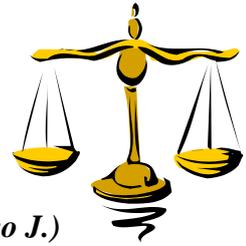




**IN THE EAST AFRICAN COURT OF JUSTICE AT  
ARUSHA FIRST INSTANCE DIVISION**



*(Coram: Jean-Bosco Butasi, PJ, John Mkwawa (Rtd), J, Faustin Ntezilyayo J.)*

**CLAIM NO.1 OF 2012**

**ANGELA AMUDO..... CLAIMANT**

**VERSUS**

**THE SECRETARY GENERAL OF  
THE EAST AFRICAN COMMUNITY..... RESPONDENT**

**26<sup>TH</sup> SEPTEMBER, 2014**

## **JUDGEMENT OF THE COURT**

### **I. INTRODUCTION**

The instant Claim has been instituted by Angella Amudo (hereinafter referred to as the “**Claimant**”). The Claim is against the employer, the East African Community (hereinafter referred to as the “**Respondent**”). The Claim is dated the 25<sup>th</sup> September, 2012 and was filed on 27<sup>th</sup> July, 2012. Basically, it is premised under Article 31 of the Treaty for the Establishment of the East African Community (hereinafter referred to as the “**Treaty**”). In essence, the matter now before this Court is an employment dispute.

At all material time, the Claimant was residing at the Olorien Road in the city of Arusha in the United Republic of Tanzania. The Respondent is the Secretary General of the East African Community who is sued on behalf of the East African Community in his capacity as the Employer of the Claimant.

### **II. REPRESENTATION**

The Claimant was represented by Mr. James Nangwala from the firm of Ms. Nangwala, Rezida & Co. Advocates located at Suite No. B5 2<sup>nd</sup> Floor Office Park Building (Buganda Road Office) Plot No.7/9 Buganda, Road P.O. Box 10304 Kampala, Uganda.

Mr. Stephen Agaba, Principal Legal Officer at the East African Community appeared for the Respondent.

### **III. BACKGROUND**

On 13<sup>th</sup> September, 2008, the Claimant who is a professional accountant was appointed by the Council of Ministers of the East African Community during its 16<sup>th</sup> Meeting, as a Project Accountant of the Respondent. It is common ground that she was recruited to replace one Mr. Ponziano Nyeko who was the then Project Accountant with a five- year contract, but had resigned before the end of his contract. The Claimant as it is evident from the record, assumed duty on 1<sup>st</sup> November, 2008. It is the Claimant's case that her appointment fell in the category of professional staff and that the conditions of service of members of staff of the Respondent are defined by Staff Rules and Regulations (2006) made pursuant to the Treaty.

It is apparent that subsequent to her appointment, the Claimant was put on notice that the position of Project Accountant was not in established positions governed by the Staff Rules and Regulations, 2006.

Noting the misrepresentation of the Council decision, the Claimant then raised her concern in writing before the Respondent. Failing to get redress thereafter, she filed this Claim.

### **IV. THE CLAIMANT'S CASE**

In the statement of the Claim, the Claimant alleged that she was recruited as a Professional Staff within the scale of P2 under the EAC Staff Rules and Regulations. She further averred that having been recruited as a Professional Staff, she was entitled to a five-year contract renewable once for a further five years *ex*

*debito justitiae*. She further contented that she was a staff of the Community and not a Project Staff of the Community and that her recruitment followed the resignation of a Project Accountant, one Mr. Ponziano Nyeko who had been on a five-year contract. The Claimant further asserted that when she was in service, she was earning a salary of USD 6,128.00 (US dollars six thousand one hundred twenty eight) per month.

The Claimant maintained that the Respondent acted *ultra vires* his powers and mandate contrary to Regulation 22(1)(c) of the EAC Staff Rules and Regulations (2006), in implementing the decision of the Council of Ministers. He gave the Claimant a contract with a tenure of twenty two months instead of a fixed five-year contract renewable once for another five years.

It was also her case that, contrary to the EAC Staff Rules and Regulations (2006) and in violation of the established existing policies of the Council of Ministers, she was given short periodical renewals of the contract at the discretion of the Respondent or his authorized deputies.

The Claimant further complained of mistreatment including being denied wages as is evident from her complaint and of the prematurely ending of her term of employment.

Finally, the Claimant averred that having been aggrieved by the aforesaid acts, she petitioned the Respondent praying that her complaints be referred to the Council of Ministers for consideration.

In light of the foregoing, the Claimants prayed for the following: “

- A. A declaration that the tenure of appointment given to her initially for a period of twenty (20) months and subsequent periodical extensions of the appointment up to 30<sup>th</sup> April, 2012, were ultra vires the powers of the Secretary General and his deputies and inconsistent with the EAC Staff Rules and Regulations (2006);**
- B. A declaration that she was entitled to a contract of employment for a period of five (5) years from the date of assumption of duty renewable once for another five (5) years;**
- C. Special damages for loss of earnings for the remaining period of seventy eight months (78), totaling to USD 477,984;**
- D. General damages for pain and suffering and mental anguish as a result of the conduct of the Respondent;**
- E. Aggravated and/or punitive damages for the wanton conduct of the Respondent’s executive officers; and**
- F. Costs of the Claim on a full indemnity basis with interest thereon.”**

The Claimant’s claim was supported by her Statement on Oath filed on 11<sup>th</sup> March 2013 and oral and written submissions.

