



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI

Civil Appeal 135 of 2002

AFRICAN DEVELOPMENT BANK.....APPELLANT

AND

BEATRICE AGNES ACHOLLA.....1ST RESPONDENT

ROSEMARY AMBALO ACHOLLA.....2ND RESPONDENT

(Appeal from a Ruling and Order of the High Court of Kenya at Nairobi (Rimita, J) dated 20th December, 2001

in

H.C.C.C. NO. 3157 OF 1996)

RULING OF THE COURT

This appeal was listed for hearing before a bench of three judges but when *Mr. Ojiambo*, counsel for the appellant, was asked to present his submissions he informed the Court that as he would, in the appeal, be seeking a reversal of the judgment of this Court in TONONOKA STEELS LTD VS. THE EASTERN & SOUTHERN AFRICA TRADE AND DEVELOPMENT BANK (PTA) [2002] 2 EARL 536 he invited us to consider constituting a full bench of five judges. He submitted that the decision in the case offends international norms of immunity. He was of the view that the issues which may be raised in the appeal now before us would be of considerable importance as concerns the privileges and immunities of international organizations, their staff, and Members' representatives to those organizations.

Mr. Ojiambo pointed out that the TONONOKA case was not referred to *Rimita, J.* whose decision is the subject matter of this appeal. If it had been brought to his notice, probably, his decision would be different, *Mr. Ojiambo* stated. He however, conceded that an ordinary bench of three judges could still properly decide on all the issues raised in both the TONONOKA case and in this appeal.

Mr. Namada for the respondents had no objection to *Mr. Ojiambo's* application for an expanded bench.

In INCOME TAX V. T [1974] EA 546, *Spry, Ag. VP*, speaking for the court said:-

“I would also remark that where it is intended to ask this Court to reverse one of its own decisions, the President should be asked to consider convening a bench of five judges although a bench of three has the same powers.”

As far as we are concerned we have not been shown a decision of this court which suggests in any manner that the TONONOKA case had been wrongly decided. The fact that the correctness of the decision may be raised in submissions to be canvassed in this court is not a ground for establishing a full bench of five judges. A bench of three can still decide on the correctness or otherwise of the decision since it has the same powers.

In our view, we do not see any reason whatsoever to expand the composition of the bench. We reject the application.

DATED and DELIVERED at NAIROBI this 28th day of April, 2006.

P.K. TUNOI

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JUDGE OF APPEAL

E.O. O’KUBASU

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JUDGE OF APPEAL

P.N. WAKI

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR