



IN THE MATTER OF:

*RWE, Applicant*

v.

*Chairperson of the African Union Commission, Respondent*

&

*PW, Applicant*

v.

*Chairperson of the African Union Commission, Respondent*

FOR APPLICANTS: *Pro se*

FOR RESPONDENT: Amb. Tordeta Ratebaye, Deputy Chief of Staff

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 21 to 23 August 2023

#### JUDGMENT

##### *Introduction*

1. The two applications have everything in common and it is efficient to consolidate them in one judgment. Both applications have the sole purpose of challenging the decision of the Respondent of 2 August 2022 appointing Mr Guy-Fleury Ntwari (GFN) as the Legal Counsel of the African Union Commission (AUC). The only difference lies in the fact that while Mr RWE is challenging the decision for not appointing him to the position of Legal Counsel despite having been ranked first in the recruitment process, Mr PW is questioning the irregularities in the recruitment process, biasness in favour of Mr GFN and his having not met the recruitment requirements.
2. I will refer to complainants as Applicants, and where the circumstances references the individual complainant I will refer to said individual as applicant or by his initials or surname, for example, RWE or Mr Eno, PW or Mr Weldesellasiae.
3. These two matters disclose a sorry tale of the recruitment and appointment processes in the African Union Commission (AUC) and wholly vindicates Mr Sabelo Mbokazi, President of AU Staff Association's sentiments in his letters of 6 March 2020 and 24 July 2020 to the Respondent, headed: 'Save African Union Commission, Dismantle the Rampant Corrupt Recruitment and Appointment Cartel, A call for the Restoration of Sound Administration Management & Leadership'. But what stand out in the matter of Mr Weldesellasiae is the brazenness, the audacity of the Respondent to refuse without a murmur to make available the report of the Ad-Hoc Investigation Panel, commissioned by Respondent and the Audit Report prepared by the Board of External Auditors, when ordered to do by the Tribunal. That conduct where the Respondent has become a law unto himself, elevates the AUC to lawlessness – a serious obstruction of justice, a violation of the most fundamental basic principle governing the division of power between the Executive, Legislature and the judicial processes, extra ordinary and contemptuous.

#### **The contested decision**

4. Both Applicants seek the Tribunal to review the Respondent's decision to appoint Mr Guy-Fleury Ntwari (GFN) as the Legal Counsel of the African Union Commission (AUC).

#### **The Background**

5. On 2 April 2022 the post of Legal Counsel in the AUC became vacant and announcements were made to that effect. Both Applicants applied for the position. Subsequently they and four others were invited for interviews which took effect on 25 July 2023. On or about 8 August 2023 they both received communications from the African Union Recruitment Support Team informing them that, 'we regret to inform you that you have been unsuccessful on this occasion we have selected another candidates (sic) whose background and experience at this moment in time, we feel, is more suitable for this position'. Meaning Applicants' backgrounds and experiences were not suitable for the position.
6. Applicants in terms of Regulation 14(1)<sup>1</sup> and Rule 62(1)(1)<sup>2</sup> of the Staff Regulations and Rules (SRR) of the African Union (AU) addressed separate letters, Mr PW with two others, to the Respondent seeking him to reconsider his decision appointing Mr GFN as legal counsel. Particularly Mr RWE wrote that he was informed that he was ranked first in the assessment, separated by six points between him and the second candidate and that it was surprising to be informed that he was unsuccessful and that his background and experience was unsuitable for the position and that if it was correct that he was ranked first in the assessment, 'it is my submission that having been the highest scoring and ranked candidate, and there being absolutely no legal impediment to your appointing me as the first ranked candidate, I expected you to appoint me for the position.'
7. He further sought three things from the Respondent, namely:
  1. The score he obtained in the assessment.
  2. A confirmation that indeed, he was ranked first.
  3. If 2 above is confirmed, an explanation as to why he was informed that his background and experience are not suitable for the position, the basis on which he was not appointed.
8. I must be quick to mention that, possibly because of this letter, on 7 October 2022, Mr RWE received an email from the Director (HRM) stating: - 'first I want to apologize as I missed your email. Then also want to apologize as the email you received after the recruitment process was not accurate at all. It is an automatic one which does not reflect the respect we have for yourself and your career. In the meantime, we have changed it.'
9. Mr PW and two other candidates on 12 September wrote to the Respondent asking him to review his decision because of:-
  - a) Bias and irregularities starting from the early stages of the recruitment process, and
  - b) Mr GFN's insufficient qualification as well as his inclusion of inaccuracies and/or falsehoods in respect of his prior work history both in the Organization and outside employment

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<sup>1</sup> Regulation 14 (1) provides as follows:

'Any staff member not satisfied with an administrative or disciplinary decision specifically related to him or her, may file an appeal against such decision as a first step, by addressing a letter to the Chairperson or any competent authority of any organ, requesting a review of the administrative or disciplinary decision.'

<sup>2</sup> Rule 62 (1.1) for its part provides as follows:

'Any staff member wishing to appeal against an administrative decision against him or her, pursuant to Regulation 12 (a), shall, as a first step, address a letter to the Chairperson or the competent authority of any organ, requesting that the administrative decision in question be reviewed; such a letter must be sent by courier service if the staff member is serving outside of Headquarters, within thirty days from the date of receipt of the contested decision. If upon review, the Chairperson or the competent authority of any other organ confirms the original decision or if no reply is received by the staff member within thirty (30) days, the staff member shall be entitled to file, within a further thirty (30) days, an appeal with the Administrative Tribunal in the form prescribed in the tribunal's rules of procedure'.

10. On 14 September 2022 Mr PW, received a memorandum from Respondent's Chief of Staff addressed to all three signatories of the letter to the Respondent, in which he acknowledged receipt of the request for review, wherein he had stated that he 'wished to inform [us] that the content [of our letter] has been duly noted and reply will be sent in due course'. But to date no reply has been received from the Respondent. Mr RWE's letter was acknowledged by the Administrative Assistant in the Cabinet of the Respondent on 17 August 2022 and she noted that, 'it will be submitted accordingly'. But up to the time of his application he had not received any response. When the Respondent did not respond at the expiry of 30 days, Applicants filed these applications.

**Mr RWE's case or facts peculiar to Mr RWE's case.**

11. Mr RWE states that what is interesting is that on 29 September 2022, [two months after the contested appointment was effected] he received an email from Ms Bridget Nakitto, a staff of Ernst & Young (the accounting firm hired by the AUC to coordinate the recruitment process) requesting him to sign a consent form for a background check for the position of Legal Counsel, noting that, 'the African Union Commission (AUC) is required to perform a verification exercise on all interviewed candidates before a decision to hire is made. This background will include verification of all job related information, such as education history, professional qualifications and memberships, employment history, credit report, criminal record and any other applicable public record information'.

12. He replied on the same day, surprised and informing Ms Nakitto that by 10 August 2022 he was notified someone else was already appointed in the post and that he was therefore confused by Ms Nakitto's email.

**13. Ms Nakitto responded on 5 October 2022 stating:**

'Apologies for the delayed response however I have forwarded your email below along with the attached to the concerned parties within the AUC for their guidance/information. We have since been advised that there is no need for you to provide your consent/go through this background check process as the communication regarding your non-appointment had already been done. Please note: At the time of reaching out to you regarding the verification process, we (EY) were not aware that you had received a notification regarding your non-appointment from AUC.'

14. On 7 October 2022 he received the email I refer to in paragraph 8 above.

15. The main thrust of Mr RWE's argument is the Merits-Based Recruitment System (MBRS) which the Au adopted in 2020, with a view ensuring that the selection of staff to fill positions within the Au is based only on a candidate's ability to perform the duties applied for, the system also aims to choose the best person/candidate for the job, resulting in a quality workforce and it also seeks to enhance transparency and the integrity of the recruitment system.

16. He maintains that the main innovations brought about by the MBRS is that the key selection criteria such as gender, country quota, regional representation, language which the Respondent relied on to exercise his discretion in the appointment are now being applied/relegated at the shortlisting stage. The said criteria, so he continues, are scrupulously applied to screen candidates during the shortlisting process and candidates who do not meet the criteria are eliminated automatically at that stage already.

17. He further states that after the automated screening, the Recruitment and Selection Committee (RSC) applying the same criteria mentioned above, further manually screens the candidates that have been shortlisted.

18. Further he states that it is therefore understood that candidates who are selected for the final assessment and interview, after the screening process, proceed to compete on merits only and nothing else.

19. He further states that the MBRS thus restricts the discretionary power entrusted in the Respondent in as far as the appointments are concerned and that the three candidates recommended by the Appointment, Promotion and Recruitment Board (APROB) are all eligible for appointment, strictly in the order they appear/ranked. In other words the first ranked should be offered the position first, and in the event that he/she declines, the offer goes to the second and then the third. This would mean the Respondent no longer has the unfettered discretion he had to make his choice for appointment from the three.

20. Whether or not he was eligible for appointment is an issue which was deliberated by the Recruitment and Selection Committee (RSC) for the reason the Cameroon quota at director level had two staff including the applicant and therefore full. The Committee had sought advice from Legal Counsel and later the Committee was advised that he was an internal candidate, there was no legal impediment for him to be selected for assessment and appointment, as the appointment would not change the Cameroon quota standing. Given that advice by Legal Counsel and other considerations, he was selected to compete for the position, so argues the Applicant. He states that after the interviews he was informed that he was first on the list of candidates recommended to the Respondent.
21. He states that he joined the African Union (Au) in 2003 as a Legal Officer at the African Commission on Human Peoples' Rights. At the Commission he served as a Legal Officer, Programme Officer, Senior Legal Officer and served over a year as Acting Executive Secretary of the Commission. He joined the African Court on Human and Peoples' Rights in 2010 as Deputy Registrar for six months and was appointed Acting Registrar in January 2011 and substantive Registrar in January 2012; a post he has held for more than 11 years and risen to grade D2 step 1. Uninterruptedly has served the AU for 20 years, over 15 years of which at managerial level. He reckons that it is that wealth of experience that made the cut for the selection.
22. Applicant feels hurt and insulted when he was informed that his background and experience were unsuitable for the position. To add insult to the injury the candidate who was appointed, as has been established through the information he provided, has far lesser experience than applicant. He maintains that it is unfair, frustrating and very demoralizing after being ranked first, he was told his background and experience was unsuitable for the post. Not only is it a mockery of his achievements and contributions he has made towards the success of the AU, so he contends, but it also flouts and defies the fundamental tenets and objectives of the AU's new MBRS and further casts aspersions on the institutional reform process and the much talked about transparency of the new recruitment system.
23. He states that the Deputy Chairperson when briefing the Permanent Representative Committee (PRC) on 29 September 2022 gave a completely different reason as to why he was not appointed. The reason she gave is that the quota for Cameroon at Director Level had been surpassed. He disputes that reason because it is on record that it was considered and resolved when Legal Counsel rendered a correct advice on the issue – that the quota does not apply to an internal candidate who is competing for a position of same grade as he/she is holding. He further contends that if the non-appointment was based on quota he would have been disqualified at the shortlisting stage. He maintains that if indeed the non-appointment was based on quota the Director of HRM or the Respondent should have responded to his letters of 10 and 17 August 2022 when he sought clarification of his non-appointment. The silence from the Director (HRM) and the Respondent confirms he was non-suited for the reason communicated to him, that is, his background and experience. He further contends that the email he received from the Director of HRM on 7 October 2022, almost two months after he wrote to her was a smokescreen. He further contends that he was shortlisted because the issue of quota was resolved and the competition was solely based on merits and could not subsequent be substituted with the quota based system. That being the case he rightfully expected the Respondent to appoint him in the position.
24. Lastly he is supported in his argument by Ernst & Young, the accounting firm hired by the AUC to coordinate the recruitment process who contacted him for a background check after another candidate was already appointed, which means the recruitment process was marred with irregularities. He further contends that it is inconceivable that the accounting firm would have done background checks between 25 July 2022 (the day of the interview) and 2 August 2022 (the day the appointment was made), 7 days to be exact, 25 July and 2 August excluded. He further contends that the fact that he was contacted for a background check, he was still being considered for appointment.
25. He contends that in the challenge of this conspicuous irregularity and illegality he finds it important to indicate why he applied for the position and why the non-appointment hurts him so much, firstly as already stated, he has 20 years with AU, 12 years of which with the African Court, he saw the position of Legal Counsel as an opportunity to further develop his career and contribute on other spheres of the law,

secondly, he desired to work as Legal Counsel for the AUC to make a mark of the work in that office and the Union as a whole and that in his contacts with the AUC he realizes there are several areas where he would have left his footprints, put hallmarks in the Union's Agenda 2063 and the position would have offered him the best opportunity to realize that dream and lastly he wanted to re-unite his family, his wife who resides in Addis Ababa while he and the children reside in Arusha Tanzania. He was even prepared to step out of the Grade D2 step 1 to a lower Grade D1 step 1 of Legal Counsel for the sake of his family. The unfair decision robbed him and his family the opportunity to reunite at one duty station.

