



World Bank Administrative Tribunal

2013

Order No. 2013-3

**L.T. Mpoy-Kamulayi (No. 9),
Applicant**

v.

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

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

L.T. Mpoy-Kamulayi (No. 9),
Applicant
v.
International Bank for Reconstruction and Development
Respondent

1. This order 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), Jan Paulsson, Francis M. Ssekandi and Ahmed El-Kosheri.
2. The Application, the Applicant's ninth before the Tribunal, was filed on 27 December 2012. The Applicant was represented by Stephen C. Schott, Schott Johnson LLP, and the Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.
3. The Applicant invokes Article XIII of the Tribunal's Statute and requests revision of the Tribunal's judgment in *L.T. Mpoy-Kamulayi (No. 2)*, Decision No. 457 [2011], in which the Tribunal dismissed the Applicant's claims relating to the Bank's November 2009 decision to reassign his responsibilities as country lawyer for Nigeria and recall him from his then duty station in Abuja, Nigeria to the Bank's Washington, DC headquarters.
4. The Application is based on documents received by the Applicant in June 2012 in the course of the proceedings which culminated in the Tribunal's judgment in *L.T. Mpoy-Kamulayi (No. 4)*, Decision No. 468 [2012]. The Applicant principally contends, first, that a September 2009 report entitled "Complaint by T. Mpoy-Kamulayi Alleging Professional Harassment and Bullying," prepared by the then Deputy General Counsel (Corporate Affairs), shows "indisputably that critical facts behind Applicant's recall from Abuja were his complaints about [the Chief Counsel's] management." Secondly, the Applicant contends that a report entitled "Assessment of the Complaint by T. Mpoy-Kamulayi Alleging Professional Harassment and Bullying" prepared by a manager in the Bank's Institutional Integrity Department ("INT") indicates that the Applicant's "disastrous performance evaluation for FY 2009" and the decision to recall him from Abuja were improperly motivated. Thirdly, the Applicant says that the Chief Counsel should be called upon to "defend ... in open forum" his written statement made in the course of the *Mpoy-Kamulayi (No. 4)* proceedings. The Applicant submits that the Tribunal's judgment in *Mpoy-Kamulayi (No. 2)* must be reopened so that the impact of the two reports, and

the Chief Counsel's written statement, can be "subject to scrutiny and debate" in oral proceedings.

5. Article XIII of the Statute provides:

A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

6. As the Tribunal noted in *Kwakwa (No. 2)*, Decision No. 350 [2006], paras. 18-20, Article XIII is a limited exception to the general principle in Article XI of the Statute that the Tribunal's judgments are final and without appeal. As was noted in *van Gent (No. 2)*, Decision No. 13 [1983], para. 21, the Tribunal is the last step along the path of settling disputes arising between the Bank and its staff, and there is no provision for appeal or further litigation, no matter how dissatisfied a party may be with the Tribunal's judgment. As the Tribunal explained in *van Gent (No. 2)* and *Kwakwa (No. 2)*, for a newly discovered fact to trigger the possibility of revision under Article XIII, it must be "potentially decisive," and it must have existed prior to the rendering of the judgment at issue. In *Kwakwa (No. 2)*, para. 19, the Tribunal stated:

To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The 'new fact' must shake the very foundations of the Tribunal's persuasion; 'if we had known that,' the judges must say, 'we might have reached the opposite result.'

7. In *Mpoy-Kamulayi (No. 2)*, the Tribunal concluded that the General Counsel's decision to recall the Applicant from Abuja was a lawful exercise of managerial discretion, with a reasonable basis supported by the record before it. Having carefully examined the documents submitted by the Applicant, the Tribunal is not persuaded that any have a potentially decisive influence on this judgment. In fact, the two reports referred to by the Applicant tend to corroborate the evidence to which the Tribunal referred in *Mpoy-Kamulayi (No. 2)* regarding the existence of genuine concerns about the Applicant's performance. They also provide additional context for the difficult professional relationship between the Applicant and his relatively recently appointed Chief Counsel. The Deputy General Counsel's report provides a detailed description and analysis of the workplace conflict between the Applicant and his Chief Counsel. The INT report provides an assessment of the Applicant's allegations of harassment and

bullying. It concludes that the facts alleged did not rise to the level of behavior that could amount to misconduct, but rather indicated a workplace conflict that could be addressed through managerial intervention. The Applicant also refers to the written statement provided by the Chief Counsel in response to certain specific questions raised by the Tribunal in the course of the *Mpoy-Kamulayi (No. 4)* proceedings. He makes no specific argument as to the statement's impact on the judgment in *Mpoy-Kamulayi (No. 2)*. None is apparent to the Tribunal.

8. The Tribunal concludes that the facts referred to by the Applicant could not have had a decisive influence on its judgment in *Mpoy-Kamulayi (No. 2)*. Accordingly, an essential requirement of Article XIII of the Tribunal's Statute has not been met. The Application is devoid of all merit.

DECISION

The Application is summarily dismissed.

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

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D. C., 13 February 2013