**AFRICAN UNION**
**ADMINISTRATIVE TRIBUNAL**

**UNION AFRICAINE**
**TRIBUNAL ADMINISTRATIF**

AUAdministrativeTribunal@africa-union.org

CASE NO.: BC/OLC/2.14
JUDGMENT NO.: AUAT/2015/002

S. G., APPLICANT

v.

CHAIRPERSON OF THE AFRICAN UNION COMMISSION

# JUDGMENT

**Counsel for Applicant:**
*PRO SE*

**Counsel for Respondent:**
ALIMAMY SESAY
ESTHER UWAZIE

This matter was first initiated on 20 December 1991 against the Secretary-General of the Organization of African Unity, now the Chairperson of the African Union Commission.  The Tribunal notes, with regret, that the application could only be heard when the Tribunal convened at its September 2014 Session after a long period of inactivity.

# JUDGMENT

**BEFORE:** Hon. Andrew NYIRENDA, Shaheda PEEROO and Aliou BA
**DELIVERED BY:** Hon. A. NYIRENDA

The Applicant joined the Organisation of African Unity, the Respondent, on 6 February 1980 as a Special Political Affairs Officer, P4 Step 2. On 11 August 1988, the Applicant was promoted to P4, Step 1 but under the same designation. On account of his promotion, he was transferred to the Respondent's Permanent Mission in New York.

The Applicant transferred to the Respondent's New York office in November 1988. At the time of his transfer his household goods and personal effects remained behind. They were to be sent to him in due course by the Respondent. The case for the Applicant is that the bulk of his goods and personal effects have to date not been shipped to him. The issues in this matter revolve around who is to blame for this situation. The Applicant contends that the blame lies wholly on the Respondent. For that reason the Applicant seeks to be compensated for loss of his goods. He further seeks damages for loss of use of the personal effects and also for the inconvenience he has experienced without them. The Applicant submits that the Respondent's action in handling his property is reprehensible, for which the Respondent must be reprimanded. The specific prayers will be itemised in detail later.

We will attend to the basic details of what happened as much as can be obtained from the communication between the Applicant and the Respondent and from the open tribunal hearing.

On 28 February 1989, the Applicant wrote P.A., the Respondent's Director of Finance then, drawing his attention to the fact that his goods and personal effects had not yet been shipped by the company contracted by the Respondent. The Applicant pleaded with the Respondent to pay for the shipment, in case that had not been done, so that the shippers could move his property. The concluding paragraph of that letter states:

> In view of the legal fact that the Finance Department made the contract with Universal Movers to pay for the service rendered, I would be most grateful if your office can

> provide me with information concerning the status of my household effects.

The letter was copied to the Assistant Secretary General (Administration and Finance) Passages and Supplies Section. It was also copied to Universal Overseas Movers Limited Company, the company that was contracted to move the property, which we shall hereinafter refer to as "the Company". The case for the Applicant is that the Respondent reneged on its responsibility under Document CM/1234 (XL) Rev. 1 on "Travel and Transfer" of employees in the manner his property was handled. Below is what the Applicant sets out in his Application. We extract only the relevant passages thereof:

> <u>POINT 4</u>: The contractual letter signed by the Director of Finance and the Head of Budget and Accounts (ANNEX III) violates the specific provision in document <u>CM/1234 (XL) Rev. 1</u> on "Travel and Transfer", with particular reference to the mode of shipment, which should be by "sea", only.
> <u>POINT 5</u>: It is the contention of the Applicant that had the Department of Finance faithfully implemented the provision in the regulation governing the mode of shipment of my household and personal effects, this case would not have been necessary.
> <u>POINT 6</u>: By giving Universal Movers PVT. Ltd. Co. (the contractor), the option of shipping my household goods and personal effects "by sea" or "by air", the Department of Finance not only violated the regulation on shipping staff entitlements referred to earlier, but has rendered itself liable to financial claims and costs from Universal Movers. It is these claims and costs in fact, which the former Director of Finance has tried to pass on to the Applicant.

