Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ARMAND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR, UN Secretariat

INTRODUCTION

1. The Applicant is a staff member of the United Nations Support Office in Somalia ("UNSOS"). He filed an application on 6 January 2021 challenging a decision by the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") to authorize, pursuant to staff rule 3.18(c)(iii), the deduction from his salary a monthly sum of USD5,032.33 for child support, based on the *Final Judgment of Dissolution of Marriage* of the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County ("11th Judicial Circuit Court"), Florida, dated 3 March 2020.

2. The Respondent filed a reply on 8 February 2021.

3. The Tribunal issued Order No. 144 (NBI/2021) on 27 July 2021 directing the Applicant to provide an update on the remand and the Respondent to provide submissions as to whether: the 3 March 2020 "Final Judgment of Dissolution of Marriage" constituted a final order; and if there has been any other legal title for the execution of child support on the terms of the impugned decision. The parties responded on 28 July 2021 and 23 August 2021.

FACTS

4. Since 2018, the Applicant has had proceedings in court in Florida, the United States of America, relating to divorce and child maintenance. On 2 April 2018, the 11th Judicial Circuit Court ordered the Applicant, in Case No. 2017-021520-FC-04, to pay monthly child support of USD3,307.95 effective 20 February 2018 and to pay arrears of USD16,539.75 by 1 May 2018. The Order was temporary in nature and subject to reconsideration at any time.[1] In all appearances, it was enforceable, given its provisional function and given that, on 13 August 2018, the 11th Judicial Circuit Court ordered the United Nations Federal Credit Union to respond to a Writ of Garnishment relating to the Applicant's assets.[2] The record includes a letter dated 1 September 2018

[1] Application, exhibit 2.
[2] Reply, annex R/5, exhibit D.

from the Applicant's then counsel to "the United Nations" and stating that the 2 April 2018 court order was "subject to motions to vacate/set aside for fraud on the court" and that the motion had yet to be heard.[3]

5. On 3 March 2020, the 11th Judicial Circuit Court issued a judgment in Case No. 2017-021520-FC-04 titled "Final Judgment of Dissolution of Marriage", pronouncing the Applicant's divorce and, among other matters, requiring him to pay as child support a total of USD5,032.33 monthly, including retroactive child support and arrears.[4] On 6 March 2020, the same court denied the Applicant's motion for rehearing and to modify the *Final Judgment of Dissolution of Marriage*.[5]

6. On 22 June 2020, the Chief, Human Resources Section ("CHRS") requested that the Applicant provide: proof of compliance with the 3 March 2020 Court Order; or proof of amicable settlement of the issue with his former spouse; or a new court order of a competent court setting aside or vacating or staying the 3 March 2020 Court Order pending appeal. The Applicant was informed that if he failed to submit the requested evidence by 21 July 2020, the mission would request authorization from the USG/DMSPC to honour the Court Order by commencing deductions from his salary pursuant to section 2.2(b) of ST/SGB/1999/4 (Family and child support obligations of staff members). He was further informed that he had to provide documentation regarding his indebtedness for the USG/DMSPC to consider his request under staff rule 12.3(b).[6]

7. Throughout the process, the Applicant was corresponding with the CHRS, requesting to lower the amount to be deducted, invoking his indebtedness, other obligations and the fact that he had been voluntarily paying some money for child support.

[3] Application, exhibit 2A.
[4] Reply, annex R/3.
[5] Reply, annex R/4.
[6] Reply, annex R/6.

8. On 14 October 2020, in regard to the *Final Judgment of Dissolution of Marriage*, the UNSOS Chief Legal Officer sought information directly from the Judge who issued it, as to whether it was final. A court clerk responded that the query remained unanswered.[7] Prior to seeking authorization for deductions, Ms. Martha Helena Lopez, the Assistant Secretary General for Human Resources consulted the Office of Legal Affairs ("OLA") seeking their advice on whether the judgment can be considered as final pursuant to sec. 2.3 of ST/SGB/1999/4. In reply, OLA advised without reference to any authority, that the Judgment is final, binding and fully enforceable.[8]