#### **The Relief Sought**

26. Applicant states that the decision not to appoint him under the circumstances adumbrated above, has caused him and his family serious moral and psychological anguish and in his own words seeks the Tribunal to order the Respondent to:

1.
  - a. Produce the Report of the Selection and Recruitment Committee or the APROB which recorded the scores and recommended ranking of the candidates;
  - b. Confirm that the Applicant was ranked first in the recruitment for the position of Legal Counsel of the African Union Commission;
  - c. Confirm that the Applicant was not appointed not based on the reasons contained in the Respondent's notification of 10 August 2022;
  - d. State the exact reason for which Applicant could not be appointed, and if not same as that in Respondent's notification of 10 August 2022, to officially notify the Applicant of the correct reason;
  - e. In the wake of serious allegations concerning the background, experience and qualification of the candidate appointed, institute an independent investigation to verify the candidate's academic and professional qualifications and suitability for the position, and if allegations are proven, to rescind the appointment.
  - f. Review the entire merits-based recruitment system as currently applied by the AUC to avoid subjecting candidates to a rigorous recruitment process where there is no likelihood being appointed even if ranked first.
2. The Applicant further respectfully requests the Tribunal to:
  - a. hold that there was no legal impediment preventing the appointment of the Applicant for the position of Legal Counsel.
  - b. find that the manner in which the process was handled has caused Applicant and family moral damage.
  - c. award Applicant the sum of two hundred thousand (200,000) United States Dollars for moral damages.

To prevent similar cases of injustice in the future, and to promote transparency and fairness, Applicant respectfully requests the Tribunal to find that the Chairperson's power to appoint a successful candidate under the merits-based recruitment system is limited to offering the position to the eligible candidates in the order they are ranked by the SRC or the APROB.

3. The Applicant respectfully requests the Tribunal to make such other orders and grant such other awards as the Tribunal may deem appropriate.

#### **Respondent's Answer to Mr RWE's case**

27. The answer to Mr RWE's case is in this form:-

At the outset under the heading pleas he requests the Tribunal to reject the application in its entirety for the grounds *infra*:

- (i) The prayer seeking the production of the report of the recruitment process is not necessary as the fact that applicant was ranked first is admitted – the Respondent only wonders how that information came to the knowledge of the Applicant as that information is supposed to be confidential.

- (ii) The appointment after recruitment is a decision in the discretion of the Chairperson (Respondent) which is subject to limited review by the Tribunal.
- (iii) Being ranked first as a candidate is not a guarantee for appointment, there are other criteria such as quota and gender that comes into play in the decision of the Chairperson, read with Staff Regulations and Rules (SRR) and other decisions of the Policy Organs.
- (iv) The new recruitment system (MBRS) regardless of its name is not only based on personal merit of candidates but it takes with it a full range of other criteria at different levels of the recruitment process, including the appointment stage. Therefore the quota consideration is not only confined to the shortlisting stage.
- (v) The applicant was not appointed because of the quota considerations as his Member State Cameroon had exhausted its quota at Director Level – it has or had two (2) nationals at that level. The Quota System beckons the Chairperson to ensure fair and equitable representation of all Member States at Managerial level and give priority to Member States least represented.
- (vi) The candidate appointed for the position is a national of a Member State (Burundi) under represented, which at the time the appointment was made, did not have any Director position. As per the quota system each Member State shall have at least one Director position.
- (vii) The message Applicant received on 10 August is a system-generated email, which did not provide details of specific reasons justifying the non-appointment of each candidate, as per the practice in several international organizations. The content of the email was not entirely accurate as it only references the background and experience. Notwithstanding the Director (HRM) already apologized [on 7 October 2022] to the applicant in that regard.

**28. In his Explanatory Statement Respondent refers to Decisions**

Assembly/AU/Dec. 805 (XXXIV and EX. CL/Dec. 1107 (XXXVIII) of February 2021 on the new AU-Wide Quota System, the relevant parts of which reads as follows:

**‘Assembly/AU/Dec. 805(XXXIV)  
Page 1**

**DECISION ON THE NEW AU-WIDE QUOTA SYSTEM**

**The Assembly,**

- 1. WELCOMES** Decision EX.CL/Dec. 1107(XXXVIII);
- 2. APPROVES** the new AU-Wide Quota System, which is an equation on the two fundamental principles of solidarity (membership) and equity (scale of assessment) at 50% each, which shall apply to the recruitment of each category of the professional positions of regular, fixed-term, regular, fixed term, short term and special service staff member in all Union structures, and should take into account gender and youth parity.

34<sup>th</sup> Ordinary Session of the Assembly of the Union, 6 & 7 February 2021, Addis Ababa, Ethiopia

**EX,CL/Dec.1107(XXXVIII)  
Page 6**

**D. Report of the Commission on the implementation of the Executive Council Decision on the New AU Wide Quotas and Report of the R10 experts on the AU quota system**

- 26. RECALLS** the EX.CL/Dec. 1097(XXXVII) reiterating the need for the review of the current quota system to be applied to all AU professional positions in all organs (regular, short term, fixed term and special service) considering the requirement of gender and youth quota excluding general service staff.

27. **TOOK NOTE** of the AU report on the Quota System and expressed concern that the Commission was unable to fully implement the Maputo and Sharm-el-Sheikh recommendations.
28. **RECOMMENDS** to the Assembly for adoption the new AU wide quota system, which is an equation based on the two fundamental principles of solidarity (membership) and equity (scale of assessment) at 50% each. **FURTHER RECOMMENDS** that the equation of the quota shall apply to the recruitment of each category of the professional positions of regular, fixed term, short term and special service staff member in all Union structures and should take into account gender and youth parity.
29. **DECIDES** that the quota shall be applied in line with the SRR with the following criteria:
- a. The quota should take into account the gender parity at all level;
  - b. Positions below P3 should favor Youth without prejudice to internal promotion procedures in line with the AU SRR;
  - c. The suggested quota shall be applied at two levels;
    - i) On the managerial level: to have a fair and equitable representation of all Member States (all positions at P4 and above);
    - ii) On tactical level: to have a fair and equitable representation of all Member States (all positions at P3 and below).
  - d. A Gap Cap of 25% will be applied while implementing the quota to the recruitment of the professional positions of regular, and non-regular staff members in all Union structures.
    - i) The Gap Cap is defined as the difference between the highest Member State in terms of its utilization of its respective quota, when compared to the least Member State in utilizing its respective quota.
    - ii) Once that Gap Cap reached at any time, the highest member state will be temporary blocked till that gap is back to less than 25%.
      - iii) That blockage can be lifted after a period of nine (9) months if the blocking Member State is not fulfilling his share of candidates.
30. **DIRECTS** the Commission and the R10 experts to develop a Quota Policy by the end of March 2021, applicable to the Union and should be presented to the next Executive Council Meeting through the relevant policy organs for approval. The Quota Policy shall take into consideration the application quota system on the African Union Youth Volunteer Program, Africa CDC Youth Fellows and Fellows and Scholarships of the Pan-African University Students, in line with Para. 38 Executive Council Decision EX.CL/Dec. 1097(XXXVII).
31. **FURTHER DIRECTS** the Commission to submit reports on the implementation of the quota policy at the sessions of the Executive Council.
29. He further elaborates what is required at the various stages of recruitment, starting with screening, shortlisting, interview and assessment process and Appointment.
30. At the appointment stage he states that the Chairperson in the exercise of his discretionary power appoints one of the recommended candidates based on the criteria below.
- a. Merit;
  - b. Priority given to least representative countries;
  - c. Gender;

- d. Quota consumption;
- e. Internal Candidate;
- f. Diversity of the Demography within the hiring department per Country and per region, including female and male representation;
- g. Managerial quota consumption; and
- h. Priority given to applicants from Member States that do not have any Director or Head of Division in order to address the imbalance in the Quota system;
- i. Restriction on appointment of applicant from Member States that filled their managerial Quota at Director of HoD levels.’

31. He puts the Respondent’s case to rest on this point when he said the following:

- i. The selection process is not only based on the personal merit of the candidates. Additional considerations include the principles of equitable geographical representation, gender and considerations for candidates already in the service of the Organization in line with Regulation 6.4 of the SRR. This has been highlighted by the Tribunal in several judgments’. (Y.T; AUAT/2021/002, para 11; A.N; AUAT/2020/002, para 15).
- ii. Criteria selection such as quota and gender are not taken into account only at the shortlisting stage;
- iii. The quota consideration is taken into account at the stage of appointment by the Chairperson in accordance with Regulation 6.4 and Rule 27 of the SRR as well as decisions of the Policy Organs. Therefore, the Chairperson should inter alia:
  - a. give priority to least represented countries;
  - a. give priority to applicants from Member States that do not have Director of Head of Division; and
  - b. make sure not to appoint an applicant from Member States that filled their Managerial Quota at Director of HoD levels.
- iv. The Chairperson discretionary power is not restricted to appointment of the candidates in the order they are ranked, otherwise it would not be a discretionary power.’

32. He also laid emphasis on why Applicant was not appointed but it is a reiteration of what has already been stated. Worth noting is his emphasis on the fact that the power to appoint vests in the Chairperson and that the Tribunal’s role in reviewing an appointment decision is not to substitute its own decision for that of the administration. Its role is rather to examine whether the procedure set out in the SRR as well as other laws of the Organization were properly applied and whether the staff member’s candidacy received proper consideration. He refers to M.Y; AUT 2019/0011 para 26; A.N; AUAT/2020/002 para 16; Y.T; AUAT/2021/002.

33. He submits that the procedures outlined in the SRR and other Rules of the Organization were properly implemented and Applicant’s candidacy received proper consideration.

34. On the non-appointment message received by the Applicant it is or reiteration of what has already been stated, worth noting is that the Respondent corrects that the automated notification was not a letter per se, rather an email and that the experience and Applicant’s contribution to the AU is not in question.

35. Respondent declines to comment on the briefing the Deputy Chairperson (DCP) did with the PRC as the sessions of the PRC are closed unless decided otherwise by the PRC. As already stated under the heading Pleas, Respondent is still affixed to how Applicant came to know that he was first on the list as recruitment processes are confidential and therefore the Respondent holds the view that the Tribunal should not give room to breach of Rules by Applicant. Respondent further states, while he appreciates the discomfort experienced by the Applicant and his family, he is not responsible for social media publications or phone calls and interpellations Applicant and his wife received.



