

**ADMINISTRATIVE TRIBUNAL
OF THE AFRICAN DEVELOPMENT BANK**

QUORUM:	Professor Maurice GLELE AHANHANZO	President
	Justice Lombe CHIBESAKUNDA	Vice-President
	Professor Christian TOMUSCHAT	Member
	Professor Yadh BEN ACHOUR	Member

APPLICATION N° 2004/04

Mrs. Kathy Dehlu MHANGO, Applicant
African Development Bank, Respondent

Judgment of the Tribunal delivered on 1 December 2006

I. THE FACTS

1. The Applicant, Kathy Dehlu MHANGO, is the wife (second marriage) of the late Kapizgapizga H. M. MHANGO who worked in the Bank as a principal health engineer from 27 December 1982 until his death on 13 October 1996. Mr. MHANGO, first married to Susan V. MTAWALI as from 1973, divorced her (hereinafter, she will be designated as Susan MTAWALI) at some date before marrying Kathy Dehlu TOWEH on 1 April 1989. The deceased had indicated to the Bank in writing (letter of 30 October 1990) that the divorce took place in February 1989 while documentary evidence placed before the Tribunal (register of the Mlowe Traditional Court, Malawi) shows that the divorce proceedings actually took place on 14 November 1986.
2. The letter of 30 October 1990 was duly taken note of by the Bank. The deceased explained in a subsequent letter that it was not easy to receive a divorce certificate regarding divorce proceedings that had taken place before a traditional local court. Nonetheless, the Bank urged him to submit the relevant certificate within three months. There is no indication in the personnel file that this request was complied with. In the following years until the death of Mr. MHANGO, Kathy Dehlu MHANGO was consistently treated as his wife in all matters having financial implications: In particular, a prepaid air ticket was prepared for her to enable her to fly to South Africa where the death had occurred.
3. Mr. MHANGO's first marriage produced two girls, namely Wongani Rachel MHANGO and Latoya Korzga MHANGO. According to a certificate of marriage, issued by the High Court of Malawi in Blantyre and submitted to the Tribunal by the Applicant, the first wife married again, after her divorce, on 9 February 1990 a Mr. Senator K. KONDOWE.
4. A son, Mbulunji Dwanyen MHANGO, was born on 30 October 1991 to the union of Kapizgapizga M. H. MHANGO and Kathy Dehlu MHANGO.
5. Divergent views arose between the Applicant and the Bank with regard to the settlement of the entitlements which are payable to the family members of a deceased staff.
6. On 18 March 1985, Mr. MHANGO had filled a form as required by the Staff Rules regarding the insurance scheme which forms part of the financial regime applicable to the employees of the Bank (at that time Rule 5.16, now Rule 81.07). In this form, he

designated his then spouse Susan MHANGO and his two daughters as the beneficiaries of the relevant insurance benefits. However, after contracting his new marriage, Mr. MHANGO designated as recipient of any possible residual settlement deriving from the Staff Retirement Plan (Article 5.10) his new wife (40%) and his daughter Wongani Rachel MHANGO (60%). This declaration of 9 January 1990 bore the mention: "I hereby cancel and revoke any previous designation." Similarly, the letter of 30 October 1990, already referred to, requested the Bank to amend his list of dependants with regard to any payment connected to his salary by deleting the name of his divorced wife and adding the name of his new wife.

7. A few days after Mr. MHANGO had passed away, the Applicant handed over the certified death and marriage certificates of Mr. MHANGO to Mr. A.D. MTEGHA, staff member of the Bank, who represented the Bank at the funeral. These documents were given to the competent Bank services on 31 October 1996 (see Inter-office memorandum of 31 October 1996). The Applicant believed that, thereby, she had implicitly initiated the relevant proceedings for the payment of all relevant financial entitlements.
8. However, the Bank remained passive during the entire year 1997. The files do not reveal any action to process the claims raised (implicitly) by the Applicant. The Applicant was not contacted. No form was sent to her requesting her to specify her demands.
9. On 16 January 1998, the first wife wrote a letter to the Bank, presenting herself as Susan V.A. MHANGO, inquiring "if I and my children have any benefits from the estate of my late husband Humphrey Kapizgapizga Mhango who passed away in October 1996". She enclosed also photocopies of her marriage certificate of 1973 and her current passport (issued on 3 October 1994), which showed her name as "Mrs. Susan Vyatowa Audrey Mhango". In a letter dated 16 February 1998, signed by J.P. Ehounou, administrator of the Staff Retirement Plan, the Bank replied:

