



World Bank Administrative Tribunal

2011

No. 457

**L.T. Mpoy-Kamulayi (No. 2),
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**L.T. Mpoy-Kamulayi (No. 2),
Applicant**

v.

**International Bank for Reconstruction
and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Francis M. Ssekandi, and Ahmed El-Kosheri.
2. The Application was received on 4 March 2010. The Applicant was represented by Stephen C. Schott, Schott Law Associates, LLP, and the Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges the Bank's decision to recall him from his assignment in Abuja, Nigeria, and to reassign him to another position.

FACTUAL BACKGROUND

4. The Applicant, who is currently Lead Counsel (level GH) in the Bank's Legal Vice Presidency, joined the Bank in 1984. He has worked primarily at the Bank's Headquarters.
5. In 2007 the Applicant was selected for a decentralized position to serve as Lead Counsel in the Bank's Country Office in Abuja, Nigeria. The terms of his assignment in Abuja were memorialized in the Memorandum of Extended Assignment to Abuja, Nigeria ("the Memorandum") issued by the Bank on 27 December 2007 and signed by him on 11 March 2008.

6. The Memorandum stated that the Applicant's assignment was expected to last three years from February 2008. The Applicant's relocation to Abuja did not take place at the time anticipated in the Memorandum. He officially reported for duty in Abuja on 9 October 2008.

7. The Applicant's assignment to Abuja did not go smoothly. Disagreements soon arose between the Applicant and the Bank officials in the Country Office and at the Bank's Headquarters over the number of amenities to which he was entitled under the Bank's housing benefits policy. He subsequently also engaged in a dispute with Bank officials regarding the reimbursement of certain hotel expenses and the number of air conditioners to which he was entitled at the Bank's expense. He filed claims on these matters with the Appeals Committee (now Peer Review Services ("PRS")) and the Tribunal. Both PRS and the Tribunal rejected his claims (*see Mpoi-Kamulayi (No. 3)*, Decision No. 449 [2011]).

8. In this Application he challenges the Bank's decision to recall him from Abuja. The circumstances leading to the recall decision are set out below.

9. According to the Bank, soon after his assignment, problems arose between the Applicant and his business clients in Abuja and the Africa Region. The Bank adds that the Applicant started to demonstrate a "combative attitude" towards the Bank officials in Nigeria even before he actually moved to Abuja. As early as April 2008 the Bank's Country Director in Nigeria complained to the Chief Counsel in the Africa Practice Group of the Legal Vice Presidency (hereinafter "Chief Counsel" or "Applicant's manager"), that during negotiations with the government officials of Nigeria, the Applicant engaged in "unacceptable behavior."

10. The Bank states that the Applicant's Overall Performance Evaluation ("OPE") of 2009 (covering April 2008 to March 2009) "documents the difficulties existing between Applicant and his business clients in Abuja and the Africa Region throughout his first year in Abuja." The Bank further states that the "Nigeria Bank staff considered the conflicts with Applicant so severe and detrimental to their work" that they sought help from the Office of the General Counsel and ultimately "requested that the General Counsel remove him from Abuja."

11. The General Counsel met with the Applicant on 24 September 2009 to discuss concerns regarding the Applicant's work in Abuja. On 14 October 2009 the General Counsel sent an e-mail message to the Applicant setting out in detail the complaints she had received from various Bank staff, including staff from the Country Office and the Africa Region, about the Applicant's behavior and style of work. In that e-mail message the General Counsel wrote:

As we discussed, your move to the region has not been easy and there have been a significant number of complaints about your behavior and style of work, more than the substance of it:

A key issue from the CMU [Country Management Unit] management perspective is that you have not made enough effort to integrate yourself into the Country Management Team – instead you have limited your involvement to narrow legalistic issues and remained on the periphery. ...

A second issue that has been consistently raised is that you are not perceived to be responsive. ...

Finally, and most concerning, is that your behavior has been considered (and described as) adversarial and non-cooperative. ...

I have received this feedback directly from clients and also through [the Applicant's manager] and [the Deputy General Counsel], and I find it unacceptable for any staff member in the Vice Presidency, and even more from a Lead Counsel. I do not intend to argue over details and personalities. Regions do not make these complaints lightly (in fact, they

do it very rarely), nor Vice Presidents engage on staffing problems without the matter being grave.

12. On 15 October 2009 the General Counsel met in person with the Vice President of the Africa Region, and by video conference with the Country Director of Nigeria to discuss concerns about the Applicant's performance. During this meeting, the Vice President and the Country Director explained that "the current working arrangements presented a risk to the Bank's ongoing lending operations in Nigeria," and they "requested that a new lawyer be assigned to take over the Nigeria portfolio."

13. On 5 November 2009 the General Counsel informed the Applicant by e-mail that she had decided to relieve the Applicant of his "responsibilities as country lawyer for Nigeria effective immediately" and recall him to Washington for assignment to a new position. The General Counsel noted that:

Because of the serious concerns raised by the regional team about your behavior, style of work, and ultimate effectiveness as Legal's decentralized lawyer assigned in Abuja, I met with [the Vice President of the Africa Region] and [the Country Director of Nigeria]. ... Following this meeting, [the Deputy General Counsel] and I came away with the conclusion that there has been an irreconcilable breakdown in the working relationship between you and the regional team which has lost confidence in your ability to provide timely and constructive legal advice. As a result of this breakdown and after careful consideration of the situation, I have no other alternative but to relieve you of your responsibilities as country lawyer for Nigeria effective immediately and to instruct you to return to HQ.

