



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



*(Coram: Yohane B. Masara, PJ; Charles O. Nyawello, DPJ; Richard Muhumuza,  
Richard Wabwire Wejuli, Gacuko Leonard, JJ)*

**CONSOLIDATED CLAIMS NOS. 1, 2 & 4 OF 2019**

PAUL IRUNGU JOHN NGUGI ..... 1<sup>ST</sup> CLAIMANT  
JOHN CHARLES KARASILA..... 2<sup>ND</sup> CLAIMANT  
POLYCARP ONYACH AKUKU ..... 3<sup>RD</sup> CLAIMANT

**VERSUS**

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

**29<sup>TH</sup> NOVEMBER 2022**

## JUDGMENT OF THE COURT

### A. INTRODUCTION

1. The Claimants, **Paul Irungu John Ngugi, John Charles Karasila and Polycarp Onyach Akuku** (hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants respectively) brought their respective Claims on the 23<sup>rd</sup> January 2019 under Article 31 of the Treaty for the Establishment of the East African Community (“the Treaty”), against the Secretary General of the East African Community (“the Respondent”) in his representative capacity as the Principal Executive Officer of the East African Community (EAC). They sought judgment against the Respondent and for orders that the Respondent pays them US \$37, 644.30, US \$79,717.50 and US \$44,287.50, respectively, in unpaid salaries and gratuity. They also claimed for general damages and costs of the Claims.
2. At the Scheduling Conference held on 31<sup>st</sup> May 2022, it was agreed that Claims Nos. 1, 2 and 4 of 2019 be consolidated, heard and determined together. This Consolidated Claim is a result of that resolve.
3. At the time of filing their respective Claims, the Claimants were residing in the United Republic of Tanzania. Their address of Service is *c/o Ideal Chambers Advocates, Col. Middleton Road, Blue Rock House – 2<sup>nd</sup> Floor, P.O. Box 14397, Arusha.*
4. The Respondent is the Secretary General of the East African Community. His address of service is *C/O The Secretariat of The East African Community, EAC Close/Afrika Mashariki Road, EAC Headquarters, P.O. Box 1096, Arusha-Tanzania.*

## **B. REPRESENTATION**

5. The Claimant was represented by Mr Michael Lugaiya and Professor John Ruhangisa, learned Counsel; while the Secretary General to the EAC was represented by Dr Anthony Kafumbe, Learned Counsel to the Community.

## **C. BACKGROUND TO CLAIMANTS' CASE**

6. The 1<sup>st</sup> Claimant was appointed as a driver by the Respondent and was assigned to drive the Deputy Secretary General, Political Federation, from 4<sup>th</sup> July 2013 at a salary of US \$4,160 per annum, in the EAC G2 salary scale. His contract was to run concurrently with that of the Deputy Secretary General. On 29<sup>th</sup> June 2016, his contract was renewed on the same terms for a period of three years. That, on 1<sup>st</sup> October 2017, the 1<sup>st</sup> Claimant received a letter from the Respondent prescribing new terms and conditions as a Senior Driver at a salary of US \$11,246 per annum in the EAC G3 salary scale.

7. The 2<sup>nd</sup> Claimant was appointed on a 3-year contract as a personal driver to the Deputy Secretary General, Planning and Infrastructure, with effect from 19<sup>th</sup> May 2009 at EAC Salary scale G2 (US \$4,160). The contract ran parallel to the duration of service of the Deputy Secretary General, which ended prematurely in 2011. On 20<sup>th</sup> June 2011, the 2<sup>nd</sup> Claimant was appointed to drive the new Deputy Secretary General on the same terms and conditions. He served the contract up to 2014. On 9<sup>th</sup> May 2014, he signed another contract for a period of 3 years on the same terms. However, the 2<sup>nd</sup> Claimant alleges that he was retained by the Respondent as a pool driver to date at Salary scale G2.