The mainstay of the Applicant's case is that the contract between the Respondent and the Company gave or allowed the Company the option to move his property by sea **or** by air. According to the Applicant such a direction was an infringement of Document CM/1234 (XL) Rev. 1 on "Travel and Transfer" of employees. As we understand the Applicant's argument, the above document did not allow for any option on the mode of movement of goods except by land and sea. He contends that it is on account of the wrong direction that the Respondent gave to

the Company that his property has remained in Addis Ababa for years after his transfer to New York.

At this stage, it will be appropriate that we briefly turn to the Respondent's position on the matter. The Respondent first submits that this matter is not receivable because it was brought out of the time prescribed in the Rules of Procedure of the Tribunal. It is also argued that the Applicant did not petition the appropriate authority. The Respondent's main response though is with reference to the interpretation and application of Document CM/1234(XL) Rev.1. We will come to this document later in the judgment. We quote part of the Response:

> (i) Paragraph 266 (d)(i) of Council of Ministers decision, Fourth Ordinary Session, Addis Ababa, Ethiopia, 27 February – 7 March 1984 on the Report of the Thirty Seventh Ordinary Session of the Advisory Committee on Administrative, Budgetary and Financial Matters (hereinafter OAU document CM/1234 (XL) Rev1) state inter alia:
> **"The Organisation of African Unity shall pay the expenses of removing a staff member's household goods and personal effects from the place of actual official duty to the new official duty station by the most economical means."**
> This provision reiterates section 3 of the Administrative Instruction on Travel and Baggage Allowance issued on 1 October 1971 by the OAU Administrative Secretary General, (Hereinafter Administrative Instruction) guiding the administration on matters concerning staff transfer and travel.
> (ii) Section 3 (a) thereof obliges the Organisation to ship by land or sea 2,000 Kilos where the staff member has a wife with one or two children.
> (iii) Section 6 permits the organisation to offer a staff member the option of shipping by air one-third of the weight of the maximum authorised sea or land shipment of his household goods and personal effects.
> (iv) Section 7 absolves the Organisation of any responsibility for loss or damage of unaccompanied baggage save where it undertakes to indemnify the Respondent of the sum of USD1,500 for the loss or damage of his goods.

What the parties have called the contract between the Respondent and the Company is the following document from the Respondent to the Company:

> Please refer to your offer dated 5-9-88, giving us quotations for the packing and forwarding of the personal effects of [S.G.] from Addis Ababa to New York.
>
> We have accepted your terms. The sea or air freight charges will be based on actual invoices demanded as evidenced by bill of lading or airway bill. We are also requesting you to proceed with the packing and other arrangements to facilitate the forwarding as soon as possible.
>
> The Organisation will bear the cost of packing and forwarding only up to 2,000 kg by sea or 666.67 kg by air.
>
> Arrangements will be made to settle your bill upon receipt of your invoices together with copies of packing list, bill of lading or airway bill etc.

In June 1989, the Company sent some of the Applicant's goods by air. According to the Applicant, it was only two suitcases. A year later, on 17 July 1990, the Company wrote the Applicant. The letter is of particular relevance to the issues in the case. We will set out the full text:

> Dear [S.G.]:
>
> I avail my best greetings to you and our good friendship forced me to draft this note in respect of your personal effects which are still lying in our store.
>
> The lying effects are packed in one wooden box of 224 x 204 x 154 dimension weighing gross 925 Kilos. Due to prevailing situations in our territory, we are unable to ship the box to USA by vessel in view of the fact that there are limited exports and besides the inland transport is quite rare and if available becomes expensive due to shortage of trucks.
>
> Therefore, I recommend to ship the effects by air and the total cost of packing, handling and air freighting to New York would cost the OAU or UN USD 4,945. Alternatively and with the present situation, the mode of transport by sea will not be less than the amount indicated by air. Subsequent to this, there appears mishandling, pilferages and damages associated with sea shipments and if all these inconveniences are expressed in terms of money, the cost by sea becomes more expensive in certain territories in Africa.

> Therefore, I would very much appreciate your response and opinion before the exporting document expires, which may end up impossible to release the shipment from Ethiopia.

