



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



*(Coram: Yohane Masara, PJ; Audace Ngiye, DPJ: Charles O. Nyawello,  
Charles Nyachae, Richard Wabwire Wejuli, JJ)*

**CLAIM NO.1 OF 2018**

**JOSEPH KIPKOECH SIGEI .....CLAIMANT**

**VERSUS**

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

**22<sup>nd</sup> MARCH, 2022**

## **JUDGMENT OF THE COURT**

### **A. INTRODUCTION**

1. The Claimant, Joseph Sigei, brought this Claim on the 20<sup>th</sup> June 2018 under Article 31 of the Treaty for the Establishment of the East African Community ("the Treaty"), against the Secretary General in the latter's representative capacity as the Principal Executive Officer of the East African Community (EAC), seeking for Judgment against the Respondent and for orders that the Respondent pay him US \$ 90,183 in unpaid salaries and gratuity, general damages, interest on the foregoing sums and costs of the Claim.

### **B. REPRESENTATION**

2. 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 AND CLAIMANT'S CASE**

3. The Claimant was appointed on a 6-year contract as a personal driver to the Deputy Secretary General responsible for Finance and Administration (DSG - FA) at the EAC with effect from 2<sup>nd</sup> July 2007 at Salary scale G2. The contract ran parallel to the duration of service of the DSG-FA, which ended in July 2013. However, the Claimant says he was retained by the Respondent as a pool driver until July 2014 when he was appointed as a personal driver to the Judge President of the East African Court of Justice (EACJ) at Salary scale G2.

4. The Claimant's Claim is premised on the allegation that, while he was appointed at salary scale G2 at inception of his employment at the EAC, in early May 2016 he got to know that there was a Council of Ministers' decision which placed his job category at salary scale G3, which would have entitled him to relatively higher salary, gratuity and some of the allowances.
5. The Claimant alleges that despite several pleas, including two letters/memos from the EACJ Court Registrar to the Human Resource function at the EAC Secretariat, no heed was taken to have any payment made to the Claimant. That on 1<sup>st</sup> October 2017, the Respondent wrote to the Claimant elevating him to salary scale G3 but that the said letter did not, however, make mention of any unpaid salary and allowances.
6. That, on 23<sup>rd</sup> April, 2018, the Claimant served a demand note on the Respondent for underpaid salary arrears and other emoluments, with a 14 days ultimatum to pay up the said arrears. The ultimatum was not honored, resulting into the filing of this Claim.
7. That, as a result of the afore-stated infractions of his rightful entitlements, he is owed and seeks to recover US\$ 63,903.00 in un-paid salaries and gratuity arising out of the initial employment 6-year contract which run from 2007 to 2013 and US\$ 26,280.00 in un-paid salary for the period 1<sup>st</sup> July 2014 to 1<sup>st</sup> July 2017. He also seeks general damages amounting to US\$ 20,000.00. Altogether, the sum Claimed is US\$ 90,183.00.



#### **D. RESPONDENT'S CASE**

8. The Respondent contends that the Claimant is not entitled to the amounts claimed. That, there was never a Council of Ministers' decision that put personal drivers at G3 salary scale. That the Council of Ministers' decision EAC/CM/Decision 77, which the Claimant relies upon, only took note of the proposal but did not adopt any position that put personal Drivers in the G3 salary scale. That similarly, Decision 76 did not state that personal drivers to executives were to be designated as senior drivers.

#### **E. ISSUES**

9. The following issues were agreed upon for determination by this Court:

- 1. Whether the Claimant may lodge a Claim under Article 31 of the Treaty for the Establishment of the East African Community;**
- 2. Whether or not the Claimant is entitled to the Claimed salaries and benefits for his tenure of service; and**
- 3. Whether or not the Claimant is entitled to the reliefs sought.**

10. Parties filed written submissions and were then granted opportunity to highlight salient areas of the submissions, which their respective Counsel elaborately did. Counsel also graciously provided copies of the authorities upon which they relied on to brace their respective arguments in their submissions.



**ISSUE NO.1: Whether the Claimant may lodge a Claim under Article 31 of the Treaty**

11. When highlighting his submissions, Counsel for the Claimant submitted that the Claim was brought under Article 31 of the Treaty.
12. Counsel for the Applicant submitted that the Applicant was an employee of the EAC and that the cause of action giving rise to the Claim arose out of his terms and conditions of service as an employee of the Community and that he was therefore rightfully entitled to bring the Claim under Article 31 of the Treaty, as he did. He cited the cases of **East African Law Society & 4 Others vs. the Attorney General of Kenya & 3 Others, EACJ Appeal No.3 of 2011** and that of **Angella Amudo vs. Secretary General of the East African Community, Application No.4 of 2015.**
13. He further submitted that, even if the Claimant's initial contract of employment entered in 2007 had expired, this did not affect the Claimant's statutory rights under the Treaty. That, in any case, the contract had expired before the information regarding his entitlement arising from Council Decision 77 had been brought to his attention notwithstanding the fact that the Decision had been made in 2006, which was before his initial employment by the EAC in 2007. That, it is after he had been given another contract which he was serving that the Council Decision 77 was brought to his attention. That consequently, whether or not the contract had expired, his rights were not extinguished and that the Claimant was right to pursue his rights even after expiry of the contract.