36. Respondent further states that neither he the Respondent nor the Tribunal is in a position to change the decision of Member States who require consideration criteria such as gender and quota along with the Merit-Based Recruitment System.
37. Respondent prays that the Tribunal should reject the Application in its entirety for the reasons articulated above.

**Observation by Applicant to Respondent's Response.**

38. Applicant agrees with the Respondent on what he stated on the recruitment stages and reiterates his argument that the criterias of gender, quota and other criterias have been relegated to the screening and shortlisting stages – they have been overtaken by the MBRS and therefore disagrees with Respondent's assertion that being ranked first is not a guarantee for appointment – as then there is no need to rank candidates which is a serious dent on the credibility and integrity of the recruitment system. The argument that quota is also applicable at the appointment stage is a mockery of the MBRS. Applicant further states that his appointment would not have changed the quota of AUC – positions at the Director level would still have remained at 2 and Respondent failed to refute the advice given by Legal Counsel that he was an internal candidate and not affected by the quota especially that the appointment was on the same grade. Applicant refutes the argument that the Respondent still has the discretion to appoint any of the three persons recommended to him and that the MBRS seeks to avoid situations where discretionary powers of the Chairperson maybe abused.
39. On the automated email Applicant argues that whether the email was automated or manually generated is immaterial, the fact of the matter is that it came from Respondent and is not disputed. Respondent cannot distance himself from the message.
40. Applicant further maintains that the psychological trauma he and his wife went through and which is still ongoing, which caused anxiety not only for him but among staff members of the Union is directly attributable to the Respondent and he finds it difficult to comprehend how Respondent can absolve himself from the pain he is going through.

**Mr PW's Case**

41. The Applicant is a native and citizen of Eritrea. He joined the AUC as the Secretary of the African Union Administrative Tribunal (AUAT) in June 2015. His salary grade then was P-5/step VIII in the fixed-term appointment (FTA2) category.
42. The purpose of his application is to seek the Tribunal to review the Chairperson's (Respondent's) decision to appoint Mr Guy-Fieury Ntwari (GFN) as the Legal Counsel of the AUC, a decision he says was taken on 2 August 2022 and only communicated to the candidates including him on 10 August 2022.
43. He states that the first indicators of the Deputy Chairperson's (DCP) bias in favour of Mr GFN commenced when the former Legal Counsel Dr Namira Negm was transferred on 22 March 2022 to an AU agency based in Rabat, Morocco. In days that followed on 31 March 2022 Dr Monique Nsanabagawa (DCP) appointed Mr GFN as Legal Counsel on an acting basis. The acting appointment was made possible after Mr Hohamed Salem Khalil, (MSK) senior to Mr GFN and first-in-line for acting appointment under staff rule 35.1 was suspended for misconduct, from February to May 2022 on the recommendation of the DCP. He opines that in light of a vacancy announcement issued for the post of Legal Counsel, on 2 April 2022, it is not clear why the DCP needed to issue acting appointment a day prior except, plausible so, was meant to help Mr GFN's career prospects.
44. On 10 August 2022 when he received a regret response for the post he had applied for, in the days that followed he learnt that it was Mr GFN who was appointed and at the same time he learnt of the substantial flaws in the recruitment process, and many questions regarding the appointee's professional qualifications and his suitability for the post.
45. After the applicant's and two others' (Professor Dire D Tladi and Advocate Thato Ramoseme) letter to the Respondent, he received an acknowledgment of the letter, from the Chairperson's Chief of staff that a reply would be sent in due course. To date that reply has not been received.
46. Within days of writing to the Chairperson, requesting for review (12 September 2022) according to the DCP when briefing the PRC on 29 September 2022, the Chairperson referred the request for review to

the DCP asking her to ‘attend to it and advise him on appropriate response of action to be taken after due investigation.’ The proceedings were on videoconferencing system which Applicant attended. The DCP also indicated, following wide circulation of the letter to the Chairperson, Permanent Representatives of multiple member states reached out to her on the matter expressing concerns and seeking to assist the AUC to address it. The DCP at the close of briefing, she informed the PRC that given the publicity of the issue there was a need for an independent investigation, followed by accountability measures, and her office was looking to hire a private firm to conduct appropriate investigation.

47. No such investigative firm was engaged.
48. On 19 October 2022, the Chairperson instead, wrote to the Chairperson of the PRC asking the PRC to propose a mechanism to investigate the allegations of irregularity and Mr GFN’s dishonesty contained in Applicant’s and two others’ letter of 12 September 2022. On 3 November 2022 the PRC in public proceedings considered the Chairperson’s request but declined the request and urged the AUC to conduct its own investigation and provide a report.
49. No action was taken since 3 November 2022 and this application was filed on 12 November 2022. I must digress here to mention that an AD-Hoc Committee on the appointment of the Legal Counsel was eventually commissioned on 5 December 2022 and had to report back the outcome, latest by 14 December 2022. A report has been filed with the Chairperson but extraordinarily and contemptuously the Respondent refused to make the report available to the Tribunal when ordered on 1 June 2023 to do so by 16 June 2023.

**Grounds for Review of Appointment Decision.**

50. The Applicant’s grounds of review are in this form:
  1. The recruitment process was flawed and compromised by clear bias in favour of Mr GFN by officials involved in the various stages of the recruitment process.
51. The allegations substantiating the ground above in the Applicant’s own words are:
  - ‘The shortlisting was initially established several weeks after the application period closed on 2 May 2022.
  - The first shortlist established in May or June 2022 did not include GFN as a candidate because it was determined by the shortlisting panel that he lacked the requisite managerial experience.
  - GFN apparently approached the HR Director or other official (s) involved in the recruitment process and caused the shortlist to re-open. It is also alleged that some officials involved in the recruitment process made effort to persuade panel members to agree to the reconsideration with the aim to benefit GFN’s candidacy.
  - Shortlisting decisions are confidential and there is no structured review process for such decisions open to all candidates before the recruitment process concludes. When officials selectively provide such process to one candidate but exclude others, as happened here, it reflects bias and offends the principles of fairness equal treatment.
  - Further, for GFN to seek review, a panel member or technical teams involved in the shortlisting process must have disclosed, against confidentiality requirements, to GFN that he had not been shortlisted, thereby prompting him to reach out to responsible officials for a special consideration, presumably with additional information that no other candidate was allowed to.
  - It is alleged that GFN’s additional information included a letter purportedly confirming GFN’s acting appointment, inaccurately, since 2018 from an official not authorized to issue acting appointments.
  - In June 2022, GFN was provided with a special opportunity at which time the shortlist was reconsidered in his favour and one other candidate (RWE) by removing other shortlisted candidate(s) from the list prepared several weeks prior.
  - RWE is a national of Cameroon and had initially been excluded from the shortlist because he was a national of country which has fully encumbered its allocated number of director-level appointments across the Union.

- RWE’s candidacy was reconsidered, and he was shortlisted at the same time as GFN. RWE eventually was the top scoring candidate after the close of assessment but was not appointed.
  - It is plausibly alleged that RWE was shortlisted for “decoy effect” as the official(s) who coordinated the contested recruitment process had no intention to recommend RWE for appointment as Legal Counsel.
  - It was known to the official(s) that the Organization’s own policy placed a hurdle to RWE’s appointment based on quota restrictions. The rule not to appoint a director from an overrepresented member state was established in the Terms of Reference that the Organization developed for the Recruitment and Selection Committee (RSC). **(ToR-RSC, ¶60 (b))**
  - The panel’s inconsistent application of **ToR-RSC, ¶60 (b)** to RWE was either designed to and or had the effect of favoring GFN by clearing the field for his eventual appointment. It was irrational for the panel to initially exclude RWE on quota grounds, and clear him for interview after discussion, only to turn around and not recommend his appointment on the same grounds. **(In her briefing to the PRC, the DCP stated that RWE was not appointed on quota grounds despite his highest score).**
  - It is also alleged that the shortlisting did not comport with the established policy that a third of short-listed candidates ought to be female. No female candidate was shortlisted for interview. **ToR-RSC, ¶33 (c), (f).**
  - The firm retained to assist the Organization in recruitment matters, EY, did not conduct a background verification of GFN’s record of prior work or negligently cleared GFN for appointment against the Terms of Reference established for the Recruitment and Selection Committee (**ToR-RSC, ¶51**) and possibly provision(s) of the agreement that EY entered into with the Organization.
  - Further irregularity was observed when a candidate for the contested post was contacted by EY to consent to EY’s verification processes in late September 2022, **two months after GFN had been appointed by the Chairperson.**
52. In a supplementary statement filed on 14 August 2022, Applicant states that he informally became aware of the reopening of the shortlist through a private conversation with an internal candidate for the post of Legal Counsel, who was not shortlisted. Later in two conversations initiated by Applicant during August/September 2022, the reopening of the shortlisting was confirmed by the Deputy Chief of Staff of the Deputy Chairperson (Mr Emile Rwagasana).
53. Mr Rwagasana explained that after the initial shortlisting had been concluded and closed some internal candidates approached him to complain about their exclusion, which begs the question as to who informed them of their exclusion? Mr GFN was one of them. According to Mr Rwagasana Mr GFN’s file was reviewed again and was added to the list of the top six candidates by the shortlisting panel. When Applicant probed him why the special treatment for Mr GFN, Rwagasana explained that two previously overlooked managerial roles led to the inclusion of Mr GFN, namely, (a) that Mr GFN served as Acting Secretary of AUCIL from 2018-2022 (4 years) and (b) that Mr GFN served as a Deputy Director of the Center for International Law at Lyon III during 2011-2017 (6 years). Applicant contends that both assertions are factually incorrect as it would become apparent in ground 2 infra, but HRM and CDCP ensured that both roles were credited to allow Mr GFN meet the requisites (8 years) managerial experience.
54. Mr Rwagasana further informed Applicant that in that process of re-opening the shortlisting another candidate, a former staff member of the Union, Mr Mourad Ben-Dhiab was removed from the initial shortlist because of undeserved housing allowance he and his wife had received in the past. When confronted with the fact that Mr Ben-Dhiab’s case of the undeserved allowance was considered at the Tribunal in June 2021 and found that Mr Ben-Dhiab or his wife did not misrepresent their marital status, Mr Rwagasana retorted to say an opinion on the matter was sought at the time from a legal officer. Mr Ben-Dhiab’s removal from the shortlisting was confirmed by the Deputy Chairperson during a briefing of the PRC on 29 September 2022 in which she said Mr Ben-Dhiab was removed based on the concerns about his intergrity in connection with past receipt of undeserved housing allowance. Applicant contends that he has no doubt in his mind that Mr Ben-Dhiab was removed to make room for Mr GFN. On 21

November 2022 Mr Ben-Dhiab addressed a letter to the Chairperson, headed: ‘Arbitrary exclusion of my candidature from the list of candidates for the position of Legal Counsel of the African Union’.