8. The 3<sup>rd</sup> Claimant was, likewise, appointed by the Respondent as a driver and was assigned to drive the Speaker of the East African Legislative Assembly with effect from 1<sup>st</sup> December 2007. His contract was to run parallel to that of the Speaker (5 years). His annual salary was put at US \$4,160 in the EAC salary scale G2. Upon the completion of the Speaker's tenure, the 3<sup>rd</sup> Claimant was retained as a Driver at the East African Legislative Assembly on a short-term contract of one year. He continues, according to him, with the service at the EAC on short term engagements.

#### **D. THE CLAIMANTS' CASE**

9. The case for the Claimants is set out in the Statements of Claim by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants, in the Replies to the Respondent's Statement of Defence, in the Affidavits in support of the Claims by the Claimants and in the Claimants' Affidavits in Rejoinder.

10. The Claimants' Claims are premised on the contentions that, while they were appointed at salary scale G2 at inception of their employment at the EAC, in early November 2018 they got to know from their colleague driver that there was a Council of Ministers' decision which placed their job category, as personal drivers to the Executives, at salary scale G3, which would have entitled them to relatively higher salary, gratuity and some of the allowances.

11. That the Council of Ministers Decision **EAC/CM12/Decision 77**, which was made by the Council of Ministers in its 12<sup>th</sup> Ordinary Meeting held on 25<sup>th</sup> August 2006, was implemented to all other categories of EAC staff members other than personal drivers to the Executives.

12. That, the 1<sup>st</sup> Claimant's terms and conditions were in fact enhanced following the letter dated 29<sup>th</sup> June 2016 titled "**New Terms and Conditions of Employment as Senior Driver to the Deputy Secretary General – Political Federation**", written by the Respondent. But that he was not informed of the Council Decision that put his job position at that category nor was his salary and other arrears paid to him.
13. The Claimants further allege that despite writing to the Respondent on 26<sup>th</sup> November 2018 asking him to comply with the Council Decision and pay them their claims, the Respondent paid a deaf ear and has not paid them to date.
14. That, as a result of the afore-stated infractions of their rightful entitlements, they seek to recover a total of **US\$ 161,649.30** in unpaid salaries and gratuity arising out of their employment as personal drivers to Executives. The 1<sup>st</sup> Claimant seeks to recover US \$37, 644.30, the 2<sup>nd</sup> Claimant US \$79,717.50, while the 3<sup>rd</sup> Claimant claims for US \$44,287.50, being unpaid salaries, pensions and other personal emoluments.
15. The Applicants also pray for general damages, costs and interest.

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

16. The Respondent's case is stated in the Respondent's Statement of Defence dated 1<sup>st</sup> August 2019, in the three Affidavits of Theophile Bazimaziki of the same date and in the Respondent's Affidavits in Reply to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants' Statement of Claims, sworn by Theophile Bazimaziki, Senior Human Resource Officer, in Arusha on 4<sup>th</sup> July 2022.

17. It is the Respondent's contention that the Claimants are not entitled to the amounts claimed or at all. That the alleged decision **EAC/CM12/Decision 77** did not put personal drivers at G3 salary scale as claimed by the Claimants. Further, that the Council of Ministers' decision **EAC/CM12/Decision 77**, which the Claimant relies upon, only **took note** of the proposal made by the Secretariat but did not adopt any position that can be held to have put Personal Drivers in the EAC G3 salary scale.
18. That similarly, although **EAC/CM12/Decision 76** regarding the grading structure for the Community was approved by Council, Senior Drivers as opposed to personal drivers were in the G3 scale. Thus, as the Claimants were recruited as personal drivers, they cannot claim rights not attributable to them.
19. The Respondent further contended that, even if the Claimants were supposed to be in the category of G3, the Claims cannot succeed as they are either anchored in contracts that had lapsed or are barred by limitation. Consequently, in the Respondent's view, the actions by the Claimants cannot lie under Article 31 of the Treaty.
20. Furthermore, that the letter addressed to the 1<sup>st</sup> Claimant upgrading him to Senior Driver position was issued inadvertently by the Respondent as it contravenes Regulation 19 of the Staff Rules and Regulations and that any claims arising therefrom would be barred by the operation of Regulation 104 of the same Rules.
21. The Respondent also contends that there was no ill will on the part of the Respondent not to pay the Claimants on the G3 salary Scale, as none of them was recruited as a Senior Driver and that

