



C.D., APPLICANT

v.

CHAIRPERSON OF THE AFRICAN UNION COMMISSION

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JUDGMENT

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

**Counsel for the Respondent:**  
ESTHER UWAZIE

## JUDGMENT

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

### **THE FACTS**

Mr C.D., of Ivorian nationality residing in Pretoria, South Africa, who had served in the Pan-African Parliament (PAP) on a series of short-term contracts, filed an application with the Administrative Tribunal of the African Union on 08 December 2011, pursuant to Article 2 of the Statute of the AU Administrative Tribunal as well as the provisions of Article 27 of the Staff Rules and Regulations..

By the same application, the Applicant drew the attention of the Tribunal to a number of flagrant violations of the provisions of the Staff Rules and Regulations, over the periods from August 2005 to May 2006 and from March 2009 to May 2011.

The Applicant also claimed to have been the victim of a form of discrimination on his person by the Pan-African Parliament, which unjustly denied him permanent employment, in violation of the Staff Rules and Regulations of the African Union.

The Applicant, Mr Cissé Django had signed a short-term contract in 2005 with the PAP at its Third Ordinary Session, and the contract had been renewed several times.

At the end of his contract covering the period from August 2005 to 31 May 2006, he received notification from the Clerk of the Parliament terminating his contract.

He felt that having initially been recruited as Bilingual Secretary, he actually occupied the functions of Officer-in-Charge of Documentation, a post classified as Technical, as opposed to the post of Bilingual Secretary, which corresponds to the category of General Services under the classification of the Staff Rules and Regulations.

He moreover affirmed that during this period, he discharged the duties of Committee Clerk due to staff shortage, without benefitting from an allowance or compensation.

On 30 May 2006, he received a letter informing him that his contract would not be renewed, and that he was therefore invited to hand over the PAP documents to the newly recruited permanent staff. This letter explained that his dismissal was a logical conclusion of the arrival of permanent staff, while acknowledging the appreciation of the Pan-African Parliament which undertook to call upon him if need be.

The Applicant felt that this commitment was never honoured for the simple reason that shortly after his departure, the Parliament recruited on two occasions, an Assistant Officer-in-Charge of Documentation.

He also submitted that the said Parliament had called upon other persons on several occasions for various posts, failing to comply with the Rules of Procedure. He further submitted that these recruitments were finalized without prior interviews and without publication of post vacancies.

He therefore sustained that the termination of his contract would constitute an abuse, in that it substantially violates the provisions of Article 23 of the Staff Rules and Regulations. In his opinion, his dismissal was neither due to the elimination of posts nor workforce reduction. To support his claims, he submitted that three persons were called upon to replace him and that the two Assistant Officers-in-Charge of Documentation recruited did not undergo any form of interview. He concluded that the action constituted a clear violation of the Articles 15 and 13 of the Staff Rules and Regulations.

He further argued that at the time, he initiated negotiations and internal appeals to no avail, and that the Defence merely led him to hope that there was a chance of him being recruited, and that he simply had to be patient.

He added that between July and August 2007, a number of vacant posts were published on the PAP website, which gave him the opportunity to apply for the post of Researcher, a post for which he was shortlisted and interviewed on 26 September 2007. However, the final results were never announced.

The Applicant maintained that he returned to PAP on a short-term contract, and that he was aware that 4 persons had been recruited for the post of Researcher, while he, who had a great deal of experience, had worked in that Institution for many years, and met the required profile, was not recruited .

He felt that the absence of a clear explanation as to why his candidature was rejected in spite of his profile and experience constituted a violation of Article 12 of the Staff Rules and Regulations.

He further added that at the end of 2010, one of the Researchers recruited resigned.

That in January 2011, he was informed that the post was vacant and that if he was interested he simply had to come forward. Although he was available and ready to accept the post, he was informed that his country, Cote d'Ivoire, was under sanctions and therefore no national of that country could be recruited into the African Union.

That in April, following the reintegration of his country after the lifting of sanctions, he contacted the Parliament for the reconsideration of his candidature, to no avail. He was informed that the post was no longer vacant, which he felt was part of relentless efforts aimed at unjustly depriving him of a permanent position. In conclusion, he felt that he had suffered tremendous material and moral damages for which he claims compensation.

#### **POSITION OF THE RESPONDENT**

In response, the Counsel for the Respondent filed two preliminary objections relating to competence and admissibility.

On the basis of Article 2 of the Statute of the Tribunal, she contended that the Tribunal was not competent to hear and rule on the case.

