

**ADMINISTRATIVE TRIBUNAL
OF THE AFRICAN DEVELOPMENT BANK**

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

APPLICATION No. 2007/07

Mr. D. J.J., Applicant
African Development Bank, Respondent

Judgment of the Tribunal rendered on 25 November 2008

I. PROCEDURAL POSTURE

1. This case comes before the Tribunal on a Motion following the judgment on the merits of the case. The initial case on the merits¹ was filed on 19 April 2004, contesting the Respondent's decision to summarily dismiss the Applicant for serious misconduct.
2. The Tribunal heard oral arguments on the case and rendered its judgment on the merits on 01 December 2005. The judgment ordered, *inter alia*, that "legal costs be borne by the Bank."
3. On 25 January 2006, the Respondent filed a Request for Interpretation of Judgment², seeking clarifications on three main issues: (1) retroactive payment of salaries; (2) consequences of rescission of the Bank's dismissal decision on entitlement claims; and (3) scope of the legal costs to be borne by the Bank.
4. In its decision rendered on 11 May 2006, the Tribunal disposed of the questions raised in the Request for Interpretation. The only issue for consideration in the present case relates to the payment of legal fees and costs. With regard to this issue, the Tribunal in its judgment, stated: "In response to the third question, paragraph 3 of the operative provisions of the judgment must be interpreted in the light of Article IX (4) of the Statute of the Tribunal."

¹ Application No. 2004/02 (2005). In this Application, the Applicant contested the Respondent's decision to summarily dismiss him for serious misconduct, following misuse by the Applicant of an education grant provided by the Respondent for education of the Applicant's children. At the end of an audit inquiry, which showed that the Applicant had failed to return the education grant which had been paid to the Applicant (though the child did not attend school), the Applicant reimbursed the Respondent in full.

² Application No. 2006/01 (2006).

5. On 09 October 2007, the Applicant filed a Motion to Enforce Judgment, which is the basis of this Application. In response, the Respondent filed a Motion to Dismiss on 25 March 2008, to which the Applicant countered with an Objection to the Motion to Dismiss on 19 May 2008.

II. THE FACTS

6. On 07 June 2006, the Applicant addressed an e-mail to the Director, CHRM, requesting implementation of the Tribunal's 11 May 2006 decision and demanding payment of legal fees to the Applicant's counsel, Ms. Rose Marie Dennis.
7. In an e-mail dated 11 July 2006, the Division Chief, CHRM, responded, offering the Applicant payment of legal fees in the maximum amount of \$15,000. The Respondent subsequently paid the sum of \$15,000.00 to the Applicant's counsel, Ms. Rose Marie Dennis, which the Applicant's counsel accepted. However in a memorandum to the Director, CHRM, dated 22 November 2006, the Applicant renewed his request for all of his legal fees and costs for one attorney to be paid.
8. In its 26 January 2007 response to the Applicant's 22 November memorandum, the Director, CHRM, informed the Applicant that "...the Bank has fully implemented the award of legal fees in [his] case, on the basis of the interpretation given by the Tribunal, and owes no further obligation in this matter."

III. ARGUMENTS OF THE PARTIES

The Respondent's Motion to Dismiss

Inadmissibility of the Application

9. The Respondent asserts that the "Motion to Enforce Judgment" as filed by the Applicant is inadmissible and cannot be adjudicated as a duly filed Application because such a "motion" is not contemplated in the Statute or Rules of Procedure of this Tribunal, and therefore no application exists which may be considered by the Tribunal in the exercise of "its functions under the Statute.". The Tribunal should therefore declare that the Applicant's "Motion" is a nullity.
10. The Applicant's "Motion to Enforce Judgment" is an attempt by the Applicant to re-open the dispute between the Applicant and the Respondent over the issue of attorneys' fees, which is already the subject of a final and binding decision in this case, delivered on 1 December 2005 and clarified on 11 May 2006. This Motion therefore violates Article XII (1) of the Tribunal's Statutes regarding the finality of the Tribunal's judgments.

The Respondent having fully complied with the decision of the Tribunal in this case as rendered on 1 December 2005 and clarified on 11 May 2006 by paying the Applicant reasonable legal fees, there is therefore no cause of action before this Tribunal for which relief can be granted. Consequently, this Tribunal should follow its decision in

C.A.W. v. ADB,³ where it rejected a similar attempt by an Applicant to re-open several issues, including award of legal fees that the Tribunal had rendered a final decision on.

