IN THE EAST AFRICAN COURT OF JUSTICE
APPELLATE DIVISION AT ARUSHA

(Coram: Emmanuel Ugirashebuja, P; Liboire Nkurunziza, VP; Edward Rutakangwa, JA, Aaron Ringera, JA, Geoffrey Kiryabwire, JA)

APPLICATION NO. 4 OF 2015

(An Application for Review arising from the Judgment of the Appellate Division of the Court at Arusha (Hon. Justice Emmanuel Ugirashebuja – President; Hon. Justice Liboire Nkurunziza – Vice President; Hon. Justice Ogoola – Justice of Appeal; Hon. Justice Edward Rutakangwa – Justice of Appeal and Hon. Justice Aaron Ringera – Justice of Appeal) in Appeal No. 4 of 2014 dated 30th July 2015.

BETWEEN

ANGELLA AMUDO ..... APPLICANT

AND

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

JUDGMENT OF THE COURT

1. We cannot do better than preface our judgment in this Review Application by a quotation from the exceedingly instructive and able judgment of Lord Shaw in **Haystead v. Commissioner for Taxation** [1920] A.C. 155 at page 166. He said:-

   "Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case or new versions which they present as to what should be a proper apprehension, by the court of the result... If this were permitted, litigation would have no end except when legal ingenuity is exhausted."

2. Similar sentiments were succinctly echoed by the Federal Court of India, thus:

   "This Court will not sit as a court of appeal from its own decisions nor will it entertain applications for review on the ground only that one of the parties in the case conceives himself aggrieved by the decision. It would, in our opinion, be intolerable and most prejudicial to the public interest if the cases once decided by the court could be re-opened and re-heard: There is a salutary maxim which ought to be observed by all courts of last resort...It concerns the State, that there be an end of law suits...its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this:" in ***Raja Prithwi Chand Lall Chaudhary v Sukhraj Rai*** *(AIR 1941 SC1).*

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3. We totally subscribe to these salutary holdings because public policy demands finality of litigation and certainty of the law as declared by the highest court (see, **Tanzania Transcontinental Co. Ltd v Design Partnership Ltd**,) [CAT], Civil Application No. 62 of 1996 (unreported)). They have now crystallized into a principle of law which is religiously followed by the courts in all jurisdictions, in the determination of applications for review. We will accordingly abide by this principle in determining this Application for Review ("*the Application*") by Ms. Angella Amudo ("*the Applicant*").

4. In this Application, the Applicant seeks a review of the Judgment of this Division of the East African Court of Justice ("*the Court")* dated 30th July, 2015 ("*the Judgment*") in Appeal No. 4 of 2014 ("*the Appeal*").

5. The Applicant was, evidently, dissatisfied with the Judgment in which her appeal against this Court's First Instance Division ("*the Trial Court*") decision in Claim No. 1 of 2012 ("*the Claim*") was dismissed in its entirety with costs.

6. For an informed appreciation of our ultimate decision, we believe that the following background would be instructive.

7. The Applicant is an Accountant by profession and resides in Arusha, Tanzania. Following the resignation of one Mr. Ponziano Nyeko from

his employment as Project Accountant in the East African Community ("*the Community"),* the Community's Council of Ministers ("the Council") at its 14th Ordinary Meeting (24th – 28th September, 2007), approved the immediate recruitment of his replacement. Mr. Nyeko, who had been employed for a five-year period in the Community's RISP Project, whose life span was five years, was handling a "specilazied one-man" section. The Applicant was appointed to fill the said vacant post by the Council at its 16th Meeting of 13th September, 2008. The Applicant's Letter of Appointment dated 29th September, 2008, partly reads as follows:-

" 1. Post

You will be employed as Project Accountant attached to the EAC Secretariat, funded under RISP Project. You shall not be considered as a regular staff member under the EAC Staff Rules and Regulations except where it is specified in this contract.

6. Tenure

This contract will run from the date of assumption of duty up to June, 2010.

15. Acceptance

If the terms and conditions spelt out in this contract are acceptable, please sign the attached slip and return it to the Secretary General for further processing."

