World Bank Administrative Tribunal

2021

Decision No. 645

FT,
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

FT,
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 Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 30 July 2020. The Applicant was represented by David Koubbi from the law firm of "28 octobre." The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The First Intervenor was represented by Sogand Zamani, Esq., and Alisa N. Yasin, Esq., of Zamani & Associates, PLLC. The Second Intervenor represented himself. The Applicant's request for anonymity was granted on 21 May 2021.

3. The Applicant challenges the decision of the Pension Benefits Administration Committee (PBAC) to deny her request for surviving spouse benefits under the Staff Retirement Plan (SRP) in respect of the late Mr. A, a retired Bank staff member.

FACTUAL BACKGROUND

4. The Applicant, a French citizen, claims that she is the spouse of a late Bank staff member, Mr. A, a Ghanaian and French citizen. Mr. A joined the Bank on 6 January 1973 and joined the SRP at the same time. In 1995, the Applicant and Mr. A had a child together and, on 2 November 1996, the two were married in Burkina Faso. On 19 November 1996, the marriage was recorded in the French consulate's civil status register. Around this time, Mr. A and the Applicant moved to Washington, D.C., for Mr. A's new role at Bank headquarters.

5. In 1998, Mr. A took a new position and moved to Conakry, Guinea. The Applicant and their child moved to her home country of France.

6. On 27 December 2000, while married to the Applicant, Mr. A completed and signed in the presence of two witnesses a Designation of Beneficiary for Lump Sum Death Benefit form, whereby he designated his estate to receive the benefit upon his death, should it become payable. The form was signed by the Plan Benefits Administrator on 11 January 2001. The form includes the following provision:

> It is not necessary to designate your existing spouse on this form. If you are survived by an eligible spouse, i.e., a spouse to whom you were married on both the last day of service with the Bank Group *and* the date of death, then a pension is automatically payable to your spouse in lieu of the lump sum benefit. This form is for you to designate a beneficiary to receive a lump sum benefit if you die without leaving an eligible surviving spouse. [(Emphasis in original.)]

7. Mr. A retired from the Bank on 31 January 2001. Following his retirement, Mr. A moved to France to reside with the Applicant and their child. Around this time, Mr. A became a French citizen.

8. The record shows that at least as of 2005 the Applicant and Mr. A had separated and that Mr. A moved to his home country of Ghana while the Applicant remained in France. Mr. A remained in Ghana until his death.

9. In 2006, the Applicant petitioned for divorce before the Toulouse High Court in France. On 15 June 2006, a non-conciliation order was rendered. On 19 September 2007, the Applicant sued Mr. A for fault-based divorce. On 10 September 2008, Mr. A counterclaimed and requested that the divorce be based on the Applicant's fault alone. On 11 September 2009, the Applicant withdrew her petition for divorce and sought the dismissal of Mr. A's counterclaim. Finally, on 29 April 2010, the Toulouse High Court dismissed Mr. A's counterclaim for fault-based divorce and ordered Mr. A to pay the Applicant 1,300.00 EUR per month in spousal support (spousal support order). The Court also made provisions for the custody of the Applicant's and Mr. A's child, and

ordered Mr. A to pay 700.00 EUR per month in contribution to the child's maintenance and education.

10. On 8 July 2010, the Applicant submitted the spousal support order to the Bank's Pension Administration (PENAD), requesting that it direct a portion of Mr. A's pension to the Applicant as spousal support payments to fulfill the spousal support order. On 30 September 2010, PENAD informed the Applicant and Mr. A in separate letters that the spousal support order was accepted under the SRP and that payments would begin in November 2010. The letters also stated that the payments would "continue until the obligation has ceased or is modified, or until either [Mr. A's] death or [the Applicant's] death."

11. On 21 December 2010, Mr. A petitioned for divorce before the Toulouse High Court but withdrew his petition on 3 December 2012.

12. On 27 November 2013, Mr. A obtained a Certificate of Dissolution of Marriage (divorce certificate) from the Superior Court of Judicature in the High Court of Justice in Accra, Ghana, signed by a justice of the High Court. The divorce certificate stated,

> It is hereby decreed that the marriage contracted and solemnized on the 2nd day of November, 1996 under the Marriage Ordinance in Ouagadougou, Burkina Faso between [Mr. A] the Petitioner herein and [the Applicant] the Respondent herein be dissolved forthwith on the grounds that the marriage has broken down beyond reconciliation.

The Applicant states that she "had never been informed that such a proceeding was taking place in Ghana."

13. On 7 January 2014, the Applicant received a letter from what appears to be Mr. A's lawyer which stated, "[P]lease find enclosed a Certified True Copy of the Divorce Certificate," and requested acknowledgment of receipt. In an email to PENAD on 8 November 2019, the Applicant stated that this letter and the enclosed copy of the divorce certificate were the only documentation she received in the matter and that she did not take any legal action in response to receiving the divorce certificate.

14. On 23 January 2014, Mr. A emailed PENAD, attaching the divorce certificate and stating, "This final judgment supersedes and nullifies all previous interlocutory orders made by courts of any jurisdiction in respect of my marriage to [the Applicant]." He then requested that all payments made to the Applicant under the SRP in accordance with the spousal support order end.

15. On 19 February 2014, PENAD responded to Mr. A's request, writing:

> We have reviewed your request to stop spousal support payments to [the Applicant] following the divorce decree issued by the High Court in Accra, Ghana on November 2[7], 2013.
>
> As mentioned in our letter of September 30, 2010, once payments pursuant to a court order commence, they will not be stopped or reduced unless the Participant demonstrates to the Bank's satisfaction that the underlying obligation to pay the spousal support has terminated or been reduced.
>
> We find that the divorce proceeding in Ghana has no legal effect on the French spousal support order which we have accepted under the Plan. Thus, we will continue to make payments to [the Applicant] until we receive evidence that is acceptable to the Plan that your obligation to make payments to her has been modified or terminated – such as an order from the French court terminating the spousal support obligation.