14. The Applicant on 6 November 2009 sent an e-mail message to the General Counsel maintaining that her decision was an abuse of managerial authority because it was: (i) arbitrary; (ii) retaliatory; (iii) discriminatory; (iv) in violation of his rights to due process; (v) based on unproven complaints attributed to the country team; and (vi) not impartial and based on double-standards.

15. Sometime around the first week of December 2009, the Applicant lodged with the Office of Ethics and Business Conduct (“EBC”) allegations of misconduct against his managers (the Chief Counsel, the Deputy General Counsel and the General Counsel). In his filing with EBC, he complained *inter alia* that these managers had engaged in abuse of managerial authority, harassment, bullying, retaliation and racial discrimination and that the recall decision was the result of these prohibited actions.

16. On 4 December 2009 the Applicant also filed a Request for Review (“Request for Review No. 9”) with PRS challenging the recall decision.

17. On 9 December 2009 EBC informed the General Counsel that it had decided to conduct an “Initial Review” of the allegations raised by the Applicant. On 28 January 2010 PRS informed the Applicant and the General Counsel that it had decided to suspend its proceedings “effective ... January 28, 2010, for sixty (60) calendar days until ... March 29, 2010, pending a review of related matters” by EBC.

APPLICATION TO THE TRIBUNAL

18. On 4 March 2010 the Applicant filed his Application challenging the recall decision. The Applicant requested that, though PRS had not completed its proceedings, the Tribunal should nonetheless exercise jurisdiction over his Application because PRS had failed to act expeditiously and the Bank had unreasonably withheld its consent to the Applicant’s request to proceed directly to the Tribunal to challenge the recall decision. The Applicant requested provisional relief in the form of a “[s]tay of the order recalling Applicant from his post, and continuation of all compensation due to him on assignment to Abuja, Nigeria.”

19. On 25 March 2010 the Bank raised preliminary objections stating that the Tribunal lacked jurisdiction over the Application because the Applicant had not exhausted internal remedies and the Bank had not agreed to waive this requirement. The Bank also objected to the Applicant's request for provisional relief.

20. By a letter of 8 April 2010 the President of the Tribunal denied the request for provisional relief.

21. In the meantime, on 25 March 2010 EBC informed the parties that it had completed its "Initial Review" of the Applicant's allegations concluding that there was "an insufficient factual basis to warrant further consideration" and accordingly had closed the matter.

22. In view of the EBC's decision, PRS informed the parties that it had resumed its proceedings in Request for Review No. 9 effective 29 March 2010.

23. By a letter of 2 June 2010 the Tribunal informed the parties that it had "decided to suspend the proceedings before it in this case until the completion of the PRS proceedings" noting that PRS "has resumed its proceedings in Request for Review No. 9 as of 29 March 2010."

24. PRS completed its proceedings in July 2010 and in its Report of 21 July 2010 concluded that

the Panel finds that [the General Counsel] had an observable and reasonable basis for her decision to recall [the Applicant] from Abuja to Washington, D.C., that she followed a proper process in the manner in which she made the decision to recall, and that she did not discriminate or retaliate against [the Applicant].

25. PRS recommended that the Applicant's requests for relief be denied and the Bank accepted this recommendation on 9 August 2010.

26. On 12 August 2010 the Tribunal lifted the suspension of the proceedings in the Applicant's case and invited the parties to file further pleadings.

27. On 1 September 2010 the Applicant made another request for provisional relief in the following form:

Applicant requests that Tribunal order Respondent to cease and desist from any further levies on his salary and to restore to him all funds already levied from his salary.

Respondent should also provide to Applicant a strict accounting of all monies claimed and all monies already withheld from him.

28. The Bank objected to this request on 16 September 2010. The Tribunal granted, in part, the Applicant's request for provisional relief on 4 October 2010 stating:

The Respondent is hereby ordered to suspend further deduction from the Applicant's salary for the purpose of collection of the amounts in dispute - namely, the rental advance (NGN 4,566,666.67) in respect of the Applicant's residence in Abuja, Nigeria, and the replacement value of equipment installed in that residence (NGN 3,477,360) - until the Tribunal decides on the merits of the present Application.

29. In its subsequent pleadings with the Tribunal, the Bank continued to assert that the Tribunal lacked jurisdiction over this Application. By order dated 12 November 2010 the President of the Tribunal decided to join the Bank's preliminary objections to the merits.

SUMMARY OF THE CONTENTIONS OF THE PARTIES ON THE PRELIMINARY OBJECTIONS

The Bank's contentions

30. The Bank argues that the Tribunal lacks jurisdiction over this Application because the Applicant failed to exhaust internal remedies in a timely manner. The Applicant failed to proceed "sequentially" with his claim under the Bank's Conflict Resolution System ("CRS"). He improperly filed "three complaints based on the same facts and

circumstances – his reassignment to HQ from Abuja – within a short time frame” before three fora – EBC, PRS and the Tribunal. His decision to pursue this grievance in several proceedings nearly simultaneously violates CRS and Tribunal rules and has caused needless duplication of efforts and unnecessary inconvenience to all. The Bank adds that:

Respondent acknowledges that the PRS proceedings have now closed, and [the Bank] has issued [its] decision denying in full Applicant’s PRS claims. This should not be allowed to retroactively confer jurisdiction to an Application that was not proper when filed.