*"Thank you for your letter of enquiry of 16 January, 1998 concerning benefits from the estate of your late husband **Mr. Martin Kapizgapizga Mhango**.*

We wish to inform you that with regard to pension's benefits, you are required to complete the forms hereto attached and return them to Staff Retirement Plan of the African Development Bank. The legalized copies of the following documents will also be necessary:

- *Photocopies of all pages of your passport;*
- *Marriage Certificate (already received);*
- *Photocopies of Birth Certificates of your two daughters;*
- *Certificate of legal guardianship of your daughters.*

Upon receipt of these documents, the Staff Retirement Plan will process payment of the rights of the statutory beneficiaries of your late husband Mr. M. K. Mhango, former staff member of the Bank."

The first wife, again using the name Susan A.V. MHANGO, sent indeed a (partly) filled form "Application for payment of death benefit for surviving spouse", signed by her on 15 April 1998, to the Bank.

10. The Bank contends that it sent a letter to the Applicant regarding the processing of her claims on 2 February 1998 (letter of Mr. Ehounou of 27 October 1998), alleging that the Applicant failed to respond to that letter. The files do not corroborate the existence of that letter.

11. On her part, the Applicant took the initiative on 3 February 1998 by sending “Letters of Administration” to the Bank which showed that she and her stepdaughter Wongani Rachel MHANGO had been appointed administratrixes of the estate of the deceased. Thereupon (8 February 1998), Mr. Ehounou wrote a letter to the Applicant in the following terms:

“We acknowledge receipt of various documents forwarded to us by Mr. Mthega and related to the above subject.

*Please be informed that on the forms for payment of the death benefits for surviving spouse and child benefits, you did not indicate the address and account number of your bank. The certificate of legal guardianship for your son **Mbulunji Dwanyen Mhango**, was also not included.*

The Staff Retirement Plan Unit will process payments of the rights to the statutory beneficiaries of your late husband Mr. M. K. Mhango, upon receipt of the complete and updated documents as indicated above.”

12. The Applicant filled in the forms which had been transmitted to her, sending them to the Bank by a letter of 8 April 1998. In October 1998 she learned that the first wife had also laid claim to the statutory benefits. By a letter of 5 November 1998, she transmitted a copy of the divorce certificate of 11 November 1986, issued by the Chairman of the Mlowe Traditional Court on 9 August 1991. Susan MTAWALI contested the authenticity of that document in a letter of 8 April 1999, contending that it had been obtained by “fraudulent means”.
13. With regard to the pension rights (surviving spouse benefits) accruing from the Staff Retirement Plan, the Bank, after numerous exchange of correspondence, informed the Applicant by letter dated 23 July 1999 that it had transferred the sum of USD 176 292.77 to one of her accounts on 28 April 1999 and 31 May 1999 respectively. The Applicant was not satisfied with that payment *per se*. In particular, she requested the payment of interest with effect from the date of death of her husband up to the date of official notification of payment of the principal. Moreover, she requested a detailed breakdown of the calculation of the above amount. She had been informed by an e-mail message of 22 January 2001 that the amount had been calculated on the basis of the annual pension (five times) which her late husband would have received on the date of his death.
14. Regarding the Applicant's son, Mbulunji Dwanyen MHANGO, the Bank requested the Applicant continually, starting with Mr. Ehounou’s letter of 8 February 1998 to an e-mail by Mrs. De Leers of 22 January 2001, to provide a certificate of legal guardianship before any payment could be made. Although the Applicant contested this requirement, requesting an explanation, the Bank never sought to justify its demand. In an internal Audit report dated 22 July 1999 (point 6.1.6), it had been stated that such requirement could not be upheld. However, the Bank changed its attitude not earlier than October 2001 when in an e-mail to the Applicant (Mrs. DE LEERS, 1 October 2001) it declared itself ready to make the required payment without any preconditions. However, it is currently prevented from so doing because the Applicant has refrained from indicating any bank account to which the amount concerned, including 5% compound interest, could be transferred.
15. Concerning insurance entitlements accruing from the Bank's life insurance policy of which all staff under the permanent career are beneficiaries, the Bank has refused to make any payments to the Applicant, given the fact that the original designation has never been withdrawn or amended. Accordingly, in December 2000 the insurance benefits were paid to Susan MTAWALI and Latoya Korzga MHANGO. It is unclear