Counsel was of the opinion, that the Tribunal only had jurisdiction for complaints alleging violations of the relevant provisions of the Staff Rules and Regulations or non-compliance with employment contracts or any other labour law, whereas the Applicant challenged the refusal of the Pan-African Parliament to offer him a

permanent position in 2007, knowing that during that period, he was not an employee of the African Union and had no valid contract.

That at the end of a statutory procedure initiated by the PAP Recruitment Committee, a report was adopted on 7 November 2008 and the Applicant had not received any official communication of a job proposal or right to appointment.

That regarding recruitment, the Committee exercises discretionary powers, which cannot be contested by unsuccessful candidates. She therefore concluded that in this particular case, the Tribunal should decline jurisdiction.

Based on Article 62 of the Staff Rules and Regulations, Counsel for the Respondent felt that the Applicant had not respected the regulation on appeals within 30 days from the date of the contested decision. She added that Article 13 of the Statute of the Tribunal and Article 11 of the Rules of Procedure provides that any application not connected to a disciplinary matter shall not be receivable unless the staff member or the employee has previously submitted a petition to the appropriate authority for re-examination of the case.

Furthermore, Counsel submitted that the Applicant had been recruited within the framework of a series of short-term contracts over a period between August 2005 and May 2006 in order to serve as a Bilingual Secretary.

That the Applicant was called upon by his immediate supervisor to carry out the duties of Clerk during the Committee session. That under other circumstances, he had also served as Assistant to the Officer-in-Charge of Documentation. He therefore claimed that he was entitled to equivalent allowance or compensation. In fact, he had submitted several claims, which were rejected on the grounds that an official or employee could, to ensure good administration and when required by the exigencies of duty, be called upon to fulfil other duties for the smooth running of the Organization.

That at the time, the Applicant did not at any time appeal against this rejection.

The Applicant, whose contract was terminated on 30 May 2006, did not at any time appeal to the Chairperson for his dismissal to be reconsidered.

Counsel for the Respondent concluded that the petition filed before the Tribunal was in violation of the relevant provisions of the Statute and Rules of Procedure of the Tribunal, as well as the Staff Rules and Regulations, insofar as the internal appeal procedures had not been exhausted. She therefore requested that the Tribunal find the application of the Applicant inadmissible.

## **DECISION AND REASONS**

Article 2 (a) and (b) of the Statute of the Administrative Tribunal provides:

That the Tribunal shall be competent to hear applications alleging violation of the relevant provisions of the Staff Rules and Regulations, and non-observance of contracts of employment and any other act of employment. On the basis of that article, the Tribunal considered the submission of the Respondent whereby the Tribunal was not competent insofar as the Applicant referred to the Tribunal only concerning the refusal of PAP to offer him a permanent position. The fact that the Applicant was no longer linked to PAP by any employment contract and was no longer a staff member was not an issue in the present case.

In fact, according to established case-law, enshrined by the judgement of the Administrative Tribunal of the African Development Bank (AfDB), delivered in Application N° 1998 /01 of 9 July 1999, acknowledges that **according to the legal definition, a staff member includes any person whose former letter of appointment or similar valid act provided he was a member of staff.**

In this particular case, it is clear that the Applicant was a staff member at least up to the termination of his contract on 30 May 2006.

In that respect, we find that the Applicant has the right to file an application: the Tribunal is therefore found competent.

The Tribunal, considering that the obligation to file an appeal provided for by Article 62 of the Staff Rules and Regulations had not been respected by the Applicant after receiving the notification of non-renewal of his contract on 31 May 2006: which constitutes grounds for inadmissibility, and therefore the Tribunal cannot consider the other applications.

## DECISION

The Tribunal, after deliberation in accordance with applicable law and regulations:

- 1) Sustains the objection of inadmissibility raised by the Respondent.
- 2) Finds the application filed by Mr C.D. inadmissible.
- 3) Holds that the parties will each bear their own costs and expenses.

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HONORABLE JUSTICE ANDREW K. C. NYIRENDA SC, PRESIDENT

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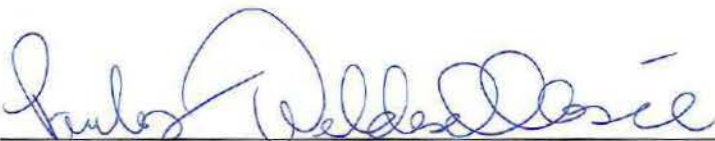
HONORABLE JUSTICE SHAHEDA PEEROO

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HONORABLE JUSTICE ALIOU BA

Secretary:



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