



M.N.

v.

Chairperson of the African Union Commission

FOR APPLICANT : Isaac M. Larbi, Esq.

FOR RESPONDENT: Office of the Legal Counsel ; Maile & Associates, Attorneys for APRM

ORDER

Factual Summary

1. On 15 May 2018, the African Peer Review Mechanism (“APRM”), an African Union agency where the Applicant last served, filed motion seeking review of Judgment No. AUAT/2017/003 issued on 15 September 2017. A sworn affidavit by APRM’s Chief Executive Officer accompanies the motion, wherein the Tribunal is asked to: (a) excuse the late filing; (b) review the judgment; and (c) stay the judgment pending review.
2. The motion claims that APRM first learned about our judgment in this matter on 19 December 2017. APRM acknowledges that the present motion is out of time, and claims Counsel for APRM wrote¹ to the Administrative Tribunal Secretary on 24 January 2018 expressing their intent to seek review of the judgment. The APRM claims that the Secretary advised them to file an official notice of representation, which the APRM claims was filed on 6 March 2018.²
3. The crux of APRM’s claim for review is that we erred in finding the Applicant was entitled to severance pay under Staff Rules 25.1 and 25.2 since his employment was terminated following the abolition of his post as Deputy Chief Executive Officer, *ad interim*. The motion now argues that the Applicant’s appointment was not ended on account of post abolition; rather he was separated upon the natural expiry of his short-term appointment. Hence, the argument goes, Staff Rule 25(3)(d) governed the Applicant’s separation from the Organization’s service.

¹ The only record of this communication we can find is the Office of Legal Counsel’s request on behalf of APRM Counsel asking the Secretariat for a copy of the transcript of proceedings.

² Contrary to assertions by Counsel for APRM, the Secretariat has not received the entry of appearance correspondence of 6 March 2018.

Legal Standards

4. The Chairperson of the African Union Commission is the chief executive officer and legal representative of the African Union.³ While the African Union is comprised of multiple bodies with various missions and objectives spread across the continent, staff relations across the entire organization are governed by a unitary set of rules, the African Union Staff Regulations and Rules.⁴ In the broader framework of the Organization's laws, therefore, these agencies and institutions are all legally represented by the Chairperson of the African Union Commission.
5. Applications under Article 2 of the Administrative Tribunal Statute can, therefore, be initiated against and defended only by the Chairperson of the African Union Commission. Our decision to allow the Chairperson as the sole respondent in administrative proceedings before us is consistent with the Commission's Statute,⁵ and serves to keep our proceedings streamlined and inexpensive to staff members.
6. Judgments of the Tribunal are final.⁶ The doctrine of *res judicata* dictates that once the Tribunal has fully adjudicated an application it cannot be re-litigated.⁷ We note the purpose of *res judicata* is to prevent abusive and duplicative litigation and maintain finality of proceedings.
7. Notwithstanding the importance of achieving finality of administrative proceedings, our Statute provides for limited grounds for review.⁸ A party may, within six months of judgment notification, seek review of judgment when he or she has discovered new and decisive facts previously unknown to the party or the Tribunal.⁹ Such application must state the new facts to be proved and must be supported by evidence.
8. We intend to exercise our review authority sparingly in exceptional circumstances when persuaded that the application before us is truly exceptional and supported by compelling new evidence.

Discussion

9. The Tribunal must first determine whether the APRM has standing to file the present motion before we consider the merits of the motion. And this is a very straightforward inquiry for us. Article 20 of our Statute is restricted only to parties who have participated in prior proceedings. The underlying application in this matter was properly initiated and proceeded against the Respondent, the Chairperson of the African Union Commission. APRM, while an agency of the African Union, was not a litigating party in those proceedings and is now foreclosed from seeking review of our judgment.
10. We do not deny the fact that, as the agency of the Applicant's last service with the Organization, APRM may have a colorable interest in the outcome of the underlying application. However, we have no reason to believe that APRM's litigation interest would be different from those advanced by the Respondent, who has already received a full and fair hearing on this matter. To us, this motion reflects a problem of coordination between APRM and the Respondent's legal representatives in the defense of this case. In fact, it appears to us that the motion is a scramble to make up for precisely that problem.

³ AUC Statute, Art. 7(1)(a)-(b).

⁴ Staff Regs. 2.1-2.2 ; Staff Rule 3(a).

⁵ AUC Statute, Art. 7(1)(a)-(b).

⁶ Administrative Tribunal Statute Art. 17(vi).

⁷ ILOAT, Judgment No. 2993; ILOAT Judgment No. 1824 ; *In re Sethi* (No. 4); Judgment No. 2010-UNAT-026bi.

⁸ Administrative Tribunal Statute Arts. 20-21.

⁹ Administrative Tribunal Statute Art. 20.

11. Apart from want of standing, the motion is untimely. Our judgment was issued on 15 September 2017, the motion for review was due on or before 15 March 2018.¹⁰ The Tribunal did not receive the present motion until 15 May 2018. Statutory time limits are jurisdictional, which is to say, we are without power to waive such rule and any late filing must be dismissed. Accordingly, we do not need to evaluate the reasons for the delay as presented in the motion because we do not have the authority to waive the time limit of Article 20, even in the presence of truly equitable circumstances.
12. Even if we were to deem the motion proper and timely, the motion does not establish grounds for review. The motion and attachments proffer stale facts and arguments previously presented and considered by the Tribunal. What is being dressed as new evidence in the form of APRM head's affidavit contains no new facts. We are also not clear why this particular witness could not have been deposed before the proceedings concluded.
13. We find that the movant lacks standing, that the motion is untimely and satisfies none of the grounds for review.

Orders

14. For the above reasons, the motion for review is dismissed.

Date: 18 June 2018

/s/

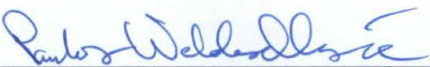
HONORABLE JUSTICE ANDREW K. C. NYIRENDA SC, PRESIDENT

/s/

HONORABLE JUSTICE SHAHEDA PEEROO

/s/

HONORABLE JUSTICE ALIOU BA

Secretary : 

¹⁰ Administrative Tribunal Statute Art. 20.