

XXIII. As a consequence of the findings of the Tribunal in the case, the Applicant's other pleas do not arise.

XXIV. The application is rejected.

(Signatures)

R. VENKATARAMAN

President

Francisco A. FORTEZA

Member

Geneva, 25 May 1979

Endre USTOR

Member

Jean HARDY

Executive Secretary

Judgement No. 245

(Original: English)

Case No. 226:
Shamsee

Against: The United Nations Joint
Staff Pension Board

Request for the sequestration of a pension paid by the Staff Pension Fund to a retired staff member.

Request that the Tribunal direct the Staff Pension Fund to honour the sequestration order issued by the New York Supreme Court.—Question whether the Staff Pension Fund enjoys the same immunity from the jurisdiction of domestic courts as the United Nations.—Interpretation of the relevant instruments.—The Tribunal concludes that the Staff Pension Fund is covered by the immunity of the United Nations.—It follows that the immunity from legal process against the Fund can be waived and that such waiver cannot extend to any measure of execution.—The Tribunal holds that the Staff Pension Fund is not bound to honour the sequestration order.—Question of the privileges and immunities of staff members in respect of their obligations to third parties.—Section 20 of the Convention on the Privileges and Immunities of the United Nations.—Staff Regulation 1.8.—Staff Rule 103.18 (b) (iii).—Obligation of staff members to fulfil their private obligations.—Corresponding obligation of retired staff members.—Lack of any provision in the Pension Fund Regulations permitting deductions for indebtedness to third parties.—Objections concerning the Tribunal's competence.—These objections are well founded, since the Applicant does not belong to the category of persons entitled to seize the Tribunal.—Applicant's contention that she should not be considered as a third party but as the receiver of the assets in dispute.—Contention rejected.

The application is rejected, the Applicant having no locus standi before the Tribunal.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Madame Paul Bastid, Vice-President;
Mr. Endre Ustor;

Whereas, on 21 April 1978, Raymonde Shamsee filed an application the pleas of which read:

“The Applicant respectfully requests that the Administrative Tribunal reverse the determination of the Standing Committee of the United Nations Joint Staff Pension Fund (Annex 16) of February, 1978 and direct the said Pension Fund to honor the Order of Sequestration of the New York State Supreme Court, County of Queens of December 30, 1976 (Annex 15) and pay to Raymonde Shamsee, as receiver, any sums which have become due to her husband, Muddassir Ali Shamsee, a retired employee of the United Nations (annexes 12, 14) under the terms of the Pension Fund since the date of service upon the Pension Fund of the Certified Copy of the aforesaid Order of Sequestration, or which hereafter shall become due to Mr. Shamsee until such time as said order is vacated.

“The obligation which Applicant is invoking is that of the United Nations and any organizations housed therein to honor the orders of courts of the host country both legally and morally unless there is a specific treaty exemption which moreover furthers the purposes of the United Nations. In the matter at bar we are not dealing with anything concerning the official operations of the United Nations. The sole issue involves the obligation of a person to support his wife and to abide by Court orders directing such support. Regulation 1.8 of the United Nations Staff Rules specifically provides that:

“ ‘The immunities and privileges attached to the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who enjoy them for non-performance of their private obligations or failure to observe laws.’

“As the Standing Committee of the Pension Fund has interpreted the situation, however, the Pension Fund is aiding and abetting Mr. Shamsee in his continued evasion of the orders of the New York State Supreme Court. There is absolutely no United Nations purpose being served by this evasion: were the moneys paid to Mrs. Shamsee as receiver, as the New York State Supreme Court order mandates, the operations and financial condition of the United Nations and the Pension Fund would be precisely the same as if they are paid to Mr. Shamsee in defiance of court orders.

“As far as Applicant knows, there is no dispute concerning the amount of moneys due under the Pension Fund to Mr. Shamsee but only the manner of their disposition.

“This is the fundamental relief requested, and, if granted, no alternate relief need be considered. If, however, it is not granted, then Applicant requests that a competency hearing be held to determine if Mr. Shamsee is mentally competent to receive and dispose of the funds (for the underlying reasons see Annexes 7 and 9) and, if he is not, to appoint Applicant as his conservator, and, even prior to that, for some determination to be made as to whether Mr. Shamsee is even alive (see Annex 10).”

