

**ADMINISTRATIVE TRIBUNAL  
OF THE AFRICAN DEVELOPMENT BANK**

QUORUM:	Professor Yadh BEN ACHOUR	President
	Justice Salihu Modibbo Alfa BELGORE	Vice President
	Justice Anne L. MACTAVISH	Member
	Justice Benjamin Joses ODOKI	Member

**APPLICATION No. 2010/01**

Mr. H. N-M, Applicant  
African Development Bank, Respondent

Judgment No. 75 of the Tribunal rendered on 29 June, 2010

**I. THE FACTS**

1. On November 13, 2009, the Administrative Tribunal of the African Development Bank rendered a judgment on Application No. 2008/03 filed by Mr. H. N-M against the African Development Bank, in the Applicant's favor. The operative elements of the judgment ordered that (1) the Applicant's 2005 performance evaluation be nullified; (2) the Bank pay the Applicant six thousand US dollars (\$6,000) for moral damages; and (3) the Bank pay the Applicant legal costs estimated at four thousand US dollars (\$4,000). All other claims were dismissed.
2. The Orders to pay legal costs and to nullify the 2005 performance evaluation are the subject of this Request for Interpretation of Judgment filed by the Applicant on 19 January 2010, pursuant to Article XII of the Tribunal's Statute and Rule XXIII of the Tribunal's Rules of Procedure.

**II. ARGUMENTS OF THE PARTIES**

**THE APPLICANT**

**Admissibility of the Application**

3. The Applicant states that the Application is submitted pursuant to Article XII (3) of the Tribunal's Statute and Rule XXIII (1) & (2) of the Tribunal's Rules of Procedure, which state *inter alia* that the Tribunal may interpret its judgment upon request of a party if the terms of that judgment appear "obscure or incomplete."

**Article XII (2) & (3) and Article IX (4) of the Tribunal's Statute:**

4. In support of his claim of admissibility, the Applicant proffers that in light of Article XII (2) & (3) and Article IX (4) of the Tribunal's Statute the judgment of the Tribunal

is incomplete as it does not state the reasons upon which it based its decision to award four thousand US dollars (\$4,000) in “estimated” legal fees only or how it arrived at this estimate, given that the Applicant submitted his statement of legal fees and expenses, which included fees incurred at the Appeals Committee and the Tribunal. By not specifying how it arrived at its decision to award four thousand US dollars (\$4,000) in “estimated” legal fees, the Applicant asserts that the Tribunal did not abide by the requirements of Article II (2) of its Statutes which states in relevant part: “each judgment shall be in writing and state the reasons on which it is based.”

5. The Applicant further maintains that the Tribunal’s judgment was also incomplete because it did not state the reason why its estimate was “reasonable” in light of the Applicant’s statement of fees and costs that he submitted. Neither did the Tribunal state the legal principles or law on which it based its decision regarding fees as required by Article V (1) of its Statute, which provides:

*In deciding on an application, the Tribunal shall apply the internal rules and regulations of the Bank, and generally recognized principles of international administrative law concerning the resolution of employment disputes of staff in international organizations.*

In addition, the Tribunal did not state what portion of the award was costs and what portion was attributed to legal fees or whether it only awarded legal fees.

6. In addition, the Applicant claims that the judgment is incomplete because the Tribunal did not clarify the basis or state the reasons for deciding not to award legal fees in whole, even though the Tribunal found that the Application was well-founded in whole.
7. Finally, in deciding that the Applicant’s 2005 evaluation be nullified, the Tribunal did not specify the consequences that ought to flow from the nullification of the 2005 performance evaluation (such as expunging the evaluation from the Applicant’s personnel file).

## **THE RESPONDENT**

8. The Respondent submits that the Application is without merit and constitutes an abuse of process contrary to Articles X and XII of the Tribunal’s Statute and Rule XXIII of the Tribunal’s Rules of Procedure.

