

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTHSESSION
THE DEPARTMENTAL COMMITTEEONFINANCE, PLANNING & TRADE

REPORT ON THE CONSIDERATION OF PUBLIC PETITION TO AMEND THE
ACCOUNTANTS ACT NO 15 OF 2008

DIRECTORATE OF COMMITTEE SERVICES
CLERKS CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

SEPTEMBER, 2016

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ABBREVIATIONS

- ACCA - Association of Chartered Certified Accountants
- CPA - Certified Public Accountants
- FAQ - Foreign Accountancy qualification
- ICPAK - Institute of Certified Public Accountants of Kenya
- KASNEB - Kenya Accountants and Secretaries National Examination Board
- SO - Standing Order

CHAIRPERSON'S FOREWORD

The Public Petition to amend the Accountants Act, No. 15 of 2008 was presented to the National Assembly by Mr. Wachira Kariuki Musa Pursuant to Standing Order 225(2) and the Petition to Parliament (Procedure) Act, 2012. The petition was dated September 30, 2015 and signed by the petitioner praying that Parliament:

- i. Debates the issue and amends the Accountants Act, No. 15 of 2008, to require that the Council of the Institute has representation of Foreign Accountancy Qualification (FAQ) holders; and
- ii. Debates the issue and amends the Accountants Act, No. 15 of 2008, to require that either the Chairman or Vice chairman of the Institute be a holder of a FAQ on a rotational basis. This will forestall any practices that may bring disrepute to the profession or unduly disadvantage FAQ holders, for example, ACCA, which is a recognized accountancy qualification in all the commonwealth countries (Kenya is a commonwealth member).

In considering the petition, the Committee invited and held a meeting with the petitioner, Mr. Wachira Kariuki Musa. Having heard from the petitioner, the Committee found merit in the petitioners' prayers and resolved to engage the Institute of Certified Public Accountants of Kenya (ICPAK) the statutory regulator of accountants in the Kenya. This report was compiled having incorporated the view of the petitioner and that of the institute.

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.

The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Finally, On behalf of the Departmental Committee on Finance, Planning & Trade and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Petition to amend the Accountants Act, No. 15 of 2008.

Hon. Benjamin Langat, CBS, M.P.

EXECUTIVE SUMMARY

This report contains the committee's proceedings during the hearing of the Public Petition to Accountants Act, No. 15 of 2008. The petition was conveyed to the House by the Speaker of the National Assembly and was committed to the Departmental Committee on Finance, Planning & Trade.

On analysis of the petition, it generally complies with the Standing Orders and the Petition to Parliament (Procedure) Act, 2012.

The Committee was able to establish that:

1. Section 3 of the Accountants Act No 15 of 2008 establishes the Institute of Certified Public Accountants of Kenya (ICPAK) whose role is to promote standards of professional competence and practice amongst members of the Institute among others.
2. The Act provides for qualification of membership to the Institute which is in turn a direct prerequisite to participate in matters of the Institute, not only to seek for the Chairperson's position but also to participate in the business of the Institute in the Annual General Meetings.
3. For persons holding any Foreign Accountancy Qualification, to register as a member of ICPAK, one must undertake **two mandatory papers** administered by Kenya Accountants and Secretaries National Examinations Board.
4. The requirements for qualification for chair and vice chair positions are not discriminatory against FAQ holders in any way. It only requires them to satisfy the local examining bodies requirements that they have the knowledge and experience required to practice in Kenya, just like in any other jurisdiction in the world.
5. That ACCA is accredited in Kenya, however to practice in the country; one must have adequate knowledge on local tax laws as provided in section 26 (3) of the Accountants Act, No. 15 of 2008.

The proposed amendments seek to give preference to FAQ holders, and therefore are in discriminatory against the Local Accountancy Qualifications holders. If this is allowed, it will injure the professional regulation as well as reputation in Kenya, which may lead to many undesired consequences including but not limited to having quacks practicing in Kenya without having any professional examining body to certify that they have the knowledge and experience to practice in Kenya.

1.1. MANDATE OF THE COMMITTEE

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (c) study and review all legislation referred to it;**
- (d) study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.**

1.2. COMMITTEE MEMBERSHIP

The committee comprises of the following members:-

- Chairperson:** The Hon. Benjamin Langat, MP
- Vice Chairperson:** The Hon. Nelson Gaichuhie, MP
- Members:**
- The Hon. Dr. Oburu Oginga, MP
 - The Hon. Jimmy Nuru Angwenyi, MP
 - The Hon. Eng. Shadrack Manga, MP
 - The Hon. Alfred W. Sambu, MP
 - The Hon. Ahmed Shakeel Shabbir, MP
 - The Hon. Sammy Koech, MP
 - The Hon. Sammy Mwaita, MP
 - The Hon. Tiras N. Ngahu, MP
 - The Hon. Abdikadir Ore Ahmed, MP
 - The Hon. Abdullswamad Sheriff, MP
 - The Hon. Abdul Rahim Dawood, MP
 - The Hon. Anyanga Andrew Toboso, MP
 - The Hon. Daniel E. Nanok, MP
 - The Hon. Dennis Waweru, MP
 - The Hon. Joash Olum, MP
 - The Hon. Iringo Cyprian Kubai, MP
 - The Hon. Jones M Mlolwa, MP
 - The Hon. Joseph Limo, MP
 - The Hon. Kirwa Stephen Bitok, MP
 - The Hon. Lati Lelelit, MP
 - The Hon. Mary Emase, MP
 - The Hon. Ogendo Rose Nyamunga, MP
 - The Hon. Patrick Makau King'ola, MP
 - The Hon. Ronald Tonui, MP
 - The Hon. Sakaja Johnson, MP
 - The Hon. Sakwa John Bunyasi, MP
 - The Hon. Sumra Irshadali, MP

1.3. COMMITTEE SECRETARIAT

First Clerk Assistant	Evans Oanda
Third Clerk Assistant	Nicodemus Maluki
Third Clerk Assistant	Fredrick Otieno
Legal Counsel II	Emma Essendi
Research Officer III	Erick Osoi
Research Officer III	Sharon Rotino

1.4. RECOMMENDATION

Having considered the petition, the Committee noted that the prayers sought are retrogressive and discriminatory. The Local Accountancy Qualification holders are also competent and qualified therefore the professional regulation should be followed. Awarding these prayers will lead to preferential treatment to FAQ holders.