On 6 September 1990, the Applicant wrote the Respondent again. It is apparent from that letter that he had previously sent reminders to the Respondent on the matter and had not received a direct response as he puts it. On 11 October 1990, the Applicant wrote to [T.M.], the Respondent's Assistant Secretary General (Administration and Finance) referring to the issues raised by the Company. The letter reads:

> As I had raised the above subject matter with you during your visit to the Executive Secretariat, I wish therefore to submit this for the record.
>
> The party that was contracted to send my personal effects i.e. Universal Movers of Addis Ababa sent me a letter, a copy of which I have attached to this memorandum. It basically informs me of the obvious, that my personal effects were still in Addis Ababa.
>
> I wish to draw attention to the entire contents of the letter sent by Universal Movers, and to underline that I did not, and have not, proposed or suggested that my personal effects be sent by airfreight.
>
> I wish to state also, that I cannot be expected to pay for any of the cost, when the institutionalised procedure of shipping the personal effects has been so clearly outlined to the shipper.
>
> It should be noted that the Department of Finance has been, and remains the contractor, Universal Movers on the other hand is still the contracting, *i.e.* until I receive my personal effects.
>
> I wish to conclude that I hold the Director of Finance liable for any and all damages to my personal effects. It would be an understatement to say that the Directorate of Finance has been irresponsible.

In a bid to further clarify its concerns, the Company sent to both the Applicant and the Respondent a breakdown of what it would entail if the Applicant's property was sent by sea and alternatively by air. It was also to demonstrate that in the circumstances prevailing at the time it was safer and cheaper to move the

Applicant's property by air. As a result of the issues raised by the Company there was subsequently a trail of communication between the Applicant and the Respondent on the whole matter. It would have been appropriate to refer to all the communication but we do not consider it necessary for purposes of addressing the real issues in the Application.

On 28 September 1991, the Applicant forwarded what he decided would be the last communication to the Respondent. That letter was addressed to The Secretary General of the Respondent. Not having received a favourable response, the Applicant presented this Application on 20 December 1991.

We do not intend to dwell on the argument that the Applicant addressed his petition to a wrong party as we believe that would merely prolong the discourse. Obviously the Applicant engaged the Respondent through several officers of the Respondent over a period of time. We do not think any of that communication could be said to be petitions. Most of the communication could at most be considered to be letters of protest. The exchange between the Applicant and the Respondent was protracted. It started towards the end of 1988 and did not relent until the end of 1991. Throughout the period in between there were numerous letters between parties. We must observe that the discussion was not amiable. In our view it was the letter of 28 September 1991 that came close to a petition to the relevant authority and we are prepared to accept it to be such. Having presented the petition to the Respondent, the Applicant triggered the operation of Article 11 para. 7 of the Rules of Procedure of the Tribunal. That Article provides:

> "7. (i) An application **not** connected with disciplinary matter shall not be receivable unless the staff member or the employee concerned has previously submitted a petition to the appropriate authority by registered delivery mail for re-examination of his case;
> (ii) Within 30 days of the receipt of the petition the appropriate authority shall notify the petitioner of its final decision.
> (iii) Silence by the appropriate authority during the 30 days following an applicant's filing a petition, shall be interpreted as an implied rejection of this request
> (iv)The application instituting proceedings, shall be filed with the Secretary within 30 days and this time limit shall be reckoned as from the days following notification

> of the final and unfavourable decision to the applicant
> taken in this regard by the appropriate authority."

Going strictly by the date of the Applicant's communication to the relevant authority, that is, 28 September 1991, the Application should have been filed with the Tribunal by 28 November 1991. As we state above the Application was presented on 20 December 1991. The Application was, therefore, close to four weeks out of time. We hasten to say the delay was not inordinate. We are alive to the principle that rules of legal procedure should be adhered to in order for legal process to be properly regulated and predictable. Delays, where such is undue and in violation of time lines set by rules of procedure of a tribunal, will invariably occasion injustice and unfairness as facts, evidence and witnesses, might be lost along the way. In the case at hand four weeks' delay did not, in our assessment, result into substantial unfairness and injustice. At the time of the Application the issues, the facts and the evidence were still fresh to both parties. We must therefore proceed to determine this matter on its merits.