Whereas, on 19 May 1978, the Respondent filed his answer in which he requested the Tribunal to reject the application pursuant to article 2, paragraph 2 of its Statute or, alternatively, to reject it on merits on the ground that the Respondent has not violated any right or entitlement of the Applicant under the Pension Fund Regulations;

Whereas, on 5 June 1978, a copy of the application was transmitted to Mr. Shamsee under article 21 of the Rules;

Whereas, on 6 June 1978, the Applicant filed written observations in which she requested oral proceedings;

Whereas, on 20 June 1978, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 31 July 1978, the Applicant submitted a copy of a judgement of 12 July 1978 by the New York Supreme Court against Mr. Shamsee awarding 14,100 dollars to the Applicant for support arrears and counsel fees;

Whereas, on 8 September 1978, Mr. Shamsee expressed his intention to intervene in the case;

Whereas, on 3 October 1978, the Tribunal decided to defer consideration of the case pending receipt of additional information requested from the parties;

Whereas, on 3 October 1978, a copy of the Respondent's answer, of the Applicant's written observations and of the further documentation in the case was transmitted to Mr. Shamsee under article 19, paragraph 3 of the Rules;

Whereas, on 18 October 1978, the Applicant submitted, following a request by the Tribunal, her observations concerning the competence of the Tribunal in the case as well as currently certified copies of the Court support order, sequestration order and arrearage judgement;

Whereas, on 14 December 1978, the Respondent submitted, at the request of the Tribunal, his observations as to whether the Pension Fund has authority to make, or has made, payments to third parties for legally adjudicated obligations and whether the Pension Fund has authority to make, or has made, payments to the spouse of a person entitled to a retirement benefit, in pursuance of a Court order for maintenance, alimony or support;

Whereas, on 18 December 1978, the Applicant submitted comments on those observations;

Whereas, on 20 February 1979, Mr. Shamsee, hereinafter called the Intervener, filed his application for intervention, the pleas of which read:

“With respect to Applicant's pleas and alternate pleas, Intervener respectfully requests the Administrative Tribunal, as to *jurisdiction*:

“—to determine that Applicant has no standing before the Tribunal as a court-appointed “receiver” claiming entitlement to rights against a participant in the UNJSPF;

“—to determine that Applicant has no standing before the Tribunal as ex-wife of a participant in the UNJSPF;

“—to determine—in the event that the deed of divorce sanctioned by the appropriate Pakistani court is disregarded for the purpose of these proceedings—that Applicant would still have no standing before the Tribunal as the wife of a living former staff member participant in the UNJSPF;

“—to determine that it has no jurisdiction to direct the Secretary of the United Nations Joint Staff Pension Fund (UNJSPF) to enforce the New York State court order of sequestering a participant's interest in the said Fund;

“—to determine that it has no jurisdiction to hear and pass judgement upon an application alleging a failure of a participant in the UNJSPF to support his wife and abide by a court order directing such support;

“—to determine that it has no jurisdiction either to hold a competency hearing for a determination of the mental capacity of a participant in the UNJSPF or to designate a participant's wife as conservator for receiving and disposing of his retirement benefit;

“—to determine also that it has no competence to conduct any independent investigation as to whether a participant in UNJSPF is dead or alive, in order to ascertain whether his wife is entitled to widow’s benefit.

“In the event that the Tribunal decides that it is competent to hear and pass judgement upon the Application, Intervener respectfully requests the Tribunal, *as to merits*:

“—to reject the application since the order of sequestration designating Applicant as “receiver” of her husband’s retirement benefit has not been duly served upon the UNJSPF.

“—to determine that the Fund should give no effect to the said Sequestration Order for it has been obtained *ex-parte* through factual distortions, and rests on a court judgement invalidated by subsequent changes in the marital and resident status of the parties concerned.