The Applicant’s contentions

31. The Applicant argues that the jurisdiction of the Tribunal is based on “exceptional circumstances” considering “the serious and irreversible consequences of the recall on him and his family and the absence of provisional relief in the statute of the newly created Peer Review Services.” The Applicant requested provisional relief before PRS, but PRS denied the request on the ground that its governing rules do not allow it to entertain such requests. Given the urgency of the situation, the Applicant had no choice but to come to the Tribunal. Moreover, the Applicant sought the Bank’s consent to proceed directly to the Tribunal, but the Bank rejected his request without proper reasons. In any event, the Applicant argues, the Bank’s jurisdictional objection is now irrelevant because the Applicant “proceeded through the PRS process, submitted the decision and PRS report to the Tribunal and has in every way followed proper process in his Application.”

SUMMARY OF THE CONTENTIONS OF THE PARTIES ON THE MERITS

The Applicant’s contentions

32. The Applicant contends that the General Counsel abused her power in ordering his recall. The General Counsel concluded that there had been an irreconcilable breakdown in the working relationship between him and the regional team, but the Bank has failed to provide supporting evidence to justify its “erroneous” and “subjective” conclusion. His removal from Nigeria and the Nigeria work program did not serve the interest of the Bank. Under the Memorandum signed by the parties, the Applicant was assigned to Abuja for three years. By recalling him the Bank had breached an essential term of the Memorandum.

33. The Applicant also contends that the Bank has in place a procedure for management of unsatisfactory performance under paragraph 3.02 of Staff Rule 5.03, but did not establish that his performance had been unsatisfactory in accordance with this Rule. He further asserts that “the decision to recall him was taken without any reference to the Rule on reassignment,” and that “it was taken hastily in the course of one day without any consultation with him or advance warning and was notified to him in peremptory terms on the evening of November 5, 2009 while he was at home in Abuja with his family.” In sum, the Applicant’s recall was a violation of Bank rules, was unfair and violated his due process rights. The recall decision cannot be sustained in view of the Tribunal’s jurisprudence in *Prasad*, Decision No. 338 [2005].

34. In addition, the Applicant claims that the recall decision was retaliatory. In his view, the “decision was taken in an effort to silence a lawyer whose advice was inconvenient and whose advocacy against discrimination and unethical conduct was resented.”

35. As remedies the Applicant requests the following: (i) “continuation of his annual compensation on the basis of his assignment to Nigeria and three years of salary and related benefits for loss of reputation, stress on him and his family, and loss of career opportunity”; (ii) additional fair and equitable compensation for loss of income and emotional distress suffered by the Applicant’s wife; (iii) assignment to a decentralized legal position in the field; and (iv) costs.

The Bank’s contentions

36. The Bank answers that the decision to recall the Applicant from Abuja was made by the General Counsel after a review of the history of conflict between the Applicant and his business clients. By the end of 2009, the General Counsel was legitimately concerned that the tensions between the Applicant and his clients in Abuja adversely affected the Bank’s work program in that area. The Vice President of the Africa Region requested that the Applicant be replaced. After confirming that the complaints about the Applicant were well-founded, the General Counsel exercised her discretionary authority to reassign the Applicant to the Bank’s Headquarters. The recall decision thus had a proper basis.

37. The Bank adds that the recall decision was consistent with the applicable Staff Rules. Moreover, nothing in the Memorandum prevents the Bank from recalling the Applicant. The Memorandum “does not guarantee 3 years without regard to performance, evolving business needs, or reassignment permitted by the Staff Rules.” The recall decision did not violate the Applicant’s due process rights and he was duly notified of the issues relating to his performance before the recall decision. Finally, there

is no evidence of improper motivation; the recall decision was motivated by business considerations only.

38. The Bank accordingly requests that the Tribunal reject the Applicant's claims.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

PRELIMINARY OBJECTIONS

39. Under Article II(2) of its Statute, the Tribunal cannot admit applications "except under exceptional circumstances as decided by the Tribunal, unless ... the applicant has exhausted all other remedies available within the Bank Group, except if the applicant and the respondent institution have agreed to submit the application directly to the Tribunal." In *Berg*, Decision No. 51 [1987], para. 30, the Tribunal emphasized that: "This statutory exhaustion requirement is of the utmost importance. It ensures that the management of the Bank shall be afforded an opportunity to redress any alleged violation by its own action, short of possibly protracted and expensive litigation before this Tribunal." Accordingly, before coming to the Tribunal, every applicant must ensure that he or she has exhausted, in a timely and proper manner, the internal remedies available in the Bank.

40. In this case, when the Applicant filed his Application on 4 March 2010 challenging the Bank's decision to recall and reassign him, a similar challenge was pending before PRS. Yet, the Applicant came to the Tribunal before PRS proceedings were concluded because PRS denied his request for provisional relief on the ground that it lacked the power to entertain such requests and also because, according to him, the Bank unreasonably rejected his request to allow him to come directly to the Tribunal.