Mr. A did not challenge this finding. On 20 February 2014, PENAD emailed the Applicant, forwarding its 19 February 2014 communication to Mr. A and notifying the Applicant that spousal support payments under the SRP would continue. Spousal support payments to the Applicant continued until Mr. A's death.

16. Mr. A died on 4 June 2019. His death was registered with the Registrar of Births and Deaths for Ghana by his brother. In his last will and testament, dated 7 October 2016, Mr. A bequeathed the benefit of his estate to his five children named in the will. It made no mention of the Applicant.

17. On 13 June 2019, the Applicant emailed PENAD to notify them of Mr. A's death, referring to him as her husband. On the same day, the Applicant emailed PENAD again, stating, "[I]n order to help with the procedure, this is my Beneficiary UPI number." The Applicant sent a third email to PENAD that day, forwarding communications regarding Mr. A's death between his former Bank colleagues, with the subject line again referring to Mr. A as her husband.

18. On 17 June 2019, PENAD responded to the Applicant, expressing their condolences and requesting a copy of the death certificate. The Applicant responded on the same day, stating that Mr. A's family had sent a copy of the death certificate to Human Resources (HR) on 7 June 2019. PENAD recorded the notification of death by the Applicant and shared it with HR on the same day; this record listed the Applicant as the spouse of the deceased.

19. On 26 June 2019, HR contacted the Applicant with regard to the Retiree Medical Insurance Plan, in which the Applicant was enrolled, and requested a copy of the death certificate. HR also stated, "This is to confirm that we have set up the surviving spouse record and the premiums will be deducted once your pension account is set."

20. On 28 June 2019, PENAD wrote to the Applicant, expressing their "sincere condolences on the death of your ex-spouse" and informing her that, "[d]ue to the retiree's passing, your spousal support pension has ceased" and the last payment would be made on 30 June 2019.

21. On 24 July 2019, PENAD emailed Mr. A's brother requesting the contact information for the administrator of Mr. A's estate and a copy of the death certificate. On the same day, the brother replied with the contact information for the trustees and estate executors.

22. On 12 August 2019, the Applicant replied to the 26 June email from HR, attaching the death certificate for Mr. A.

23. On 20 August 2019, PENAD emailed the Applicant, reiterating its previous message that spousal support payments had ceased due to the death of her "ex-spouse."

24. On 21 August 2019, PENAD emailed the Applicant, writing:

> Pursuant to the Certificate of Dissolution of Marriage on November 27, 2013 in the Superior Court of Judicature in the High Court of Justice Accra-Ghana and the provision of the Staff Retirement Plan you are not eligible to receive a surviving spouse pension.

> However, if you have remarried kindly provide us with a copy of the marriage certificate.

25. On 10 September 2019, the Applicant responded to PENAD with a copy of her French civil record, stating, "We could never remarry because we were never divorced: we married according [to] French law, and we are still married under it." The following day, PENAD responded, stating: "Grateful for providing us with the documentation showing that you were married to him on the last day of his retirement and [were] still married to him on the date of his death. We shall request our Legal Department to review these."

26. On 3 October 2019, the Applicant's lawyer emailed PENAD, contending that the Applicant remained married to Mr. A until his death according to French law and contesting the divorce certificate.

27. On 9 October 2019, PENAD contacted the trustees and estate executors requesting the death certificate and letters of administration. One of the executors responded the same day, noting that the death certificate and will were mailed to the Bank and that tracking showed they had been received. He also explained that the letters of administration were under judicial proceedings in Ghana and would be shared when ready.

28. On 28 October 2019, PENAD wrote to the executor explaining the terms of the SRP death benefits and requesting confirmation of Mr. A's marital status at the time of his death. The executor replied on 30 October 2019, writing that in Mr. A's will he "wills all of his properties and entitlements to his five children. The Will does not mention a spouse as none existed at that time. I also know that a copy of [Mr. A's] divorce papers have been filed with your office."

29. On 4 November 2019, PENAD informed the Applicant that it would be forwarding her claim to the PBAC for further review and deliberation. The email further stated that the Applicant could submit additional documentation for the PBAC's review and inquired as to whether the Applicant took any action to contest the divorce certificate. The Applicant responded on 8 November 2019, stating,

> I have not taken any legal action in this sense as this court ruling was never communicated to me, nor notified to me in any legal form, i.e. accompanied by the required information informing me of the fact that I was entitled to appeal the ruling, as well as the terms and conditions of an appeal (reasons for the ruling that were not communicated, appeal process, appeal deadline, the jurisdiction to whom the petition of appeal should be submitted, etc.).

30. The PBAC reviewed the Applicant's claim on 5 December 2019, unanimously finding that "there were no sufficient grounds to doubt the authenticity of the Ghana divorce order, which was duly submitted to PENAD in 2014 by the late [Mr. A]." The Bank explains that, in making this finding, the PBAC noted that

> (i) PENAD accepts final and fully executed legal orders that are valid on their face, (ii) PENAD is not positioned to assess the legal adequacy of judicial systems around the world, (iii) it would be problematic to discredit a divorce order that had been accepted by PENAD without question for many years, (iv) multiple jurisdictions could have an interest in the marriage in question, including the home countries and countries of residence of [Mr. A] and Applicant, as well as Burkina Faso, where the marriage took place, (v) [the] Applicant was aware of the divorce order and did not challenge it in the courts, and (vi) the Ghana divorce order is the latest in time order relating to the parties' marital status.

31. Having "unanimously agreed that there were no sufficient grounds to doubt the authenticity of the Certificate of Dissolution of Marriage issued by the High Court of Justice in Accra, Ghana, which was duly submitted to the Pension Administration in 2014 by the late [Mr. A]," the PBAC determined that the Applicant was not married to Mr. A at the time of his death and was therefore ineligible for the surviving spouse pension. The PBAC thus declined the Applicant's request for the surviving spouse pension and notified her of such on 30 January 2020.

The present Application

32. The Applicant filed the present Application with the Tribunal on 30 July 2020. The Applicant challenges the decision of the PBAC to deny her request for surviving spouse benefits in respect of the late Mr. A.