the Community is in the process of finalising the recategorization of General Staff as directed by Council in its 25<sup>th</sup> Meeting held in August 2012.

22. Lastly, that the Claimants have no claims against the Respondent as they were paid all their entitlements as provided for in their letters of engagement and that the information received from a colleague that Council decision No. **EAC/CM12/Decision 77** provided that drivers to Executives were supposed to be employed under G3 salary scale was false.

#### **F. ISSUES**

23. At the Scheduling Conferences held on 30<sup>th</sup> and 31<sup>st</sup> May 2022, the following issues were agreed upon for determination by this Court:

- a) Whether the Claims are properly before this Honourable Court;**
- b) Whether the Decision EAC/CM12/Decision 77 entitles the Claimants to the Claims made before this Honourable Court; and**
- c) What Remedies are the Parties entitled to.**

24. Hearing proceeded through filing of Affidavits by all the Claimants and Affidavits in Reply by an officer of the Respondent. Counsel for the Parties filed written submissions and were then granted opportunity to highlight salient areas of the submissions.

## **G. COURT'S DETERMINATION OF THE ISSUES**

### **ISSUE NO.1: Whether the Claims are properly before this Honourable Court**

25. This issue aims at challenging the propriety of the Claims filed in this Court. We deem it appropriate to determine it before venturing into the rest of the issues, if need be.

26. In the Affidavits sworn on behalf of the Respondent and in the written submissions and highlights made thereon, the Respondent contends that the Claims by the Claimants are not properly before this Court for a number of reasons.

27. Counsel for the Respondent stated that as the Claimants purported to bring their respective claims under Article 31 of the Treaty, the Claims are untenable as they are based on expired contracts. That Article 31 of the Treaty envisages the existence of a valid and subsisting contract, which is not the case in this matter.

28. He went on to say that, even if the Claimants had made their Claims on subsisting contracts, the provisions of Regulation 104 of the Staff Rules and Regulations 2006, which were integral to the contracts signed by the Claimants, render the Claims time barred.

29. Further, it was the Counsel's contention that the Claimants are challenging the alleged illegal decision of the Respondent in putting them in a wrong salary scale. That, such a challenge cannot be anchored on Article 31 of the Treaty; it should have been made under Article 30 of the Treaty. Thus, be it as it may, as the claims were brought after the two-month limitation period had long expired, the Claims would be untenable. He made reference

to the decision of this Court in Angella Amudo vs Secretary General of the East African Community, EACJ Application No. 4 of 2015 to bolster his contention.

30. On the other hand, Counsel for the Claimants submitted that the Claimants brought their claims during the subsistence of their contacts; thus, they were employees of the Community and that the cause of action giving rise to the Claims arose out of their terms and conditions of service as employees of the Community. That while the 1<sup>st</sup> Claimant's contract expired alongside that of the Deputy Secretary General, he was still an employee of the Community when he filed the Claim in January 2019. That the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants are still employees of the Community. In the Counsel's view, the Claimants were rightfully entitled to bring their Claims under Article 31 of the Treaty.

31. Counsel for the Claimants further submitted that, even if the Claimants' initial contracts of employment had expired, this did not affect their statutory rights under the Treaty. That, in any case, the Claimants, like all other staff members of the Community, joined the Community on the terms and conditions set by the Council of Ministers. That they did not negotiate their terms of employment. It was for the Respondent to place them in their rightful salary scale.