55. Subsequently, in a conversation with the other Applicant in this matter (Mr RWE) he learnt that Mr RWE received similar reconsideration as Mr GFN. Applicant became aware that Mr RWE had initially been excluded from the shortlist on the grounds of Cameroon quota restrictions. Mr RWE initially petitioned the President of AFCHPR (his supervisor and member of both the shortlisting and interview panels) and subsequently the DCP for a favourable reconsideration. Mr RWE’s request was granted and he was invited for an interview. Applicant contends that Mr RWE’s inclusion was (unfairly to him) a theatrical prop to give the appearance of regularity to the reopening of the shortlist, while concealing the fact the intended and beneficiary was Mr GFN alone.
56. Applicant further contends that the reopening of the shortlist to remove Mr Ben-Dhiab and include Messrs. GFN and RWE was also confirmed during a conversation Applicant had with Professor Mohamed Belhocine, Commissioner of Education, Science and Technology, who chaired both the shortlisting and interview panels. Prof Belhocine reassured the Applicant that the shortlist was in fact reopened. The learned Professor had expressed strong reservations about the re-opening of the shortlist and even the outcome of the selection process, which resulted in Mr GFN’s appointment. But the director of HRM (intending to benefit Mr GFN) exhorted Prof Belhocine that the reopening of a shortlist was a normal and acceptable action within human resources.
57. Finally Applicant apprises the Tribunal that the contract extension/appointment difficulties he previously reported to the Tribunal has been resolved at the eleventh hour, after severe emotional distress, anxiety and having to precariously remain in the host country without any lawful status for several days. The eleventh hour resolution came about with the intervention of the Deputy-Chief of staff of the Chairperson, Ambassador Tordeta Ratebaye as well as a protest by the Chief of Mission of Applicant’s home country.
58. Applicant is certain that HRM and CDCP meant to use the contract extension process to punish him on account of this application. Applicant believes to be the case because Mr Rwagasana twice informed him that he ‘misbehaved’ by filing this application with the Tribunal, instead of patiently waiting for management’s decision on his petition to the Chairperson. The veiled threats were issued twice, first during the process of requesting extension of the tenure on behalf of the current members of the Tribunal in February 2023 and most recently while discussing the extension of Applicant’s fixed-term appointment in July 2023. How sad that the contract system is now used to silence staff for fear of losing their jobs.
59. The Applicant in conclusion on the first ground contends that the flaws above, are significant and clear indicators that the official(s) who led the recruitment process were biased in GFN’s favor as evidenced by: **(a)** reconsidering the shortlist; **(b)** overlooking obvious inaccuracies in GFN’s profile; and **(c)** neglecting to conduct due diligence verification of GFN’s prior employment record both in the Organization and outside; and **(d)** causing the Chairperson to issue an appointment decision based on unverified candidate information.
60. The second ground is that: Mr GFN’s appointment is unlawful because he does not meet the minimum requirements established in the vacancy announcement. The vacancy announcement advertised on 2 April 2022 required a master’s law degree **“with 15 years of postgraduate work experience of which a minimum of 8 years is expected to be [at] managerial level.”** These rules of selection were not applied to GFN. GFN did not meet the minimum qualification established for the post.

It is alleged that GFN has significantly less than the required 15 years of post-master’s degree (obtained in January 2008) professional experience and almost none of it was managerial.

It is further alleged that GFN’s only managerial role within the Organization began, arguably, when the Chairperson appointed him acting Secretary of AUCIL in March 2021.

Additionally, none of GFN’s prior roles within the Organization or outside were managerial.

61. The assertions above are confirmed by the African Union Board of External Auditors in their ‘final Management Letter on the Audit of the African Union Commission for the year ended 31 December 2022’ of 12 May 2023 at pages 245-246 of the report. The report on Legal Counsel Recruitment file in its entirety reads as follows:

### **‘3.2 Assessment of the recruitment process:**

Review of some of the recruitment files among those requested by the audit team, for which the audit team obtained sufficient documentation to assess the recruitment process, enabled to note the following violations of procedures and egregious excesses:

**A - Legal Counsel Recruitment file:**

- The assumption of duty of the successful candidate as legal counsel was on 06/09/2022 while the report on the check reference by ERNEST and YOUNG (E&Y) was prepared on 18/10/2022, more than one (01) month and a half after his appointment in the position. However, the E&Y report is an important criterion for recruitment because it confirms the candidate's statements regarding his experience as a manager. This reveals that the verification of this firm and their results were not taken into account in the assessment and evaluation of the candidate, although this high-priced consulting firm was chosen, given its independence from all stakeholders, to ensure transparency in recruitment.
- According to the check reference report, the candidate stated in his CV that he has been acting in the position of Legal Counsel (acting) at the AUC since 2018. However, a review of his personnel file revealed that:
- The person concerned joined the African Union Commission as part of the special service for contract of 03 months renewable as a legal officer, according to the contract reference 20180074 of 10/01/2018 and the letter of assumption of duty reference 91003067/715.2018 of 24/01/2018, and on 03/11/2020 he had an assumption of duty in the position of Senior Legal Officer in which he was confirmed according to confirmation letter no 10001200/193.22 of 20/01/2022. It is therefore impossible that he can act as legal counsel (acting) from 2018.
- The candidate's personal file does not contain an acting decision. He only acted as of 2022 according to the 31/03/2022 memorandum which served as the basis for calculating the acting allowance obtained from the payroll department. This means that the person does not meet the requirement to have at least 08 years of experience in management positions required by the job description. Moreover, his experience as legal counsel from 2003 to 2006 was not confirmed by E&Y and proved by supporting documents.
- The Human Resources Directorate did not bother to verify the compliance of the successful candidate's CV with his personal file given that the candidate is a member of the AUC staff and did not attract, therefore, the attention of the panels and the RSC to the applicant's misrepresentation on his CV relating to his professional career within the AUC. This constitutes an act from management in favour of this candidate to the detriment of potential candidates who participated in the recruitment process by depriving the panels and the RSC of essential information for the appropriate exercise and in complete transparency of their roles.
- In addition, the recruitment process of this candidate (duration between the short list and the assumption of duty) lasted only three (03) months unlike other recruitments whose process lasted between 5 and 9 months.<sup>3</sup>

62. On risks and consequences – the audit reveals that:

**Risks and consequences;**

- recruitment of senior staff to manage AU organs and achieve the objectives of Agenda 2063 who may not have the required qualifications and skills;
- questioning the credibility of the committees and panels set up as part of the recruitment process;
- undermining the AU's declared and stated values (transparency, accountability, professionalism, impartiality, Africa first etc.);
- Disruption of the social climate of the AUC and recourse of the AU Administrative Tribunal due to recruitment abuses 70% of cases pending in the Administrative Tribunal concern internal recruitment;<sup>3</sup>

63. The Audit Director commented as follows:

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<sup>3</sup> At p 247-248.

The Human Resources Directorate focused its responses on the observations and anomalies identified regarding recruitment for the position of “legal counsel” defending the CV of the successful candidate without providing the documents justifying the veracity of his experience in particular in the management function stated in the CV.

It also asserts that the recruitment files are confidential and should not be filed in the personnel file’s office of the directorate, which is contrary to the generally accepted norms and the values of the AU in particular that of transparency. In addition, the Personnel files Office (HRM registry) is the most secure place in terms of confidentiality because access to this office and files is subject to prior approval by the Head of Division and/or the Directorate and is regulated by the HR procedure. The external auditor therefore maintains his findings and recommendations<sup>4</sup>.

**The report of the Board of External Auditors to the Executive Council through the Permanent Representatives Committee (PRC), a summary Audit Reports of the African Union and its Organs for the year ended 31<sup>st</sup> December 2022, presented by Counsellor/Hesham Badawy, assisted by Dr Diaaeldin Mohamed Farouk Elgamal of 21 June 2023<sup>5</sup>.**

64. In the introductory part they state that they carried out the audit accounts of AUC and AU organs for the year ended 31 December 2022. The audit among other things involved review of internal controls; and test for compliance with rules, regulations and policies.
65. In the course of the Audit findings that heeded management’s attention were identified in detailed and its related recommendations on how to address any shortcomings are contained in the Management letters in line with Article 104 of the African Union Financial Rules (AUFR). The draft management letters were submitted to AU Management on 21 April 2023. All issues that came to our attention were discussed with the AU Management. The quality of audit reports was discussed and reviewed by members of Audit Operations Committee (AOC) during the period 23-24 May 2023 and then submitted to the BoEA for consideration. The final audit reports with opinions were adopted and signed by the BoEA on 26 May 2023.
66. Under the heading ‘Dysfunction of Internal Control and violation of internal recruitment procedures’ the auditors remark as follows:

‘The recruitment process in the African Union of the new structure is characterized by weak internal control and a violation of the internal procedures stipulated in the AU SRR, as well as a lack of separation between duties, as the same person deals with the recruitment quota schedule and the recruitment process, in addition to that it is not updated schedule quotas when changes occur, and modifications cannot be tracked. The schedule of employment quotas for Member States is also subject to manipulation and sufficient importance is not given to checking the sources and references contained in the candidates’ data during internal recruitment, and checking references for job candidates is not conducted in a timely manner.

**It is recommended to define and formalize all the information, check reference report and documents that the Human Resources Department must compile and make available to the panels, RSCs and PMCs to enable them to select and recruit the candidate in a transparent manner, to establish and/or update the quota table on the selection date (date of the short listing), to establish effective internal control mechanisms and put a regular, experienced official of proven integrity at the head of the recruitment unit.<sup>6</sup>**

67. The third ground is related to the second ground above and it is alleged that Mr GFN engaged in substantial embellishment of his resume and the Organization overlooked or failed to detect and take appropriate action in respect to the various inaccuracies and contradictory work history in his most recent resume and personal history profile.
68. Applicant further states that upon information and belief, the following is alleged in respect to Mr GFN’s record of prior employment.

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<sup>4</sup> At p 248-249.

<sup>5</sup> At p 1-2.

<sup>6</sup> At p 14-15.

- GFN served as Legal Officer (P-2, non-regular) until October 2020. He was appointed Senior Legal Officer (P-3) in November 2020. But he claimed serving as Senior Legal Officer since February 2018 to increase his chances of being shortlisted.
- GFN's acting appointment as Secretary of AUCIL was issued on 27 March 2021. But he claimed serving as acting AUCIL Secretary starting February 2018. GFN was a non-regular staff until November 2020 and could not have been lawfully appointed acting officer because non-regulars are barred under **Staff rule 35.2 (c)** from any acting or officer-in-charge appointment. In any case, the Chairperson signed off on GFN's acting appointment on 27 March 2021.
- If GFN deserved any managerial experience credit based on his work with AUCIL, that credit should not have exceeded 15 months. The panel credited him with 4 years of managerial service based on the false presentation that he had been acting since February 2018.
- The candidate profile or resume that GFN presented in 2022 in connection with his application for Legal Counsel was embellished to fit the requirements set forth in the vacancy announcement. It is alleged that GFN previously submitted candidate profiles to the African Union Commission and/or AFCHPR at least on two different occasions (2017-2018 and 2019) prior to the contested application of April/May 2022.
- It is alleged that those profiles materially contradict with each other as to periods of employment, positions and titles held, and responsibilities because the most recent profile was strategically altered to meet the managerial requirements of the position of Legal Counsel.
- It is plausibly alleged that the profiles GFN submitted prior to 2022 (for non-managerial position) deserve more reliability weight because, presumably, GFN did not then harbor the motive to exaggerate or embellish his managerial credentials.
- It is also alleged that HRM, and presumably EY, curiously failed to conduct a pre-appointment background verification of GFN's prior employment despite the fact that the Organization engaged in 2021 a private firm (EY) to conduct such process with respect to all candidates presented to the Chairperson for appointment.
- It is further alleged that HRM and other officials turned a blind eye to the discrepancies because GFN was the preferred candidate for Legal Counsel.

69. The allegations above are further supported by Annex 8 below, evidence pertaining to discrepancies in Mr GFN's resume and personal history files, which Annex was attached to Applicant's second motion for summary judgment and leave to amend prayers filed on 20 July 2023.