8. We categorically pointed out in our now impugned Judgment that:-

"22. The Appellant assumed duty on 1st November, 2008. She served the full term of her contract without a word of complaint enjoying all the benefits of the contract.

*23. Upon expiry of her formal contract of Employment, the Appellant was given periodic "**Short-Term Employment contracts**", in the same position which she apparently gladly accepted. On 27th April 2012, the Respondent informed her by letter (Exh.P20) that her **"short-term contract as Project Accountant which expires on 30th April, 2012 will not be renewed."** She was formally thanked for the services she had rendered to the Community and wished success in her future endeavours.*

*24. She reacted instantly. By her letter dated 30th April, 2012 (Exh. P21), she expressed her dissatisfaction with the decision to terminate her employment as it was contrary to the Council decision of 13/09/2008. She maintained that the contract ought to have "been running for five years renewable once." She sent another letter to the Respondent dated 8th May, 2010 (sic) (Exh. P22), for the first time registering her grievances on her "**irregular appointment terms**." When the Respondent failed to act favourably she forsook the arbitration route and accessed the Trial Court."*

9. In the Claim, the Applicant was challenging the decision of the Community's Secretary General ("the Respondent") to recruit her as a Project Accountant under the RISP Project. She was accordingly seeking a declaration to the effect that that decision was *ultra vires* the Respondent's power and inconsistent with the Community's Staff Rules and Regulations. In addition, apart from claiming damages, she was

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claiming a declaration that "the Respondent (sic)" was entitled to a renewable contract of employment for a period of 5 years.

10. The Claim's competence was challenged from the outset by the Respondent. The latter contended before the Trial Court that the Claim was incompetent as it had been instituted beyond the period of two months prescribed in Article 30(2) of the Treaty for the Establishment of the East African Community ("the Treaty").

11. In its ruling, the Trial Court held that the claim was not based on Article 30 is the Respondent would have it, but rather on Article 31 of the Treaty and accordingly not time barred. A full trial ensued, at the end of which the Trial Court partly found in favour of the Applicant.

12. The Applicant was partly aggrieved by the Judgment of the Trial Court. She wanted more than what was awarded to her, hence the Appeal which resulted in the impugned Judgment.

13. In our Judgment, we dismissed the Appeal in its entirety with costs. That was on 30th July, 2015.

14. The Applicant, as the Application amply shows, was not happy with the outcome of the Appeal. Fortunately, she had one last avenue through which to demonstrate her dissatisfaction. It was the review route created by Article 35 (3) of the Treaty read together with Rule 72

of the East African Court of Justice Rules of Procedure, 2013 ("the Rules").

15. Article 35(3) of the Treaty reads thus:-

> *"An application for review of a judgment may be made to the Court only if it is based upon the discovery of some fact which by its nature might have had a decisive influence on the judgment if it had been known to the Court at the time the judgment was given but which fact at that time, was unknown to both the Court and the party making the application, and which could not with reasonable diligence, have been discovered by that party before the judgment was made, or on account of some mistake, fraud or error on the face of the record or because an injustice has been caused."*

16. Rule 72 of the Rules provides in sub-rules (1) and (3) that:

> *" 1. An Application for review of a judgment under Article 35 of the Treaty shall be made in accordance with this Rule.*
>
> *3. The Court shall grant an application for review only where the party making the application under sub-rule (2) proves the allegations relied upon to the satisfaction of the Court."*

17. In pursuit of her right to have the Judgment against her reviewed, the Applicant duly lodged the Application on 4th December, 2015, by Notice of Motion supported by an affidavit deponed by herself.

18. The grounds for review as articulated in the Notice of Motion are:-

"1. *This honourable Court omitted to take account of the fact that the Council is the only Organ vested with powers to determine officers and staff in the services of the Community.*

2. *This honourable Court omitted to take account of the fact that the Respondent's communication that informed the Appellant/Applicant of renewals and non-renewal of her contract on whether they were preceded by Council Decisions.*
3. *This honourable court on an error apparent of (sic) the face of the record that Ponziano Nyeko was employed for a period of five years in the RISP project when he was employed as Professional Staff for the Secretariat on a 5 year contract renewable once for another 5 years by the Council.*
4. *This honourable court on an error apparent on the face of the record that the Established structure (Exh.RE.1) is the one approved by the Council in its Meeting of August 25th, 2006 while it was not.*
5. *This honourable court on an error apparent on the face of the record that the Appellant/Applicant's cause of action against the Respondent was illegal decision of the Respondent to appoint the Appellant/Applicant as a Project Accountant under RISP funding, and the Claim governed by Article 30(2) instead of Article 31 of the Treaty when the Appellant's/Applicants cause of action against the*