32. Furthermore, that Decision 77 was not brought to their attention before November 2018; thus, the cause of action should start to run when they got to know of the said decision.

33. Counsel further submitted that under Article 31 of the Treaty, there was no requirement for one to be in service in order for them to come to Court on matters of terms and conditions of service. In

addition, that Rule 104 of the EAC Staff Rules and Regulations cannot override the provisions of the Treaty by imposing a time within which a member of Staff can initiate a Claim to make a retrospective Claim of their emoluments. That, under Article 31 of the Treaty, there are no time limit restrictions. He also contended that Regulation 104 is only applicable to Claims in respect of allowances but that in this case the Claims are for salaries and not for allowances or grants.

34. Counsel therefore urged the Court to overrule the Respondent's contention regarding the propriety of the Claims and determine the matter on its merits.

35. We have considered the rival positions of the parties on this issue. In essence, the determination of this issue hinges on the interrogation of the more fundamental question: *whether this Court has jurisdiction to entertain and determine the Claims as presented.*

36. We are guided by the decision of the Appellate Division of this Court in **Angella Amudo vs Secretary General of East African Community, EACJ Appeal No.4 of 2014,** in which the learned Justices of Appeal, while taking note of what had transpired in the trial, stated that:

**“The defence of limitation had challenged the trial Court’s jurisdiction to entertain the Claim and determine it on merit. What the Respondent was saying briefly, was that the trial Court lacked jurisdiction *ratione temporis.*”**

37. Once a question of jurisdiction is raised, it must be addressed forthwith in order to determine whether indeed the Court has the

mandate to entertain the matter before it, before proceeding to address any other question.

38. Jurisdiction in a judicial context has long been held to be a unitary concept that denotes three essential elements; namely, jurisdiction *ratione materiae* (subject matter), *ratione personae* (*locus standi*) and *ratione temporis* (temporal condition).

39. The Court has held that the absence of any of the above essential elements of jurisdiction would disavow it the mandate to entertain a dispute (see: **Manariyo Desire vs Attorney General of the Republic of Burundi, EACJ Appeal No. 1 of 2017**)

40. It is not in contention that the Claimants purportedly brought their Claims under Article 31 of the Treaty. Article 31 provides that:

**“The Court shall have jurisdiction to hear and determine disputes between the Community and its employees that arise out of the terms and conditions of employment of the employee of the Community or the application and interpretation of the Staff Rules and Regulations and terms and conditions of service of the Community”.**

41. Whereas Article 30(2) of the Treaty stipulates the period within which proceedings can be brought to Court by any person, Article 31 thereof mandates the Court to hear disputes between the Community and its employees based on the Staff Rules and Regulations.

42. Article 30(2) of the Treaty requires that such proceedings are instituted within 2 months of the occurrence of the trigger of the

cause of action or of such trigger coming to the Claimant's knowledge.

43. Counsel for both parties were not agreeable on whether the Claims before the Court are subject to limitation as well. Mr Lugaiya, for the Claimants, maintained that the claims are not subject to any limitations as Article 31 of the Treaty does not provide any limitation and that arrears of salary and pension do not fall in the categories provided under Regulation 104 of the Staff Rules and Regulations. On the other hand, Dr Kafumbe, relying on Regulation 104 of the said Regulations urged the Court to hold that the Claims are time barred as the Claimants did not meet the conditions thereof.

44. For clarity, we deem it appropriate to reproduce Regulation 104 of the EAC Staff Rules and Regulations 2006. It provides as follows, regarding payments:

**“A member of Staff who may have been entitled to receive allowances, grants or other payments due under these rules and Regulations shall not be entitled to Claim such allowances, grants or other payments retrospectively, unless a written Claim has been submitted within 12 months of the date when the initial payment would have otherwise been due.”**

45. We gather from the pleadings filed in this case that at the time the Claims were filed, the 12 months period provided for in Regulation 104 of the Staff Rules and Regulation had expired. It follows therefore that such claims would be barred by limitation, if the Regulation is held to be applicable to the Claimants.

