

**ADMINISTRATIVE TRIBUNAL OF THE  
AFRICAN DEVELOPMENT BANK**

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

**APPLICATION NO. 2001/06**

Mr. J. Z. A., Applicant  
African Development Bank, Respondent

Judgment of the Tribunal - delivered on 19 July 2002

**I. THE CAUSE OF ACTION**

1. The cause of action arose out of the decision dated 11 April 2001 of the President of the African Development Bank (ADB) on the recommendation of the Appeals Committee on 1 February 2001 to “maintain the decision not to pay any entitlements to the Appellant and to reject all further claims by the Applicant,” which was received by the latter on 19 April 2001.

**II THE RELEVANT FACTS**

2. The Applicant, a Benenese citizen and a former staff member entered the services of the African Development Bank on 16 November 1982 as a bilingual clerk in the Personnel Department on grade G4/5. At the time of termination of his appointment on 17 March 1995, he occupied the post of Administrative Assistant in charge of staff benefits and entitlements in the Human Resource Management Department.
3. Following the termination of his contract with the African Development Bank, the Applicant was granted all his entitlements except for repatriation expenses and personal contributions to the Bank Pension Fund.
4. On 5 May 1999, the Applicant contacted the Bank to request payment of :
  - (a) His repatriation entitlements – the air ticket for his spouse;
  - (b) entitlements for repatriation of his personal effects; and
  - (c) his personal contribution to the ADB Pension Fund.

5. On 21 June 1999 the Bank Management notified the Applicant that his personal contribution to the Pension Fund and repatriation entitlements were ready for payment and collection. The air ticket expenses were paid, excluding those relating to repatriation of personal effects, which were refused on the ground that the ADB regulations did not allow for them and an air ticket in favour of the Applicant's spouse on the ground that she was still in the service of the Bank. The payment of compensation in view of the delay was also refused.
6. After several contacts and exchanges between the parties, the Applicant on 6 March 2000 appealed against the Management's decision to the Staff Appeals Committee claiming inter alia compensation in the amount of 93 962 535 FCFA in damages on the ground that the payment of his repatriation benefits had unduly been delayed for a period of 4½ years as well as 1.675,000 FCFA in legal costs.

### **III THE RELIEF SOUGHT BY THE APPLICANT:**

7. The Applicant prays for the payment of:
  - (a) Repatriation expenses for personal effects and of the air ticket of the Applicant's spouse;
  - (b) an amount of CFA F 93 962 535, being salary for 53 months during which Applicant was stranded in Cote d'Ivoire, in damages for inconvenience suffered owing to the delays caused in the payment of his repatriation entitlements;
  - (c) an amount of CFAF 1 675 000 in legal fees and expenses pursuant to Article 1X -4 of the Statute of the ADB Administrative Tribunal computed as follows: CFAF 1 500 000 for legal fees and CFAF 75 000 for procedural expenses.

### **IV THE APPLICANT 'S SUBMISSIONS**

8. The Applicant challenged the President's decision and its legality in respect of his Personal effects on the grounds that the Appeals Committee did not state its decision concerning the personal effects. Furthermore, having regard to the Presidential Administrative Memorandum 04/84 issued on 27 April 1984 stating that the Bank refunds staff members expenses incurred up to the limits of their entitlements, on presentation of receipts. In corroboration hereof the Applicant referred to exhibit 15 that relates to transportation of the Applicant's Personal effects dated 21 July 1991.
9. In respect of the air ticket for his spouse, the Applicant, relying on Article 3.2.2 of the Presidential Memorandum No. 03/84 dated 27 April 1984, submitted that even if the spouse remained in the Bank's employ and is a locally recruited staff

member, she is entitled to the repatriation expenses because of the status of her husband covering himself and his entire family.

