



**IN THE EAST AFRICAN COURT OF JUSTICE
APPELLATE DIVISION AT KAMPALA**

**(Coram: Nestor Kayobera, P.; Sauda Mjasiri, VP; Anita Mugeni,
Kathurima M'Inoti and Cheborion Barishaki, JJA.)**

APPEAL NO. 03 OF 2022

BETWEEN

JOSEPH KIPKOECH SIGEI..... APPELLANT

AND

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

[Appeal from the Judgment of the First Instance Division of the East African Court of Justice at Arusha (Hon. Yohane Masara, Principal Judge; Hon. Justice Audace Ngiye, Deputy Principal Judge; Hon. Justice Dr. Charles O. Nyawello, Hon. Justice Charles Nyachae and Hon. Justice Richard W. Wejuli, JJ.) dated 22nd March 2022 in Claim No. 1 of 2018].



JUDGMENT OF THE COURT

A. INTRODUCTION

1. This is an Appeal from the decision of the First Instance Division of this Court (hereinafter referred to as the "Trial Court") arising out of Claim No. 1 of 2018 dated 22nd March, 2022. The Trial Court dismissed the Claim and ordered that each party bears its own costs. It appears the Judgment did not meet the Appellant/Claimant's desires and expectations.
2. The Appellant is resident in the Republic of Kenya, a Partner State of the East African Community, and as former employee of the East African Community (EAC). The Respondent is the Secretary General of the East African Community and is sued in his capacity as the Principal Executive Officer of the Community.
3. The Claim was instituted by the Appellant under Article 31 of the Treaty for the Establishment of the East African Community ("the Treaty") on 20th June, 2018 in the Trial Court by a Statement of Claim, against the Respondent.
4. In the Trial Court, the Appellant was seeking for judgment and orders that the Respondent pays him US \$ 90,183 being unpaid salaries and gratuity, general damages, interest on the said sums and costs of the Claim. As stated, the Claim was dismissed by the Trial Court on 22nd March, 2022.



5. Dissatisfied with the Judgement of the Trial Court, the Appellant filed this Appeal seeking the Appellate Division to quash the Judgment and orders of the Trial Court.
6. The Appellant was represented by Mr. Michael Lugaiya and Professor John Eudes Ruhangisa, learned Counsel; while the Respondent was represented by Dr. Anthony Kafumbe, Counsel to the Community (CTC).

B. BACKGROUND TO THE APPEAL

7. On 2nd July, 2007, the Appellant was appointed on a 6-year contract as personal driver to the Deputy Secretary General responsible for Finance and Administration (DSG-F&A) at the EAC Secretariat at a salary scale G2. The contract ran parallel to the duration of service of the DSG-F&A, which ended in July 2013. After the expiry of the contract, the Appellant said that 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 a salary scale G2.
8. The Appellant alleges that despite several pleas, including two letters/memos from the EACJ Registrar to the Human Resource at the EAC Secretariat, no heed was taken to have any payment made to him at salary scale G3. He indicates that on 1st October 2017, the Respondent wrote to him on elevation ~~of his salary scale to G3 but~~



that the said letter did not mention of his unpaid salary and allowances.

9. On 23rd April 2018, the Appellant alleges to have served a demand letter on the Respondent for underpaid salary arrears and other emoluments, with a 14-days ultimatum to pay up the said arrears but which was not honoured, resulting in the filing of the Claim in the Trial Court.

C. THE CLAIM

10. At the Trial Court, the Appellant was seeking to recover US\$ 63,903,00 in unpaid salaries and gratuity arising out of the initial employment, that is the 6-year contract which ran from 2007 to 2013 and US \$26,280,00 in unpaid salary for the period 1st July 2014 to 1st July 2017, general damages amounting to US \$ 20,000.00, interest on the foregoing sums and costs of the Claim.
11. The Respondent contended that the Claimant was not entitled to the amounts claimed, as according to him, there was never a Council of Ministers' decision that put personal drivers at G3 salary scale. The Respondent indicated that the Council of Ministers decision EAC/CM/Decision 77, which the Claimant relied upon, only took note of the proposal but did not adopt any position that put personal drivers in the G3 salary scale. The Respondent further argued that Decision 76 did not state that personal drivers to executives were to be designated as senior drivers.