33. The Applicant requests the following relief: the rescission of the decision taken by the PBAC and to be declared eligible for the surviving spouse benefit under the SRP since 30 June 2019.

34. The Applicant claims legal fees and costs in the amount of $18,500.00.

Applications for intervention

35. On 29 January 2021, recognizing that they may have an interest in intervening in the case, the Tribunal wrote to the executors of Mr. A's estate to inform them of the Application. On 31 March 2021, the Tribunal received an application for intervention from a surviving child and heir of Mr. A (First Intervenor), pursuant to Rule 21(1) of the Tribunal's Rules, which provides:

> Any person to whom the Tribunal is open under Article II, paragraph 3, and Article XV of the Statute may apply to intervene in a case at any stage thereof on the ground that he or she has a right which may be affected by the judgment to be given by the Tribunal. Such person shall for that purpose draw up and file an application in the form of Annex II for intervention in accordance with the conditions laid down in this rule.

36. On 8 April 2021, the Tribunal received a second application for intervention from the executor of Mr. A's estate (Second Intervenor).

37. Having met the requirements of Rule 21(1) of the Tribunal's Rules, the First and Second Intervenors (Intervenors) were allowed to intervene.

38. The First Intervenor claims legal fees and costs in the amount of $23,376.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contention No. 1

The PBAC had no right to take any decision regarding the rights of the Applicant on the basis of the divorce certificate

39. It is the position of the Applicant that she and Mr. A were still married at the time of his death, and she provides the certificates of marriage from France and Burkina Faso, which contain no reference to the Ghanaian divorce proceeding, as well as a legal opinion from a Burkinabe lawyer to support this assertion. To the Applicant, the Bank's position is that under Ghanaian law the Applicant and Mr. A were no longer married at the time of his death, but the Applicant contends that "there is actually no objective reason for the Tribunal to make Ghanaian law prevails [*sic*] over French law or Burkina Faso law." Instead, the Applicant contends that "jurisdiction and applicable law regarding a divorce proceeding must be determined in accordance with the place with which the spouses have the closest connection," which is, according to the Applicant, France. Thus, the Applicant maintains that French law should prevail on the matter and that she should be recognized as the surviving spouse.

40. The Applicant further contends that the PBAC had no right to take any decision regarding the rights of the Applicant on the basis of the divorce certificate because it was, according to the Applicant, legally invalid and inadequate. To support this contention, the Applicant claims that the divorce certificate is invalid on its face, as there is not a single document that contains both the signature of the judge and the official stamp of the court. The Applicant also contends that the divorce certificate "cannot be considered as a sufficient proof of an effective divorce proceeding" between the parties as her name is not spelled correctly on the document. To the Applicant, "[t]he absence of a perfect adequacy and coherence between this Ghanaian Certificate and the real civil status of [the Applicant] makes it impossible to be sure that this Certificate is really concerning [the Applicant]." The Applicant further contends that the divorce certificate cannot be considered a final court order as it does not "contain any precision regarding the facts, the legal grounds which justified the decision and the proceeding" or "any precision regarding spousal support or alimony, child support, parental authority, or visiting rights."

41. The Applicant also asserts that the PBAC should not give effect to the divorce certificate as the High Court of Justice in Accra did not have jurisdiction over the matter. To the Applicant, because the parties had the closest connection to France and because French courts had already been seized on the matter of the marital relationship, "only French Courts had jurisdiction for any divorce proceeding between [the Applicant] and [Mr. A]."

42. The Applicant next contends that the divorce certificate is inconsistent with Ghanaian law because it did not consider the situation of the child of the marriage who had not yet reached the age of majority at the time of the proceeding, as required pursuant to the Matrimonial Causes Act 1971 (Act 367). The Applicant further submits that the Ghanaian divorce proceeding did not comply with internationally recognized principles of fair and reasonable procedure as the Applicant was not informed of the proceeding prior to the issuance of the divorce certificate and thus "never had the chance to defend her rights." To the Applicant, such a proceeding should not produce any legal effect under the SRP.

43. The Applicant finally submits on this contention that the PBAC should not give effect to the divorce certificate as it was the result of a fraud. To the Applicant,

> it is clear that [Mr. A] introduced a divorce proceeding in Ghana […] on the sole purpose to succeed to stop spousal support payments, knowing that he could not achieve this aim before the French Courts with adversarial procedure, and that he would be ordered to pay alimony to [the Applicant] for divorce.

The Applicant thus claims that the divorce certificate "is manifestly the result of a fraud" which "must not produce any legal effect under the SRP Rules."

The Bank's Response

The PBAC decision was reasonable and justified

44. It is the Bank's position that the Applicant did not qualify for the surviving spouse benefits under the SRP because she was not married to Mr. A at the time of his death. The Bank submits that both the evidentiary record and the surrounding facts support the PBAC's finding that the

parties were divorced at the time of Mr. A's death. The Bank notes that the PBAC upheld the divorce certificate on the basis that

> (i) it appeared valid, with no question as to its authenticity, (ii) the institution typically refrains from "assessing the legal adequacy of judicial systems," (iii) it was the later in time decision, (iv) [the] Applicant had ample opportunity to contest it in an appropriate forum, but did not do so, and (v) PENAD accepted it without challenge during [Mr. A's] lifetime and it would be unfair to now reject it.

45. The Bank also submits that the divorce certificate was not on its own dispositive and maintains that the entirety of the record supports the finding that the Applicant and Mr. A were no longer married at the time of his death. As relevant facts, the Bank notes that at the time of Mr. A's death the parties "had lived on separate continents for at least fourteen years, many of which were marred by acrimonious court proceedings." The Bank further notes that Mr. A's estate administrator maintained that Mr. A and the Applicant had divorced, and that Mr. A's will made no mention of the Applicant while provision was made for their child. The Bank also found relevant that the

> Applicant, despite receiving a copy of the Ghana divorce order and having been notified of [Mr. A's] submission of it to PENAD in 2014, did not challenge the order in any court nor did she raise her concerns of fraud and invalidity to PENAD prior to 2019.