Substantive Grounds for Dismissal

11. The Application is also lacking in merit in that it makes a claim for payment of legal costs that this Tribunal has found to exceed the level of reasonableness contemplated by the Statute. Article IX (4) of the Tribunal's Statute provides in part that each party shall bear its own costs. However, this Article empowers the Tribunal to order the Bank to pay "reasonable costs" to the Applicant "totally or partially" after a determination on a case by case basis.⁴ The Applicant's claims for legal fees do not meet the test of "reasonableness," as the original claims as well as additional claims for representation in subsequent proceedings have been found by this Tribunal to be excessive.
12. Respondent argues that the jurisprudence cited by the Applicant in his "Motion" does not provide any support for the Applicant's stated claim for legal fees. In fact, most of the cases cited provide awards for legal fees ranging from \$3,000.00 or less.⁵ Even in the decisions of the IMF Administrative Tribunal where higher sums were awarded in legal fees, awards over \$15,000.00 are not the rule. The general range of awards by IMFAT is between \$15,000.00 and \$16,000.00. In only one case cited was there an award of \$49,832.50.⁶

The Respondent further notes that this Tribunal's own jurisprudence is consistent in its award of legal fees. In light of this jurisprudence, it is clear that the Applicant's claims are out of proportion to previous awards by this Tribunal. Even in the case of *C.A.W.*, where the Tribunal awarded the applicant \$15,000.00 in legal costs, the award was based on "*the particular difficulties the applicant [had] experienced in defending her case.*" Moreover, the Tribunal should recall that the cases that the Applicant cites in support of his "Motion" were all cited in the *C.A.W.* (Request for Interpretation and Revision)⁷ case and the Applicant's arguments in that Request were rejected. The Respondent asserts that the Applicant's statement of fees in the present case, even for one counsel, far exceeds all other previous awards by this Tribunal, and should be rejected.

³ Application No. 2005/03 (2006), *C.A.W. v. the African Development Bank*. This Tribunal rejected the Applicant's attempt in that case to re-open issues, including award of legal costs that the Tribunal had disposed of in its judgment, in the guise of a request for Interpretation and Revision.

⁴ Article IX (4) states:

The Bank or, as the case may be, the respondent institution and the applicant may be assisted in the proceedings by counsel of their choice and each party shall bear its own costs. Notwithstanding the foregoing, if the Tribunal determines that an application is well founded in whole or in part, it may order that the reasonable costs incurred by the applicant, including legal fees and expenses of the applicant, be totally or partially borne by the Bank or, as the case may be by the respondent institution.

⁵ See e.g., *In re Gatmaytan*, ILOAT Judgment No. 424 (1980) (Applicant awarded \$1,000.00 in legal fees).

⁶ See *Ms. M & Dr. M v. IMF*, IMFAT Order No. 2007-1 (award of \$15,000); *Mr. F v. IMF*, IMFAT Order No. 2005 (award of \$49,832.50); *Ms. C v. IMF*, IMFAT Order No. 1998-1 (award of \$15,000); and *Ms. J v. IMF*, IMFAT Order No. 2003-1 (award of \$16,434.32).

⁷ Application No. 2006/04 (2006).

13. The Respondent notes that the Applicant's attempt to distinguish the present case from the *C.A.W.* case is without basis. The Applicant argues that the Applicant in *C.A.W.* was only partially successful on the merits of her case and did not succeed on her main claim. The Respondent however posits that applying the same standard to the present case (first proceeding)⁸, it is equally accurate the Applicant was only partially successful on the merits of his case and not all the relief requested was granted by the Tribunal. Thus any attempt to distinguish this case from the *C.A.W.* falls on its face.
14. The Respondent maintains that its payment of legal fees to the Applicant in the sum of \$15,000.00 is consistent with the Tribunal's judgment in this matter and constitutes a full and final settlement of reasonable legal costs. The Respondent has therefore complied in full with the Tribunal's decision, taking into account all of the relevant precedents by this Tribunal.