What is more than clear to us is that the responsibility to ship the Applicant's goods was on the Respondent. Indeed we do not think that the Respondent has ever argued that such is not the case. We also believe that the parties are agreed that central to the process of shipment are the Staff Rules and Regulations, in particular, the regulations governing the shipment of staff property on transfer as outlined in OAU Document CM/1234(XL) Rev.1. For the most part, this case is about the interpretation and application of that document and how the Applicant's property has been managed pursuant to the contract between the Respondent and the Company. In that regard the starting point is to analyse Document CM/1234(XL) Rev.1.

Document CM/1234(XL) Rev.1 is the Report of the Thirty-Seventh Ordinary Session of the Advisory Committee Administrative, Budgetary and Finance Matters. The document contains reports on many subjects that were discussed during the Session. The relevant part of the document on shipment of goods on transfer is in Paragraph 266. What is significant is that the Committee resolved to maintain the existing Regulations. The opening statement of Paragraph 266 states "The Committee approved to maintain the status quo…" The status quo, that is, the

existing regulations, are in Document ADM/CIRC.15/71-Rev. 1 on Administrative Instruction on Travel and Baggage Allowances. This is the document that has full provisions on the subject of travel and baggage allowance. The following are the relevant passages of that document:

> **3. Travel on Transfer:**
> The Organisation of African Unity shall pay the expenses of removing a staff member's household goods and personal effects from the place of actual duty station to the new official duty station by the most economical means, including weight and volume of packing and crating up to the maximum of:
>
> (a) By land/or by sea
>
> 1000 kilos, (9 cub meters or 2,000 lbs or 220 cub feet) inclusive of packing crates and lift vans for staff member without dependants;
>
> 1,500 kilos, (11 cub meters or 3,300 lbs. or 330 cub feet) for staff member and wife without children;
>
> 2,000 kilos (13 cub meters or 4,400 lbs. or 440 cub feet) for staff member and wife with one or two children;
>
> 2,500 kilos, (15 cub meters or 5,500 lbs. or 550 cub feet) for staff member and wife with three to six children.
>
> (b) By air
> 50 kilos unaccompanied baggage; and
> 10 kilos excess baggage for each eligible person.
>
> (c) N.B. The Organisation will pay reasonable costs of packing and crating only.
>
> **6. Conversion of Surface Shipment Entitlement:**
> The conversion to air freight of whole or part of the surface shipment entitlement under items 1(a), 3(a) and 4(a)… shall be authorised on the basis of one third of weight or volume to the maximum authorised surface entitlement or to the remaining unused part of the surface entitlement (e.g. 2500 kilos of surface shipment shall be considered as equivalent to 833.3 kilos of air freight)"

We have carefully read through the text of Document CM/1234 (XL) Rev. 1 and Document ADM/CIRC 15/71-Rev.1. What is true is that these documents should

be read in context and as a whole. It is correct to say Paragraph 3(a) of Document ADM/CIRC 15/71-Rev.1 mentions transportation of the bulk of the goods by land or sea only. It is equally correct that Paragraph 6 specifically provides for conversion of volumes from sea/land to air. It is not by any stretch of imagination to understand that Paragraph 6 was meant to allow a staff member the option to transport property by air. In that case and when authorized, the staff member would be entitled to one thirds of the maximum weight authorised by sea or land.

We are clear in our reading of the contract between the Respondent and the Company that the Respondent was merely restating and following the path of the entire regulations on baggage allowance. The Respondent did not want to close options for the Applicant in case it became necessary that his property be transported by air. We are therefore unable to share the Applicant's reading and interpretation of the text of Document CM/1234(XL) Rev.1, read together, as must be done, with Document ADM/CIRC.15/71-Rev.1.