9. On 21 October 2020, the Applicant filed an appeal against the 3 March 2020 *Final Judgment of Dissolution of Marriage*.[9]

10. By a 10 November 2020 memorandum, the CHRS informed the Applicant that since he had failed to provide proof that he was complying with the 3 March 2020 Court Order, the USG/DMSPC had authorized the deduction of USD5,032.33 from his salary effective from the November 2020 payroll and each subsequent month thereafter pursuant to section 2.2(b) of ST/SGB/1999/4. The payment would then be forwarded to the Florida State Disbursement Unit in compliance with the 11th Judicial Circuit Court's judgment.[10]

11. The Applicant requested management evaluation of the 10 November 2020 decision on 17 November 2020. In a management evaluation response dated 4 January 2021, the *Chef de Cabinet* upheld the decision to make monthly deductions of USD5,032.33 from the Applicant's salary starting from November 2020.[11]

[7] Correspondence of UNSOS Chief Legal Officer to the Circuit Court Judge, Florida, dated 14 October 2020 (Applicant's exhibit 7 to his application and annex 1 to his motion for interim measures).
[8] Application on the merits; reply, annex R/8, para. 7; Applicant's submission of 8 February 2021, exhibit 2E (management evaluation response, p. 3); and Applicant's motion for interim measures, annex 3.
[9] Application, exhibit 11.
[10] Application, exhibit 1; see also Applicant's motion for interim measures, annex 1.
[11] Application, exhibit 4.

12. The Applicant filed the current application on 6 January 2021, where he signalled that he was appealing the *Final Judgment of Dissolution of Marriage* and attached a copy of the appeal.[12]

13. The Administration deducted USD5,032.33 from the Applicant's salary from November 2020 to April 2021.[13]

14. On 10 February 2021, the Third District Court of Appeal of the State of Florida ("Court of Appeal") reversed the Judgment in Case No. 2017-021520-FC-04 and remanded the case, having found that subject matter jurisdiction had not been properly ascertained.[14] On 11 February 2021, the Applicant forwarded a copy of the Court of Appeal Judgment to UNSOS and informed them of the reversal of the 11th Judicial Circuit Court Judgment on which the Administration had based the deductions. He reiterated the same on 23 February 2021.[15] On 24 February 2021, UNSOS replied that the matter was being dealt with in the proceedings currently underway before the Dispute Tribunal; that the proceedings were handled by the Administrative Law Unit of the Department for Management, Strategy, Policy and Compliance; and that UNSOS would wait for the outcome of those proceedings and act in accordance with the relevant instructions.[16]

15. On 21 April 2021, the Court of Appeal denied a motion by the Applicant's former wife to rehear the Court's 10 February 2021 Judgment.[17]

16. On 23 April 2021, the Applicant filed a motion for interim measures pursuant to articles 10.2 of the UNDT Statute and 14 of the Rules of Procedure. The Tribunal suspended the monthly deductions for child support but dismissed the Applicant's plea

[12] Application, para. 7 and exhibit 11.
[13] Applicant's motion for interim measures, 23 April 2021, annex 4; Applicant's 28 July 2021 response to Order No. 144.
[14] Applicant's submission of 11 February 2021.
[15] Applicant's motion for interim measures, 23 April 2021, annex 3.
[16] Ibid.
[17] Applicant's motion for interim measures, 23 April 2021, annex entitled "appellee's motion for rehearing is denied".

for a return of payments made since 10 February 2021.[18]

SUBMISSIONS

17. The Applicant's case is that the 11th Judicial Circuit Court based the monthly support payment on an erroneous monthly gross salary of USD22,125.91 (monthly net salary of USD15,748.27) whereas his actual monthly gross salary is USD17,050.99 and his net monthly income is USD13,298.70. The monthly child support payment of USD5,032.33 being taken out of his salary is unreasonable because it leaves him unable to cater for his other family and financial responsibilities. He has repeatedly requested that the Respondent exercise his discretion under staff rule 12.3(b) to lower his payments so he can meet all his obligations, but this has been to no avail.