14. 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.
15. In reply, Counsel for the Respondent contended that it was not possible for the Applicant to proceed under Article 31 of the Treaty as at the time of filing the Claim in 2018 the initial contract of employment with the Respondent had expired in 2013 and he was therefore not an employee of the Community in the context of Article 31 of the Treaty.
16. He cited the case of **Angella Amudo vs. Secretary General EAC (supra)**, for the argument that the Claimant ought to have possibly proceeded under Article 30 of the Treaty and not Article 31 which is restricted to disputes between the Community and its employees and that an employee must have a valid employment contract in place.
17. He drew Court's attention to the fact that upon appointment in 2007, the Respondent brought it to the Claimant's attention that his employment was regulated by the EAC Staff Rules and Regulations. That under Regulation 104 of the said Rules and Regulations, a Claim by any member of Staff must be made within 12 months, but that in the instant case, the Claimant filed his Claim 11 years after the alleged cause of action arose.
18. He cited the case of **Seiph Wanumba vs. Muhimbili National Hospital & 2 Others [2005] TZHC 45** for the contention that Claims of this nature should not be entertained by Court.
19. He also prayed that the Claim should not be entertained under Article 31 of the Treaty which is reserved for employees of the



Community with a valid contract, which he contends, the Claimant did not have.

20. In rejoinder, regarding the application of Rule 104 of the EAC Staff Rules and Regulations, the Applicant contended that the Rule 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 Claim was for salaries and not for allowances or grants.

#### **F. DETERMINATION OF ISSUES**

21. The issue as to whether or not the Claimant may lodge a Claim under Article 31 of the Treaty goes to interrogate the more fundamental question as to whether this Court has the jurisdiction to entertain and determine this matter as presented.

22. This Court is guided by the decision of the Appellate Division in **Angella Amudo vs. Secretary General of East African Community, Appeal No.4 of 2014**, in which the learned Justices of Appeal, while taking note of what had transpired in the trial proceedings where the issue of limitation of time had been raised, stated that:

**“The defence of limitation had challenged the trial Courts 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*.”**

23. 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.

24. 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). 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, [2015-2017] EACJLR 978.**)

25. In determining whether or not this Claim is properly brought before this Court, the question of jurisdiction over the matter will be addressed in tandem.

26. Whereas Article 30(2) of the Treaty stipulates the period within which proceedings can be brought to Court by any Claimant, Article 31 thereof mandates the Court to hear disputes between the Community and its employees, exclusively.

27. Article 30(2) 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.

28. On the other hand, 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”.**

29. Regulation 104 of the EAC Staff Rules and Regulations (2006) provides as follows, regarding retroactive 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.”**

30. **Annex JJ1** which is the Claimant’s letter of appointment/contract of employment states that the Claimant was offered employment as a personal driver to the Deputy Secretary General - Finance and Administration with effect from 2<sup>nd</sup> July 2007. Clause (a) thereof provides that the contract term would run parallel to the period of service of the DSG -FA. It is discerned from paragraphs 11 and 13 of the Statement of Claim that the contract ended on its 6<sup>th</sup> anniversary, when the DSG’s tenure of service is said to have ended in July 2013.

31. In his submissions, Counsel for the Applicant affirmed that the complaint had been brought under Article 31 of the Treaty, notwithstanding the fact that the contract under which the Claimant was initially employed had lapsed. He contended that the Claimant was still an employee of the Respondent under another contract



which subsisted at the time of filing the Claim and that he could therefore rightfully proceed under Article 31.

32. Without substantiation, he proffered the position that the Claimant's right to belatedly bring action could not be hampered by the application of the Staff Rules and Regulations, which he argued, are overridden by the provisions of the Treaty.

33. Counsel also submitted that the expiry of the contract and the provisions of Regulation 104 did not affect the Claimant's right to lodge a Claim against the Respondent and, most intriguingly, to do so belatedly as he did in the instant case.

34. 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.