whether Mongani Rachel MHANGO has accepted the payment, which she had for a long time refused to do.

16. The Applicant is of the view that some Bank staff interfered unduly, thus causing the delay recorded in processing her late husband's papers. The Bank rejected these accusations. Three investigations were carried out by the Bank to clarify any possible wrongdoing, one internal investigation by two officers of CLEG and CHRM (dated 21 December 1998), another one by the Internal Audit Department and a third one by an external firm (Deloitte & Touche). It is clear from the file that a Bank employee who was in charge of the file of the death benefits, tried to influence the Applicant's stepdaughter Wongani Rachel MHANGO to withdraw the powers of attorney she had given to her stepmother. It also turned out that the same person informed another employee of the Bank, a close friend of the deceased and his first wife, about the entitlements accruing to the surviving family members. Thus, legitimate fears were entertained by the Applicant that the processing of the claims might have become subject to manipulation.
17. On 24 August 2001, the Applicant lodged an appeal with the Staff Appeals Committee which issued its conclusions and recommendations on 10 February 2004 and forwarded them to the President of the Bank on 12 February 2004. In sum, the Appeals Committee concluded that the decision not to accede to the Applicant's request to be paid the insurance entitlements be maintained.
18. By letter dated 18 May 2004, the Bank accepted those recommendations and forwarded a copy thereof to the Applicant. Meanwhile, Kathy MHANGO filed an Application before the Tribunal on 6 May 2004.

II. PROCEDURE

19. Pursuant to Article XIV (1) of the Rules of Procedure, the Bank filed a motion to dismiss the Application. It stated that:
 - The Applicant's step-daughter could not be a co-applicant since that would result in the introduction of a new application with a different content;
 - The letter of 23 July 1999 contains no more than a piece of information and had, in any event, been accepted by the Applicant. As such, it could not constitute an administrative decision as per Article III (1) of the Statute of the Tribunal. Moreover, the Appeals Committee lacked competence to decide on matters relating to the pension. Consequently, to meet the requirement of exhausting all Bank internal remedies, the Applicant should have filed a case before the Pension Appeals Committee.
 - The letter of 26 November 2000 to the Applicant's step-daughter was not an administrative decision affecting the Applicant that would empower the Applicant to contest the decision before the Administrative Tribunal.
20. During the 22 November 2005 hearing, the Applicant declared that she would not insist on joining her step-daughter as co-applicant. At the same time, the Respondent declared through its Legal Counsel that it would withdraw its motion to dismiss.
21. In the light of the declaration made by both parties, the Tribunal noted that the motion to dismiss raised by the Respondent was no longer applicable.
22. Therefore on 1 December 2005, the Tribunal pronounced the following judgment:

- “ 1. *The motion to dismiss raised by the Respondent is moot.*
2. *The Respondent shall present its Answer on the merits of the case within thirty days of delivery of this decision.*
3. *The judgment on the merits of the case shall rule on the expenses incurred at the stage of the procedure concluded by the present decision.”*

23. The proceedings continued at the session of the Tribunal in May 2006. On 3 May 2006, the Tribunal decided that the three reports covering the investigations carried out by the Bank on the alleged irregularities in the processing of the legal entitlements derived from the death of Mr. MHANGO would be taken into account by it but could not be made accessible to the Applicant. In accordance with Article IX (1) of the Statute, the Respondent had submitted that the introduction of that evidence would “hinder the operation of the Bank because of the secret or confidential nature of the document”.

