

**ADMINISTRATIVE TRIBUNAL
OF THE AFRICAN DEVELOPMENT BANK**

QUORUM:	Professor GLELE AHANHANZO	President
	Professor Christian TOMUSCHAT	Member
	Professor Yadh BEN ACHOUR	Member
	Judge Salihu Modibbo Alfa BELGORE	Member

APPLICATION No. 2006/05

Request for Revision of the Judgment delivered on 11 May 2006 by the Administrative Tribunal in Application No. 2004/10, Mr. K. K. vs. the African Development Bank

Judgment of the Tribunal delivered on 22 November 2007.

I. THE FACTS

1. On 11 May 2006, the Administrative Tribunal of the African Development Bank delivered judgment on Application No. 2004/10, filed by Mr. K. K.

The operative provisions of the judgment are as follows:

"The Tribunal decides to:

1. *Dismiss the Applicant's claims that the termination of his appointment was wrongful;*
 2. *Grant the Applicant's request in connection with the reimbursement of the medical expenses unduly deducted with effect from 10 July 2001;*
 3. *Dismiss the Applicant's claims seeking the inclusion of 16 days of accumulated leave;*
 4. *Award the Applicant the sum of two thousand United States dollars (USD 2 000) as legal costs."*
2. On 8 November 2006, the Applicant filed a Request for Revision of Judgment. He not only challenges the operative part of the judgment but also several areas of analysis of elements of the case by both the Respondent and the Tribunal, alleging unknown "facts unbecoming of the Bank", which could have influenced the judgment rendered on 11 May 2006, pursuant to Article XII (4) of the Statutes and Rule XXII of the Rules of Procedure of the Tribunal.
3. The Request for Revision was forwarded to the Respondent. The Respondent submitted its comments to the Tribunal on 25 January 2007.
4. Both parties having decided not to file a reply and a rejoinder, the proceedings are limited to a single exchange of views between the parties.

II. REASON FOR THE REQUEST FOR REVISION AND CLAIMS BY THE PARTIES

The Applicant

5. The Applicant maintains that he was “incorrectly presented”. He had the competence to exercise other functions, having joined the Bank as a documentalist/clerk in the Documentation Division under the General Secretariat. Only afterwards was he assigned to the Mail Unit as a clerk. He was even trained at the *Institut Supérieur Africain des Postes et Télécommunications* [Higher African Institute of Post and Telecommunications], and awarded a certificate equivalent to a high school diploma + 3.
6. The Applicant claims that after abolition, the Mail Unit was “resurrected” through the reassignment to it of several staff members already in the Bank’s service. The Applicant maintains that the Mail Service was in fact never abolished and that there had indeed been no sub-contracting. He gives the names of the staff members reassigned to positions which had been declared redundant. In reality, those positions were not abolished.
7. The Bank had published the list of staff members concerned by the abolition of positions within CADM Department, currently CGSP, prior to the relocation. The Applicant maintains that these staff members did not leave the Bank but remained in the same positions, which is proof of the arbitrary, unfair, fallacious and targeted nature of the position abolition exercise. The aforementioned list is attached as Annex 4 of the Applicant’s Request for Revision.
8. The Applicant further maintains that were these elements in the Tribunal’s possession, especially the list of staff still in service, it would have rendered justice, because these staff members hold positions declared redundant. Furthermore, the Applicant denies that the Bank really employed sub-contractors other than DHL, which was already present at the time of the restructuring.
9. Moreover, the Bank did not comply with its own texts, particularly Rule 611.06 (b). Indeed, the Applicant maintains that from statements by the former CHRM Director, he was not reassigned due to his lack of qualification to hold another position, but rather "due to the limited overall Bank staffing level approved by the Board of Directors."
10. Lastly, regarding the requested compensation for 16 days of unpaid leave, the Applicant states that the failure of the witness cited to appear considerably influenced the decision of the Judges. In his view, Messrs. Michel Fokoua and Louis Akpaka, as well as Mrs. Julienne Konate, were eyewitnesses and aware of the problem of accumulated leave. If the first two, dismissed at the same time as he, could not be present at the hearing, Mrs. Konate, who was frequently cited, should have been compelled to testify before the Tribunal. The reasons given by her and accepted by the Tribunal were not justified.
11. The Applicant asserts that if the said witness had been cited by the Bank, she, as well as the supervisors concerned, would have been constrained to testify. He holds his supervisors responsible for accumulating the leave days. The Bank did not oblige him to take the leave days. On the contrary, it prevented him from taking his leave for reasons of service. Therefore, he could not be penalized for not taking his leave.

