I. THE FACTS

1. The Administrative Tribunal of the African Development Bank delivered a judgment No 91 on 12 June 2015 in Application No. 2014/04, filed by Mr. S. O.

The judgment reads:

“The Administrative Tribunal therefore grants the Respondent’s motion and declares this Application inadmissible.”

2. On 12 August 2015 the Applicant filed an Application for Revision and Interpretation of this judgment. This Application was sent back to him for correction on 2 September 2015. The corrected Application was registered on 17 September 2015 and then sent to the Respondent on 23 September 2015. The Applicant challenged the judgment in so far as it accedes to "the third plea of inadmissibility raised by the Respondent, namely; that the Applicant had not exhausted all internal remedies, as required by Article III-paragraph 2 of the Statute of the Administrative Tribunal."

3. This Application was sent to the Respondent on 23 September 2015 and the Respondent submitted its Answer on 12 November 2015. The Answer was also sent to the Respondent for corrections. The corrected Answer was registered on 23 November and sent to the Applicant on 26 November 2015.

4. The Applicant's Reply was filled on 30 December 2015 and returned for correction. The corrected Reply was registered on 2 February and sent to the Respondent on 5 February 2016. The Respondent, by a letter dated 4 March 2016, waived its right to file a Rejoinder.

5. The Applicant's request is based on the provisions of Article XII of the Statute of the Administrative Tribunal and Article XXII (new) of the Tribunal’s Rules of Procedure. The
Application is based, on the one hand, on the discovery of new facts and, on the other hand, on the Respondent's misinterpretation of Staff Rule 103.04 (a).

II. ARGUMENTS OF THE PARTIES

The Applicant

A. Application for Revision

6. The Applicant submits that he has new facts justifying his Request for Revision. According to the Applicant, there was a concealment of another Appeal (No. 227) from the Respondent which the Applicant calls a "motion of censure" initiated by Mr. S. G. who the Applicant considers as a "lawyer at CHRM" (Human Resources Management Department of the Bank). Thus, the Respondent allegedly tried to influence the course of the Applicant’s Appeal procedure.

7. In support of his argument, the Applicant refers to three (3) exchanges of e-mails between the Staff Appeals Committee’s Secretary and Mr. S. G;

- A first dated 3 February 2014 from Mr. S. G. to the Secretary of the Appeals Committee in which Mr. S. G. refers to Appeal No. 227 and requests the list of persons constituting the Panel expected to rule on the said appeal. The Applicant claims that this procedure which he calls "motion of censure" is irregular.

- A second e-mail is that of 4 February 2014 to Mr. S. G. forwarding the list of Panel members to review his Appeal No. 227. This e-mail informed him of his right to reject a panel member for legitimate reasons. After pointing out that the e-mail was sent out on the eve of the 81st session dedicated to the review of his appeal, the Applicant highlights the "total lack of fairness" due to the "connivance between the Appeals Committee and the Respondent."

- A third e-mail of 25 February 2015. Mr. S. G. where in requests the Secretary of the Staff Appeals Committee for the outcome of the session devoted to a review of his appeal. According to the Applicant, the exchange is proof of the Respondent’s "unethical behaviour ".

8. Accordingly, the Applicant requests the Tribunal to review Appeal No. 227 and establish that irregular. He also calls for the appraisal of the minutes of the 81st session of the Appeals Committee to establish its irregular nature and thereby grant his request for a review on the merits of Application No. 2014/04.

B. Request for Interpretation

9. Regarding the Request for Interpretation, the Applicant calls for the Interpretation of Rules 103.04 (a) of the Staff Rules and questions the Staff Appeals’ interpretation in this Rule. He calls on the Tribunal to review the interpretation of this Rule in light of principles of international
law. According to him, this text is not clear. In addition, it is incomplete and ambiguous. In doing so, any interpretation that challenges the text must be constitute against the Respondent who is the editor.

10. The Applicant also contends that Rule 103.04 of the Staff Rules should be interpreted in a way that makes the Respondent’s Corporate Services Vice-President (VP-CSVP) responsible for providing an “acknowledgement of receipt” for any request submitted to it.

11. The Applicant further contends that Rule 103.04 of the Staff Rules is "silent on the maximum time and referral requirements of the Appeals Committee from the date of notification of the administrative decision." The Applicant therefore requests the Tribunal to order the Respondent "to clearly indicate in Rule 103.04 (a) the maximum time limit and conditions for referral to the Appeals Committee from the date of notification of the administrative decision."