24. On 11 May 2006, the Tribunal issued the following order:

- “ 1. *The case shall continue before the Tribunal and the proceedings pursued.*
2. *Pursuant to Rule XX (3) of the Rules of Procedure, the Bank shall put at the disposal of the Tribunal the original dossiers containing all the documents related to this case.*
3. *The Bank, in cooperation with the Malawian authorities, shall conduct an inquiry to determine whether, at the time of Mr. Kapizgapizga Mhango’s death:*
- a) *A valid divorce had dissolved the marriage between the deceased and his first spouse who, at the time of her first marriage, bore the name Susan Mtawali.*
- b) *The first wife had remarried and bore the family name K(h)ondowe. The outcome of that investigation should be forwarded to the Tribunal within three months of this decision.”*

25. The Bank submitted the report on the inquiry carried out on its behalf by legal counsel in Malawi (Savjani & Co., Blantyre) during the Tribunal’s session in November 2006. The report concludes that indeed the marriage between the deceased and Susan was validly dissolved by a decision of the Mlowe Traditional Court on 14 November 1986 (not on 11 November as shown in the divorce certificate submitted by the Applicant). At a hearing on 21 November 2006, the results of the inquiry were discussed.

III. ARGUMENTS BY THE PARTIES ON THE MERITS

THE APPLICANT

26. The Applicant argues that the first wife of the deceased should never have been taken into consideration as a potential beneficiary of the entitlements resulting from his death as a staff member of the Bank on 13 October 1996. The long delay in the payment of her surviving spouse benefits, the outstanding payment of her son’s pension benefits and the decision of the Bank to recognize the former wife as a beneficiary of the insurance benefits were a result of improper handling of her deceased husband’s file within the Bank.

27. The Applicant points out that there could be no serious doubt about her being the lawful wife of the deceased at the time of his death. The different dates of divorce that have appeared in no way nullify the fact that the divorce had indeed taken place before the new marriage was celebrated. That is obvious from the letter sent to the Bank on 26 October 1998 by the elder daughter, Wongani, attesting to the fact that her parents were divorced, and from the writings of the deceased himself to the Bank on several occasions during his lifetime which the Respondent has annexed to its answer to the substantive issues. Eventually, the Bank concluded that the Applicant was the surviving spouse. There is no justification for the delay in reaching that conclusion.
28. The Applicant maintains that there is a close relationship between the pension and the insurance benefits. Therefore, the Bank contradicts itself when it:
- States on the one hand that it can neither review nor overrule the designation made by the deceased,
 - but reintroduces on the other hand the first wife, Susan MTAWALI, into the file of the deceased as the surviving spouse, taking no account of the series of correspondence from the deceased on his divorce and his requests that his file be amended.
29. The Applicant points out that the Bank, despite its affirmations, acted imprudently and carelessly. The deceased had clearly requested in his memorandum dated 30 October 1990 and referring to his personnel file Number 1225, which includes both the pension and the insurance, that the said file be amended.
- Indeed, the deceased mentioned his divorce and remarriage; he stated the name of his new wife (Kathy is mentioned in the file as “his present wife”) and requested that his file be amended “accordingly” (“Kindly amend the records on my file accordingly”). He requested that his new situation be reflected in the file.
30. In connection with the pension entitlements, the Applicant points out that she disagrees with the Bank's view according to which there are no questions outstanding over the issue. On the contrary, she maintains that there are these questions pending:
- The unjust retention of the entitlements of the orphan boy. for a long time, the Bank subjected that payment to the production of a certificate of legal guardianship by the Applicant, notwithstanding the fact that she is the mother of the child and the wife of the deceased;
 - The payment of compensatory interest by the Bank which unduly retained the child's entitlement. Even if the Bank no longer requested the certificate of legal guardianship and was ready to pay, the fact remains that it unduly retained that payment several years after the death of the child's father;
 - The need to shed light on the whole entitlements dossier and its breakdown.
31. The Applicant maintains that there are fundamental questions for which she requires an answer, in particular those concerning the insurance benefits:
- Her son's name was included nowhere on the policy. She herself received nothing. In contrast, the Bank paid part of the insurance benefits to which she and her son were entitled to “Susan KONDOWE”, the former wife of the deceased.