41. The Tribunal notes that PRS – unlike the Appeals Committee that it replaced in July 2009 - does not have the power to consider requests for provisional relief. A staff

member might reasonably consider that he or she has no option but to come to the Tribunal – even if PRS proceedings were not completed – because of the urgency of his or her request for provisional relief. In the present case, the Applicant filed an application with the Tribunal (which included a request for provisional relief) before PRS had completed its review of his Request for Review. The Tribunal does not consider that, in the circumstances of this case, the entire Application should be rejected as inadmissible for this reason alone. The Tribunal ruled on the Applicant’s request for provisional relief, and suspended the proceedings before it regarding the substance of the Application until PRS completed its review of the Applicant’s challenge. It resumed those proceedings after the conclusion of the PRS proceedings. The Tribunal finds that the Applicant’s actions were not unreasonable in the circumstances, and that the Applicant has exhausted internal remedies with respect to the matter before it. The Bank’s objection is accordingly denied.

MERITS

The basis for the decision to recall and reassign

42. Principle 5 of the Principles of Staff Employment and Staff Rule 5.01 govern reassignment of staff members of the Bank. Principle 5 states that

it is recognized that the changing demands on the Organizations require that they adapt to meet evolving needs and circumstances. To enable the Organizations to respond effectively in such circumstances, and at the same time in a manner considerate of the needs and aspirations of their staff, the Organizations shall ... organize, assign and transfer staff to meet the needs of The World Bank.

43. Staff Rule 5.01, paragraph 2.04, provides that: “A staff member may be reassigned within a vice-presidential unit at any time by a senior manager to meet the work program needs of the vice-presidential unit.” The same Staff Rule in paragraph

1.03 defines reassignment as “any transfer of a staff member from one position to another at the same grade or to or from an ungraded position in a field office.”

44. The Tribunal recognizes that the Bank enjoys a broad discretion in assigning its staff members to different functions as it deems appropriate. In *Sweeney*, Decision No. 239 [2001], para. 74, the Tribunal stated that:

Absent discrimination or other abuse of discretion, the Bank is entitled to reassign staff members in accordance with its needs. A staff member is in no position to declare that his or her “career was cut short” by such a reassignment; nor are staff members in a position to enter into detailed critiques of work programs as though they have a power of veto.

45. In *Sengamalay*, Decision No. 254 [2001], para. 29, the Tribunal stated that decisions such as those relating to redundancy, or to reassignment and transfer, are discretionary decisions for the management of the Bank, and are subject only to limited review by the Tribunal. Such decisions will not be set aside unless they constitute an abuse of discretion, being arbitrary or capricious, discriminatory, or influenced by a lack of due process.

46. In light of Principle 5 and Staff Rule 5.01 and the Tribunal’s jurisprudence, the Tribunal will decline to reverse the November 2009 decision of the Bank to recall the Applicant from Abuja and reassign him to another position if the Tribunal is satisfied that the Bank had a reasonable basis for its decision (*see Sweeney*, Decision No. 239 [2001], para. 74; *Desthuis-Francis*, Decision No. 315 [2004], para. 23).

47. The basis for the Bank’s decision to recall the Applicant from Abuja and reassign him to another position is articulated in the 5 November 2009 e-mail message of the General Counsel by which she informed the Applicant about her decision. It reads:

The issue at hand ... relates to your performance over the past year as Lead Counsel assigned to the Bank’s country office in Nigeria. The country team has identified a number of serious concerns with your performance which have already been made clear to you by [the Chief Counsel] and [the Deputy General Counsel] quite a while back, and more recently by me in person and in writing. These include being not responsive, collaborative and a team player. Your assertion that I have reached these

conclusions without hearing your side of the story simply has no basis as a matter of fact.

Because of the serious concerns raised by the regional team about your behavior, style of work, and ultimate effectiveness as Legal's decentralized lawyer assigned in Abuja, I met with [the Vice President of the Africa Region] and [the Country Director of Nigeria]. ... Following this meeting, [the Deputy General Counsel] and I came away with the conclusion that there has been an irreconcilable breakdown in the working relationship between you and the regional team which has lost confidence in your ability to provide timely and constructive legal advice. As a result of this breakdown and after careful consideration of the situation, I have no other alternative but to relieve you of your responsibilities as country lawyer for Nigeria effective immediately and to instruct you to return to HQ. ...

When you are back in HQ, we will discuss possibilities regarding your new assignment. ...

I very much regret having to take this course of action, but the seriousness of the concerns raised by the regional team as well as the importance of the Bank's work program in Africa leave me with no alternative.

48. The Tribunal will now examine whether this determination by the General Counsel is supported by the record before it.

49. The record shows that as early as April 2008 the Country Director of Nigeria raised questions about the Applicant's performance. In an e-mail message of 22 April 2008, copied to the Applicant, the Country Director in Nigeria complained to the Chief Counsel that during negotiations with the government officials of Nigeria, the Applicant engaged in "totally and utterly unacceptable behavior." The Country Director also noted that "the head of the Nigerian delegation has already raised with me that he was surprised about the inputs from the legal side." In an e-mail message of 23 April 2008 to the Chief Counsel titled "Feedback on Complaints from the Country Director," the Applicant defended his position by stating *inter alia* that: "I am deeply saddened by the ... statement made by the Country Director about me since his statement is greatly at variance with the

words spoken by himself during the meeting we had with him while we reported on the impasse we had encountered at the negotiations table.”