## **V. THE RESPONDENT'S CASE**

In his response, the Respondent refuted the Claim on the following grounds:

***“Firstly, that by way of a Preliminary Objection pleaded that the instant Claim was time-barred;***

***Secondly, that the claimant was a project staff who was on a contract governed under the Regional Integration Support Agreement (RISP);***

***Thirdly, that the Programme that the Claimant was holding did not entitle her to a five-year contract with a possibility of renewal as alleged by her;***

***Fourthly, that the position of a Project Accountant was created by the Council of Ministers and not by the Secretariat as alleged at its 11<sup>th</sup> Meeting held on 28<sup>th</sup> March to 4<sup>th</sup> April 2006 in Arusha, Tanzania;***

***Fifthly, that the Claimant during her tenure period of service earned USD6,128.00 per month instead of USD4,440 which is earned by an EAC employee on the P2 position;***

***Sixthly, that the Claimant did not for the entire duration of her contract with the Respondent make any attempt to claim the review of her terms and duration; and***

***Finally, the Respondent prays that the Claim against the Respondent be dismissed with costs.”***

The Respondent's case was supported by an Affidavit of Dr Julius Tangus Rotich, the then Deputy Secretary General in charge of Political Federation (EAC), an Affidavit of Mr. Joseph Ochwada, Director of Human Resources and Administration (EAC), an Affidavit of Mr. Juvenal Ndimurirwo, Acting Director of Finance and oral and written submissions.

## **VI. SCHEDULING CONFERENCE**

At the Scheduling Conference held on 1<sup>st</sup> February, 2013, it was agreed, that the following were the issues to be determined by the Court:

- 1) Whether the Claimant is time-barred under Article 30(2) of the EAC Treaty;***
- 2) Whether the Claimant was a staff member governed by the EAC Staff Rules and Regulations (2006);***
- 3) Whether the position of Project Accountant that the Claimant held would entitle her to a five year contract with a possibility of renewal;***
- 4) What remedies are available to the Parties?***

In addition, the Parties agreed upon to adduce oral evidence and to submit to Court written submissions.

## **VII. DETERMINATION OF THE ISSUES**

### **ISSUE NO1: Whether the Claimant's claim is time-bared under Article 30(2) of the EAC Treaty**

This issue was the subject of **Application No.15 of 2012** (arising from **Claim No.1 of 2012 – The Secretary General of the East African Community vs. Angela Amudo**) in which the Court found that the claim was not time-barred.

### **ISSUE NO.2: Whether the Claimant was a staff member governed by the EAC Staff Rules and Regulations, (2006)**

On this issue, Counsel for the Claimant submitted that the implementation of the decision of the Council of Ministers held on 13<sup>th</sup> September 2008 and relating to the appointment of a professional staff of the Secretariat to the position of Project Accountant at grade P2 was *ultra vires* the powers of the Respondent and inconsistent with the EAC Staff Rules and Regulations, (2006).

Counsel for the Claimant in his endeavor to demonstrate the powers vested in each organ of the Community referred us to Article 14(3) (a), (c), (d), and (g) of the Treaty.

It is the Claimant's position that the *sub-judice* matter being an employment dispute, any evidence in support or against the Claim must comply with Staff Rules and Regulations, Council directives, decisions, recommendations and opinions taken in

accordance with Article 16 of the Treaty in as much as they are binding on the Respondent.

Counsel for the Claimant further contended that all staff of the Secretariat are appointed on contract and in accordance with the Staff Rules and Regulations and the Terms and Conditions of Service of the Community pursuant to Article 70(2) of the Treaty.

Counsel for the Claimant averred that after a number of processes which included a vacancy that occurred after resignation of one Mr. Ponziano Nyeko, the Claimant was appointed by the Council during its Meeting of 13<sup>th</sup> September, 2008 to the position of Project Accountant under Grade P2. Furthermore, Counsel for the Claimant added that the aforesaid appointment falls under category of Professional Staff as laid down in Regulation 18 of the Staff Rules and Regulations.

Counsel then referred the Court to the Claimant's Letter of Appointment as a Project Accountant under RISP funding, dated 29<sup>th</sup> September 2008 to demonstrate that it did not reflect the Council's decision. In this regard, Learned Counsel pointed out that as per the Council Meeting Report dated 13<sup>th</sup> September 2008, the Claimant was not recruited under RISP.