18. Principally, however, he submits that the judgment which formed the basis of the salary deductions was entirely reversed on 10 February 2021. The Applicant's case was remanded for an entirely new hearing on subject matter jurisdiction to determine whether the court that issued the judgment has the jurisdiction to pronounce on the Applicant's child support obligations, including the qualification of the amount of child support that he needs to pay his former spouse. The Applicant submits that a judgment entered by a court which lacks subject matter jurisdiction is void.[19] As a remedy, he seeks to have the decision rescinded.

19. In response to Order No. 144, the Applicant informed the Tribunal that: his appeal of the 3 March 2020 *Final Judgment of Dissolution of Marriage* in Case No. 2017-021520-FC-04 is still pending a hearing; and as of 10 February 2021, there are no outstanding or existing enforcement actions in the Trial Court's docket on any matter pertaining to the 3 March 2020 judgment.

20. The Respondent's reply, where it was argued that the Applicant had not submitted any subsequent order or judgment setting aside or vacating the Trial Judgment as required under section 2.3 of ST/SGB/1999/4, was filed before the

[18] Order No. 090 (NBI/2021).
[19] *McGhee v. Biggs*, 974 So. 2d 524, 526 (Fla. 4th DCA 2008).

reversal of the *Final Judgment of Dissolution of Marriage*. At present, however, the Respondent still maintains that the Applicant has presented no basis for the Organization to discontinue the current salary deductions prior to final adjudication of the case on the merits.

21. The Respondent also demonstrates that, prior to the decision to deduct from the Applicant's salary the full amount of the child support determined by the said Judgment, proper consideration had been given to all the relevant information on the Applicant's financial standing and his other obligations.

22. In response to Order No. 144, the Respondent submits that child support orders are executable unless modified due to a substantial change in circumstances.[20] He further states that in Florida, jurisdiction over the dissolution of a marriage is not tied to jurisdiction over child support awards.[21] Thus, a Florida court has jurisdiction to set and modify child support regardless of whether a foreign jurisdiction adjudicated the divorce.[22] He reiterates that the Applicant has not complied with section 2.3 of ST/SGB/1999/4 because: he never moved to modify the child support ordered in the Judgment; he was never granted a stay of the Judgment pending appeal; and he appealed on the matter of the subject matter jurisdiction over the divorce but did not appeal the issue of the child support award. The Respondent believes that the Florida court regards the child support award in the Judgment to be executable and is actively seeking to enforce the award.

[20] In reliance on Florida Statutes Title VI. Civil Practice and Procedure § 61.14, Enforcement and modification of support, maintenance, or alimony agreements or orders; see also https://floridarevenue.com/childsupport/change_support_orders/Pages/change_support_orders.aspx ("Until an order is changed, terminated or vacated, the amount ordered is owed and legally enforceable.").
[21] See section 61.09 of the 2020 Florida Statute, Alimony and child support unconnected with dissolution.
[22] *Sullivan v. Hoff-Sullivan*, 58 So. 3d 293, 294 (Fla. Dist. Ct. App. 2011) (divorce of parties in different state did not prevent the court from modifying child support orders) and section 61.29 (child support guidelines principles); *Barr v. Barr*, 724 So. 2d 1200, 1202 (Fla. Dist. Ct. App. 1998)(upon domestication of a foreign divorce judgment, the Florida court had jurisdiction to modify its child support measure).

CONSIDERATIONS

23. The controlling instrument, section 2.3 of ST/SGB/1999/4*,* allows deduction for family support on the basis of a final court order, and defines it to mean one that has "become executable". In the present case, the Judgment relied upon by the Respondent in the issuance of the impugned decision is the 3 March 2020 *Final Judgment of Dissolution of Marriage* of the 11th Judicial Circuit Court. The primary question for the matter at hand is whether this Judgment constituted a final, alternatively - non-final but executable, order in the sense of ST/SGB/1999/4*,* section 2.3.