50. The Applicant and the Country Director met shortly thereafter to address the issues relating to the Applicant’s performance. But it appears that the meeting failed to resolve matters. This is evident from the following e-mail message from the Country Director to the Applicant (copied to the Chief Counsel) dated 6 May 2008:

I have thought about our conversation a considerable amount.

I am afraid that I am quite concerned about the situation we find ourselves in: Whilst it is true that actions speak louder than words, it is also true that to work effectively in a team, communication must be good. Thursday’s conversation did not convince me in any way that we have good communication around your functioning in the Nigeria country team. In fact, it convinced me of the opposite.

I welcome your promise to convince through action, and I will hold you accountable for doing so in the most convincing manner, based on the expectations I outlined to you during the meeting.

In addition, however, I would ask you to consider what else you can do to re-establish effective communication both between us and for you within the team. In my view this is a necessary condition for you to succeed in your very important assignment in Abuja. It can therefore not be treated as optional and it must be done quickly.

51. Following this e-mail message, the Chief Counsel wrote to the Applicant on the same day:

You will have seen the attached message from the Country Director.

For the reasons I mentioned to you following last Thursday’s meeting, I have to say that I am not surprised by [the Country Director’s] statement This feedback, as well as the feedback I provided to you after the meeting, are important and I urge you to reflect on them.

Clearly, this is less than an auspicious beginning to your imminent decentralized assignment in Abuja. Nevertheless, I am confident that you will take these comments on board and do your utmost to turn the situation around. I know from personal experience working with the [Country Director] that he will react most positively when he sees evidence of

value-added legal contributions that facilitate his work program. I have no doubt that you have the experience and knowledge necessary to make such contributions yourself to the Nigeria Country team. I look forward to seeing you deliver successfully on this challenge in the weeks and months ahead.

52. These messages from the Country Director and the Chief Counsel do not appear to have been well-received by the Applicant. On the next day, 7 May 2008, he wrote to the Chief Counsel: "I am deeply troubled by the tone and the insinuations from both of you." Two days later, on 9 May 2008, the Applicant sent another e-mail message to the Chief Counsel, stating:

I believe the least I can expect from my Managers is for them to listen with objectivity and impartiality to my explanations. Regrettably, I must say that I have not been given either.

Instead, what I am given are clear signals aimed at coercing me into mere submission through what appears to me to be threats and intimidation tactics based on foregone conclusions supported by perceptions instead of established facts.

53. On the same day the Chief Counsel responded by e-mail stating that he was "shocked" that the Applicant thought that the Country Director and he were coercing the Applicant with "threats and intimidation." The Chief Counsel wrote that: "These are serious and wholly unwarranted accusations that are completely unfounded and which I reject categorically and in the strongest possible terms."

54. Given the above, it is not that difficult for the Tribunal to come to the conclusion that the working relationship between the Applicant and his manager (the Chief Counsel), and between the Applicant and the Country Director had deteriorated even before the Applicant actually moved to Abuja in October 2008.

55. Matters do not seem to have improved after the Applicant moved to Abuja. The record includes an e-mail message of 9 June 2009 in which the Country Director noted

that the Applicant was late in attending an “important mission.” The Applicant states that “the incident is totally meaningless, but the verifiable facts are that Applicant was at a special conference in Jakarta, Indonesia and was not allowed for cost reasons to travel directly to Abuja. He had to use an expensive ticket back to Washington, and take a new ticket to travel to Abuja.” It appears, however, from the e-mail of the Country Director that the Applicant did not inform his manager or other relevant Bank officials about this delay in a timely manner.

56. The record also includes an e-mail exchange between the Applicant and the Chief Counsel dated 16 June 2009 in which the Chief Counsel criticized the Applicant for untimely submission of a briefing memorandum. In the e-mail message, the Chief Counsel wrote:

Thank you for the briefing memo. It is unfortunate that ... had to request it, particularly for a \$500 million operation. I have discussed with you in the past that such memos for negotiations should be provided either prior to or concurrently with your clearance of the negotiations package. In addition, you will need to correct the obvious misstatements in the first sentence of the fourth paragraph of the memo and resubmit it – again, an unfortunate lack of attention to detail for an operation of this size and importance.

57. On the same day, the Applicant sent an e-mail message to the Chief Counsel providing a detailed response to the Chief Counsel’s criticism in which the Applicant also wrote: “The tone of the communications I have described above is further evidence of unacceptable managerial behavior I have complained about on several occasions regarding my interactions with you. I do hope that you will endeavor to put an end to this pattern of abuse of managerial authority which I have been suffering from you since you have been LEGAF’s Chief Counsel.” The Applicant states in his pleadings that: “The facts are that [the Chief Counsel], apparently at the instigation of [the Country Director] who had urged [the Chief Counsel] quite unnecessarily to admonish Applicant to do his

job quickly ... criticized Applicant for delaying the legal clearance process. Applicant responded immediately laying out the exact chronology hour by hour showing that he had provided the requested briefing memorandum within 2 hours of the request.”