### **ANNEX 8 - matrix of discrepancies between appointed candidate's 2022 and 2018 profiles**

2022 EMPLOYEE PROFILE			2018 EMPLOYEE PROFILE	
1	Acting Legal Counsel - AUC - OLC	2022 - Present		
2	Senior Legal Officer - AUC-OLC	2018 - Present <sup>1</sup>	1	02/2018 - Senior Legal Expert - AUC - OLC
3	Head/Acting Executive Secretary, AUCIL	2018 - Present <sup>2</sup>	2	01/2017 - 12/2017 Senior Legal Expert - AUCIL
			3	11/2016 - 12/2016 Consultant, AU/UNDP
4	Associate Professor and Deputy Director of Center for International Law, Lyon III	2011 - 2017 <sup>3</sup>	4	09/2016 - 02/2018 Postdoctoral Fellow, Lyon III
5	Assistant Professor and Senior Researcher, Lyon III	2007 - 2011 <sup>4</sup>	4	09/2015 - 08/2016 Senior Researcher and Associate Lecturer, University de Franche -Comte
6	Legal Consultant, International Foundation for Electoral Systems (IFES)	2003 - 2006 <sup>5</sup>	5	05/2015 - 12/2015 Consultant, Civil Society Prison Reform Initiative, Dullah Omar Institute
7	Human Rights Officer, Action by Christians for the Abolition of Torture	2002 - 2003 <sup>6</sup>	6	09/2013 - 08/2015 Senior Researcher and Assistant Lecturer, Lyon III

			7	09/2009 - 08/2013	PhD Fellow and Assistant Lecturer in Law, Lyon III
			8	03/2008-08/2009	Visiting Lecturer / Maitre-assistant, University of MLK, Lumiere, and Lac Tanganyika
			9	07/2006 - 09/2006	Legal Consultant, International Foundation for Electoral Systems (IFES)
			10	01/2006-07/2006	Human Rights Officer, Action by Christians for the Abolition of Torture
<b>EDUCATIONAL HISTORY</b>					
1	PhD	Lyon III		04/2015 (attended 01/2008 - 12/2014)	
2	LLM	Lyon III		01/2008 (attended 10/2006 - 09/2007)	
3	LLB	University of Lac Tanganyika		09/2006 (attended 10/2001 - 09/2006)	

<sup>1</sup>He served as Legal Officer (P-2, non-regular) until Oct 2020. Appointed Senior Legal Officer (P-3) in Nov 2020. Candidate falsely claimed serving as Senior Legal Officer since 2/2018.

<sup>2</sup> Acting appointment as Secretary, AUCIL was issued 27 March 2021. Candidate falsely claimed serving as acting AUCIL Secretary from 2/2018. He was non-regular staff until 11/2020. Chairperson signed off on candidate's acting appointment on 27 March 2021. Non-regulars are excluded under Staff rule 35.2(c) from any acting or officer-in-charge appointment.

<sup>3</sup> Title of Associate Professor and/or Deputy Director were never listed in previous profile. During this period, candidate reported working for multiple employers as a consultant, PhD Fellow, Assistant Lecturer, Postdoctoral Fellow, etc. Previously listed roles with other employers during this period were purged from new resume to reflect continuous supervisory role within Lyon III.

<sup>4</sup> Title of Associate Professor was never listed in previous profile. During this period, candidate reported he was a PhD Fellow and Assistant Lecturer in Law, Senior Researcher, Visiting Lecturer etc. Previously listed roles with other employers during this period were purged from new resume to reflect continuous supervisory role within Lyon III.

<sup>5</sup> Period of employment was 3 months in previous profile (7-9/2006). New resume lists this role as a 3-year employment. (20032006). During this time candidate was in undergraduate study.

<sup>6</sup> Period of employment was 7 months in previous profile (1-7/2006). The period of employment was moved from 2006 to 20022003 in new resume. During this time candidate was in undergraduate study.

<sup>7</sup> Candidate was continuously enrolled in university studies from 2001-2015. His reported work history (continuously since 2002) appears highly improbable given the years of university enrollment for the degrees of LLB, LLM and Ph.D. This red flag was likely ignored because the new resume curiously omitted dates of graduation/attendance.

70. Mr Gilles Devers of Gills Devers Law Office, Place Louis Pradel 69001 Lyon, instructed by Applicant conducted a diligent research of the title of Associate Professor at Jean Moulin Lyon III University for the period from 2011-2017 on Mr GFN's resume. He, on 14 July 2023 compiled a statement disputing that title to the credit of Mr GFN. What he credits to him is a temporary teaching and research assistant at the Jean Moulin Lyon III University and University of France Comté 3 in 2011-2012 and 2015-16 respectively.

71. He concludes in his statement stating that Mr Guy-Fleury Ntwari was unable to hold an associate Professor position at the University, for the period from 2011-2017 for the following reasons.

- i) No decree of appointment by the President of the French Republic, concerning Mr Guy-Fleury Ntwari has . . . been published in the Official Journal (in a reply dated June 14, 2023, the Presidency of the French Republic replied on enquiry that it does not hold the requested documents 9).
- ii) No nomination proposal has been issued by the President of the University Jean Moulin Lyon III for the President of the French Republic.



- iii) No opinion of the Academic Council of the University Jean Moulin Lyon III has been given to the support for such a proposal.
  - iv) Mr Guy-Fleury Ntwari did not meet the legal conditions for appointment to a full-time or part-time associate professor position. There was a legal incompatibility between the position of associate professor and the status of public official of Mr Guy-Fleury Ntwari as temporary teaching and research attaché, for the years 2011-2012 and 2015-2016.
  - v) Mr Guy-Fleury Ntwari could not be a full-time Associate Professor from 2011-2017, i.e. 7 years, while the maximum legal duration is 6 years.
72. He further in para 20 of his statement states that: ‘the recruitment of associate professors within higher education and research establishments, such as Universities, is regulated by Decree No 85-733 of July 17, 1985 relating to associate or guest lecturers and University professors.
  73. On 18 August 2023 Applicant sought leave to file additional evidence, of the screenshots taken and stored by Wayback Machine, a digital archive which allows any interested user to go ‘back in time’ and see how a specific website looked at a particular point in time.
  74. Applicant’s Counsel inputted the CDI’s Uniform Resource Locator (URL; CDI Website’s unique address on the web) on the Wayback Machine’s portal, which returned screenshots (which were attached). The screenshots importantly document past content on CDI Website, which contradicts Mr GFN’s reported work history with the Centre.
  75. The screenshots were archived by Wayback Machine on 19 December 2011, 14 January 2012, 27 September 2013, 2 June 2014, 4 November 2016 and 18 August 2017.
  76. Mr GFN’s resume submitted for the position of Legal Counsel in or about April 2022, he claimed that during 2011-2017 he served as Associate Professor and Deputy Director of CDI, Lyon III.
  77. It is established that the archived screenshots of CDI indicate that Mr GFN was only listed as a doctoral candidate (before 2014) and thereafter a doctor (of laws). Further throughout the archived period (2011-2017), CDI’s website listed no information on anyone holding the title of Deputy Director of the Centre, which is proof that the title allegedly held by Mr GFN to be a likely fabrication.
  78. Further, Mr GFN’s name also does not appear among the administrative team of the CDI listed on the website during 2011-2017 (despite updates to the list in 2014 and 2017). It is contended that if Mr GFN truly held the second top administrative role within CDI, as he claimed, his name would have appeared at a minimum among the administrative team listed on the website. Additionally, Mr GFN’s undated resume (but covering his profile circa 2008) obtained from the website of CDI contradicts his reported employment history during 2002-2008 with Lyon III, FFES and ACAT.
  79. In the further evidence filed on 22 August 2023, i.e. CDI annual reports and organizational charts published during 2012-2017, CDI reports does not list an employee or a team member with the title of Deputy Director, nor does that position appear in the organizational chart of the CDI. Among the four research centers within EDIEC, only CEE and IDCEL list a Director and a Deputy Director in their annual organizational charts and reports. Mr GFN was only listed as doctoral student in 2012 and 2013 and as Doctor of Laws in 2014, 2015 and 2016 and listed among teacher-researchers and associate doctors Enseignants-Chercheurs et docteurs associés in the 2017 report.
  80. He is asking the Tribunal for the following relief.
    - a) Declare the appointment of Mr GFN unlawful and rescind the appointment of Mr GFN as Legal Counsel.
    - b) Order Respondent to restart the recruitment process afresh with sufficient guarantees of fairness and neutrality.
    - c) Order payment of \$1 in nominal damages; and
    - d) Order payment of \$15,000 in costs of this action and any other relief deemed appropriate by the Tribunal.
    - e) Additional damages in the form of 12 months gross salary at Applicant’s present salary grade and step (P5/step 9).
    - f) Seeks exemplary damages in the form of 12 months’ gross salary at his present salary grade and step (P5/step 9).
  81. This completes the evidence relied on by Mr WP.

### **Respondent's Case**

82. While Respondent mounted a formidable defence to Mr RWE's case, low and behold, he failed to do so in the case of Mr PW. What transpired in Respondent's case is that Mr PW's application was served on him on 14 November 2022. He had 30 days to answer to the application. He did not file an answer in the 30 days. On 16 January 2023 Respondent filed a request for an extension of 30 days which was granted to file by 13 February 2023. On 10 February 2023 he filed a second request for extension of 30 days. On 11 February 2023 the Tribunal inquired if Respondent had hired an outside counsel as Legal Counsel was conflicted. In place of addressing that question, Respondent clarified that the extension request was sought because the AD-Hoc Committee's investigation was still ongoing.
83. The matter and extension request were deferred and ordered Respondent to file a status report on the investigation of the Ad-Hoc Committee no later than 24 February 2023. On 24 February 2023 Respondent filed a third extension request informing the Tribunal that the Ad-Hoc Committee has yet to present its report to the Chairperson and requested a 15 days extension until 11 March 2023.
84. On 27 February 2023 Applicant filed opposition to the third extension and on 28 February 2023 Respondent notified the Tribunal that the Ad-Hoc Committee had completed its work and the report would be submitted soon to the Chairperson.
85. On 1 March 2023 the Tribunal allowed yet a further extension (final) to file his answer by 10 March 2023.
86. On 10 March 2023 Respondent informed the Tribunal that the Committee had not submitted the report to the Chairperson and sought a suspension of the proceedings pending the outcome of the investigation, alternatively to dismiss the application for being unsubstantiated. For the timelessness of the application the Tribunal on 20 March 2023 rejected the request and barred Respondent from filing any pleadings.
87. On 17 April 2023 Applicant filed a motion for summary judgment and leave to amend prayers. On 16 May 2023 Respondent filed application opposing both motions. In the opposition application of note was that Respondent informed the Tribunal that the matter was complex and that he was waiting for the report so that he could place before the Tribunal an informed reality of what happened. He further informed the Tribunal that the investigation requested by him is completed and he 'will communicate his decision to the Tribunal in due course'. Applicant on 23 May 2023 opposed Respondent's late opposition to his motion for summary judgment.
88. On 01 June 2023 the Tribunal refused both motions for summary judgment and amendment of prayers. The consideration on the summary judgment motion were that given the magnitude of the matter it was only fair to have it referred for oral evidence, that Applicant himself in his founding statement had requested the matter to be referred to oral evidence. He listed a number of witnesses that he wanted subpoenaed and be heard orally and subjected to cross-examination and that the Respondent had indicated in his opposition to summary judgment that the investigation requested by him was completed and his decision would be communicated to the Tribunal in due course.