Respondent is illegal decision of the Respondent to limit tenure of Appellant/Applicant's appointment in the service of the Community contrary to the tenure fixed by the staff rules and regulations without express directives from the Council whereby the Claim is governed by Article 31 instead of Article 30(2).

6. *This honourable court on an error apparent on the face of the record that the Appellant was not a staff member of the Community governed by the staff rules and regulations which "uncontested facts" relied on by the Trial Court Justices are laid down procedures in appointment of professions (sic) spelt out in the staff rules and regulations and are Council's established procedures used in appointments of such category of staff.*
7. *This honourable Court on an error apparent on the face of the record that the Respondent had not acted ultra vires in issuing Exh. P2 but rather that the Learned Justice of the Trial Court had misapprehended the nature, substance and quality of Respondent's evidence before them."*

19. The Respondent, through an Affidavit in Reply sworn by Mr. Liberat Mfumukeko, Deputy Secretary General (Finance and Administration) strongly resisted the Application.

20. At the Scheduling Conference held on 11th November, 2015, two issues where agreed upon. These were:

(a) Whether the Court should exercise its jurisdiction to review its Judgment dated 30th July, 2015 on the grounds stated in the Notice of Motion, and

(b) Whether on account of fraud practised upon it by the Court Respondent, the Court erroneously found that the Learned Justices of the First Instance Division had misapprehended the nature, substance and quality of the Respondent's evidence.

21. Furthermore, the Parties were ordered to lodge Written Submissions in support of their respective positions in the matter, a duty they duly fulfilled. The Parties, the Applicant in person and Mr. Stephen Agaba, learned Advocate for the Respondent, appeared before us on 8th February, 2016 to highlight on their written submissions.

22. Before canvassing the able submissions of the Applicant and Mr. Agaba, we find ourselves constrained to elaborate on what we alluded to in paragraph 13 above.

23. In dismissing the Appeal, we did not base our decision on the merit or otherwise of the Applicant's Claim. All that was said in the Judgment on this aspect were merely *obiter dicta*. The *ratio decidendi* of the case was that the Trial Court wrongly assumed jurisdiction over the matter which was patently predicated on Article 30 of the Treaty and having been instituted beyond the stipulated two-month period, the Claim was indisputably time barred.

24. This is what we said in paragraph 57 of the Judgment:

"All said and done, we hold without any demur that the entire proceedings in the Trial Court were a nullity on account of want of jurisdiction. We accordingly quash and set them aside."

25. It does not stand to reason, therefore, that after nullifying and setting aside the proceedings, we would have proceeded to make a binding determination on the merits or demerits of the Claim.

26. Our definitive finding that the Applicant's Claim was time barred was predicated not on the evidence adduced by the parties, after the Trial Court had wrongly assumed jurisdiction over the matter. As it is obvious in paragraphs 49, 50, 51 and 52 of the Judgment, it was based on the Parties' Pleadings.

27. As a consequence, we thus held in paragraph 53:-

"*Since the Claim was patently time barred, the Trial Court lacked* ***jurisdiction ratione temporis****..."*

We accordingly nullified the entire trial and the Trial Court's judgment.

28. For the avoidance of doubt, we categorically **observed** as follows in paragraph 58:

"*Under normal circumstances, we would have rested the matter here. But for the purpose of completing the record and* ***providing guidance for future actions,*** *we shall go further and* ***venture our opinion*** *on the issue agreed on in this appeal."*

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29. The above quotation, in our considered opinion, ought to have sent a clear message to every objective reader, let alone trained legal minds, that what we opined on in paragraphs 59 to 86 of the Judgment were mere ***obiter dicta*** (not essential for the decision) and not the ***ratio decidendi***, that is, the reason or rationale for our decision.