In support of his written submissions, Counsel for the Claimant referred the Court to some authorities to wit: **Cheshire and Fifoot's Law of Contract, 9<sup>th</sup> Edition by M.P. Furmston published by London Butterworth 1976 No.7** where the learned author laid down that:

**“..... If the contract is lawful in its formation, but one Party alone intends to exploit it for an illegal purpose, the law not unnaturally takes the view that the innocent Party need not be adversely affected by the guilty intention of the other.”**

As consequences of such a kind of contract, the same author further pointed out that:

**“The situation envisaged here is that contract is lawful ex-facie and is not disfigured by a common intention to break the law, but that one of the Parties, without the knowledge of the other, in fact exploits it for some unlawful purpose. In these circumstances, the guilt Party suffers the full impact of the maxim ex-turpi causa non oritur action and all remedies are denied to him.....**

**On the other hand, the rights for the innocent Party are unaffected.”**

According to Counsel for the Claimant, the above principle applies to the Claimant’s contract to the extent that the Staff Rules and Regulations provide for a written contract in recruitment or appointment of any employee. However, the existence of a contract like the one at hand was lawful ex-facie whereas the Respondent misrepresented its formation and implementation for unlawful purpose to limit the tenure of the Claimant for reasons only known by the Respondent.

Relying on the authority in Scott- vs. Brown Dowering, NC Nab & Co. [1892] 2Q.B 728 where it is stated that:

***“No Court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is dully brought to the notice of the Court, and if the person invoking the aid of the Court is himself implicated in the illegality,”***

Counsel for the Claimant consequently submitted that the latter was appointed as a Professional Staff for the Secretariat in accordance with the Staff Rules and Regulations. In conclusion, Counsel for the Claimant invited the Court to answer Issue No.2 in the affirmative.

In response to the foregoing, Counsel for the Respondent vehemently opposed the claim and contended that the Claimant was not a staff member governed by the EAC Staff Rules and Regulations (2006), and that instead, the Claimant’s contract was concluded under RISP. However, Counsel for the Respondent agreed with Counsel for the Claimant on the fact that the nature of the *sub-judice* matter is an employment dispute that would be resolved by the interpretation of the Staff Rules and Regulations, Council directives, decisions or its recommendation and opinions. He further invited the Court to apply those principles in addressing the dispute. Counsel for the Respondent thereafter asserted that according to Regulation 20(2) of the Staff Rules and Regulations, 2006:

***“No recruitment shall be undertaken unless the approved vacancy exists in the establishment of the Community...”***

Learned Counsel added that, while implementing the above Regulation, the Council approved proposed positions in EAC for all the organs (Secretariat, EACJ, EALA) at its 12<sup>th</sup> Meeting held on 25<sup>th</sup> August, 2006, but the Project Accountant’s position was not among those established positions. He further referred the Court to Council decision **EAC/C M 12/Decision 76** for more details and to the testimony of the one Mr. Ochwada, Director of Human Resources and Administration of the EAC Secretariat at the hearing of 6<sup>th</sup> February, 2014 where the latter stated that the approved established structure by the 12<sup>th</sup> Council Meeting is still in force whereas the Claimant told the Court during her cross examination that the said structure may have been revised or updated.

It was the argument of the Counsel for the Respondent that the Claimant was put on strict proof to substantiate how the Project Accountant’s position falls under the EAC Staff rules and Regulations, (2006) and that twice, during the hearing of 11<sup>th</sup> November, 2013 and her cross-examination, she affirmed that the position of Project Accountant was outside the approved position.

Counsel for the Respondent went on to say that the position of Project Accountant was not a creation of the Secretariat as alleged by the Claimant; rather, the position came out from Council’s decision **EAC/CM 11/Decision 125** when the Council,

at its 11<sup>th</sup> Meeting, approved the recruitment of a Project Accountant for the lifespan of RISP. It was, therefore, the Respondent's case that when the Council passed the above decision, it expressly specified that the Project Accountant was appointed for the duration of RISP. Counsel for the Respondent averred that job advertisement **(REF: EAC/HR/07-08/028 - Project Accountant)** clearly stated that the Project Accountant's position fell in the project category in the strict line of the above Council's decision.

Counsel for the Respondent argued that, when the Council appointed the Claimant to the position of Project Accountant at its 16<sup>th</sup> Meeting held on 13<sup>th</sup> September, 2008, it knew that the position was not among the established positions approved in 2006. He therefore submitted that it is unfair to allege that the Respondent acted *ultra vires* his powers and contrary to the Staff Rules and Regulations while implementing the Council's decision. It is Counsel's further submission that in his capacity of Principal Executive Officer of the Community and in accordance with Article 71(l) of the Treaty, the Respondent exercised powers conferred on him in recruiting the Claimant to the Project Accountant's position funded by RISP and governed by a Cooperation Agreement. The Court was afterwards referred to several similar decisions taken by the Council, but we do not deem it necessary to reproduce them.

Counsel for the Respondent also argued that the Claimant was even given a chance to consider the terms and conditions of her

offer of appointment and the latter gave her consent in writing on 29<sup>th</sup> September, 2008, by signing the employment contract.