### **On the motion to amend prayers**

89. Applicant had offered six reasons why he sought the prayer, namely, (a) Respondent engaged in prejudicial acts in proceedings before the Tribunal, sought multiple extensions with shifting reasons, did not ensure recusal of the office of legal counsel from this matter and characterized Applicant's claim as unsubstantiated, (b) the unfair statements in (a) are consistent with that of the Director (HRM) at a staff meeting on 20 September 2022 where she dismissed Applicant's claims as mere neighborhood rumors. This worsened by the fact that Respondent allowed the Director (HRM) to subsequently issue an internal report in Mr GFN's favour soft-peddling the discrepancies within Mr GFN's multiple resume as acceptable. (c) Acknowledge to the PRC the necessity to investigate alleged irregularities and fraud as far back as October 2022 and yet Mr GFN was allowed to carry on the functions of the Union's top legal officer. Respondent's inexplicable reluctance to handle the complaint with deliberate speed and describing Applicant's claim as unfounded harms Applicant's professional reputation. (d) Mr GFN's background check was done 10 weeks after the appointment, a cover-up to ensure that the verification record was in Mr GFN's file for use in future litigation or audit as needed. (e) The appointment investigation of Mr GFN was turned into a Sisyphean task by Respondent officials with no defined timeline for completion nor action. The delays to complete the investigation are consistent with Applicant's belief of official bias in Mr GFN's favour. (f) The delays and the attitude of Respondent have caused Applicant grave emotional distress and distrust as to the seriousness of Respondent's officials to conduct a thorough and impartial investigation, resulting in Applicant expensively retaining a legal representative in Paris, France to help Applicant in verifying Mr GFN's employment history with multiple French institutions.
90. Finally Applicant contended that Respondent's attention was drawn to the contested decision since 9 September 2022 but no action was taken as by then. Applicant believes that Respondent continue unduly protecting Mr GFN while harming his professional standing through inaction, public appearances with Mr GFN and/or by allowing

officials to make prejudicial and unfounded statements against Applicant's claim. For the reasons above he sought to amend his prayers to seek additional damages in the form of 12 months gross salary at his present salary grade and step (P5 step 9).

91. With greatest respect to Applicant, in summary the reasons above, boil down to prejudicial statements, delays in finalizing the matter and Mr GFN allowed to discharge his official duties as per his appointment. Unsubstantiated allegations was said in the context of exchanging pleadings, a common practice in pleadings. In Applicant's position I would understand that it was painful, frustrating and embarrassing to characterize his claim as neighborhood rumors. And indeed, the founding statement of Applicant, was replete with hearsay evidence, which alone, could not have sustained his claims. In that context the words unsubstantiated/neighborhood rumors find application. Perhaps neighborhood rumors is a bad choice of words, but it is not farfetched. In fact in the authorities that Applicant provided in the supplemental statement in the matter of Mr S C v World Health Organization (WHO) Judgment No. 2602, WHO in reply to the complaint's submissions, in paragraph C of the judgment used the words 'false and unsubstantiated assertions.' The consideration in dismissing the motion to amend prayers was that in Applicant's original prayer was a general prayer of any other relief that the Tribunal may deem appropriate which if damages at the conclusion of this case are proved could be granted under that general relief and the fact that Respondent did not oppose the application.
92. It is for the reasons above that both motions were dismissed and ordered Respondent to submit the reports of the Ad-Hoc Committee and the External Auditors of December 2022 by 16 June 2023. That date expired and none of the reports was filed. The matter then was postponed to the week of 7-11 August 2023 and further to 21 August to 1 September 2023.
93. Subsequent on 5 June 2023 Applicant filed a motion to reconsider the dismissal of the motion to seek amendments to the prayers. On 20 July 2023 Applicant filed a second motion for summary judgment and for leave to amend prayers. Applicant also submitted the 2022 Audit Report of External Auditors, statement of Mr Gilles Devers of Gilles Devers Law Office, Lyon France, a document headed; Annex 8 – Matrix of discrepancies between appointed candidate's 2022 and 2018 profiles. Both these applications were served on the Respondent but he did not answer to the applications. On 14 August Applicant filed supplemental statement and memorandum of points and authorities with additional evidence. In the opinion of the Tribunal it was these subsequent filing that saved the day.
94. On 18 August 2023 Applicant further filed additional evidence on screenshots taken and stored by Wayback Machine, the contents of which are recorded in paras 73-78 above. Mr Ntwari also filed an application to intervene in this case. The opposition to the application to intervene was filed on 20 August 2023. On 22 August 2023, Applicant filed yet further additional evidence of the CDI Annual Reports and organizational charts published during 2012-2017. (See para 79)
95. After a consideration of both the intervention application and the opposition thereto, the application was declined for being, *inter alia* untimely. Mr GFN must be one of the persons who should have been contacted/briefed about the allegations Mr PW was making against him. The most simplest action to answer to Mr PW's case was for the Respondent to file an affidavit/statement through Mr GFN rebutting Mr PW's case, with the annexure of the alleged employment history – why this matter took these twists and turns only the Respondent knows. Mr GFN should, when the allegations against his employment history came to light, made to produce the employment history contained in his resume, or made to file an answer to the allegations against him. In the opinion of the Tribunal the prolongation of this matter so unnecessarily is conduct which supports Mr PW's case that Mr GFN was favored, we may add, 'earmarked' for the post right even before the vacancy announcement was made when he was appointed to act in the post from the last day of March 2022. Applicant to his supplemental statement and memorandum of points and authorities he attached newspapers articles, i.e. the Botswana Guardian Sun which reported widely on the appointment, of Mr GFN, carrying headlines 'African Union Commission in a Stinking Recruitment Scandal (Friday, September 23, 2022), 'Controversy Haunts Appointment of AU Commission Legal Counsel – but Commission still unwilling to Investigate the matter', Cronyism at AUC: Why is Deputy Chairperson destroying any chances for reforms Friday, October 07, 2022; AU Commission Chairperson orders creation of independent Committee to probe misconduct.' The newspaper publications were in September and October 2022, we assume immediately after both Applicants had addressed letters to the Chairperson complaining about the appointment of Mr GFN. Very recently on 21 July 2023 the Africa Intelligence threw its weight on the issue, carrying a headline, 'A new report [External Auditors Report] pinpoints the recruitment policy African Union Officials. Mr GFN must have seen these publications related to him as early as September 2022. To have waited then until now, is not only unfair to the Applicants but to the Tribunal as well, as the Tribunal would have to reschedule its timetable, to either late this year or sometime next year which in the circumstances of this case is really unnecessary. Worse still, Mr GFN must have testified before the Ad-Hoc Committee on his appointment. The allegations must have surfaced at that enquiry. The application comes at unholy hour of the proceedings-it is correctly rejected.

### **Conduct of the Respondent**

96. We now turn to the analysis/discussion of the evidence, but before we do that we want to register our displeasure at the conduct of the Respondent when he disobeyed the Tribunal's order to provide the Ad-Hoc Committee and the External Auditors Reports and did so without any reason.
97. That conduct where the Respondent has become a law unto himself, elevates the AUC to lawlessness – a serious obstruction of justice – a violation of the most fundamental basic principle governing the division of powers between the Executive, Legislature and the Judicial Processes – it is shocking, extraordinary and contemptuous, conduct inimical to his office.
98. Mr Justice Brandeis of the Supreme Court of the United States in *Olmstead v United States*<sup>7</sup> remarked as follows about the need for the government to set a good example by not violating the law, even in circumstances it may consider to be good or necessary.

‘In a government of laws, existence of government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example . . . . If the government becomes a lawbreaker, it breeds contempt for law, it invites every man to become a law unto himself, it invites anarchy . . . .’

99. In *SS v VV* -S<sup>8</sup> the Constitutional Court of South Africa remarked as follows:

‘All court orders must be complied with diligently, both in form and spirit, to honour the judicial authority of courts . . . .’

100. ‘When courts issue orders, they do not do so as suggestions or pleas to the persons at whom they are directed. Court orders issue *ex cathedra*, are compulsory, peremptory and expressly. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This court, as most all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the Constitutional edicts of equality under the law, the upholding of the rule of law are not mere platitudes but present realities.’<sup>9</sup>
101. The sentiments above reverberates across the entire world in all democratic countries including some member States to the AU. The right to appeal to the Tribunal provided for in Rule 62 of the AU SRR would remain an illusion unless orders made by the Tribunal ‘are capable of being enforced by those in whose favour such orders were made.’<sup>10</sup> The process of adjudication and resolution of disputes in Courts of law is not an end in itself but only a means thereto; the end being the enforcement of rights or obligations defined in the Court order.<sup>11</sup>
102. In the AU organizational structure, the Respondent is the institutionalized mechanism to enforce the decisions of the Executive Council, The Assembly, and the orders of the Tribunal and other organs of the AU. In respect of the Tribunal when he disobeys its order he renders meaningless the whole process of taking disputes to the Tribunal for adjudication and that is recipe for chaos and disorder.
103. Judgments, orders are but what the courts are all about. The Court's effectiveness lies in the execution of their judgments and orders. To disobey the Tribunal order you strike at the foundation and the wisdom of the forefathers of AU who established the Statute of the Administrative Tribunal and a violation of the Statute itself.
104. There is a misunderstanding of the AUAT in the AUC. The AUAT is an independent judicial body/institution of the AU and not that of the AUC. The Tribunal is subject only to the Statute and the law, which it must apply impartially and without fear, favour or prejudice and no person or an organ of the AU may interfere with the functioning of the Tribunal.
105. The CEO of African Peer Review Mechanism (APRM) in his letter of 26 May 2022 wrote to the Deputy Chairperson (DCP), among other things stating that, ‘we strongly believe its processes (AUAT) are highly flawed and pose a reputational risk to the Union and that the AUAT is causing unnecessary challenges with financial implications to all organs of the Union and he recommended to suspend the operations of the Tribunal till finalization of its reform in February 2022.’

<sup>7</sup> 227 US 438 (1928) at 485.

<sup>8</sup> 2018 (6) BCLR 671 (CC) [I2018] ZACC 5.

<sup>9</sup> Per the Appeal Court of Kenya in the matter of *Dr Fred Mutiang'i the Cabinet Secretary, Minister of Interior and Co-ordination of national Government v Migana Miguna and 4 others* [2018] EKLK.

<sup>10</sup> *Mjeni v Minister of Health and Welfare, Eastern Cape* 2000 (4) SA 446 (TK) at 453C-D.

<sup>11</sup> *Id.*

106. That coming from a person who goes by the title of a Professor is so shocking, nonsensical and ill-advised proposal. The Tribunal's advice is that back off, it is in province of the Tribunal to interpret the labour relations laws of the AU and abide by the Union's Staff Regulations and Rules, disregarding them has serious financial consequences.
107. We mention the above examples to clearly show that every Tom, dick and Harry wants to toss around the Tribunal. If there is an institution in the entire Union that should be independent i.e. in its decision making and budgetary considerations is the Tribunal and the Human Rights Court in Arusha.
108. The Tribunal takes the contemptuous conduct of the Respondent very serious and we are directing the Secretary to the Tribunal to circulate this judgment to the PRC, the Executive Council, the Assembly and every Member State. To disobey a court order is foreign to democratic values, when it comes from the person who is enjoined to implement the activities of the Union is a shame, reputational damage to the entire Union. More so in this case the disobedience, has one intention, making it more difficult for the Tribunal to ascertain the truth, impeding the course of justice. What a shame, the conduct is inimical to the Africa we want.

