



IN THE MATTER OF:

*V.H. et al, Applicants*

v.

*Chairperson of the African Union Commission, Respondent*

FOR APPLICANT: *Pro se*

FOR RESPONDENT: Hajer GUELDICH, Legal Counsel, African Union Commission

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 23 May 2023, 20 July 2023

JUDGMENT

***Procedural and Factual History***

1. On 22 April 2022, Applicants, former staff members of the Pan African Parliament (PAP), filed a joint application contesting the decision not to extend their appointment beyond their respective mandatory separation date under Staff rule 71.
2. The Tribunal transmitted the application to Respondent on 25 April 2022. Respondent submitted his written Answer on 24 June 2022. Applicant's written Observations were received on 22 July 2022. Following a preliminary review, the Tribunal invited the parties to file additional briefs on the legal issues present in this matter.
3. Having been satisfied that the facts and issues have been presented adequately in the pleadings, the Tribunal heard this matter on 23 May 2023 on the parties' papers filed.
4. Applicants are former staff members who served at the PAP as a Clerk (VH), Senior Internal Auditor (EKA), and Senior International Relations Officer (LC). VH and EKA separated from service by way of retirement on 31 March 2022, LC on and 31 May 2022.
5. On 5 May 2021, VH requested an eleven-month post-retirement extension for himself as well as EKA and LC as permitted by Staff rule 71.1. VH explained the extensions were sought "in the interest of stable continuity of business in PAP as the retirement of the three senior officers fall at a time when Parliament was to have a new President, a new Bureau and a new set of Bureau staff."
6. On 7 May 2021, the acting President notified VH that he approved his request for extension. By subsequent memorandum issued on 21 May 2021, the Director of PAP Bureau notified VH that all three Applicants have been approved for extension by the acting President.
7. At the time the extensions were issued, the acting President was the only Bureau member, all other Bureau members<sup>1</sup> having left office prior to the end of the Bureau of PAP's term in May 2021. The acting President left office at the end of his term in May 2021.
8. On 17 January 2022, head of AHRM e-mailed VH memorializing a discussion regarding the extensions which occurred that day about Applicants' incomplete performance appraisals. Several avenues of completing the appraisals were explored including arranging for VH and EKA to be appraised by the Deputy Chairperson (DCP) and the Director of Internal Audit, respectively.

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<sup>1</sup> As of March 2021, the record shows that the former President as well as the first, second, and the third Vice-Presidents had left, leaving in office only the acting President.