46. In response to the Applicant's assertions regarding the legal invalidity and inadequacy of the divorce certificate, the Bank contends that it and its administrative organs, including the PBAC and the Tribunal, do not "have the competence or mandate to interpret or apply the domestic law of either France or Ghana, much less make a pronouncement on the validity or priority of either decision." The Bank cites the Tribunal's decision in *Rodriguez-Sawyer*, Decision No. 330 [2005], para. 16, in which the Tribunal observed that

> to require the PBAC to refer to the laws of one or another nation would potentially render its decision-making thoroughly impracticable, given the fact that staff members come from [189] nations, with no doubt widely differing approaches to the respective rights of divorced spouses.

47. Accordingly, the Bank contends that the Applicant's concerns regarding the Ghanaian divorce proceedings should have been adjudicated by the national courts, not the PBAC. The Bank states that, "[w]ithout a subsequent or supervening order from a court of competent jurisdiction invalidating the Ghana divorce order, the PBAC had no grounds to disregard the Ghana divorce order."

48. The Bank further submits that the divorce certificate was valid on its face, despite the Applicant's contention regarding the misspelling of her name. The Bank notes that, while the Applicant's middle name was misspelled on the document, she was also identified by her address and the details of the parties' marriage align with the facts she presented in her Application. The Bank also contends that the divorce certificate is a final order under the terms of the SRP for the purpose of determining Mr. A's marital status, "having entered into law in Ghana and being considered enforceable and legally binding there."

49. The Bank next distinguishes the Applicant's contentions from those raised in *Mr. "P" (No. 2)*, International Monetary Fund Administrative Tribunal (IMFAT) Judgment No. 2001-2, and *Aleem and Aleem*, Decision No. 424 [2009], as in those cases the only question was whether a spousal support order should be enforced and not whether the parties were divorced. To the Bank, the Applicant here "seeks to invalidate the Ghana divorce order by attacking the judicial proceedings, which the Tribunals [in *Mr. "P" (No. 2)* and *Aleem and Aleem*] carefully did not do." The Bank maintains that it would be inappropriate for the PBAC or the Tribunal to consider the adequacy of the judicial proceedings leading to the divorce certificate.

50. The Bank finally submits on this contention that the Applicant received everything to which she was entitled and that death benefits should now be payable to Mr. A's estate consistent with his duly executed designation of beneficiary form. To the Bank,

> [g]ranting [the] Applicant's request for a surviving spouse pension would result in an unreasonable and unjustified windfall to [the] Applicant, as the monthly benefit would be several times more than that accorded as spousal support under the Toulouse decision. It would further violate [Mr. A's] last wishes and deny his children their rightful shares of benefits payable upon their father's death. Legally, [the] Applicant is not entitled to this benefit because the parties were divorced, and

> practically, the parties lived on separate continents for more than a decade prior to [Mr. A's] death from cancer. The equities do not support overriding the Ghana divorce order and all other evidence indicating that the parties were divorced to deliver Applicant many thousands of dollars per month for the remainder of her life by virtue of her ex-spouse's death.

The Applicant's Contention No. 2

The Applicant had a legitimate expectation that no legal value would be given to the divorce certificate

51. The Applicant submits that "[a] substantive legitimate expectation is formed where an authority makes a lawful representation that an individual will receive or continue to receive some kind of substantive benefit." To the Applicant, a legitimate expectation was formed in 2014 when PENAD made the decision to continue the spousal support payments pursuant to the spousal support order, rejecting Mr. A's request to stop the payments after obtaining the divorce certificate. The Applicant states that this decision "made it clear to [the Applicant] that the Ghanaian Certificate of Dissolution of Marriage had absolutely no legal effect and that she was still considered by [PENAD] as [Mr. A's] spouse notwithstanding the Ghanaian Certificate." The Applicant further contends that this legitimate expectation was perpetuated when PENAD referred to her as Mr. A's spouse in its first written summary of the situation following Mr. A's death and when a subsequent email from HR referred to a "surviving spouse record."

52. The Applicant also asserts that it is "legal nonsense" to claim that the divorce certificate could exist concurrently with the spousal support order. To the Applicant, because the spousal support order specifically contemplated "contribution to the expenses of the marriage," it could not produce any legal effect if the parties were divorced.

The Bank's Response

The Applicant's expectation of receiving a surviving spouse pension after divorce is not reasonable

53. The Bank contends that the Applicant's "belief that she would be recognized as [Mr. A's] spouse and eligible for a surviving spouse pension upon his death is unfounded and inconsistent

with the record." To the Bank, "[t]here was no promise, representation or practice in place upon which [the] Applicant could have reasonably relied […] to form an expectation that she would be recognized as [Mr. A's] spouse and paid a surviving spouse pension."

54. The Bank submits that the Applicant's continued receipt of spousal support payments is irrelevant to her eligibility for surviving spouse benefits and maintains that PENAD never communicated otherwise. The Bank asserts that the Applicant misconstrues PENAD's communications from 2014 which "only confirmed that the Ghana divorce order would not legally affect the payments under the Toulouse decision" and "never represented that the Ghana divorce order would not change the parties' marital status and as a result, her eligibility for a surviving spouse pension." The Bank states that, "[i]n fact, any promise to this effect would have conflicted with the Tribunal's well-established jurisprudence on the validity of divorce orders and the terms of the SRP, which control eligibility for surviving spouse pensions, not court orders." The Bank further submits that the Applicant's communications with PENAD and HR following Mr. A's death did not confirm her status as a surviving spouse, as the cited emails were merely intake records of the information that the Applicant herself provided. The Bank notes that, in the same month, PENAD communicated with the Applicant extending condolences on the death of her "ex-spouse."

55. The Bank likewise rejects the Applicant's assertion that "spousal support" cannot be maintained if the spouses are divorced, as, according to the Bank, the term is "widely accepted and used in relation to periodic payments made between either separated or divorced spouses."