### **The Analysis/Discussion of the Evidence**

#### **Mr RWE's Case**

109. The dispute between the Applicant and Respondent is crisp but complex. Applicant is saying the Merits Based Recruitment System relegated the Quota System to the shortlisting stage and that notwithstanding the fact that Cameroon his Member State Quota at Director level was exhausted, once invited for an interview and was ranked first of the three recommended to the Respondent, Respondent had no discretion but to offer him the post first, unless he declined, then Respondent would make the offer to number two and then three in that order. He further states that Legal Counsel informed him that as an internal candidate the quota system was not applicable to him, but unfortunately Applicant did not obtain a statement confirming that statement which remains hearsay. Strangely Respondent did not dispute that allegation, either. He further contends that his appointment would not have changed the quota of his Member State for he would have vacated the post he is holding now.
110. The Respondent's argument is that the quota system is applicable at every stage of the recruitment process including the appointment stage and that the discretionary power of the Respondent is not restricted to appointment of the candidates in the order they are ranked, otherwise it would not be a discretionary power. He relies on Rule 27 of the SRR which provides for 'Conditions of Appointment', particularly 27.2, 3 and 5 which provides for the quota system and Assembly decisions 805 and 1107 of February 2021 on the new AU-Wide Quota System above. (See para 28) In this regard Respondent is further supported by Article 18. 6 and 7 of the Statutes of the Commission of the African Union which provides:
6. In recruiting senior administrative, professional and technical staff, the Recruitment Board shall:
- a) uphold the principles of equitable geographical representation and gender equality; and
  - b) apply a quota system recommended by the Executive Council and approved by the Assembly on the basis of a minimum number of posts allocated to a Member State, and additional posts allocated on the basis of agreed criteria including assessed contributions.
7. Paramount in the employment of the staff referred to in the preceding paragraph shall be the need to guarantee the highest standards of competence, efficiency and integrity.
111. The Respondent's argument is further supported by 'Terms of Reference for the Interim' Recruitment and Selection Committee and Ad-Hoc-Panel to advise on the New Recruitment System during the implementation of the phase one of the Transition Plan: Paragraphs 57-60 reads as follows:

### **XII. CRITERIA FOR APPOINTMENT BY THE CHAIRPERSON**

57. In accordance with Regulations 6.1(b) of the Staff Regulation and Rules, the power for appointment shall be vested in the Chairperson.
58. The Chairperson in the exercise of his Discretionary Power shall appoint one of the recommended candidates based on the following criteria:
- a. Merit (Regulations 6.4 (b) and Rule 27. 5 of the SRR)
  - b. Priority shall be given to Least representative countries (Rule 27.5 of the SRR);
  - c. Gender (Regulation 6.4 (b) and Rule 28.8 of the SRR)
  - d. Quota consumption (the percentage of Quota consumption of the member states from across the Union (Regulation 6.4(c), Rule 27.5 and Rule 28.6 of the SRR);

- e. Internal Candidate (Rule 28.5 of the SRR);
- f. Diversity of the Demography within the hiring department per Country and per region, including female and male representation (Regulation 6.4(c));
- g. Managerial quota consumption; and
- h. Applicants from Member States that do not have any Director of HoD shall be given priority in order to address the imbalance in the Quota system.

59. In line with the new AU wide quota system, which requires respect for the principle of fair and equitable representation of all Member States, the appointing authority shall ensure the appointment of at least one (1) Director from each Member State. Upholding this principle of fair and equitable representation at Directors level is critical.

60. RESTRICTIONS

- a. . . .
- b. Applicant from Member States that filled their managerial Quota at Director of HoD levels shall not be appointed.

112. It follows that though Applicant's argument is attractive, it is not supported by evidence, the application stands to be dismissed.

113. However the explanation of the Respondent of the factors considered at the screening and shortlisting stages raises a question how Applicant was invited for interview, regard had to the criteria for appointment by the Chairperson, as his name should have been eliminated either at the screening or shortlisting stages.

114. Respondent explains that with MBRS and the new Quota System, recruitments take place in several stages in line with the SRR and Decisions of the Policy Organs as follows:

Screening: the system generates the list of the top twenty (20) applicants, screened based on the following criteria.

- (a) Filled Quota
- (b) Quota Gap Cap
- (c) Screening questionnaire
- (d) Age limit
- (e) Nationality, through a valid Member States Passport
- (f) Applicant from same nationality with direct line manager; and
- (g) Current official appointed Acting Staff that apply shall be included in the top twenty and score

115. Shortlisting: The Ad-Hoc Panel undertakes the scoring for shortlisting of the applications from twenty (20) down to the top six (6) applicants based on the following criteria.

- (a) Merit: academic qualifications, experience, and professional credentials to determine whether they match the requirements stipulated in the job advertisement.
- (b) Priority shall be given to least Member States.
- (c) Gender; and
- (d) Least and underrepresented Member States.

116. On this evidence, it is miraculously how Applicant would have passed the screening and shortlisting stages. So is Mr GFN. Mr GFN could have passed the screening stage but not the shortlisting stage regard had to his experience which we show in the case of Mr PW *infra*.

117. Respondent does not explain in the evidence he so eloquently testify to, how Applicant got to the penultimate and ultimate stages of the recruitment process. Unless the system is either inaccurate at the first two stages, which is doubtful, or a human hand had interfered with the system, favourably pushing through the Applicant and Mr GFN and removing some candidates from the initial shortlist as alleged by Messrs PW and Ben Dhiab. On a balance of probabilities the second proposition sounds plausible and we so hold, which destroys Applicant's case, for it is eclipsed by a corrupt/flawed recruitment system. Given the utilized quota of Cameroon, we do not find any reason and there is none on record and makes no sense at all why his name was pushed up to the appointment stage if the administration had no intention to appoint him; unless he was used as a scapegoat, when the administration had already earmarked Mr GFN for the post. Why would the administration cause him to undergo a vigorous excruciating recruitment process, with no intention to appoint him as the utilized quota of his Member State was well known even before his participation in the process? Appointments of candidates in the position of Applicant is in peremptory tone prohibited. There is only one reason, one only, on probabilities that the process particularly at the shortlisting was manipulated to accommodate him well knowing they were not going to appoint him.

118. Article 18.5 of the Statutes of the Commission of the AU provides that, ‘the recruitment process shall be conducted in accordance with elaborate recruitment procedures calculated to ensure the utmost transparency and objectivity.’ It was not the case here. One does not have to look far to find flaws in this recruitment process.

1. Respondent keeps on wondering how Applicant became aware that he was ranked first of the three recommended. Applicant even knows that there was a six points between him and the person who came second.
2. In paragraph 27 of his answer, Respondents states that, ‘the Respondent is therefore of the view that the Tribunal should not give room to breach of rules by the Applicant.’ acknowledging that there was a breach of rules, and indeed there was. There was no confidentiality in the recruitment, which he maintains recruitment is supposed to be confidential.
3. Applicant and probably other unsuccessful candidates were given wrong reasons for their non-appointment whether the message was automated is immaterial or that an apology was tendered. The fact of the matter is that the reason given at the time of the appointment is wrong and Respondent is held to that reason.
4. Applicant was contacted for a background check by E & Y an accounting firm coordinating the recruitment process almost two months after Mr GFN was already appointed. Meaning there was no background check on Mr GFN at the time of his appointment, when it was required to perform a verification exercise on all interviewed candidates before a decision to hire is made. It must have been so embarrassing for the auditors.
5. The Accounting Firm confirms that the verification on Mr GFN was done two months after Mr GFN was already appointed. Why it was done after Mr GFN was already appointed only Respondent knows – there is nothing on record.

119. Therefore the argument that the recruitment process was conducted in line with relevant Regulations and Rules of the Organization is not only contradictory to paragraph 27 of Respondent’s answer, but totally misplaced and misleading. On Rule 27 Respondent relies on for the quota system, and Article 18.6 of the Statutes of the Commission, Applicant could not have reached the ultimate of the recruitment process given the exhausted quota of Cameroon.

The Tribunal therefore hold that the recruitment process was flawed.

#### **Relief Sought by Applicant**

120. There can be no doubt that Applicant and his wife were demoralized psychologically. After being taken to the final battle line (appointment) and ranked first, the administration gave him hope, but that was not to be. The reason given for the non-appointment added an insult to the injury. The rest of paragraphs 1-6 a prelude to the real relief were good wishes from sympathizers and when Applicant terms them, ‘harassment’ to his wife would be inappropriate under the circumstances.

121. The rest of the prayers under 1(a) – f have been ventilated in either the Respondent’s answer to Applicant’s application or the Judgment. The prayer that there was no legal impediment in appointing Applicant is based on the Applicant’s contention of the MBRS, which is wrong. There was a legal impediment given the prohibitions. Same is the prayer limiting the discretion of the Respondent, the Respondent still has the discretion at the appointment stage.

122. As already stated, Applicant suffered harm. We believe him when he says that trauma is still ongoing. It feels that Applicant was used, for the Administration to achieve its goal. When a Member State Quota is utilized for a particular level as it were in this case, Applicant should not even have applied or should not have gone beyond the shortlisting. Consequently, the application would be dismissed. But for the reason that Applicant was clandestinely or deliberately involved in this recruitment procedure well knowing he was not going to be appointed, it was extremely unfair to the Applicant and to ameliorate the hurt feelings, he should be compensated.

#### **Mr PW’s Case**

123. We recorded Applicant’s case and evidence he relies on in full and greater details. The case revolves around three issues/allegations, as recorded above. All that remains is to analyze the evidence to determine whether he proved the allegations he makes, namely, flawed and compromised recruitment process in favour of Mr GFN, Mr GFN did not meet the minimum requirements established in the vacancy announcement and that Mr GFN embellished/exaggerated his resume.

124. We have already stated that Mr PW’s application is unopposed. In seeking the first extension on 13 January 2023 for another 30 days to 13 February 2023, Respondent gave the reason that he could not file his response within the deadline without significantly impairing its quality and required adequate time to prepare briefs that are accurate, clear and complete submissions to assist the Tribunal, which the Tribunal appreciated as that was what it required

and the extension was granted. On 10 February 2023 Respondent sought another extension for 30 days. On 11 February 2023 the Tribunal enquired whether Respondent had hired counsel as the AUC Legal Counsel was conflicted. That enquiry was never answered, but Respondent instead gave reason that the extension was required because the investigation was still ongoing. The Tribunal did not take a decision on the request, deferred the decision to 24 February 2023 and ordered Respondent to file the status report by that date. On 24 February 2023 the Respondent filed yet another extension for 15 days to 11 March 2023 but informed the Tribunal that the Ad-hoc Committee is yet to present the outcomes of its work to the Chairperson.