12. All things considered, the Applicant claims that the Bank caused him damage that must be compensated.

The Respondent

13. The Respondent asserts that the request is inadmissible because the elements presented do not meet the requisite conditions for filing a request for revision, pursuant to Article XII of the Statute and Rule XXII of the Rules of Procedure of the Administrative Tribunal. The same elements, according to the Respondent, are not relevant or likely to call into question the judgment delivered by the Tribunal on 11 May 2006. Consequently, it prays the Tribunal to dismiss the Application outright.

14. To the Respondent, the request for revision is inadmissible, by virtue of Rule XXII (1) of the Rules of Procedure of the Tribunal, which requires:

- The discovery of a fact or document which by its nature might have had a decisive influence on the judgment of the Tribunal;
- At the time of judgment, that fact was unknown to the Tribunal and to the party to the case requesting the revision;
- That party was not responsible for such ignorance.

15. Lastly, Article XII (4) of the Statute stipulates that “the request for revision shall contain the information necessary to show that the afore-mentioned conditions have been satisfied. It shall be accompanied by the original or a copy of all supporting documents.”

16. The Respondent asserts that the alleged facts do not meet any of the conditions stipulated under Article XII (4) of the Statute. These facts pertain to:

- i) Misrepresentation of facts regarding the duties of the Applicant at the time of his recruitment;
- ii) The Applicant’s request for full payment of his entitlements and compensation, not merely a review of the aforementioned entitlements;
- iii) The fact that the Applicant never requested to be reinstated in his position until retirement;
- iv) The list of the four staff members allegedly reassigned to the Mail Unit and the thirteen staff members concerned by the abolition of positions, but still in the Bank’s service.

17. According to the Respondent, these lists were prepared by the Applicant himself and cannot be considered as "supporting documents" required by Article XII. Even if the information were true, it is not new. The Applicant does not prove that he had no knowledge of it before the judgment. The same is true of the argument concerning non-compliance with Staff Rule 611.06 (b) and the letter of 31 July 2002 from the former CHRM Director.

18. Lastly, the Respondent makes the same observation regarding the claim for unpaid accumulated leave. The Applicant presents no new fact or document. Rather, he points out that the failure of the witness cited to appear was detrimental to him and that he holds the Bank solely responsible for the fact that he could not take his leave.
19. According to the Respondent, another instance of non-compliance with the conditions for revision relates to the Applicant's failure to indicate the dates the alleged facts were discovered. It is difficult, under these circumstances, to determine if the deadlines prescribed in Rule XXII (2) of the Rules of Procedure of the Tribunal were respected. Consequently, the Respondent requests the Tribunal to declare the Application inadmissible on grounds of non-compliance with the provisions of Article XII of the Statute and Rule XXII of the Rules of Procedure.
20. Assuming the Tribunal pronounced the Application as admissible, the Respondent requests that the Application be declared baseless for the following reasons:
 - The facts presented are insignificant, puerile and futile, because they neither demonstrate the wrongful nature of the dismissal nor the Respondent's non-compliance with Rule 611.06 (b) of the Staff Rules.
 - They are groundless and unserious.
 - The Applicant seeks to reopen the proceedings, in violation of the Article XII-1 of the Statute of the Tribunal.