The Intervenors' Contentions

56. The Intervenors first contend that the Tribunal's jurisprudence makes clear that PENAD, the PBAC, and the Tribunal do not have the competence to interpret member states' laws or pronounce on the validity of decisions of member states' courts. Accordingly, to the Intervenors, if the Applicant wanted to challenge the validity and procedural due process underlying the divorce certificate, the appropriate time and place for the Applicant to lodge such a challenge would have been close in time to its issuance and through the legal system and procedures provided in Accra,

Ghana. The Intervenors submit that for the Applicant to now seek this Tribunal's intervention as a substitute for her failure to challenge the divorce certificate close in time and through the applicable Ghanaian legal system is unsupported by the applicable jurisprudence of this Tribunal. The Intervenors thus contend that the PBAC's determination should be affirmed.

57. The Intervenors aver that, even if the Tribunal were to assess the legality of the divorce certificate under French law, the Applicant's claims would fail. Citing an opinion sought and obtained from a French lawyer, the Intervenors submit that the divorce certificate would be recognized in France because

a. The Ghanaian decree benefits from the principle of automatic recognition;

b. The authority of *res judicata* is recognized as long as the foreign decision has not been declared irregular; and

c. The action for unenforceability aimed at having it declared unlawful is now time-barred pursuant to the applicable statute of limitations.

58. The Intervenors next contend that, pursuant to the "divisible divorce principle" advanced in *Aleem and Aleem* [2009] and *Mr. "P" (No. 2)*, there is no conflict between the French spousal support order and the Ghanaian divorce certificate because the latter does not address issues of spousal support. The Intervenors submit that, when Mr. A presented the divorce certificate and requested that the spousal support payments to the Applicant cease, PENAD applied the principle of divisible divorce by allowing the divorce certificate to "sever the bonds of matrimony between the parties while still allowing [the] Applicant to receive her spousal support benefits." Thus, the two orders were able to co-exist and be deemed facially valid. The Intervenors contend that the Applicant's assertion that she had a legitimate expectation of receiving surviving spouse benefits is unreasonable in light of the divisible divorce principle and the established precedent of the Tribunal.

59. Finally, the Intervenors submit that,

> [i]f the Tribunal were to overturn the PBAC's determination regarding [Mr. A's] marital status and clear designation of beneficiaries pursuant to his last executed

> Beneficiary Designation Form, the longstanding public policy underlying the SRP would be greatly compromised.

60. The Intervenors maintain that such a decision "would severely prejudice [Mr. A's] surviving children for the sole benefit of [Mr. A's] ex-spouse whom he had not seen in more than ten (10) years prior to his death."

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

WHETHER THE PBAC'S DECISION WAS REASONABLE

Scope of the Tribunal's review

61. With respect to challenges to PBAC decisions, the Tribunal has recognized such decisions "cannot be regarded purely as a matter of executive discretion." *Courtney (No. 2)*, Decision No. 153 [1996], para. 30. Accordingly, the Tribunal will examine

> (i) the existence of the facts, (ii) whether the conditions required by the [SRP] for granting the benefits requested were met or not, (iii) whether the PBAC in taking the decision appealed has correctly interpreted the applicable law, and (iv) whether the requirements of due process have been observed.

Id. See also Mills, Decision No. 383 [2008], para. 31; *Baartz (No. 2)*, Decision No. 265 [2002], para. 22.

62. With regard to the applicable law in PBAC decisions, in *Aleem and Aleem* [2009], para. 57, the Tribunal stated, "The dispute must be resolved under the SRP applying the rules and policies contained therein." The Tribunal discussed its rationale in *Rodriguez-Sawyer* [2005], para. 16, where it explained that

> [t]he Bank's determination to apply only its own internal rule concerning beneficiary designations is thus quite reasonable, not only because of the uncertain state of the law in the U.S. but also because of additional elements of uncertainty in the choice of law […]. Beyond that, of course, to require the PBAC to refer to the laws of one or another nation would potentially render its decision-making thoroughly impracticable, given the fact that staff members come from [189]

nations, with no doubt widely differing approaches to the respective rights of divorced spouses.

63. The Tribunal expanded upon this reasoning in *Mills* [2008], paras. 33–34, stating:

> It is well-established that while the Bank has the power or discretion to interpret its own rules and procedures, the interpretation of disputed court orders is to be addressed by the court of competent jurisdiction. In *Mr. "P" (No. 2) v. IMF*, IMF Administrative Tribunal Judgment No. 2001-2 (November 20, 2001), the International Monetary Fund Administrative Tribunal concluded that "[u]nder its Statute, the Administrative Tribunal has no competence to pass upon the validity of municipal law as interpreted and applied by the legal authorities of either Maryland or Egypt" (para. 146). In *E*, Decision No. 325 [2004], this Tribunal, following *Mr. "P" (No. 2)*, held that "the Bank must avoid interpreting or construing the ambiguous or unclear provisions of a decree of a national court" in accordance with the "principle of abstention" applicable to disputed interpretations (paras. 26, 31).
>
> The Tribunal "has often declared that the laws of a member state within the Bank, whether statutory or judicial, do not govern the Bank or an organ within it such as the PBAC." *Rodriguez-Sawyer*, Decision No. 330 [2005], para. 14 (citing *de Merode*, Decision No. 1 [1981], para. 36; *Mould*, Decision No. 210 [1999], paras. 23-24; *Cissé*, Decision No. 242 [2001], para. 23). The reason for this, as was explained by the Tribunal in *Shekib*, Decision No. 358 [2007], para. 27, is that "[o]therwise, the Bank's operations could be encumbered by entanglements in the domestic laws and judgments of scores of its member nations."

64. In *Lecouna*, Decision No. 484 [2013], para. 40, the Tribunal opined further, stating:

> The issue before the Tribunal is whether the decisions of the Pension Benefits Administrator and PBAC were validly made in accordance with the terms of the SRP, not whether they are correct as a matter of Argentine law. Neither the Pension Administration nor PBAC or for that matter the Tribunal has authority to interpret Argentine law or pronounce on the validity of the decisions of Argentine courts.