### **Admissibility of the Application**

9. The Respondent maintains that the Tribunal’s judgment of 13 November 2009 contains no ambiguity with respect to legal fees that would lend itself to a Request for Interpretation. The judgment is neither obscure nor incomplete; therefore the Application should fail as it has not met the requirements for a Request for Interpretation of judgment, pursuant to Rule XXIII (2) of the Tribunal’s Rules of Procedure, which provides in relevant part:

*The application shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete.*

### **Interpretation of the Order for payment of legal costs**

10. The Respondent further asserts that the Tribunal's Order for payment of legal fees in the sum of four thousand US dollars (\$4,000) was unequivocal and unambiguous. The Order was based on the evidence and legal arguments presented before the judgment was entered. The Respondent argues that the language "based on the foregoing" indicates that the Tribunal based its decision on all what is written in the 57 paragraphs of the judgment before the decision. The award covered legal costs, fees, expenses and any other financial costs incurred by the Applicant in filing and maintaining his Application. Therefore, the Applicant's argument relating to what portion of the Tribunal's award were for costs and what portion were for legal fees has no merit and is not plausible.
11. The Respondent further maintains that the real purpose of the Application is to reopen and reargue judgment No. 70 regarding the quantum of legal costs, hence his reference to legal fees submitted to the Tribunal before the judgment was rendered. The Applicant is claiming that the Tribunal did not properly evaluate the evidence presented regarding the quantum of legal costs and is therefore seeking a re-evaluation of this evidence (Statement of Legal Fees).
12. Moreover, whether or not legal fees awarded were similar to those requested by the Applicant in his statement of fees is irrelevant to a determination of the amount of legal fees that the Tribunal can award. The Respondent submits that the Tribunal has the sole discretion to determine how much it will award and did so in this case, in accordance with Article IX (4) of its Statute.
13. The Respondent then points to the general rule regarding costs, which states that each party will bear its own costs; yet the Tribunal has discretion under the Statute to order that the Applicant be reimbursed partial or total costs. In light of this, the Respondent argues, the Tribunal can decide what it deems reasonable legal costs and did so in this case, by stating the exact monetary amount that should be paid to the Applicant.
14. The Respondent concludes that with respect to legal fees and costs, the Application does not provide any basis for revising the costs awarded in the original case, and it is simply an appeal against an award of costs disguised as a request for interpretation of judgment. The Applicant must accept the decision even if he is unsatisfied with it, as stated by the ILO Administrative Tribunal in *In re Belsar (No. 2)*; *Bossung (No. 2)* and *Lederer (No. 2)*. The ILOAT stated: "*the stability of judicial procedures and the need to bring an end to litigation require that parties must accept the result they obtain even when they are unsatisfied with it.*" (ILOAT Judgment No. 1825, Considerations, paragraph 6 [1999]).

### **Interpretation of nullification of Applicant's 2005 evaluation**

15. With respect to the order for nullification, the Respondent submits that nullifying the 2005 performance evaluation rendered it legally invalid, thereby cancelling out the

effect of the evaluation. The said evaluation therefore is not part of the Applicant's Personnel File and/or record of service with the Bank. Hence no interpretation is required. The request for interpretation of the nullification of the 2005 evaluation is therefore an abuse of process as stated in Articles X and XII of the Tribunal's Statute and Rule XXIII of the Tribunal's Rules of Procedure (citing Application No. 2000/08 *W. B. O-O. v. the African Development Bank [2001]*, ADB Administrative Tribunal Judgment No. 21, paragraph 9).

### **III. REQUESTS BY THE PARTIES**

#### **16. The Applicant**

The Applicant requests the Tribunal to:

- a. clarify the award of legal fees in light of requirements of the Tribunal's Statute; and
- b. state the effect flowing from the decision to nullify the Applicant's 2005 evaluation.

#### **17. The Respondent**

The Respondent prays the Tribunal to dismiss the Application for interpretation of the Tribunal's judgment in Application No. 2008/03. The Application for interpretation of judgment is inadmissible because the operative sections of the judgment at issue are neither obscure nor incomplete, and no arithmetical or typographical error is alleged. Consequently, the Application should be dismissed as lacking in merit.