10. Concerning the delay in the payment of his entitlements the Applicant noted that considering that the Staff Appeals Committee rejected his claims for payment of compensation on the basis of arguments arising from Article 4.12 of the 1969 Staff Rules which reads that “A staff member who has not received an allowance, grant or other payment from the Bank to which he is entitled, shall not receive such allowance, grant or other payment unless he has made a claim in writing” and which the committee wrongly interpreted as this text in fact solely concerns the procedure for obtaining back payment of allowances and benefits payable to staff members who are still in the service of the ADB, not the entitlements of an ex-staff member. In the premises the Applicant submitted that the committee has wrongly interpreted and applied the abovementioned provision in concluding that the Applicant’s claims were baseless, because “It was for the Appellant to claim them within twelve months following his departure from the Bank.” In other words as an ex staff member the provisions of Rule 4.12 did not apply to the Applicant alas the Applicant.
11. The Applicant submitted that the committee misapplied its jurisprudence in confirming the instructions by the Bank for payment are not tantamount to payment because “if it is a fact that the Bank on 8 June 1995 prepared and transmitted to the departments concerned, the instructions for assessing the cost of tickets and conveyance of personal effects, this does not in any way mean that the Bank has completely fulfilled the obligations mentioned, namely to determine the financial position with regard to the Staff member and made payment accordingly. It is clear that upon termination of the services of a staff member, the Bank is required to immediately assess the financial position relating to the staff member and pay whatever amount is due to this staff member.”

**V. BURDEN OF PROOF**

12. The Applicant further submitted that the Appeals Committee erred in concluding that the Applicant “... did not pursue payment of his terminal benefits because his debt to the Bank exceeded his entitlements” and “it was for the Appellant to come forward and claim the amounts within the twelve months following his departure from the Bank,” because “... the burden of proof, according to the jurisprudence, is with the Bank and not with the Applicant, who is being asked to prove that he did everything possible to get paid especially, as ... the jurisprudence obliges the Bank to liquidate and immediately pay the entitlements of dismissed employees.”

**VI. THE RESPONDENT’S SUBMISSIONS**

13. The Respondent’s submission in respect of the Applicant’s contention that the Staff Appeals Committee failed to make a recommendation on the Applicant’s

claim that the Respondent did not shift the Applicant's personal effects supporting this contention on the ground that Administrative Memorandum No. 04/84 provides that the Bank should reimburse staff members' expenses incurred up to the equivalent of their entitlements upon presentation of the requisite receipts and that the Bank had a practice of paying cash in lieu of shipping personal effects while he was still a staff member of the Bank, is that the contention is fallacious and untenable both in fact and in law because having worked in the Human Resources Management Department as a Benefits Assistant from 1985 to 1995, the Applicant was fully aware of the internal law of the Respondent in respect of time limits for filing claims and was therefore, fully conversant with Rule 4.12 of the Staff Rules on Retroactive of payments.

14. The Respondent further submitted that the Tribunal should take judicial notice of the fact that a staff member or "member of staff" as defined in Article 11(1)(ii) of the Statute of the Tribunal includes a former staff member and should reject the Applicant's claim that Rule 4.12 could not have applied to him as it was meant to apply to staff members and not former staff such as him as untenable. Alternatively, the Respondent submitted that "... if the Applicant truly considers so vital a provision of the internal law of the Respondent not to apply to the Applicant in he mistaken guise that he is a former staff member, then he has no cause of action for which relief can be sought from this Tribunal under its Statute, since the Applicant will by his own admission lack *locus standi*."
15. According to the Respondent the Tribunal should take due notice that the Respondent's internal law is clear on the modalities for entertaining the types of benefits which the Applicant is alleging in his application that he is entitled to as it places the onus on the Applicant to have filed a claim within one year of his departure from the Respondent's services or at the latest after the Staff Appeals Committee's recommendations in Appeal No. 040 of 13 December 1996. In the premises, the Respondent submitted that the issue of air tickets to the Applicant on 6 August 1999 as well as the request to process the shipment of the Applicant's personal effects on 21 July 1999 was a mere gesture of goodwill and social benefit as there was no longer any legal duty, in 1999 on the Respondent to grant the Applicant any of these benefits and furthermore the Applicant failed to adduce any rule of law or jurisprudence that would have legally bound the Respondent to do so. And this was, according to the Respondent, the finding of the Staff Appeals Committee that the Applicant failed to follow up on these benefits in accordance with the provisions of the Respondent's internal law. "Thus the Tribunal should rule specifically that since the Applicant had not exercised his right to claim the air tickets for his repatriation more than one year after his termination from Respondent's service, his entitlement to the said tickets as well as to the shipment of his personal effects had become time barred by virtue of the statute of limitation in Rule 4.12 of the Staff Rules."

