Case Number:	Application 15 of 2012
Date Delivered:	02 May 2013
Case Class:	Civil
Court:	East African Court of Justice
Case Action:	Ruling
Judge:	Isaac Lenaola, John Joseph Mkwawa, Mary Stella Arach-Amoko
Citation:	Secretary General of the East African Community v Angella Amudo [2013] eKLR
Advocates:	-
Case Summary:	-
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
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Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA

FIRST INSTANCE DIVISION

(Coram: Mary Stella Arach-Amoko, DPJ, John Mkwawa, J, Isaac Lenaola, J.)

APPLICATION NO. 15 OF 2012

(ARISING FROM REFERENCE NO.1 OF 2012)

BETWEEN

THE SECRETARY GENERAL OF

THE EAST AFRICAN COMMUNITY.....APPLICANT

AND

ANGELLA AMUDO.....RESPONDENT

DATE: 2ND MAY 2013

RULING

1. This is an Application brought by the Secretary General of the East African Community, seeking an order that the claim by Angella Amudo, the Claimant in **Claim No. 1 of 2012** be declared as time barred. The Application is expressed to be brought under Rule 21 of the Court's Rules of Procedures and is supported by an Affidavit sworn on 6th December, 2012, by one, Jean Claude Nsengiyumva, Deputy Secretary General (Finance and Administration) of the East African Community.

2. The Applicant's case is that in the Statement of Claim, the Claimant (now the Respondent in the Application) stated that the actions complained of **"took place in September, 2008"** while the Claim was filed on 27th September, 2012, a period of over four years. That, therefore, invoking Article 30(2) of the Treaty, it is his contention that the Claim was filed outside the two month's limitation period prescribed by the said Article and is consequently time-barred and should be struck off.

3. In response, the Respondent filed a Replying affidavit sworn on 8th March, 2013 and after detailing out the gist of her claim, which we deem unnecessary to reproduce in this Ruling, then stated at paragraph 14 of the said Affidavit:

"14.THAT the Respondent's application based on the limitation period provided under Article 30 of the Treaty is clearly misconceived and irrelevant to an employment dispute brought to Court under Article 31 of the Treaty. I am advised by my Advocate and I also genuinely believe that a Statement of Claim under Rule 25 cannot at the same time be a Reference under Rule 24 of the Rules of Procedure of this Court and vice-versa."

4. Further, she has added in paragraph 15 of the Affidavit, the point that the;

"subject matter for determination of the court is substantially the import of the Staff Rules and Regulations notwithstanding that the authority under which they were made is the Treaty or that in determining the dispute, I shall refer to some provisions of the Treaty."

5. In Submissions before us, Mr. Steven Agaba, Learned Counsel for the Respondent also argued that Article 31 flows from Article 30 and that any reference to a **"natural person"** in Article 30 must necessarily also refer to an **"employee''** of the Community who has raised a dispute under Article 31, aforesaid.

6. He also placed reliance on two decisions of the Appellate Division of this Court i.e. **Attorney-General of the Republic of Kenya vs Independent Medical Legal Unit, EACJ Appeal No.1 of 2011 and Attorney-General of the Republic of Uganda and Anor vs Omar Awadh Omar and 6 Others others, EACJ Appeal No. 2 of 2012,** where the Learned Justices of Appeal held inter-alia that the objective of Article 30(2) is legal certainty and that the Treaty has not envisaged a situation where there is an exception to the two months' limitation period created by that Article.

7. On his part, Mr. James Nangwala, Learned Counsel for the Respondent, in his response, termed the Application wholly misconceived for the reasons that Article 30 of the Treaty must be read in isolation with Article 31 because whereas Article 30 is specific as to what matters can be time-barred by the two months' rule, Article 31 has no such bar. That the procedure to be used in invoking either of the Articles is also different and in the case of Article 30, it is a **"Reference "**under Rule 24 of the Court's Rules of Procedure while under Article 31, it is a **"Statement of Claim"** under Rule 25 of the said Rules.