“—to reject as frivolous Applicant’s alternate pleas concerning Intervener’s mental competency and the question of whether he is even alive.”

Whereas, on 28 March and 16 April 1979, the Applicant submitted comments on the application for intervention;

Whereas the facts in the case are as follows:

The Applicant, a Canadian national, and the Intervener, a Pakistani national and at the time a staff member of the United Nations, were married on 29 January 1956 in New York. In 1976 the Applicant brought an action for separation against the Intervener, who counterclaimed for a divorce; on 10 June 1976 the New York Supreme Court dismissed both the action and the counterclaim and ordered the Intervener to pay 200 dollars per week to the Applicant for her support and maintenance. On 1 October 1976 the Intervener retired from the United Nations and became entitled to a pension, and he subsequently returned to his home country. On 13 December 1976 the Applicant inquired of the Secretary of the Pension Board as to the status of the Intervener’s pension, claiming that he was compelled by court order to pay her 200 dollars per week for support and that she had not received any support from him for several weeks. On 14 December 1976 the New York Supreme Court issued an order against the transfer out of New York State or to any third party of any property in which the Intervener had any interest. On 17 and 21 December 1976 the Applicant’s attorney wrote to the Secretary-General to request his intervention in the matter. On 21 December 1976, the Applicant having attempted service of the Court order upon the Office of the Secretary of the Pension Board, a Senior Legal Officer of the United Nations defined the position of the Organization in a letter to the Applicant’s attorney reading in part:

“ . . .

“As I said to you over the phone, the status of the Headquarters District is not the principal impediment to the withholding of Mr. Shamsee’s pension entitlement. Under the Convention on Privileges and Immunities of the United Nations, to which the US is party, the Secretary-General may waive the UN’s immunity from suit but not immunity from measures of execution.

“Staff are not immune from suit in their private capacity, and it is the UN’s policy to seek to prevent the Organization’s immunity from execution from prejudicing the rights of creditors of staff members where the staff member’s private

affairs are involved. Although UN salary is not subject to garnishment, the UN Staff Regulations and Rules permit deduction from salaries and allowances, in the Secretary-General's discretion, for debts to third parties. Consequently, it is the practice at the time of separation to make deductions for judgement debts from final pay due from the UN to a staff member. Staff members are as a matter of proper conduct required themselves to meet their judicially established private legal obligations while they are in service.

"Mr. Shamsee, however, is no longer in United Nations employ and no monies were due and owing from the United Nations to Mr. Shamsee at the time of this Order. As a retired UN staff member he does have pension entitlements payable by the United Nations Joint Staff Pension Fund.

"Monies of the United Nations Joint Staff Pension Fund are entirely separate from UN assets. The Pension Fund is governed by different Regulations from the UN Staff Regulations. The United Nations is only one of several participating member Organizations; and the Chief Administrative Officer of the Pension Fund is not the Secretary-General of the United Nations but the Secretary of the Fund itself. Under the Regulations applicable to the Pension Fund, the Secretary of the Fund has no discretion, like the Secretary-General's under the Staff Regulations and Rules, to deduct or to withhold entitlements for private creditors of the pensioner and such deductions are not even permissible for debts owed to the United Nations itself.

"The United Nations Administrative Tribunal is the only judicial body which has jurisdiction in matters relating to the Pension Fund Regulations and may order payment by the Fund to a claimant. Persons claiming under the Pension Regulations may invoke the Tribunal's jurisdiction, but Mrs. Shamsee as a wife of a former participant, himself, still living, would probably not have standing to invoke the Tribunal's jurisdiction. On the other hand, Mr. Shamsee could claim against the Pension Fund for failure to make timely payments of his pension entitlements in accordance with his payment instructions, and this failure on the Fund's part would not be justifiable under the Regulations by reference to Mr. Shamsee's obligation to his wife or other creditor.

"Since the UN Joint Staff Pension Fund may not, consistently with the Regulations which are binding on it and which may be invoked by Mr. Shamsee, properly withhold any entitlements from Mr. Shamsee, the Secretary of the Fund is in no position to act in accordance with the Order even voluntarily.