46. In his submissions, Counsel for the Applicant affirmed that the complaints had been brought under Article 31 of the Treaty, notwithstanding the fact that the contracts under which the Claimants were initially employed and from which they based their substantial claims had lapsed, with the exception of the 1<sup>st</sup> Claimant. He contended that the Claimants were still employees of the Respondent under other contracts which subsisted at the time of filing the Claims and that they could therefore rightfully proceed under Article 31 of the Treaty.

47. Mr Lugaiya was of the view that, applying the *ejusdem generis* rule, salary claims could not be payments envisaged under Regulation 104. That the expiry of the contract did not affect the Claimants' rights to lodge the Claims against the Respondent belatedly as they were unaware of the Council Decision.

48. With respect, we do not agree. This Court, faced with a similar matter, had the occasion to interpret the two provisions in Joseph Kipkoech Sigei vs the Secretary General of the East African Community, EACJ Claim No. 1 of 2018. We stated as follows:

**“A cursory look at Article 31 of the Treaty reveals that the provision takes cognizance of the very Staff Rules and Regulations which the Claimant attempts to impugn. Article 31 is the cradle from which the mandate to apply and interpret the Staff rules and Regulations stems from. The argument, therefore, that Article 31 does not expressly provide for a time frame within which to commence proceedings speaks to a very restricted interpretation of the provision by the Claimant.”**

49. Guided by that interpretation, we have no option but to agree with Counsel for the Respondent on the interpretation of claims based on Article 31 of the Treaty.
50. We are unable to agree with the contention that claims of salary and gratuity payments are not covered by Regulation 104 of the Staff Rules and Regulations, 2006. Arrears of salaries and gratuity payments, in our view, fall in the category of **other payments** envisaged in the said Regulation.
51. We, however, do not agree with Dr Kafumbe that an employee of the Community who has since left the Community or whose contract has expired cannot bring a Claim under Article 31 of the Treaty. Such person, in our view, is able to successfully claim payments due to him if he brings such claims within the 12 months period from the time such payments were due.
52. That said, none of the Claimants' claims fall within the 12 months limitation. Starting with the 1<sup>st</sup> Claimant, his claims are based on the contract dated 4<sup>th</sup> July 2013, which expired on July 2016. He also claims arrears of salary and other payments with regards to the renewal of contract dated 29<sup>th</sup> June 2016 which ended in June 2019. While serving the said contract, he was given new terms and conditions with effect from 1<sup>st</sup> October 2017. Incidentally, his claims in this latter contract relate to the period July 2016 to September 2017. Such claims could only succeed if they were brought latest by September 2018. As his Claim was filed in January 2019, the same fell out of the time prescribed by Regulation 104 of the Staff Rules and Regulations.

53. The Claims by the 2<sup>nd</sup> Claimant relate to the contracts dated 19<sup>th</sup> May 2009, 20<sup>th</sup> June 2011 and 9<sup>th</sup> May 2014, all of which had expired before his Claims were lodged in Court in January 2019.

54. Similarly, the 3<sup>rd</sup> Claimant's claims are barred by limitation as they relate to the contract dated 1<sup>st</sup> December 2007 which expired in December 2012, long before he brought the Claim in January 2019.

55. In the Joseph Kipkoech Sigei case (supra) we further stated that:

**“The attempt to impugn the Staff Rules and Regulations, which stipulate a time period within which the Claimant ought to have submitted a written Claim, is misconceived and the notion that the Staff Rules and Regulations should yield to a belated commencement of proceedings is without legal backing and is equally misconceived. Without any doubt, the timelines prescribed by Regulation 104 are binding on the proceedings.”**

56. We say no more. It is the finding of this Court that at the time the Claimants filed their respective Claims before this Court, the time allowed to do so had since expired; thus, depriving this court of jurisdiction *ratione temporis*.