We agree that on a close reading, the documents consider moving property by sea or land as the main mode of transportation of goods. We think this is for good reason. Household effects and goods for most established staff members of the Respondent will most likely be of particularly large volumes in size as well as weight. In most cases land or sea transportation will be the most economical way of transporting such property. We believe however it cannot be ruled out that in some cases the property might not be in large volumes. In other instances the nature of the property might dictate otherwise. In such cases consideration may be given to transporting the property by air. Obviously this would entail consultations between the staff member and the relevant authority of the Respondent. This takes us to the developments in the case before us.

We have referred to some of the important letters between the Applicant and the Respondent. We have also referred to the letter from the Company to the Applicant of 17 July 1990. What is clear to us from the letters is that the Respondent did not attend to the Applicant's plight with due diligence. As early as February 1989 the Applicant started alerting the Respondent to the delay in dispatching his property. In June 1989 a few items were sent to the Applicant. It was only a year later in mid-1990 that the Respondent started paying particular attention to the

matter. It was around that time that the Respondent inquired from the Company what was delaying moving the Applicant's property. The Company informed the Respondent that part of the Applicant's property had been moved by air. The Applicant also confirmed that part of his property had been moved by air. This was only two suitcases according to him. The bulk of the Applicant's property remained in Addis Ababa.

The other side of the matter is the Applicant's own involvement in the process of movement of his property. We have, above, quoted the letter of 17 July 1990 from the Company to the Applicant. Our reading of that letter clearly says to us the Company was alive to the fact that the Applicant's goods were to be moved by land and sea. The essence of that letter was therefore to demonstrate to the Applicant the difficulties and the danger of moving the property by land and sea. The letter was further intended to persuade the Applicant to understand the predicament the Company was in and more importantly to seek the Applicant's understanding and approval that his property be moved by air. It might, strictly speaking, be said the Company was approaching a third to the contract, but as we shall discuss later, the Company was prompted to write by the Applicant himself. But further to that this matter was eventually taken up between the Applicant and the Respondent.

Going back, on 28 February 1989, the Applicant wrote to P.A., then the Respondent's Director of Finance. That letter, in part, reads:

> The object of this letter is to draw your attention to the issue concerning the non-shipment of my household effects which were packed in October 1989 and destined for shipment to my new duty station – the OAU office in New York.
> ….
>
> It is now more than a year since that contract, and I am still waiting for my household effects to arrive. This matter is urgent because Universal Movers has not had the courtesy or decency to inform me as to why they did not ship my things. As the Finance Department made the contract with Universal (and not myself), I can only draw attention to the fact that as the other party to the contract. (sic) There is an obligation to verify whether the service paid for has been rendered. If the Finance Department has still not paid for my things, I also would like an explanation. My information from Addis Ababa is that my household effects

> are still there. There are three things I would like to highlight:
> The first is that I carried out my responsibility as far as providing the effect to be packed and shipped.
> The second concerns the obligation of Universal Movers to meet the terms of their contract with the Finance Department to ship my household effects without delay.
> The third concerns my right to take action if my household effects have not been shipped (a) because of non-payment by Finance or (b) because Universal failed to ship them.
> ….
> In my view of the legal fact that the Finance Department made the contract with Universal Movers to pay for service rendered, I would be most grateful if your office can provide me with information concerning the status of household effects.

What is significant about this letter is that the Applicant was anxious to hear from the Respondent as well as the Company on the status of his property. The Applicant actually copied the letter to the Company. The Company later got in touch with the Applicant personally by letter of 17 July 1990 in respect of the remaining property. It was to this letter that the Applicant responded by his letter of 11 October 1990 which we have quoted earlier.

What is strange to us is that while the Applicant was very eager, by his earlier communication, to establish the status of his property, when he was eventually contacted, he decided he should rather leave the matter for the Respondent to deal with. We note that while his earlier communication was copied to the Company, his letter of 11 October 1990 quoted above was not. What is also most significant about that letter is that the Applicant does not come out clear on a very straight forward question. The question was whether the Applicant would consent to his property being moved by air. Our reading of the Applicant's response is that he did not want to be drawn into making a decision on the matter. We acknowledge that it is also possible to understand the Applicant's response as saying he wanted his goods to be transported by land and then by sea when he says:

> I wish to draw attention to the entire contents of the letter sent by Universal Movers, and to underline that I did not, and have not, proposed or suggested that my personal effects be sent by airfreight.