### **IV. THE LAW**

#### **18. The order in the judgment of this Tribunal as given on November 13, 2009 in Application No. 2008/03 reads as follows:**

1. The Applicant's performance evaluation be nullified
2. The Bank (Respondent) to pay the Applicant six thousand US Dollars (\$6,000) for moral damages, and
3. The Bank to pay the Applicant legal costs estimated at four thousand US dollars (\$4,000)
4. All other claims were dismissed.

#### **19. The Applicant has now re-applied to the Tribunal with a "Request for Interpretation of Judgment" aforementioned, according to him, pursuant to Article XII of the Tribunal's Statute and Rule XXIII of the Tribunal's Rules of Procedure. His contention is that in the light of Article XII (2) and (3) and Article IX (4) of the Tribunal's Statute the judgment of the Tribunal "is incomplete as it does not state the reasons upon which it based its decision to award four thousand US dollars (\$4,000) in estimated legal fees only or how it arrived at this estimate, given that the Applicant submitted his statement of legal fees and expenses." Thus the complaint is for not specifying or advancing reasons for this estimate.**

20. The Applicant also posited that “the Tribunal shall apply the internal rules and regulations of the Bank and generally recognized principles of international administrative law concerning the resolution of employment disputes of staff in international organizations.”
21. It is difficult to understand the argument of the Applicant in view of the fact that the portion of the judgment complained about is devoid of any ambiguity. That the “performance evaluation” of the Applicant with the Bank should be nullified is clear; once nullified it follows to reason it will be expunged from his record with the Bank. The payment of six thousand dollars (\$6,000) for moral damage by Bank to the Applicant as ordered by the Tribunal is unambiguous. Finally the payment of legal costs fixed at four thousand dollars (\$4,000) is clear.
22. The Rules of the Tribunal allow for the award of reasonable legal costs and what is reasonable is a matter of fact.
23. The Tribunal has the discretion to award legal costs where it deems it appropriate to do so, within reasonable limits. An applicant will be at liberty to employ the services of a counsel to represent him before the Tribunal, but the cost of bringing that counsel must be within reasonable limits. For an Application before Tribunal sitting in Tunis, the Tunisian Capital and Temporary Headquarters of the Bank, an Applicant can choose a counsel from Tunisia or any other country. But should an Applicant choose to bring a “counsel of his choice” from afar, that will be his wish and the extraordinary expense of doing that, which is not within bounds of reasonableness, will be his own only, and the Tribunal will always consider what is reasonable.
24. It is difficult, in fact impossible, to find any ambiguity in the decision of this Tribunal. What was awarded as legal costs is what is reasonable and it needs no interpretation as it is in simple language. Article XII at Section 3 of the Statute of the Tribunal does not apply. There is no obscurity or incomplete sentence in the Judgment of the Tribunal to warrant explanation. Nor is there any typographical or arithmetical error to correct.
25. This application is manifestly without foundation and it amounts to an abuse of process. The Tribunal will not condone litigious propensity especially in cases like this one, where the application is no more than a disguised attempt to have the Tribunal reconsider its original award of costs. (Article X refers.)
26. The operative provisions of the judgment being challenged for interpretation are clear, especially in view of Rule XXIII (2) of the Rules of Procedure. In the clear words of that judgment, it is in interest of justice that there must be an end to litigation. This is because judgments of the Tribunal shall be binding, final and without appeal. To accede to this type of application for interpretation of a clear and unambiguous judgment will open a floodgate to unending litigation, a situation that would invite gross instability in the Tribunal’s adjudication process. This stand is in conformity with international administrative law practice. The Rule *res judicata* is a general principle of law applicable in both domestic and international law. There must be an end to litigation.

**V. THE DECISION**

Based on the foregoing, the Application is rejected

Professor Yadh BEN ACHOUR

President

Mrs. Albertine LIPOU MASSALA

Executive Secretary

**THE APPLICANT**

Mr. H. N-M

**COUNSEL FOR THE RESPONDENT**

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