



D.K.A.

v.

Chairperson of the African Union Commission

FOR APPLICANT : Biruk Geremew, Addisu Hailegebriel

FOR RESPONDENT: Namira Negm, Legal Counsel

ORDER

Procedural and Factual History

1. On 26 May 2002, the Applicant filed an application contesting the decision to recover installation entitlements paid to him on his appointment as personal assistant to the then Assistant Secretary-General.
2. On 26 October 2015, the Tribunal set aside the contested decision and ordered the Respondent to pay back the recovered amount and to pay the Applicant any separation benefits including travel and shipment expenses still owed to him. The Tribunal also awarded him 500.00 USD in costs.¹
3. On 18 June 2018, the Applicant filed a complaint alleging that the Respondent has not complied with the judgment, and in the same complaint seeks appropriate damages as well as a finding of contempt against the Respondent.
4. On 18 June 2018, the Tribunal transmitted the complaint to the Respondent requiring his reply by 2 July 2018, in which he was required to clarify the status of any ongoing judgment execution process and to explain why the Respondent should not be sanctioned for contempt.
5. On 26 June 2018, the Respondent filed his reply claiming: (a) “innocent misunderstanding” within the various departments of the Organization; (b) a problem in identifying a budget code from which to satisfy judgments of the Tribunal; and (c) that the interdepartmental misunderstanding has been resolved and the execution of all Tribunal judgments was underway. In the reply, the Respondent could not indicate when the judgment will be executed supposedly on account of the 31st African Union Summit.²

¹ *D.K.A. v. Chairperson*, AUAT/2015/001

² We take administrative notice that the African Union held its 31st Summit from 25 June to 2 July 2018 in Nouakchott, Mauritania.

Legal Standards

6. Judgments are final when delivered and the Respondent bears the obligation to fully execute them within thirty days of notification.³
7. Failure to execute a judgment within the prescribed time period and provide sufficient reasons in the event of delay amounts to contempt.⁴ The Tribunal will sanction a party for contempt when its judgments are disobeyed.⁵
8. The Tribunal may impose punitive damages where it finds a party's contemptuous conduct egregious. The Tribunal may also award compensation for damages resulting from non-performance of an obligation.⁶ A claim for damages will generally succeed if supported by sufficient evidence of monetary loss and/or moral injury.
9. Where there is a failure to execute the judgment as ordered by the Tribunal, the proper course for the prevailing party is to inform and seek the assistance of the Tribunal.

Discussion

10. The judgement at issue here should have been fully satisfied by 25 November 2015. In the time between then and now, the Applicant patiently followed up, without any success, with various officials of the Organization using polite entreaties. We have reviewed with sympathy his many electronic messages, some never responded to and others answered with callous one-liners such as when the Organization's finance director wrote to him as recent as 7 June 2018 that "[she] cannot commit to a timeline [for paying the judgment amount], that is dependent on AHRM action." We are appalled.
11. The reply filed by the Respondent's legal representative does very little to assure the Tribunal that the Respondent will timely abide by our orders and judgments. In the reply, the Respondent's legal representative claims "an innocent misunderstanding among the relevant departments within AU Commission." This statement distresses us not only because we find it disingenuous given the three year delay here, but because it shows a troubling theme of bureaucratic run-around within the Organization. The Tribunal will not enter this interdepartmental fray; judgements must be complied in a timely fashion and it is the responsibility of the Respondent's legal representatives to coordinate and ensure timely compliance.⁷
12. Even when cautioned that this particular case has crossed into the zone of contempt, the Respondent failed to commit to a firm implementation timeline in his reply. In fact, his legal representative seems to say that the judgment may have to wait because "the Commission's departments are currently engaged with preparations" for the 31st African Union Summit. In case the Respondent's legal representative is telegraphing to us that Tribunal matters are secondary, we think it important to underline that our judgments and orders must be satisfied by the dates we set without being subordinated to organizational exigencies. Surely, we do not think the Chairperson would be happy to hear that the Organization's operations come to a halt during Summits.

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

⁴ *T.T. v. Chairperson*, Order No. 2018/001, para.4.

⁵ *Id.*

⁶ Administrative Tribunal Statute Art. 17(iv).

⁷ *T.T. v. Chairperson*, Order No. 2018/001, paras. 9-10.

13. This complaint comes on the heels of three Tribunal orders sanctioning the Respondent for contempt for like conduct as here.⁸ One would expect that, after facing three contempt orders, the Respondent would do everything possible to avoid further delays in the execution of the judgment at issue here. This has not been done and we find the Respondent contemptuous of the Tribunal. As before, the Secretary is directed to file a copy of this order with the Chairperson in the hopes that he will hold his legal representatives and other officials accountable.
14. The Applicant prays that the Tribunal awards him USD 6,000.00 in travel and accommodation expenses for his travel from Mauritius to Kigali and subsequently from Mauritius to Addis Ababa. He claims these trips were taken to seek payment of the judgment awards. We are not sure why the Applicant resorted to such methods while being represented by counsels based in the city of the Organization's headquarters. The proper course would have been for him to inform and seek the assistance of the Tribunal. He did not do so until the present complaint. Hence, we cannot award compensation for the Applicant's personal efforts the necessity of which we are not persuaded of.
15. Given the excessive delay in payment of the award, we find that the Applicant is entitled to interest. 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.* 26 November 2015.
16. Having found the Respondent's conduct contemptuous, the Tribunal awards the Applicant the sum of USD 10,000.00 in punitive damages.
17. As the complaint succeeds, the Applicant is entitled to costs, which the Tribunal sets at USD 500.00.

Orders

18. For the above reasons, the Tribunal:
 - a. FINDS the Respondent in contempt of the Tribunal's orders;
 - b. REAFFIRMS Judgment No. AUAT/2015/001 and directs the Respondent to comply with the judgment in full within 15 days;
 - c. ORDERS the payment to the Applicant of USD 10,000.00 in punitive damages;
 - d. ORDERS the payment to the Applicant of USD 500.00 in costs;
 - e. DENIES the Applicant's request for compensation for expenses incurred toward execution of judgment;
 - f. ORDERS the Respondent to submit to the Tribunal proof of execution of this Order within 15 days from the date this Order is issued; and
 - g. DIRECTS the Secretary to serve this Order on the Chairperson of the African Union Commission.

⁸ *T.T. v. Chairperson*, Order No. 2018/001, para.13; *A.L. v. Chairperson*, Order No. 2018/002 para.10; *N.M. v. Chairperson*, Order No. 2018/003, para. 9.

19. 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: 16 July 2018

/s/

HONORABLE JUSTICE ANDREW K. C. NYIRENDA SC, PRESIDENT

/s/

HONORABLE JUSTICE SHAHEDA PEEROO

/s/

HONORABLE JUSTICE ALIOU BA

Secretary :