III. THE PROCEEDINGS

21. After receiving the Respondent's Answer, the Applicant renounced his right to file a Reply. In the absence of a Reply, the Respondent, in turn, decided not to file a Rejoinder. Thus, the proceedings ended on 23 March 2007. Consequently, both parties were so notified, pursuant to the provisions of Rule XII (5) of the Rules of Procedure.
22. On 25 and 28 June 2007, the Applicant transmitted to the Executive Secretariat of the Tribunal additional details entitled: "Detailed Request for Compensation for Wrongful Dismissal and Additional Documents to the Detailed Request for Compensation for Wrongful Dismissal".
23. Having not obtained prior consent from the President of the Tribunal, pursuant to Rule XIII (1) of the Rules of Procedure, the Applicant was informed of that fact on 29 June 2007. The same fact was communicated to the Respondent on 9 July 2007 when it was forwarded the said documents. The Respondent expressed its intention to plead the dismissal of these additional documents.

IV. THE LAW

24. Article XII (1) of the Statutes of the Tribunal provides that judgments of the Tribunal are binding, final and without appeal. The exclusion of the appeal procedure is in line with internationally recognized general principles of human rights. Indeed, the International Covenant on Civil and Political Rights prescribes the judicial process for any dispute over civil rights and obligations (Article 14 [1]). However, the Covenant prescribes an appeal only in criminal matters (Article 14 [5]).

25. According to the Statute (Article XII [4]) and Rules of Procedure of the Tribunal (Rule XXII [1]), a Request for Revision can only be filed under exceptional circumstances. The two relevant provisions state that three conditions must be met to dispute the validity of judgment that had acquired the force of *res judicata*.
- Firstly, a fact or a document must have been discovered which, by its nature, could have had a decisive influence on the judgment concerned;
 - Secondly, the provision presupposes that neither the Tribunal nor the party requesting for the revision was aware of the existence of the fact or document; and
 - Lastly, the Applicant must not be responsible for such ignorance.
26. The Applicant believes that the judgment rendered on 11 May 2006 is based on facts that do not correspond to reality. However, he does not comply with the provisions set forth under Article XII (4) of the Statute and Rule XXII (1) of the Rules of Procedure which place on him the onus of demonstrating the applicability of the revision procedure in this case.
27. To start with, the Applicant should at the very least have proven that the facts invoked in support of his request are “new facts”, which existed at the time of judgment but were “discovered” later. None of the circumstances referred to by the Applicant meet that criterion. In his request, the Applicant does not even bother to mention the dates at which he learned about the facts that he considers as relevant.
28. Regarding the restructuring of the Bank’s services, especially the reassignment of some staff, the Applicant’s request provides no new fact that was not known at the time of judgment. It was the Applicant’s responsibility during the proceedings when the substantive issues of his case were examined, to present all facts that, in his view, demonstrate that the Bank had not fulfilled its obligations pursuant to Rule 611.06 (b) of the Staff Rules. Furthermore, measures taken by the Bank after 11 May 2006 are of no relevance whatsoever to the revision procedure. The two provisions governing the revision procedure apply strictly to the situation at the time that the Tribunal took its final decision.
29. Concerning claims for compensation for leave days not taken into account, the Applicant totally fails to provide the indications required under Article XII (4) of the Statutes of the Tribunal. Essentially, he no more than states his conviction that he should have been granted compensation for the 16 days in dispute. His submissions contain no reference of any sort to a “new fact discovered”.
30. Furthermore, the Tribunal recalls that in the event of the discovery of a new fact or document, the request for revision must be filed within thirty days from the date on which the fact or document is discovered (Rule XXII [2] of the Rule of Procedure). In that regard, the Applicant is not specific. It is evident from the text of his request that he alleges facts that were long known and which, for that reason, could not be “discovered”.
31. In conclusion, the Tribunal notes that the Applicant has not met the procedural requirements set forth under Article XII (4) of the Statute and Rule XXII of the Rules of Procedure of the Tribunal.

V. THE DECISION

32. The Tribunal decides as follows:

The request for revision of the judgment in case 2004/10 is rejected.

Professor Maurice Glèlè Ahanhanzo

President

THE APPLICANT

Absent

COUNSEL FOR THE RESPONDENT

Mr. Dotse TSIKATA