12. The Respondent finally submitted that the Claim should be dismissed with costs.

D. DECISION BY THE TRIAL COURT

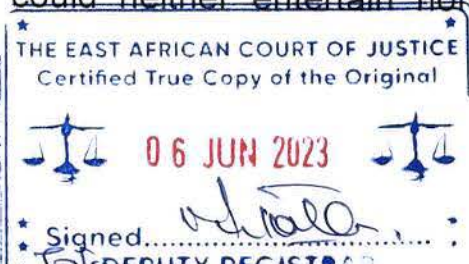
13. Three (3) issues were framed for consideration by the Trial Court, which are reproduced as follows: -

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 remedies sought.

14. The Trial Court held that a claim under Article 31 of the Treaty is only possible when there is a subsisting contract; that therefore, it would be absurd for the Court to take the position, as the Claimant would have liked it to be, that because at the time of filing the claim, he had another running contract with the Respondent, the Claimant could rightly bring an action premised on the earlier contract of 2007 which has now expired.

15. The Trial Court also held that the contract from which the claim arose having lapsed in 2013 and the claim having been instituted in 2018, the same was patently time barred by Regulation 104 of the Staff Rules and Regulations.

16. The Trial Court therefore held that it lacked jurisdiction *ratione temporis*; and that in the circumstances, it ~~could neither entertain nor~~



proceed to determine the Claim on its merits as it lacked jurisdiction to do so.

17. Finally, the Trial Court held that the proceedings suffered a still birth at that stage and dismissed the Claim accordingly, with an order for each party to bear its own costs.

E. THE APPEAL

18. Being dissatisfied with the judgment and order of the Trial Court, the Appellant filed an appeal to this Division on the following grounds stated in its Memorandum of Appeal, which is reproduced as under: -

- “1. The Honorable Justices erred by holding that the Court lacks jurisdiction to entertain the matter.*
- 2. The Honorable Justices erred by holding that the choice to bring the Claim under Article 31 of the Treaty was improper.*
- 3. The Honorable Justices erred by holding that the Claim is time barred.*
- 4. The Honorable Justices erred by holding that the Appellant’s contract had expired while in fact he was still working with the Respondent under the second contract and he was suing on both contracts.”*

19. The Appellant asked the Court to allow the Appeal, quash the decision of the Trial Court and award him costs of the Appeal.



F. THE RESPONDENT'S OPPOSITION TO THE APPEAL

20. The Respondent opposed the Appeal for the reason that it did not meet any of the requirements of Article 35 A of the Treaty and that it should be rejected, because, in terms of Regulation 19(2) of the Staff Rules and Regulations, 2006 the authority to upgrade members of staff is vested in the Council of Ministers rather than in the Respondent.

21. The Respondent submitted that the Reference was anchored on an expired contract and no longer in the context of Article 31 of the Treaty, and that therefore, the Trial Court was right to find as it did and in dismissing the Claim.

22. The Respondent finally prays that the judgment and orders of the Trial Court be upheld and the Appeal be dismissed in its entirety.

G. ISSUES FOR DETERMINATION

23. Prior to the hearing of the Appeal, a Scheduling Conference was held on 8th August 2022, at which the Appellant was represented by Mr. Michael Lugaiya and Prof. John Eudes Ruhangisa, learned Advocates, while the Respondent was represented by Dr. Athony L. Kafumbe, Counsel to the Community.

24. The following issues were agreed upon by the parties and approved by the Court for determination: -

1. Whether the Trial Court lacked jurisdiction



2. Whether the choice to bring the Claim under Article 31 of the Treaty was improper.
3. Whether the Claim was time barred.
4. Whether the Appellant's contract had expired.
5. What remedies are available to the parties.

H. PARTIES' SUBMISSIONS AND ARGUMENTS

25. During the hearing held in Kampala, Uganda on 18th November 2022, both Counsel for the Appellant and the Respondent further agreed to compress the issues for determination into only two (2) issues, namely:-

- 1) The issue of jurisdiction; and
- 2) The issue of remedies.

I. APPELLANT'S SUBMISSIONS ON ISSUE NO. 1: JURISDICTION

26. Surprisingly, instead of submitting on the issues as framed and agreed during the Scheduling Conference, Counsel for the Appellant submitted on the grounds of appeal No.1 and No. 2 together, that the Honourable Justices of the First Instance Division erred by holding that the Court lacked jurisdiction to entertain the matter and also erred by holding that the choice to bring the Claim under Article 31 of the Treaty was improper.

27. Counsel submitted that at the time the Appellant filed the Claim, he was still an employee of the Respondent since 2nd July 2007 up to



July 2013 but that after the first contract, he was given a one-year contract. He was recruited on 22nd July 2014 as personal driver to Judge President until the 1st December 2020.