- i. The Committee finds no merit on the prayer one that sought to amend the Accountants Act No. 15 of 2008, to require the Council of the Institute have a representation of FAQ holders.
- ii. The Committee also does not find merit in prayer two that either the Chair or Vice chair of the Institute be a holder of a FAQ on a rotational basis.

The Committee therefore dismisses the Petition in its entirety.

2.0.INTRODUCTION

2.1.Background Information

Article 119(1) of the Constitution provides that every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. This particular provision is operationalized by the Petition to Parliament (Procedures) Act, 2012 and Standing Order 219.

The Public Petition to amend the Accountants Act, No. 15 of 2008 was presented to the National Assembly by Mr. Wachira Kariuki Musa, on September 30, 2015 pursuant to Standing Order 225(2) and the Petition to Parliament (Procedure) Act, 2012. Pursuant to the House rules, the petition was referred to the Departmental Committee on Finance, Planning & Trade for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227.

The petitioners wished to draw the attention of the House on the following:-

- i. **THAT** the Institute of Certified Public Accountants of Kenya (ICPAK); the statutory regulator of accountants in Kenya unduly and unfairly discriminates against holders of Foreign Accountancy Qualifications (FAQ) in pursuit of its statutory mandate of regulating the profession in Kenya.
- ii. **THAT** the Institute of Certified Public Accountants of Kenya – ICPAK, obliges holders of Foreign Accountancy Qualifications to drop the use of the designations from their mother institute, for example, ACCA after their names as is the practice worldwide and instead uses the designation CPA before their names, thus losing the recognition earned and offered by such qualifications.
- iii. **THAT** the Institute of Certified Public Accountants of Kenya – ICPAK encourages discriminatory practices by the sister statutory examination body the Kenya Accountants and Secretaries National Examination Board (KASNEB). ICPAK sits on the board of KASNEB and vice versa. KASNEB charges FAQ holders Kshs 40,000 each for tax and law papers (thus Kshs 80,000); while normal rates are Kshs 3,000 per paper (thus Kshs 6,000). By allowing this, ICPAK is perpetuating a discriminatory practice and thus violating or allowing the violation of Article 27 of the Constitution of Kenya.

The petitioner confirmed that:

- i. He had brought the above facts to the attention of the Institute and the Exam body; and
- ii. That both the Institute and the Exam body have not shown any interest in addressing the violation of Article 27 of the Constitution of Kenya.

He further confirmed that:

The issues in respect of which the petition is made are not pending before any court of law or Constitutional or legal body.

The Petitioners therefore prayed that Parliament -

- i) debates the issue and amends the Accountants Act, No. 15 of 2008, to require that the Council of the Institute has representation of FAQ holders; and
- ii) debates the issue and amends the Accountants Act, No. 15 of 2008, to require that either the Chairman or Vice chairman of the Institute be a holder of a Foreign Accountancy Qualification on a rotational basis. This will forestall any practices that may bring disrepute to the profession or unduly disadvantage Foreign Accountancy Qualification holders, for example, ACCA, which is a recognized accountancy qualification in all the commonwealth countries (Kenya is a commonwealth member).

3.0.SUBMISSIONS AND EVIDENCE

3.1.Mr. Wachira Kariuki Musa, Petitioner

Having been seized of the Petition, the Committee invited the petitioner, Mr. Wachira Kariuki Musa for a briefing session on 3rd February, 2016. During the meeting, Mr. Wachira Kariuki informed the Committee as follows:-

1. The Accountants Act, No. 15 of 2008 establishes the Institute of Certified Public Accountants of Kenya (ICPAK).

2. The Institute of Certified Public Accountants of Kenya (ICPAK) is the statutory regulator of accountants in Kenya. It discriminates against holders of Foreign Accountancy Qualifications (FAQ).
3. The Institute (ICPAK) obliges holders of Foreign Accountancy Qualifications to drop the use of the designations from foreign qualifications after their names as is the practice worldwide and instead uses the designation of CPA before their names when qualifying audited accounts. Thus, losing the recognition earned and offered by such qualifications.
4. The Institute of Certified Public Accountants of Kenya encourages discriminatory practices by the sister statutory examinations body the Kenya Accountants and Secretaries National Examination Board (KASNEB). ICPAK sits on the board of KASNEB and vice versa. KASNEB charges FAQ holders Kshs 40,000 each for tax and law papers (thus Kshs 80,000); while normal rates are Kshs 3,000 per paper (thus Kshs 6,000). By allowing this, ICPAK is perpetuating a discriminatory practice and thus violating or allowing the violation of Article 27 of the Constitution of Kenya.
5. That he has made efforts to bring the issue to the attention of the Institute and the Exam body, but no action has been taken as both the Institute and the Exam body has not shown any interest in addressing the violation of Article 27 of the Constitution of Kenya.
6. That, ACCA holders are allowed to practice in all Commonwealth countries.
7. That ACCA is accredited in Kenya. However, to practice in the country; one must have local knowledge of local tax law and practice. For example, to sign an audit report, the abbreviations CPA must be used, and that means to qualify a report one must be an accountant qualified in Kenya.

3.2. Institute Of Certified Public Accountants of Kenya (ICPAK)

The Committee invited the Institute of Certified Public Accountants of Kenya (ICPAK), to respond to the allegations on their conduct. ICPAK informed the Committee as follows:-

- 1) The Act provides for qualification of membership to the Institute which is in turn a direct prerequisite to participate in matters of the Institute, not only to seek for the

Chairperson's position but also to participate in the business of the Institute in the Annual General Meetings.