30. That was why we thus tellingly concluded in paragraph 87:

> "*For the foregoing reasons, we hold that all things being equal, we would have answered both limbs of the issue framed for determination in this Appeal in the affirmative and allowed the Cross-Appeal with costs, had we been convinced that the Claim was competent.*"

31. Given the above elucidated factual and legal positions, as the Court's decision was premised solely on the legal issue of limitation which rendered the Claim incompetent, and not on the merits or otherwise of the Claim, we respectfully find ourselves with no flicker of doubt in our minds that grounds 1, 2, 4, 6 and 7 in the Notice of Motion, as well as the complaint on fraud, are not only frivolous but wholly misconceived in law. They are based on clear **obiter dicta** and not the **ratio decidendi** of the impugned Judgment. We find them to be legally unmaintainable in this review Application and we accordingly reject them outright, as our decision did not rest at all on the review of the evidence on record.

32. Our rejection of grounds, 1, 2, 4, 6, 7 and 8 (which was belatedly added at the Scheduling Conference), renders the second framed issue

in the Application totally redundant. We shall, therefore, not give any opinion on it, lest we engage ourselves in a fruitless academic exercise.

33. The only point for consideration then in the Application, is whether the Applicant has made out a case for reviewing the Judgment and satisfied the criteria for entertaining the same in our review jurisdiction.

34. At this stage, then, we have found it highly desirable to canvass first, the now firmly established principles governing the exercise of review jurisdiction by any court. The litany is long but not exhaustive either. As a matter of elaboration, we shall cite a few but pertinent ones, culled from a number of decided cases from various jurisdictions.

35. Some of these principles are:-

(a) The principle underlying a review is that the court would not have acted as it had, if all the circumstances had been known: **Attilio v Mbowe** (1970) HCD.n.3 (TzHC).

(b) There are definitive limits to the exercise of the power of review. The review jurisdiction is not by way of an appeal. The purpose of review is not to provide a back door method to unsuccessful litigants to re-argue their case. Seeking the re-appraisal of the entire evidence on record for finding the error, would amount to the exercise of appellate jurisdiction which is not permissible: **Meera Bhanja v Nirmala Kumari Choudury** (1955) ISCC (India), **Independent Medical Unit v Attorney General of Kenya,** Application No. 2 of 2012 (EACJ).

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(c) The power of review is limited in scope and is normally used for correction of a mistake but not to substitute a view in law. This is because no judgment however elaborate it may be can satisfy each of the parties involved to the full extent: **Peter Ng'homango v.Gerson A. K. Mwanga & Another**, [CAT] Civil Application No. 33 of 2002 (unreported), **Devender Pal Singh v. State, N.C.T. of New Delhi and Another,** Review Petitions No. 497, 620 and 627 of 2002 (India Supreme Court), etc.

(d) A judgment of the final court is final and review of such judgment is an exception: **Devender v. State, N.C.T of New Delhi** (supra), **Blueline Enterprises Ltd. v. The East African Development Bank (EADB)** [CAT] Civil Application No. 21 of 2012 (unreported), etc.

(e) In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction: **Kamlesh Varma v. Mayawati & Others**, Review Application No. 453 of 2012.

(f) There is a clear distinction regarding the effect of an error on the face of the record and an erroneous view of the evidence or law. An error on the face of the record justifies a review. An erroneous view justifies an appeal. Therefore, the power of review may not be exercised on the ground that the decision was erroneous on merit: **Aribam Tuleshwar Sharma v. Ariban Pishak Sharma,** 1979 (11) UJ 300 SC.

(g) It will not be sufficient ground for review that another judge would have taken a different view. Nor can it be a ground for review that the

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court proceeded on incorrect exposition of the law. "*Misconstruing a statute or other provision of the law cannot be a ground for review*": **National Bank of Kenya Ltd. v. Njau** [CAK) [1995-98] 2 E.A. 231.

(h) A court will not sit as a court of appeal from its own decisions, nor will it entertain applications for review on the ground that one of the parties in the case conceived himself to be aggrieved by the decision. It would be intolerable and most prejudicial to the public interest if cases once decided by the court could be re-opened and re-heard: **Raja Prithwi Chand Lall Chaudhary v. Sukhraj Rai** (supra)**; Blueline Enterprises Ltd v. EADB** (supra), **Autodesk Inc. v. Dyason** (No.2) [1993] HCA 6 (Australia), etc.