8. Further, it is his contention that whereas Article 31 concerns itself with interpretation of the Treaty pursuant to jurisdiction conferred on this Court by Article 27, Article 31 limits itself to the application and interpretation of Staff Rules where there is a dispute in that regard between the Community and its employees.

9. He has also relied on **Halsbury's Laws of England, 3rd Edition, Volume 36, paragraphs 579 and 597** to argue that where the words of a statute are clear and unambiguous; there is no need to look elsewhere to discover their true meaning and intention.

10. We have carefully considered the Application, the response to it and rival submissions on record and our view of the matter is as follows:

11. Firstly, we are bound by the decisions in the Independent **Medical – Legal Unit and Omar Awadh Cases** (supra). In those decisions, the Appellate Division addressed its collective mind to the provisions and import of Article 30(2) of the Treaty. In the latter case and following its decision in the former, the Court rendered itself as follows:

"Moreover, the principle of legal certainty requires strict application of the time-limit in article 30(2) of the Treaty. Furthermore, nowhere does the Treaty provide any power to the Court to extend, condone, to waive or to modify the prescribed time limit for any reason."

12. Secondly, and without deviating from the above holding, it is our considered view that an interrogation of the jurisdiction of this Court under the Treaty is necessary in determining whether the holding extends to matters filed under Article 31 of the Treaty. In that regard, a concise reading of the Treaty would show that this Court is conferred jurisdiction in certain situations including in the following matters:

(i) Jurisdiction over the interpretation and application of the Treaty - Article 27(1)

(ii) Disputes between the Community and its employees – Article 31

(iii) Preliminary Rulings by way of case stated upon request by Courts and Tribunals in Partner States – Article 34

(iv) Disputes between Partner States regarding the Treaty submitted to the Court under a special agreement – Article 32

(v) Arbitration in situations envisaged by Article 32 of the Treaty

(vi) Advisory opinions – Article 36

The Court shall also have such other original, appellate, human rights, and other jurisdiction as will be determined by Council at a subsequent suitable date as provided for by Article 27(2) of the Treaty.

13. In that context, our reading of the Treaty would show that Article 30 must be read, in terms of jurisdiction ,with Article 27, hence the words in Article 30 that;

"Subject to Article 27, any person who is resident in a Partner State may refer for determination by the court, the legality of an act, regulation, directive or action <u>of a Partner State or an institution of the Community</u> on the grounds that such an Act, regulation, directive, decision or action is <u>unlawful or is an infringement of the provision of this Treaty</u>." (Emphasis ours)

14. Article 27(1) then provides that the Court shall "**initially have jurisdiction over the <u>interpretation and application of this Treaty.</u>"**(Emphasis added). The jurisdiction in both Articles is clearly limited to matters relating to the Treaty and nothing else. Further, the office of Secretary General, the Respondent in the Claim, is neither a Partner State nor an Institution of the Community under Article 9 of the Treaty as read together with Article 30 above. The import of both provisions is that no proper claim can be made by an employee qua employee against the Secretary General by the invocation of Article 30. Conversely, Article 31 is titled, "**Disputes between the Community and its Employees**." For avoidance of doubt, the Article provides as follows:

"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 employees of the Community or the application and interpretation of the Staff Rules and Regulation and Terms and Conditions of Service of the Community."

It is obvious, therefore, that Article 31 is limited to disputes relating to the above issues only and do not extend to the jurisdiction under Articles 27 and 30 and we dare say that the jurisdiction under Article 31 is unique and special in that it gives the Court jurisdiction akin to a Court dealing with employment and labour relations but limited to employees of the Community.

15. We must now juxtapose the above findings with the provisions of Article 30(2) for a clearer understanding of the issue at hand. It provides as follows:

"The proceedings provided for <u>in this Article</u>, shall be <u>instituted within two months of the enactment, publication, directive, decision or action complained of,</u> or in the absence thereof, of the day in which it came <u>to the knowledge of the complainant as the case may be."</u> (Emphasis supplied).

