APPLICATION No. 2011/06


Judgment No. 78 of the Administrative Tribunal rendered on 09 March 2012

I. THE FACTS

1. On the 15 July 2011, the Administrative Tribunal of the African Development Bank, rendered Judgment in the case No. 2010/02, brought by the Applicant, L. T. K. M.

2. In the said Judgment, the Tribunal ordered as follows:

   1. Compensation for wrongful dismissal corresponding to the value of twelve (12) months’ salary and benefits;
   2. The amount of (10,000) US – Dollars for legal costs;
   3. All other claims are rejected.

3. On 13 September, 2011, the Applicant filed a request for interpretation at the Executive Secretariat, pursuant to Article XII – 3 and Rule XXIII,1 of the Tribunals Rules of Procedure of the Judgment rendered in her case against the Bank, on 15 July, 2011.2

4. The applicant seeks an interpretation of the said judgment. Among other things, the Applicant requested the following:3

   “The Tribunal to adjudge and declare that judgment no.76 of 15 July 2011, the summary dismissal decision of 12 February 2010 is annulled with retroactive effect and therefore considered never to have been taken. Accordingly, in addition to the compensation for wrongful dismissal as ordered in section 1 of the operative provisions of the Judgment, the Respondent has an obligation to pay the Applicant her salary and benefits in accordance with her employment contract until the date of the Judgment, i.e. until 15 July 2011, as well as related interest on arrears at the rate of 8 per cent p.a. ”

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1 Application No. 2011/06.
2 Judgment No. 76 of the Tribunal rendered on 15 July 2011.
II. ARGUMENTS OF THE PARTIES

THE APPLICANT

5. The Applicant submits that “there is an overwhelming number of international case law in which Administrative Tribunals have found dismissal decisions of international organizations to be unlawful and therefore ordered their rescission (or the “setting aside” or the “quashing”) in the operative provisions of the respective Judgments.”4 She relies on the interpretation decision rendered on 11 May 2006 by the Tribunal in case of Derris Jenkins-Johnston v. African Development Bank.5 The Applicant further submits that the operative provisions of the Judgment appear incomplete; “since it only addressed the payment of damages for wrongful dismissal and for legal costs, but neither the rescission of the impugned decision nor the legal and pecuniary consequences thereof.”6 In addition, she contends that the Tribunal did not address the question of the consequences of the quashing of her summary dismissal decision and for the reactivation of the employment contract.7

6. The Applicant further argued that, “the operative provisions of the Judgment in the Applicant’s case only addressed the payment of damages for wrongful dismissal and for legal costs but neither the rescission of the impugned decision nor the legal and pecuniary consequences thereof.”8 Therefore, she argues that the direct legal and pecuniary consequences of the rescission of a summary dismissal decision are not consistent with the existing practice of Administrative Tribunals.9 In this regard, the Applicant contends that the operative provisions of the Tribunal’s judgment at paragraph 65 did not give full effect to the existing law and practice of Administrative Tribunals.10

7. The Applicant also argues that she is entitled to a “retroactive award of salary from the date of her dismissal to the date of Judgment, with interest on the same at the rate of 8% p.a. This, she contends, should be “in addition” to an award of 12 months’ salary by the Tribunal. The Applicant argues that she is so entitled by reason of the Tribunal’s decision in the case of Derris JENKINS-JOHNSTON v. the African Development Bank.11

8. The Applicant further requests that the Tribunal: “should adjudge and declare that under the Judgment No. 76 of 15 July 2011, the summary dismissal decision of 12 February 2010 is annulled with retroactive effect and therefore considered never to have been taken.”12

9. The Applicant also requests that the Tribunal declare that “in addition to the compensation for wrongful dismissal as ordered under section 1 of the operative provisions of the

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5 Ibid.
6 Application No. 2011/06, paras. 14 – 18.
7 Application No. 2011/06, para. 6.
8 Application No. 2011/06, para. 18.
9 Application No. 2011/06, paras. 14, 18 – 19.
10 Ibid, para. 18.
11 Application No. 2006/01; (at paragraph 8 of the judgment on the Request for Interpretation).
12 Application No. 2011/06, para. 19.
Judgment, the Respondent has an obligation to pay her salary and benefits in accordance with her employment contract until the date of judgment, i.e., until 15 July 2011, as well as interest on arrears at the rate 8% p.a.”\textsuperscript{13} This interest on the arrears, the Applicant contends, is consistent with the established case-law of the ILOAT.\textsuperscript{14}

**THE RESPONDENT**

10. The Respondent submits that “a request for interpretation of a Judgment implies that there is an ambiguity or a lack of clarity in a Judgment. The Respondent further avers that, the criteria for determining the admissibility or otherwise of an application for interpretation of a Judgment is set out in Section 2 of Rule XXIII as follows:

   “The Application shall be admissible only if it states with sufficient particularity in what respect the operative provisions of the judgment appear obscure or incomplete.”

11. Firstly, the Respondent submits that the Applicant’s submissions amounted to an application for the clarification of the Judgment of the Tribunal. The Respondent avers that the application is without merit and constitutes an abuse of the Tribunal’s process contrary to Article X of the Statute.

12. Secondly, the Respondent argues that no ambiguity exists in the Judgment. In this regard, the Respondent cited the relevant paragraphs in the Judgment as paragraphs 66 to 73.

13. Thirdly, the Respondent contends that the Applicant had several heads of claim in her original Application including those set out in her present Request for Interpretation of the Judgment\textsuperscript{15} all of which were dismissed by the Tribunal save and except the claims for damages for wrongful dismissal and legal costs.