(i) The term 'mistake or error on the face of the record' by its very connotation signifies an error which is evident **per se** from the record of the case and does not require detailed examination, scrutiny and elaboration either of the facts or the legal position. If an error is not self-evident and detection thereof requires a long debate and process of reasoning, it cannot be treated as an error on the face of the record. To put it differently, it must be such as can be seen by one who runs and reads: MULLA, **Commentary on the Indian Code of Civil Procedure,** 1908, 14th edition at pp 2335-6, **State of Gujarat v. Consumer Education and Research Centre (**1981) A. Guj.233, **State of West Bengal and Others v. Kamal Sengupta and Another (2008)** 8 SCC 612.

36. With these firmly established legal principles in mind, which will guide us in our determination of the Application, it behoves us now to examine

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the grounds of complaint fronted by the Applicant in justification of this review Application.

37. We have indicated that the Applicant had premised her prayer for review of the Judgment on eight grounds. All the same, we found six of them to be unmaintainable given the character of the impugned Judgment. They were accordingly rejected leaving us with only two grounds of complaint to contend with (see paragraphs 32 and 33).

38. The remaining grounds forming the core of the review application are 3 and 5.

39. It is the contention of the Applicant in ground 5 that:

> "*This honourable court on an error apparent on the face of the record that the Appellant's/Applicant's cause of action against the Respondent was illegal decision of the Respondent to* ***appoint the Appellant/Applicant*** *as a Project Accountant under RISP funding, and the Claim governed by Article 30 (2) instead of Article 31 of the Treaty when the Appellant's/Applicants cause of action against the Respondent is* ***illegal decision of the Respondent to limit tenure (sic) of Appellant's/Applicant's*** *appointment in the service of the Community contrary to the tenure fixed by the staff rules and regulations without express directive from the Council where the Claim is governed by Article 31 instead of Article 30 (2).*" [Emphasis supplied by the Applicant].

40. Elaborating on this ground, both in her written and oral submissions before us, the Applicant relying on Article 70 (2) of the Treaty, impressed upon us, on what is otherwise obvious and undisputed: This is that the "Council is the Appointing Authority of Professional Staff." She elucidated further that the Council, under the Regulations ("the Staff Rules"), at its 16th Meeting duly appointed her as a Professional Staff for the Secretariat. She also stressed that the tenure of appointment of such professional staff is "*5 years renewable once by the Council for another 5 years.*" According to the Applicant, her "*appointment in Council Decision EAC/CM16/Decision...is intact and in force.*"

41. The above state of affairs notwithstanding, the Appellant vehemently argued before us that the Respondent issued her "*an appointment letter with tenure of 21 months...instead of issuing her an appointment letter with tenure of 5 years renewable once for another 5 years.*" She tellingly emphasized that "*Article 9(4) of the Treaty terms this action of the Secretary General Ultra Vires*".

42. The Applicant concluded her otherwise brief submission on this ground asserting:

> "*Thus the cause of action in this dispute:*
>
> *is the illegal decision of the Respondent to limit tenure of Appellant's/Applicant's appointment in the service of the Community contrary to the fixed tenure of 5 years renewable once by the Council*

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stipulated under Regulation 22(1) (c) of the staff rules and regulations whereby the Claim is governed by Article 31 of the Treaty."

She accordingly invited us to sustain ground five in the notice of motion and grant the reliefs sought in the Application.

43. In response to the Applicant's submissions, Mr. Agaba found it imperative to point out from the outset that as the Court had found the proceedings in the Trial Court to be a nullity on account of want of jurisdiction, the Applicant ought to appreciate that the Appeal was determined not on the basis of the evidence, but on the basis of the Claim having been preferred out of time.

44. Addressing his mind to ground five in the notice of motion, Mr. Agaba was of the view that the holding of the Court that the Claim was barred under Article 30(2) of the Treaty was one of law and "not an error on the face of the record at all". He associated himself fully, without more, with the *"reasoning of the Court as reflected in the Judgment from paragraphs 21 – 52".* He accordingly pressed us to dismiss this ground of complaint as it does not demonstrate "*any errors apparent on the face of the record"* to justify a review of the Judgment.