"As you may be aware, there is an international Convention on the Recovery Abroad of Maintenance, a copy of which I am enclosing. Pakistan has been party to this Convention since 1959 although the United States has never acceded to it. The non-accession of the US does not of course necessarily imply that Pakistan will not enforce Mr. Shamsee's obligation to Mrs. Shamsee if action is brought in his home country."

In a reply dated 24 December 1976, the Applicant's attorney stated *inter alia*:

"I am in receipt of your letter of December 21. If I understand it correctly, the Pension Fund is separate from the United Nations, and rather is an entity in which the United Nations, among other parties, is a member. If that is the case, it would not be covered by the treaty exempting the United Nations and its assets from execution. The Pension Fund (as well as the United Nations) is in New York and

therefore presumptively subject to New York jurisdiction. Indeed, that is confirmed by Section 7 of the agreement between the United States and the United Nations of 26 June 1947. The treaty does go on to exempt certain United Nations matters, as does the Convention on Privileges and Immunities of 13 February 1946, but this would not involve the Pension Fund which, as you state, is not a UN asset. Therefore, it is as subject to orders of the New York State courts equally with any other assets within New York State.

“ . . .

“I cannot understand how the United Nations Administrative Tribunal can have jurisdiction over the Pension Fund when it is not a United Nations asset, but if that is the case, then I certainly wish to invoke same on behalf of Mrs. Shamsee who, as a potential widow of a retiree over 60, automatically has rights thereunder. It is, of course, our position that since the Pension Fund is not a United Nations asset, it is not in any way exempt by treaty, and therefore already has been stayed from transfer, but if that is not the case, and if for any further reason the Secretary-General will not allow service of process, then we wish the United Nations Administrative Tribunal to take jurisdiction.

“ . . . I thank you for the copy of the Convention of Recovery Abroad of Maintenance but, apart from the issue of whether Pakistan would enforce a convention on behalf of a country not a party thereto, it would be impossibly prohibitive for Mrs. Shamsee to commence a legal proceeding 10,000 miles away.

“ . . . ”

On 28 December 1976 the Applicant's attorney advised the Pension Fund that no funds should be released to the Intervener and requested that any decision whereby he might have been authorized to withdraw funds from the Pension Fund be reviewed. On the same day the Applicant's attorney asked for the Secretary-General's consent for service of the Court order upon the Pension Fund. On 30 December 1976 the New York Supreme Court issued an order directing sequestration of the assets of the Intervener. On 6 January 1977 the Senior Legal Officer addressed the following clarification to the Applicant's attorney:

“You have said in your letter of 24 December that you would wish to invoke the jurisdiction of the United Nations Administrative Tribunal in the event—which you doubt—that the Tribunal has jurisdiction with respect to the Pension Fund. Although I have very grave doubts as to Mrs. Shamsee's standing to invoke the Tribunal's jurisdiction, as the wife of a retired UN staff member while her husband is living, I think it quite clear that the United Nations Administrative Tribunal has jurisdiction over cases involving the Pension Fund and is in a position to order payments from the Fund by virtue of the Pension Fund Regulations adopted by the United Nations General Assembly (see Article 49) as well as under the Tribunal's Statute and Rules.

“I am sorry that my reference to the separation of Pension Fund assets from UN assets was misunderstood to imply or led you to infer that the United Nations Joint Staff Pension Fund was not covered by the Convention on the Privileges and Immunities of the United Nations. The Joint Staff Pension Fund is established by the United Nations General Assembly and as a subsidiary organ is covered by the immunity of the Organization. Its assets are held in the name of the United Nations,

separately from the assets of the United Nations (see Article 18 of the Pension Regulations), in the sense that they are not under the control of the Secretary-General in the same way as other assets of the Organization.

“As I wrote to you, the UN Administration might well have been in a position to assist Mrs. Shamsee to recover a judgement debt while her husband was employed by the United Nations. Entirely apart from process of local courts, the Secretary-General has discretion with respect to monies owned by the United Nations to a staff member under the Staff Regulations and has the authority to make payment to third parties which, in practice, is frequently done for legally adjudicated obligations. However, the Regulations adopted by the General Assembly establishing the United Nations Joint Staff Pension Fund provide the Secretary-General no such discretion or authority with respect to Pension Fund payments.

