

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2023-UNAT-1326

- i) A marriage attestation, issued by a DRC government official on 13 February 2006, confirming that Mr. Mbirange concluded a monogamous marriage with “Uwingabire Conforte” on 11 July 1986. The names of the bride’s parents were recorded as “Munyakabera” and “Nyirandabona”. The name “Banyanga” does not appear anywhere on the marriage certificate.¹
- ii) A copy of Ms. Uwingabire’s birth attestation, issued on 14 February 2006, stating that her date of birth was 10 July 1964 and that her full name was “Uwingabire Conforte”. The names of her parents were listed as “Munyakabera” and “Nyirandabona”, consistent with the marriage certificate. Again, the name “Banyanga”, does not appear anywhere on the birth attestation.
- iii) A medical insurance plan (MIP) enrolment form, signed by Mr. Mbirange, in which he recorded that his spouse’s name was “Conforte Uwingabire”, that her date of birth was 10 July 1964, and that their date of marriage was 11 July 1986. Mr. Mbirange did not include Appellant’s last name, “Banyanga”, anywhere on the MIP form. The MIP form also lists eight children born between 1985 and 2005.
- iv) Birth attestations for his children, all of which reflect the name of the mother to be “Uwingabire” or “Uwingabire Conforte”. The name “Banyanga”, does not appear on any of the children’s birth attestations.

7. In line with the information and documents submitted by Mr. Mbirange to MONUC, the United Nations reported to the UNJSPF that Mr. Mbirange’s spouse was named Ms. Conforte Uwingabire and that her date of birth was 10 July 1964.

8. Following Mr. Mbirange’s death, two individuals requested a widow’s benefit from the UNJSPF. The first, Ms. Clotilde Mukankusi, submitted a copy of a marriage certificate purporting to establish that she had married Mr. Mbirange in Rwanda on 24 July 1987. The UNJSPF rejected this claim because the marriage was never reported to the UNJSPF as required by Section B of the UNJSPF’s Administrative Rules, and the supporting

¹ On 1 June 2008, Mr. Mbirange furnished a replacement marriage attestation, in all respects identical to the first, but which reported his date of marriage as 11 July 1984 instead of 11 July 1986.

15. The Chief Executive of Pension Administration of the UNJSPF rejected Ms. Banyanga's request for a widow's benefit and informed her accordingly by letter dated 9 August 2021. She concluded that Ms. Banyanga was not the same person as Ms. Uwingabire, who had been reported as Mr. Mbirange's spouse. In reaching this conclusion, the Chief Executive took into account the following. The name "Banyanga" did not appear on any of the documents submitted by Mr. Mbirange relating to his spouse, whose name was consistently identified only

20. On 20 August 2021, Ms. Banyanga filed a request for review of the denial of the widow's benefit to the Standing Committee. The Standing Committee considered her request at its meeting held on 2 March 2022 and upheld the decision of the Chief Executive of Pension Administration. The Standing Committee's decision was conveyed to Ms. Banyanga by le2 ()TJ06 14-9.2 (y4

Considerations

27. Article 34(a) of the UNJSPF Regulations, cited earlier, provides in relevant part that a widow's benefit is payable to the surviving spouse of a participant who died in service, if she was married to him at the date of his death in service.

28. Section C.4(a) of the Financial Rules of the UNJSPF provides that the Chief Executive of Pension Administration is responsible for establishing procedures for ensuring that all payments and disbursements are properly payable on the basis of supporting documents for payments in terms of the relevant instruments. Therefore, as a matter of practice and principle, the surviving spouse asserting entitlement to a widow's benefit normally bears the burden to prove the condition precedent to entitlement, namely that she was married to a participant who died in service at the date of his death. She who makes a positive assertion must prove the facts she asserts. It is common cause that Mr. Mbirange died in service. The only question for determination in this appeal is whether Ms. Banyanga has discharged the onus of showing on a balance of probabilities that she was indeed married to Mr. Mbirange at the time of his death.

29. In so far as we are faced with two irreconcilable versions in relation to the truth of the alleged marriage, regard must be had to issues of credibility, reliability and the inherent probabilities. These must be assessed in the light of any latent bias (self-interest of the claimant), any internal and external contradictions in the documentary evidence and the inherent probabilities and improbabilities of the two versions. Where the probabilities are equipoised then the burden of proof not being discharged will operate to determine that the entitlement or claim has not been sufficiently established.

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participant to the UNJSPF at the time of his or her separation or, as in this case, by the employing organization at the time of the participant's separation or death in service if the documentation is already on file with the member organization.

31. Ms. Banyanga does not in her appeal offer a clear explanation for the inconsistencies in the spousal information provided by Mr. Mbirange at the time he commenced employment with the Organisation. She merely states that the information was erroneous and that she had taken steps to correct it subsequent to his death. The UNJSPF accordingly persists to reject her claim for a widow's benefit on three grounds. Firstly, her personal information is substantially different from that of Mr. Mbirange's reported spouse; secondly, her arguments and the documentation she submitted do not adequately explain the differences between her own personal information and that of Mr. Mbirange's reported spouse, nor do they establish that she is Mr. Mbirange's reported spouse; and thirdly, there is insufficient evidence to conclude that her alleged marriage to Mr. Mbirange in 1997 is valid.

32. Ms. Banyanga states her full name to be "Conforte Uwingabire Banyanga", whereas the name of Mr. Mbirange's reported spouse is "Conforte Uwingabire". The name "Banyanga" does not appear in any of the documentation that Mr. Mbirange submitted to the United Nations. Moreover, her date of birth is 20 August 1980, whereas the date of birth of Mr. Mbirange's

attesting to her marriage to Mr. Mbirange on 14 January 1997 was first provided to the UNJSPF in May 2021.

possibly Ms. Mukankusi in Rwanda in 1987. Polygamy is illegal in the DRC and the UNJSPF would not be able to recognize Mr. Mbirange's purported marriage to Ms. Banyanga in the DRC on 14 January 1997 without evidence that Mr. Mbirange's prior marriages were validly dissolved.

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Judgment

41. The appeal is dismissed and the decision of the Standing Committee of the UNJSPB of 3 March 2022 is affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 18th day of April 2023 in New York, United States.

(Signed)

J3.4 (s) TJO.005 Tc -0.005

Judge Sandhu and Judge Colgan’s Concurring Opinion

1. We agree with our judgment dismissing the appeal on the basis that there was a significant number of insufficiently or unexplained discrepancies between the Appellant’s claims and the recording of the deceased staff member’s beneficiary instructions. We wish only to add this which is not a criticism of the decision of the UNJSPB appealed or its reasoning.

2. It should not be thought by the Appellant that those making these difficult decisions have adopted a very strict, literal and precise repetition-of-all-names approach. Names are given, taken and used in many different culturally-appropriate ways. Nor are what may appear to be minor spelling differences to disqualify alone and decisively someone from acknowledgment as the person she or he claims to be. Such changes occur in many instances across all cultures and are not necessarily indicative of a wholly different identity.

3. Rather, our approach has been (and should be by decision-makers in similar cases) to take all relevant evidentiary factors into account in weighing up whether we considered that the UNJSPB erred in its overall assessment of the probabilities of the Appellant’s entitlement.

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Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Sandhu

(Signed)

Judge Colgan

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(Signed)

Juliet Johnson, Registrar