

ISSN: 0856-9940



ISSUE No.18  
NOVEMBER 2011

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publication of the East Africa Law Society

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*Design & printing by:*

Noel Creative Media Ltd

Tel: +254-20-2729906/20

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ISSN: 0856-9940

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# Cross Border Legal Practice in an Integrated East African Community

## Introduction

Cross-border legal practice largely involves an advocate performing legal professional work beyond his or her home state. An advocate can offer legal services outside his or her country where he or she is licensed to practice. Traditionally, advocates practice law in the country where they completed their legal studies. However, experiences from regions such as the European Union have shown that greater regional integration may lead to greater mobility of advocates. With the establishment of the East African Community and subsequently the Protocol on the Establishment of the East African Common Market (herein after 'the Common Market Protocol'), there have been increased calls for freer and easier trade in goods and services across the region. Thus, ideally cross-border legal practice implies that advocates in any of the East African partner states can freely practice in all the five states, namely: Burundi, Kenya, Rwanda, Tanzania and Uganda. Partner states would be required to abolish all restrictions, which impede or make it impossible for an advocate to render legal services beyond his/her home state. However, albeit the partner states support the free movement of goods, workers and services, some are rather cautious and may seek to maintain their sovereignty in some of these issues. Consequently, instruments such as the East African Community Common Market (Free Movement of Workers) Regulations, Annex II (November 2009) regulate the entry, stay, and exit of workers. The East African Common Market (Schedule of Commitments on the Progressive Liberalization of Services), Annex V also illustrates the cautious and skeptical attitude among

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some partner states towards cross border legal practice. For example under this Annex, only Rwanda and Kenya fully committed themselves to eliminate barriers to cross border legal practice by 2010; Burundi and Uganda's elimination date is 2015, while Tanzania did not commit itself regarding legal services. Within the allocated space, this paper briefly examines the need for the promotion of cross border legal practice in an integrated East African Community.

## Justification of Cross Border Legal Practice

It should be noted from the outset that like elsewhere, advocates in East Africa play an increasingly important role in business transactions, some of which involve more than one partner state. Cross border legal practice has real benefits for both advocates and the public, especially business persons. With cross border legal practice, advocates are able to follow their clients who are transacting business in another partner state. Advocates with special expertise are able to apply it further afield. Clients can choose who they want to represent them, where ever they are. Courts can also benefit from the expertise of senior advocates from other jurisdictions who appear before them thus helping to improve the quality of

practice in the host state. It should also be pointed out that though not yet fully institutionalized, cross border legal practice is already taking place in one form or another among the partner states. National legislations governing professional legal practice also contain reciprocity clauses, which may facilitate cross border legal practice. As pointed out above, Kenya and Rwanda have opened up. In any case, under the Common Market Protocol, partner states guarantee the free movement of persons (article 7), workers (article 10), services (article 16) and harmonization and mutual recognition of academic and professional qualifications (article 11). Thus, the skepticism and fear to embrace cross border legal practice should not arise.

## What Form May Cross Border Legal Practice Take?

Cross border legal practice may take the following forms:

- Temporary provision of legal services across boundaries. This might even include having permission to appear in court in the host country with the oversight/supervision of a local advocate. For example, a Ugandan lawyer, say, could go to Rwanda for a specific case and appear in the Rwandan court with court approval;



- Acting as a “legal consultant” on foreign law. For example a Rwandan advocate goes to Kenya to serve as a consultant on a short-term basis;
- Establishment of a “foreign law” practice in the host country. For example a Ugandan advocate sets up a firm in Rwanda to among others, advise various stake holders such as the members of the business community that may want to invest in Uganda on Ugandan law;
- Entering a partnership with a law firm in the host country. For example, a Burundian law firm, a Tanzanian law firm, and a Rwandan law firm joining forces. In so doing, mergers and acquisitions would easily be enhanced and the process eased;
- Becoming a member of the host country bar either through an examination or through reciprocity (“mutual recognition”);

- Arbitration work. For example a lawyer from any East African partner state is permitted to represent any client before an arbitration tribunal in any other partner state.

### Challenges of Attaining Cross Border Legal Practice

Although cross border legal practice is inevitable within an integrated East African Community, there are some challenges, which include the following but are not insurmountable:

- Having different rolls of advocates in each partner state;
- Weak regulatory framework at the national levels thereby making it difficult but not impossible to develop one at the regional level;
- Advocates play different roles in each of the partner states;
- There are different regulatory systems for legal practice in the partner states;

- There are different political systems;
- Language problem;
- Different legal systems (common law and civil law);
- Limited resources;
- Nationalistic tendencies which may breed protectionism of the different legal markets; and
- Disparities in the Bar Associations.
- How do you protect the practice of experienced advocates versus the young ones?
- How do you address competition; should lawyers be required to team up in a country?

### Strategies for Achieving Cross Border Legal Practice

In spite of the challenges outlined above, several strategies may be applied to achieve cross border legal practice in the integrated

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East African Community. Some of these strategies include:

- Harmonizing legal training and curricula in the partner states;
- Encouraging practicing advocates to acquaint themselves with the laws of each partner state. This is because the practice of law essentially requires precise knowledge of national law. National Bar Associations could incorporate the study of major national legal frameworks in the continuing legal education curriculum for advocates.
- Sensitization of all stakeholders such as the Chief Justices, Law Reform Commissions, members of the different national Parliaments at both regional and national levels, advocates in all the partner states and the general public on the benefits of cross border legal practice;
- Amend national Advocates' practice laws, regulations and administrative provisions to allow cross border legal practice;
- Develop a law that creates a homogeneous legal basis that could be applied directly in all partner states;
- Reciprocal or mutual recognition of practicing certificates, in the short run, and introduction of an East African practicing certificate in the long run; and
- Harmonization of statutory and administrative requirements in the partner states.

### **Mutual Recognition Agreement (MRA) or East African Legislation on Cross Border Legal Practice?**

A mutual recognition agreement (MRA), in the context of this paper, is an agreement by which two or more partner states agree to recognize one another's academic and professional qualifications. The main object of an MRA would be to promote trade in services among partner states. The MRA may, among others, provide for academic and professional qualifications, registration procedures, competencies, code of conduct and disciplinary procedures and other

conformity assessment criteria. According to Article 11 of the Common Market Protocol, the partner states undertook to 'mutually recognize the academic and professional qualifications granted, experience obtained, requirements met, licenses or certificates granted in other partner states' (Article 11 (1) (a)). The implementation of article 11 is to be in accordance with Annexes to be concluded by the partner states.

Some commentators, including legal practitioners in the region have argued that in order to promote cross border legal practice, there is a need to have MRAs in place. To this end, the Draft East African Community Common Market (Mutual Recognition of Academic and Professional Qualifications) Regulations 2011 have been prepared. Regulation 7 obliges Partner States to designate competent authorities to enter into MRAs to facilitate free movement of professionals in accordance with commitments made under the Protocol. The Regulations contain frameworks for registration of professionals and disciplinary measures. Other commentators are of the view that there is a need for an East African Legislation on Cross Border Legal Practice. The legislation would provide for regulation of cross border legal practice within the East African Community. The comforting thing is that both approaches are mutually reinforcing and aim at one important objective: the promotion of cross border legal practice in the region.

It should be noted that according to the Draft Regulations, MRAs are entered into by 'competent authorities' (Bar Associations?). They are contractual undertakings, which are governed by the terms of the agreement. Can't a party to this agreement easily pull out of the MRA? What if only two 'competent authorities' enter into the MRA? How do you bring the others on board? Space does not permit me to fully engage the merits of each approach, but in my view, the East African legislation is an appropriate regional framework to handle various aspects pertaining to legal practice that go beyond the national advocates' regulatory mechanisms. The debate continues: do we go the MRA way or take the path of East African legislation?

## **Conclusion**

With the Common Market Protocol in place, cross-border legal practice is inevitable. However, its implementation should be systematic and in a phased manner. It is also important to note that implementation of cross border practice has to be done together with harmonization of legal training and curricula in the partner states. There is a need for sensitization of various stakeholders on the benefits of cross border legal practice. Without underestimating the importance of MRAs, my view is that an EAC Advocates legislation is crucial for the implementation of cross border legal practice in the partner states. However, the enactment of the legislation is a sensitive issue and has political implications. Therefore there is a need for extensive consultations and sensitization so that the legislation can be owned by all the stakeholders and thus be effectively implemented without opposition. It is possible to have a single market for advocates, the challenges such as different languages and different legal systems, notwithstanding. Cross border legal practice is necessary if we are to take advantage of the opportunities that unfold with the opening up of the East African market for goods and services. END



# Cross Border Legal Practice In East Africa:

## *A Civil Law Perspective*

### Introduction of subject matter

**T**raditionally, lawyers practice law in the country where they completed their legal studies or home State. The organisation and regulation of the legal profession were developed at a time when legal matters used to be confined to a single jurisdiction and the familiarity of the attorney with that jurisdiction was considered of exclusive importance. Most lawyers were involved in litigation on the basis local rules. The question raised in this paper is to what extent the de-territorialisation of law practice in civil law system is actually being reflected into the organisation and the regulation of the legal profession. In other words, this paper interrogates to what extent the civil law system allows lawyers to engage in cross-border law practice.

This practice though still dominant, is slowly changing in the East Africa Community (EAC), as greater economic integration deepens leading to greater mobility of lawyers. It is expected that Partner States lawyers will benefit from this increased mobility, as the scope of their practice will be expanding since they will be practicing law in any of Partner States in addition to home State where they obtained their professional license. In practice, this mobility may seem difficult to achieve because it necessitates harmonization of legal standards among countries with different le-

*By Herbert RUBASHA\**



gal regimes.<sup>1</sup> As such, legal profession has become a priority policy issue that all EAC Partner States are committed to improving and have a conducive environment to pave way for cross border practice within the Community. It is worth noting that, a number of initiatives have already been embarked upon to facilitate cross border legal practice in EAC.<sup>2</sup> Interestingly, this paper will combine an assessment on traditional perspectives of Rwanda and Burundi – as States hailing from the civil law system and appreciate the ongoing legislative attempts at the community level vis-a-vis the concept of cross border legal practice.

Thus, this paper presents a resume at its best of a rather topical and complex subject matter with an orientation and focus to civil law system. Particularly, the paper gives a brief factual/situational analysis of the subject matter, assesses milestones and successes at present, discusses challenges and shortcomings and makes a conclusion with relevant recommendations to the theme.

### Factual or situational analyses

East Africa Law Society (EALS) brings more than 7,000 lawyers in the region together in contrast to its Partner - the Canadian Bar Association (CBA) which has over 37,000 lawyers, judges, notaries, professors, students. Particularly, Rwanda has around 605 while Burundi has around 180 practicing advocates. Traditionally, Rwanda and Burundi hail from a civil law background which in many respects differs from that of other Partner States (Uganda, Kenya and Tanzania) that embrace common law system. The two regimes largely differ both in terms of practice and legislation. Understandably, with the admission of Rwanda and Burundi in the EAC, efforts have been made to gradually align with sister Partner States through harmonization of their respective legal systems, for compliance and enhancement of quality legal practice, as well as encourage the formulation of a regulatory framework for cross border legal practice.<sup>3</sup>

Under the Common Market Protocol (CMP), cross border practice among Partner States envisions gradual abolishment of restrictions on the free supply

<sup>3</sup> The Protocol on the Establishment of the East African Common Market Protocol, Part D on Free Movement of Persons and Labour – particularly from article 7-12.

