

**ADMINISTRATIVE TRIBUNAL OF THE
AFRICAN DEVELOPMENT BANK**

QUORUM	:	Justice Mohammed Bello,	President
		Professor Maurice Glélé Ahanhanzo,	Vice-President
		Justice Lombe Chibesakunda,	Member
		Dr. Ahmed El Kosheri,	Member
		Professor. Christian Tomuschat,	Member
		Justice Pio Marapi Teek,	Member

Re : CASE NO 2000/08

W. B. O.-O., Applicant
versus
The African Development Bank, Respondent

Respondent's Application for the Interpretation of the Order rendered by
the Tribunal on July 25, 2001 rejecting the Motion to strike out an
additional document

DECISION OF THE TRIBUNAL – RENDERED ON NOVEMBER 9, 2001

I. THE APPLICATION

1. On August 31, 2001 the Respondent submitted to the Tribunal a request to interpret its Order rendered on July 25, 2001 rejecting the Motion to strike out a document that was submitted by the Applicant in the above-mentioned case n° 2000/08.
2. After reproducing the two paragraphs of the said Order, the Respondent considered that certain language used in these two paragraphs "raise[s] elements of ambiguity whose clarification by the Tribunal is necessary for the orderly conduct of the Respondent's business."

3. The Respondent submits that “the Order warrants interpretation because its **ratio decidendi** and its ruling are uncertain and ambiguous” in their use of the phrase “official of the Bank”, which “if interpreted literally would have the effect of granting any employee of the Bank the authority to exercise the Presidential power of consent provided for in Article 3 (1) of the Headquarters Agreement.”
4. The Respondent attached to the Request of interpretation two decisions of the International Labour Organisation Administrative Tribunal (ILOAT) as indicative of the jurisprudence of international administrative tribunals with respect to interpretation requests. Based on the said decisions, the Respondent invited the Tribunal to interpret “both the **ratio decidendi** and its ruling in the Order of July 25, 2001 to be limited to the particular facts and circumstances of Application n° 2000/08 and incapable of general application, as a matter of applying precedent.”
5. In implementation of paragraph 3 of Rule XXIII, the Tribunal’s Secretariat notified the text of the Request for Interpretation to the Applicant in case 2000/08 in order to provide him with a reasonable opportunity to present his views on the matter, but the Tribunal received no comments in this respect.
6. After hearing on November 7th, 2001 Counsel of the Respondent with regard to the above-stated Request for Interpretation,

THE TRIBUNAL

7. Indicates that according to the explicit text of paragraphs 1 and 2 of Rule XXIII of the Tribunal’s Rules of Procedures :

“1. In accordance with Article XII, section 3 of the Statute, after a judgment has been rendered, a party may within sixty, (60) days of notification of the judgment, apply to the Tribunal requesting an interpretation *of the **operative provisions** of the judgment.*

2. 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 “ (italics added).

Hence, the Request for Interpretation could only envisage an ambiguity or incompleteness in the **dispositif** of the Judgment, and cannot relate to the reasoning on which the ruling has been based.

8. The jurisprudence of international administrative tribunals, as reflected in the two ILOAT Judgments relied upon by the Respondent (judgment n° 802 (1987) and Judgment n° 1306 (1994)), is perfectly consistent with the above-stated rule, since the first judgment declared :

“an application for interpretation of a judgment is receivable only if the operative part gives rise to uncertainty or ambiguity about its meaning or import”.

Focusing exclusively on the operative part of the Judgment in question, the ILO Tribunal considered that the Judgment : “is quite clear, suffers no ambiguity and presents no difficulty of interpretation”.

The subsequent Judgment followed the same pattern of focusing exclusively on “the wording of the claims” as shown in the operative part of the judgment under consideration by indicating that :

“an application for interpretation of a judgment is receivable only if the meaning of the Tribunal's ruling is uncertain or ambiguous”.

Within the context of this second judgment, the ILO Tribunal declared the application for interpretation “receivable because the parties disagree on how to combine points 1 and 2 of the ruling”.

9. In the present case, there is clearly no possible ambiguity in the ruling by which the Tribunal declared that : “The objection is rejected”. Hence, there is no room for interpretation in strict compliance with Rule XXIII of the Tribunal's Rules of Procedure and in conformity with the established jurisprudence of international administrative tribunals.
10. Furthermore, even if assuming *in arguendo* that the *ratio decidendi* forms an integral part of the ruling which could as such be subject to an application for interpretation as the Respondent seems to argue, it has to be observed that the Tribunal was keen to emphasize at the beginning of paragraph 7 of its Order of July 25, 2001 that it has no intention to go beyond the scope of the facts and circumstances pertaining to the pending case, by noting : “for the purpose of the present case”.

Equally, in the following paragraph 8, the Tribunal explicitly indicated that the act under scrutiny: “by its nature does not affect any of the rights and prerogatives covered by the privileges and immunities provided for in the Bank's Headquarter's Agreement”; and accordingly: “the Tribunal considered that, there had *been within the context of the present case* no violation that could justify the Bank's objection” (*italics added*)

No reasonable person could infer from said clear language any assertion that the Tribunal's ruling would extend beyond the factual context and circumstances of case n° 2000/08.

Therefore

The Respondent's application for interpretation is inadmissible.

Honorable Justice Mohammed Bello - President

Albertine Lipou Massala - Executive Secretary

REPRESENTATIVE OF THE RESPONDENT

- Mrs. Ninon Omérine, Representative of Human Resources Department (CHRM)

COUNSEL FOR THE RESPONDENT

- Mr. George Aron

Assisted by

- Mr. Godfred Penn