- 2) That the petitioner Mr. Wachira Kariuki Musa had taken the Institute of Certified Public Accountants of Kenya (herein referred to as ICPAK) to court which case was canvassed and determined by the *High Court of Kenya: Petition No. 590 of 2014 Nairobi Wachira Kariuki Musa Versus the Attorney General and the Chief Executive Officer of the Institute of Certified Public Accountants of Kenya*.
- 3) That the petitioner had raised the same grounds and he is praying that the National Assembly considers amending the Accountants Act, No. 15 of 2008. However, in addition, his prayers in court included a prayer that he has been discriminated by ICPAK and therefore ICPAK should be compelled to register him as a member of ICPAK, without undertaking the **two mandatory papers** administered by Kenya Accountants and Secretaries National Examinations Board, for persons holding any Foreign Accountancy Qualification;
- 4) That the High Court heard and determined the petition and ruled as follows:-

"the respondent has only asked the petitioner to abide by the law as it currently stands. The mandate under the law is vested in the respondents with regard to registration of the accountants, and unless clear evidence is presented, the Court has no basis for interfering. The petitioner has the obligation to abide with the law with regard to registration, and to demand that he be exempted is to demand preferential treatment which the Court cannot sanction. In the circumstances, I find no merit in this petition. It is therefore dismissed with costs to the respondents. Dated, Delivered and Signed at Nairobi this 17th day of September, 2015: MUMBI NGUGI, JUDGE"
- 5) That the Institute, being the Respondent in the Petition, opposed the petition by way of an affidavit sworn by Dr. Patrick Ngumi, the Secretary of the Council of the Institute, on 23rd February, 2015. The affidavit stated that the petitioner must first demonstrate that he was fully qualified as required by the Accountants Act before the Court can examine whether, despite his qualification he was denied admission to the Institute.
- 6) That the Institute has a form for pre-registration under section 26 in respect to foreign qualifications, which form the petitioner, was to complete and submit to KASNEB, the only examination body recognized under the Accountants Act. The petitioner refused to submit to the requirements of the Examinations Board his argument being that he had already done the subjects at the Mombasa Polytechnic which examinations were offered by Kenya National Examinations Council (KNEC).

- 7) It is common practice in many jurisdictions including in United Kingdom to require holders of Foreign Professional Qualifications to be certified by the Local Professional Examinations Body that the person has adequate professional knowledge and practice by undertaking certain examinations and receiving exemptions from undertaking all the professional examinations. This is not limited to accountancy but it also applies to other professions including but not limited to law, medical, engineering professions among others.
- 8) Where a holder of a Foreign Professional Qualification is required under local laws to be exempted, the holder of the Foreign Professional Qualification is always required to pay an exemption fees to the Local Professional Examining Body, which is determined by the Board of the Professional Examining Body. In this respect, the powers to set the fees to be paid for by the Accountants who hold Foreign Accountancy Qualifications and are exempted from sitting certain professional papers is vested with the Kenya Accountants and Secretaries National Examination Board (KASNEB);
- 9) That, the prayers sought by the petitioner to amend section 7 and section 11 of the Accountants Act is not viable. The Institute is the body that regulates and develops the Accountancy profession in Kenya. It is a voluntary professional body for Accountants and those who wish to join must comply with the provisions of the Act.
- 10) That, the Institute is a body meant for Accountants with qualifications recognized in Kenya by the Council of the Institute in consultation with the Examination Board and approved by the Minister, this then determines the membership of the Institute.
- 11) That, the business of the Institute, as provided for in the Act is conducted by the membership through the Annual General Meeting. The AGM constitutes members of the Institute who are duly registered as per the provisions of the Act. Therefore the persons with foreign qualifications cannot have representation in the Council of the Institute since they do not qualify to participate in the business of the Institute, not unless they are duly registered as members.
- 12) That, the amendment to the Act as sought by the petitioner is not only against the spirit of the Accountants Act but also the basic principles of good governance. That the Institute is of the opinion that the petitioner is acting in bad faith and they request that the petition to be set aside.

13) That on the matter of amending the law to require that either the ***“Chairperson or Vice Chairperson of the Institute shall be a holder of a Foreign Accountancy Qualification on a rotational basis”***, the issue for determination is whether, a person who holds Foreign Professional Qualification, ought to be a member of a professional body regulating the conduct of professionals of that profession? The Answer is yes. This has been demonstrated in many other professions including but not limited to law, medicine, engineering, accountancy among others, where persons holding Foreign Professional Qualifications have registered as members in compliance with local laws and have risen over time to become the Chairpersons, or Vice Chairpersons of the body’s regulating the professional conduct of its members. ICPAK has had past Chairpersons, Vice-Chairpersons and Council members who held Foreign Accountancy Qualifications after they had complied with the provisions of local laws and registered as members of the Institute. This is not limited to Kenya but it also applies to Commonwealth countries as well as many other jurisdictions including the United Kingdom.

4.0.COMMITTEE OBSERVATIONS

Upon analyzing the petition and through interaction with the Petitioner and the Institute, the Committee made the following observations:-

6. Section 3 of the Accountants Act No 15 of 2008 establishes the Institute of Certified Public Accountants of Kenya (ICPAK) whose role is to promote standards of professional competence and practice amongst members of the Institute among others.
7. The Act provides for qualification of membership to the Institute which is in turn a direct prerequisite to participate in matters of the Institute, not only to seek for the Chairperson's position but also to participate in the business of the Institute in the Annual General Meetings.
8. For persons holding any Foreign Accountancy Qualification, to register as a member of ICPAK, one must undertake **two mandatory papers** administered by Kenya Accountants and Secretaries National Examinations Board.
9. The requirements for qualification for chair and vice chair positions are not discriminatory against FAQ holders in any way. It only requires them to satisfy the local examining bodies requirements that they have the knowledge and experience required to practice in Kenya, just like in any other jurisdiction in the world.
10. That ACCA is accredited in Kenya, however to practice in the country; one must have adequate knowledge on local tax laws as provided in section 26 (3) of the Accountants Act, No. 15 of 2008.
11. The proposed amendments seek to give preference to FAQ holders, and therefore are in discriminatory against the Local Accountancy Qualifications holders. If this is allowed, it will injure the professional regulation as well as reputation in Kenya, which may lead to many undesired consequences including but not limited to having quacks practicing in Kenya without having any professional examining body to certify that they have the knowledge and experience to practice in Kenya.

5.0.COMMITTEE RECOMMENDATIONS

Having considered the petition, the Committee noted that the prayers sought are retrogressive and discriminatory. The Local Accountancy Qualification holders are also competent and qualified therefore the professional regulation should be followed. Awarding these prayers will lead to preferential treatment to FAQ holders.

- i. The Committee finds no merit on the prayer one that sought to amend the Accountants Act No. 15 of 2008, to require the Council of the Institute have a representation of FAQ holders.
- ii. The Committee also does not find merit in prayer two that either the Chair or Vice chair of the Institute be a holder of a FAQ on a rotational basis.