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<sup>1</sup> Jonathan Barsade, the Effect of EC Regulations upon the Ability of U.S. Lawyers to Establish a Pan-European Practice, 28 INT'L Law 313, 313 (1994).

<sup>2</sup> EAC Treaty and Relevant Protocols and Annexes, such as Annex II - EAC Common Market Protocol on Free Movement of Workers, Regulations, Annex V - EAC Common Market Protocol Schedule of Commitments on the Progressive Liberalization of Services and Annex VI on Mutual Recognition Agreement (MRAs).

of legal services within the community where ultimately goods and services are traded freely and easily. Currently, Rwanda has opened to lawyers from Partner States albeit conditions stipulated under Annex V of the CMP.<sup>4</sup> In a related context, the European Union (EU) has expressly allowed migrant lawyers to provide legal services in the host State since the adoption of the Services Directive of 1977.<sup>5</sup> This Directive allows lawyers practising in one member State to provide legal services of in another member State on a temporary basis. While rendering services in the host State, the lawyer uses the professional title he has acquired in his home State. In addition, a lawyer pursuing such activities is bound by the rules of professional conduct of the host State, without prejudice to his obligations in his home State<sup>6</sup>

## Applicable Laws and policies

The EAC Treaty and CMP spells out an entry point for cross border practice at the community level. Currently, the applicable legislation in relation to cross border practice however varies from State to State. Traditionally, the custom of legal profession practice dictated that a lawyer who has not been locally admitted to practice in a particular Partner State may nevertheless be accepted to participate on “pro hac vice” basis.<sup>7</sup> Both in Burundi and Rwanda, the out-of-State attorney or foreign lawyers would need the permission from the Bar to practice in local courts. The law establishing the Bar in Rwanda stipulates that subject to any international convention, a lawyer who is a member of a Bar of a State other than Rwanda that has provided in its national legislation for reciprocity may provide legal services in Rwanda on an occasional basis in accordance with Rwandese rules respecting the regulation of the profession.<sup>8</sup> Accordingly, the law provides for admission

of lawyers from other States on the basis of other conventions with binding force on Rwanda. It is noted that the Rwandan Bar has under this prescription accredited various lawyers to practice in local courts upon their application to the president of the Bar.

The Burundi Bar Association also embraces the concept of cross border legal practice in almost the same way as Rwanda. As such also, the basis of accreditation to practice in Burundi is both found in legislation and practice. While the legislation clearly provides the procedural considerations of pro hac vice admission to legal practice, the aspect of reciprocity dominates the grounds of accreditation in Burundi. This later approach turns to be more flexible and commonly used either based on the previous engagement or future commitment to the effect of facilitating Burundi lawyers upon their application to practice in host State.

As part of pro hac vice admission prerequisite by both Rwanda and Burundi Bars, foreign lawyers are usually required to work in conjunction with a local lawyer. The rationale of active involvement of the local counsel seems to spin on the fact that they are more conversant and familiar with local laws and practices. Another thinking attributed to this pre-condition is the unique nature of civil law system which might not necessarily be the case that the foreign lawyer masters well. While in the EU presupposes the same conjunction - the extent to which the local lawyer should be involved in the case varies from jurisdiction to jurisdiction and cost implications<sup>9</sup>, the Rwandan legislation is silent to that effect. Basing on the practice though, you infer a presupposition that this joint mandate between the two counsels (the local and foreign) lasts until completion of legal proceedings.

The law establishing the Rwandan bar further enshrines reciprocity as another consideration the president of the Bar can accredit a foreign lawyer temporal certificate to practice in Rwanda. In one case, Me. Richard Gisagara, a Rwandan national successfully applied to join and practice in Valedoise Bar of France. The applicant was successfully considered. It followed that

the Rwandan Bar offered to reciprocate in the same capacity should any member of Valedoise Bar apply to practice in Rwanda. Also, the same consideration was done to a lawyer from Cameroonian Bar following acceptance of a Rwandese lawyer to practice in the former's jurisdiction. This dynamism has set Rwanda apart in its unique approach of applying and considering cross border legal practice. Particularly, such flexibility reflects the vitality and adaptability of Rwandan legal practice chiefly - the response to the call of globalization where individuals and companies increasingly need global legal advice. It also gives another credible perspective of civil law system in our quest to find relevant solutions to contemporarily challenges.

## Successes and milestones

The biggest question on everyone's mind is whether we really have anything to celebrate about civil law practicing member States in terms achievements towards realization of the CMP – and particularly cross border legal practice. In the case of Rwanda, it is noted that under the law establishing the Bar<sup>10</sup>, foreign lawyers may render services on an ad hoc basis, practice law on a permanent basis under the home State professional title and may even become a full member of the profession of the host State if he has effectively and regularly pursued activities in the host State involving the law and regulations that regulate the Bar.<sup>11</sup>

While the above clearly demonstrates that Rwanda - as a formerly civil law system - has made some interesting strides towards embracing cross border legal practice, it must be recalled that CMP paves the same way for free movement of goods, services, capital, labour, and people. Consequently, the benefits attributed range from trade opportunities, larger markets, improved competitiveness, high returns on investment, larger brokered investments, one single investor's visa to be issued for free movement in the region to free labour movement in all

<sup>10</sup> Ibid.

<sup>11</sup> Currently, a lawyer from Cameroon Bar Association has been admitted in Rwanda Bar Association following a set of procedural and admission tests as provided under the law establishing Rwandan Bar and the internal rules and regulations of the Bar. An American lawyer was also admitted on the same grounds. The former often practices in Rwanda's courts just like any other local practicing advocate.

<sup>4</sup> Common Market Schedule of Commitment on the Progressive Liberalisation of Services, Annex V (In Protocol on the Establishment of the East African Community Common Market – Pg 67).

<sup>5</sup> Directive 77/249/ECC of 22 march 1977, to facilitate effective exercise by lawyers of freedom to provide services: O.J. [1977] L.78/17.

<sup>6</sup> Ibid.

<sup>7</sup> Clint Eubanks, Can I practice in Another State? A survey of State Pro Hac Vice Admission, (2003-2004) 28 J. Legal Prof. 145.

<sup>8</sup> Article 6 of the Law No. 03/97 Establishing the Bar in Rwanda (Official Gazette No. 08 of 15/04/1997).

<sup>9</sup> Tom Zwart, The reflection of cross-border law practice in the organization and regulation of the legal profession, *Academic of International Law and Political Sciences* 2001, (2).

Partner States among others.<sup>12</sup> It is thus expected that under such integration and globalised economy, companies and individuals will increasingly need both global and regional legal advice. Indeed, the potential clients will certainly want to employ counsels of their choice for economic and efficiency reasons. In addition, clients expect one lawyer to be able to suggest answers to questions that may concern several jurisdictions. Understandably, law firms will follow suit. Therefore, this is likely to increasingly engage Partner State lawyers in cross border legal practice to offer their clients legal representation. Even then, most of multinational companies prefer to tackle national legal challenges through their lawyers in anticipation of familiarity and quality of services rendered.

### Challenges and shortcomings

The process of integration is an ongoing process with a multitude of challenges that impede or slow down cross border legal practice. This section briefly highlights challenges that affect different Partner States - ranging from nationalistic ten-

dencies, language challenges, protectionism, disparities in the Bar Associations, competition tendencies, unfair market practices to limited resources among others. On a recent note, Partner States with civil law background seem to be quick in adopting relevant protocols and implementing documents. Particularly, Rwanda emerges to be among the first embracing Partner States thereby opening for a variety of both supply of goods and services. While Rwanda's pace and first compliance rate is appreciated by some circles as a positive stride towards integration - and therefore deserving the same emulation by other Partner States, other critiques have expressed deep concern whether Rwanda will ever be emulated or at least be reciprocated by Partner States. Thus this mismatch poses a fundamental challenge to Partner States' future commitment in fear of betrayal and un-proportional returns.

### Conclusion and Recommendations

Whether under civil or common law system, cross border practice in the EAC Partner States is still at its infancy stage. Still, cross border legal practice presents itself as a Must-Do-Thing if we need to realize the full potentials of integration of the EAC. The traditional perspectives of Rwanda and

Burundi related to cross border legal practice seem though impressive as the two systems have both legislatively and customary embraced the practice. The principle of reciprocity almost in the entire civil law system seems to be such a decisive benchmark and cornerstone for cross border legal practice. The Valedois Bar of France has admitted various foreign lawyers on that basis - including a Rwandan lawyer.

At the EAC level, we note that various legislations have been tipped to come into force and facilitate realization of cross border practice. Annex VI of the CMP is considered as a point of entry for professional bodies to start discussing Mutual Recognition Agreement (MRAs). Indeed, the professional/regulatory bodies of the East African legal professions must be at the heart of the development of the MRAs. The success of both the EU and CBA processes was in no small measure as a result of co-operation and agreement between all the professional bodies which should inform EAC Partner States as well. Finally, it is worth noting that EAC integration is governed by the progressive principle, and therefore, it may be helpful to consider the principle of variable geometry where some Partner States would mutually recognise lawyers from Partner States rather than waiting for Parliamentary Acts to enable realisation of full potentials of integration. **END**

<sup>12</sup> The scope for international commercial legal practice in the East Africa Community presented at the East African Regional Seminar on International Commercial Law organized by the Pan African Lawyers Union (PALU) - Kigali Serena Hotel, prepared by Mathews Nderi Nduma, Principal Legal Officer, EAC - the 14th of February 2011.

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# The Role of the Legal Profession in the Regional Integration Process:

## A Case of East African Community

### Introduction:

**T**he East African Community (EAC) Partner States (Republics of Kenya, Uganda, Rwanda, Burundi and The United Republic of Tanzania) have embarked on a process of coming together as individual states within a region into a larger whole. The degree of this integration depends upon the willingness and commitment of independent sovereign states to share their sovereignty.

### Defining Regional Integration

Regional integration has been defined as an association of states based upon location in a given geographical area, for the safeguarding or promotion of the participants, an association whose terms are fixed by a treaty or other arrangements. It is a worldwide phenomenon of territorial systems that increase the interactions between their components and create new forms of organisation, co-existing with traditional forms of state-led organisation at the national level.<sup>[1]</sup> Regional integration refers to the process by which states within a particular region increase their level of interaction with regard to economic, security, political, and also social and cultural issues. In simple terms, regional integration is a process in which states enter into a regional agreement in order to enhance regional cooperation through regional institutions and rules. The objectives of the agreement could range from economic to political, although it has generally become a political economy initiative where commercial purposes are the means to achieve broader socio-political and security objectives. It could be organized either on a supranational or an intergovernmental

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decision-making institutional order, or a combination of both.

The East African Community as a regional organisation is structured along these lines. In the East African Community integration process, like in many other regional organisations efforts have often focused on removing barriers to free trade in the region, increasing the free movement of people, labour, goods, and capital across national borders, reducing the possibility of regional armed conflict (for example, through Confidence and Security-Building Measures), and adopting cohesive regional stances on policy issues, such as the environment, climate change and migration.