24. The Tribunal finds no express indication that the Judgment of the 11th Judicial Circuit Court was executable upon issuance, neither does the issue seem to have been investigated by the administration in the proceedings leading to the impugned decision. Rather, all pertinent documents focus on the finality, apparently presumed from the title 'Final judgment of dissolution of marriage'. The Tribunal considers that the title should not have been relied upon. It posits that, at a minimum, whether a divorce and derivative orders on division of property, alimony, child custody and child support may be pronounced without a right of appeal warranted a reflection – indeed displayed by the UNSOS Chief Legal Officer. Moreover, a basic internet search provides information that in the Florida legal system the expression 'final order' denotes appealable decisions.[23] Rather, the word "Final" in the *Final Judgment of Dissolution of Marriage* should be juxtaposed with "temporary" in the Order of 2 April 2018. Furthermore, in the application on the merits, at the latest, the Applicant informed of the fact that he had filed an appeal.

25. The Respondent's current position, nevertheless, appears to be that, in the State of Florida, all child support orders, the temporary ones as well as ones included in judgments, are immediately enforceable. The Tribunal recalls that Order No.144 directed the Respondent to demonstrate the executability of the 3 March 2020 *Final*

[23] E.g., https://rules.floridaappellate.com/rule-9-030/

Judgment of Dissolution of Marriage "by way of official document (i.e. a judgment with an enforceability clause, information by the issuing court or by an organ of execution, or expert opinion or similar)". In response, the Respondent resorts to general information on the internet: the Florida Statutes Title VI. Civil Practice and Procedure section 61.14, as well as the website of the Florida Department of Revenue, which describe the preconditions to have a child support order modified; in this, they presuppose an order that is valid and enforceable, but do not discuss what are the conditions for enforceability.

26. Be it as it may, the central issue for the case lies in the legal consequences of the appellate judgment by the Third District Court of Appeal of the State of Florida. The Tribunal does not find any indication of it being limited to the divorce decision only. The orders on child support included in the reversed Judgment had been issued in the regime of divorce proceedings, where the 11th Judicial Circuit Court had assumed to have jurisdiction. It is noted that the appellate court reversed and remanded the 11th Judicial Circuit Court judgment for the question of jurisdiction, citing, among other, that "[a] judgment entered by a court which lacks subject matter jurisdiction is void…" It also noted that it did not address the Applicant's remaining arguments on appeal as they were not necessary to the resolution of this case.[24] Finally, it was alive to the child support issues, citing that "[i]f a question of existence or exercise of jurisdiction […] is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously."

27. The Tribunal finds that the Respondent's narrowing "interpretation" of the Judgement of the Court of Appeal is lacking basis in the Judgment's semantics. The authorities cited by him, in turn, are not relevant for the question at hand. They discuss the exercise of jurisdiction over child support matters by courts who have as the legal premise divorce judgments pronounced by other courts in accordance with their proper jurisdiction. These authorities do not contemplate salvaging divorce-related child support dispositions of a judgment issued by a court lacking jurisdiction to hear the

[24] Applicant's motion for interim measures pending proceedings, filed on 23 April 201, exhibit 2, Judgment of the Third District Court of Appeal, fn 2.

divorce in the first place.

28. In the event the Respondent were to uphold his earlier argument that the remand of the 11th Judicial Circuit Court Judgment must have caused the earlier temporary child support award order of 2 April 2018 to revive[25], this argument is speculative. The Tribunal observes that the temporary order was also issued in the context of a dispute about subject matter jurisdiction of the child support. No information has been put before the Tribunal as to the result of that dispute, which, probably, is due to the fact that the temporary order had been superseded by the divorce judgment.

29. To the extent the Respondent in this respect invoked an earlier, non-final Judgment of this Tribunal in *Kuate*[26], in that provisional measures stay in force until otherwise decided by the court before which the case is pending, that this effect is *ex lege* and that a different interpretation would place the matter of child support in limbo, which would systematically contradict the principle of protecting the interest of the child – this holding was made upon examination of the text of the law of Cameroon which had been put before the Tribunal, and where there had been no dispute about existence of subject matter jurisdiction. It cannot be *verbatim* transferred to the present context. Whereas the general rule of interpretation consistent with the interest of the child is teleologically valid here as well, the same goal might be possibly achieved within the proceedings after remand, as noted in the appellate judgment ("[i]f a question of existence or exercise of jurisdiction […] is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously". There is thus no basis to presume a revival of a temporary order from three years ago.