“A decision to the contrary by the United Nations Administrative Tribunal would of course be effective, although as I have indicated I can see little likelihood of the Tribunal’s either recognizing Mrs. Shamsee’s standing before it or ordering payment to her. Nonetheless you may if you wish attempt to pursue the case in accordance with the Tribunal’s Statute and Rules.”

On 7 January 1977 the Secretary of the Pension Board informed the Applicant’s attorney that he was not empowered to comply with the latter’s request of 28 December 1976. In a letter of 10 January 1977 addressed to the Senior Legal Officer, the Applicant’s attorney, while stating that the Applicant was “pursuing the Administrative Tribunal route”, requested that the United Nations immunity be waived in the matter. On the same day and again on 21 January 1977 the Applicant’s attorney wrote to the Pension Fund asking for information on how to comply with article 7 of the Administrative Tribunal’s Statute. On 25 January 1977 the Secretary of the Pension Board advised the Applicant’s attorney that it was necessary for the Pension Board first to have ruled on the subject of the dispute, that it was open to serious question whether the Applicant had the necessary standing to invoke the jurisdiction of either the Administrative Tribunal or the Pension Board in the matter, but that he was nevertheless ready to seek a decision from the Standing Committee acting on behalf of the Pension Board. On 31 January 1977 the Applicant notified the Secretary of the Pension Board that she wished to request review by the Standing Committee of his decision with regard to payment of retirement benefits to the Intervener. On 12 September 1977 the Applicant’s attorney wrote to the Secretary of the Pension Board requesting that, in view of the failure of the Standing Committee to act in the case, the matter be referred directly to the Tribunal. On 15 November 1977 the Intervener intimated to the Court of XVII Civil Judge at Karachi (Pakistan) that he had divorced the Applicant; a photocopy of the divorce deed was placed on record. On 29 November 1977 the Applicant’s attorney, in acknowledging receipt of the deed of divorce, stated that he could not see how it could in any way affect the decree of the United States court where both the Intervener and the Applicant had resided to the effect that they were neither separated nor divorced and that the Intervener was under a legal obligation to support the Applicant in the sum of 200 dollars weekly. On 16 February 1978, a statutory period of 90 days having expired, the divorce pronounced by the Intervener was made effective by an order of the Court of XVII Civil Judge in which it is stated:

“. . . Notices were sent through embassy and duly served on opponent but she has remained absent. As such arbitration council could not be performed and rec-

conciliation proceedings could not take place. Statutory period of 90 days as provided U/s of Family Laws Ordinance 1961 has expired. Divorce pronounced by the applicant is hereby made effective.’’

On 2 March 1978 the Secretary of the Pension Board informed the Applicant that the Standing Committee of the Board had reviewed the decision of the Secretary to pay retirement benefits to the Intervener and had decided to confirm that action as being in conformity with the Regulations and Rules of the Pension Fund. On 21 April 1978 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant’s principal contentions are:

1. The United Nations and the Pension Fund have a moral and legal obligation to honour the sequestration order of the New York Supreme Court.
2. Both as the Intervener’s wife and therefore a beneficiary under the Pension Fund and as his court-appointed receiver, the Applicant is entitled to bring her claim. In any event, the Pension Fund has waived this technicality.
3. All of the exemptions and immunities granted to the United Nations are for the benefit of the United Nations—not the Pension Fund which is a separate entity—in its official function, not to protect employees from their private obligations.

Whereas the Respondent’s principal contentions are:

1. The Applicant is not among the persons specified in article 2, paragraph 2 of the Tribunal’s Statute, to whom the Tribunal is open.
2. The Respondent is particularly concerned to avoid breaching any obligation owed to the Intervener who is, under the Pension Fund Regulations, entitled to receive benefits in accordance with his payment instructions. The Respondent is not aware of any basis on which such benefits may be reduced by amounts paid out to third persons claiming rights against the pensioner.