65. The Applicant in this case contends that the PBAC was unreasonable in declining her request for surviving spouse benefits and that she and Mr. A were still married at the time of his death. To support her contention, the Applicant asserts that the PBAC had no right to rely on the divorce certificate in determining the surviving spouse benefits because it was, according to her, facially invalid, not a final court order, from a court without jurisdiction over the matter,

inconsistent with Ghanaian law, not in compliance with internationally recognized principles of fair and reasonable procedure, and the result of a fraud.

66. The Tribunal recalls its decision in *Mills* [2008], para. 33, where it stated that "the interpretation of disputed court orders is to be addressed by the court of competent jurisdiction." Further, the issue before the Tribunal when considering PBAC decisions is whether the decisions were made in accordance with the SRP and not whether they are correct as a matter of national law. *See Lecouna* [2013], para. 40. It is well established that the Tribunal does not have the authority to interpret national laws or pronounce on the validity of the decisions of national courts. *Id.*

67. The Tribunal therefore considers whether the PBAC decision at issue here was reasonable, not by assessing the legal validity of the Ghanaian divorce certificate, as such matters are outside the Tribunal's competence, but rather by examining the existence of the facts, whether the established facts satisfy or do not satisfy the requirements of the SRP for the payment of surviving spouse benefits, whether the PBAC correctly interpreted the relevant provisions of the SRP, and whether the requirements of due process have been observed. *See Courtney (No. 2)* [1996], para. 30.

Existence of the facts

68. It is an established fact in this case that the Applicant and Mr. A were married in Burkina Faso in 1996 and registered the marriage with the French consulate there. It is further established that, in 2000, Mr. A completed a Designation of Beneficiary for Lump Sum Benefit form whereby he designed his estate to receive the benefit upon his death, should it become payable. The form was witnessed and signed on 27 December 2000, and Mr. A made no changes to the designation before his death. Mr. A retired from the Bank on 31 January 2001 while married to the Applicant.

69. The record shows that at least as of 2005 the Applicant and Mr. A were living separately in France and Ghana respectively and that the Applicant initiated divorce proceedings before the Toulouse High Court in France the following year. Mr. A counterclaimed for fault-based divorce,

but by 2010 the petitions were either withdrawn or dismissed and the Toulouse High Court ordered Mr. A to pay spousal support and child support to the Applicant. The Applicant submitted the spousal support order to PENAD, and in September 2010 PENAD informed the Applicant and Mr. A that it had accepted the spousal support order under the SRP. PENAD also wrote that the payments would "continue until the obligation has ceased or is modified, or until either [Mr. A's] death or [the Applicant's] death." The Applicant did receive payments from the SRP pursuant to the spousal support order until Mr. A's death in 2019.

70. The record also shows that Mr. A petitioned for divorce before the Toulouse High Court again in 2010 but withdrew his petition on 3 December 2012. In its order accepting the withdrawal, the Toulouse High Court noted "that the proceedings are discontinued and that this court of law is divested."

71. It is next established that, on 27 November 2013, Mr. A obtained the divorce certificate from the Superior Court of Judicature in the High Court of Justice in Accra, which was signed by a judge of the High Court and decreed that the marriage between the Applicant and Mr. A was dissolved. The record shows that the Applicant received a copy of the divorce certificate from a Ghanaian lawyer on 7 January 2014. The Applicant stated in an email to PENAD that she did not take any legal action in response to receiving the divorce certificate.

72. Mr. A submitted the divorce certificate to PENAD in 2014 requesting that the spousal support payments to the Applicant cease. However, on 19 February 2014 PENAD wrote to Mr. A to inform him that the divorce certificate had no legal effect on the French spousal support order and that payments to the Applicant would continue until there was evidence that the obligation to make payments had been modified or terminated. PENAD emailed the Applicant the following day informing her that the payments would continue and forwarding its communication with Mr. A.

73. Mr. A died on 4 June 2019, and in his last will and testament he bequeathed the benefit of his estate to his five children named in the will.

Application of the facts to the requirements of the SRP and whether the PBAC was correct in its interpretation

74. It is in relation to these established facts that the requirements of the SRP, their interpretation, and their application will now be examined.

75. Section 11.2(a)(ii) of the SRP provides,

> Upon the death of a participant not in service, of a participant in service who has reached normal retirement age, or of a retired participant (not retired on a disability pension) leaving a surviving spouse who was the participant's spouse or domestic partner on the last day of participation, or leaving a surviving domestic partner who was the participant's domestic partner on the last day of participation, the eligible surviving spouse or eligible surviving domestic partner shall be paid a pension equal to 50 percent of the pension the retired participant was receiving.

76. Section 11.2(b)(iii) of the SRP provides that, if no surviving spouse pension is payable, a lump sum benefit shall be paid to the beneficiary or beneficiaries as designated by the retiree.

77. In *Mould* [1999], para. 27, the Tribunal considered the plain meaning of the surviving spouse benefits provision of the SRP, finding

> that the plain text of Section 4.1(a)(ii) of the SRP on spouse benefits, as is confirmed by its evolution, compels the conclusion that, in order to qualify for a surviving spouse benefit, a surviving spouse must be married to the decedent participant not only on the last day of contributory service but also at the time of death.

78. Just as with the 1999 version of the SRP, here the Tribunal finds that the plain text of Section 11.2(a)(ii) of the SRP requires that, in order to qualify for the surviving spouse benefit, "a surviving spouse must be married to the decedent participant not only on the last day of contributory service but also at the time of death."

79. Having established the requirements of the SRP for the surviving spouse benefits to be paid, the Tribunal will now determine whether the established facts satisfy those requirements. It is evident from the record that the Applicant was married to Mr. A on the last day of his

contributory service. It is also evident that the Applicant and Mr. A lived separately on different continents for around fifteen years and that, prior to his death, Mr. A had obtained a divorce certificate from Ghana which decreed that his marriage to the Applicant was dissolved.

80. The Applicant, however, contends that the divorce certificate is legally invalid and inadequate and should not produce any legal effect under the SRP. The Tribunal is not convinced, as discussed below.