45. From the notice of motion and the submissions before us, it is clear that the Applicant is seeking a review of the Judgment on the ground of an error apparent on the face of the record. Surely, this is one of the permissible grounds for review under Article 35 (3) of the Treaty and Rule 72 (2) of the Rules. But we wish to make it absolutely clear, as we

articulated in para. 36 above, that a review of judgement is not granted as a matter of absolute right upon mere assertions of "*mistake or error apparent on the face of the record*". On this we find it very instructive to return to the illuminating judgment of the Court of Appeal of Tanzania in the case of **Chandrakant Joshubhai Patel V. R**. [2004] T. L. R. 218.

46. In the above cited case it was succinctly held as follows:-

"It is, we think, apparent that there is a conflict of opinion as to what amounts to an error manifest on the face of the record and it is important to be clear of this, lest disguised appeals pass off for applications for review. We say so for the well known reason that no judgment can attain perfection, but the most that the courts aspire to is substantial justice. There will be errors of sorts here and there, inadequacies of this or that kind, and generally no judgment can be beyond criticism. Yet while an appeal may be attempted on the pretext of any error, not every error will justify a review. As was held by the Supreme Court of India in ***Thungabhadra Industries Ltd v. State of Andra Pradesh*** *[1964] SC 1372, a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."*

We subscribe entirely to this reasoning and we find ourselves in short of better words, to improve on the clarity of its language and strong message.

47. We have already indicated on what amounts to an error or mistake apparent on the face of the record in paragraph 36 while canvassing the

legal principles governing review jurisdictions. From those principles, it is crystal clear that indeed not every error or mistake in a judgment will justify a review. An error which has to be fished out and searched will not suffice. It should be something more than a mere error. It must be an error which is "*so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant*" : **S. Baghirathi Ammal vs. Palani Roman Catholic Church** (2009) 10 SCC 464, in paragraphs 12 and 26. Can this be said of the alleged error fronted by the Applicant in ground five of the notice of motion?

48. After revisiting the pleadings in the Claim, the ruling on the issue of limitation and Judgment of the Trial Court, the impugned Judgment, and the Applicant's submissions before us in support of the ground under scrutiny, we have found ourselves constrained to provide a negative answer to the above posed question. Indeed, in our respectful view, the Applicant is trying to build a mountain out of a dung hill. We shall demonstrate.

49. In the Judgment under review, we found it as an undisputed fact, going by the pleadings, that the Council, which we recognized and still recognize as the only Community Organ with powers to determine the Community's officers and staff, at its 16th Meeting appointed the Applicant as Project Accountant in the place of Mr. Ponziano Nyeko, who had resigned from his services. The Applicant does not dispute this: see, for instance, paragraphs 3, 4, 5 and 8 of Annexure AA2 to the affidavit in support of the notice of motion.

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50. As shown in paragraphs 22 and 23 of the Judgment, the Applicant accepted the offer, assumed duty on 1st November, 2008, served the full term of the contract of service, which ended on 30st June, 2010 and gladly accepted periodic short-term Employment contracts offered to her thereafter which, too, came to an end on 30th April, 2012. It was on 27th September, 2012 that the Applicant lodged her Claim in the Trial Court challenging the decision of the Respondent in appointing her *"initially for a period of 21 months and the subsequent periodical extensions of the appointment up to 30th April, 2012"* dubbing the decision *"ultra vires the powers of the Secretary General and his deputies."*

51. The Respondent challenged the competence of the Claim in the Trial Court for being time barred. It was after this challenge on the competence of her claim, that the Applicant belatedly claimed that the Claim was based on Article 31. The Trial Court accepted her assertion and assumed jurisdiction over the matter.