> I wish to state also, that I cannot be expected to pay for any of the cost, when the institutionalised procedure of shipping the personal effects has been so clearly outlined to the shipper.

Our observation is that the Applicant is a very articulate and a well-reasoned person. We believe he was quite capable of coming out much more clearer on the matter. We think the Applicant deliberately decided not to assist. We are vindicated in so analysing the Applicant's position by subsequent communication between the Applicant and the Respondent. On 3 December 1990, the Applicant wrote to the Respondent. The following was his letter:

> Thank you for your letter referenced ASG/ADM/FIN/7(d) 164.90 and dated November 4, 1990 and the copy of the Brief that the Director of Finance prepared for the Secretary General.
> I appreciate your keen desire to help resolve the matter, and wish to assure you of my co-operation.
> For purposes of setting the record straight, I have **enclosed my reactions** to the Brief that [P.A.] submitted to the Secretary General.

The **"enclosed reactions"** was entitled "CORRECTING THE MISINFORMATION CONTAINED IN THE BRIEF ON MY PERSONAL EFFECTS PREPARED BY THE DIRECTOR OF FINANCE FOR THE SECRETARY GENERAL'S ATTENTION." We will extract a few paragraphs of the **"enclosed reactions"** that we believe best present the Applicant's position in the whole discourse:

> POINT 7:
> The Director of Finance is once again shirking his responsibilities when he states on page 2 in his Brief, as he puts it, that he has requested the Managing Director of Universal to submit all his proposals to me (meaning himself) for onward transmission to [S.G.] for his decision so as to enable us resolve the matter once and for all. *The intent in this passage is clear: to give the impression that the responsibility to ship my personal effects rests with me. The impression is wrong, and I state categorically that I have no decisions to make on how my personal effects should be sent to me*. *The Secretary General should judge whose responsibility this is."* **(Our underlining)**

As mentioned earlier, there should be no denying that the Respondent had the obligation to move the Applicant's goods and personal effects to his new place of work in New York. It should further not be in doubt that for that purpose the Respondent contracted the Company to transport the property. The contract was indeed between the Respondent and the Company without the Applicant being a party. To that extent the Applicant is right in contending that he could not have instructed the Company on the mode of transporting the goods. He was a third party to the agreement between the Company and the Respondent.

What is really in issue in this case, we hold, is what obtained between the Applicant, as a staff member, and the Respondent, as the employer, on the movement of the Applicant's property.

We have already alluded to our reading and interpretation of Document CM/1234(XL) Rev. 1 together with Document ADM/CIRC.15/71-Rev.1. We have explained that the contract between the Respondent and the Company was properly in the context of the two documents. It is these documents that allowed for the option to transport goods by sea **or** by air. This position, we find, was not the creation of the Respondent's Finance Manager as the Applicant suggests.

It is obvious to us, just as it must have been obvious to both parties, that the sheer volume of the Applicant's property required transportation by sea. Transportation by air, using the conversion formula, would have required the Applicant to shoulder part of the transportation cost.

Much as this was the case, the Respondent was duty bound to alert the Applicant, its employee, on the danger of his property being destroyed, damaged or lost. It is for that reason that the Respondent wanted to get a decision from the Applicant. As a matter of fact the Respondent was literally pleading with the Applicant to come out clear on the matter as demonstrated by the following communication from the Respondent's Director, Finance Department to the Respondent's New York Office.

> I have the honor to transmit a copy of the correspondence received from the Director of UNIVERAL transit company that was requested to ship the personal effects of [S.G.] to New York.