28. Counsel further submitted that Article 31 of the Treaty deals with disputes between the Community and its employees. Specifically, it provides that:

“The Court shall have jurisdiction to hear and determin disputes between the Community and its employees that arise out of the terms and conditions of employment of the employees of the Community or the application and interpretation of the staff rules and regulations and terms and conditions of service of the Community.”

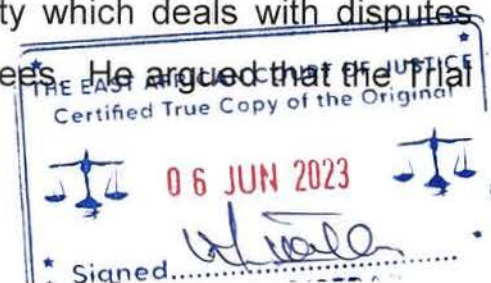
29. Counsel submitted that the first issue which was framed at the Trial Court that **“Whether or not the Claimant may lodge a claim under Article 31 of the Treaty in relation to a contract that expired in July 2013”** was clear that it was not intended to question the Appellant’s claim under the second contract that had not expired.

30. Counsel further submitted that the matter before this Court fell within Article 31 of the Treaty because the Appellant was an employee of the Community and had been adversely affected by the way the Respondent selectively interpreted and applied the Staff Rules and Regulations contrary to what the Council had directed. He submitted that the claims under both contracts are valid and payable since the Appellant fully offered his services to the Respondent under both



contracts and he lodged the claim when he was still in the employment of the Respondent.

31. Counsel argued that the fact that the first contract had expired did not have any effect on the second contract which was also part of the Appellant's claim and that the claim arose out of a chain of two contracts, that, unfortunately, the Trial Court did not address itself on the existing contract under which the Appellant had also made a claim.
32. It was Counsel's further submission that the cause of action in this case arose when the Appellant obtained information about the existence of the Council decision and therefore, the time for coming to Court by employees under Article 31 is not restricted. He contended that the Appellant pursued his rights by asking the Registrar of the Court to address the Respondent, and that the Respondent adjusted the Appellant's salary and title as senior driver.
33. On the other hand, Counsel submitted that the Trial Court erred by holding that the Appellant's contract had expired yet he was still working with the Respondent under the second contract and he was suing on both contracts. He was of the view that the expiry of the first contract did not take away the right of the Appellant under the second contract and therefore, did not take away the jurisdiction of the Court.
34. Counsel further submitted that the Appellant had rightly approached the Court under Article 31 of the Treaty which deals with disputes between the Community and its employees. He argued that the Trial



Court applied Regulation 104 of the EAC Staff Rules and Regulations to reach a wrong conclusion that the Claim was time barred and insisted that the claim was not time barred because Article 31 of the Treaty does not fix the time limit on the disputes between the Community and its employees.

35. Counsel contended that the 12 months requirement does not apply in respect of an employee's salary which should have been paid as of right. He underlined that had the Trial Court interrogated the details of the dates, the Respondent's submission would not have qualified as a Preliminary Objection in terms of the decision of ***Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd.*** [1969] EA 696 which requires a preliminary objection to be on a pure point of law. The decision set the position that: -

"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop."

36. Counsel submitted that Regulation 104 applies only to allowances, grants and other payments *ejusdem generis*, which depend on the availability of funds within the financial year, and does not apply to salary which is fixed by Council and payable every month.



37. Counsel further submitted that while agreeing with the position of the Appellate Division in the case of **Angella Amudo vs. the Secretary General of the East African Community**, Appeal No. 4 of 2014, that “a challenge to jurisdiction must be decided and not assumed, and once the challenge is positively proved, the proceedings must be dismissed”, the challenge in the present matter was not positively proved in the Trial Court.
38. Counsel finally submitted that the Trial Court erred in law and in fact in holding that it lacked jurisdiction to entertain the matter. He therefore prayed to this Court to allow the appeal and set aside the judgment of the Trial Court with costs.