16. In respect of Applicant's contentions concerning his claim of a cash payment in lieu of the reimbursement that the Respondent should have made to the supplier for his repatriation, air tickets and the shipment of his personal effects, the Respondent submitted that the legal bases on which such claims are founded were tenuous and relied on the dictum of the World Bank Administrative Tribunal in the case of Gregorio, WBAT Reports, 1983, Decision No. 14 paragraph 57 at p. 27 in which, in interpreting a provision in the World Bank's Personnel Manual Statement regarding the conditions for a former staff member's eligibility for a resettlement allowance, it said:

"The Tribunal agrees as well with the Bank's assertion that his PMS does not contemplate a cash payment in lieu of actual resettlement expenses. This is compelled not only the explicit language (...) but also the very specific provisions in PM5 6.05 that deal with such matters as travel, shipment, import duties, insurance and attendant Bank procedures." Consequently, the Respondent submitted that: "... mutatis mutandis, Rule 91.12 of the Respondent's Staff Rules, which is the successor provision to Staff Rule 8.15 of the 1969 Staff Rules and Administrative Instruction 04-84 of April 27, 1984, the rules and procedures of the Respondent are similar to PMS 6.05 of the World Bank as interpreted in the dictum above." The Respondent cited, in his submission, Gregorio not as authority for the fact that the Applicant's dependant spouse is not entitled to a repatriation ticket but as persuasive authority for the fact that the Applicant is not entitled to a cash payment in lieu in any of the benefits he claims. Accordingly, the Respondent urged the Tribunal to hold that under the internal law of the Respondent both as it existed at the time of the Applicant's summary dismissal and as it exists now, there is no option for the Respondent to make a cash payment to a staff member or former staff member in lieu of the benefits which are the subject matter of this application.

17. The Respondent further submitted that each separation exercise for its staff is subject to terms agreed upon with the staff members being separated and these agreed terms do not generally derogate from the legal principle that shipment of personal effects is a benefit which is granted to a former staff member to enable such staff member relocate his/her personal effects from his/her last duty station. Thus in keeping with these principles the Respondent often agrees with former staff members who have either been separated from service voluntarily (retirement) or in voluntarily (agreed separation), that repatriation air tickets and shipment of personal effects can be converted to off-set, indebtedness to the Respondent, which cannot otherwise be met. The case of the Applicant, according to the Respondent is distinguishable from the usual cases in which the Respondent converts, not pays, air tickets and the shipment of personal effects into cash.
18. The Respondent finally submitted on this point, that in any event, it would not be in accordance with Rule XV(6) of the Tribunal's Rules of Procedure for the list

submitted by the Applicant as annexure 4 to his Reply in corroboration of Applicant's allegation of previous cash payments made by the Respondent in lieu of actual resettlement expenses, to be admitted in evidence as that Rule requires the Tribunal to disregard any evidence, which is irrelevant, frivolous or lacking in probative value. The Respondent contended that the list in question is lacking in probative value as there is no evidence that it emanated from an official or credible source.

19. Furthermore, the Applicant failed to show that the list was in the Respondent's possession and custody and it was requested and obtained from the Respondent. Such failure according to the Respondent shows that "the list is of necessity tainted, and thus lacking in probative value, no matter how relevant it might be to the Applicant's case. There is another even more overriding reason for which the Respondent believes that, from an ethical standpoint, the

Tribunal should not countenance the production of this type of evidence. This is because its production shows from the fact that the Applicant was a Benefits Clerk while in the employment of the Respondent. In that capacity he might have illegally compiled such a list contrary to the provisions of Regulation 3.6 of the Respondent's Staff Regulations."

20. The Respondent submitted that Regulation 3.6 provides in pertinent part that staff members must exercise the utmost discretion with regard to all matters relating to the activities of the Respondent both while such staff members are staff members and after the services of such members with the Respondent have ended as the Regulation enjoins former staff members from disclosing any unpublished information known to them by association of their former employment with the Respondent, as well as to refrain from using such information to private advantage without the prior authorisation of the Respondent's specifically designated officers. Therefore, if the challenged list "was reproduced from the Applicant's memory then its use in evidence directly infringes the duties imposed on the Applicant by Regulation 3.6 and the Tribunal should not only, not give any weight to it, but must enjoin the Applicant to respect the legal and ethical obligation that is imposed on him by Regulation 3.6".

21. Relating to the Applicant's contention that the Respondent should be required to pay for a repatriation ticket for his wife because even if she is still an active staff member of the Respondent, she is not an internationally recruited staff member and therefore could have benefited from a repatriation ticket derivatively from the Applicant's status, the Respondent argued that this contention was fallacious and could not be supported by the Administrative Memorandum No 03-84 concerning Dependency Allowance issued by the President on 27 April 1984 as it has been superseded by Executive Instruction No E 1005/91 and here is no provision of that instrument that requires the Respondent to pay for repatriation tickets. In the

circumstances, the Applicant's contention and argument concerning his spouse's right to a repatriation air ticket has no legal foundation or, at the very least, are premised on a mistaken legal foundation, according to the Respondent.