The Committee therefore dismisses the Petition in its entirety.

Signed:  Date: 1st September 2016

(THE HON. BENJAMIN LANGAT, M.P.)

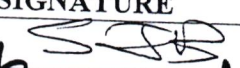
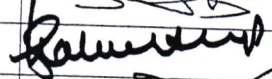
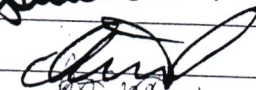


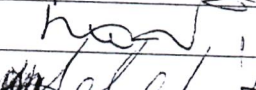
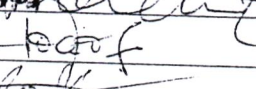

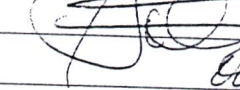

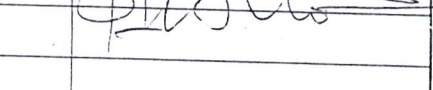
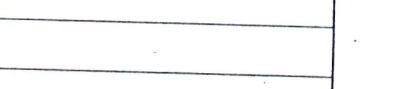
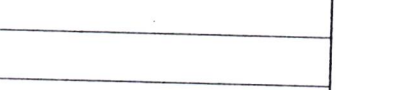

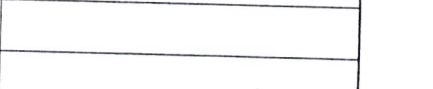
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING &
TRADE

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 11/08/2016 TIME 10:00 AM

AGENDA ① Meeting the National Treasury to consider Finance Bill, 2016
 ② Consideration of Pending Petitions.

	NAME	TITLE	SIGNATURE
1	HON. SAKWA BUNYATI	Ag. Chair	
2	Hon Shakeri Shaker	Member	
3	Hon. Kuba Inyanga	Member	
4	Hon. Mary Chere	Member	
5	Hon. A. Kalim Lawood	member	
6	Hon. Patricia Makau	"	
7	Hon. Rose Nyamanga	"	
8	Hon. Jati Lelehi	"	
9	Hon. Joseph Olom	"	
10	Hon. RONALD TOSU	"	
11	Hon. SAMMY KOSU	"	
12	Hon. Tony Mlolisa	"	
13	Hon. Joseph Lino	"	
14	Hon. Dr. Eburu Oginga	"	
15	Hon. Kinza S. B. Kote	"	
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MINUTES OF THE 71ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 11TH AUGUST, 2016 IN THE MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00AM

PRESENT

1. Hon. Sakwa John Bunyasi, MP Ag. Chairperson
2. Hon. Shakeel Shabbir, MP
3. Hon. Iringo Cyprian Kubai, MP
4. Hon. Ronald Tonui, MP
5. Hon. Mary Emase, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Lati Lelelit, MP
8. Hon. Dr. Oburu Oginga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Ogendo Rose Nyamunga, MP
11. Hon. Sammy Koech, MP
12. Hon. Joash Olum, MP
13. Hon. Kirwa Stephen Bitok, MP
14. Hon. Joseph Limo, MP
15. Hon. Jones Mlolwa, MP

APOLOGIES

1. Hon. Benjamin Langat, MP **Chairperson**
2. Hon. Nelson Gaichuhie, MP **Vice-Chairperson**
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Sumra Irshadali, MP
5. Hon. Sammy Mwaita, MP
6. Hon. Abdikadir Ore Mohammed, MP
7. Hon. Abdullswamad Shariff, MP
8. Hon. Anyanga Andrew Toboso, MP
9. Hon. Daniel Epuyo Nanok, MP
10. Hon. Eng. Shadrack Manga, MP
11. Hon. Alfred Sambu, MP
12. Hon. Tiras Ngahu, MP
13. Hon. Dennis Waweru, MP
14. Hon. Sakaja Johnson, MP

KENYA NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 2. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 3. Ms. Emma Esendi | - | Legal Counsel |
| 4. Mr. Eric Ososi | - | Research Officer |

MIN.NO. DCF/272 /2016: PRELIMINARIES

Pursuant to Standing Order 188 the Committee nominated Hon. Sakwa Bunyasi, MP as the Ag. Chairperson. He then called the meeting to order at 10. 30 am followed by a word of prayer from Hon. Patrick Makau King'ola, MP.

MIN.NO. DCF/273/2016: CONSIDERATION OF THE PETITION REGARDING CONFINING OF THE NATIONAL AND COUNTY TREASURIES TO EXCLUSIVE USE OF LOANS AND OTHER FINANCIAL LENDING THAT DO NOT ATTRACT INETRESTS BY MR. DAVID GESICHO

The Committee considered the petition and noted that:-

- i) The petitioner submits that the Republic of Kenya has over the years been operating unbalanced annual National Budget with recurring budget deficits.
- ii) He states that the domestic borrowing by the National Treasury may have contributed to the high interest rates by the Commercial banks in the domestic financial market.
- iii) The Petitioner further submits that the only effective solution to control the budgetary deficit was by cutting government spending.
- iv) The petitioner requests the National Assembly to enact the legislation to confine the National and County Treasuries to the exclusive use of specific Interest Free loans and other financial lending instruments that do not charge interest rate like Islamic lending options such as Sukuk Murabaha, Sukuk al- Ijarah and Sukuk al- Istisna.

Committee Resolutions

The Committee resolved to invite the petitioner at an opportune time to consider the petition before tabling its report.

MIN.NO. DCF/274/2016: ADOPTION OF THE REPORTS ON PETITIONS

The Committee considered and unanimously adopted the reports on the petitions by Mr. Mithamo Muchiri regarding Amendment of Article 231 of Constitution on Images on notes and coins issued by the Central Bank of Kenya and by Mr. Wachira Kairuki Musa regarding the Amendment of the Accountants Act No. 15 of 2008.

MIN.NO. DCF/275 /2016: ADJOURNMENT

The Ag. Chairperson adjourned the meeting at 12.05pm

Signed.....

Chairperson

Date.....



MINUTES OF THE 7TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON WEDNESDAY 3RD FEBRUARY, 2016 IN COMMITTEE ROOM, 4TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00AM.