- Her fight for justice in this case aims at granting true beneficiaries (surviving spouse and the child(ren) of deceased staff) the right to which they are entitled.
- Her suspicion was justified, given the imprudent way in which the Bank treated the matter concerning her and her son.

32. Lastly, the Applicant points out that transparency requires that all parties should have access to reports on the case or all information regarding the inheritance, namely the three investigative reports established by:

- The Legal Department;
- The Internal Audit Department;
- The Deloitte & Touche Consulting Firm.

She requests access to those reports in her capacity not only as the surviving spouse but also as the Administratrix of the estate of the deceased.

THE RESPONDENT

33. The Respondent acknowledges that it does not contest some of the facts in the case, among which: the fact that the deceased informed it on several occasions about his marriage to Susan MTAWALI, subsequently about his divorce with her and his new marriage to the Applicant.

34. Neither does the Respondent contest the fact that the entitlement due to the son of the deceased (Mbulunji D. MHANGO) as required under the Staff Retirement Plan, remains unpaid.

35. However, the Respondent insists on a number of key issues:

- The first spouse maintains that she had not been divorced from the deceased at the time of his death and that the divorce certificate was obtained through fraudulent means.
- The Applicant and the deceased before his death had stated that there had indeed been a divorce. However, the dates of the divorce presented differ:
 - * The deceased stated that the divorce was pronounced in February 1989.
 - * The Applicant produced a certificate of divorce pronounced on 11 November 1986.

36. The Respondent maintains that the decision taken concerning the entitlements of the deceased with regard to insurance benefits complied with the rules. Hence, it considers itself free of all commitments after paying those benefits to the beneficiaries named by the deceased and the surviving spouse's entitlements to the Applicant.

37. Since March 1985, while actively in service, the deceased had ample time to amend the list of beneficiaries. Either deliberately or by negligence, he did not do so before his death. Moreover, the Applicant's allegations according to which the deceased did modify the list of beneficiaries, only for that list to be unduly tampered with by the Respondent's staff, has not been matched with proof.

38. The Respondent acknowledges that when it became aware of improper conduct by some staff members in the Respondent's communications with Wongani, it took appropriate measures. However, all enquiries conducted showed no proof whatsoever that the staff

member involved in any way intervened to modify the list of beneficiaries after the designation made in the March 1985 list.

39. At various stages, the Respondent took into account the reservations made by the Applicant and took precautions prior to making any payment. It was only after due inquiry conducted within and without by an external consulting firm that the Respondent decided to pay the insurance benefits of the deceased, based on the 18 March 1985 designation. Thus, USD 295 290.76 was shared between Susan (the former wife) and her two children – Wongani and Khozga.
40. Regarding the pension entitlements, the Applicant has received the sum of USD 176 292.77 in April and May 1999. The lapse of time, nearly three years since the death of the deceased, was necessary since it enabled the Respondent to take all precautions prior to making any payment. The Respondent did not unduly withhold the entitlements. It only awaited the conclusion of necessary investigations. Consequently, the Respondent holds that the Applicant is not entitled to interests with effect from the date on which she filed her application for payment of the said entitlement.
41. Lastly, the Respondent acknowledges and accepts the request concerning Mbulunji - the son of the Applicant and the deceased - and is ready to make payment as it stated in the course of discussions during the eleventh session. The Applicant has not forwarded the details of the bank account to which the payment would be made.
42. Furthermore, the Applicant has not given the necessary information that would enable the implementation of the recommendations of the Appeals Committee with regard to the personal effects of the deceased, transport allowance and other expenses.