22. Furthermore, according to the Respondent, there is no rule either in any of the Respondent's internal law or in international administrative law and practice that requires the Respondent to issue repatriation tickets to one of its staff members who is still in active employment.
23. It would be unlawful and improper for the Respondent to issue repatriation tickets to a staff member who is not departing its service. The Respondent prayed that this claim be dismissed as frivolous and without further consideration for, even if she were to retire from the Respondent's employment today, she would not be entitled to repatriation tickets because she is not an internationally recruited staff member under the relevant rules and regulations of the Bank. The fact that she used to be entitled to tickets for home leave when the Applicant was in the employment of the Respondent was a benefit derived from her husband's status, but one which she lost once the Applicant's services were terminated and she remained in the employment of the Bank as a locally-recruited staff member.
24. Regarding the Applicant's contention that the Tribunal should award him damages in the amount of 93.962.535 FCFA representing 53 months' salary for being stranded in the Cote d'Ivoire as well as legal costs in the amount of 1,675,000 FCFA, the Respondent submitted that the Applicant provided no evidence of how the damages were computed nor did he show why the Respondent is responsible for him to be stranded in Cote d'Ivoire for 53 months.
25. In the final analysis, the Respondent submitted that the Tribunal should take judicial notice of all the evidence adduced in the matter that shows the lack of the Applicant's understanding of the Respondent's internal law and rule, like the Staff Appeals Committee recommended, that the Applicant's cause of action is frivolous and lacking in merit because the evidence submitted by the Applicant in the form of documents on the letterhead of Ets. Omega, from which a reasonable inference can be drawn that the Applicant has never had any intention to relocate from Cote d'Ivoire following his summary dismissal from the Bank, which inference would be inconsistent with the purpose of repatriation ticket and the shipment of personal effects as can be inferred from Rule 91-12 of the Respondent's Staff Rules and its predecessor instrument.
26. It is therefore, according to the Respondent, "inimical to the Applicant's claim and consequently, with the Tribunal's right to award damages in deserving cases under its statute and Rules of Procedure".

**VII RESPONDENT'S FINAL PRAYER**

27. In the premises, the Respondent prayed for the Application to be dismissed and to award it such reasonable damages as may be assessed in accordance with Article X(1)(a) of the Tribunal's Statute.

**VIII FINDINGS OF FACT AND THE LAW**

28. Having studied the facts advanced and having regard to the applicable internal law, this matter can be disposed with on the basis of one issue raised by the Respondent in its Rejoinder namely, that Applicant's entitlement to the tickets as well as the shipment of his personal effects has become time barred by virtue of the Statute of limitation in Rule 4.12 (ii) of the Staff Rules of the ADB 1969, which, in part reads, as follows : "Retroactivity of payments.. A staff member who has not received an allowance, grant or other payment from the Bank to which he is entitled, shall not receive such allowance, grant or other payment unless he has made a claim in writing"

(i).....

(ii)..... within one year following the date on which the initial payment would have fallen due".

29. Unlike the Staff Rules of the Bank of 1969 which were applicable at the relevant time, the April 1999 Staff Regulations and the present Staff Rules of October 2000 define "Staff member" as "..... an officer or other regular employee of the Bank appointed by the President under these Regulations, and shall not include a consultant or expert, unless otherwise provided in the terms and conditions of his employment, "and it is in that spirit that the Applicant, pursuant to the provisions of article II (i) (ii) of the statute of the Administrative Tribunal, of 1998 read with those of Article III thereof, that the Applicant as a "Staff member" albeit "former Staff member" was entitled to lodge the application with this Tribunal. Article II (I) (ii) reads as follows: "For the purposes of this Statute, unless the context otherwise provides, requires or permits, the following expressions shall have the meanings ascribed thereto below:

(i) .....