PRESENT

1. Hon. Jimmy Nuru Angwenyi, MP
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Alfred Sambu, MP (Chairing)
4. Hon. Shakeel Shabbir, MP
5. Hon. Eng. Shadrack Manga, MP
6. Hon. Timothy Bosire, MP
7. Hon. Ogendo Rose Nyamunga, MP
8. Hon. Sakwa John Bunyasi, MP
9. Hon. Abdul Rahim Dawood, MP
10. Hon. Ronald Tonui, MP
11. Hon. Jones Mlolwa, MP
12. Hon. Lati Lelelit, MP

ABSENT WITH APOLOGIES

1. Hon. Benjamin Langat, MP
2. Hon. Nelson Gaichuhie, MP
3. Hon. Abdullswamad Shariff, MP
4. Hon. Kirwa Stephen Bitok, MP
5. Hon. Anyanga Andrew Toboso, MP
6. Hon. Daniel Epuyo Nanok, MP
7. Hon. Joseph Limo, MP
8. Hon. Mary Emase, MP
9. Hon. Patrick Makau, MP
10. Hon. Joash Olum, MP
11. Hon. Tiras Ngahu, MP
12. Hon. Sumra Irshadali, MP
13. Hon. Sakaja Johnson, MP
14. Hon. Dennis Waweru, MP
15. Hon. Sammy Koech, MP
16. Hon. Iringo Cyprian Kubai, MP
17. Hon. Sammy Mwaita, MP

Chairperson
Vice-Chairperson

IN ATTENDANCE

STAFF

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Ms. Ann Ceta Gacheri | - | Research Officer |
| 4. Mr. Eric Ososi | - | Research Officer |
| 5. Mr. Stephen Nyakuti | - | Audio Recorder |

PETITIONER

Mr. Wachira Kariuki Musa

MIN.NO. DCF/022/2016: PRELIMINARIES

The Alfred Sambu, MP called the meeting to order at 11:16am followed by a word of prayer from Hon. Alfred Sambu.

MIN.NO. DCF/023/2016: CONSIDERATION OF THE PETITION TO AMEND THE ACCOUNTANTS ACT NO. 8 OF 2008 BY MR. WACHIRA KARIUKI MUSA

Mr. Wachira Kariuki Musa appeared before the Committee and briefed it as follows on his petition, that;

1. The Institute of Certified Public Accountants of Kenya – ICPAK (the statutory regulator of Accountants in Kenya) unduly and unfairly discriminates against Holders of Foreign Accountancy Qualifications in Pursuit of its statutory mandate of regulating the profession in Kenya.
2. ICPAK obliges holders of Foreign Accountancy Qualifications to drop the use of the designations from their mother institute (e.g. ACCA) after their names as is the practice worldwide and instead use the designation CPA before their names, thus losing the recognition earned and offered by such qualifications.
3. ICPAK encourages discriminatory practices by the sister statutory examination body, the Kenya Accountants and Secretaries National Examination Board (KASNEB). ICPAK sits in the board of KASNEB and vice versa. KASNEB charges FAQ holders Kshs. 40,000 each for the tax and law papers (thus Kshs. 80,000); while normal rates are Kshs. 3,000 per paper, thus Kshs. 6,000. By allowing this, ICPAK is perpetuating a discriminatory practice and thus violating or allowing the violation of Article 27 of the Constitution of Kenya.
4. He brought the matter to the attention of the institute and the exam body
5. Both the institute and the exam body have not shown any interest in addressing the violation of Article 27 of the Constitution of Kenya.
6. He further informed the Committee that he filed a case in court on the refusal by ICPAK to register him as a member since his application.

The petitioner pray that the National Assembly, through the Departmental Committee on Finance Planning and Trade;

- a) Debates the issue and amends the Accountants Act no. 8 of 2008, to require that the council of the institute have representation of FAQ holders.
 - i. Debates the issue and amends the Accountants Act no. 8 of 2008, to require that either the Chairman or the Vice Chairman of the institute be a holder of a Foreign Accountancy Qualification on a rotational basis. This will forestall any practices that may bring disrepute to profession or unduly disadvantage Foreign Accountancy Qualifications Holders eg ACCA which is a recognized accountancy qualification in all the commonwealth countries.

MIN.NO. DCF/024 /2016: MEMBERS OBSERVATIONS

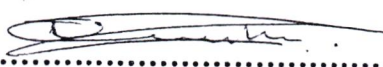
Having heard from the petitioner, the Committee found merit in the petitioners' prayers and resolved to engage ICPAK on the matter.

MIN.NO. DCF/025 /2016: RESOLUTIONS

Members resolved to consider the matter at an opportune time.

MIN.NO. DCF/026 /2016: ANY OTHER BUSINESS

There being no other business, the meeting adjourned at half past twelve noon.

Signed..........date.....^{8th} March 2016.....

Chairperson

REPUBLIC OF KENYA



ELEVENTH PARLIAMENT
(THIRD SESSION)

THE NATIONAL ASSEMBLY

PETITION

(No. 23 of 2015)

CONVEYANCE OF A PETITION CONCERNING AMENDMENT OF
THE ACCOUNTANTS ACT NO.15 OF 2008

Honourable Members,

Standing Order 225 (2) (b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office is in receipt of a Petition signed by a Mr. Wachira Kariuki Musa praying for the amendment of the Accountants Act No. 15 of 2008.

The Petitioner prays that the Accountants Act, be amended in section (7) which provides for election of the Chairperson of the Institute of Certified Public Accountants of Kenya, to further, provide that *either the Chairperson or Vice-chair of the Institute shall be a holder of a Foreign Accountancy Qualification on a rotational basis*. The Petitioner contends that the amendment will forestall any practices that may bring disrepute to the profession or unduly disadvantage foreign accountancy qualification holders such as ACCA graduates. The Petitioner also prays that the National Assembly amends section 11 of the Act which provides for the Membership of the Institute of the Certified Public Accounts Council, to provide for a *representative from the Foreign Accountancy Qualification (F.A.Q) holders*.

Honourable Members,

This Petition now stands committed to the Departmental Committee on Finance, Planning and Trade for consideration. The Committee is requested to consider the Petition and report its findings to the Petitioner and the House in accordance with Standing Order 227 (2). The Committee is at liberty to introduce a Bill to the House, proposing to amend the Accountant Act No.15 of 2008 in the manner prayed by the Petitioner.

Thank you!