IV. REQUESTS BY THE PARTIES

THE APPLICANT

43. The Applicant seeks the following relief:
 1. Immediate payment by ADB of all remaining Pension benefits;
 2. Immediate payment of interests on all pension benefits, at the prevailing bank lending rate, from 13 October 1996 to the date of official notification of payments;
 3. General damages and reimbursement of the expenses incurred by the co-administrators in communication with the ADB including travel, accommodation and lodging costs in liaising with the ADB offices in Côte d'Ivoire and Tunisia;
 4. Maximum damages for delayed payment of the benefits and for the emotional stress and trauma suffered;
 5. Provide record of the clearing of the deceased's office after his death and return all personal effects taken out;
 6. Investigate transparently the Insurance case and pay the deceased's lawful beneficiaries at the time of his death in 1996: Mrs. Kathy D. Mhango – Wife, Ms. Wongani R. Mhango – daughter – Ms. Korzga L. Mhango – daughter, and Mbulunji D. Mhango – son;

7. Investigate transparently the Insurance case, especially in light of the gross negligence of the ADB in the case of the Pension, and the impartiality of Helen Nestor who was the Bank staff handling the processing of all the deceased's death benefits at the time of the event's;
8. Investigate and establish motive(s) for the undue, unsolicited and malicious interference of Bank staff Helen Nestor and Lillian Sangala in our family matters, especially in relation to their coercing Applicant's stepdaughter to disclaim her;
9. Investigate the complicity of Bank staff Helen Nestor and Lillian Sangala in relation to the quick and sly acceptance of the fraudulent claims of the deceased's former wife;
10. Provide copy of Insurance Policy, especially pertaining to marriage-divorce-remarriage, the importance of indicating the relationship of a beneficiary on a beneficiary form, regulations pertaining to the inclusion of child born to, or adopted by, the insured after his subscription;
11. Establish intent of the deceased where the circumstances surrounding the processing and payment benefits is dubious;
12. Provide copies of documents relating to the deceased's dependants and beneficiaries in the Bank, including all related correspondences from the deceased to the Bank;
13. Provide copies of all three investigations carried out on the case: Legal Department, Internal Audit Department, Deloitte & Touche;
14. Officially inform the Administrators of the deceased's estate before any disbursement is made.

THE RESPONDENT

44. The Respondent maintains that it fully discharged its legal obligations with regard to the Applicant. Consequently, it requests the Tribunal to dismiss Application 2004/04 as lacking merit.

V. THE LAW

1. The Surviving Spouse benefits

45. It is uncontested that the Applicant received the pension benefits which were owed to her as the surviving spouse of the deceased (transfer of USD 176,292.77, effected in April and May 1999). According to information received from the Respondent, in calculating those benefits it applied the deceased's projected date of retirement at the age of sixty (1989 to 2007, i.e. 17.665 years) instead of the actual duration of the deceased's participation in the Staff Retirement Plan (1989 to 1996, i.e. 6.79 years). If the actual duration method had been applied in the case, as currently practiced, the surviving spouse benefit would have amounted to UA 40,030.40 equivalent to USD 54,354.87. Consequently, the Applicant cannot claim any further payment under this head. It remains open, however, whether interest must be added to the amount paid. According to the Staff Retirement Plan, interest can be claimed for outstanding payments only if "the responsibility for the non-payment of the benefit clearly falls on the Plan" (Section 5.16). Since the Respondent is of the view that objective difficulties, namely the claims

raised by Susan MTAWALI, prevented it from making a final determination on the issues at an earlier date, it did not add any interest to the sum of USD 176,292.77.

46. The Tribunal finds that the Bank was remiss in discharging its responsibilities towards the Applicant. It had received the documents supporting the Applicant's entitlement to surviving spouse benefits on 31 October 1996. Nonetheless, no action was taken by it to initiate the requisite proceedings. The competent officers waited until Susan MTAWALI raised her claims in January 1998. Even then no action was taken to clarify the legal position as soon as possible. Susan MTAWALI was provided with a form to claim pension benefits as was the Applicant almost at the same time. It is only in the autumn of 1998, when the Applicant, by a letter of 29 October 1998, complained about the slow pace of the proceedings and about alleged tampering of the file, that actual steps were taken by the Bank to clarify her legal entitlement to pension benefits. In April 1999, the Bank, based on an opinion of its Legal Department, came to the conclusion that indeed the requests of Susan MTAWALI had to be dismissed.
47. The Tribunal holds, accordingly, that interest should be paid to the Applicant for the period running from 1 December 1996 to 31 October 1998. These 23 months were lost in sheer inertia. On the other hand, the Bank cannot be charged with negligence for having proceeded to a full assessment of all the factual and legal elements of the case from November 1998 to April 1999. Although most of the available evidence supported the claims raised by the Applicant, the allegations made by Susan MTAWALI could not be rejected out of hand. Even an experienced consulting firm like Deloitte & Touche erred when, on the basis of a somewhat lightheaded examination of the available data in its report of 1 December 1999, it concluded that the Bank had been mistaken in paying the surviving spouse benefits to the Applicant.