In my view regional integration initiatives in East Africa, should fulfill the following important functions:

- contribution to peace and security in the region
  - the building of programmes at the regional level
  - the strengthening of the region's interaction with other regions of the world
  - the adherence to law in implementing the developed programme
- the strengthening of trade integration in the region
  - the creation of an appropriate enabling environment for private sector development
  - the development of programmes in support of economic growth and regional integration
  - the development of strong public sector institutions and good governance;
  - the reduction of social exclusion and the development of an inclusive civil society

### Relevance of Legal Profession

For purposes of this paper, I wish to confine the term "legal profession" to represent the Lawyers and Judges. These are key players especially in the operationalisation of adherence to law one of the identified functions to be fulfilled in the integration process as Partner States implement the programmes developed. Within the East African Community framework, these concerned have to some extent been considered and catered for by the Treaty through creation of the East African Court of Justice.<sup>1</sup> Apart from the creation of the Court, very little has been done by the policy organs of the Community to strengthen the East African Court of Justice as an important organ in the integration process. There is no doubt that the Court has a big role to play in the integration process particularly in settling disputes that arise out this relationship.

<sup>1</sup> See Article 9(1)(e) of the Treaty for the Establishment of the East African Community

The East African Court of Justice in collaboration with the Members of the bar in the region have effectively performed this noble function as mandated under the Treaty<sup>2</sup> through judicial pronouncements as shown hereunder:

## Development of Regional jurisprudence

While the legislative and executive organs are working towards the creation of enabling environment for the political integration to be a reality by enacting community laws and adopting policies of the implementation of these laws, the judicial organ of the Community has played the crucial role of interpreting the Treaty and other Community laws and in ensuring respect for the founding principles of the

<sup>2</sup> Article 23 of the Treaty provides that the Court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with the Treaty

Community. In doing so, the Court was being assisted by the lawyers representing the parties or coming in as friends of the Court (*Amicus Curiae*).<sup>3</sup> It should be noted that advocates are also officers of the Court forming part and parcel of the justice process.

The Court has discharged its obligation under the Treaty and contributed to the EAC integration process through adjudication of disputes as its core function. As at end of September 2011 the Court had rendered 14 Judgments, 29 rulings and one advisory opinion thereby contributing directly and significantly to the Community law and regional ju-

<sup>3</sup> In Reference No. 1 of 2005, *Callist Andrew Mwatela and Two Others v. Secretary General and Others*, and, Reference No. 1 of 2006, *Prof Peter Anyang' Nyong'o & others vs. AG of Kenya & 5 Others*, The East Africa Law Society (EALS), and the Bar Associations of Kenya Uganda and Tanganyika, appeared as *Amicus Curiae* to assist the Court in providing answers to legal issues that sought to be determined.

risprudence as well as to the integration process as mandated by the Treaty.

### (i) Interpretation role

In interpreting the laws, courts play an important role complementing that of legislators in as far as they give clear and detailed explanations of the content of laws. The judicial interpretation of the community laws assists the policy makers to have a common understanding of these laws as they take informed decisions during the implementation stages. The East African Court of Justice has actively played this role as can be deduced from its jurisprudence.

In the first ever case brought before the EACJ, *Callist Andrew Mwatella & 2 others vs. EAC*. Reference No. 1 of 2005, the applicants challenged the legality of the actions of the Council of Ministers and the Secretariat in assuming control over Assembly-led Bills. The Council had



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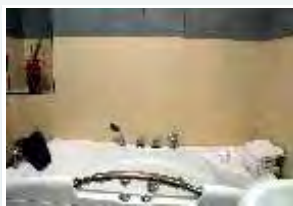
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purported to withdraw four private members' Bills from the Assembly. The application questioned the right of the Council to delay the presentation of the Bills to the House. It also challenged the validity of the meeting of the Sectoral Council on Legal and Judicial Affairs (the Sectoral Council) held on 13<sup>th</sup> to 16<sup>th</sup> September 2005 and the decisions taken by it about Bills pending before the EALA, including the recommendation to legalize decisions through protocols not Community Acts. The application sought an order by the Court that the report of the Sectoral Council meeting held on 13<sup>th</sup> to 16<sup>th</sup> September 2005 was null and void *ab initio* and enjoined court to find that all decisions, directives and actions contained in or based on it were null and void.

The Court found that the Sectoral Council on Legal and Judicial affairs was not constituted per Treaty, in particular Art. 14 which provides that the Council of Ministers shall '**establish from among its members' only** Sectoral Councils and that Sectoral Council members are restricted to 'ministers' as defined by the Treaty. Court found that Kenya and Tanzania were represented by non-ministers (including Attorneys General) at the disputed meeting of 13<sup>th</sup> to 16<sup>th</sup> September 2005, therefore the meeting was not properly constituted and did not amount to a lawful Sectoral Council meeting. In this regard, its decision regarding the two Bills was *ipso facto* invalid. However, the Court employed a prospective annulment principle as opposed to retrospective annulment in order not to take the community back to square one on matters that such improperly constituted meeting had already decided earlier on. It was this particular decision of the Court that led to the amendment of the Treaty thereby validating participation of Attorneys General in such Sectoral Council for Legal and Judicial Affairs.<sup>4</sup>

On another issue the Court found that under Art. 59 (1) any Member of the Assembly may introduce a Bill. Council does not have exclusive legislative initiative to introduce Bills in the Assembly. It held that the Assembly owns all Bills once in the Assembly, whether they came initially by way of private members Bills or

Community Bills. As such, permission of the Assembly would be required for withdrawal of any Bill. Such approval must be sought and obtained through a motion passed by the Assembly. The Court found that the Bills were already in the Assembly, so could not be withdrawn by the Council of Ministers as purportedly done. All the Council could do was to delay the debate.

The Court found on the issue on relationship of the Council and the Assembly on legislation that decisions of the Council even on policy issues have no place in areas of jurisdiction of the Summit, Court and the Assembly (Art. 14 (3) (c) & Art. 16). It held that the Assembly is a creature of the Treaty like the other Organs of the Community and its competence is only on matters conferred upon it by the Treaty as with all Community organs. In this regard, the Assembly could only legislate on matters on which the Partner States had surrendered sovereignty to the EAC.

By interpreting these Articles of the Treaty, the Court dutifully discharged its functions under the Treaty and provided guidance for future operations of the affairs of the Community by its organs. Without fear or favour the Court boldly told the Ministers and Attorneys General that they had overstepped their boundaries and that was not acceptable in any democratic institution. However, having made that finding, in order not to cripple the activities of the Community, the Court invoked in the doctrine of prospective annulment.

In the case of *Christopher Mtikila v. The Attorney General of the United Republic of Tanzania and the Secretary General of the East African Community*<sup>5</sup>, the applicant was contending that the East African Court of Justice had jurisdiction to hear cases involving questions as to membership of the East African Legislative Assembly under Article 52 (1) of the EAC Treaty. The Court did not feel shy to state it clearly that it had no jurisdiction over the matter that the complainant had presented to it. Giving more precise meaning to the proviso to Article 52 (1), the Court held that:

**"the declaration that two persons were improperly elected and that they**

**are not Members of the (East African) Legislative Assembly is the domain of the High Court of Tanzania and not this Court."**<sup>6</sup>

Another significant case brought to EACJ was *Prof Peter Anyang' Nyong'o & others vs. AG of Kenya & 5 Others, Reference No. 1 of 2006*. The main contention in this reference was whether Kenya's process of electing the nine persons deemed to be its EALA members and the rules of Kenya National Assembly for EALA elections infringed Art. 50 of the EAC Treaty.

The EACJ considered the possible meanings of the expression "the National Assembly 'shall elect' " (Art. 50), and found it can only mean "shall choose by vote" taking the ordinary meaning of the phrase, reference to 'democratic election of persons to political office' as understood to mean election by voting. Further, that this interpretation of the meaning of 'elect' is borne out by the practice in each partner states of electing the Speaker and Deputy in the National Assembly through voting. In all Partner States, the National Assembly executes the function of electing Speaker & Deputy Speaker by voting in one form or another, and the extent of discretion of the National Assemblies is to determine what procedure should be applied for the voting. The Court held that the bottom line for compliance with Article 50 of the Treaty is that the decision to elect is a decision of and by the National Assembly not another caucus.

Finally, on whether the Kenya rules complied with Art. 50, it held that the election rules partially comply with Article 50 in so far as they provide for proportional representation of political parties. However, there was a significant degree of non-compliance in the failure to provide for gender and other special interests representation. The major deviation found in the Kenya rules was the non-provision for *election*: The Court held that the election rules and actual process was the antithesis of an election, as the rules 'deemed' the nine elected in order to circumvent the express Treaty provision.

<sup>6</sup> *Christopher Mtikila v. The Attorney General of the United Republic of Tanzania and the Secretary General of the East African Community*, Reference No. 2 of 2007, p. 12 (Unreported)

<sup>4</sup> See Article 3 (c) of the Treaty

<sup>5</sup> Reference No. 2 of 2007



## (ii) *Respect for founding principles of the Community*

As mentioned earlier, the EAC has adopted fundamental and operational principles that govern the achievement of the objectives of the Community<sup>7</sup>. The EACJ through judicial pronouncements has played the role of ensuring that these principles are followed by the different stakeholders of the Community. In *East African Law Society and 4 Others v. Attorney General of Kenya and Others*<sup>8</sup>, the Court held that failure to carry out consultation outside the Summit, Council and the Secretariat was inconsistent with a principle of the Treaty and therefore constituted an infringement of the Treaty. *Katabazi's Case*<sup>9</sup> is another such examples.

## (iii) *Peaceful settlement of disputes*

The functionalist approach to integration departs from the assumption that violence and power become obsolete as a means by which to achieve ends and aspirations.<sup>10</sup> It claims that group conflict is not inherent in humans once they realize that everyone shares common social goals and values.<sup>11</sup>

The establishment of courts of justice within regional groupings follows from this approach to integration and therefore always responds to the need for a mechanism of peaceful settlement of disputes when they occur.

Arguably, in this regard the jurisdiction conferred upon the EACJ is wide enough to enable the peoples of East Africa to access the justice mechanism put in place by the EAC Treaty. It was mentioned earlier that the Court's jurisdiction includes, advisory and arbitral jurisdiction and any such jurisdiction that may be con-

ferred upon it any time by the Council of Ministers.

However, the wideness of the Court's jurisdiction and access to it as provided for under the Treaty are not enough to make the Court the forum through which disputes within the region are settled. The Court needs to build users' confidence in its justice through fair and impartial decisions. It has included in its rules of procedure a requirement for the parties to explore first the possibility for reaching settlement out of court before the matter can be fixed for hearing. This is normally done during scheduling conference.<sup>12</sup>

## (iv) *Independence*

A regional court like any other court has to be independent in its performance of its functions if it is to win confidence of its stakeholders. The East African Court has so far proved to be an independent and impartial body. However, It has experienced and survived what can be termed as apparent intimidation while discharging its noble duty as the Temple of Justice. This can be ably demonstrated by what transpired soon after delivery of one ruling on a matter that was before the Court. In their joint Communiqué of the 8<sup>th</sup> Summit, being a reaction to the Court's ruling and temporary injunction in *Anyang' Nyong'o case* the EAC Heads of State directed, among other things:

*"that the procedure for the removal of Judges from office provided in the Treaty be reviewed with a view to including all possible reasons for removal other than those provided in the Treaty."*<sup>13</sup>

and that

*"a special Summit be convened very soon to consider and to pronounce itself on the proposed amendments of the Treaty in this regard."*<sup>14</sup>

Within fourteen days the Treaty was surreptitiously amended accordingly. Among the said Treaty amendments, as said earlier, was one concerning removal of Judges from office.<sup>15</sup> This included a situation where a 'judge who holds judicial or public office in a Partner State is re-

moved from that office for misconduct or inability to perform the functions of the office for any reason, or the judge resigns from that office following allegations of misconduct... or a judge is convicted of an offence under any law in force in a Partner State involving dishonesty, fraud or moral turpitude'.<sup>16</sup> It is noted that in these scenarios there is no requirement for the Summit to refer the question of the Judge's removal from office to an *ad hoc* tribunal. It appears from the foregoing interventions that the security of tenure for EACJ Judges was seriously put at risk by creation of automatic consequences. However, this unfortunate reaction of the Summit did not deter the Judges from acting impartially and independently as it transpired in the subsequent decisions of the Court. Arguably this makes the EACJ an exemplary model of the Court that stands to propel the integration process as provided for in the EAC Treaty. Indeed Judges are committed to do justice without fear or favour as required by their judicial oath.