According to Learned Counsel, in so doing, the Claimant found the terms and conditions of service fair enough and that would explain why she did not terminate her contract or sought legal interpretation of relevant provisions of the EAC Rules and Regulations from the Counsel to the Community (C.T.C). In addition, Counsel for the Respondent relied on the case of **“Hall vs. Woolston Hall Leisure Ltd” [case No: EATRF/1998/0297]**, to stress that the instant employment contract was legal, in as far as the Appointing Authority acted within its powers to approve recruitment of the Claimant pursuant to Article 14 of the Treaty.

Counsel for the Respondent further referred the Court to practice of other international organizations in particular the **African Union Staff Rules and Regulations, and the United Nations Administrative Instruction ST/A1/2010/4/Dev.1** and to authorities to wit: **Hall vs. Woolston Hall Leisure Ltd** (Supra), **L. Estrange vs. F. Graucob Ltd [1934] 2 kb 394, Peepay Intermak Ltd vs. Australia and New Zealand Banking Group Ltd [Care No: A3/2005] Kengrow Industries Ltd vs. Chdaran [Civil Appeal No.7 of 2001], Namyols Josephine vs. National Curriculum Development Centre [2008] HCT-00-CV-0122-2008 and Pan African Insurance Company (U) Ltd vs. International Air Transport Assoc. 00-cc-cs-0667 of 2003.**

In this regard, Counsel for the Respondent invited the Court to apply the above Rules and Regulations as well as the aforementioned authorities.

With due respect to Counsel, we find that the said Rules and Regulations are not best practices applicable to any international organizations. As for the authorities, we did not find them relevant to this Claim.

Finally, Counsel for the Respondent invited the Court to answer **Issue No.2** in the negative.

### **VIII. DECISION ON THE ISSUE NO.2**

We have seen elsewhere above that both Parties are in full agreement that the Staff Rules and Regulations (2006), Council directives, decisions, recommendations and opinions will apply *mutatis mutandis* to this instant Claim. In this regard and for a gradual analysis of a set of facts within the *sub-judice* Claim, it is important to examine this case from the first step related to the job advertisement to the last phase of signing the employment contract by the Claimant.

Firstly, it cannot be gainsaid by any Party to this Claim that either the Statement of Claim filed before this Court on 27<sup>th</sup> September, 2012 or the Respondent's Statement of defense to the Claim lodged in the Court on 18<sup>th</sup> October, 2012 contain an identical job advertisement to wit: **[REF: EAC/HR/07-08, 028] – PROJECT ACCOUNTANT (1 POST)**. Nothing in this job advertisement would have suggested that the Project Accountant's position was governed by the RISP agreement.

Besides, it is worth noting that Learned Counsel for the Respondent, in his written submissions, referred the Court to **EAC/CM11/Decision 125**, by which the Council approved the recruitment of a Project Accountant and a Budget Assistant during the lifespan of the project.

We hasten to say that the latter reference is not helpful enough, in as much as it does not tell us whether that position was governed by RISP agreement and in the absence of such a precision, the Court cannot make any deduction from facts. The group of words **“lifespan of the project”** at this preliminary stage is neither meaningful nor helpful unless we pursue the analysis of the whole process of the recruitment.

Secondly, on 8<sup>th</sup> and 9<sup>th</sup> September, 2008, the Finance and Administration Committee met and analyzed among other items the appointment of Professional Staff for the Secretariat. It is compelling to recall that the Deputy Secretary in charge of Finance and Administration personally attended the meeting where the Committee **“noted that the process of recruiting suitable persons to fill in the positions of Project Accountant and Senior Engineer/Planner – Communications for Secretariat following the resignation of Mr. Pontiano Nyeko and Eng. Enock Vonazi had been completed.”** Then, the Finance and Administration Committee recommended to the Coordination Committee to consider and submit to the Council the appointment of Ms. Angella Amudo and Mr. Robert Achieng to the respective Professional Staff positions of Project Accountant and Senior Engineer/Planner.

The above recommendation of the Finance and Administration Committee, which comprised the Deputy Secretary General in charge of Finance and Administration, is not disputed by the Respondent.

Thirdly, the Council held its 16<sup>th</sup> Meeting in Arusha on 13<sup>th</sup> September, 2008 on the basis of the Coordination Committee's Report, considered among other issues the recruitment of Professional Staff. It is further worthy noting that during that meeting, the Council, as recommended by the Coordination Committee and by its decision **EAC/CM 16/Decision 41**, appointed Ms. Angella Amudo to the position of a Project Account as a professional staff.

We also noted that on the same date, the Council appointed Mr. Leonard M. Onyonyi, Benoit Bihamiriza and Didacus, B. Kaguta to the respective positions of Peace and Security Expert, Conflict and Early Warning Expert and Peace and Security Officer under AU Funding. At this stage, one may pause and ask why there has been a clear distinctiveness of those appointments made the same day.