81. First, the Applicant contends that the divorce certificate is facially invalid as there is not a copy with both the judge's signature and the stamp of the court. The Tribunal notes, though, that the Applicant offers no support for her statement that "an official Court Order should include the signature of the Judge and the official stamp of the Court." The Tribunal further notes that there are two copies of the divorce certificate in the record: the first is a copy of the original, signed by the judge and the registrar of the court; the second is a certified copy, bearing the official stamp of the court designating it as such. The Tribunal also recognizes that, while the Applicant's middle name is spelled incorrectly on the divorce certificate, all other identifying information, including her address, is properly included. The Tribunal therefore finds that these differences are insufficient to cast doubt on the facial validity of the divorce certificate.

82. The Applicant next contends that the divorce certificate does not meet the criteria of a final court order, but she provides no compelling legal authority to support her proffered criteria. The Applicant cites the provisions of the SRP and Staff Rules concerning spousal support and child support payments; however, these provisions say nothing about the Applicant's criteria for an "official legal document" and moreover are irrelevant to the question of survivorship. As the Bank indicates in its pleadings,

> [a]dministering the benefits for tens of thousands of staff and retirees around the world, Human Resources and PENAD likely receive certificates substantiating various life events, including births, deaths, marriages, domestic partnerships, divorces, and separations, issued in many different countries every day.

The Tribunal considers that there is a distinction in the SRP between spousal support orders and the question of survivorship benefits. Under the first scheme, PENAD is accepting the court order

under the SRP in order to enforce its terms upon a staff member. Under the second, PENAD is considering evidence establishing a marital relationship. A marriage certificate would likely be sufficient to establish that a surviving spouse was married to a deceased staff member at the time of their death. Likewise, the Tribunal finds that a divorce certificate is sufficient to establish that the deceased staff member was no longer married at the time of the staff member's death.

83. The Applicant further challenges the validity of the divorce certificate by contending that the High Court of Justice in Accra did not have jurisdiction in the matter, that the divorce certificate is inconsistent with Ghanaian law, and that the divorce proceeding did not comply with internationally recognized principles of fair and reasonable procedure. Here, the Tribunal again recalls that "the interpretation of disputed court orders is to be addressed by the court of competent jurisdiction." *Mills* [2008], para. 33. Further, it is well-established that the Tribunal does not have the authority to interpret national laws or pronounce on the validity of decisions of national courts. *See Lecouna* [2013], para. 40.

84. The Applicant was notified of the divorce certificate in 2014; had she wished to challenge its validity, she had ample opportunity to do so in a proper forum. The Tribunal observes that, although the Applicant contends that the divorce certificate is inconsistent with Ghanaian law, she never made an attempt to challenge it in Ghana, whose courts could properly assess its validity. Nor did the Applicant take any action in France, whose courts she contends were the only ones which had jurisdiction over the matter. The Applicant contends that she had no reason to challenge the divorce certificate, believing it to be invalid and producing no legal effect in France, Burkina Faso, or "probably even in Ghana." The Applicant further suggests that the burden is on the Bank to prove that the divorce certificate had legal effect. Here the Applicant misunderstands the respective burdens; there being a facially valid divorce certificate, she bears the burden to prove to the Bank, and now the Tribunal, that the certificate should not be relied upon to determine Mr. A's marital status at the time of his death. The proper authority in the Bank has concluded that the divorce certificate is valid for the purposes of the SRP, and the Tribunal will not overrule the Bank unless convincing contrary evidence is presented by the Applicant. The Applicant has failed to present such evidence.

85. The Tribunal finds that, having failed to challenge the divorce certificate in the proper forums for over five years after being notified of its existence, the Applicant is prevented from raising with the Tribunal challenges that are cognizable in courts of Bank Group member states with jurisdiction over such matters.

86. The Applicant finally contends that the divorce certificate "is manifestly the result of a fraud" since it was obtained in fraud of her rights, because, to the Applicant,

> it is clear that [Mr. A] introduced a divorce proceeding in Ghana […] on the sole purpose to succeed to stop spousal support payments, knowing that he could not achieve this aim before the French Courts with adversarial procedure, and that he would be ordered to pay alimony to [the Applicant] for divorce.

87. As the Tribunal stated in *Z*, Decision No. 380 [2008], para. 27, "[f]raud is never presumed." The Tribunal therefore finds no basis to consider the divorce certificate the result of a fraud.

88. In light of the above considerations, particularly the existence of a divorce certificate that has not been proven invalid, the Tribunal concludes that the decision of the PBAC to deny the Applicant surviving spouse benefits on the basis that she was no longer married to Mr. A at the time of his death was reasonable and that the relevant provisions of the SRP were correctly interpreted and applied.

Due process

89. The Tribunal will next consider whether due process has been observed. In this regard, the Tribunal notes that the Applicant has not alleged any violations of due process with respect to PENAD's determination or the PBAC process. Rather, the Applicant contends that the divorce proceedings in Ghana did not comply with fair and reasonable procedure, particularly with respect to the adversarial process, as she claims she received no notice of the proceedings. The Applicant cites IMFAT decision *Mr. "P" (No. 2)*, para. 152, which states:

> Proceedings involving notice and hearing are expressly accorded a presumption of validity under Rule 2 of the Administration Committee Rules of Procedure under SRP Section 11.3. The Fund's internal law more generally, as articulated in the

> Commentary on the Tribunal's Statute, specifies that "…certain general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund." […] The jurisprudence of the Administrative Tribunal has applied notice and hearing as essential principles of international administrative law.

90. The Tribunal notes that, as articulated in *Mr. "P" (No. 2)*, the IMF has elaborated the procedures by which a court order for spousal or child support or division of marital property may be given effect at the request of a spouse or former spouse of an SRP participant or retired participant. As articulated in *Mr. "P" (No. 2)*, para. 86, Rule 2 of the IMF's Administration Committee Rules of Procedure under SRP Section 11.3 set forth four substantive criteria for according a court order a presumption of validity:

> Unless a participant or retired participant, spouse or former spouse objects, the Administration Committee may presume that a court order or decree concerning the payment of amounts from the Staff Retirement Plan
>
> (A) is valid by reason that:
>
> (1) a reasonable method of notification has been employed and a reasonable opportunity to be heard has been afforded to the persons affected; and
>
> (2) the judgment has been rendered by a court of competent jurisdiction […] and in accordance with such requirements of the state as are necessary for the valid exercise of power by the court;
>
> (B) is the product of fair proceedings;
>
> (C) is final and binding on the parties; and
>
> (D) does not conflict and is not inconsistent with any other valid court order or decree.