In my view Article 26 of the Treaty as amended should be reconsidered. The article proposed for reconsideration is the provision that if a Judge of the Court, who also holds judicial or other public office in a Partner State, is removed or, as the case may be, resigns following allegations of, misconduct or inability to perform the functions of office for any reason, from the office in the Partner State, shall *ipso facto* be removed.

There is no doubt that this provision will become redundant when the Judges of the Court cease to work on *ad hoc* basis. However, as long as the provision remains in play, it has the potential of causing disparity in the standards applicable to Judges of the Court from the different Partner States, unless and until the national laws and standards of the Partner States governing the removal and resignation of Judges from office are synchronized.<sup>17</sup> In the reference challenging the

7 These principles as articulated under Articles 6 and 7 of the treaty includes: peaceful settlement of disputes, Adherence to the principles of democracy, the rule of law, promotion and protection of human and peoples' rights among other things.

8 Reference No 3 of 2007

9 Reference No 1 of 2007

10 J. L. Kent "Effectiveness of the European Court of Justice and its role in the Process of Integration", paper presented at the Second International Conference on "The Challenges of a New European Architecture: Implications for the European Community's Internal and External Agendas", 22-24 May 1991, George Mason University, Fairfax, Virginia, pp 6-7.

11 Ibid.

12 See Rule 53 of the EACJ Rules of Procedure.

13 Joint Communiqué of the 8th Summit of EAC Heads of State, 30 November 2006, Arusha, Tanzania, p. 12.

14 Ibid.

15 See Article 26 of the Treaty

16 See Article 26 (1) (b) (c) (d) Ibid

17 See Mulenga J.N "The Role, Function and Structure of the East African Court of justice in a Common Market Integration Phase", A Paper Presented during The Workshop on Institutional Reforms for the Establishment of an Effective Common market, Held at Sheraton Hotel, Kenya, 26 – 27 January 2009, p. 11.

validity of the 2006/07 amendments to the Treaty, the Court observed:-

“The introduction of automatic removal and suspension on grounds raised or established in the home State, and applicable to only those in judicial or public office, makes possibilities of applying un-uniform standards to Judges of the same court endanger the integrity of the Court as a regional Court”<sup>18</sup>

Adherence to the principles of democracy, the rule of law, promotion and protection of human and peoples' rights

The regional cooperation put in place under the EAC Treaty is people-centered and market driven.<sup>19</sup> If democracy means the rule of the people by the people, and is one of the fundamental principles of the EAC, then the EAC working strategy must focus on participation of all social groups from the bottom to the top. As Janet L. Kent put it,

18 See p. 45 of the Judgement of the Court in The East African Law Society Case (Unreported)

19 Article 7 (1) (a) of the Treaty, Op cit.

“For integration to be a valid concept (...), individuals must be affected by the policy decisions of the supranational institutions and they must have some input into the decision making process.”<sup>20</sup>

In order to get proper answers to the Court's performance to ensure respect for the principle of democracy, one should look also into its jurisprudence in this regard.

Asked to consider if by reason of failure to carry out wide consultations within Partner States on the proposals for the amendments, the process constituted an infringement of the Treaty in any other way, the Court found that:

“It is common knowledge that the private sector and civil society participated in the negotiations that led to the conclusion of the Treaty among the Partner States and, as we have just observed, that they continue to participate in the making of Protocols thereto. Furthermore, as we noted earlier in this judgment, Article

20 J. L. Kent, p 4.

30 entrenches the people's right to participate in protecting the integrity of the Treaty. We think that construing the Treaty as if it permits sporadic amendments at the whims of officials without any form of consultation with stakeholders would be a recipe for regression to the situation lamented in the preamble of “lack of strong participation of the private sector and civil society” that led to the collapse of the previous Community.”<sup>21</sup>

21 *East Africa Law Society and 4 others v. Attorney General of Kenya and 3 others*, Reference No 1 of 2007, p.30 (Unreported). This is a case jointly filed and prosecuted by the East African Law Society in collaboration with the Law Societies of Kenya, Uganda, and Tanzania challenging the surreptitious amendment of the Treaty on 14 December 2006 without involving the citizens as directed by the Treaty. It is these amendments that brought about the creation of the Two Divisions of the Court (First Instance and Appellate Divisions) and also implemented what the EAC Heads of State directed through their Communique that the procedure for the removal of Judges from office provided in the Treaty be reviewed with a view to including all possible reasons for removal other than those provided in the Treaty. See Foot Notes 13 and 15.

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The Court went on to conclude that: *“failure to carry out consultation outside the Summit, Council and the Secretariat was inconsistent with a principle of the Treaty and therefore constituted an infringement of the Treaty (...).”*<sup>22</sup>

On the question of the role of the Court in ensuring that there is respect of rule of law at Community level the case of *James Katabazi and Twenty One Others v. The Secretary General of the East African Community and the Attorney General of the Republic of Uganda*, Reference No. 1 of 2007, is very relevant. In order to appreciate the issues involved I will give the facts in detail form.

The story of the claimants is that: During the last quarter of 2004 they were charged by the Government of Uganda with treason and misprision of treason and consequently they were remanded in custody. However, on 16<sup>th</sup> November, 2006, the High Court granted bail to fourteen of them. Immediately thereafter the High Court was surrounded by security personnel who interfered with the preparation of bail documents and the fourteen were re-arrested and taken back to jail.

On 24<sup>th</sup> November, 2006, all the claimants were taken before a military General Court Martial and were charged with offences of unlawful possession of firearms and terrorism. Both offences were based on the same facts as the previous charges for which they had been granted bail by the High Court. All claimants were again remanded in prison by the General Court Martial.

The Uganda Law Society went to the Constitutional Court of Uganda challenging the interference of the court process by the security personnel and also the constitutionality of conducting prosecutions simultaneously in civilian and military courts. The Constitutional Court ruled that the interference was unconstitutional.

Despite that decision of the Constitutional Court the complainants were not released from detention and hence this reference with the complaint that since the rule of law requires that public affairs are conducted in accordance with the law and decisions of the Court are respected,

<sup>22</sup> Ibid, p. 31.

upheld and enforced by all agencies of the Government and citizens, the actions of a Partner State of Uganda, its agencies and the second respondent were in blatant violation of the Rule of Law and contrary to the Treaty.

The Court held that the intervention by the armed security agents of Uganda to prevent the execution of a lawful Court order violated the principle of the rule of law and consequently contravened the Treaty. It emphasised that:

*“...Abiding by the court decision is the corner stone of the independence of the judiciary which is one of the principles of the observation of the rule of law.”*

As regards, the principle of promotion and protection of human and peoples' rights, Janet L. Kent argues that for the European Court of Justice (as any other regional court) to be seen as an integrating institution, it has *inter alia* to facilitate the integration process through the recognition of the rights of individuals.<sup>23</sup>

Although explicit human rights jurisdiction is yet to be conferred upon the Court, the latter has been courageous enough to ensure that basic rights of individuals are respected. At more than one occasions, the Court has had to consider preliminary objections from defendants alleging lack of *locus standi* by individuals and legal persons. The Court consistently upheld that individuals and legal persons have access to the Court under article 30 of the Treaty,<sup>24</sup> which is a basic right to the regional justice mechanism enabling the peoples to “participate in protecting the integrity of the Treaty.”<sup>25</sup>

## Conclusion

The discussion on the role of legal profession in the integration opens new intellectual space. It provides a concept that allows us to discuss the role of the Lawyers, Partner States and other stakeholders have in making the justice system as an aspect of

regional integration function. The role to define and interpret regional legal instruments rests on the regional Court. For integration process to succeed in East Africa there has to exist independent and free system that will remedy violations and above all political willingness of those in power to abide by decisions of those given the sacred duty of redressing injustices. It is the vigilance and proactive regional court and lawyers working in collaboration that can bring this about.

From the foregoing examination, it is evident that some important stakeholders still do not sufficiently appreciate the crucial role that has been entrusted to the Court by the Treaty. The Court should not be seen as an opponent to the policy makers whenever they are not happy with any of its rulings. The Court interprets and applies the Treaty provisions for the achievement of the EAC objectives and not for purposes of pleasing any of the interested stakeholders.

It is very important that Partner States build trust and strengthens the EACJ the regional judicial body charged with determination of community disputes in the region.

The discussion in this paper has shown how the EACJ has performed its functions and the potentialities it has in ensuring adherence to the rule of law but it is not given sufficient jurisdiction and in some instances the little jurisdiction it has is systematically taken away. The Court of Justice of the European Communities for example which, since its inception, has been playing a crucial role in the European integration process has, from January 2000 to November 2009, determined more than four hundred (400) cases related to Customs Union and Common Market.<sup>26</sup> This is what a fully fledged Community Court is capable of achieving and the EACJ has the potential of doing the same. All it needs is support from the EAC Policy Organs.

<sup>23</sup> J. L. Kent, p 2.

<sup>24</sup> See Cases *Prof. Peter Anyang' Nyong'o and others v. Attorney General of Kenya and others; Christopher Mtikila v. The Attorney General of the United Republic of Tanzania and the Secretary General of the East African Community and East Africa Law Society and 4 others v. Attorney General of Kenya and 3 others.*

<sup>25</sup> *East Africa Law Society and 4 others v. Attorney General of Kenya and 3 Others.*

<sup>26</sup> The cases finalized by the Court of First Instance are not included. See data existing at [http://ec.europa.eu/taxation\\_customs/resources/documents/common/infringements/case\\_law/List\\_of\\_cases\\_6th\\_VAT\\_directive\\_a2\\_fr.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/infringements/case_law/List_of_cases_6th_VAT_directive_a2_fr.pdf) and [http://ec.europa.eu/taxation\\_customs/resources/documents/common/infringements/case\\_law/court\\_cases\\_direct\\_taxation\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/infringements/case_law/court_cases_direct_taxation_en.pdf) both websites accessed on 20 January 2010.





# 2011 Annual Conference and General Meeting

Ngurdoto Mountain Lodge, Arusha, Tanzania

25<sup>th</sup> to 26<sup>th</sup> November, 2011

FACTS FACTS FACTS

## About the Conference

The EALS 2011 Annual Conference and General Meeting will take place at the Ngurdoto Mountain Lodge in Arusha from the 25th to 26th November 2011, under the theme ***"Positioning the Legal Profession in the Regional Integration Process – Opportunities and Challenges."*** As is customary, we have lined up an impressive array of expert presenters and discussants to analyze the topic and guide the discussions. This time round, we have also provided for numerous networking opportunities through gala dinners and other social events and also offer an unprecedented opportunity for EALS members to visit the home of the EALS Secretariat.