Fourthly, when on 29<sup>th</sup> September, 2008 the Respondent came to implement the above Council's decision; he informed Ms. Angello Amudo that she had been appointed as Project Accountant, not in the category of Professional Staff but as a Project Accountant attached to the EAC Secretariat funded under RISP Project. It is indicated in the said letter that the appointee was not to be considered as a regular staff member under EAC Staff Rules and

Regulations (2006), except where it was specified so in that contract.

For ease of reference, we reproduce hereinafter the first paragraph of the aforesaid letter:

***“Following the approval of the 16<sup>th</sup> Ordinary Council of Ministers Meeting held on 13<sup>th</sup> September, 2008, I have the pleasure to inform you that you have been appointed as Project Accountant, under RISP funding with effect from 1<sup>st</sup> October, 2008 .....*”**

At this juncture, we ask ourselves whether the Council’s decision was properly implemented by the Respondent.

It is evident for both Parties to the Claim that the Council of Ministers is the Appointing Authority of Professional Staff as required by Article 70(2) of the Treaty which states that:

***“All staff of the Secretariat shall be appointed on contract and in accordance with the staff rules and regulations and terms and conditions of service of the Community.”***

In addition, Article 14(3)(g) of the Treaty provides that:

***“.....the Council shall make staff rules and regulations and financial rules and regulations for the Community.”***

We have seen elsewhere in this judgment that the Council appointed Ms. Angello Amudo to the position of Project Accountant as a Professional Staff, whereas the Respondent’s

notification letter indicated that the Claimant was recruited as a Project Accountant under RISP. One may thus ask whether the Respondent is vested with powers to amend or review a Council's decision. Articles 9 and 16 of the Treaty do not provide for such a competence.

Indeed, Article 9 of the Treaty provides for organs of the Community and the Secretariat is one of them. Article 9(4) states as follows:

***“The organs and institutions of the Community shall perform the functions, and act within the limits of the powers conferred upon them by or under this Treaty.”***

As for Article 16 of the Treaty, it provides that:

***“....the regulations, directives and decisions of the Council taken or given pursuance of the provisions of this Treaty shall be binding on the Partner States, on all organs and institutions of the Community other than the Summit, the Court and Assembly....”***

Consequently and from the reading of the said Article, it is our understanding that the Staff Rules and Regulations (2006) as well as Council's decisions are binding on the Respondent and we do not find why and with which authority the Council's decision was distorted by the Respondent.

Furthermore, the basic rights, duties and obligations of the staff members of the Community are enshrined in Staff Rules and Regulation (2006). As regards the appointment of EAC Staff,

Regulation 23(8) points out that ***“The Council shall appoint the Registrar, the Clerk, Counsel to the Community and other Professional Staff in accordance with the relevant provisions of the Treaty.”***

Regulation 22(1), (c) goes beyond the appointment and specifies that all Professional staff shall be appointed on a five-year contract, which may subject to satisfactory performance, be renewed once by the Council.

Handmaidens to the Treaty, the Staff Rules and Regulations afford a high degree of attraction and protection of the EAC Staff. It is the spirit of Regulation 1 of EAC Staff Rules and Regulations. From the analysis of the facts, relevant provisions of the Treaty and EAC Staff Rules and Regulations, there is no flicker of doubt that the Claimant was appointed by the Council to the position of Professional Staff under EAC Staff Rules and Regulations.

Nevertheless, we are still eager to find out what caused an about-turn of the Respondent. Therefore, at 6<sup>th</sup> February 2014 during the cross-examination of the witness of the Respondent, one Mr. Ochwada, Director of Human Resources and Administration to the Community, a specific question was put on him by Counsel for the Claimant as follows:

***“Mr. Nangalwa: Let me ask it this way: was this recommendation for Angella Amudo outside the Staff Rules and Regulation?”***

***Mr: Ochwada: My Lords, I want to make it clear that appointments of this nature of***

***Professional staff obviously have to be approved by the Council.***

***Mr. Nangwala: Now, answer my questions.***

***Mr. Ochwada: It was within the Staff Rules and Regulations as far as the recruitment was concerned.”***

As to whether Ms. Angella Amudo was recruited to the position of Professional Staff and whether the position is an established position under Staff Rules and regulations, the answer of Mr. Ochwada was unambiguous: ***“The Council appointed the above named person to the respective professional staff position. It is clear; the professional staff is an established position.”***

Moreover, as whether in the appointment of Mr. Leonard Onyonyi, Mr. Benoît Bihamiriza and Mr. Didacus P. Kaguta, it was specified that they were appointed under AU funding, whereas in the appointment of Ms. Angella Amudo and Mr. Robert Ochieng, such mention was missing, Mr. Ochwada reacted as follows:

***“My Lords, I was not concealing but the drafting, whoever drafted the Minutes and it came out but, nothing was concealed. Some details may have just been erroneous left out. I just said that there were details which were left out erroneously but it was not an error.”***

In the event that, the appointment was an error as Mr. Ochwada underscored it to be, it should have been taken to the Council for review as it has been the case for the appointment of **Senior Administrative Officer (P2) (see EAC/CM/Decision 36)**.