91. While the Tribunal certainly supports the principle enshrined in *Mr. "P" (No. 2)*, it remains the case that the Tribunal does not have the authority to assess the legal adequacy of the judicial system of a member state. Though the Applicant claims she was not notified of the legal proceedings in Ghana as they were underway, she was certainly aware of the divorce certificate as

of January 2014. Five years passed before Mr. A's death, yet the Applicant took no action to challenge the divorce certificate on the grounds of due process violations. As the Applicant failed to challenge the divorce certificate in an appropriate forum after she became aware of its existence, the Tribunal will not now consider her challenge to the adequacy of the divorce certificate.

92. The Tribunal notes that its authority is limited to addressing the question of whether the Bank followed due process in finding adversely against the Applicant in the SRP matter. The Applicant does not contend that the Bank violated due process in this regard. Rather the Applicant's claim is different, *i.e.*, that the divorce proceedings in Ghana lacked due process. A lack of due process in any proceedings is a concern for the Tribunal, but the remedy lies with the appropriate national judicial forum that deals with divorce proceedings. The Bank may consider examining the internal rules of the IMF with a view to seeing whether its own rules have sufficient safeguards to ensure that due process is observed when giving effect to domestic court orders.

WHETHER THE APPLICANT HAD A LEGITIMATE EXPECTATION OF RECEIVING SURVIVING SPOUSE BENEFITS

93. The Applicant also contends that she had a legitimate expectation to receive surviving spouse benefits because she continued to receive spousal support payments pursuant to the spousal support order until Mr. A's death. To the Applicant, PENAD's 2014 decision to continue the spousal support payments made it clear to her that the divorce certificate "had absolutely no legal effect" and that she was still considered by PENAD as Mr. A's spouse. The Bank contends that the Applicant's expectation was unreasonable as the spousal support payments were irrelevant to her eligibility for the surviving spouse benefits.

94. In *Lavelle*, Decision No. 301 [2003], para. 24, the Tribunal articulated the doctrine of legitimate expectation, stating:

> The notion of fairness has given rise to the doctrine of legitimate expectation. (*See* the English court case *R v. IRC*, *ex parte MFK Underwriting Agencies Ltd*, [1990] 1 WLR 1545, at 1569-70.) Fairness is not loosely defined. On the contrary, it is measured by strict standards. While in its origins the doctrine was applied only to procedural shortcomings, it has evolved into an examination of the reasonableness

> of decisions and policies. As stated by Lord Russell at the end of the nineteenth century, a court's solicitude does not extend to regulations "if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men." (*Kruse v. Johnson*, [1898] 2 QB 91, [1895-99] All ER Rep 105.) In a recent formulation, an English court has held:
>
> > Where the court considers that a lawful promise or practice has induced a legitimate expectation of a *benefit which is substantive*, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy. [(Emphasis in original.)] (*R v. North and East Devon Health Authority, ex parte Coughlan* [2000] 3 All ER 850, 871-2, para. 57.)

95. The question of legitimate expectation, then, is ultimately one of fairness. It is the Applicant's position that she was led to believe that PENAD would never give any legal effect to the divorce certificate on the basis of an email to Mr. A that was later forwarded to her. The email conveyed the following:

> As mentioned in our letter of September 30, 2010, once payments pursuant to a court order commence, they will not be stopped or reduced unless the Participant demonstrates to the Bank's satisfaction that the underlying obligation to pay the spousal support has terminated or been reduced.
>
> We find that the divorce proceeding in Ghana has no legal effect on the French spousal support order which we have accepted under the Plan. Thus, we will continue to make payments to [the Applicant] until we receive evidence that is acceptable to the Plan that your obligation to make payments to her has been modified or terminated – such as an order from the French court terminating the spousal support obligation.

96. The Tribunal finds that nothing in the above communication suggests a lawful promise, practice, or representation that PENAD would give "absolutely no legal effect" to the divorce certificate. Rather, PENAD's email informed Mr. A and the Applicant of its narrow decision: that the divorce certificate did not modify the spousal support obligation that PENAD had previously

accepted. The Tribunal finds that it was unreasonable for the Applicant to expect that the spousal support obligation would extend to the right of survivorship on the basis of this communication.

97. The Applicant asserts that it is "legal nonsense" to claim that the divorce certificate could exist concurrently with the spousal support order, as the spousal support order was made as a contribution to "the expenses of the marriage," which, to the Applicant, would necessarily end when the marital relationship ended. This contradiction does not exist under the terms of the SRP, however, as PENAD was clear that only an order modifying or terminating the spousal support order would end the obligation. As the divorce certificate was silent on the issue of spousal support, it cannot be said that it modified or terminated the obligation under the French order. Thus, the Tribunal considers that it was unreasonable for the Applicant to assume that the continuation of the spousal support payments meant that the marital status of herself and Mr. A remained unchanged.

98. Finally, the Applicant contends that her legitimate expectation was perpetuated when PENAD referred to her as Mr. A's spouse in its first written summary of the situation following Mr. A's death and when a subsequent email from HR referred to a "surviving spouse record." The Tribunal considers the Bank's assertion that these communications were simply intake records recording information the Applicant provided and that an additional email to the Applicant around the same time extended condolences on the death of her "ex-spouse." After considering the record, the Tribunal agrees with the Bank's position and finds that the Applicant's belief that she would be recognized as Mr. A's spouse and receive a surviving spouse pension was unfounded and inconsistent with the record.

99. Given the above considerations, the Tribunal holds that the decision of the PBAC is affirmed.

DECISION

(1) The decision of the PBAC is affirmed;

(2) The parties shall bear their own costs; and

(3) All other claims are dismissed.

/S/ Andrew Burgess
Andrew Burgess
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C.,* 7 June 2021

*In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.