2. The Child Benefits

48. Although in the past, until 1 October 2001, the Bank had requested a certificate of legal guardianship as a precondition for the payment of the child benefits in favour of the Applicant's son Mbulunji, it is since that time prepared to make the requisite payment. The Tribunal takes note of that willingness to pay. For that purpose it needs the indication, by the Applicant, of a bank account to which the amounts due could be transferred. The Applicant has, however, refused to advise the Bank accordingly, seemingly out of fear that accepting payment might be interpreted as forfeiting some of her rights. Consequently, the Tribunal notes that on this issue a dispute does not exist any longer. A legal dispute presupposes that one party makes a claim which the other party opposes. This is not the case here any longer. According to Article III (1) of its Statute, the Tribunal holds jurisdiction only with regard to disputes between the Bank and any of its staff members, if an administrative decision is "contested". In the present circumstances, the Applicant cannot contend that the Respondent does not comply with its duties. Accordingly, there is no need for the Tribunal to rule on the request to order the Bank that it pay the pension benefits on behalf of her son Mbulunji. This finding leaves open the question as to whether the Respondent is liable to pay damages to the Applicant on account of the delay caused by the requirement that a certificate of legal guardianship be submitted.

3. The Insurance Benefits

49. It is uncontested that the personnel file of the deceased contains a document, signed by him on 18 March 1985, in which he designated as the beneficiaries of the insurance benefits his former wife Susan MTAWALI and his two daughters. The Applicant has attempted to challenge the legal effects of that document. In fact, there may be good grounds to wonder about the inconsistency between the amendment of the list of

dependents (30 October 1990) and the instruction about any residual settlement (9 January 1990), on the one hand, both subsequent to the new marriage concluded by the deceased in 1989, and his maintaining the original designation of the beneficiaries of the insurance benefits. It may well be that the deceased was not aware of the fact that actual payments connected with the salary, pension entitlements and insurance benefits were three different elements. But the Tribunal cannot speculate about the motives lying behind the deceased's omission to revise the designation he had made back in 1985 when he was still married to his first wife. It must take note of the fact that no other designation could be found in the file. Nor is there any other evidence allowing the conclusion that the original designation was revised or revoked at a later date. Even if the designation of Susan MTAWALI could be deemed to have been revoked by implication, the result of such legal assessment would not favor the Applicant, but the deceased's two daughters who were named as beneficiaries. The Tribunal notes, lastly, that the three reports referred to above have not established that the irregularities to the detriment of the Applicant resulted in fraudulent removal of any documents from the file.

4. Damages

50. The Tribunal finds that the Bank did not act correctly in processing the Applicant's claims for the surviving spouse benefits. Although some time may be needed to commence the requisite proceedings, to wait for the whole year of 1997 without taking any operational step is utterly unjustifiable. However, the greatest stress was caused to the Applicant when the Bank, without informing her of a sudden competing claim by the former wife, accepted that claim at face value and encouraged Susan MTAWALI to specify her claim by providing her with the requisite form. It was clear from the file that the deceased had provided specific information about his divorce and about his remarriage. Given these circumstances, the competent services of the Respondent should have proceeded immediately to an in-depth inquiry. The claim by the former wife was all the more implausible since it was made one year and three months after the death of Mr. MHANGO. The investigations carried out by the Bank have confirmed that the Applicant could not trust the impartiality and objectivity of the staff tasked with handling the file. She had good reasons to believe that a conspiracy was going on intent on depriving her of her legal entitlements. This caused feelings of anguish and frustration.
51. Regarding the certificate of legal guardianship, which the Bank required without having any specific legal basis therefor, the Tribunal also finds that the delay in processing the demand of the Applicant is unacceptable. It is only in October 2001 that the Bank declared itself ready to pay the child benefits.
52. For the reasons set out above, the Tribunal grants the Applicant as compensation for moral damage an amount of USD 50.000.
53. As compensation for pecuniary damage, caused by the faulty handling of the administrative proceedings regarding the benefits accruing to her as a result of her husband's death, the Applicant claims an amount of USD 19.100 for the years 1998 and 1999. According to her explanations, the amount was required for air travel and visa, for a stay in Abidjan (two months in 1998, one month in 1999) as well as for telephone, fax, courier, stationary etc. The Tribunal notes that these claims are overstated. On an equitable basis, the Tribunal grants her an amount of USD 5,000 as damages.
54. Given the fact that the payment of her surviving spouse benefits was made in 1999, the Applicant cannot claim any compensation for the costs incurred in 2000, 2001 and 2002.