The Applicant's Motion to Enforce Judgment

15. The Applicant asserts that the Respondent failed to implement the Tribunal's order. He states that the Respondent, by unilaterally assessing and deciding on the amount of \$15,000.00 to pay in legal fees, usurped the Tribunal's authority to determine what constitutes "reasonable" legal fees. Such a determination, in the practice of international administrative tribunals, falls within the exclusive jurisdiction of the administrative tribunal.
16. The Respondent wrongly applied the Tribunal's judgment in *C.A.W. v. the African Development Bank*.⁹ The Applicant underlines that in that judgment the Tribunal's order for payment of partial legal fees was based on the Applicant's specific circumstances (difficulties the Applicant experienced in defending her cause). The Respondent's reliance on that case is erroneous because it is distinguishable from the present case in that the Applicant in the present case prevailed on the merits of his case, whereas the Applicant in *C.A.W.* did not.
17. The Applicant further asserts that the only limitations placed on the award of legal fees in the present case is that it should be for one attorney only and should not be "excessive." It is therefore up to the Tribunal and not the Respondent to determine what is "reasonable," based on the general principles of administrative law. Under these general principles, the prevailing rate of attorneys' fees has generally been taken into account. On the basis of published rates for attorneys practicing in counsel's practice jurisdiction and area of law, the Applicant believes that the fee submissions by Applicant's counsel are reasonable.
18. The Applicant further claims that the Respondent failed to raise the issue of "reasonableness" of attorney's fees and costs in the first instance of this case and were therefore barred from raising it in its Request for Interpretation of Judgment. Consequently, the Tribunal's order of 11 May 2006 should be implemented.

⁸ Application No. 2004/02 (2005)

⁹ Application No. 2005/03; judgment delivered on 11 May 2006. The Applicant in this case was granted \$15,000.00 in legal costs.

The Applicant's Objection to the Motion to Dismiss

On the Respondent's procedural grounds for dismissal

19. The Applicant states that pursuant to Article V of the Tribunals' Statute, the Tribunal is bound to apply general principles of international administrative law in deciding on its competence to entertain the Applicant's Motion to Enforce Judgment No. 2004/02. The principle that the Tribunal has an inherent right to interpret its own decisions has been supported in decisions from the World Bank Administrative Tribunal and other international tribunals.¹⁰ The Respondent's argument that this Tribunal's Statute does not provide for motions such as the one at issue should fail because the interpretation of the Tribunal's judgment is within the sole discretion of the Tribunal. The Applicant asserts that following this general principle of administrative law, the Tribunal has "an inherent right to entertain a request from the applicant to redress in the event that the Respondent fails to fully implement the Tribunal's judgment." By claiming that it has fully complied with the Tribunal's decision by paying the Applicant's counsel the sum of \$15,000, the Respondent is in essence usurping the Tribunal's right to interpret its own decision. There is therefore no basis for the Respondent's claim that \$15,000 is "reasonable" as this determination is left to the sole discretion of the Tribunal. Consequently, it is up to the Tribunal alone to determine the basis of the Applicant's motion, deal with its merits and swiftly resolve the issue in order to arrive at a "final and binding" decision.
20. The Applicant recalls that the Tribunal's decision of 1 December 2005 in *J.J.*¹¹ awarded total legal costs to be "borne by the Bank." In response to the Respondent's Request for Interpretation, this Tribunal stated: "*The purpose of the Request for Interpretation is to clarify the operative provisions that appear obscure or incomplete. It shall not, for instance, override that purpose to lead the Tribunal into reviewing a decision that had acquired the authority of a final judgment.*"¹² The Applicant therefore asserts that the only limitation on the Tribunal's decision that total legal fees be borne by the Bank is that these fees concern only one attorney and not two.
21. The Respondent's reliance on *C.A.W.* is erroneous because *C.A.W.* was decided after the present case and as such cannot be relied upon as a precedent. The Applicant argues that the award of costs is decided on a case by case basis according to criteria set by the jurisprudence of international administrative tribunals for awarding "compensable legal costs." This jurisprudence underlines the fact that the Respondent cannot make a unilateral determination as to what constitutes "reasonable fees" for such a determination is within the sole discretion of the Tribunal. Consequently, payment of only a portion of counsel's fees by the Respondent in the present case does not fully satisfy the Tribunal's order and is therefore a controversy that the Tribunal should rightly resolve. The Motion to Enforce Judgment is therefore not a guise to reopen the case; rather it is a request that the Tribunal order the Respondent to fully comply with its decision in Case No. 2004/02 and thus admissible.