30. This notwithstanding, the impugned decision has as the executive title the Judgment of the 11th Judicial Circuit Court for Miami-Dade County, which has no legal being anymore. Should the Secretary-General grant authorization to proceed with child deductions upon a different title, this would require an amendment to the decision in

[25] Respondent's response to the motion for interim measures, dated 28 April 2021.
[26] *Kuate*, UNDT/2021/018, para. 50

both the formal and substantive aspect, the latter necessarily examining the enforceability and the extent of obligation stated in the order (significantly lower than presently executed by the Respondent). Presently, the Respondent does not make such a showing.

31. In conclusion, following the reversal of the *Final Judgment of Dissolution of Marriage*, the impugned decision lost its legal basis and must be rescinded. In the application, the Applicant did not request repayment of the deductions made, which renders it unnecessary to delve into the question of retroactive or prospective effect of the reversal and its impact on the validity of the impugned decision during the period from the beginning of deductions in November 2020 until the reversal of the Judgment in February 2021 and further, till April 2021 when the deductions were stopped by way of interim relief. Moreover, notwithstanding whether the jurisdiction of 11th Judicial Circuit Court is eventually to be confirmed or not, there is no enrichment on the part of the Organization. By effecting the deductions, whether based on a valid legal title or not, the Organization settled a portion of the Applicant's child support obligations. He may offset these deductions directly with his ex-wife and/or they may be taken into account in any new decision.

32. The Tribunal wishes to recall its general observations on issues arising repeatedly in similar cases. The Tribunal, first, observes that the Respondent's first duty as employer is to pay the staff members their salary and entitlements in return for the work rendered. It is not a primary role of the Respondent to execute family support orders, as is expressed by the controlling legal act, ST/SGB/1999/4, whose section 2 establishes authorizing deductions as discretionary. This reflects the fact that making relevant determinations on the interface of municipal private law, in which the Organization has no expertise, may prove overly cumbersome and time-consuming, and still be erroneous in the end. It follows that a decision to authorize deductions must be based on a court order whose enforceability is unequivocal. Such order is not present in this case.

33. The second observation is that it is the municipal law that controls the family

status of a staff member and finality or executability of court orders in the context of ST/SGB/1999/4 and ST/AI/2009/1 (Recovery of overpayments made to staff members). In the event where the Organization chooses to define the meaning of any of such elements specifically for the purpose of its own operations, such definition must be express, as in section 2.3 of ST/SGB/1999/4.[27] Still, the ultimate plane 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 inter-entity. 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, and absent cooperation from the state agency as to clarifying the needful, the Organization should err on the side of refraining from deductions. The Organization should not be expected to ensure for claimants of child support more protection than it is granted to them by the original jurisdiction. The Tribunal is perplexed by the fact that the Respondent, who has Headquarters in the Member State from which the disputed judgment emanates, has no established channels enabling him to obtain official information as to enforceability of specific court decisions in their individual circumstances.

34. The third observation is that no administrative issuance can explicitly foresee all relevant situations arising on the ground of municipal laws or, for that matter, in any area of their operation. That ST/SGB/1999/4 does not literally refer to a certain scenario does not automatically authorize *a contrario* inferences unfavourable for the employee, where the overall purpose of the administrative issuance is not undermined by applying analogy. This purpose necessarily encompasses due protection of the staff

[27] See also *Larriera* 2020-UNAT-1004.

member's salary. Staff members are not always in a position to obtain from their courts an order phrased identically as section 2.3. The example of mechanistic, unfavourable interpretation in this case is the Respondent's insistence that the Judgement of the Court of Appeal did not "vacate" the first instance judgment, where it is obvious that a judgment must be vacated for the case to be heard afresh.

JUDGMENT

35. The application is granted and the impugned decision is rescinded.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 14th day of October 2021

Entered in the Register on this 14th day of October 2021

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi