



T.T.
v.
Chairperson of the African Union Commission

FOR APPLICANT : *Pro se*

FOR RESPONDENT: Office of the Legal Counsel, African Union Commission

ORDER

Procedural and Factual History

1. This matter was last before us on 26 October 2015 when we concluded that the Applicant was wrongfully refused reinstatement into the Organization's service and ordered the Respondent to pay the Applicant: (a) any and all separation benefits due to him; (b) the sum of USD 5,000.00 in damages; and (c) USD 500.00 in costs.¹
2. In his application of 15 February 2018, the Applicant represents to the Tribunal that the Respondent has not satisfied the judgment awards itemized above. In addition to asking for swift execution, the Applicant requests compensation for damages resulting from the Respondent's failure to execute our judgment and for resources expended in making repeated inquiries with the Respondent. The Applicant did not file any evidence of damages.
3. On 8 March 2018, the Tribunal required the Respondent to respond. The Respondent did not file a response. Having received no response from the Respondent, the Tribunal finds that its judgment of 26 October 2015 remains unsatisfied as claimed by the Applicant.

Legal Standards

4. Judgments are final when delivered and executable without the need of any application for writ of execution from the successful party.² The Respondent is responsible for payment of any compensation awarded by the Tribunal and it must do so within thirty days of being notified of a

¹ *T.T. v. Chairperson*, AUAT/2015/007.

² Administrative Tribunal Statute Art. 17(vi).

judgment.³ Failure to execute a judgment in full within the prescribed time period amounts to contempt.

5. Contempt powers are inherent to any judicial or quasi-judicial body and essential to regulating the conduct of litigants.⁴ Without such powers, we will have little authority over a party undermining or otherwise interfering with the smooth and effective administration of justice. Certainly, we cannot command the confidence and respect of the Organization's staff members and officials as an independent internal justice mechanism when our judgments are openly disregarded, and our processes and proceedings disrespected. Therefore, we deem it appropriate to exercise this power to preserve and sustain our adjudicatory authority, to enforce the rights of parties and to compel the full obedience of our orders, processes and proceedings.
6. Neither the Statute nor our Rules of Procedure provide specific guidance in regard to matters of contempt. We, thus, rely on the residual provisions of Rule 22 to fashion, as we do below, standards by which we will evaluate and sanction contemptuous conduct by parties appearing before us.
7. Contempt action may be initiated on the Tribunal's own motion or upon an application by a party under any of the following circumstances: (a) where a party refuses to comply with a judgment or order of the Tribunal; (b) where a party refuses to comply with Tribunal procedures and processes; or (c) where an individual is disrespectful toward the Tribunal. The Tribunal will not call "contempt" lightly and when it does it will follow due process, sanctioning a party for contempt only when the facts have been proved to its satisfaction and reasonable opportunity for defense has been provided.
8. The Tribunal may award compensation for damages caused by non-performance of an obligation.⁵ To succeed on a claim for damages, an applicant must satisfy the Tribunal with sufficient evidence of monetary loss and/or moral injury as the Tribunal will find it very difficult to evaluate unsupported and generalized pleas for compensation.⁶ But, this is without prejudice to the Tribunal's authority to impose appropriate punitive damages where it finds the conduct of a party contumacious.

Discussion

9. Legal representatives appearing before the Tribunal must uphold their professional responsibilities and duties under the law. They must realize that they are officers of the Tribunal and conduct themselves as such in the course of their representation of the Organization. Their actions must at all times be directed toward assisting the Tribunal to achieve the ends of justice. They must interact with the Tribunal with candor, diligence and integrity. In this case, the Tribunal finds the conduct of Respondent's legal representatives astonishing. In finding so, we cannot help but observe the reputational cost to an organization known as the continental champion of rule of law.

³ Administrative Tribunal Statute Arts. 9 and 17(v).

⁴ *Igbinedion*, 2014-UNAT-410, para 31; *Nuclear Tests Case*, ICJ Reports 1974, pp. 259-260, para. 23.

⁵ Administrative Tribunal Statute Art. 17(iv)

⁶ *Kozlov and Romadanov*, 2012-UNAT-228, para 26; *Asariotis*, 2013-UNAT-309, para. 36; ILOAT Judgment No. 2935 consideration 5.