57. It is a celebrated tenet of our law that once a Court finds that it lacks jurisdiction to determine a matter before it, that substantially disposes the matter before it. However, before we take leave of this matter, we deem it appropriate to make the following observation.

58. This matter proceeded under Article 31 of the Treaty. As stated herein before, that provision relates to disputes between employees and the Community. Had this matter proceeded on its merit, one fundamental question that needed to be decided upon would be whether the Claimants were employees of the Community at the time of lodging their Claims, thus persons envisaged by Article 31 of the Treaty.

59. While Mr Lugaiya's position was that all the three Claimants were employees at the time of lodging the Claims, Dr Kafumbe had a slightly different view. In his opinion, the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants ought to have left the Community service when their contracts, attached to the tenure of the Executives, expired.

60. A cursory examination of the records availed to us points to a different conclusion. In our view, for a person to bring a claim of unpaid emoluments before Court under Article 31 of the Treaty, such person must have a running contract with the Community or has to be a person claiming for payments due to him for a period he was serving the Community, not exceeding 12 months after his contract with the Community expired.

61. While we do not doubt that the 1<sup>st</sup> Claimant had a subsisting contract at the time of lodging his Claim, the two other Claimants' status could not be ascertained. We note that the 2<sup>nd</sup> Claimant did not present any documentary evidence to prove that in January 2019, when he filed Claim No. 2 of 2019, he was in the service of the Community. The only evidence presented to Court is his contract dated 9<sup>th</sup> May 2014 which expired in 2017. In that case, he should not have filed his Claim under Article 31 of the Treaty.

62. Similarly, the 3<sup>rd</sup> Claimant did not prove his status as an employee beyond the one-year extension given to him on 23<sup>rd</sup> May 2012 which expired a year later. It follows therefore that when he filed his Claim in January 2019, he was not an employee of the Community entitled to bring such claims under Article 31 of the Treaty.

63. Even assuming that at the time of filing the Claims the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants had one form of contract or the other, such contracts would not entitle them to bring claims under Article 31 of the Treaty based on contracts that had since expired. As correctly argued by Counsel for the Respondent, such claims ought to have been brought within the prescribed period or, as the Claimants maintained that their claims were based on illegality of action or inaction of the Respondent, they ought to have been anchored under Article 30 and not Article 31 of the Treaty.

64. Ordinarily, we would be inclined to grant costs to the successful party, in this case the Respondent, in accordance with Rule 127 of the Rules. Rule 127 directs that costs in any proceedings shall follow the event unless the Court for good reasons orders otherwise. Taking into consideration the nature of the dispute before us and that the Claimant's claims failed on a technical ground, granting costs against them will not serve the interest of justice. This case, in our view, is one of the cases where it is appropriate to exercise our judicial discretion not to grant costs to the successful party.

## **H. CONCLUSION**

65. In the event, and as above stated, this Court lacks jurisdiction *ratione temporis* over the claims. It can neither entertain nor portend to proceed to determine the Consolidated Claim on merit.

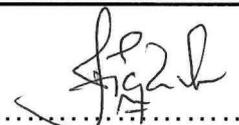
66. The Consolidated Claim is accordingly dismissed.

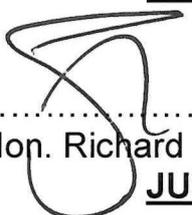
67. We direct that each party bears their own costs.

**Dated, signed and delivered at Kampala this 29<sup>th</sup> Day of November  
2022.**

  
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Hon. Yohane B. Masara  
**PRINCIPAL JUDGE**

  
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Hon. Dr Charles O. Nyawello  
**DEPUTY PRINCIPAL JUDGE**

  
.....  
Hon. Richard Muhumuza  
**JUDGE**

  
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Hon. Richard Wabwire Wejuli  
**JUDGE**

  
.....  
Hon. Dr Gacuko Leonard  
**JUDGE**