## About Arusha

Dubbed "the Geneva of Africa", Arusha is home to the headquarters of many Regional and Continental bodies and has served as the venue for the signing of many of Africa's charters and conventions. Most notable of the institutions that call Arusha home are, The East African Community Secretariat and its attendant bodies such as the East African Court of Justice and the East African Legislative Assembly; The African Court on Human and Peoples Rights; and the International Criminal Tribunal for Rwanda. At one time considered to be the exact centre of the African Continent, Arusha is located at the heart of the Northern tourist Circuit of Tanzania and boasts 4 national parks; the two mountains (Meru and Kilimanjaro) and a plethora of other tourist attractions such as the Ngorongoro crater. Needless to say, Arusha is a nirvana for tourism enthusiasts.

Arusha also boasts of a lively night life with no less than 5 night clubs catering for a variety of music tastes. Many hotels around Arusha also have live bands playing from Thursday to Sunday; in addition to a two theatre cinema complex showing the latest Hollywood and Bollywood movies. Conference delegates could try out Masai camp on Old Moshi road; Triple A night club in Sakina on Nairobi Road; Club AQ in the center of Arusha town and Velocity at Njiro Complex for the party goers.

For Nyama Choma lovers, we recommend, Tembo club in Burka, New AICC club on Old Moshi road, Nicks Pub on Njiro road, and Boogaloo at the Njiro Complex.

## About Ngurdoto Mountain Lodge

Ngurdoto mountain lodge is located halfway between Kilimanjaro International Airport and Arusha Town. It is a sprawling 140 acre property featuring among others a 9 hole golf course, Lawn tennis, basketball, and volleyball courts, all perfectly nestled between Mt. Meru and Mt. Kilimanjaro. The lodge features grandiose architecture with the facilities to accommodate up to 500 guests. Little wonder then that it has been the venue of choice for the last 5 EAC Heads of State meetings.



## Transport

A complementary shuttle service will run between the Arusha town and Ngurdoto mountain lodge for the duration of the conference.

Buses will be leaving the hotel for Arusha town at 5.30pm and 10pm on Friday 25th November; and at 2.30pm and 5.00pm on Saturday 26th November.

The buses will leave Arusha town for Ngurdoto Mountain Lodge at 7.30am, 8.15am and 7.00pm on Friday and 7.30am and 8.15am on Saturday Morning; and for those interested exploring the Arusha Social life, the buses will be returning to Ngurdoto from Arusha at 10.00pm, 12.00am and 2.00am on Friday and Saturday nights.

The buses will be located at the following locations:

- Mount Meru Hotel
- AICC roundabout
- Impala Hotel
- Snowcrest Hotel.

If you wish to travel to or from the Conference venue at times other than those indicated above, private taxis at 30,000Tsh from Ngurdoto to Arusha or Vice versa will be available. Please contact the Conference organizers at the venue for a list and contacts of recommended taxi cabs.

Recommended Transport rates for private taxis:

- Town to Ngurdoto and vice versa – 30,000 TShs
- Airport to Arusha town and vice versa – 50,000Tshs

## Accommodation

Being a tourist haven, Arusha is home to a number of hotels ranging from those aimed at the budget traveler to the high end luxury hotels. In all Arusha has hotel room coverage of approx 800 rooms although the hotel s accredited to the EALS AC/AGM have a room coverage of 400 rooms. Delegates are however requested to book early to avoid disappointment as the date for the conference coincides with the beginning of the holiday season which is marked by many hotel bookings. We have negotiated preferential rates with the accredited hotels and you can contact them with your details to benefit from the rate. We have also taken the time to rate the hotels and although the unrated hotels may offer lower rates, EALS cannot vouch for the quality of service at the hotels in question and delegates are requested to check carefully before booking.

The EALS has negotiated a discounted flat rate of 120US\$ bed and breakfast for cottages, chalets and deluxe rooms at the Ngurdoto Mountain Lodge. Delegates who wish to book elsewhere can do so with the aid of our accredited hotels list available below. A complementary shuttle service will run for the duration of the conference and General Meeting between the venue and the other hotels on the accreditation list. We recommend that you reserve and confirm your accommodation arrangements well ahead of time to avoid disappointments as November also happens to be peak tourism season in Arusha.

## Weather Conditions

November in Arusha is the time for the short rainy season although it is also one of the warmer months of the year with highs of 28 Degrees Celsius and lows of 19 Degrees. Light summer clothing is appropriate but weather conditions can change suddenly so delegates are encouraged to carry along some items of warm clothing.

*Karibu Tanzania, Karibu Arusha*

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# Realising a Gendered Common Market for East Africa:

## *Gaps and the Role of the Legal Profession*

By Ruth Kihiu

Platform Coordinator for the East African Women in Trade Platform, East Africa Business Council

**Disclaimer:** *The views expressed in this Article are that of the author and do not necessarily reflect the views of the East African Business Council (EABC)*



### Introduction

The overall objective of many Regional Economic Communities (RECs), such as the East African Community (EAC), which primarily aim to establish Free Trade Areas (FTAs), is to enhance sustainable development and the standard of living for citizens. Gender is a key factor in this complex relationship which comprises three main components namely; trade, growth and development, yet there is a widespread assumption that trade policies and agreements are class, race and gender neutral, which often not the position. This Article will discuss some, not all, gender gaps of the East African Common Market Protocol. It will also advance recommendations towards realisation of a more gendered common market and the crucial role to be played by the legal profession in this regard.

### Problem analysis

The East African Community has a combined population of 129.5 million<sup>1</sup> people, half of which are women. Gender equity is therefore an important consideration in the regional trade and integration process

towards ensuring social and gender balanced economic advancement for citizen of the region. Since gender inequality is widely recognised as an impediment to the promotion of sustainable development, it must also negatively impact opportunities to increase economic development and attainment of better living standards, both key objects of trade agreement pursued by RECs. Although trade can be a catalyst for gender equality, the effects of trade liberalisation on women, in particular, can be varied. For example, while in a large number of cases trade in general has improved women's empowerment and livelihoods, in some other cases the benefits gained by women from trade liberalisation have been marginal, and relatively lower than those gained by their male counterparts. In other cases, trade liberalisation has actually exacerbated gender inequalities and women's economic and social status (UNCTAD, 2009). Accordingly, if regional trade agreements are to meet their objectives, the ideals, letter and spirit of social and gender equity particularly in the design, negotiation process as well as the legal, regulatory and institutional frameworks set up to implement these agreements.

Notably, The Treaty for the Estab-

lishment of the East African Community (hereinafter referred to as the Treaty) clearly provides for the enhanced role of women in all spheres of life as well as gender mainstreaming in all EAC's endeavors and further provides, as one of its guiding principles, gender equality. While the Treaty lays a good foundation for gender mainstreaming in the Community's operations and pursuits, it is unfortunate to note that most Protocols established under this Treaty are largely gender blind, in that they fail to take into consideration gender dimensions and provide for objectives and regulations that promote equal access (of both genders) to benefits and opportunities existing in the agreements.

One such agreement is the Protocol on the Establishment of the East African Community Common Market (hereinafter referred to as the Protocol) which came into force on 20<sup>th</sup> November 2009 and which gives realisation to Article 76

<sup>1</sup> EAC Statistical Portal, [http://www.eac.int/statistics/index.php?option=com\\_content&view=article&id=143&Itemid=109](http://www.eac.int/statistics/index.php?option=com_content&view=article&id=143&Itemid=109)



and 104 of the Treaty. The overall objective of the Protocol is to realise accelerated economic growth and development through the attainment of the free movement of goods, persons, labour, the rights of establishment and residence, the free movement of services and capital. While the principle of gender equality is inferred under Article 3- *Objectives of the Common Market* of the Protocol and Article 39-*Harmonisation of Social Policies* (thereby adopting compartmentalization of gender issues as opposed to mainstreaming in all provisions of the Protocol), the agreement makes an erroneous assumption that opportunities and benefits will accrue equally to men and women. It therefore fails to consider and provide for measures to address existing gender inequalities and societal barriers that hinder women's access to trade and economic opportunities. This in effect creates barriers (or creates conducive ground for barriers) to women accessing opportunities existing in the agreement and further results in skewing any measurement of intra-regional trade, in terms of a net economic benefit and market-based criteria, as it largely ignores societal imbalances (including gender inequality), subsequently causing long-term trade inefficiencies.

Challenges facing women's access to trade opportunities in the Protocol can broadly be categorized as *direct hurdles* (those that relate mainly to legal and regulatory restrictions as well as inadequate and discriminatory trade facilitation frameworks) and *indirect hurdles* (those that relate mainly to discriminatory national laws and practices on inheritance and family law as well as women's effective participation in decision making). These hurdles can further be unpacked as follows;

**1. Existing regulatory restriction such as Non- Tariff Barriers (NTBs) and lack of harmonised (national and regional) laws, regulations and tax regimes;** These mainly include laws, regulations, administrative and technical requirements that impede free movement (and thereby trade) of persons, workers, goods, capital and services, the existence of complicated and uncoordinated pro-

cedures and documentation relating to export management and cross-border trade, such as adherence to complex Rules of Origin.

A good example of how these regulations barriers restrict women's access to regional trade is demonstrated by stipulations relating to the free movement of workers. While Article 10 of the Protocol (and Annex II, Regulations for the Free Movement of Persons) provides for the free movement of workers, in reality there exists challenges in accessing work permits (notably Kenya and Rwanda have abolished application fees for work permit) which remains a requirement for citizens of a Partner State who seek to enter or exit the territory of another Partner State as a worker. This issue was captured in the East Africa Business Climate Index, 2008 commissioned by the East African Business Council (EABC), which found that it took a Kenyan 1-5 months to acquire a work permit to work in Uganda and Tanzania and more than 2 months to acquire a work permit for a Ugandan worker in Kenya. Further, over a quarter (26%) of business leaders interviewed indicated that bribery was a major problem in the acquisition of work permits for East Africans with the region while a quarter of the respondents claimed to have paid a bribe to obtain a business license. The latter challenges are brought about by lack of harmonisation of laws and regulations across EAC members states, thereby causing absence of uniformity in the application of the Protocol's provisions coupled with a fairly weak enforcement mechanism by EAC organs. The principle variable geometry which allows for progression in cooperation among members states on a variety of areas, and at different speeds; further complicates the situation.

While the impact of these barriers are borne by most all traders, women traders bear the burden more severely than their male counterparts since they generally lack control to resources, are more likely to pay bribes

(most times paying higher bribes) to circumvent harassment by government officials manning customs offices and border posts.. Further, while EACs has made strides in putting in place trade facilitation mechanisms with the view of enhancing the movement of goods, these initiatives have largely targeted the formal economy thereby excluding the informal economy in which a large number of women participate as informal cross broader traders. Further lack of harmonisation of domestic taxes (such as Value Added Tax) and common external tariff structures means traders cannot move goods freely without incurring hefty (and often unplanned for) transactional costs. For women traders, who often do not have access large credit/financing facilities this situation discourages them for participating in intra-regional export business.

**2. Inadequate awareness creation and information strategies by national government and regional platforms;** Because of the often technical wording, numerous regulations set forth in agreements (and their annexures), as well as inadequate (and sometimes gender insensitive) government information strategies, women traders (especially informal cross-broader traders) continue to face challenges in market access, identifying exclusions from customs duties and charges, intra-regional and import management techniques (including requirements and stipulated time frames for the processing of relevant documents). Without this crucial information women traders often rely on government officials and male counterparts to provide the information and interpret the various provisos thereby presenting opportunities for misinformation, manipulation and harassment. This is usually the situation for women informal cross- broader traders who rely almost entirely on boarder officials and male counterparts for information about regional trade regulations and laws. This results in the traders facing different forms of gender based vio-



lence and sometimes loss of revenue and goods.