Whereas the Intervener’s principal contentions are:

1. The Applicant has no standing before the Tribunal as a court-appointed receiver claiming entitlement to rights against a participant in the Pension Fund or in any other capacity.
2. The Tribunal has no jurisdiction to direct the Secretary of the Pension Fund to enforce a New York court order sequestering a participant’s interest in the Pension Fund.
3. The Tribunal has no jurisdiction either to hold a competency hearing for a determination of the mental capacity of a participant in the Pension Fund or to designate a participant’s wife as conservator for receiving and disposing of his retirement benefit or to conduct an independent investigation as to whether a participant in the Pension Fund is dead or alive in order to ascertain whether his wife is entitled to widow’s benefit.

The Tribunal, having deliberated from 9 to 25 May 1979, now pronounces the following judgement:

I. In her main claim the Applicant requests that the Tribunal direct the Staff Pension Fund to honour the sequestration order issued by the New York Supreme Court on 30 December 1976 and to pay her, as receiver, any sums which have become payable as pension to Mr. Shamsee, a retired employee of the United Nations, as long as such order remains in force. This claim involves the question whether the Staff Pension Fund does enjoy the same immunity from the jurisdiction of domestic courts as the United Nations itself under the terms of Article 105 of the Charter and of the Convention on the Privileges

and Immunities of the United Nations. While the Convention—which was concluded before the establishment of the Fund—is silent on the matter, there seems to be no doubt that the question cannot but be answered in the affirmative. It is true that the assets of the Fund are separate from the assets of the United Nations, that the Fund is governed by its own regulations, that the United Nations is only one of several organizations participating in the Fund and that the chief executive officer of the Fund is not the Secretary-General of the United Nations but the Secretary of the Staff Pension Board itself. Nevertheless the Staff Pension Fund has been established by the United Nations General Assembly, the Fund exists on the basis of its Regulations which were adopted by the General Assembly, and the Fund is a subsidiary organ of the General Assembly, admittedly of a special type. Members elected by the General Assembly participate in the Staff Pension Board and in the United Nations Staff Pension Committee, while the Secretariat of the Board as well as the members of the Committee of Actuaries and the consulting actuary are appointed by the Secretary-General. According to article 18 of the Pension Fund Regulations, the assets of the Fund “. . . shall be acquired, deposited and held in the name of the United Nations . . .”.

Thus a strict interpretation of the relevant instruments clearly leads to the conclusion that the Staff Pension Fund is covered by the immunity of the United Nations.

II. The immunity of the United Nations from the jurisdiction of local courts is anchored in Article 105 of the Charter and in article II, section 2 of the Convention on the Privileges and Immunities of the United Nations. This latter provision reads:

“The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.”

III. The United States is a party to that Convention and the provision quoted is binding on it. Hence the immunity in question also applies in respect of the jurisdiction of the United States courts.

If the Staff Pension Fund enjoys the same jurisdictional immunity as the United Nations itself—as has been set out above—then the above-quoted provision of the Convention on the Privileges and Immunities of the United Nations equally applies to the Staff Pension Fund. Two consequences follow: one, that the immunity from legal process against the Fund can be waived and, two, that such waiver cannot extend to any measure of execution.

IV. The Applicant requests the Tribunal to “. . . direct that [the] Pension Fund honour the Order of Sequestration . . . of December 30, 1976”. This claim obviously runs counter to the basic rule quoted above which forbids that the immunity from legal process of the United Nations and its assets be waived for the purpose of execution of decisions of local courts. The Tribunal therefore holds that the Staff Pension Fund is not bound to honour the sequestration order of the New York Supreme Court.

V. The Tribunal next proceeds to examine the extent of the privileges and immunities of United Nations staff members, whether in service or retired, in respect of their obligations to third parties.

In this respect article V, section 20 of the Convention on the Privileges and Immunities of the United Nations contains a detailed provision which reads:

“Privileges and immunities are granted to officials in the interests of the United

Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.”

The same idea is expressed in Staff Regulation 1.8 as follows:

“The immunities and privileges attached to the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations.”