14. The Respondent further submits that the Tribunal’s decision in Derris Jenkins-Johnston’s case should be distinguished from the present one. The Respondent also states that the Tribunal had already considered and declined the Applicant’s claim for “the award payment (...) of her salary and all benefits retroactively from the date of dismissal (12 February 2010) up to the date of the Tribunal’s Judgment”.\textsuperscript{16} Accordingly, the Respondent maintains that paragraph 58 of the Johnston decision, did not apply to the Applicant’s case because: “….. the dual payment of salary and benefits as well as “in addition” the payment of additional amounts in lieu of reinstatement in the Derris JENKINS-JOHNSTON judgment was a considered decision based on the particular circumstances of that case. As a result, the terms of the Judgment were very different from those rendered in the Tribunal’s Judgment of 15 July 2011 in the Applicant’s case.”\textsuperscript{17}
15. The Respondent asserts that paragraph 5 of the Applicant’s Request for an Interpretation of the Judgment simply re-stated all her heads of claim, notwithstanding that the Tribunal took all the Applicant’s claims into consideration before arriving at the decision in its judgment.\(^\text{18}\)

16. The Respondent referred to the decision of the Tribunal in J.N.N. v African Development Bank (Application No. 2001/03) on a request for interpretation of Judgment at paragraphs 18 – 19. There, it was noted:

> “The President of the Tribunal informed the parties that in its deliberation in writing, the Tribunal had fully considered whether to order the reinstatement of the Applicant (….) and decided that, having regard to the circumstances of the case, it was not appropriate to make the order. The circumstances of the case were set out in the judgment, particularly the negative attitude of some senior members of the management against the Applicant after discovery of the theft. For that reason, in lieu of reinstatement, the Tribunal awarded the highest compensation permitted by Article XIII.2 of the Statute for moral and psychological damage suffered by the Applicant from the wrongful accusations (…).”

17. Finally, for reasons stated in paragraphs 6 – 12 of the Respondent’s Observations 2011/06, the Respondent requests that the Tribunal reject the Application for interpretation of the Judgment rendered on 15 July 2011, as it is clear and unambiguous. The Respondent further states that it has satisfied the Judgment in full.

### III. THE PROCEDURE

18. This is a post judgment application, which if admitted, for purposes of interpretation may be incorporated into the original judgment, by virtue of Rule XXIII – 3 of the Rules.

19. In the instant case, the Applicant raises both the issue of admissibility of her request and for substantive relief, based on the second limb of Rule XXIII – 2; as she alleges that part of the Tribunal’s Judgment of 15 July 2011 was “incomplete”.

20. Therefore, the Tribunal is required to determine, if indeed, the Application for interpretation is admissible, and if so; whether the operative provisions of its judgment was in fact “incomplete” as alleged by the Applicant.

21. Finally, the Applicant refers to the Tribunal’s failure to award moral damages at paragraph 7 of her Request for Interpretation, even though her original action against the Respondent includes a similar claim for retroactive payment of benefits and for moral damages in the sum of US$200,000.\(^\text{19}\)

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\(^{18}\) Respondent’s Observation 2011/06 para. 7.

\(^{19}\) See: paras. 5 – 6 of the Application 2011/06.
IV. REQUESTS BY THE PARTIES

APPLICANT’S REQUEST

22. The Applicant requests the Tribunal to interpret Judgment No. 76 of 15 July 2011 as follows:

1. The summary dismissal decision of 12 February 2010 be rescinded;

2. The employment contract between the Applicant and the Respondent is reactivated with retroactive effect for the period from February 2010 to July 2011, the date of the judgment of the Tribunal;

3. The Respondent must pay the Applicant her salary and corresponding benefits for which the contract is retroactively reactivated, i.e., for the period of 12 February 2010 to 15 July 2011, including interest on arrears at the rate of 8% p.a.;

4. In addition, the Respondent must pay the Applicant the compensation for wrongful dismissal as ordered in section 1 of the operative provisions of the Judgment, in an amount of 12 months of salary with benefits;

5. In addition, the Respondent must pay the Applicant US$10,000 in legal fees.

RESPONDENT’S REQUEST

23. The Respondent requests that the Tribunal:

1. Declare that the interpretations proposed by the Applicant in paragraphs 20 (2) and (3) of her Request for Interpretation of the Judgment are not tenable and should be rejected by the Tribunal;

2. Dismiss the Request for an Interpretation of the Judgment dated 19 September 2011, on the grounds that the judgment is clear and unambiguous and that the Respondent has satisfied the said judgment in full.

V. THE LAW

24. Article XII – 1 of the Tribunal’s Statute provides that judgments of the Tribunal are “binding, final and without appeal”.

25. Article XII – 3 of the Statute stipulates that “The Tribunal may interpret or rectify any of its judgements whose terms appear obscure or incomplete, or which contains a typographical or arithmetical error.” These conditions are again set out under Article XXIII of the Rules of Procedure which makes provision for a party to apply to the Tribunal for an interpretation of the operative provisions of a judgment where those provisions appear obscure or incomplete.
26. The Applicant has brought an application for interpretation of the Tribunal’s decision of July 15, 2011, alleging that the operative provisions of the Tribunal’s decision are incomplete.

27. The Tribunal has given careful consideration to the Applicant’s request. The remedies awarded to the applicant for her wrongful dismissal included compensation corresponding to the value of 12 months’ salary and benefits and $10,000 (US) for legal costs. All of the other claims asserted by the Applicant were rejected.

28. The Decision made by the Tribunal on July 15, 2011, is unambiguous and complete. Consequently, the Applicant’s application for interpretation should be dismissed, and the Applicant has no further entitlement to any additional remedy for the loss of her employment.

VI. THE DECISION

29. The Application for interpretation is rejected.

Professor Yadh BEN ACHOUR, President

Mrs. Albertine LIPOU MASSALA Executive Secretary

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