



*A.L.*

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. On 4 September 2014, the Applicant contested his suspension from employment in 2014 on allegations of maladministration and misuse of financial resources of the Secretariat of African Union Advisory Board on Corruption.
2. In Judgment No. AUAT/2017/002, pronounced on 15 September 2017, we found his suspension irregular and unlawful. We rescinded the suspension and ordered the Respondent to expunge the predicate audit report. We also ordered expungement of the disciplinary records and awarded the Applicant USD 5,000.00 in damages and USD 500.00 in costs.<sup>1</sup>
3. The Applicant now claims that the Respondent has not complied with the judgment. He requests that we order the Respondent to execute the judgement immediately. He also asks for repatriation costs, an award of interest from the judgment date until full compliance, and any other relief the Tribunal may deem necessary.
4. The request was transmitted to the Respondent with a requirement to file a response within ten days. The Respondent did not file a response and accordingly we deem the Applicant's factual allegations proved and his request unopposed.

*Legal Standards*

5. Judgments are final when delivered and the Respondent bears the obligation to fully execute them within thirty days of notification.<sup>2</sup>

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<sup>1</sup> *A.L. v. Chairperson*, AUAT/2017/002.

<sup>2</sup> Administrative Tribunal Statute Arts. 9 and 17(v).

6. Failure to execute a judgment within the prescribed time period or to provide an explanation when called upon by the Tribunal amounts to contempt.<sup>3</sup> The Tribunal will sanction parties for contempt when its judgments are disobeyed or its notices disregarded.<sup>4</sup>
7. The Tribunal may impose punitive damages where we find a party's contemptuous conduct egregious. The Tribunal may also award compensation for damages resulting from non-performance of an obligation.<sup>5</sup> A claim for damages will generally succeed if supported by sufficient evidence of monetary loss and/or moral injury.

### *Discussion*

8. Our judgment in this matter was issued more than nine months ago and it deeply troubles us that the Respondent has not fulfilled it to this date. As we held in *T.T.*, our judgments are final and must be executed within thirty days of notice.<sup>6</sup> Where the Respondent is unable to timely execute a judgment, its legal representatives have a duty to inform the Tribunal and seek appropriate directions.
9. We required the Respondent to explain the delay under pain of contempt sanction, his legal representatives did nothing to inform the Tribunal. The cavalier attitude of the Respondent's legal representatives distresses this Tribunal. Their conduct fails to meet the minimum professional obligations of exercising respect and diligence in their dealings with the Tribunal.
10. We have previously held that the Respondent is accountable for the actions of its legal representatives.<sup>7</sup> We accordingly find that the Respondent has acted in contempt of the Tribunal. As we did in *T.T.*, we direct the Secretary of the Tribunal, in addition to normal service procedures, to file this order directly with the Respondent so that the Organization, if it so chooses, can assess the quality and effectiveness of the legal representation it is receiving from the Office of Legal Counsel.<sup>8</sup>
11. We sympathize with the Applicant given our prior finding that the Respondent has subjected him to mental stress and anxiety through a purported misconduct process that we found to be irregular and flawed. Undoubtedly, the Applicant's suffering persists with every delay created by the Respondent in executing our judgment, particularly with respect to our order to expunge the record of misconduct from his personnel file. We, therefore, depart from our general rule requiring specific proof of moral damages, and award the Applicant the sum of USD 6,000.00 in moral damages.
12. In his present request, the Applicant renews his claim for repatriation costs. As previously held, we are unclear whether the Respondent has refused this particular claim.<sup>9</sup> For that reason, we again decline the invitation to enter a finding on the matter. However, since we previously found the Applicant's suspension unlawful, we direct the Applicant to present this claim in the first

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<sup>3</sup> *T.T. v. Chairperson*, Order No. 2018/001, para. 4.

<sup>4</sup> *Id.*

<sup>5</sup> Administrative Tribunal Statute Art. 17(iv).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *T.T. v. Chairperson*, Order No. 2018/001, para. 20.

<sup>9</sup> *A.L. v. Chairperson*, AUAT/2017/002, pp. 16-17.

instance to the Respondent and the Respondent to adjudicate that claim consistent with our findings in Judgment No. AUAT/2017/002 as well as pertinent provisions of the Staff Regulations and Rules.

13. 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 the judgment, interest shall accrue as of the day following the expiry of that period *i.e.* 16 October 2017.
14. Having found the Respondent's conduct contumacious, the Tribunal awards the Applicant the sum of USD 7,500.00 in punitive damages.
15. Since the application succeeds, the Applicant is entitled to costs, which the Tribunal sets at USD 500.00.

### *Orders*

16. For the above reasons, the Tribunal:
  - a. FINDS the Respondent in contempt of the Tribunal's orders;
  - b. REAFFIRMS Judgment No. AUAT/2017/002 and directs the Respondent to comply with the judgment in full within 15 days;
  - c. ORDERS the payment to the Applicant of USD 6,000.00 in 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.
17. 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 16 October 2017 until full satisfaction.

DATE: 7 June 2018

/s/

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HONORABLE JUSTICE ANDREW K. C. NYIRENDA SC, PRESIDENT

/s/

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HONORABLE JUSTICE SHAHEDA PEEROO

/s/

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HONORABLE JUSTICE ALIOU BA

Secretary :