5. Personal Effects

55. The Appeals Committee recommended that the personal effects of the late Mr. MHANGO be returned to the Applicant. By letter of 18 May 2004, the Bank made known to the Applicant that it accepted that recommendation, requesting, however, instructions from her identifying the relevant personal items. No such instructions have been received by the Respondent. Accordingly, the Tribunal confines itself to urging the Bank to make all reasonable efforts with a view to finding out whether any personal items of the deceased Mr. Mhango can be retrieved in the premises of the Bank and to restore them to the Applicant.

6. Investigations

56. The Tribunal notes that the Bank has duly investigated the alleged irregularities in the handling of the Applicant's case. In fact, it has turned out that some irregularities did happen. The Tribunal has taken these findings into account in adjudicating the application. As it decided at its session in May 2006, the three reports cannot be made available to the Applicant.

7. Expenses

57. Lastly, the Applicant claims compensation for expenses incurred by her for pursuing her case before the Tribunal.
58. Regarding the expenses incurred by the Applicant in pursuing the matter before the Tribunal, the Applicant must first be reminded of the relevant provision governing compensation for costs. Pursuant to Article IX paragraph 4 of the Statute, the Tribunal may order, if it finds that an application is well-founded, that the reasonable costs, including legal fees and expenses of the applicant, "be totally or partially borne by the Bank". In the present case, the Tribunal takes into account that the major part of the requests of the Applicant has been dismissed. Additionally, the Tribunal notes again that the length of the stay in Tunisia – twice two weeks – can in no way be justified as being necessary for the pursuit of her case. Consequently, the Applicant can be reimbursed only for a small part of her expenses. On an equitable basis, the Tribunal grants her a global amount of USD 8,000.

VI. THE DECISION

59. For these reasons, the Tribunal decides:
1. The Bank shall pay interest on the amount of USD 176,292.77 paid to the Applicant as surviving spouse benefits, as specified in Section 5.16 of the Staff Retirement Plan, for the period from 1 December 1996 to 31 October 1998, at the rate applicable at the Bank on the day of the delivery of this judgment.
 2. There is no need to rule on the request of the Applicant for payment of child benefits.
 3. The request of the Applicant for payment of insurance benefits is dismissed.
 4. The Bank is ordered to pay the Applicant an amount of USD 50,000 as compensation for moral damage.

5. The Bank is ordered to pay the Applicant an amount of USD 5.000 as compensation for pecuniary damage.
6. The Bank is urged to make all reasonable efforts with a view to finding out whether any personal effects of the deceased Mr. MHANGO can be retrieved in the Bank premises and be restored to the Applicant.
7. The Bank shall pay to the Applicant an amount of USD 8,000 as partial compensation for the expenses incurred by her in pursuing her case before the Tribunal.
8. The other requests of the Applicant are dismissed.

Professor Maurice GLELE AHANHANZO

President

Albertine LIPOU MASSALA

Executive Secretary

THE APPLICANT

Mrs. Kathy MHANGO

COUNSEL FOR THE RESPONDENT

Mr. Dotse TSIKATA

Assisted by

Mrs. Alexa FLEISCHER