58. The e-mail exchanges between the Applicant and the Chief Counsel demonstrate that management was not happy with the Applicant’s performance and that the Applicant had lost faith in the leadership of the Chief Counsel and the Country Director.

59. According to the Bank, one of the most significant conflicts between the Applicant and his clients in Nigeria arose in September 2009, relating to his refusal to provide legal clearance on a regional project. The Applicant states that he did so because, in his professional judgment, the proposed project did not comply with the applicable Bank policies. The Bank, however, asserts that: “As perceived by the Country Office, Applicant was unreasonably withholding legal approval for a project that was high-profile and fast-moving, without suggesting any alternative or being productive.”

60. In September 2009 the General Counsel became involved. She met with the Applicant on 24 September 2009 to discuss concerns raised regarding the Applicant’s work in Abuja. Again on 14 October 2009 the General Counsel sent an e-mail message (quoted in paragraph 11 above) to the Applicant detailing the complaints she had received from various Bank staff (including staff from the Country Office and the Africa Region) about the Applicant’s behavior and style of work. On 15 October 2009 the General Counsel met in person with the Vice President of the Africa Region, and by video conference with the Country Director of Nigeria to discuss concerns about the Applicant’s performance. During this meeting, the Vice President and the Country

Director explained that to protect the work program in Nigeria a new lawyer should be assigned to take over the Nigeria portfolio.

61. After her discussions with the Applicant, the Chief Counsel, the Deputy General Counsel, the Country Director, and the Vice President of the Africa Region, the General Counsel had come to the conclusion that the Applicant was no longer in a position to provide effective service as a country lawyer in Nigeria and that “the tensions between the Applicant and his clients in Abuja were negatively impacting the work program of the World Bank in that area.” Accordingly, on 5 November 2009, the General Counsel informed the Applicant that she had decided to recall him and reassign him to another position.

62. The Tribunal notes that PRS conducted a hearing when the Applicant challenged the recall decision before PRS. The following individuals testified before PRS: the Applicant; the General Counsel; the Deputy General Counsel; the Chief Counsel; the Country Director, the Sector Manager of the Africa Regional Integration; a Senior Transport Specialist of the Africa Regional Office; and a Senior Human Resources Officer. PRS concluded that the General Counsel

properly exercised her management discretion in making the decision to recall and reassign [the Applicant]. [The General Counsel] acted reasonably and not in an arbitrary manner in deciding to recall [the Applicant], and took into account all relevant factors in making her decision. The work program needs of the Region fully supported [her] decision, which the Panel finds was legitimate, fair, and based on business reasons.

63. Given the totality of the record before it, the Tribunal is of the view that the General Counsel had a reasonable basis for her decision, and that it was not an abuse of discretion to recall the Applicant and reassign him.

64. The Applicant argues that the recall decision is a breach of contract under the Memorandum signed by the parties because he was assigned to Abuja for three years. The Memorandum states that: “The duration of your assignment is expected to be three years from approximately February 1, 2008.”

65. The Tribunal finds that the Memorandum must operate subject to the Staff Rules of the Bank. The Memorandum did not detract from management’s power as embodied in the Staff Rules to shorten or extend a staff member’s assignment in a country office based on performance, evolving business needs or changed circumstances. In AA, Decision No. 384 [2008], the applicant in question signed a Letter of Agreement with the Bank by which she was expected to be on external service for five years. The context of the external service was “to avoid a conflict of interest stemming from the Applicant’s personal relationship with the [then] President of the Bank.” The President left the Bank before the expiry of his five-year term whereupon the Bank terminated that applicant’s external service. The Tribunal concluded that given the context of the external service, the Bank’s termination of the five-year external service was not unreasonable. Given the general power of the Bank to reassign staff members and given the context of the present case, the Tribunal concludes that there is no merit to the Applicant’s argument that the shortening of his assignment in Abuja was a breach of contract.

66. The Applicant also claims that the recall decision was retaliatory. Retaliation is prohibited under the Bank’s rules. The Tribunal in O, Decision No. 337 [2005], para. 47, stated that:

The burden lies with an applicant to establish facts which bring his or her claim within the definition of retaliation under the Staff Rules. An applicant bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse

action. A staff member's subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the allegation of poor performance is a pretext to mask the improper motive.

67. The Tribunal finds that the Applicant has failed to provide a factual basis for the claim of retaliation. The General Counsel concluded that there was a poor working relationship between the Applicant and the management team in Nigeria; and the Applicant was not serving effectively as a country lawyer. She gathered relevant information, and after discussion with the Applicant and after consultation with the relevant Bank officials, she made the determination that recalling the Applicant from Abuja would be necessary to allow the work program of the Bank to continue there without distractions. The record supports a reasonable basis for her recall decision and the Tribunal finds no improper motive for the recall. Moreover, after being recalled from Abuja, according to the Applicant, he "was assigned as lead counsel on Egypt, a major World Bank borrower." The Bank adds that the "Applicant was not demoted, his pay did not suffer, and his career has not been impacted, by his reassignment from the Nigeria portfolio to the Egypt portfolio." Given these circumstances, the Tribunal is not convinced that management acted improperly in recalling the Applicant from Abuja.