12. Lastly, the Applicant requests that the Tribunal reverse its decision of 12 June 2015 in order to examine the merits of Application No. 2014/04.

The Respondent

13. For the Respondent, Application No. 2015/03 is inadmissible in view of the provisions of the judgment of 12 June 2015. Indeed, the Respondent holds that the grounds for inadmissibility for non-exhaustion of internal remedies of Application No. 2014/04 apply mutatis mutandis to Application No. 2015/03. Indeed, for the Respondent, the Applicant still has not shown that he has exhausted all remedies with respect to this Application.

14. Moreover, the judgment resulting from Application No. 2014/04 did not rule on the substance of the dispute and merely declared the Application inadmissible. It follows, according to the Respondent, that the substantive arguments contained in the said complaint can no longer be examined by the Tribunal.

15. The Respondent also points out that Application No. 2015/03 does not fulfill the conditions for admissibility of a request for revision in accordance with Article XXII of the Rules of Procedure and those of Article XII (4) of the Statute of the Administrative Tribunal.

16. The Respondent submits that, by the Applicant's own admission, the e-mails referred to were sent to him in February 2014, more than one year before Judgment No. 91 was delivered. The Respondent therefore submits that these elements do not constitute new facts.

17. The Respondent further submits that, notwithstanding the two (2) Appeals No. 227 and No. 224 had been examined during the same Staff Appeals Committee session, these two remedies have no connection between them. Appeal No. 227 was introduced in a completely independent case before the Appeals Committee by Mr. S. G., a former staff member.

18. Similarly, the Respondent submits that the alleged "motion of censure" refer to by the Applicant is in fact the right granted to any party to a dispute to challenge a member of the jury.
19. Furthermore, the Respondent refers to two decisions of the Tribunal, that of 1 December 2006 in Application No. 2006/04 and that of 22 November 2007 in Application No. 2006/05 referring respectively to the cumulative nature of the conditions under Article XXII (4) of the Statute of the Administrative Tribunal and that of Article XXII (1) of the Tribunal's Rules of Procedure. The Respondent concludes that none of the conditions specified in the above-mentioned Articles have been met.

20. As regards the Request for Interpretation, the Respondent submits that it is also inadmissible because it does not comply with the provisions of Article XXIII of the Rules of Procedure of the Tribunal. Indeed, the Respondent points out that in order to be admissible, the Applicant must specify which part of the judgment he is seeking Interpretation. In the present case, the Applicant confines himself to asking for the Interpretation of Staff Rule 103.04 (a) "in accordance with the principles of international law", which according to him are not being complied with by the Appeals Committee.

III. REQUESTS OF THE PARTIES

Applicant’s Requests

21. The Applicant requests the Tribunal to review Judgment No. 91 of 12 June 2015 as follows:

1. Verify and reverse the decision of 12 June 2015 made on the basis of the third plea of admissibility in order to examine the merits of Application No. 2014/04.
2. Examine the e-mails exchanged between Mr. S. G. and the Secretary of the Staff Appeals Committee to establish their irregularity.
3. Appraise the minutes of the Appeals Committee as there are two (2) minutes of the session (81st session of 24 February 2014).
4. Call into question the report of the said session of the Appeals Committee as it refers to another file other than that of the Applicant.
5. Note the absence of an acknowledgment of receipt during the submission of his Application for review by the CSVP Vice-President.

22. The Applicant also requests the Tribunal to interpret Rule 103.04 (a) of the Staff Rules. According to the Applicant, Rule 103.04 (a) should be interpreted in the light of international law in order to declare the need for the Respondent to issue an acknowledgment of receipt to the Applicant after the filing of an Application for a review of an administrative decision, and to set a new maximum period for referral to the Appeals Committee by the Applicant.

Respondent’s Requests

23. The Respondent urges the Tribunal to declare inadmissible the Applicant’s request for Interpretation and Revision of the judgment made by the Tribunal in Appeal No. 91 of 12 June 2015
IV. **THE LAW**

24. By his Application registered at the Secretariat of the Administrative Tribunal on 17 September 2015, the Applicant urges the Tribunal to “reconsider its decision of 12 June 2015 on the basis of the third plea of inadmissibility in order to consider the merits of Application No. 2014/04”. The conclusion of the Application therefore seems to be confined to an Application for revision of Judgment 91 made by the Administrative Tribunal on 12 June 2015. But on reading the entire Application, it appears that the latter targets both the Revision and Interpretation of the said judgment. The Tribunal will examine these two issues in turn.