52. In our impugned Judgment, we faulted the Trial Court in so holding. In paragraph 47 we held as follows: –

> *47. We are also mindful of the fact that in determining its jurisdiction at the threshold, a court must be guided by the relevant law(s), treaties inclusive, and the parties' pleadings and not by the parties' allegations or assertions of facts from the bar."*

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53. In holding that the Claim was based on Article 31 and not Article 30, the Trial Court had said:

> "*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 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.*"

54. We found this holding to be strange, if not made *per incuriam*. Prior to that, this Court in the case of **The East African Law Society and Four Others v. The Attorney General of Kenya and Three Others** [EACJ] Appeal No. 3 of 2011 had categorically held that a Claim against the Secretary General of the Community by any resident of the Partner States of the Community, is maintainable under Article 30 of the Treaty. It is unfortunate that in determining this issue, the Trial Court did not make even a fleeting reference to this decision. Whether the Trial Court would have held as it did, had it directed its mind to this decision, is now anybody's guess.

55. For this reason, we held as follows in paragraphs 34 – 38 of the Judgment:

> *"34. We take it to be settled law that there can be not suit, without a cause of action having accrued to the claimant or plaintiff. It is equally settled that a cause of action should always be gleaned from the plaint or statement of claim and not from the claimant's assertions*

from the bar or submissions. In this particular case, the Appellant's cause of action could only be traced in her Statement of Claim, particularly paragraphs 12, 15, 16, 19, 20, 22 and 23.

35. We have had the advantage of reading the Appellant's Statement of Claim and its annexures. It was obvious, even to the naked eye, that the Appellant's sole basis (cause of action) of her claim against the Respondent was the alleged illegal decision of the Respondent of appointing her as a Project Accountant under the RISP funding for a period running from 1st October, 2008 to 30th June, 2010. To her, the Respondent acted in excess of his mandate and in bad faith (that is, ultra vires his powers), as the appointment was contrary to the directives of the Council. This decision led her to suffer general and specific damages as indicated therein. She was accordingly challenging the legality of the Respondent's decision and seeking the Court's declaration to that effect. This pleading, therefore, took the Appellant's claim out of the ambit of Article 31.

36. As we have already sufficiently demonstrated, a claim under Article 31 is strictly confined to disputes between the Community and its employees under the situations stipulated therein. It is glaringly clear to us that this was not the case here, for two self-evident reasons. ***One****, by the time the Appellant instituted the Claim, in December, 2012, she had long ceased to be an employee of the Community, even under RISP funding Project. As per paragraph 13 of her contract of employment (Exh.P5), she was effectively "separated from the service" of the Community on 30th April, 2012. It*

is totally inconceivable, under the circumstances, that she would have maintained an action under Article 31. It is unfortunate that the Trial Court took it for granted that she was still an employee of the Community. We are saying so deliberately because in its Ruling concerning the competence of the Claim, the learned trial Justices never addressed themselves to the Parties' pleadings having in mind this specific issue.

37. ***Two,*** *what was being challenged was the legality of the Respondent's decision, which fell squarely within the four corners of Article 30. The Appellant, being a resident of one of the Partner States, and in view of our decision, in* ***The East African Law Society & Four Others v. The Attorney General of Kenya & Three Others,*** *(EACJ) Appeal No. 3 of 2011, had locus standi to institute such a claim against the Respondent.*

38. From the above discourse, it is our conclusive finding that the Claim was based on and governed by Article 30 of the Treaty and not Article 31 as the Trial Court irregularly held. Since the Claim was instituted about 27 months after the expiry of the initial tenure and nearly five (5) months after the expiry of the last short-term contract, it was unarguably time barred. It ought to have been dismissed with costs. The Trial Court did not do so, but proceeded to determine it on merit with no voice of dissent from the Respondent. Was that proper? We have no flicker of doubt in our minds that it was not. We shall endeavor to elaborate why."

56. That the Claim was based on the alleged illegal decision of the Respondent, apart from Statement of Claim, is confirmed by the contents of ground five itself in the notice of motion and paragraph 54 of her affidavit in support of the same, which reads thus:

> *"54. THAT the cause of action in this dispute, is the decision of the Secretary General – an Authority with no powers – to shorten the tenure of my appointment by issuing me an appointment letter with tenure of 21 months instead of one with 5 years renewable once by the Council fixed by law, purport to renew my contract and purport to pronounce himself on expiry of my contract without preceding decision of the Council – knowing very well that I was a professional staff governed by the Staff Rules and Regulations and decision EAC/CM16/Decision 41, is still in force and has never been invalidated by the Council itself."* [Emphasis supplied].

