



M.N.

v.

Chairperson of the African Union Commission

FOR APPLICANT : Isaac LARBI, Esq.

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

BEFORE : Hon. Andrew K.C. NYIRENDA, Hon. Shaheda PEEROO and Hon. Salufu S. MAINGA¹

ORDER

Procedural and Factual History

1. On 28 September 2018, the Applicant filed an application for the interpretation of our order in this matter, Order No. 2018-003 (*M.N.*) dated 7 June 2018.
2. Also on the same date, the Applicant filed an Application to nullify our decision in the same matter, Judgment No. AUAT/2017/003, dated 15 September 2017. The motion was based under Article 21(i) of the Administrative Tribunal Statute. The Applicant claims that we “manifestly exceeded [our] competence or that [we] failed to exercise jurisdiction vested in [the Tribunal].”
3. On 2 October 2018, the Tribunal invited the Respondent to file his response to both applications. The Respondent did not file a response.
4. We will address both applications together in this Order.

Legal Standards

5. Judgments of the Tribunal are final.² The doctrine of *res judicata* dictates that once the Tribunal has fully adjudicated an application, it cannot be re-litigated.³ We note the purpose of *res judicata* is to prevent abusive and duplicative litigation and maintain finality of proceedings.
6. Notwithstanding the importance of achieving finality of administrative proceedings, our Statute provides for limited grounds for annulment of judgment.⁴ We intend to exercise this authority sparingly in exceptional circumstances when persuaded that the application before us is truly exceptional.

¹ Judge Sylvester Salufu Mainga was sworn in as African Union Administrative Tribunal Judge on 10 July 2019. He joins Judges Nyirenda and Peeroo in this judgment to permit disposition of this matter under Article 4(i) of the Tribunal’s Statute.

² Administrative Tribunal Statute Art. 17(vi).

³ *ILOAT Judgment* No. 2993; *ILOAT Judgment* No. 1824; *In re Sethi* (No. 4); *Judgment* No. 2010-UNAT-026bi.

⁴ Administrative Tribunal Statute Art. 21.

7. A party may also request annulment of an award where: (a) the Tribunal has manifestly exceeded its competence or failed to exercise jurisdiction vested on it; (b) there has been a serious departure from a rule of procedure; (c) the Tribunal has erred on a question of law [as] to the Charter of OAU and the Statute; (d) the rules of natural justice were not observed.⁵
8. Under Article 19 of the Tribunal's Statute, only the Tribunal shall be competent to interpret its judgment.

Discussion

Application under Article 21

9. The Applicant's request for annulment does not satisfy any of the grounds specified under Article 21(i). The request is conclusory and unsupported by authority. Most of the arguments itemized in the annulment request were adequately addressed during the hearing of the case and the rest could have been raised prior to the Tribunal's judgment.
10. Article 21 is not a mechanism by which parties will present fresh argument or re-litigate issues already considered and adjudged by the Tribunal. We have looked at the Applicant's Article 21 request carefully and we are not persuaded that we exceeded or underused our competence in considering the Applicant's matter.
11. Accordingly, the Tribunal finds that the Applicant has not satisfied any of the requirements for annulment of judgment.

Application under Article 19

12. In his application for "Order to Pay Judgment Debt with Interest" dated 24 November 2017, the Applicant prayed for the Respondent to be ordered to pay the judgment debt "with interest of not less than 20% from the 16th October 2017 till day of full and final payment."⁶ [Our emphasis]
13. In his Application for Interpretation, the Applicant now seeks clarification "whether the Order to pay 15% interest directed at the Respondent is to be paid monthly or yearly."⁷
14. An award of compensation is made for the purpose of restoring the staff member to the position in which they would have been had the Organization not failed to meet its obligations. In adjudicating his request for execution of judgment, the Tribunal found that there had been excessive delays on the part of the Organization and found that the Applicant was entitled to payment of interest. We imposed a 15% interest pursuant to the powers granted to us under Article 17 of the Statute to award appropriate compensation for the Organization's failure to timely satisfy Judgment No. AUAT/2017/003.
15. The Applicant did not pray for interest to be paid at a monthly rate. Nor is there any indication in our Order that the interest was imposed as a punitive measure.
16. The imposition of interest in this case sought to deter execution delays and to ensure that the compensation awarded served its purpose without diminishing in value by delays in execution. As such, the method of computation consistent with the rationale of restoring the staff member's original position is to apply the rate on a per annum basis. Incidentally, the Tribunal notes that this method is consistent with the practice in other administrative tribunals.⁸

⁵ Administrative Tribunal Statute Art. 21.

⁶ Application for Order to Pay Judgment Debt with Interest.

⁷ Application for Interpretation.

⁸ See e.g. *Warren*, 2010-UNAT-059; *Iannelli*, 2010-UNAT-093; *ADBAT*, Decision No. 114 (21 July 2018); *Decision* No. 115 (21 July 2018).

Orders

17. The foregoing is the Tribunal's interpretation of Order No. 2018-003.
18. The Applicant's request under Article 21 is denied.

Date: 10 September 2019

/signed/

Hon. Andrew K. C. NYIRENDA, President
Hon. Shaheda PEEROO
Hon. Sylvester S. MAINGA

Secretary: _____