16. The time limit imposed by the above Article, in our humble view, cannot be applied to every instance in the Treaty or to every jurisdiction conferred by the Treaty (set out above) but only to matters in Article 30 as read with

Article 27 hence the specific rider that only **"Proceedings provided for in this Article**" shall be subject to the two month's limitation period.

17. If the framers of the Treaty had intended that the two months' limitation period should be invoked in all proceedings under the Treaty as opposed to proceedings under this Article (i.e. Article 30), nothing would have been easier to do. That they chose to do as they did, does not give this Court the mandate to reduce, extend, waive, condone or modify their language and intent which is clearly discernible from a clear reading of all the Articles referred to above.

We must add here that our reading of the decisions in **Independent Medical Legal Unit** and **Omar Awadh**,(supra) would lead to only one conclusion; that the Appellate Division was addressing the applicability of the provisions of Article 30 of the Treaty and not Article 31 thereof and so the two decisions can be distinguished from the one before us.

18. We, therefore, accept the guidance provided by **Halsbury's Laws of England**(above) that:

"If the words of a statute are clear and unambiguous, they themselves indicate what must be taken to have been the intention of Parliament, and there is no need to look elsewhere to discover their intention or their meaning."

Further, that;

''Whenever there is a particular enactment and a general enactment in the same statute, and the latter taken in its most comprehensive sense, would override the former, the particular enactment must be operative ,and the general enactment must be taken to affect only the parts of the statute to which it may properly apply. This is merely one application of the maxim *generalia specialibus non derogant.''*

We adopt the above statements as expressive of the intention of the framers of the Treaty and in finding that we see no ambiguity at all in either Article 30 or Article 31 for reasons we have given.

19. Thirdly, we need not address the argument that the Claimant is a ''**natural person''** or a "**resident of a Partner State**" because once we have held that Article 30(2) does not apply to proceedings under Article 31, the matter becomes moot.

20. Fourthly, we agree with the Respondent that reading Rules 24 and 25 of the Court's Rules of Procedure, the perpetration of the intent to separate proceedings under Article 30 and those under Article 31 is clearly discernible. Proceedings under Article 30 are by way of a **"Reference**" while those under Article 31 are by way of a **"Statement of Claim"** and the manner of handling both are also procedurally different. For avoidance of doubt in that regard, Rule 24(1) provides as follows;

''A reference by a Partner State, the Secretary General or any person under Articles 28,29,30 respectively of the Treaty shall be instituted by presenting to the Court an application."

Article 25(1) then provides as follows:

"A claim for determination of a dispute between the community and its employees under Article 31 of the Treaty shall be instituted by presenting to the First Instance Division a statement of claim"

It is obvious to us that different procedures in each instance are applied not for cosmetic value but because it was

precisely intended that different legal parameters should be set in each of the two jurisdictional situations.

21. Lastly, a question may be raised as to whether proceedings under Article 31 or arbitration proceedings under Article 32 or indeed any other proceeding other than one under Article 30 as read with Article 27 are open-ended and are not subject to the time limitation under Article 30(2) of the Treaty. The issue was not raised nor addressed by parties; and important as it may be, in fairness to all parties, we do not consider it imperative to address at this juncture in this matter. It is however our hope that in the future, opportunity may well arise when the issue may be sufficiently and properly addressed.

22. In conclusion, we find that the Application before us is misguided and misconceived and is hereby dismissed.

23. As to costs, let the same abide the outcome of **Claim No.1 of 2012.**

It is so ordered.

DATED, DELIVERED AND SIGNED AT ARUSHA THIS 2ND DAY OF MAY, 2013

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MARY STELLA ARACH-AMOKO

DEPUTY PRINCIPAL JUDGE

.....

JOHN MKWAWA

JUDGE

.....

ISAAC LENAOLA

JUDGE