A similar assertion is repeated in paragraph 5.9 of her written submission (see paragraph 42 above).

57. Since the Applicant was challenging the legality of Respondent's decision to employ her as a Project Accountant under RISP funding thereby limiting, what she believes up to this moment, her appointment tenure in the Community contrary to the one fixed by the Staff Rules without express directives from the Council, we unequivocally held in paragraph 52 that:

"52. From all the above, it is our finding that the Claim had its basis in Article 30 of the Treaty, and ought to have been instituted within two months' of the Respondent's decision."

58. After giving due consideration to all the material before us in the Application, we have found ourselves still of the same firm view. We are now increasingly of the view that the Applicant has failed to prove the allegation in ground five of the Notice of Motion, to our satisfaction as required under Rule 72 (3) of the Rules.

59. Instead, it has occurred to us that the Applicant believing that we were wrong in our decision, wants to have a second bite, through rehearing of the Appeal. In other words, instead of seeking the correction of a mistake or an error on the face of the record, which she has failed to demonstrate, she is looking for a substitute view. The fronted 5th ground of complaint was adequately dealt with and answered in the Judgment and she has no right to challenge our finding on this point in the guise of an error apparent on the face of the record.

60. As we believe we have already sufficiently demonstrated, we cannot sit as an appellate court over our own decision. Neither can we invoke our review jurisdiction because the Applicant conceives herself aggrieved by the decision, otherwise were this permissible "*litigation would have no end except when legal ingenuity is exhausted.*" That would be totally *"intolerable and prejudicial to public interest,"* which demands an end to litigation.

61. In view of the above discussion, we dismiss the fifth ground of complaint in the Notice of Motion for being frivolous and misconceived.

62. Coming to the third ground, (see para 18.3 [supra]) we should quickly point out that, on full reflection, we have found it seriously wanting in merit. Our holding that the Claim was time barred had nothing to do with terms of employment of Mr. Ponziano Nyeko. If anything was said about him in the course of dealing with that issue, it was on account of the undisputed fact that the Applicant was employed as a Project Accountant to replace Mr. Nyeko who had resigned. We have gleaned nothing from the submissions of the Applicant establishing even an error in our alluding to this fact in our Judgment. This unsubstantiated ground, therefore, stands dismissed.

63. In concluding our discussion, we wish to reiterate that the only point or issue for consideration and determination in this Application is whether the Applicant has managed to make out a case justifying the review of the impugned Judgment under the provisions of Article 35 of the Treaty.

64. While canvassing this issue we found out that six out of the eight grounds relied on by the Applicant in seeking the review of the Judgment were totally misconceived. We rejected them. The remaining two grounds were apparently pegged on two perceived errors apparent on the face of record. After re-visiting the Judgment, the entire Notice of Motion and considering the submissions of both parties in the

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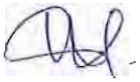
Application, we are satisfied that the Applicant has abysmally failed to establish any error on the face of the record worth of any consideration. The Applicant, we are convinced, is trying to use the review jurisdiction as a back door method to re-argue the appeal, which is not legally permissible.

65. In fine, we are of the settled opinion that the Judgment passed by the Court dated 30th July, 2015, does not suffer from any patent defect. As such, it does not warrant any interference by way of review as no error on the face of the record has been proved. The Application, therefore, is misconceived and bereft of any substance or merit. It is accordingly dismissed with costs.

DATED AND DELIVERED at Arusha, this 25th day of May, 2016.



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Emmanuel Ugirashebuja

President

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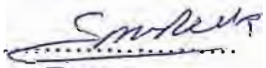
Liboire Nkurunziza

Vice President



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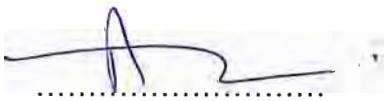
Edward Rutakangwa

Justice of Appeal



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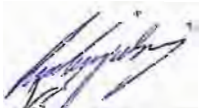
Justice of Appeal



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Geoffrey Kiryabwire

Justice of Appeal