10. We also think it important for us to outline some of the obligations of the Organization's legal representatives in the context of litigating matters before us. We do so at the risk of stating the obvious. After a judgment is pronounced, the Respondent's legal representatives are expected to obtain the applicant's bank information, to promptly advise the Respondent and his various officials and, of course, to navigate all internal processes necessary for timely execution of the Tribunal's monetary and non-monetary orders. In the event of non-compliance, the legal representatives should approach the Tribunal to seek appropriate directions.
11. Two and half years after delivery, our judgment in this case remains wholly unfulfilled. This is egregious. We are troubled to have to remind the Respondent's legal representatives that the Tribunal is not in the business of issuing judgments that are only advisory. Our judgments, as here, adjudicate disputes and settle controversies by way of appropriate orders. They have the force of law and must be implemented in full and without delay.
12. The Tribunal has grave concerns over the conduct of the Respondent's legal representatives in this case. Not only have they failed to ensure timely execution of the judgment, they have also disregarded inquiries from the Tribunal. The example they set is alarming, and if allowed to persist, it will undermine our very authority to maintain a fair and expeditious administration of justice within the Organization.
13. It is the cardinal principle of agency law that an agent binds their principal through their actions. This principle applies in the context of attorney-client relationship.⁷ It follows, therefore, that the Chairperson is bound by the actions of the legal representatives acting on his behalf.⁸ Accordingly, we hold that by failing to ensure the timely execution of our judgment, and by disregarding our order requiring explanations, the Respondent has acted in contempt of the Tribunal.
14. Our directives and orders in this matter should serve as a warning. Future professional lapses, such as happened here, will be met with less magnanimity. We will not shy away from making findings against individual legal representatives of the Respondent followed by referral for personal accountability to appropriate administrative bodies or policy organs of the Organization.
15. Staff members are accountable to the Respondent in the course of performing their duties and exercising their authority.⁹ In fairness, the Organization should not quietly shoulder financial and reputational liabilities arising from unlawful actions or inactions of its officials. The Tribunal uses this opportunity to, gratuitously, note the need to explore opportunities for strengthening personnel accountability and control systems of the Organization.
16. With regard to compensation sought by the Applicant, the Tribunal notes that the Applicant has not provided any evidence in support of his claim for moral damages. Mere mention of trauma and stress is not sufficient.¹⁰ Accordingly, the claim for an award of moral damages cannot succeed.

⁷ ILOAT Judgment 3969, consideration 15.

⁸ The logical corollary to this principle is that the agent bears fiduciary responsibilities toward the principal and acts under the principal's control. We do not concern ourselves with this aspect of the relationship. It is for the Respondent to exercise effective control of those who act on his behalf.

⁹ Staff Rule 5.5.

¹⁰ ILOAT Judgment 1534, consideration 5.

17. The Applicant is entitled to interest for the excessive delay in payment of the award. Since the Respondent failed to pay the sum awarded to the Applicant within thirty days following notification of judgment, interest must run from the day after the expiry of that period *i.e.* 26 November 2015.¹¹
18. Having found the Respondent's conduct contumacious, the Tribunal awards the Applicant the sum of USD 7,500.00 in punitive damages.
19. As the application partly succeeds, the Applicant is entitled to costs, which the Tribunal sets at USD 500.00.

Orders

20. For the above reasons, the Tribunal:
 - a. FINDS the Respondent in contempt of the Tribunal's orders;
 - b. REAFFIRMS Judgment No. AUAT/2015/007 and directs the Respondent to comply with the judgment in full within 15 days;
 - c. DENIES the Applicant's request for moral damages;
 - d. ORDERS the payment to the Applicant of USD 7,500.00 in punitive damages;
 - e. ORDERS the payment to the Applicant of USD 500.00 in costs;
 - f. ORDERS the Respondent to submit to the Tribunal proof of execution of this order within 15 days of execution of judgment; and
 - g. DIRECTS the Secretary to serve this order on the Chairperson of the African Union Commission.
21. The above sums are to be paid within 15 calendar days from the date this order is issued. A 15 % interest rate shall accrue on the judgment amount as of 26 November 2015 until full satisfaction.

DATE: 7 June 2018

/s/

HONORABLE JUSTICE ANDREW K. C. NYIRENDA SC, PRESIDENT

/s/

HONORABLE JUSTICE SHAHEDA PEEROO

/s/

HONORABLE JUSTICE ALIOU BA

Secretary :



¹¹ ILOAT Judgment 3152, consideration 20.