THE HON. J. B. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

TUESDAY, 29TH SEPTEMBER, 2015

D/LXP

PETITION TO THE PARLIAMENT OF THE NATIONAL ASSEMBLY OF KENYA.

Petition to amend the Accountants Act no¹⁵ 8 of 2008.

I Wachira Kariuki Musa, a citizen of Kenya and resident in Nairobi Umoja Estate do draw the attention of the House to the following:

1. That the Institute of Certified Public Accountants of Kenya-ICPAK (the statutory regulator of Accountants in Kenya) unduly and unfairly discriminates against Holders of Foreign Accountancy Qualifications in pursuit of its statutory mandate of regulating the profession in Kenya.
2. That the Institute of Certified Public Accountants of Kenya-ICPAK, obliges holders of Foreign Accountancy Qualifications to drop the use of the designations from their mother institute (e.g. ACCA) after their names as is the practice worldwide and instead use the designation CPA before their names, thus losing the recognition earned and offered by such qualifications.
3. That the Institute of Certified Public Accountants of Kenya-ICPAK encourages discriminatory practices by the sister statutory examination body the Kenya Accountants and Secretaries National Examination board (KASNEB). ICPAK sits on the board of KASNEB and vice versa. KASNEB charges FAQ holders Kshs 40,000 each for the tax and law papers (thus Kshs 80,000); while normal rates are Kshs 3,000 per paper (thus Kshs 6,000). By allowing this, ICPAK is perpetuating a discriminatory practice and thus violating or allowing the violation Article 27 of the Constitution of Kenya.

I do hereby confirm that:

1. I have brought to the attention of the institute and the exam body of the above facts.
2. That both the institute and the exam body have not shown any interest in addressing the violation of article 27 of the constitution of Kenya.

I do hereby confirm that:

1. The issue in respect of the petition is made are not pending before any court of law or constitutional or legal body.

HEREFORE your humble petitioner pray that parliament-

1. Debates the issue and amends the Accountants Act no 8 of 2008, to require that the council of the institute have representation of FAQ holders.
2. Debates the issue and amends the Accountants Act no 8 of 2008, to require that either the chairman or the vice chairman of the institute be a holder of a Foreign Accountancy Qualification on a rotational basis. This will forestall any practices that may bring disrepute to the profession or unduly disadvantage Foreign


PETITION TO THE PARLIAMENT OF THE NATIONAL ASSEMBLY OF KENYA.

Petition to amend the Accountants Act no 8 of 2008.

Accountancy Qualifications Holders eg ACCA, Which is a recognized accountancy qualification in all the commonwealth countries (Kenya is a commonwealth country).

And your petitioners will ever pray.

Petition to amend the Accountants Act no 8 of 2008.

Name	full address	ID Number	Signature
Wachira Kariuki Musa	P.O. BOX 19849-00202, Nairobi.	12400845	

Institute of Certified Public Accountants of Kenya
CPA Centre, Ruaraka, Thika Road.
P.O. Box 59963 - 00200 Nairobi, Kenya
Tel: (020) 2304226/7; 8068570/1
Mobile: (+254) 727531006/ 733 856262 / 721469796
Fax: (020) 8562206

Drop in box no. 164 Revlon Professional Plaza

17 MAR 2016



② D/Com - National Assembly

Your Ref: KNA/DC/FPT/2016(09)

Our Ref: ICPAK/Legal/13

4th March, 2016

Jeremiah Nyegenye
Clerk of the National Assembly
Parliamentary Buildings
P.O Box 41842 - 00100
NAIROBI

THE SENATE
RECEIVED

21 MAR 2016

DIRECTOR COMMITTEE SERVICES

Dear

Nyegenye,

REF: PETITION BEFORE THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE

We are in receipt of your letter dated 18th February, 2016 on the captioned subject and wish to respond as follows: -

Parliamentary petition to amend the Accountants Act No 15 of 2008

The Institute of Certified Public Accountants of Kenya (ICPAK) takes note of the petition presented before the National Assembly on Wednesday, September 30, 2015 during its third session submitted by Mr. Wachira Kariuki Musa praying for the amendment of the Accountants Act No. 15 of 2008 (the Act). The petitioner prayed that the Accountants Act, be amended in -

- i. Section 7 of the Act which provides for the election of the Chairperson of the Institute, to further, provide that *either the Chairperson or Vice Chairperson of the Institute shall be a holder of a foreign Accountancy Qualification on a rotational basis*. The petitioner contends that the amendment will forestall any practices that may bring disrepute to the profession or unduly disadvantage foreign accountancy qualification holders such as Association of Certified Chartered Accountants (ACCA) graduates; and
- ii. Section 11 of the Act which provides for the membership of the Institute's Council, to provide for a *representative from foreign Accountancy Qualification (F.A.Q) holders*.

[Type text]

③ EVANS
pls deal
+A 2/13

Advice on amendment to Section 7 and Section 11 of the Act

The Institute is a body corporate established under Section 3 of the Accountants Act, No. 15 of 2008 whose sole mandate is to develop and regulate the accountancy profession in Kenya.

The Institute is governed by the Council established under Section 9 of the Act.

Section 7 of the Act provides for the Chairman of the Council who is elected in the manner prescribed in paragraph 1 of the First Schedule.

Section 7 (2) provides that a member seeking election as Chairman shall be a person who –

- (a) has been a member of the Institute for a continuous period of not less than seven years;
- (b) has served on the Council or its Committees for at least one year; and
- (c) has not be disqualified under the provisions of the Second Schedule.