**3. Challenges in accessing finance and credit facilities;** the Protocol envisages growth economic activities and intra-regional trade, but for this to take place, business persons must be able to access the necessary capital and financing to run their ventures. The resultant effect of gender blindness of the Protocol which makes the assumption that men and women will be able to equally access the common market and ignores the fact that women generally lack access to resources and finance due to combination of factors such as societal patriarchal structures, lack of collateral and bank loan guarantee schemes. This in turn hinders them from establishing, expanding and venturing into new lucrative business opportunities.

**4. Patriarchal structures and discriminatory national laws;** most EAC partner states have ratified different international conventions that seek to promote women's empowerment, however the national laws (and indeed actual practice) that domesticates these agreements are not necessary in harmony with these international obligations. In regard to the Protocol and, the agreement is again passive (besides a blanket provision on approximation and harmonisation of laws and systems under Article 47) as to how patriarchal structures and discriminatory national laws need to be handled to ensure women access and participation to regional trade and integration. This can be illustrated, by for example, the fact that women's free movement whether as workers, persons or traders in goods, is often

curtailed if national laws (especially family, land and inheritance laws) do not entitle women to own and control land and property, participate freely in economic activities (most societies expect and require women to seek their husband's approval to open accounts, register companies and businesses) and participate in decision making at all levels. It is also interesting to note the Protocol, under Article 15, provides that access to and use of land and promise shall be governed by national laws and policies of partner states. While this is not necessarily an adverse provision caution must be taken to ensure that laws of partner states do not marginalise women in the ownership and use of land( which is a major resource) as this does have an impact on whether they effectively participate in regional trade.

## Recommendations and Conclusion

The EAC is currently considered as one of the more successful and fast-moving RECs in the continent and indeed globally. In this regard the legal profession has a critical role to play in ensuring that laws, regulations and agreements concluded are non-discriminatory and espouse balanced development. Further the profession should not be limited to critiquing concluded ( and seeking amendments) but also engage in discussion and negotiations leading to the ratification of these agreements as well as enhancing citizens' capacities to effectively participate in the regional integration and trade.

Pursuant to this role, the following identifies some recommendation towards strengthening the content and implementation process the Common Market Protocol that could be pursued by the profession either by way of amendments to the Protocol (as stipulated under Article 53) and/ or development of other Protocols (such as the East African Protocol on Gender Equality currently been drafted) and other legally binding instruments. The recommendations are;

1. Relevant organs of EAC, in collaboration with relevant partner states should regular gender aware diagnostics of the legal and regulatory frameworks (with emphasis on the actual practice) of the Protocol.
2. Relevant organs of the EAC should entrench a gender aware monitoring and evaluation mechanism to track the implementation of the Protocol. This mechanism should ensure collection of reliable gender – disaggregated data to be used to inform review of existing agreements and formulation of other related Protocols.

3. Based on the outcomes of the diagnostic and monitoring framework described above undertake a process of reviewing existing agreements, from a gender perspective, existing EAC Protocols and harmonising trade and other related national laws and regulations to be in line with the reviewed Protocols.
4. Continued reference to and implementation of international instruments should be pursued as domestic laws may be indifferent to gender concerns. International instruments on gender not directly related to trade can play an important role in creating rights-based frameworks where women can seek economic rights by way of entitlement and also ensuring that national governments have the appropriate protective enabling instruments in place to avoid any undermining of or distortions to trade policies and agreements.
5. EAC should entrench a trade facilitation framework that targets both the formal and informal traders. Key components to this framework should include simplification of import-export documents, reduction of administrative channels and documentation (preferably moving towards a single window clearance system), phasing out of the mandatory use of customs brokers and private companies to handle pre-shipment inspections as well designing appropriate trade related capacity building, Business/Private Sector Development Services (BDS) and awareness creation strategies targeting different categories of traders as opposed to targeting them as one group.

END

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**Guy Beringer**, Senior Partner, Allen and Avery.

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**CRB AFRICA LEGAL (CRB)** is one of the leading Tanzanian corporate law firms based in Dar es Salaam, the commercial capital of the United Republic of Tanzania. It has recently been designated as an associate office of the Norton Rose Group, a leading international legal practice with a global presence and offices throughout Europe, Asia Pacific, Canada, Africa and the Middle East.

The firm was founded in February 2009 under the name CRB Attorneys by Charles RB Rwechungura (who is the Managing Partner), but in February 2010 the name changed to CRB AFRICA LEGAL, following the signing of a collaboration agreement between CRB Attorneys and Africa Legal International (Pty) now known as Norton Rose Africa Legal, an English law division of what is now Norton Rose South Africa. Through this association with Norton Rose Africa Legal, practitioners with international experience from Norton Rose are seconded to CRB to work as part of the CRB team in the capacity of consultants. CRB will further benefit from the collaboration through technical support from the Norton Rose Group.

Over the period of over two and a half years since commencement of business, CRB has developed quickly from a virtual solo practice to a busy and motivated team of ten legal practitioners and established itself as one of the notable corporate law firms in Tanzania. At the moment the team of professionals in the firm includes:-

**Partners:**

Charles R.B. Rwechungura  
Rugambwa C.J.Pesha  
Abdul Qaubid Ali

**Consultants:**

Adam Lovett  
Nick Zervos

**Associate Partners:**

Octavian Mushukuma

## THE FK LAW CHAMBERS



## SERVING PRIVATE AND PUBLIC CLIENTS THROUGHOUT THE EAST AFRICAN REGION

Established in 1995, FK Law Chambers is among the most experienced legal firms based in Dar es Salaam. The firm is a team of highly skilled and respected lawyers within their respective areas of practice.

FK Law Chambers has been recognized by Chambers Global and other leading International industry publication for its market outstanding practices in areas of General Litigations, Taxation, Corporate & Commercial Transactions, Employment, Labour & Immigration, Construction Engineering & Infrastructure, Project Finance & Banking, Private Public Partnerships (P3s), Investment & International Trade, Trade marks, Patents & Copyright, Mining, Litigation and Arbitration.

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FK Law Chambers is located within Dar es Salaam's Central Business District. FK House, 23 Ocean Road, Sea View, Upanga, P.O. Box 20787, Dar es Salaam. Tel:+255 22 2122029 +255 22 2122031 +255 22 2122032 or Fax +255 22 2122027 Alternatively, one may leave us an email at: [info@fklawchambers.net](mailto:info@fklawchambers.net) [www.fklawchambers.net](http://www.fklawchambers.net)



**Hallmark Attorneys** (former *Law Offices of Chipeta & Associates*) is a legal practice registered and licensed to practice law in Tanzania.

With its offices in Tanzania mainland and Zanzibar archipelago, the Firm provides legal expertise in corporate, commercial and finance industry. Managed by three Partners, it deals in major fields of law including Commercial, Communication, Mining, Maritime, Investment, Mergers & Acquisitions, Securities, and Land Law & Conveyance. The Firm also deals with Banking Law, Construction Law, Insurance Law, Personal Injury Law, Intellectual Property, Environmental & Natural Resources Law, Employment & Labor Relations Law, and civil dispute resolution (Litigation, Arbitration and Mediation).

Established in June 2000 the Firm brings together a team with specialized skills and experience in the above areas. The team-up allows the senior professionals offer extensive experience, while the team of young attorneys offers exceptional energy, industry and delivery.

## Vision

*'To uphold its status as a corporate legal practice dispensing services through qualified legal experts while adhering to the core values of the legal profession.'*

## Presence

**Hallmark Attorneys** serves its Mainland clientele through its Dar es Salaam office and operates a full-fledged office in the Zanzibar Island, manned by a resident Associate Partner.

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<i>Lawyers</i>	9 Partners including International consultant and	3 Associate Partners, and 6 lawyers Most of the lawyers have masters with at least one degree obtained abroad mostly from the UK
<i>Common to all Partners and associates</i>	All Partners are corporate consultants and advocates and can handle any corporate and litigation, however, our practice areas are organized around specializations: Contact persons listed below:	
<i>Dr. Alex Thomas Nguluma</i>	Managing Partner and Head Tax and Corporate. Oil & Gas	<a href="mailto:a.nguluma@rexattorneys.co.tz">a.nguluma@rexattorneys.co.tz</a>
<i>Dr. Eve HawaSinare</i>	Advocate/consultant- Business Development-& Partner -Banking , project Finance, financial services, capital markets and Employment	<a href="mailto:e.sinare@rexattorneys.co.tz">e.sinare@rexattorneys.co.tz</a>
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<i>Mr. George Mpelikilindu</i>	Head Banking, Project Finance and Financial Services, Capital Markets	
<i>Tabitha Maro</i>	Head, Mining, Oil & Gas	<a href="mailto:t.maro@rexattorneys.co.tz">t.maro@rexattorneys.co.tz</a>
<i>Common</i>	Commercial Arbitration is done by most partners.	

## PRACTICE AREAS

- 1 General Corporate law including corporate restructuring, acquisitions, mergers, competition, company/trust formation, services which can be offered by any each department
- 2 Tax and Tax Litigation
- 3 Banking, Project Finance, Financial Services especially syndications and related services
- 4 Mining
- 5 Energy-Oil & Gas
- 6 Capital Markets transactions
- 7 Employment and Immigration
- 8 Legal and Legislative Review
- 9 Commercial litigation and arbitration
- 10 NGOs

# LAW ASSOCIATES (ADVOCATES)



The firm was founded in year 1991 by its current Chairman Dr R. W. Tenga who is an Advocate, researcher and academic, leading a team of partners, advocates and consultants with diverse expertise such as Land Law and Property Conveyancing, Corporate matters, mining, banking and financial related matters, litigation, arbitration, etc.

The firm vision is to provide high quality and innovative legal professional services of the highest quality focusing on satisfaction of needs and requirements of our clients' base by providing customized legal solutions.

All these are to be achieved through the following strategic principles:

- Provision of premium and composite legal services through mastery of local conditions;
- Consistent quality and prompt service to clients;
- Strict adherence to professional code of conduct (Ethics);
- Ensuring fundamental relationship of trust and confidentiality, which distinguishes the provision of legal services from that of other consultancy services.
- Engagement of qualified staff of highest professional standing.
- Networking with other law firms and non-legal services providers in assuring composite services to clients.

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# RACHIER AND AMOLLO ADVOCATES

NAME OF FIRM (CONSULTANT)	Rachier & Amollo Advocates
FOUNDED	1998
NO. OF PARTNERS	3
PERSONELL STRUCTURE	<b>Partners</b> A.D.O Rachier LL.B, LL.M P. Otiende Amollo EBS, LL.B, LL.M J. Okome Arwa LL.B., LL.M, Phd. <b>Associates – 5</b> <b>Legal Assistants – 8</b> <b>Administrative Assistants – 5</b> <b>Clerical staff - 10</b>
DEPARTMENTAL STRUCTURE	<b>Litigation Department</b> Energy sector Litigation, Liquidation, Bankruptcy & Winding up proceedings, Public Procurement, Arbitration, Probate & Administration, Matrimonial Causes. <b>Conveyancing Department</b> Transfer of Properties: Leases, Mortgages, Charges, Shares, Motor vehicles, General Sale Agreements, Employee Share Option Plans, Trusts, Pension Schemes etc. <b>Commercial Transactions &amp; Consultancies</b> Banking, Insurance & Financial Services Mergers and Acquisitions Joint Venture Agreements, Partnerships, Agency Agreements Initial Public Offers Consultancy – Legal and Financial advisory services Consultancy – Legislative Framework review, development, formulation, drafting etcetera (regulations, rules, guidelines, policies, Statutes)



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## OUR PROFILE

*“Willing to challenge traditional ways of solving problems”*

## CHAMBERS AND PARTNERS, 2011

Founded in 1988, **Mohammed Muigai** is a leading law firm in Kenya. Recognised for its specialist regulatory advisory services, high level dispute resolution (through both litigation and alternative dispute resolution mechanisms) and handling complex and big value property transactions, Mohammed Muigai has a keen understanding of the legal, commercial and regulatory environment in Kenya.