35. The Claimant's letter of appointment dated 2<sup>nd</sup> July 2007 drew his attention to the fact that his obligations, entitlements, immunities and privileges would be as stipulated in the Staff Rules and Regulations. This therefore means that the Rules and Regulations constitute an integral part of the employment contract between the parties. Consequently, once the Claimant signed up the contract, he subjected himself to, was presumed to be conversant with and was bound by the Staff Rules and Regulations.

36. 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.
37. It now begs to answer the question as to whether the Claimant was an employee of the Respondent at the time of filing the Claim.
38. The Claimant admitted that the initial employment contract had expired but that the Claimant had entered another contract in 2014. The 2014 contract was preceded by a gap period during which he was allegedly retained as a pool driver. This was allegedly under an arrangement referred to by his lawyers as “an administrative arrangement”. Despite the absence of a formal contract during this period, the Claimant argued that he was at all material times a continuous employee of the Respondent, hence the choice to proceed under Article 31 of the Treaty.
39. In a rather self-defeating feat, Counsel for the Claimant oscillated between the arguments that the contract in respect of which the Claim arises had expired, that the Claimant was still in employment and that even if the contract had expired, the Claimant still had statutory rights which survived the expiry.
40. Whereas, factually, the Claimant was in the Respondent’s employment when he filed the Claim, this was under a new contract (2014) which was different from the initial employment contract of 2007 upon which the Claim is anchored. Under the



terms spelt out in the July 2007 letter of appointment from the DSG to the Claimant, the Parties agreed that the contract would run parallel to that of the DSG, which expired in July 2013. They also agreed, by virtue of application of the Staff Rules and Regulations, that if he had to, the Claimant would only initiate or submit any complaint regarding retrospective Claim for payment of emoluments within a period of 12 months of any date when such payment would have been due during the subsistence of the contract. When the Claimant therefore filed his Claim in 2018, the 2007 contract had long expired and there was no longer a recognized employee- employer relation that subsisted under that contract. There is no evidence on record that the Claimant had ever filed any written complaint for retroactive payments as stipulated in the Staff Rules and Regulations, in which case the Claim would have been brought into the fold of time had he done so.

41. In the absence of fraud, misrepresentation or any other form of illegality, this Court cannot amend the terms of a contract willingly entered into by the parties. None of the parties pleaded any of the foregoing grounds to possibly warrant lending a different meaning and intent from that which is expressly stipulated in the letter of appointment regarding the application of the Staff Rules and Regulations and most specifically by implication, Regulation 104 which prescribes limitation on when actions such as the instant one can be commenced.

42. No action would therefore now arise from the expired contract in the context of Article 31 of the Treaty without the would-be





Claimant having first complied with the requirements of Regulation 104 of the Staff Rules and Regulations, 2006.

43. As rightly argued by Counsel for the Respondent, a Claim under Article 31 is only possible when there is a subsisting contract. It would be absurd for this Court to take the position, as the Claimant would have liked it to be, that because at the time of filing this Claim, the Claimant had another running contract with the Respondent, the Claimant could rightly bring an action premised on the earlier, now expired contract of 2007.

44. The contract from which the complaint stems having lapsed in 2013 and the Claim instituted in 2018, the Claim is patently time barred by Regulation 104 of the Staff Rules and Regulations. The Claimant could have possibly maintained his action under Article 30 of the Treaty, but subject also to the limitations that it expressly spells out.

45. The choice to bring the Claim under Article 31 of the Treaty was improper. This Court is further guided by the decision of the Appellate Division of the Court in **Angella Amudo vs. SG-EAC** (supra), that *'a challenge to jurisdiction must be decided and not assumed, and once the challenge is positively proved, the proceedings must be dismissed'*.

46. In the event, this Court lacks jurisdiction *ratione temporis*. It can neither entertain nor portend to proceed to determine this Claim on its merits. It lacks jurisdiction to do so.

47. The proceedings suffer a still birth at this stage and the Claim is accordingly dismissed.

48. Considering the nature of the dispute herein and in the interest of justice, we direct that each party bears their own costs.

49. It is so ordered.

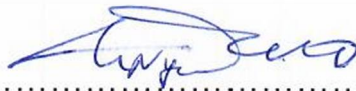
**Dated, signed and delivered at Arusha this 22<sup>nd</sup> Day of March, 2022.**




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



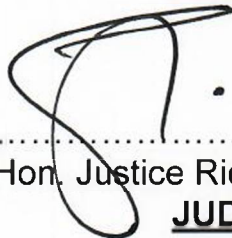
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Hon. Justice Audace Ngiye  
**DEPUTY PRINCIPAL JUDGE**



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Hon. Justice Dr. Charles O. Nyawello  
**JUDGE**



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Hon. Justice Charles Nyachae  
**JUDGE**



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Hon. Justice Richard W. Wejuli  
**JUDGE**