> Please ask [S.G.] to let us know his decision as soon as possible so that we can settle this matter once and for all. As you can see, the weight of the shipment is 925 kilograms.
>
> If the effects are to be sent by air, the organization will cover the cost of 352 kgs representing the balance from the 667 kgs to which [S.G.] was entitled under the OAU regulations. I wish to recall that [S.G.] has already used 315 kgs. out of his entitlement of 667 kgs. Therefore, if the shipment is to be by air, the OAU will only pay US$ 1,900.00, whereas [S.G.] will be responsible for the remaining US$ 3,094.00.
> If, however, the effects are to be shipped by sea, [S.G.] will have nothing to pay, as the air shipment would then be converted to sea shipment, in which case 1 kg by air would equal 3 kgs by sea, giving 325*3 = 1,056 kgs, in accordance with the rules currently in force at the OAU (circular ADM/CIRC.15/71 – Rev. of 1 October 1971) that are available at the financial services of your office.
> In this case, the 1056 kgs even exceed the weight of the remaining personal effects of [S.G.]. However, there are certain risks involved as the Director of UNIVERSAL shipping company has highlighted.
> Please bring these facts to the attention of [S.G.] and ask him to decide and to let us know his decision, so that we can take the appropriate action accordingly.

This communication reached the Applicant by his own admission. Fortunately, for the Respondent, the Company was also in contact with the Applicant and the Applicant himself was in contact with the Company.

The major question we have addressed in our minds is whether the prudent thing for the Respondent to do, possessed with the information from the Company, would have been to instruct the Company to risk moving the property by land and eventually by sea, without bothering to bring that information to the Applicant's attention. We ask whether the Applicant would have been at peace with his property destroyed, damaged or lost, in the event of such a development, and only to learn that his employer was in fact aware of these risks. We do not believe the Applicant would have stayed down and accepted any such event. We are of the clear view that destruction, damage or loss of property that the Applicant says was so dearly to him would have drawn more exasperation from the Applicant. The Respondent in

turn would have been found wanting and to be in total disregard of the welfare of and responsibility to its employee.

The other consideration is the Applicant's own responsibility to himself and his precious property. For some inexplicable reason the Applicant decided he would not offer much help to the Respondent on the movement of his property. As we demonstrate, the communication that we have referred to shows that the Respondent was virtually pleading with the Applicant to make a decision, so that the matter could be resolved once and for all. The Applicant resolved that he was not going to make any decision, in his own final words on the matter. This, as we observe earlier, is puzzling, and not just that, we are of the firm view that the Applicant demonstrated total lack of care for his personal effects. In fact the Applicant behaved in reckless abandon. He was uninterested in mitigating any further delay to the movement his property or to guard against possible damage, destruction or loss.

On the contrary, the Respondent decided to proceed with care, albeit belatedly, conscious of its responsibility and duty to its employee. The Respondent consulted the Applicant on account of the information that had come from the Company. That was the only appropriate and responsible thing for the Respondent to do and we so find. In the final analysis, although the Respondent would be accused of a rather lengthy delay in responding to the Applicant's plight, what eventually caused the deadlock was the Applicant's own conduct.

Be that as it may, we believe the Respondent could have done better. Conscious of its responsibility to its employee and having done what could be done in that respect, but yet aware of its overriding duty to ship the Applicant's property, the Respondent should have eventually gone ahead and instructed the Company to send the property by land and sea. It was well within the Respondent, in the circumstances, to give such inevitable instructions to the Company. That course would have cleared or at least absolved the Respondent of blame. As matters are, the Respondent is saddled with a share of blame in the whole transaction. The blame is on account of the delay in responding to the Applicant when he brought up the matter in the early stages. It is also on account of indecision in resolving the deadlock, when that became apparent.

The Applicant seeks to be compensated for loss of his property in the amount of USD 230,000.00. He also seeks compensation for stress and anxiety caused to himself and his family in the amount of USD 90,000.00. He further seeks the following orders, which should be set out as they are in the Application because of the comments we make about them:

(a) Censure of the former Director of Finance for violating regulations on shipment of property according to entitlement and for depriving him of his personal effects.

(b) Authorize the immediate implementation of the specific provisions in Document CM/1234 (XL) Rev. 1 on Travel and Transfer, as far as the shipment of any household goods and personal effects is concerned.