25. In order to obtain a revision of the judgment, the Applicant relies on the existence of new facts. According to the Applicant, these new facts are essentially "the concealment of another improper Appeal 227 and the influence of the Respondent on the course of the proceedings after the end of the pleadings of Appeal 224" as well as irregularities in the minutes of the Appeals Committee’s deliberations at its 81st session held on 24 February 2014 and, finally, the absence of an acknowledgment of receipt of the Applicant's Application submitted to the CSVP Vice-President seeking a review of the contested administrative decision.

26. In his Reply registered at the Tribunal’s secretariat on 30 December 2015, the Applicant asked the Tribunal "to declare the lack of jurisdiction of the Appeals Committee and to take a decision on the matter in accordance with Rule 102. 09 of the Staff Rules ".

27. In this regard, the Tribunal recalls that the revision procedure is an exceptional procedure which must enable the Tribunal to reopen the case as stated in Article XII of the Statute of the Administrative Tribunal, "In the event of the discovery of a fact which by its nature might have had a decisive influence on the judgement of the Tribunal and which at the time the judgement was delivered was unknown both to the Tribunal and any party ...." This provision is supplemented and clarified by Article XXII (1) of the Tribunal's Rules of Procedure.

28. As the Tribunal has already stated in other cases, the conditions for the admissibility of an Application for revision are as follows :

   a. The discovery of a new fact or document after the judgment was rendered;
   b. The decisive character of this fact or document on the judgment rendered;
   c. The Tribunal’s ignorance of this fact as well as that of the party calling for a revision; and
   d. The fact that the Applicant is not responsible for the ignorance about the fact or the document.

   These conditions are cumulative, as recognized by the Tribunal in Judgment No. 58, C.A.W v. ADB of 1 December 2006 (§ 14).

29. Having examined the documents in the file, the Tribunal was unable to find a new fact capable of justifying a revision of the judgment delivered. The e-mails allegedly discovered by the Applicant were undoubtedly available at the stage of his Appeal No. 224 to the Staff Appeals Committee. They cannot therefore be considered as new facts. Moreover, Mr. S.G., who is
presented as a lawyer in the Human Resources Management Department of the Bank (CHRM), is in fact the Appellant in Appeal No. 227 examined by the Staff Appeals Committee at its 81st session, also devoted to the Appeal No. 224 of the Applicant. This misjudgment cannot constitute grounds for revision.

30. With regard to the irregularities which the Applicant claims to have detected in the recommendations of the Staff Appeals Committee and, in particular, the alleged confusion between Appeal No. 224 and Appeal No. 227, and without having to rule on their accuracy or on their grounds, they are not capable of giving rise to a revision of the judgment rendered by the Tribunal on the ground that they are neither new facts nor decisive facts which could have changed the judgment whose revision is requested by the Applicant. The two Appeals (No. 224 and 227) has no connection between them.

31. With regard to the request for Interpretation of the judgment, the Tribunal, after examining the Applicant’s arguments, considers that they tend to require the Tribunal to interpret Staff Rule 103.04 (a) which is not within the Tribunal’s jurisdiction. It further raises substantive issues relating to the case, whereas the Tribunal’s judgment was limited to the admissibility of the Application. The Tribunal recalls that a request for Interpretation cannot be for the purpose of reconsidering a case but merely the interpretation of "aspects of the judgment which appear obscure or incomplete" as stated in Article XXIII of the Rules Procedure of the Administrative Tribunal. The Applicant's Application for Interpretation does not satisfy these conditions.

V. THE DECISION

32. On these grounds, the Tribunal has decided that:

The Application is dismissed regarding both the Application for Interpretation and the Application for Revision.

Yadh BEN ACHOUR President

Abdoulkader DILEITA Executive Secretary

THE APPLICANT

S. O.

COUNSEL FOR THE APPLICANT

Helene N'GARNIM-GANGA General Counsel
Almaz TADESSE Division Manager, Administrative Affairs
David MARTY Legal Consultant