68. The Applicant also claims that the recall decision was unfair. The Tribunal has held that "when Bank interests dictate reassignment elsewhere, those interests will prevail." *Eindhoven*, Decision No. 23 [1985], para. 47. The General Counsel took the recall decision after considering all factors and knew that it would be disruptive to the Applicant. She suggested to the Applicant the possibility of administrative leave for two months in order to facilitate his return. The Applicant, however, rejected the idea, stating that her suggestion involved using the administrative leave mechanism as "a form of

illicit gratuity which is prohibited under the Bank's Code of Conduct." While the Applicant no longer receives benefits associated with serving in a country office, the recall has not resulted in any demotion in grade or level of responsibility or reduction in his regular salary. He is still serving as a Lead Counsel in the portfolio of another member country, Egypt. In sum, the Applicant has not substantiated his claim of unfairness for which the Bank is liable to compensate him.

Due process

69. The Applicant claims that the recall decision was made in violation of his due process rights. In this context, the Tribunal stated that it would "examine whether the Bank afforded the Applicant adequate notice of the performance concerns and a meaningful opportunity to defend herself before the adverse decisions affecting her employment were taken." *BF*, Decision No. 430 [2010], para. 81.

70. Here, the record shows that, as early as April 2008, the Chief Counsel and the Country Director brought their concerns about the Applicant's performance to his attention. In May 2008 both of them met with the Applicant to discuss his performance. As noted earlier, in an e-mail message of 6 May 2008 the Applicant's manager advised the Applicant as follows:

I am confident that you will take these comments on board and do your utmost to turn the situation around. I know from personal experience working with the [Country Director] that he will react most positively when he sees evidence of value-added legal contributions that facilitate his work program. I have no doubt that you have the experience and knowledge necessary to make such contributions yourself to the Nigeria Country team. I look forward to seeing you deliver successfully on this challenge in the weeks and months ahead.

71. Moreover, as part of the Applicant's 2009 OPE, his manager met with him a number of times to discuss the issues relating to his performance, and this is documented

in the 2009 OPE. The Deputy General Counsel also met with the Applicant to discuss the complaints raised about him before the recall decision was made. In September 2009 the General Counsel met with the Applicant to discuss the perceived shortcomings in his performance. In October 2009 the General Counsel sent him an e-mail message detailing concerns about his performance, which have already been quoted in paragraph 11 of this judgment. In sum, based on the record, it cannot be said that management failed to bring to the Applicant's attention the issues relating to his performance.

72. The record is clear that the Applicant was given opportunities to defend himself. On each occasion when management met with him to discuss his performance, the Applicant did not hesitate to provide a detailed response to the complaints and issues raised. For example, the Applicant responded immediately to the messages sent to him in May 2008 by the Chief Counsel and the Country Director (*see* paragraphs 49-52 above). The record is full of examples where the Applicant gave his side of the story with respect to issues raised by management about his performance. When the General Counsel sent him a detailed e-mail message in October 2009, the Applicant again responded in writing. The record is abundantly clear that the Applicant exercised his right to respond to criticism of his performance. For the same reasons, he cannot credibly claim that he was never given any opportunity to improve his performance.

Other matters

73. A related matter before the Tribunal in this case is whether the Applicant is obligated to return the rental advance of 12 million Naira (equivalent to around \$78,000) that the Bank gave to the Applicant when he moved to Abuja. The Bank states that the Applicant negotiated and signed a lease with his landlord in Abuja that required him to

pay the rental advance. The Bank states that this was an interest-free loan from the Bank and that the Applicant is required to repay it. It adds that: "According to the ordinary procedures followed by the Bank, the rental advance is paid back to the Bank (as an interest-free loan) through deduction in staff payroll." In response, the Applicant claims that "it is illogical for Respondent to turn back against Applicant by seeking to hold Applicant responsible for any consequences, financial, or otherwise, deriving directly from the illegal and intemperate decisions taken by Respondent against Applicant."

74. The Tribunal has already found that the recall decision was a lawful exercise of managerial discretion. In this respect, the Tribunal notes that, in the Memorandum of December 2007, the Bank advised the Applicant to insert a "Diplomatic Clause" for any lease agreement that he would conclude with his landlord. The Applicant confirms that he included such a clause in the terms of his lease, which states as follows:

That if the Tenant due to a break in diplomacy or for any reason whatsoever is required to withdraw from, ceases to operate or exist in Nigeria the Tenant may at his option yield the Demised Premises to the Landlord without any further obligation on the part of the Tenant and the Landlord shall refund to the tenant all the rent paid for the unexpired term of the lease.

75. The Tribunal finds that the claim that the Bank is, in effect, responsible for meeting financial obligations flowing from the Applicant's rental agreement are without basis. The Tribunal concludes that the rental advance was indeed a loan from the Bank and the Applicant is obligated to repay the amount, like other staff members in similar situations. Accordingly, the Tribunal's suspension order of 4 October 2010 is hereby lifted and the Bank may collect the remaining amount of rental advance in accordance with the applicable Staff Rules.