Finally, it is our finding that the letter of appointment of Ms. Angella Amudo as Project Accountant under RISP was not in conformity with the Council's decision.

In view of all the foregoing, we answer **Issue No.2** in the affirmative.

**ISSUE NO.3: Whether the position of the Project Accountant that the Claimant held would entitle her to a five year contract with a possibility of renewal**

The main thrust of the Claimant's submission is that she was recruited as a Project Account under EAC Staff Rules and Regulations.

In support of his stance, Counsel for the Claimant referred the Court to the Scheduling Conference Notes, especially on point of agreement No.4 where it was agreed upon that:

***“The Applicant's appointment with the Respondent fell in the category of Professional Staff.”***

On the basis of the foregoing, Counsel further referred us to Regulation 22(1) (c) which states that:

***“All Professional Staff shall be appointed on a five year contract, which may, subject to satisfactory performance, be renewed once by the Council.”***

He consequently urged the Court to answer issue No.3 in the affirmative.

Council for the Respondent, on his part, contended that the Claimant’s case was flimsy and the evidence provided was inadequate to enable the Court to rule against the Respondent. It was his submission that the Claimant was employed as a Project Accountant; a position which was not listed as an established position as per EAC Staff Rules and Regulations, 2006.

Learned Counsel averred that project positions are funded by various EAC Development Partners governed by different Cooperation Agreements concluded between EAC and such other Partners.

He further argued that for officers working under projects, their terms and conditions of work as well as the duration of their contracts are governed by Cooperation Agreements between EAC and Development Partners, and that this is clearly indicated on paragraph 1 of the notification letter of the Claimant’s appointment as reproduced elsewhere in this judgment.

According to Mr. Agaba, Counsel for the Respondent, there was no misrepresentation or fraudulent intent from the Respondent and, therefore, Counsel submitted that it would be illogical to conclude that the Claimant was entitled to a five-year contract as

alleged, and that instead, she was recruited for the duration contained in her contract. Counsel maintained that the Claimant is bound by her signature appended on the contract since at any material time; she was not coerced or put under any form of duress at the time of signing the contract.

To fortify his argument, Counsel referred the Court to the doctrine of Estoppel as set out by Court of Appeal case decided in 1988: Litwin Construction (1973) Ltd, 29 BCLR (2(d)) where the crucial question in an employment contract would be:

***“Has the Party against whom the estoppel is Claimant affirmed the contract unequivocally by his words or conduct in circumstances making it unfair or unjust for him now to resile from that contract?”***

Counsel for the Respondent argued that the Claimant had read and agreed with the terms and conditions of her contract and besides enjoyed it. It is the thrust of Counsel’s argument that she cannot now, after the end of her tenure, come and challenge the employment contract.

### **IX. DECISION ON THE ISSUE NO.3**

From the outset, we wish to point out that it is not in dispute that Regulation 22(1)(c) provides for a renewal of contract for all professional staff by the Council.

It was also an agreed fact, during the Scheduling Conference, that the Applicant’s appointment fell in the category of Professional Staff and that she was recruited to replace Mr.

Nyeko who was the then Project Accountant with a five year contract governed by the EAC Rules and Regulations.

We heard Counsel for the Respondent stressing that the Claimant was recruited as a Project Accountant under RISP as indicated in the advertised job position. But from the reading of the said advertisement, no such an indication can be found. Moreover, as we earlier on found after a deep analysis of the matter, the Claimant was recruited as a Project Accountant under a Professional Staff position governed by EAC Staff Rules and Regulations.

In the light of the foregoing and basing on Article 16 of the Treaty, there is no way that the Council's decision would be disregarded in favour of an advertisement notice of a job position or a notification letter which does not conform with the said decision since this would be tantamount to negating powers of the Council.

Having so found and held, we are also of the firm view that the refusal by the Respondent to respond to any of the Claimant's protestation about her employment status is administratively unjustifiable and that the continuing renewal of her short term contract was inconsistent with the Council's decision.

Given all our findings on this issue, we are now of the settled view that Issue No.3 is answered in the affirmative.

**ISSUE NO.4: What remedies are available to the Parties?**

It was the Claimant's submission that she is entitled to the remedies sought and any other entitlements that she would have under Staff Rules and Regulations.

Learned Counsel for the Claimant then urged the Court to make the following declarations that:

- A. The tenure of appointment given to Claimant initially for a period of 20 months and the subsequent periodic extensions of the appointment upto to 30<sup>th</sup> April 2012 were ultra vires the powers of the Secretary General and his Deputies and inconsistent with the Staff Rules and Regulations of the Respondent;***
- B. The Respondent was entitled to an employment contract of 5 years from the date of assumption of duty renewable once for another five years;***
- C. The Claimant is entitled to special damages for loss of earning in the sum of USD477,984;***
- D. The Claimant is entitled to general damages as per paragraph 23 (ii) hereof;***
- E. The Claimant is entitle to aggrieved damages for the wanton conduct of the Respondent's Executive Officers; and***
- F. The Claimant is entitled to costs of the Claim on a full indemnity basis with interest thereon.***

The above prayers are contained in the Statement of Claim; but other prayers were added in the Claimant's written submissions without leave for amendment as required by Rule 40 of the Court's Rules of Procedure. Therefore, we are bound by the Rules in resolving the instant Claim and we will only consider prayers contained in the Statement of the Claim.