We should first comment on paragraph (b) above. It is not immediately clear whether the Applicant is asking for shipment of his goods by this prayer or he is asking the Tribunal to issue a directive that in all cases of transfer of employees Document CM/1234 (XL) Rev.1 must be complied with. Having gone through the Application and listening to Applicant, we believe this prayer is about the Tribunal giving guidance on the interpretation and application of the Document. The terms of the Document are more than simple and clear. The Respondent has also demonstrated a clear understanding of the document. We have offered further interpretation of the documents by this judgment. We consider it unnecessary to give any further guidance.

As regards the prayer in paragraph (a) and in the light of our findings, there would be no basis for censuring any officer of the Respondent, past or present, again for the simple reason, as we find, that in fact it was partly the Applicant's conduct that was reprehensible.

The Applicant's main prayer is for compensation for loss of his property. We can well understand the basis for his prayer. We have looked at Annex 11, which is the inventory of the goods. True to the Applicant's contention, the list consists mostly of books, but it also includes cassettes, a few paintings and suit cases with clothing. We presume that part of the suitcases are those that were sent by air to the

Applicant. It is now twenty seven years since the goods were packed and delivered to the Company. We do not believe any of the goods that we have seen on the inventory can still be in a good state, let alone in a usable state.

As stated above, the Applicant asked for USD 230,000.00 as compensation for loss of the goods. He has since, without leave of the Tribunal, revised that figure and is now asking for USD 500,000.00 because the cost of replacing the property has gone up, as he puts it. We will ignore the revised figure and consider the original claim and in that regard there is one more issue that we should discuss.

According to the Respondent its liability, if at all, under Document CM/1234(XL) Rev.1, read together with Document ADM/CIRC.15/71-Rev. 1, can only be USD 1,500.00 as provided in Clause 7 of the later document. Clause 7 is on the maximum insurance cover in case of unaccompanied shipment. We are of the view that the situation in the present case is not subject to Clause 7. The Respondent had simply not yet authorised the shipment of the Applicant's property. Beyond the contract document, the Respondent was yet to finally instruct the Company on how to dispatch the remaining bulk of the property. That was because of the discussion that was going on between the Respondent and the Applicant.

The Company, in turn, awaited further instructions on the matter from the Respondent, in effect stalling execution of the contract, to that extent. That says the goods were still under the special control of the Respondent. The loss that resulted from the Respondent's indecision is therefore on the Respondent, on account of that special control over the property, as opposed to what would have been the case had the loss occurred in the course of shipment.

What is really difficult in this matter is to determine the value of the property. From what we hear from the Applicant, we cannot help thinking that he is just coming up with figures. In fact, the figures that he puts forward are grossly exaggerated in our view. No attempt has been made to explain the figures. As we are aware, the burden is on the Applicant to give us some guidance on how he arrives at the figures that he puts forward. That being the case we are compelled to determine as we consider appropriate, having carefully gone through Annex 11. We are aware that we might also be out of the way. We believe the idea is to bring this

matter to a close after these many years. We would in our absolute discretion place the loss of property at USD 10,000.00.

We should now apportion blame. Considering the entire circumstances disclosed in this matter, we determine that the Respondent shoulders fifty percent of the blame, while the Applicant himself bears fifty percent of the blame. The Respondent shall therefore pay USD 5,000.00 in damages for loss of the Applicant's property.

We have said that the Respondent ignored the Applicant for a considerable period after the matter was brought to its attention. We have also remarked that the Applicant himself was not in a hurry to have his property when the Respondent eventually engaged him. We consider that an award of USD 3,000.00 would suffice in respect of loss of use.

In the light of the facts of this matter, we order that each party bears own costs of the action.

PRONOUNCED this 26th day of October 2015 in Addis Ababa, Ethiopia.

/s/

HONORABLE JUSTICE ANDREW K. C. NYIRENDA SC, PRESIDENT

/s/

HONORABLE JUSTICE SHAHEDA PEEROO

/s/

HONORABLE JUSTICE ALIOU BA