Today we have six partners, three associates and a dedicated team of legal assistants and support staff offering expert legal advice to businesses, corporate entities, banks, insurance and financial institutions, governments and private clients. Our members have varied educational and professional backgrounds and unique exposure to diverse areas such as banking, finance, insurance, energy, telecommunications and transportation. In order to increase our responsiveness to the dynamic legal needs in the region, we place great premium on continual learning to complement the advanced and specialized degrees that partners and associates hold.

Note: **Prof. Githu Muigai**, Senior Partner of the firm is currently on official leave of absence from the firm to serve as the Attorney General of the Republic of Kenya.

Mohammed Muigai is organised into four departments: the Litigation and Arbitration Department is involved in day to day litigation before the Kenya Courts, tribunals both domestic and international and represents clients in arbitrations and before regulators; the Real Estate Transactions Department deals with Land and Conveyancing transactions including: transfers, conveyances, leases, sale agreements and subdivisions. The department also advises on change of user and negotiations of securities such as charges and mortgages; the Legal Advisory and Consultancy Group focuses on providing consultancy services to government, private and public institutions on statutory and regulatory reform; and the Commercial Transactions Department provides a wide range of Transaction advisory services to clients including undertaking due diligence exercises, negotiating restructurings, advising on public listing, rights issues, asset sales and financing through single lender or syndicate loans.



## MUTHOGA GATURU & COMPANY ADVOCATES [MG&Co.]

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### The Law Firm

**MG&Co.** was established in June 1975 by the two founding partners, Judge Lee G. Muthoga, S.C., and Mr. Evans T. Gaturu, to respond to the growing need from clients for quality legal services at reasonable fees. Over these years, through ethical practice based on integrity, professionalism and high standards of quality service delivery, **MG&Co.** has established itself as a premier corporate commercial law firm both at the national level and in the region, without losing the vision of its founding partners.

The business environment within all the five States comprising the East Africa Community (EAC) has in recent years improved and made tremendous growth. The EAC has become a new frontier for foreign investments from all over the world. Consequently, the need for high quality legal advisory services at local and cross-border levels has increased exponentially.

**MG&Co.** has highly qualified legal staff with first-class training skills and competencies, and significant practical experiences in its key areas of practice. We pride ourselves at providing high quality and innovative technical legal advice that is relevant to our clients' needs and minimises their legal and regulatory risks, within ethical parameters and within agreed timelines.

**MG&Co.** currently has seven partners and a youthful but experienced team of bright and very talented associates and legal assistants. This legal team is supported by a well qualified and multi-disciplinary management and administration team to render support services. **MG&Co.** utilizes and continuously updates its state of the art information and communications technology (ICT) customized to suit the needs of legal practice and business, to ensure that our standards of customer service delivery standards are internationally bench-marked at all times.

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- ✓ Estate Planning and Administration Practice
- ✓ Labour Law Practice
- ✓ Civil Litigation Practice
- ✓ Arbitration and Alternative Dispute Resolution (ADR) Practice

### The Place of Business and Practice

**MG&Co.** has its principal place of business and practice in Nairobi – Kenya, and a branch office at Nyeri – Kenya. We have established a network of associating firms within the EAC and COMESA regions to be able to serve our international clients. Our contacts are:

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## NJOROGE REGERU & COMPANY

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A. **THE FIRM:** Njoroge Regeru & Company, Advocates is a key player in the legal scene regionally, rendering services across a wide range of practice areas. The Firm's capabilities and resources are dedicated to an efficient and competent delivery of legal services to a broad cross-section of clientele ranging from individual persons and small businesses to large multinational corporations, governmental institutions and statutory corporations, international organizations, local and international banks and development institutions.

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## Fountain Law

**Fountain Law Chambers (FLC)** is a dynamic and modern Rwandan law Firm of legal consultants and advocates. The foundation of our practice is Employment/Labor law, Business and corporate law, Human rights, Securities/Regulatory Matters, Intellectual Property, Mergers and Acquisitions, Constitutional, Environment and Land Law among others. Besides, the Firm ensures first class and high quality legal services to corporate entities, Government agencies, INGOs, Private Sector Organisation and individuals in a wide range of disciplines. Whether it is getting the deal done or simply gaining advice, we are committed to a level of service allied to a total-solutions approach that completely meet the clients' requirements, viewing ourselves as a vital addition to the business of every one of our clients. We are always there to respond promptly to our clients' needs and guide them on the way forward. To us, everything for our client matters!

At FLC, we are honest and trustworthy in our dealings with each other (as partners), with our clients and with all others. We act with integrity at all times. We show respect towards each other and with anyone whether seeking services of our firm or simply our guest. We are considerate and appreciate the contributions of all members of our team, and show it. We recognize that our future depends on the encouragement, development and recognition of our people. Teamwork is of fundamental importance to us and we respect each member of the team as an individual. Our diverse individuals combine to create an unbeatable team of lawyers and staff of the firm.

As a Rwandan law firm in this globalised world, we notice that clients require more services from their lawyers than ever. Clients not only expect their lawyers to provide impeccable advice and representation in courts of law, but also lawyers they can trust and also expect to exhibit independence, integrity and fidelity beyond question. We base our practice on concrete assumption on such expectations and it is our goal to meet and even exceed them. FLC is one of Rwanda's leading law Firms and prides itself in having competent advocates and experienced associates providing world-class legal advisory and representation services. FLC is at your service should you require our legal advice or representation in Rwanda.

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E-mail: [info@fountainlawchambers.com](mailto:info@fountainlawchambers.com) , [www.fountainlawchambers.com](http://www.fountainlawchambers.com)

## RUKANGIRA LAW CHAMBERS (RLC)

**Background:** Rukangira Law Chambers was established in 1995 and is a dynamic and modern reputable Law firm in Rwanda.

**Location:** Rukangira Law chambers are located in the city Center. Reach us at Commercial Avenue, Bank of Kigali building, and second floor opposite Caritas Library, P.O BOX 7097 KIGALI –RWANDA , Office (250)0785748274, Mob. (250) 0788300280

**Email:** [rukangira@yahoo.fr](mailto:rukangira@yahoo.fr), Web: [www.rukangiralawc.com](http://www.rukangiralawc.com)

**Our team:** Our Lawyers come from different domains of law with perspectives and experiences united by a commitment to providing our clients with quality legal services.

RUKANGIRA Emmanuel, Managing and founder Partner; Contact; Tel; 0788300280; Email; [rukangira@yahoo.fr](mailto:rukangira@yahoo.fr); [rukangira@rukangirarl.com](mailto:rukangira@rukangirarl.com); WIBABARA Jacqueline An Advocate and in addition, a lecturer at the Faculty of Law, Kigali Independent University; RUTEMBESA Phocas: Contacts: Tel; 0788558080; Email; [rutephocas@yahoo.com](mailto:rutephocas@yahoo.com); [rutembesa@rukangirarl.com](mailto:rutembesa@rukangirarl.com). BUZAYIRE Angèle: Contacts: Tel; 0788839462; Email; [buzayire@rukangirarl.com](mailto:buzayire@rukangirarl.com); MWAMIKAZI Alice: Contacts: Tel; 0788602474; Email; [mwamiakice@yahoo.fr](mailto:mwamiakice@yahoo.fr); [mwamikazi@rukangirarl.com](mailto:mwamikazi@rukangirarl.com); NIYONGIRA Ghislaine: Tel; 0788463878; Email; [ghyslaineus2000@yahoo.fr](mailto:ghyslaineus2000@yahoo.fr); [niyongira@rukangirarl.com](mailto:niyongira@rukangirarl.com)

**PRACTICE AREAS:** Commercial Law, Taxation Law, Banking and finance, Social Law , Private Law: Administrative Law: Criminal Law:

**Current Specific Areas :** Our office offers modern and new business orientations to investors in Rwanda including but not limited to : Intellectual property registration and protection, Trademarks registration and protection, Patent rights registration and protection, Industrial design and model, Title Deeds services, Mortgages registration services, Company registration in general, Registration of foreign companies services, Re-registration of companies in compliance with new company Act in Rwanda.

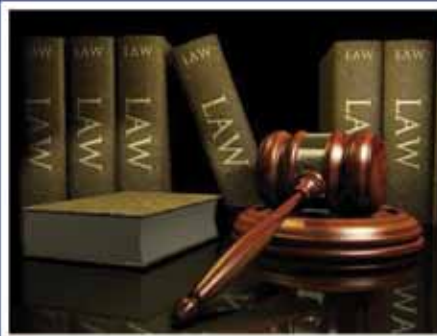
**Partners:** we have established working relationship with law firms in countries such as Burundi, Uganda, Democratic Republic of Congo, Tanzania, Kenya, Canada and Belgium.



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## East Africa Law Society



**E**ast Africa Law Society (EALS) is the premier regional Bar Association formed in 1995 by a visionary group of lawyers and the leadership of the national Bar associations in the East African Community (EAC) region. It is a dual membership organization, bringing together over seven thousand individual lawyer-members as well as the six national Bar associations: Burundi Bar Association, Kigali Bar Association, Law Society of Kenya, Tanganyika Law Society, Uganda Law Society and Zanzibar Law Society.

EALS is one of the largest organized Professional/Civil Society membership organizations with a strong interest in the professional development and practice of law as well as constitutionalism, democracy and good governance, the just rule of law, and the advancement, promotion and protection of human rights of all people in East Africa and beyond.

It is uniquely positioned to promote cross border integration for the people of East Africa and enjoys formal Observer Status at the EAC.

#### Key Milestones

- ✚ On the ground credibility within the 5 EAC partner states: with lawyers, governments, civil society and ordinary citizens; that assures the EALS audience from all key stakeholders at both regional and national level.
- ✚ Robust financial support base from its ever growing annual membership subscription, that guarantee the continuity of any project intervention upon cessation of third party technical and financial support.



- ✚ Formal EAC Observer Status and unparalleled competence on EAC law, including litigation at the East African Court of Justice and formulating draft legislation for the consideration of the East African Legislative Assembly.
- ✚ A well established and credible network of national level partners, that ensures the filtration and ownership of all EALS interventions by national level actors.
- ✚ A robust and strong professional resource base from amongst its diverse membership, guaranteed to contextually enrich the quality of the society's programs and interventions.
- ✚ Strong continental linkages and networks with various institutions including the Coalition for an Effective African Court on Human and Peoples' Rights (CEAC), SADC Lawyers' Association and the West African Bar Association.