¹⁰ See e.g., *Moses (2) v. IBRD*, WBAT Decision No. 138 (1997)

¹¹ *Id* at para. 58.

¹² ADB Judgment No. 2006/01, para. 11. In this decision, the Tribunal declined to set a maximum or minimum amount of what should be considered "reasonably incurred" fees or indicate whether the fees that the Applicant had submitted were "excessive." (Para. 21).

On the Respondent's substantive grounds for dismissal

22. The Applicant maintains that the Tribunal never stated that the Applicant's fee submissions were unreasonable, as the Respondent argues in its Motion to Dismiss. Rather, the Tribunal ordered that the Applicant's legal costs be "borne by the Bank." These costs comprise all costs incurred by the Applicant in defending his original claims, including those related to payment of legal fees which was the subject of the Respondent's Request for Interpretation of Judgment. All the costs form part of the defense of the Applicant's original claims, which this Tribunal determined to be well-founded. This includes costs relating to the Applicant's present Motion to Enforce Judgment, which was only filed because the Respondent failed to fully comply with the Tribunal's judgment, forcing the Applicant to return to the Tribunal for redress. To support his position, the Applicant points to *In re Malhotra No. 4*¹³, contending that the Applicant is entitled to an award of legal costs for his Motion because he was forced by the Respondent to return to this Tribunal for execution of the initial judgment.
23. The Applicant further contends that past decisions from this Tribunal and other international administrative tribunals clearly show that there has been no intent to place a cap on awards of legal costs.¹⁴ The Applicant asserts that the amount of the award of legal costs in cases such as *Ngueneba*, *Camara* and *Barry* were made for attorneys practicing in Ghana and Benin and the Respondent has not demonstrated in its argument that the prevailing rates for attorneys in these countries are the same as in Washington, DC. Furthermore, the Respondent's reliance on the *Gatmaytan* case is erroneous because in that case, the award of costs was consistent with the criteria of international administrative jurisprudence for awarding legal costs, the complainant in that case prevailed in only part of his complaint and the amount at stake was not high.
24. The Applicant maintains that the *C.A.W.* case is distinguishable from the present case because in the present case the Applicant did indeed succeed on his main claim, which was that the termination was wrongful. Moreover, the Tribunal's decision to grant the Applicant's request for rescission confirms this. Only the ancillary claims (compensation for moral injury and expunging of documents from the Applicant's records) were not granted. All the relief flowing directly from the decision to restore the Applicant to the *status quo ante* was granted. Whereas, in the *C.A.W.* case, the Tribunal disagreed with the Applicant's main claim that she was entitled to reinstatement, but found that she had suffered moral and material prejudice due to procedural irregularities in carrying out her evaluation, and thus was entitled to partial legal costs.
25. The Applicant concludes that the only inquiry to be made with respect to legal fees is whether or not the statement of legal fees and costs is reasonable.

III. REQUESTS BY THE PARTIES

¹³ ILOAT Judgment No. 1523 (1996).

¹⁴ The Applicant points to *Ms. M and Dr. M v. IMF*, IMFAT Order No. 2007-1 (award of €15,881.85 or \$25,004.30); *Ms. C v. IMF*, IMFAT Judgment No. 1997-1 (1997) (award of partial legal costs of \$15,000).

26. The Respondent

The Respondent moves that this Tribunal dismiss the Applicant's Motion to Enforce Judgment due to procedural and substantive inadmissibility as described above, as well as on the grounds that the Respondent has indeed satisfied this Tribunal's judgment in full.

27. The Applicant

The Applicant requests that the Tribunal enforce its judgment No. 2004/02 with respect to legal costs and order the Respondent to pay the Applicant's attorney's fees in whole as interpreted in Judgment No. 2006/01. The legal fees amounted to \$41,659.188 of which the Respondent has paid \$15,000.00, leaving a balance of \$26,659.18.

In addition, the Applicant requests that the Tribunal order the Respondent to pay (1) the Applicant's attorney's fees, costs and expenses to date in the amount of \$7,660.72 incurred by the Applicant in connection with this Motion to Enforce Judgment; (2) legal costs incurred by the Applicant in connection with his Objection to the Motion to Dismiss and (3) any other further legal costs which will be submitted to the Tribunal at the close of proceedings in this matter.