9. Further exchanges occurred on the same subject between VH and the head of AHRM, which for the purposes of this judgment suffices to note that both did not agree on whether the extensions were conditional on prior performance appraisal for 2021.
10. By e-mail communication dated 27 January 2022, VH instructed the head of AHRM to issue the 11-month contracts without delay and to finalize all outstanding performance appraisals. In response to VH's terse e-mail, the head of AHRM wrote back on 1 February 2022, informing VH that the extensions had been flagged as irregular by internal auditors during November 2021 since the approval was not predicated on satisfactory performance appraisals and Bureau approval.
11. By memorandum dated 2 February 2022, VH urged the head of HRM to comply with the approval of the acting President, which he explained was properly issued. He explained that performance appraisals for EKA and LC had already been completed. Whereas for VH, his appraisals were manually done by the acting President of PAP, and in any case, he could be appraised when a new President takes office.
12. On 3 March 2022, PAP's Legal Officer dispatched a written request to the Office of the Legal Counsel (OLC) seeking interpretation and applicability of Staff rule 71.1.
13. On 14 March 2022, VH wrote to the Deputy Chairperson (DCP) reporting AHRM's resistance and seeking her intervention in relation to the 11-months extension which Applicants expected to be issued at the end of their retirement. The DCP acknowledged receipt of VH's but does not appear she acted on the request.
14. By written opinion issued on 21 March 2022, the OLC concluded that the extensions were irregular. The acting President was not authorized to issue extensions under Staff rule 71.1 and therefore his decision was *ultra vires*. Based on directives issued by the Executive Council (EX.CL/Dec.1097 (XXXVII) post-retirement extensions were to be issued sparingly and in "strict compliance" with applicable staff rules. The extensions were issued without Bureau approval and appropriate performance appraisal reports. In the circumstances, the OLC recommended that the planned extensions be refused.
15. On 22 March 2022, Head of AHRM notified each Applicant by separate memorandum that based on OLC's opinion and the audit report of November 2021, ARHM was not amenable to issuing the post-retirement extensions and Applicants would be separated from service upon each reaching the retirement age as previously notified.
16. On 27 March 2022, Applicants jointly petitioned the Chairperson to review the decision setting forth arguments why the acting President's decision must be executed. Respondent responded via memorandum dated 29 March 2022 affirming the conclusion that the proposed post-retirement extensions were not consistent with Staff rule 71.1.
17. Applicants ask the Tribunal to order: (a) material damages in the form of 22 months' salary in respect to VH (\$14,400/month); and at the rate of \$10,400/month in respect to EKA and LC; (b) payment of arrears accrued on account of annual with-in grade step increments; (c) general damages for emotional stress, trauma, humiliation, pain and suffering; (d) exemplary and punitive damages; (e) cost of this action; and (f) any other relief deemed fit by the Tribunal.
18. In reply, Respondent asks the Tribunal to dismiss the entire application with cost.

### *Discussion*

19. On 21 May 2021, the acting President of PAP granted all three Applicants eleven-month short-term appointments beyond their respective retirement dates. The HRM refused to implement the acting President's decision, which decision Applicants contested in this case.
20. Applicants advance several pleas against the contested decision. They first contend that the acting President acted with authority when he approved their extensions. Next, they submit that even if the President was not competent to issue extensions, he acted with apparent authority or that his approval created legitimate expectations that their appointments would be extended. They finally complain that Respondent acted in bad faith in not providing them with sufficient notice of separation.
21. Staff rule 71.1 (compulsory retirement), set forth the conditions under which post-retirement extensions may be granted, as follows:
  - (a) Staff members, except for elected officials and the Special and Political appointees, shall not be retained in the service of the Union beyond the age of sixty (60)

following the last day of the month in which he or she celebrates his or her 60<sup>th</sup> birthday.

(b) The Chairperson or the competent authority of any other Organ may, in exceptional cases determined by the work needs, grant him or her an eleven-month contract based on satisfactory performance in previous appraisal and the need for securing his or her services. Under no circumstances shall the said contract be renewed more than once.

(c) These provisions are applicable to all persons working in any capacity for the Union except consultants.

