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Case No.: AUAT/2016/003
Order No.: AUAT/2020/001

M.Y.

v.

Chairperson of the African Union Commission

FOR APPLICANT: Richard HILL, Esq.; Jordan HOWELLS, Esq.
FOR RESPONDENT: Namira NEGM, Legal Counsel, African Union Commission
BEFORE : Hons. Sylvester S. MAINGA, Jamila B. SEDQI, and Paulo D. COMOANE

ORDER

1. On 10 September 2019, the Tribunal granted the application filed by Applicant contesting the decision to not select him for the post of Director of Infrastructure and Energy.¹
2. On 3 March 2020, Respondent filed the instant request under art. 21 of the Administrative Tribunal Statute seeking annulment of the judgment. The Tribunal invited Applicant to file his response, which he submitted on 20 March 2020.
3. Judgments of the Tribunal are final.² In limited circumstances, a party may seek review of a judgment when he or she has discovered new and decisive facts previously unknown to the party or the Tribunal.³ Such application must state the new facts to be proved and must be supported by compelling new evidence.
4. A party may also request annulment of an award where: (a) the Tribunal has manifestly exceeded its competence or failed to exercise jurisdiction vested on it; (b) there has been a serious departure from a rule of procedure; (c) the Tribunal has erred on a question of law [as] to the Charter of OAU and the Statute; and (d) the rules of natural justice were not observed.⁴ We have inspected the application filed by Counsel for Respondent and the record and find no reversible error in the judgment.
5. In prior proceedings finding in favor of Applicant, Counsel for Respondent failed to mount a defense of the contested decision despite proper service of the application. Nor did she submit any response when Applicant sought adjudication of his case by way of summary judgment, again, despite proper service of the motion. Counsel for Respondent cannot now access the Tribunal via art. 21 of the Statute to raise arguments or to present evidence, reopening long-concluded proceedings, when Counsel could have raised or presented them prior to the conclusion of proceedings. The instant application is not a proper use of art. 21.

¹ *M.Y. v. Chairperson*, AUAT/2019/001.

² AUAT Statute art. 17(vi).

³ AUAT Statute art. 20.

⁴ AUAT Statute art. 21.

6. It is also the Tribunal's lamentable observation that, on this matter, Counsel for Respondent has not been interacting with the Tribunal in good faith and with candor. In addition to the flurry of post-judgment motions and status updates lacking consistency that Counsel variously filed with the Tribunal, the instant application was filed on the heels of a "settlement agreement" that Counsel filed with the Tribunal days before, on 27 February 2020, undertaking to fully implement the judgement, and an Executive Council decision dated 7 February 2020 approving full implementation of the judgment.⁵
7. In the circumstances, the Tribunal concludes that the application for annulment filed by Counsel for Respondent is frivolous, unfounded in law and in fact, and is hereby DIMISSED.

Date: 17 August 2020

/signed/

Hon. Sylvester MAINGA, President
Hon. Jamila B. SEDQI
Hon. Paulo D. COMOANE

Secretary:



⁵ Applicant's Opp., Annexes 5-6.