125. On 27 February 2023 Applicant opposed the third extension. The next day 28 February 2023 the Respondent informed the Tribunal that the Ad-hoc Committee had completed its work and the report would be submitted to the Chairperson soon. On 1 March 2023 the Tribunal granted Respondent a further extension until 10 March 2023. On that date the Respondent informed the Tribunal that the Ad-hoc Committee had not submitted the report to the Chairperson but sought a suspension of the proceedings pending the outcome of the investigation, in the alternative to dismiss the application for being unsubstantiated.
126. On 20 March 2023 the Tribunal rejected the application and Respondent was barred from filing any further pleadings. The application to hold the proceedings in abeyance without a date was absurd and outrageous.
127. From since Applicant's application was served on the Respondent on 14 December 2022, up to 11 March 2023 Respondent had almost 90 days to file his answer to no avail, instead engaged in providing varying reasons why extensions were sought. The letter appointing the Ad-hoc Committee on 5 December 2022 gave that Committee until 14 December to report its outcome. Why it took almost another three months or beyond the Tribunal was not informed. In an event the Respondent could have still filed an answer through Mr GFN. He was the author of the resume and Respondent could have responded through him.
128. It was at that point that Applicant applied for summary judgment and amendment of prayers which we discussed above, which Respondent had opposed. In that opposition filed on 15 May 2022, Respondent, among other things informed the Tribunal that 'the investigation requested by the Chairperson of the Commission is completed and the Chairperson will communicate his decision to the Tribunal in due course.' It was that information among other things that persuaded the Tribunal to refuse the summary judgment – as the Tribunal believes that, that Report says it all. The Tribunal on 1 June 2022 ordered the Respondent to file the Report by 16 June 2023 which order was disobeyed without reason until now. The Tribunal has rebuked that conduct above. (See paras 96-109)
129. We now turn to consider whether Mr PW proved the allegations he made. The answer is yes he did.
130. The flawed and compromised recruitment process in favour of Mr GFN and the other two grounds cannot be viewed in separate compartments, but cumulatively forming bias in favour of Mr GFN. The main complaint is that he was appointed without having met the minimum requirements established for the post. That alone, no doubt is a huge favour for any candidate.
131. The allegations Applicant makes that Mr GFN and Mr RWE did not make it on the first shortlist established in May or June 2022 and that Mr GFN approached the Director (HRM) or Official(s) involved in the recruitment process, persuaded them to reconsider placing him on the shortlist and the shortlisting was re-opened and some candidates were withdrawn from the list, Mr Ben Dhiab in particular, amounts to hearsay. It is information he was told according to him by Mr Rwagasana, Prof Mohamed Belhocine, who chaired both the shortlisting and interview panels, Mr RWE and other sources.
132. But when regard is had to the criteria at the screening and shortlisting stages elaborated by Respondent in Mr RWE's case, as I already stated, Mr GFN would not have made it past the shortlisting unless the system is inaccurate, which is doubtful, given Mr GFN's experience. Mr Ben Dhiab writing to the Chairperson on his exclusion from the initial list states that, '... it has come to my knowledge that after being shortlisted I was excluded from the final list of selected candidates for the position of Legal Counsel of the African Union (AU) for reasons of integrity.' His removal from the list was confirmed by the DCP at a session of PRC and the reason why he was removed. Mr Ben Dhiab's letter on his removal from the list and the confirmation of the removal by the DCP, read with the criteria at the screening and shortlisting stages, on a balance of probabilities, is probable that the list was re-opened to accommodate Mr GFN.
133. There is evidence *aliunde* that Mr GFN did not meet the minimum requirements established for the post. The damning report of the External Auditors Ernest and Young (E&Y) does not mince words on the recruitment of Mr GFN. First the appointment was rushed for no apparent reason. He assumed duty on 06 September 2022 but the background check reference by the firm was done on 18 October 2022. There is no evidence why the appointment was rushed or the check reference still required long after the appointment. The auditors further states that a check reference is crucial/important criterion for recruitment because it confirms the candidate's statements regarding his experience as a manager. On this point they emphatically state that their verification and results were not taken into



account in the assessment and evaluation of Mr GFN, and yet the firm was chosen to co-ordinate the recruitment process, given its independence from all stakeholders, to ensure transparency in recruitment.

134. The Question is why? Why this exceptional treatment of Mr GFN? This a typical case of the observations made in the R10 Final Report, November 2019 – September 2022<sup>12</sup>, namely, interference with the recruitment and selection process at the AU Commission which commences at shortlisting stage, the findings were that an applicant can be appointed to an AU job regardless of his or her qualifications provided he/she has strong connections, limited compliance with the AU recruitment and selection policies, common recruitment without merits, unplanned positions created to recruit people favored by influential people. In effective recruitment and selection system, the list goes on and on.
135. The Auditors had access to Mr GFN's personnel file and their report is based on direct evidence. He must have stated in his CV that he started acting in the post of Legal Counsel since 2018. They discounted that to say he acted from 31 March 2022. He joined the AUC in 2018 as a Legal Officer and on 3 March 2020 he was promoted to a Senior Legal Officer in which he was confirmed as of 20 January 2022. A little bit over six months he was Legal Counsel. The Auditors further state that they could not confirm Mr GFN's experience as Legal Counsel from 2003 – 2006 as it was not proved by supporting documents. They then conclude that, 'the person does not meet the requirements to have at least 8 years of experience in management position required by the job description.
136. The Auditors further blame HR Directorate which did not bother to verify what is contained in Mr GFN's CV with his personal file, when Mr GFN is a staff of the AUC. That misrepresentation in Mr GFN's CV of his professional career in the AUC also skipped the attention of the Panel and RSC. They conclude that this was a favour to Mr GFN by management at the detriment of potential candidates who participated in the recruitment process. Further down their report, the Auditors commented that the Human Resources Directorate '... defended the CV of successful candidate without providing the documents justifying the veracity of his experience in particular in the management function stated in the CV.'
137. The question is, could HRM really so blunder not to verify Mr GFN's CV against his personnel file, could they defend the CV without documentation, was it a human error or incompetence at a large scale. No, on probabilities this is hand in hand with the allegation Applicant makes that the shortlist was re-opened to accommodate Mr GFN.
138. The Auditors continued to record that the recruitment process of Mr GFN is sui generis in that the duration between the shortlist and the assumption of duty lasted only three months, while other recruitment processes lasted between five and nine months.
139. Under the heading Risks and Consequences, they question the credibility of the committees and panels set up as part of the recruitment process, undermining the AU's declared and stated values/or what AU stand for (transparency, accountability professionalism, impartiality, Africa first etc. They further observe that 70% of cases that find recourse at the AUAT concern internal recruitment. The Tribunal takes judicial notice of the observation of cases that end up at the AUAT – they are mostly a violation of the internal procedures in the AU SRR.
140. Mr GFN's employment history in France at Lyon III University of a Deputy Director and Associate Professor is refuted in the evidence I recorded in great detail *supra*. That of Mr Gilles Devers of Gills Devers Law Office, the screenshots taken and stored by the Wayback Machine and the annual activity reports of the Center for International Law (CDI) at Lyon III, which reports shows Mr GFN as a student in 2012 and 2013, a doctor of Laws in 2014, 2015 and 2016 and in 2017 he is listed under Associate Professors and PhDS and nothing more. There are four research centers within EDIEC; that is CDI, the Center for European Studies (CEE); the Center for Research in Private International Law (CREDIP) and the Edouard Lambert Institute of Comparative Law (IDCEL). Of the four only CEE and IDCEL list a Director and a Deputy Director in their annual organizational charts and reports. Mr GFN could not have been a Deputy Director at CDI.
141. The three sets of evidence are admissible, as they are in the public domain.
142. In the judgment at para 69 is a document headed: 'Annex 8-Matrix of discrepancies between appointed's 2022 and 2018 profiles' which speaks for itself. I may add that evidence shows Mr GFN's resume in 2018 probably when he joined AUC and the 2022 resume which appears to have been altered to adapt to the Legal Counsel job description I may further add that the annex contained Mr GFN's CV's, documents of his alleged employment history i.e. documents he submitted with his resume. They range from France, Senegal, South Africa, and Burundi to Ethiopia. In Senegal he was contracted for less than a month as a consultant, South Africa six months as a consultant and Burundi at different periods for short intervals. The employment history in France is discounted by the three sets of evidence.

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<sup>12</sup> AU Reform of the Recruitment and Selection Systems and oversight of the Transition Plan (Rio Final Report, November 2019-September 2022).

143. As we have already stated, the Respondent did not oppose the case of Mr PW. It is very clear from the evidence above that Mr GFN, did not meet the minimum requirements of the Legal Counsel post. He was wheel chaired in the post by the system, an influential person without the necessary qualifications. It is as good as having given him the post without an advertisement.
144. That being the case one appreciates the allegations Applicant makes that Mr GFN was favored even before the advertisement of the post was done. Mr Khalil the most senior staff in the Office of Legal Counsel is suspended in February 2022 at the recommendation of the DCP (the lawfulness of that suspension is pending before the Tribunal), Legal Counsel is transferred on 22 March 2022 elsewhere, nine days later Mr GFN as the most senior then in the absence of Mr Khalil who was on suspension, is appointed to act, a few days later a vacancy announcement is made, three months from shortlisting Mr GFN is Legal Counsel. Upon an outcry of the appointment, and letters of review by Applicants the Chairperson refers the matter to the DCP to attend to it and advise him accordingly, DCP in her engagement with the PRC promises to hire a private firm to investigate the complaints, but she never does but the Chairperson eventually appoints an Ad-Hoc Committee on 5 December 2022. The report has been filed with the Chairperson – it is accumulating dust on his desk. Almost nine months after December 2022 and almost a year after the letters of review nothing has been done, to hell with the complaints is the attitude of the Chairperson.
145. What a sorry tale. There is evidence *aliunde* that the recruitment process was flawed and compromised, the whole competition became a sham, Mr GFN was appointed at the end of a flawed recruitment procedure which was unlawful, so is the decision appointing Mr GFN. The AUC violated the principle of *tu patere legem quam ipse fecisti*, which forbids the administration to ignore the rules it has itself defined.
146. Applicant no doubt has suffered prejudice. As a result of his complaint an Ad-Hoc Committee was appointed to investigate his complaint. The report of the Committee has been filed with the Chairperson but until now, he has not been informed of the outcome of the report. The administration held over all the information it has on this matter; Applicant a biblical David fighting a Goliath. He had to spread his wings beyond the continent Africa into Europe to seek evidence to prove the allegations in his case when the administration with resources could have handled this case with deliberate speed. Even the Report of the Committee set up to investigate his complaint, was refused the Tribunal with the sole purpose of making it difficult for the Tribunal to arrive at the truth – a serious obstruction of justice. The Tribunal draws an adverse inference against the Respondent that the Report went against the administration. Applicant is entitled to damages.

#### **Costs**

147. Mr PW had sought costs in the amount of USD 15 000 in his founding statement but on 31 August 2023, he filed a Bill of Costs from his legal counsel Mr Gilles Devers in the amount of 27 300 Euros (USD 29 386-88). The Tribunal is not amenable to award that amount for the reasons that firstly, he had sought USD 15 000 in costs and did not seek an amendment and secondly, the Bill of Costs appears to be exaggerated and the Tribunal can only award the initial costs sought in the amount of USD 15 000.

#### **Orders**

148. Consequently, the Tribunal makes the following Orders:
1. In RWE v Chairperson –
    - (a) The application is dismissed.
    - (b) Applicant is granted damages one (1) month's gross salary at his present salary grade and step (D2/step 1) which amounts to USD 12 241.99.
    - (c) All other prayers are refused.
  2. In PW v Chairperson –
    - (a) The application succeeds – the decision of the Chairperson/Respondent of 2 August 2022 appointing Mr Guy-Fleury Ntwari as Legal Counsel of the AUC is unlawful, *null* and *void ab initio* – it is reviewed and set aside.
    - (b) Applicant is granted damages eight (8) months' gross salary at his present salary grade USD 11 381.58 monthly and step (P5/step9) which amounts USD 91 052.64.
    - (c) Respondent is to pay the costs of the Applicant in the amount of USD 15 000.
    - (d) The rest of the prayers are refused.

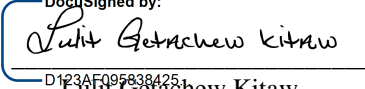
3. All sums in both cases are payable within 30 days from the date of this judgment, failing which an additional 5% annual interest shall accrue and escalate to 10% if the sums are not paid in full beyond 60 days after the date of this judgment.
4. The Secretary of the Tribunal is directed to circulate/bring this judgment to the attention of the Permanent Representatives' Committee.

Date: 01 September 2023

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SYLVESTER MAINGA, PRESIDENT  
JAMILA B. SEDQI  
PAULO D. COMOANE

For Tribunal Secretary:   
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Eulit Getachew Kitaw