22. The key question in resolving this case is to determine if the acting President of the PAP Bureau meets the definition of the “competent authority” of PAP; and further examine the above conditions for post-retirement extension and whether they were met in respect of each Applicant at the time the acting President granted the extensions in May 2021.
23. While the staff regulations and rules do not define the phrase competent authority, more specific guidance may be found under PAP Protocol art. 12.5, which states, the President, and the four Vice-Presidents constitute officers of the PAP (collectively referred to as Bureau) who are “responsible for the management and administration of the affairs of the PAP and its Organs. These descriptions are echoed under Rule 17 of the PAP rules of procedure. Given these provisions, it was not unreasonable for Respondent to conclude that with respect to PAP, only the Bureau as opposed to the President alone, could issue extensions under the PAP.
24. The Tribunal has considered Applicants argument that during the material time, the only PAP Bureau member at the time was the acting President with no other Bureau member to consult with and determine their extension request filed on 5 May 2021. However, the argument is unavailing.
25. The powers of the President and the Bureau are defined in the Protocol of PAP and its rules of procedure. The proper limits of their respective powers and responsibilities may not be extended by implications arising from temporary vacancies in either office. In fact, Applicants do not cite any legal authority for the assertion that in case of severe vacancies in the Bureau, the President may act alone on matters of staff appointment.
26. Additionally, the Tribunal has considered the arguments in light of the curious timing of Applicants’ request submitted essentially on the eve of the acting President’s end of term of office. The Tribunal would be hard pressed to deem the timing simply coincidental. If the timing was strategic or opportunistic, as speculated, Applicants have no one to blame but themselves for the deficiencies in the acting President’s decision. As far as the Tribunal understands, Applicants’ retirement dates were due to occur during March – May of the following year, and having seen no particular urgency, it may have been prudent for Applicants to defer their request until after new Bureau members took office.
27. Further, as correctly pointed out by Counsel for Respondent, apart from the lack of authority by the acting President, the Tribunal is satisfied from the record that at the time the extensions were granted no prior performance appraisals were on file in respect of each Applicant. As such, the *exceptional* extensions were not granted consistent with the conditions enumerated under Staff rule 71.1
28. Applicants next argue that even if the acting President lacked authority, they were entitled to the extensions based on the principles of legitimate expectation. Respondent retorts that Applicants’ circumstances as they unfolded in this case are not appropriate for the application of the doctrine of legitimate expectation in so far as the “fulfillment of the expectation [did not lie] within the powers” of the acting President. The Tribunal agrees.
29. The principle of legitimate expectation is an equitable remedy open only to persons who truly believe and rely on a party’s actions to their detriment. It is not clear to the Tribunal, given the profile of Applicants, that they honestly believed the purported extensions were procedurally and substantively sound. The record contains, at least with respect to VH, proof of instances where he resisted a PAP president’s decision taken without Bureau approval.
30. More importantly, the Tribunal has taken note of the resolutions of the Committee on Rules, Privileges and Discipline of the Pan African Parliament dated 12 March 2021, which reflected the vacancies affecting the management of PAP were severe enough that arrangements were put in place to form an interim Bureau consisting the acting President and chairpersons of the regional caucus filling the vacancy of the Bureau members from their respective regions. The acting President’s inability to “*legitimately sit and function*” was a consideration for the resolution. In the circumstances, the Tribunal finds Applicants’ argument in respect to legitimate expectation disingenuous. Applicant’s arguments premised on the doctrine of apparent authority must fail for the same reasons.

31. Applicants next question the decision-making authority of the head of AHRM. However, given the obvious interest in obtaining the extensions, it was not unreasonable for the head of HRM to, without consulting Applicants, seek the opinion of OLC or guide herself based on an audit report which questioned the extensions as irregular. This plea is without merit.
32. Turning to the argument that Respondent unfairly treated or discriminated against Applicants, the Tribunal has repeatedly held that Respondent has a duty to deal with its staff “fairly, transparently, and justly.”<sup>2</sup> However, Applicants have not submitted proof that Respondent breached these obligations. Applicants were notified of their retirement dates in due time. Applicants were as early as January 2022 notified of the deficiencies in the acting President’s post-retirement extensions. Nor has the Tribunal been presented with evidence that Respondent favorably determined similar requests from other staff members in like circumstances. As such, Applicant’s insufficient notice and discrimination pleas are not accepted by the Tribunal.
33. Overall, the Tribunal examined Applicants’ pleas with due deference to Respondent, sensitive to the fact that post-retirement extension under Staff rule 71.1 are exceptional and discretionary. The Tribunal may only reverse Respondent’s exercise of discretion if tainted by breach of rule or procedure or was improperly motivated. Having found none in this matter, the application is DENIED.

Date: 26 February 2024

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SYLVESTER MAINGA, PRESIDENT  
JAMILA B. SEDQI  
PAULO D. COMOANE

Secretary: 

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<sup>2</sup> A.L. v. Chairperson, AUAT/2017/002 p.15; Staff reg. 3.4(b).