As to whether the Claimant is entitled to remedies sought, Counsel for the Respondent submitted that the Claimant was legally employed with a binding initial appointment of 3 years, with subsequent short term contracts and was provided notice of non-renewal of contract.

Counsel for the Respondent contended that the contract duration was specified to last at least 2 years and the Claimant was given termination notice.

Counsel for the Respondent asserted that the Claimant had never complained about the duration of her contract before the expiry of the initial contract which ran from October, 2008 to June, 2010. He finally submitted that there was no wrongful termination and that, subsequently, the Claimant is not entitled to any remedy.

#### **X. DECISION ON THE ISSUE NO.4**

We have given due consideration to the rival pleadings and submissions from both Parties and at this juncture, we have this to say:

Having answered the **Issues Nos. 2 and 3 in the affirmative, prayers (A) and (B) are allowed.**

Prayer (C) is in respect of special damages and at this point, there is need to define what special damages are before we resolve it.

**Black's Law Dictionary** defines special damages as:

***“Damages that are alleged to have been sustained in the circumstances of a particular wrong. To be awardable, special damages must be specifically claimed and proved.”***

It follows the above definition that special damages are based on measurable amounts of actual loss. Before determining prayer (C), we would like to say that it is composed of two limbs. The first limb is related to the loss incurred during the remaining 18 months of her five year contract. The second limb implied the loss for the expected renewal of the Claimant's contract.

In respect of the first limb, the Claimant was appointed by Council of Ministers for a period of five years in accordance with Regulation 22(1) (c); that is to say that she was to serve 60 months and was entitled to all benefits provided for under Staff Rules and Regulations, 2006. However, by virtue of misrepresentation of her employment contract, she was offered to serve as a Project Accountant under RISP funding on 29<sup>th</sup> September, 2008 and assumed duty on 1<sup>st</sup> November, 2008. Now, being compensatory, special damages must be calculated by balancing what she had been earning in her position of Project Accountant and what she would have been paid as a Professional Staff P2 during the entire period that she served the Community.

In doing so, a real loss incurred by the Claimant will be reached and redressed.

If the Claimant was to serve a five year contract as a Project Accountant governed by EAC Staff Rules and Regulations, she would have been paid **USD 4,440.00 (United States of America dollars: Four thousand, four hundred and forty only)** per month and **USD 266,400.00 (United States Dollars: Two hundred and sixty six thousand, four hundred only)** for the duration of her contract (60 months).

This basic salary of **USD 4,440.00 (United States of America dollars: Four thousand, four hundred and forty only)** was given in all pleadings by Counsel for the Respondent and it has never been disputed by Counsel for the Claimant who instead constantly focused on the position of a Project Accountant; Professional Staff member under EAC Staff Rules and Regulations.

As a Project Accountant under RISP funding, the Claimant was paid a consolidated package of **USD 6,128.00 (United States of America dollars: Six thousand, one hundred and twenty eight only)** per month. For the service rendered to the Community, the Claimant has been paid an amount of **USD 257,376.00 (United States of America dollars: Two hundred and fifty seven thousand, three hundred and seventy six only)**. From the following computation, it is obvious that the loss incurred by the Claimant as per misrepresentation of the Council decision by the Respondent is the balance between amounts **USD 266,400.00 – USD 257,376.00**. As a result, special damages sought in this

Claim are allowed up to **USD 9,024.00** (United States of America dollars: **Nine thousand and twenty four only**).

As to the second limb, the Claimant was to serve a five year contract; her contract would have run from 1<sup>st</sup> November, 2008 to 1<sup>st</sup> November 2013. The renewal of her contract was subject to satisfactory performance [see Regulation 22(1), (c)]. That is to say that it was not such an automatic renewal; rather, it was subject to a performance appraisal. Hence, to address the matter of contract renewal would be purely speculative and we decline to go that route.

We also know and it is undisputed that the Claimant has been serving on short employment contract terms from 1<sup>st</sup> July, 2010 to 30<sup>th</sup> April, 2012, the latter being the expiry date of her contract.

The Argument as to whether she had never raised a Claim until the expiry of her contract is untenable. Indeed, in **White & Carter (Council) Limited vs. MC Gregor (1962) A. C. 413**, the principle of the right of affirmation was laid down as:

***“.....the right of an innocent Party faced with a repudiation or breach of contract, to elect to continue his own performance of earning his contract price or of obtaining a decree of specific performance against the wrongdoer.”***

We found it attractive and relevant to apply to the instant case.