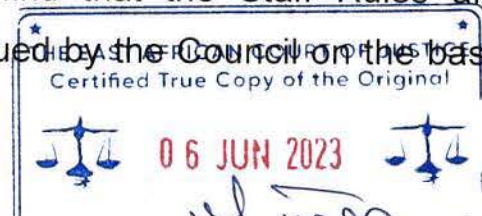
J. THE RESPONDENT’S SUBMISSIONS ON ISSUE NO. 1: JURISDICTION

39. In relation to the first issue, Counsel for the Respondent, Dr. Anthony Kafumbe submitted that the Trial Court was right to hold that it lacked jurisdiction to entertain the Reference because as indicated in the judgment, there was no merit in pursuing claims in respect of contracts that had long expired. Relatedly, he submitted that the Court rightly clarified that consistent with the decision in the **Angella Amudo case** (supra), the Court lacks jurisdiction *ratione temporis*.
40. Counsel further submitted that the Trial Court rightly appreciated the import of Regulation 104 of the EAC Staff Rules and Regulations, 2006 to the effect that :-



“A member of Staff who may have been entitled to receive allowances, grants or other payments due under these Staff 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.”

41. He further submitted that it was evident that the first employment commenced on 2nd July 2007 and lapsed in July 2013 and that there was no evidence to show that any claim was made within 12 months as required by the Staff Rules and Regulations. Counsel added that under the circumstances, the Trial Court had no mandate to address matters in respect of an expired contract as this was out of the ambit of the provisions of Article 31 of the Treaty.
42. Equally, Counsel contended that even after the Appellant entered into another contract in 2014, he did not abide with Regulation 104 of the Staff Rules and Regulations 2006 but only filed his complaints through the Registrar in 2016 and then came to Court in 2018 which was way out of time. Certainly, Counsel argued, there was no evidence adduced as alleged to prove that there was any Council decision that made personal drivers to Executive Staff as senior drivers, and that even assuming this was true, it was not followed up.
43. Counsel submitted that the Trial Court was right to respect the obligations that parties had under the contract that both parties willingly entered into and to also find that the Staff Rules and Regulations 2006 which are also issued by the Council on the basis



of Article 14 of the Treaty had not been followed. For Counsel, it was clear that no action would lie over an expired contract and in all cases there was no adherence to Regulation 104 of the Staff Rules and Regulations.

44. Counsel further submitted that in the instant case, what the Claimant challenged at the Trial Court and also in this appeal is the Respondent's refusal to implement a Council decision that allegedly put him in salary grade 3 scale and therefore, this matter cannot be brought under Article 31 of the Treaty but ought to have come under Article 30 of the Treaty which was not done.

45. Counsel submitted that the Trial Court rightly observed the Appellant's failure to abide with Regulation 104 of the Staff Rules and Regulations was fatal to the extent that the matter was time barred. That also this position is true be it in respect of the first contract and what the Claimant calls the second contract that ran from July 2014 to December 2020, given that even then the communication on behalf of the Claimant was only made by the Registrar of this Court in 2016.

46. Counsel lastly submitted that it was an anomaly that ought to be rejected by this Court for the Claimant to claim arrears from 2014 to date based on a letter allegedly upgrading him from a grade 2 salary scale to a grade 3 salary scale given the provisions of Regulations 19 of the Staff Rules and Regulations. He indicated that this is more so the case because the Claimant is aware that his employment



contract was regulated by the Staff Rules and Regulations and not letters such as that of October 2017 from the Respondent.

K. THE COURT'S ANALYSIS AND DETERMINATION

47. We have carefully considered the rival arguments of the parties on the first issue and we would like to make the following observations and determination: -

48. On issue No. 1 the Trial Court, though not framed as such, held in paragraph 48 of its Judgment that: -

"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 jurisdiction to entertain and determine this matter as presented".

49. Suffice to indicate that, as provided under Article 35 A of the Treaty, appeals from the judgment or any order of the First Instance Division are brought to this Court only on the following grounds: -

- a. points of law;
- b. lack of jurisdiction; or
- c. procedural irregularity.

48. The gist of this Appeal by the Appellant is that the Honorable Learned Justices of the First Instance Division erred by ~~holding that the Court~~ lacked jurisdiction to entertain the Reference.



50. The finding by the Trial Court that it lacked jurisdiction to entertain and determine the Reference was based on the fact that the Claim was brought under an irrelevant Treaty provision (Article 31 instead of Article 30 of the Treaty) and that the matter was time barred.