IV. THE LAW

28. The Tribunal ordered in paragraph 3 of its decision in this case of 1 December 2005, on which the Respondent further asked for clarification in a subsequent application, that the Respondent should bear the cost of Applicant's legal fees. The order by the Tribunal, in any of its decisions, as to legal fees where no specific sum is mentioned, might look like a blank cheque but it is not. In the clarification asked for by Respondent as Applicant the Tribunal answered in paragraph 18 as follows:

"18. The third question concerns paragraph 3 of the operative provisions of the judgment: "orders that the legal costs be borne by the Bank," pursuant to Article IX (4) of the Statute of the Tribunal. The Respondent maintains that the fees claimed by the Applicant are disproportionate to what is usually paid in previous cases submitted to the Tribunal, and that they exceed the reasonable limits prescribed by Article IX (4)".

29. The general rule is that each party should bear its costs. But the Tribunal is given the discretion, if justified by circumstances of the case, to order the Bank to pay the Applicant's legal fees according to a standard of reasonableness.

30. Special circumstances may include difficulties the Applicant encountered in prosecuting his claim, the overall justification of the claim of the Applicant, the unreasonableness of the decision of the Respondent's action that affects the Applicant and so forth. The category of special circumstances is not closed.

31. The Respondent filed a motion to dismiss this motion because it has no place in the Statute of the Tribunal. The Applicant, according to the Bank, was paid \$ 15,000.00 which has satisfied reasonableness as envisaged in Article IX (4) of Tribunal's Statute. The Tribunal in *C.A.W.* awarded \$15,000.00 as reasonable when an application resembling this one came before the Tribunal.
32. The Applicant, for his own reason, employed the services of two counsel and did nothing to show that the complexity of the application justified this. The Tribunal has clearly indicated that the legal fees to be paid to the Applicant should be in line with Article IX (4) of the Tribunal's Statute. Is the sum of \$41,659.188 claimed as legal fees by the Applicant reasonable? Certainly the Tribunal never contemplated such a figure in light of the simplicity of the original application based on dismissal for wrongful retention of education fund allowance to which the Applicant was not qualified. The Applicant refunded the money and the Tribunal was of the view that further disciplinary action of dismissal was unjustified.
33. The motion to enforce judgment filed by the Applicant is not provided for as a special category of remedy in the Statute or the Rules of Procedure of the Tribunal. Accordingly, the competence of the Tribunal to consider that motion must be assessed by the yardstick of the general rules laid down in the Statute.
34. It results from the submissions of the Applicant himself that he neither wishes to obtain a new interpretation of the judgment of 1 December 2005, which was already interpreted by the Tribunal in its judgment of 11 May 2006, nor to request a revision of any of the two judgments pursuant to Rule XXII of the Rules of Procedure. Any new request for interpretation of the judgment of 1 December 2005 would in fact be inadmissible since that judgment has acquired finality.
35. A claim for enforcement of judgment can be brought before the Tribunal only after an applicant has exhausted other administrative review remedies available within the Bank, if the application is filed within ninety days after the occurrence of the event giving rise to the application (Article III of the Statute).
36. In the instant case, the Applicant has not made use of the internal remedies available to him. The amount of \$15,000 was transferred to his account on 17 July 2006. It had been made clear by a preceding e-mail of the Division Chief, CHRM, of 11 July 2006 that this was the maximum amount the Respondent was prepared to pay. The Applicant could have appealed this decision within six months pursuant to rule 103.04 of the Staff Regulations. Even if one should interpret his renewed letter of 22 November 2006 to the Director, CHRM, as such an appeal – its text gives no indication to that effect - , it is clear that the negative response sent to him by letter of 26 January 2007 should have been challenged before the Staff Appeals Committee within thirty (30) days. The Applicant, however, took none of the steps required under Rule 103.04 of the Staff Regulations.

37. The Applicant has neither attempted to exhaust the available remedies within the Bank, nor has he respected the time-limits set by the Staff Regulations. Accordingly, the motion which the Applicant filed with the Tribunal on 9 October 2007 is inadmissible.

VI. THE DECISION:

For these reasons, the Tribunal decides:

- i. the Motion by the Respondent Bank to dismiss the Application is granted;
- ii. the Motion to Enforce Judgment filed by the Applicant is dismissed.

Professor Maurice GLELE AHANHANZO

President

Mrs. Albertine LIPOU MASSALA

Executive Secretary

APPLICANT'S COUNSEL

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