Furthermore, the finding of the High Court of UGANDA in **Tumusiime Fidelis vs. Attorney General (Civil Suit No.88 of 2003)** is amply instructive in as far as the Court held that:

***“.....the law in case of unlawful termination of contract of employment, with no provision for termination prior to expiry of the fixed period is that the employee is entitled to recover as damages the equivalent of remuneration for the balance of the contract period. This is in contrast unlawful termination of a contract that has a stipulation of termination by either party. In such a case the wronged employee is entitled to recover damages the equivalent of remuneration for the period stipulated in the termination notice.”***

In addressing prayer (C), we therefore find it relevant to borrow the above findings and apply them to the instant case.

Pursuant to the Council’s decision, Ms. Angella Amudo’s employment contract would have covered a five year period; from 1<sup>st</sup> November, 2008 up to 1<sup>st</sup> November, 2013. Contrary to the aforesaid decision, her contract was unlawfully terminated on 30<sup>th</sup> April, 2012 as indicated elsewhere above.

Therefore, prayer (C) is allowed to compensate the loss incurred during the period comprised between 1<sup>st</sup> May, 2012 and 1<sup>st</sup> November, 2013 to top up a 5 year employment contract she was given by the Appointing Authority, to wit **USD9,024,00.**

With regard to prayer (D) to which general damages for pain and mental anguish are sought, we equally need to define it as we did

for special damages. To that regard, Black's Law Dictionary defines General damages as:

***“Damages that the Law presumes follow from the type of wrong complained of specific compensatory damages for harm that so frequently results from the tort for which a Party has sued that the harm is reasonably expected and need not be alleged or proved.”***

In other words, general damages are for intangible losses that can be influenced from special one as well as from facts surrounding the case and to that extent, they are not easily measurable.

In addition, the High Court of Uganda held in an employment dispute between an employee and a defendant company that:

***“On the issue of damages, the Court accepted submission by counsel of the defendant on the general accepted rule that:***

***‘an employee is not entitled to damages for breach of contract of service by the employer as the employer retains the right to terminate his services at any time even for no cause. And in such a situation, an employee is only entitled to recover arrears of completed service and accumulated leave if any.’***

***On this basis the Court ruled that Plaintiff is not entitled to the general damages claimed.”*** [See: Georges

**Wanyera vs. Kabira Sugar ltd, 1985 (in the High Court of Uganda at Jinja), HCT-C.S.-0058-1997].**

Save for the words “**at any time even for no cause**”, we find the above authority attractive enough and compelling to apply it *mutatis mutandis* to this prayer.

With due respect to Counsel for the Claimant, we do not see any basis on which this prayer is premised and Learned Counsel did not adduce any evidence thereof. Furthermore, as long as Counsel for the Claimant did not underscore on which grounds general damages would be evaluated, these damages appear as putative damages in as far as they are claimed but unapproved. Consequently, prayer (D) is disallowed.

Regarding prayer (E), it is obvious that the Claimant has been working for the Community until 30<sup>th</sup> April, 2012. Again, Counsel for the Claimant did not substantiate the basis of this prayer; he only asserted that aggravated damages are within the discretion of the Court as they are “**merely instructive and not obligatory.**”

On our part, we are of the opinion that the conduct of the Respondent’s Executive Officers has been minimized by different short employment contracts accorded to the Claimant.

Prayer (E) is therefore, disallowed.

On prayer (F), costs shall follow the event in any proceedings as provided under Rule 111(1). Taking into account the merits of

the Claim and the determination of issues Nos. 2 and 3, prayer (F) is partially allowed.

### **FINAL ORDERS**

Consequent upon the foregoing, we order as follows:

1) Prayer (A) is granted in the following terms:

**The appointment of the Claimant for an initial period of twenty (20) months and subsequent periodical extensions of the appointment up to 30<sup>th</sup> April 2012, were *ultra vires* the powers of the Secretary General and his deputies and inconsistent with the EAC Staff Rules and Regulations (2006);**

2) Prayer (B) is allowed in the following terms:

**The Claimant was entitled to a contract of employment for a period of five (5) years in accordance with EAC Staff Rules and Regulations;**

3) Prayer (C), is partially allowed in the following terms:

**The Claimant is entitled to special damages for loss of earning in the sum of USD9, 024.00;**

4) **Prayer (D) and prayer (E) are dismissed;** and

**5) On costs, the Claimant has partially succeeded and shall be awarded half of the taxed costs to be borne by the Respondent.**

It is so ordered.

**Dated, Delivered and Signed at Arusha this 26th Day of  
September 2014.**

.....

**JEAN BOSCO BUTASI  
PRINCIPAL JUDGE**

.....

**JOHN MKWAWA  
\*JUDGE (RTD)**

.....

**FAUSTIN NTEZILYAYO  
JUDGE**

*\***NB**: Hon. Justice John Mkwawa participated in the hearing and deliberations leading to the above Judgment. He retired from the Court on 26<sup>th</sup> June 2014.*