were unsuccessful, the CMS requested the safe to be broken as a last resort.

15. Upon opening of the safe, The CMS, the Applicant, and other OSESG-B personnel established that Burundian Francs (“BIF”) 16,672,117 and USD12,000 in cash, were missing from the OSESG-B safe.

16. The missing money was reported to the Chief of Mission, the Head of DSS, and local security personnel. Both the CMS and the Applicant were interviewed regarding the circumstances surrounding the missing money.

17. Eventually that day, the Applicant wrote and signed a statement stating,

I, Adolphe Irambona, accept that I lost the money that were in the safe while I was with all the keys for the cashier office (12,000\$ and 17,900,500 BIF).

management, this is the last additional day and if I fail to this agreement police action should be taken against me.” (Application Annex 1).

19. When the Applicant did not pay the balance that next day, a criminal complaint was filed with the police, and he was handed over to the local authorities on 25 June 2021.

20. The Applicant separated from the Organization on 1 July 2021 following the closure of the OSESG-B on 31 May 2021.

21. On 14 July 2021, the Applicant deposited BIF15,000,000 in a United Nations account at the Interbank Burundi.

22. On 15 July 2021, the Applicant was released from prison.

23. On 16 October 2021 the Applicant wrote to the Regional Service Centre in Entebbe (“RSCE”) asking when his separation would be processed, and when his entitlements would be paid.<sup>6</sup>

24. The Applicant’s Counsel wrote to the UNDSS in Burundi on 18 October 202, to ask if there had been a decision to waive immunity in the Applicant’s case, if monies had been taken from the Applicant and if so on what basis, whether there was an ongoing investigation and whether he had been paid separation entitlements.<sup>7</sup> Applicat0.08800.0000-11(s)

25. On 2 December 2021, the Applicant filed a request for management evaluation of three decisions: (a) the implied decision to refer the theft of which he was accused to national authorities; (b) the implied decision to waive immunity in relation to the theft case of which he is accused; and (c) the decision to retain monies paid by the Applicant to the United Nations in relation to a theft which has not been investigated and in relation to which no disciplinary finding has ever been made.<sup>8</sup>

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<sup>6</sup> Application, section VII, page 4, para. 17. See applica

26. The Departments of Political and Peacebuilding Affairs and Peace Operations (“DPPA”) informed the Office of Internal Oversight Services on 10 February 2022

evaluation should start from that date.

31. The Applicant claims that the OSESG-B *Chef de Bureau's* complaint to

In the absence of a proper investigation, there was an implied decision to retain this money.

36. The Applicant submits that recovery of financial loss by the Organization through an act of misconduct is a decision within the authority of the United Nations Under-Secretary-General (“USG”) for Management, upon advice from the United Nations Assistant Secretary-General (“ASG”) for Human Resources Management.<sup>13</sup>

*Respondent’s submissions*

37. The Respondent submits that it was the Applicant’s decision to repay certain missing amounts to the Organization. Therefore, it cannot be considered as a contestable administrative decision. The decision not to refund the money did not violate any staff regulation or rule.

38. Moreover, the Applicant’s request for management evaluation was not timely submitted rendering that portion of the application not receivable *ratione materiae*.

**Considerations**

*Receivability*

39. In *Christensen* 2013-UNAT-





45. The Applicant's Counsel's letter of 18 October 2021 asking if there was a decision to waive immunity cannot reset the clock. (*Abu Rabei* 2020 UNAT-1060, para. 24; *Qassem* 2021-UNAT-1132 para. 25. A staff member cannot reset the time for management review by asking for a confirmation of an administrative decision communicated to him earlier. *See also, Abu Nqairah* 2018 UNAT-854).

46. Accordingly, the challenge to: (a) the implied decision to refer the theft of which he was accused to national authorities; and (b) the implied decision to waive immunity in relation to the theft case of which he is accused are untimely and shall be

alleged theft is a decision of continuous implementation akin to a decision to place an individual on administrative leave”. (Application, para. 21).

52. The Applicant does not cite any authority for this proposition, but presumably he is referring to *Calvani* UNDT/2009/092 and *Ba* UNDT/2012/025. However, this argument is unavailing.

53. First, both *Calvani* and *Ba* arose in the context of applications to suspend decisions placing the staff members on administrative leave. The Respondent argued that those decisions could not be suspended by the Tribunal because they had already been implemented. (*Id.* citing *Nwuke* UNDT/2012/002). That context, and thus the analysis therein, is entirely different and distinguishable





68. Thus, to meet his burden of proof, the Applicant cannot rely on this faulty claim of “simple logic”, but must present evidence that his statements were, in fact, the result of coercion by the Administration.

69. The Applicant testified at length in the hearing. According to him, on 22 June 2021, he was “kidnapped and spent the entire morning with the kidnappers who took his phone.” The kidnappers asked him about his role at the United Nations and about a United Nations position for which he was a candidate. The kidnappers made him sign



this kidnapping in the two years since, although one would expect a kidnapping victim to report the crime (and he expressed a desire to report it that morning).

76. Second, the Applicant also gave similarly incredible testimony that he was







choose to withhold entitlements from the staff member on a provisional basis pending completion of the disciplinary process.” (Application, para. 28 citing to ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) paras. 9.5 and 9.6). However, this argument also lacks merit.

90. ST/AI/2017/1, paragraph 9.5 states, *inter alia*, that “[t]he Under-Secretary-General **may** then decide to recover, in part or in full, any financial loss suffered by the Organization pursuant to staff rule 10.1 (b). Staff rule 10.1(b), in turn, says that “the staff member **may** be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member’s conduct.” And ST/AI/2017/1, paragraph 9.6 states “the Under-Secretary-General for Management **may** decide to withhold the estimated financial loss suffered by the Organization from the staff member’s final separation entitlements.” The use of “may” confirms that these provisions are permissive, not mandatory. (*Azar* 2021-UNAT-1104, para. 33). The Applicant cites no authority saying these procedures must be used to recovery money owed to the Organization.

91. Furthermore, ST/AI/155/Rev.2 (Personnel payroll clearance action) provides that “[s]taff members separating from service, in accordance with their contractual obligations to the United Nations are responsible for: (a) Settling all indebtedness to the United Nations.” (*Id.*, sec. 11). The jurisprudence recognizes that the provisions for recovery like those the Applicant references are for when the staff member does not settle their debt. (*Azar* UNDT/2021/125 para. 21. Procedure contemplates “notice given to the separating staff member, in order to enable him/her to take an informed decision whether to offer a kind of surety in exchange for the release of “entitlement documents). Clearly this contemplates settlement of the debt in an informal fashion.

92. In essence, the Applicant’s argument is that when a staff member says, “I am indebted to the United Nations, I want to settle my debt, and here is the money”, the Organization cannot accept the repayment offer but must follow the ST/AI/2017/1 procedures. “Simple logic” tells us that this argument does not make sense.