Hence staff members cannot use their privileges and immunities as a shield against performance of their private obligations or payment of their debts to third parties. In respect of indebtedness of staff members to third parties, Staff Rule 103.18 (b) (iii) provides as follows:

“(b) Deductions from salaries, wages and other emoluments may also be made for the following purposes:

“ . . .

“(iii) For indebtedness to third parties when any deduction for this purpose is authorized by the Secretary-General”.

VI. Although Staff Regulation 1.8 and Staff Rule 103.18 (b) (iii) are not applicable to retired staff members, it is obvious that the privileges and immunities of the United Nations cannot serve the purpose of dispensing them from the fulfilment of their private obligations. Yet the present case shows that retired staff members can, indirectly, benefit unduly from the immunities of the Staff Pension Fund itself and from the lack of a provision similar to Staff Rule 103.18 (b) (iii) in the Pension Fund Regulations.

As matters stand, the Pension Fund Regulations contain one single provision permitting deductions from the benefits payable to the retired staff member. This provision is article 44 which is, however, limited to the possible deduction of the amount of any indebtedness to the Fund itself. The Staff Pension Board, which has the power to make such deduction, is not entitled by the Regulations to deduct any amount for indebtedness to third parties. This is in contrast to Staff Rule 103.18 (b) (iii).

It is for the General Assembly to consider whether in the light of the present case it might be desirable to amend the Pension Fund Regulations on the lines of Staff Rule 103.18 (b) (iii).

VII. Both the Respondent and the Intervener oppose the application on the ground that the Applicant has no standing before the Tribunal, i.e. that the Tribunal has no competence in this case. Reference has been made to article 2, paragraph 2 of the Statute of the Tribunal and to article 49, paragraph (a) (ii) of the Pension Fund Regulations.

Since the Applicant clearly does not belong to the category of persons who under the provisions referred to are entitled to seize the Tribunal and since in particular she cannot show that she is “entitled to rights under [the] [Pension Fund] Regulations by virtue of the participation in the Fund of a staff member . . .” as required under article 49 of the Pension Fund Regulations, these objections are well founded.

VIII. The Applicant contends that the sequestration order on which she relies

appointed her receiver of the assets of Mr. Shamsee, and that consequently the Staff Pension Fund is not being asked to make payment to any third person but to the duly appointed receiver of the assets of the very person to whom it owes an obligation. According to the Applicant, she should be considered, for the purposes of these proceedings, not as a third person falling under article 49, paragraph (a) (ii) of the Pension Fund Regulations but as a person stepping into the shoes of the Intervener, i.e. becoming entitled to all the pecuniary rights of the latter.

This argument is unconvincing. The recognition by the Staff Pension Fund of the appointment of a receiver of assets for the purposes of collecting the pension of a staff member would amount to the recognition of a court decision as binding on the Fund. The Fund, however, being entitled to "immunity from every form of legal process", cannot be expected to grant such recognition, the more so since the Court order appointing the receiver constitutes a "measure of execution".

IX. For the reasons stated in paragraphs VII and VIII above, the Applicant has no *locus standi* before the Tribunal and the application is accordingly rejected.

(Signatures)

R. VENKATARAMAN

President

Suzanne BASTID

Vice-President

Geneva, 25 May 1979

Endre USTOR

Member

Jean HARDY

Executive Secretary

Judgement No. 246

(Original: English)

Case No. 241:
Fayemiwo

Against: **The Secretary-General
of the United Nations**

Termination of a locally recruited staff member of the United Nations Children's Fund (UNICEF) holding a regular appointment.

The Secretary-General's discretionary power to terminate regular appointments.—Request for rescission of the termination.—Contention that the decision was biased by extraneous factors.—Review of the facts bearing on the Applicant's performance.—Mixed performance record of the Applicant.—Contention rejected.—Contention that there were procedural defects in dealing with the Applicant's rebuttals of two of his periodic reports.—Complexity of the various instructions applicable in the case.—Action taken to deal with the Applicant's rebuttals of his periodic reports.—Such action conformed to instructions.—Contention rejected.—Application rejected.
