

**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
	Professeur Christian Tomuschat	Member

APPLICATION N° 2000/08

W. B. O. – O., Applicant
African Development, Respondent

**Order on the Bank's Motion to
Strike Additional Document**

Order of the Tribunal – delivered on July 25th, 2001

1. Pursuant to Rule XV(8) of its Rules of Procedure, the Bank (the Respondent) filed an objection related to the inadmissibility of a document filed by the Applicant which is entitled : "Procès Verbal du constat Suivi d'Inventaire", accompanied by an English translation. The document was drawn up by a "Huissier" Maître Nguessan Hykpo Lydia, and purports to attest the veracity of the facts therein stated.
2. According to the Respondent, the said document should be struck from the evidence in this application. The Respondent's objection to the admissibility of this piece of evidence under Rule XV (8) is premised on two grounds. The first of these grounds is that the "Huissier" who conducted the purported investigation must either be aware, or be deemed to be aware, of the provisions of the Respondent's Headquarters Agreement with the Government of the Ivory Coast that govern the performance of acts such as the purported investigation.

3. It is the Respondent's contention that the so-called "Procès Verbal de Constat Suivi d'Inventaire", as well as its English translation, violates Articles 2 (1) and 3(1) of the Respondent's Headquarters Agreement.
4. Articles 2(1) and 3(1) of the Headquarters' Agreement provide, on the one hand, that the Principal Office of the Respondent is inviolable and under the control and authority of the Respondent, and on the other hand, that Officers and Officials of the Host Country, whether they be administrative, judicial, military or police, cannot enter the Principal Office of the Respondent to perform official duties therein except with the consent of the President of the Respondent and under conditions agreed by him.
5. The Respondent contends that the 'Huissier's" performance of her duties within the premises of the Headquarters violated the principle of inviolability in Article 2(1) of the Headquarters Agreement. Consequently the Respondent submits that the validity of the so-called 'Procès Verbal de Constat Suivi d'Inventaire" is vitiated both by the fact that :
 - i) the President's consent was not obtained prior to its being carried out; and
 - ii) for being carried without conditions agreed by the President.

Thus, the principle of inviolability of the premises of the Principal Office had been breached.

6. After hearing the argument of both parties with regard to the above-stated motion,

The Tribunal

7. Notes, for the purpose of the present case, that the Applicant informed in advance an official of the Bank that he shall be accompanied by an "Huissier" during the delivery of the carton containing the documents which the Bank accepted to remit to him. No objection was notified to him with regard to the presence of the "Huissier" to accompany him, and the security officer permitted the 'Huissier" to attend the delivery of the carton as well as to accomplish his task of dressing an inventory of the files contained therein in his presence.

8. Since the acceptance of undertaking such function of attesting what were the contents of the carton delivered in the basement of the Bank to the Applicant is an act which by its nature does not affect any of the rights and prerogatives covered by the privileges and immunities provided for in the Bank's Headquarters' Agreement, the Tribunal considers that there had been within the context of the present case no violation that could justify the Bank's objection related to the admissibility of the document dressed by the "Huissier" which is entitled : "Procès Verbal de Constat Suivi d'Inventaire".

Therefore

The objection is rejected.

Honorable Justice Mohammed Bello - President

Albertine Lipou Massala - Executive Secretary

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- Maître Kaba Mohamed Jr.

REPRESENTATIVE OF THE RESPONDENT

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

COUNSEL FOR THE RESPONDENT :

- Mr. Kalidou Gadio

Assisted by

- Mr. Dotse Tsikata