(ii) "member of the staff "means any person whose current or former letter of appointment or similar instrument provides that he shall be a member of the staff of the Bank, any person who is entitled to claim upon a right of a staff member as a personal representative or successor in interest by reason of the staff member's death and any person designated or otherwise entitled to receive a payment under any provision o the Staff Retirement Plan", and Article III (I) provides that "The Tribunal shall be competent to hear and pass judgment upon ay application by a member of the staff of the Bank contesting an administrative decision for non-observance of the contract of employment or the terms of appointment of such staff

member”. Incidentally, it is clear from Article II (I) (ii) that the meaning of “staff member” is extended to third parties with an interest arising out of the rights of the Respondent’s employee or to his or her agent.

30. In the premises, it is by virtue of the provisions and consequent upon the status of staff member of the above cited instrument accorded to him by a former letter of appointment that the Applicant litigated against the Respondent’s.
31. Therefore, the Applicant’s contention is self-defeating and fallacious because the reason for the Tribunal’s competence to be seized with the application is pursuant to the provisions of Article II (i) (ii) by virtue of which the Applicant is a person whose former letter of appointment provided that he shall be a member of staff. Without which the Applicant would have had no locus standi before the Tribunal. It is by virtue of that status accorded him as a former member of staff of the Bank that he was entitled to assert any claims relating to termination benefits before the Tribunal. Therefore, his legal status as a “staff member” pertaining to his rights and liabilities survive or extend beyond his dismissal or termination of service.
32. It is common cause that the Applicant at the time of the termination of his appointment was the Administrative Assistant in charge of staff benefits and entitlements in the department of the bank from 1985 to 1995. Thus he knew or ought to have known the Respondent’s internal law in respect of time limits for filing benefit claims in accordance with Rule 4.12.
33. Given the lengthy period the Applicant occupied the post as Benefits Assistant only one reasonable inference can be drawn namely, that he was fully conversant with the provisions of Staff Rule 4.12 in that a staff member who has not received an allowance, grant or other payment from the Bank to which he is entitled, shall not receive such allowance grant or other payment unless he has made a claim in writing “..... within one year following the date on which the initial payment would have fallen due”.
34. It is important to note that the language of the sub-Rule 4.12 (ii) is peremptory (“shall”) which is indicative of the purposive nature thereof pertaining to the smooth and good governance of the Respondent’s business and therefore binding on all staff members.
35. The Applicant novel and ingenious contention that the provisions of sub Rule 4.12 (ii) are only applicable to staff member and not to him as he is a former or ex-staff member is too farfetched and untenable especially, when regard is had to the fact that he brought this application pursuant to the applicable provisions of the Respondent’s internal law, a fact which prevents him from choosing which laws are applicable to him and which are not. It is an absurdity for the Applicant

to repudiate those provisions of the Respondent's internal law which are prejudicial or disadvantageous to him but to enforce his rights and claims under other provisions favourable to him.

## **IX CONCLUSION**

36. The Tribunal is therefore satisfied that the Respondent has succeeded on a preponderance of probabilities, in fact, beyond a reasonable doubt, in proving that the Applicant is legally regarded as a "staff member" of the Respondent and is, for all intents and purposes covered by the Respondent's internal law and concludes that since the Applicant had not exercised his right to claim his entitlements and benefits within one year after his dismissal from Respondent's service his right to claim had become time barred by virtue of the limitation in Rule 4.12 of the Staff Rules. The Respondent's prayer that the Application be dismissed should therefore be allowed but no order is made in accordance with Article X (i) (a) of the Tribunal Statute as requested by the Respondent because the application was not frivolous or manifestly without foundation either in fact or existing law. Therefore, no sanction shall be imposed, for the Applicant's conduct or act was in good faith in reliance upon an erroneous interpretation of his legal status.
37. For the foregoing reasons, it is clear that the cause of action upon which the Applicant's claims are premised is unfounded in law due his own making in that he only contacted the Respondent on 5 May 1999 to request the payment of the termination benefits due to him. There was a lengthy delay of more than four (4) years since the termination of his services on 17 March 1995 or since the Staff Appeals Committee's recommendations on 13 December 1995. During which period the Applicant failed or neglected to claim or demand his benefits or entitlements payment, nor did he enquire about any payment due to him until May 1999. Moreover, no acceptable or reasonable explanation for the lengthy delay has been advanced. The cause of action and all incidental claims there-aneant have prescribe due to the effluxion of time in accordance with the Respondent's internal law and need no further attention because, the relationship between the Applicant and Respondent was a purely contractual one governed by the Respondent's internal law and subject to international administrative law. Therefore the Applicant is precluded by the extinctive nature of the prescription clause in the Respondent's law to proceed with the claims against the Respondent.