## Kampala Associated Advocates

Plot 41 Nakasero Road  
P.O. Box 9566 Kampala, Uganda.  
www.kaa.co.ug

### THE FIRM

Kampala Associated Advocates ("KAA") is one of the leading firms in Uganda and is a full-service law firm offering services ranging from litigation to various aspects of corporate practice. We have over 35 staff with a total of 20 lawyers hence making us one of the largest legal practices in Kampala with unrivalled expertise in Litigation, corporate and banking financial services, corporate restructuring, revenue and taxation, employment and arbitration.

We are in global partnership with SNR Denton, a leading firm in the United Kingdom, which makes us part of a network of offices and associates in Europe, Central Asia, Middle East and Africa. The SNR Denton network assists KAA to combine regional and international best practice with sound legal solutions, ensuring a cost effective and coordinated strategy in matters involving multiple jurisdictions.

Our African Association for instance comprises law firms from Nigeria, Sudan, Kenya, Rwanda, Burundi, Tanzania, South Africa, Ghana, Mauritius, Botswana and Zambia.

Our clients are therefore guaranteed with top notch legal representation as they conduct and arrange their business affairs in today's contemporary world.

### OUR PRACTICE

#### Litigation Practice

Our Litigation department is headed by, Peter Kabatsi and Joseph Matsiko both excellent and renowned legal practitioners.

Peter was a long time serving Director of Public Prosecutions and later Solicitor General for the government of Uganda.

Joseph was the head of Civil Litigation in the Attorney General's chamber for a number of years.

They are assisted by Paul Kuteesa, our Associate Partner and five Associates, Annet N Kemaali, Eunice Kabibi, Jet Tumwebaze, Afrah Mpungu and Ernest Rukundo.

The team also works under the guidance of Justice Ntabgoba and Justice Mulenga, who are our full time consultants.

#### The Corporate and Finance Practice

The department is headed by David Mpanga, who was previously a legal services manager for PriceWaterhouse Coopers, a leading audit firm. He is assisted by one of our Associate Partners Aisha Naiga, and a team of three other Associates, Ernest Rukundo, Isaac N. Kyagaba and Claire Amanyakeeto.

#### Banking practice

Our banking practice is headed by Sam Mayanja, who has had several years of banking experience, supported by, Dennis Ottatina, Benjamin Beyanga and Afrah Mpungu an associate.

The practice supports some of the largest commercial banks in Ugandan economy including Barclays Bank, Stanbic Bank, DFCU bank, Citibank, Centenary Rural Development Bank, East African Development Bank and Standard Chartered Bank.

#### Revenue and Taxation

Our taxation practice is headed by Oscar Kambona a renowned tax practitioner and a lecturer at the Law Development Center, assisted by Gad Wilson.

We pride in ensuring that tax disputes are resolved in the quickest possible time allowing businesses and taxpayers to concentrate and focus on other aspects of their businesses.



#### Credit Management

Our credit management practice is headed by Dr. Charles Kalumiya and assisted by Jet John Tumwebaze and Eunice Kabibi. We support businesses in the management and recovery of their receivables portfolio.

#### Business Development and Immigration Practice

Our Business Development & Immigration practice is headed by Elly Karuhanga assisted by one of our Associate, Ernest Rukundo. We assist foreigners looking to work, establish businesses, or live in Uganda to apply and process immigration permits, that is, work permits, entry permits, dependants' passes and other visa categories.

#### OUR VALUE PROPOSITION

- By KAA working for you, our commitment is that every customer is important irrespective of size and value of subject matter. The customer always gets full benefit and support of the firm as an entity starting from the most senior partner to the junior lawyers.
- Our services and work for the client is primarily and solely solution driven. We propose to work with you and generate sound legal solutions that are practicable at the cheapest possible cost.

## Katende, Ssempebwa & Company Advocates

Founded in 1969, Katende, Ssempebwa & Company Advocates is Uganda's largest and leading legal Firm with over sixty staff members. In addition to its offices in Kampala, the Firm has affiliated offices in all the leading capitals in the world as the Ugandan member of Lex Africa – the largest network of independent legal firms on the Africa continent and World Services Group – a network of leading professional in over 130 countries.

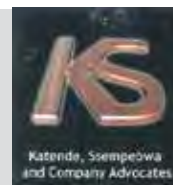
The Firm has over 40 years experience in providing world-class legal advisory services and has been internationally recognized year-in year-out as the number one law firm in Uganda by the Chambers and Partners Global Guide to the World's Leading Lawyers, IFLR 1000: The Guide to the World's Leading Financial Law Firms and Practical Law Companion: Which Lawyer?

We are a full service law firm providing legal services as a firm of Advocates, Solicitors, Legal, Investment and Tax

Consultants, Commissioners for Oath, Notary Publics, Trademark and Patent Agents, Receivers, Liquidators and Company Secretaries.

The Firm has some of the most talented, highly qualified and experienced advocates in Uganda many of whom have received advanced legal training in the world's leading law schools and some are licensed to practice in Uganda, New York, and the United Kingdom and it has been the premier breeding ground of many of the leading legal practitioners in Uganda.

This Firm has the size, strength, and resources to provide quality results and has been a leading advisor on many landmark transactions that raise new and complex questions of law and has consistently been the choice for clients with groundbreaking and unusually challenging transactions in the region.



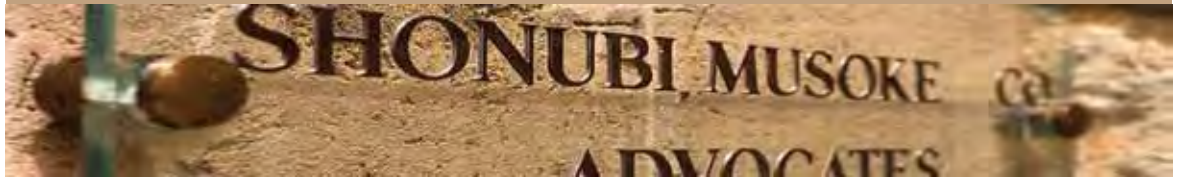
#### CONTACT DETAILS:

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# Shonubi, Musoke and Co. Advocates



*Shonubi, Musoke and Co. Advocates was registered as a law firm in 1987*



The firm has steadily grown into one of the largest firms and established itself as a leading law firm in Uganda and is proud to be one of the few firms in the country that own their multi storey business premises.

In a jurisdiction where few firms have managed to specialise, the firm has succeeded in building a specialised practice with core capabilities in all fields of corporate and commercial law ranging from non-contentious transactional work to highly contentious complex litigation. The firm's endeavours have enabled them to build a solid reputation and this fact is exemplified by the lengthy and ever increasing portfolio of impressive international and local clients.

The firm is the Uganda member of the Africa Legal-International Legal Services Alliance an extensive network of the continent's leading firms in Angola, Democratic Republic of Congo, Ghana, Kenya, Mozambique, Namibia, Nigeria, Tanzania, and Zimbabwe. The key features of the Africa Legal Alliance operated out of Norton Rose South Africa/ Norton Rose Africa legal include the sharing of know-how, expertise and market information and more importantly the ability to carry out cross border legal work with proven and reliable foreign counsel.

The firm has at various times been rated as a leading law firm in Uganda by Chambers and Partners and by the IFLR 1000 directory of leading financial law firms, by PLC Which Lawyer and was awarded the Law Firm of the year 2010 and 2011 awards in Banking and Finance, Mergers and Acquisitions and Energy Law by Corporate International and has since been awarded Law firm of the year 2011 by the same entity.

Major areas of practice include Corporate/ M&A, Banking & Finance, Energy, Mining, Oil and Gas, Tax & Securities, Telecommunications, Intellectual Property, General & Conveyancing and Real Property, Transport, Privatisation & Deregulation, Litigation & Arbitration.

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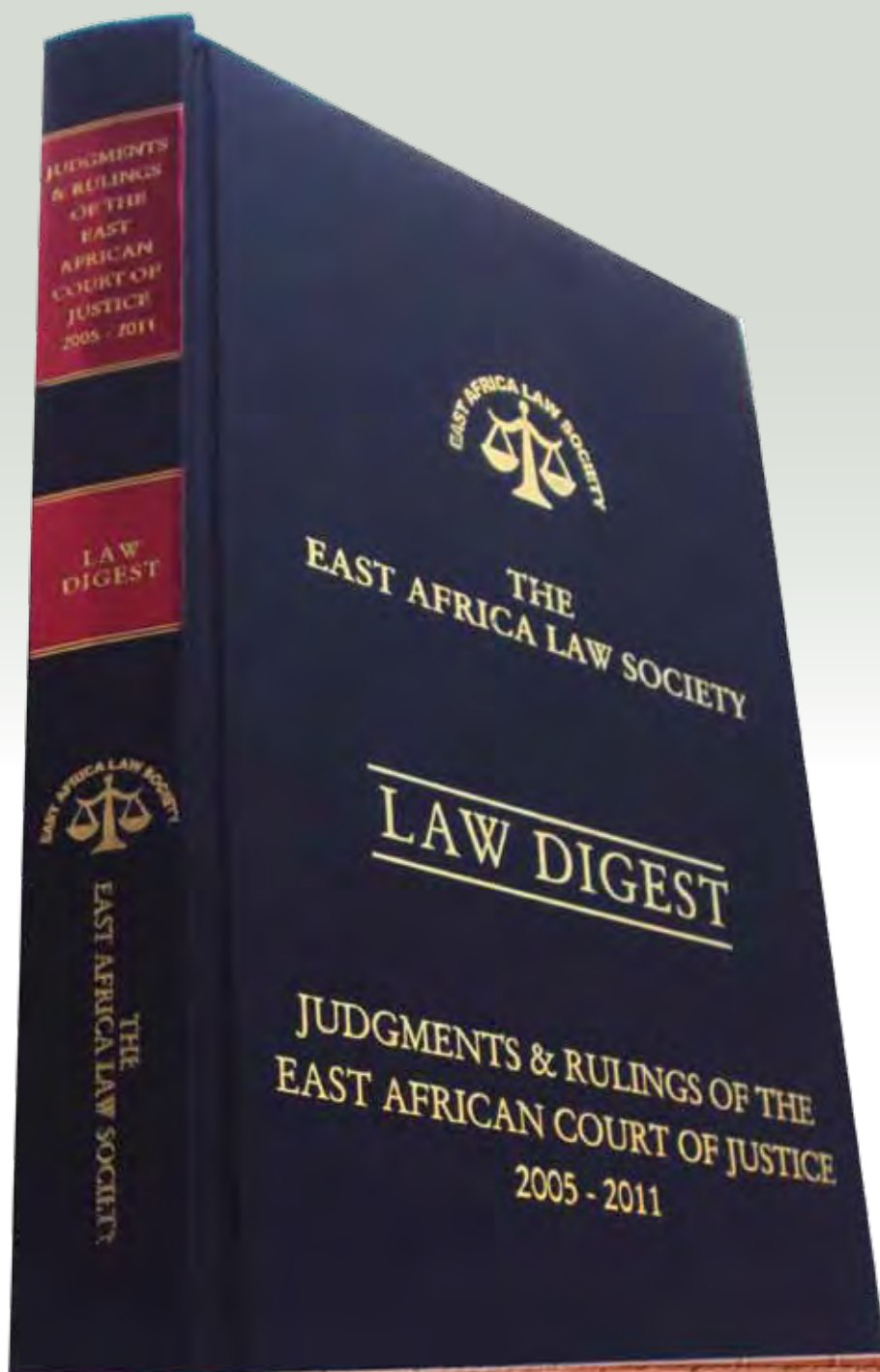
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