51. At this juncture and for the avoidance of doubt, it would be more judicious to reproduce the contents of those provisions of the Treaty before embarking on the analysis and findings on whether the Trial Court committed any irregularity by finding that it lacked jurisdiction to entertain and determine the matter: -

- i. Article 30(1) of the Treaty provides that: *“Subject to the provisions of Article 27 of this Treaty, any person who is resident in a Partner State may refer for determination by this Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty.”*
- ii. Article 30(2) stipulates that: *“the proceedings provided for in this Article shall be instituted within two months of the enactment, publication, directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complained, as the case may be.”*
- iii. Article 31, on the other hand provides that: *“the Court shall have jurisdiction to hear and determine the disputes between the*



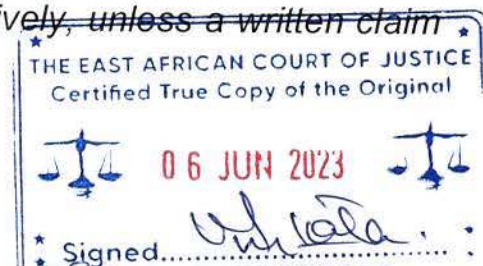
Community and its employees that arise out of the terms and conditions of employment of the employees of the Community or the application of the staff rules and regulations and terms and conditions of service of the Community.”

52. From the above provisions, two differences are discernible: -

- Firstly, while the Court may be accessed by anybody who is resident in a Partner State under Article 30, including the community employees, the remedy under Article 31 is only available to employees of the Community qua employees.
- Secondly, while the right granted by Article 30 is circumscribed in the sense that the proceedings must be instituted within two months, Article 31 imposes no such limitation. However, such limitation is provided for by the Staff Rules and Regulations (2006), and most specifically by application of Regulation 104 which prescribes limitation on when actions such as the Claim subject of this Appeal can be commenced.

53. For avoidance of doubt, we wish to reproduce the contents of Regulation 104 of the EAC Staff Rules and Regulations (2006) which provides as follows: -

“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.”

54. In the Trial Court, the issue of jurisdiction was raised and the Court had to address it forthwith in order to determine whether it had the mandate to entertain the matter before it could proceed to address any other question. 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), *jurisdiction ratione personae* (locus standi) and jurisdiction *ratione temporis* (temporal condition).

55. In ***Manariyo Desire vs. the Attorney General of the Republic of Burundi***, [2015-2017] EACJ LR 978, this Court held that the absence of any of the above essential elements of jurisdiction would disallow it the mandate to entertain a dispute.

56. The issue here is whether the Trial Court erred in holding that it lacked jurisdiction to entertain the Claim brought in 2018 under Article 31 of the Treaty for an employment contract that had expired in 2013.

57. As it has been sufficiently demonstrated, a claim under Article 31 of the Treaty is strictly confined to disputes between the Community and its employees under the situations stipulated therein. It is not disputed that the contract, subject of the Claim in the Trial Court was entered by the Parties on 2nd July 2007 and expired in July 2013. In essence, an expired contract ceases to exist from the date of expiration.



58. Therefore, the contention that the Appellant was an employee of the Community when the Claim was instituted in the Trial Court in 2018 (5 years after the contract expired in 2013) because he got a new contract in 2014 and which was different from the initial one of 2007, are legally unfounded, misconceived and meaningless.

59. We are in full agreement with the Trial Court that the Claim was brought under Article 31 which deals with disputes between the Community and its employees and it was time barred.

60. Unfortunately, since the Claim was instituted in 2018 (5 years after the expiry of the initial contract (in 2013), it was unarguably time barred as was held by the Trial Court.

61. In fact, the Trial Court was absolutely right and did not commit any irregularity in holding that: -

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

62. Therefore, Issue No.1 is answered in the negative.

L. ISSUE NO. 2: REMEDIES

63. The Claim having been rightfully dismissed by the Trial Court for lack of jurisdiction, the Appellant would have incurred costs in respect of the Claim by virtue of application of the provision of Rule 127 (1) of this Court Rules which provides that: -



“Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order.”

64. From the wisdom of the Learned Justices of the Trial Court, and in compliance with the provision of Rule 127(1), which is also applicable in this Appeal, each Party was directed to bear its own costs taking into account the nature of the Claim.

65. It has not been demonstrated that the Trial Court exercised its discretion to award costs erroneously, and therefore there is no basis for interfering with that order.

M. DISPOSITION

66. In view of our findings hereinabove, this Appeal is hereby dismissed in its entirety. However, taking into account the nature of the Appeal, we direct that each party bears its own costs.

IT IS SO ORDERED.

DATED, DELIVERED and SIGNED at ARUSHA on this 30th day of May, 2023.

Nestor Kayobera
30.05.2023

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Nestor Kayobera
PRESIDENT




Sauda Mjasiri
VICE PRESIDENT


Anita Mugeni
JUSTICE OF APPEAL


Kathurima M'Inoti
JUSTICE OF APPEAL


Cheborion Barishaki
JUSTICE OF APPEAL