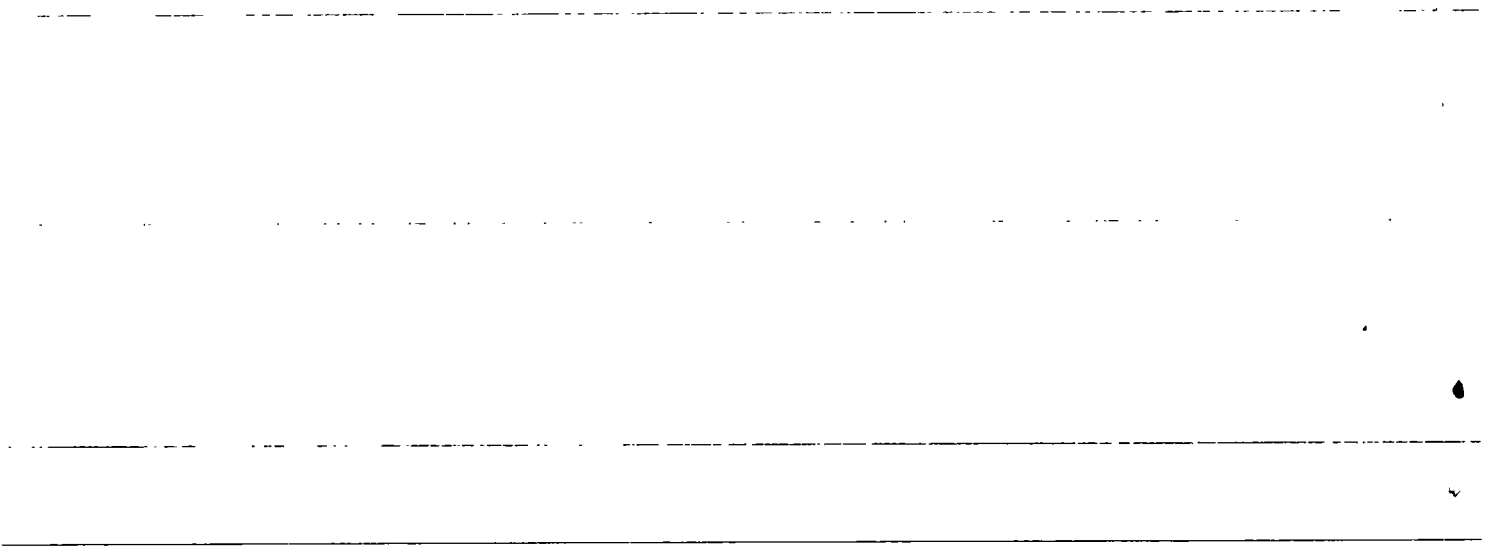
Paragraph 1 of the First Schedule states that the Chairman of the Council shall be elected at the Annual General Meeting held annually and shall hold office for a period of two years.

Section 11 of the Act provides for the membership of the Council which consists of eleven members, these are –

- (a) a Chairman elected in accordance with **section 7**;
- (b) one member to represent the Ministry responsible for matters relating to Finance;
- (c) one member to represent the Capital Markets Authority;
- (d) one member to represent the Examinations Board(KASNEB);
- (e) one member appointed by the Minister to represent a profession other than accountancy;
and
- (f) six other members elected in the manner provided in the Second Schedule

From the foregoing, it is clear that for one to be elected as Chairperson or member of the Council he or she must be a member of the Institute. Section 4 of the Act provides for membership of the Institute and it states that for a person to be a member of the Institute he or she must be registered with the Institute. The qualifications for registration are provided for under Section 26 of the Act. For one to qualify for registration as a member of the Institute, he or she must;-

- (a) have been awarded by the Examinations Board (the Kenya Accountants and Secretaries National Examinations Board) a certificate designated the Final Accountancy Certificate;
or
- (b) holds a qualification approved by the Council in consultation with the Examinations Board and with the approval of the Minister.



Section 26 (3) provides that the Council may require a person making an application for registration to satisfy the Registration Committee, in such manner as it may direct, that the person has –

- (a) adequate knowledge of local law and practice;
- (b) adequate experience in accounting; and
- (c) acceptable professional conduct and general character which, in the opinion of the Committee, make such person a fit and proper person to be registered, and unless the person so satisfies the Registration Committee, he shall not be treated as being qualified to be registered.

Paragraph 5 of the Second Schedule provide for the Vice Chairperson of the Council who shall be elected by the Council from amongst the members of the Council elected under **section 11(f)** of the Act.

From the above, the Act provides for qualification of membership to the Institute which is in turn a direct prerequisite to participate in matters of the Institute, not only to seek for the Chairperson's position but also to participate in the business of the Institute in the Annual General Meetings.

As the law currently stands, a person with foreign qualifications in accountancy does not qualify to be a member of the Institute hence cannot take part in the business of the Institute; either to seek for the position of the chairperson or to be elected as a member of the Council under section 11 (f) and Second Schedule of the Act. In the event such a person wishes to take part in the business of the Institute, the Act provides for the procedure to be followed for such a person to be admitted to membership of the Institute, which provision applies to all interested persons.

In *Wachira Kariuki Musa -Versus- Institute of Certified Public Accountants of Kenya, Petition No. 590 of 2014* Mr. Wachira Kariuki Musa (the petitioner herein) was aggrieved by the decision of the Institute not to register him as a member of the Institute on the basis that he did not have the requisite qualifications as required by the Act. The petitioner, stated that he was a qualified accountant having undertaken a course of study between September 1992 and November 1995. He then went through three years of practical experience and qualified as a member of Association of Certified Chartered Accountants (ACCA) in 2010. He further stated that prior to undertaking the ACCA course, he undertook a course of study at the then Mombasa Polytechnic and obtained a Diploma in Accountancy qualification, and that he undertook and passed a course in commercial law, company law and taxation, which one is required to have studied in order to be admitted to ICPAK.

The Institute, being the Respondent in the Petition, opposed the petition by way of an affidavit sworn by Dr. Patrick Ngumi, the Secretary of the Council of the Institute, on 23rd February, 2015. The affidavit stated that the petitioner must first demonstrate that he was fully qualified as required by the Accountants Act before the Court can examine whether, despite his qualification he was denied admission to the Institute.

The Institute has a form for pre-registration under section 26 in respect to foreign qualifications, which form the petitioner, was to complete and submit to KASNEB, the only examination body recognized under the Accountants Act. The petitioner refused to submit to the requirements of the Examinations Board his argument being that he had already done the subjects at the Mombasa Polytechnic which examinations were offered by Kenya National Examinations Council (KNEC).

In the determination of this petition, the Honorable Court held that, the Institute had only asked the petitioner to abide by the law as it were. The mandate under the law was vested in the respondent with regard to registration of Accountants, and unless clear evidence is presented, the court had no basis for interfering. The Court further held that the petitioner had the obligation to abide with the law with regard to registration, and to demand that he be exempted was to demand preferential treatment which the court could not sanction. The Court found no merit in the petition and dismissed it with costs to the respondent.