76. The Applicant also contends that the Bank's decision to deduct from his salary "the replacement value of equipment installed" in the property rented by the Applicant in Abuja is unjustified. After the Applicant left Abuja, the Bank recovered most of the equipment it installed in the Applicant's leased property, but it claims that the Applicant must pay for the installed Bank property that it could not recover. The Applicant contends that the Bank, and not he, should be responsible for the replacement value of the equipment, because the loss was directly attributable to the abrupt and unlawful recall decision. The Bank contends that it was the Applicant's responsibility to return the equipment or to arrange with the Bank to allow it to retrieve the equipment, which the Applicant failed to do.

77. The Tribunal finds that the Applicant has not provided sufficient information to substantiate his claims that he is not responsible for the replacement value of the equipment. He simply states that: "Applicant did not remove any of the equipment and does not know what action the Bank took to retrieve its property, but believes the local office removed it on June 16, 2010." Based on the record and the documents provided by the Bank, the Tribunal finds that the Bank is entitled to recover the replacement value of equipment that it installed in the Applicant's rented house that were not returned or could not be accounted for by the Applicant.

78. Also, related to the recall decision is the Applicant's complaint against EBC. As stated earlier, the Applicant lodged complaints of misconduct against his managers (the Chief Counsel, the Deputy General Counsel and the General Counsel). He complained *inter alia* that these managers had engaged in abuse of managerial authority, harassment, bullying, retaliation and racial discrimination, and that the recall decision was the result

of these prohibited actions. On 25 March 2010 EBC's Program Manager informed the Applicant that EBC had completed its "Initial Review" of the Applicant's allegations concluding that there was "an insufficient factual basis to warrant further consideration" and accordingly had closed the matter. In her e-mail message to the Applicant, the Program Manager stated:

Following your request to review the matter, EBC undertook an Initial Review into the four allegations ... that involved, among other things, interviews of various staff members, review of relevant World Bank Group Staff Rules, policies and procedures, review of the Code of Conduct and review of other pertinent documentation. We next analyzed the record of the interviews, factoring into account the character and credibility of those persons interviewed, in order to make a determination as to the merits of the allegations.

After a thorough and diligent Initial Review, as provided under Staff Rule 3.00, paragraph 8.01, EBC has determined that there is an insufficient factual basis to warrant further consideration. Taking into account the information that we received from various witnesses, including yourself, evaluation of the factual record, analysis of the documentary record, we found no substantive evidence that would support a further review.

As such, we will take no further action regarding this matter unless sufficiently new and credible evidence is brought forward that would warrant otherwise.

79. In an e-mail message of 9 April 2010 the Chief Ethics Officer of EBC further explained to the Applicant as follows:

Under EBC's mandate, we are responsible for reviewing allegations of misconduct ... and reporting our findings to the applicable decision-makers for appropriate sanction or disciplinary action. With regard to allegations of staff misconduct, as in your original complaint, and as delineated within Paragraph 8.01 of the Staff Rule, the investigators undertook an initial review, wherein they evaluated the available information and evidence to determine whether or not there was a sufficient evidentiary basis for a formal fact finding, or further review. In your case, as you were previously notified by the investigators, EBC reached a determination that there was not a sufficient basis for further action.

With regard to the specifics of EBC's process and analysis in arriving at this conclusion, I am not in a position to provide any staff member with more than we have already provided when closing a matter that did not warrant further consideration. As noted in previous communications with you, you were not the subject of the review and not in any way in an "adversarial" posture with EBC; we cannot agree to requests for review of work-product documentation as might be permitted in other forums.

...

I note the differences in our standards and procedures to assure you that with regard to your original complaint, EBC has fully considered your allegations and consistent with such standards and procedures, concluded that there was not a basis for further action. In sum, I have reviewed and accept the findings of the investigators. Thank you for bringing your concerns to our attention.

80. The Applicant challenged EBC's actions in Request for Review No. 33 before PRS framing the "employment matter" at issue as follows: "Refusal to conduct an independent investigation of my charges of abuse and discrimination and refusal to provide me with a copy of the report produced by the Ethics Office concerning allegations of misconduct leveled by me against [the General Counsel] in connection with her decision to recall me from my extended field assignment in Abuja, Nigeria." PRS dismissed the Request for Review on 5 October 2010, stating that it does not have the authority to review matters concerning "actions, inactions, or decisions taken in connection with staff member misconduct investigations."

81. Before the Tribunal, in his Reply of 21 April 2011, the Applicant complained that EBC's actions were improper; in particular, it failed to provide the Applicant an "Ethics Report," and also it failed to conduct a full investigation. The Applicant urged the Tribunal to address these matters as part of his current Application. The Bank, however, objects to this, stating that the EBC matters are not properly before the Tribunal because the Applicant has not exhausted internal remedies and the record is incomplete.

82. The Tribunal finds that the Applicant has exhausted internal remedies with respect to the EBC matters, and finds it proper to address them. The Tribunal finds that, in the e-mail message of 25 March 2010, the Program Manager explained to the Applicant the basis for EBC's decision to close the matter without a full investigation, and that, in a subsequent e-mail message, the Chief Ethics Officer of EBC also provided to the Applicant explanations for EBC's decision. Considering the record as a whole, including the Applicant's submissions regarding the alleged misconduct, the Tribunal concludes that the Applicant has not demonstrated that EBC's response to his complaints violated any rules of the Bank.

DECISION

For the foregoing reasons, the Tribunal dismisses the Applicant's claims.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, DC, 11 October 2011