UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1277

Betty Mukomah

(Appellant)

v.

United Nations Joint Staff Pension Board

(Respondent)

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Dimitrios Raikos
Case No.:	2021-1622
Date of Decision:	28 October 2022
Date of Publication:	23 November 2022
Registrar:	Juliet Johnson

Counsel for Appellant:	Martin Aquilina
Counsel for Respondent:	Rosemarie McClean

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Betty

the participant to “divorced”,

iii) The former spouse has reached the age of 40. Otherwise, the benefit entitlement shall commence on the day immediately following the day that age is reached; and

iv) Evidence is provided that a divorce settlement does not have an express renouncement of UNJSPF pension benefit entitlements.

15. There is no dispute before the Appeals Tribunal regarding the payment of the widow's benefit to Ms. Mulinge in terms of Article 34.

16. In an e-mail to the Fund dated 5 August 2019, Ms. Mukomah maintained that she and the late participant had in fact resumed their marriage prior to his death, the common-law partnership with Ms. Mulinge had been dissolved the previous year and that under Canadian law, a person could be in a common-law u/LBoa02 2.5 (p)-.41 s clai i05a1r m c M0 th-20 Tc thvesem9 (on)TJ51.1 (

23. She maintains further that the Fund erred by relying on Canadian law rather than Kenyan law in determining the validity and status of the alleged union between the late participant and Ms. Mukomah. She also belatedly challenged the validity of the decree of divorce granted by the Kenyan High Court and disputed its effectiveness in dissolving the marriage.

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31. Article 34(a) stipulates specific conditions precedent for a spouse to be eligible to receive a UNJSPF widow's benefit. If the participant died in service (as in this case), the spouse must have been married to him at the time of his death in service; and if the participant separated from service prior to his death, not only the spouse must have been married to him at the time of separation from service but should have remained married to him until his death.

32.

44. In the appeal brief filed on her behalf, counsel for Ms. Mukomah merely makes bald assertions that "a spousal relationship conferring similar legal effects as marriage was re-established" after the divorce, that the location of that union was Kenya, and that the relationship was in existence at the date of the late participant's death. However, no supporting evidence was provided or referred to in substantiation of those assertions. Instead, it was merely submitted that the competent authority of Kenya recognised the relationship and that it conferred similar legal effects to a marriage with regard to pension rights. These bald assertions and submissions (without supporting evidence proving the nature, the duration, the surrounding circumstances of the alleged union and the position or stance of the competent authorities in Kenya), are insufficient to prove the existence and legal effects of the union for the purpose of granting a benefit under Article 34. Ms. Mukomah accordingly, on the face of it, failed to discharge her evidentiary burden to establish her entitlement.

45. Ms. Mukomah alleges that she was denied due process in proving her claim of a r re80 T/TT3 1 Tf7 (sh)-CJ0.006 T6 (re8034w 5.228 0m2.3 7i)-4.5 (e)-35 (e)d4sg re1 (650.272 0 Td( )TCJ0.006

47. Article 2(5), read with Article 2(9)(b), of the Statute of the UNAT provides *inter alia* that in exceptional circumstances the Appeals Tribunal may remand a case to the Standing Committee of the UNJSPB for additional oral testimony, but may not do so if the evidence was known to either party and should have been presented at the Standing Committee.

48. In response, the Fund referred to the decision of the UNJSPB at its session in July 2016[2] making certain modifications to the proceedings before the Standing Committee. One of the modifications was that appellants would have the opportunity to submit comments on the Chief Executive's submission to the Standing Committee within 15 calendar days, but that such comments may not include any new information or claims not previously submitted in the appeal. In this case, the Fund transmitted to Ms. Mukomah the Chief Executive's submission to the Standing Committee on her case for comments on 4 June 2021. Ms. Mukomah was given until 16 June 2021 to submit her comments and was informed that she could not include any new information or claims that were not previously submitted in the appeal before the Standing Committee. She was granted an extension to submit her appeal to the Standing Committee, as she believed that she had additional information that could assist the Fund in considering her case. Ms. Mukomah failed to submit her comments within the deadline. The Fund followed up and counsel for Ms. Mukomah submitted a short comment to the Fund on 22 June 2021, without providing additional convincing comment or proof of the alleged union between Ms. Mukomah and the late participant in 2018. The Standing Committee fully considered the case on the facts and evidence submitted. e s

50. In the premises, there is insufficient evidence proving that the late participant and Ms. Mukomah lawfully entered a union legally recognized by the competent authority of Kenya conferring similar legal effects as a marriage in relation to pension rights. Therefore,

Judgment

52. The appeal is dismissed, and the decision of the Standing Committee of the UNJSPB is affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Murphy, Presiding	Judge Halfeld	Judge Raikos

Judgment published and entered into the Register on this 23rd day of November 2022 in New York, United States.