This is therefore to say, the prayers sought by the petitioner to amend section 7 and Section 11 of the Accountants Act is not viable. The Institute is a body that regulates and develops the Accountancy profession in Kenya. It is a voluntary professional body for Accountants and those who wish to join must comply with the provisions of the Act.

Secondly, the Institute is a body meant for Accountants with qualifications recognized in Kenya by the Council of the Institute in consultation with the Examination Board and approved by the Minister, this then determines the membership of the Institute.

Thirdly, the business of the Institute, as provided for in the Act is conducted by the membership through the Annual General Meeting. The AGM constitutes members of the Institute who are duly registered as per the provisions of the Act. Therefore the persons with foreign qualifications cannot have representation in the Council of the Institute since they do not qualify to participate in the business of the Institute, not unless they are duly registered as members.

To conclude, the amendment to the Act as sought by the petitioner is not only against the spirit of the Accountants Act but also to the basic principles of good governance. It is our considered opinion that the petitioner is acting in bad faith and we call for the petition to be set aside.

Your

Sincerely

CPA Dr. Patrick Ngumi (PhD)
CHIEF EXECUTIVE

**RE: PETITIONS BEFORE THE DEPARTMENTAL COMMITTEE ON
FINANCE & TRADE TO AMEND THE ACCOUNTANTS ACT, 2008**

The facts of the petition concerning the amendment to the Accountants Act No. 15 of 2008 before National Assembly by Mr. Wachira Kariuki Musa are as follows:

- i. the petitioner Mr. Wachira Kariuki Musa had taken the Institute of Certified Public Accountants of Kenya (herein referred to as ICPAK) to court which case was canvassed and determined by the High Court of Kenya: PETITION NO. REPUBLIC OF KENYA, IN THE HIGH COURT OF KENYA AT NAIROBI, PETITION NO. 590 OF 2014: WACHIRA KARIUKI MUSA....PETITIONER VERSUS THE ATTORNEY GENERAL.....1ST RESPONDENT, THE CHIEF EXECUTIVE OFFICER, THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA.....2ND RESPONDENT;
- ii. the petitioner had raised the same grounds he is praying the National Assembly to consider for amendments of the Accountants Act, No. 15 of 2008 in principle, however, his prayers were that he has been discriminated by ICPAK and therefore ICPAK should be compelled to register him as a member of ICPAK, without undertaking the two mandatory papers administered by Kenya Accountants and Secretaries National Examinations Board, for persons holding any Foreign Accountancy Qualification;
- iii. the High Court heard and determined the petition and ruled as follows:-

“the respondent has only asked the petitioner to abide by the law as it currently stands. The mandate under the law is vested in the respondents with regard to registration of the accountants, and unless clear evidence is presented, the Court has no basis for interfering. The petitioner has the obligation to abide with the law with regard to registration, and to demand that he be exempted is to demand preferential treatment which the Court cannot sanction. In the circumstances, I find no merit in this petition. It is therefore dismissed with costs to the respondents. Dated, Delivered and Signed at Nairobi this 17th day of September, 2015: MUMBI NGUGI, JUDGE”

- iv. It is common practice in many jurisdictions including in United Kingdom to require holders of Foreign Professional Qualifications to be certified by the Local Professional Examinations Body that the person has adequate professional knowledge and practice by undertaking certain examinations and receiving exemptions from undertaking all the professional examinations. This is not limited to accountancy but it also applies to other professions including but not limited to law, medical, engineering professions among others.
- v. Where a holder of a Foreign Professional Qualification is required under local laws to be exempted, the holder of the Foreign Professional Qualification is always required to pay an exemption fees to the Local Professional Examining Body, which is determined by the Board of the Professional Examining Body. In this respect, the powers to set the fees to be paid for by the Accountants who hold Foreign Accountancy Qualifications and are exempted from sitting certain professional papers is vested with the Kenya Accountants and Secretaries National Examination Board (KASNEB);
- vi. On the matter of amending the law to require that either the ***“Chairperson or Vice Chairperson of the Institute shall be a holder of a Foreign Accountancy Qualification on a rotational basis”***. The issue of determination is whether, a person who holds Foreign Professional Qualification, ought to be a member of a professional body regulating the conduct of professionals of that profession? ? Clearly the answer is yes. This has been demonstrated in many other professions including but not limited to law, medicine, engineering, accountancy etc, where persons holding Foreign Professional Qualifications have registered as members in compliance with local laws and have risen over time to become the Chairpersons, or Vice Chairpersons of the body’s regulating the professional conduct of its members. The ICPAK has had past Chairpersons, Vice-Chairpersons and Council members who held Foreign Accountancy Qualifications after they had complied with the provisions of local laws and registered as members of the Institute. This has also applied to other professions in Kenya including but not limited to Law, Medicine and Engineering Professions, just to mention a few. This is not limited to Kenya but it also applies to common wealth countries as well as many other jurisdictions including the United Kingdom, where the petition holds the Foreign Accountancy Qualifications from. Indeed it is even worse for Kenyans who hold our Local Accountancy Qualifications and intend to be registered as



practitioners in the United Kingdom, who are required to sit for far too many subjects, in the United Kingdom in order to be conferred with the membership of Association of Certified Chartered Accountants (ACCA).

- vii. It is also important to note that the Senate had also been petitioned by same Mr. Wachira Kariuki Musa and the matter was canvassed by the Senate Standing Committee on Legal Affairs and Human Rights on Monday 23rd March, 2015, where the petitioner had alleged that the ICPAK had treated him unfairly, discriminatory and unconstitutionally. However, when Senate realized the matter was before the High Court the matter was put on abeyance.
- viii. Finally, the petitioner is requesting the National Assembly to exempt him from abiding by the laws of this Country through an amendment after challenging the provisions of the law in the High Court of Kenya. This is intended to injure the professional regulation as well as reputation in Kenya, which may lead to many undesired consequences including but not limited to having quacks practicing in Kenya without having any professional examining body to certify that they have the knowledge and experience to practice in Kenya. In this respect, therefore this petition should not be entertained.

Conclusion

It is the duty of Parliament to protect Kenyans from persons/ professionals who hold Foreign Professional Qualifications by requiring them to satisfy the local examining bodies that they have the knowledge and experience required to practice in Kenya, just like in any other jurisdiction in the world. In this respect, this petition should be dismissed by the National Assembly's Departmental Committee on Finance, Planning and Trade.

