

RECOGNITION OF QUALIFICATIONS IN LAW EARNED IN AN EAST AFRICAN COMMUNITY PARTNER STATE: KENYA'S PRACTICE

Wilfred N. Konosi* and Fred M. Ratemo**

Abstract

The Treaty for the Establishment of the East African Community secures specific rights for nationals or citizens of Partner States. These rights include freedom of movement within the Community. In exercise of this freedom, Kenyan nationals have been granted access to training institutions in other Partner States from which they have earned academic and professional qualifications in law. The qualifications are recognised by the host Partner States as being sufficient for accessing the profession of an advocate within their territories. The Protocol on the Establishment of the East African Community Common Market provides for harmonisation and mutual recognition of academic and professional qualifications. Partner States undertook to mutually recognise qualifications granted, experience obtained, requirements met, licences or certifications granted in other Partner States.

Harmonisation and mutual recognition of qualifications should be undertaken in accordance with annexes to be concluded by the Partner States. No annexes have been concluded. In the absence of a mutual recognition framework, Kenyan nationals who have earned qualifications in law in other Partner States are subjected to additional requirements in violation of the Treaty. Kenya cannot renege upon her obligations under Community law and must refrain from any acts which would frustrate the objects of the Treaty.

Keywords: Freedom of Movement, EAC Common Market, EAC, Mutual Recognition, Academic and Professional Qualifications

* Wilfred N. Konosi, MSWL (University of Zimbabwe); LLB (University of Nairobi, Kenya); Diploma in Law (Kenya School of Law); Certified Professional Mediator (Mediation Training Institute); Advocate of the High Court (Kenya); Dean Emeritus School of Law (Kisii University, Kenya).

** Fred M. Ratemo, LL.M (Uganda Pentecostal University); LLB (Uganda Pentecostal University); Diploma in Law (Institute of Legal Practice and Development, Rwanda).

1.0 Introduction

The minimum academic and professional qualifications for joining the bar in Kenya are regulated by law. Of relevance, are the provisions of the Kenya School of Law Act,¹ the Legal Education Act,² the Advocates Act³ and the Regulations made under these Acts. The Kenya School of Law Act prescribes the requirements for admission to the Kenya School of Law. In addition, the Legal Education Act prescribes 16 core courses that must be undertaken by any student pursuing an award of a degree in law whether in Kenya or elsewhere⁴. An applicant for admission to the Advocates Training Programme at the Kenya School of Law must meet the requirements prescribed by both Acts.

The Advocates Act provides that only citizens of the East African Community Partner States are eligible for admission as advocates of the High Court of Kenya.⁵ It sets out both academic and professional qualifications for admission as an advocate. Acceptance and recognition of professional qualifications for purposes of admission is vested in the Council of Legal Education⁶ while recognition of academic qualifications is vested in the Commission for University Education.⁷

In practice, the manner in which the Council of Legal Education has exercised its mandate has generated a lot of controversy and litigation.⁸ First, the Council's position is that under the Kenya School of Law Act, only Kenyans ought to be admitted to the Kenya School of Law and it had directed the School not to admit nationals of the other East African Community Partner States. Second, the Council has rejected academic qualifications awarded to Kenyans by institutions accredited by relevant national authorities

¹ Act No.26 of 2012.

² Act No. 27 of 2012.

³ Cap 16 of the Laws of Kenya.

⁴ Section 23 and the Second Schedule.

⁵ Section 12.

⁶ Section 13.

⁷ Section 5A of the Universities Act, Act No 42 of 2012.

⁸ *Jonnah Tusasirwe & 10 Others v Council of Legal Education & 3 Others* [2017] eKLR; *Lucy Nyaguthii Wachira v Council for Legal Education & 3 Others* [2017] eKLR, *Republic v Council of Legal Education & Attorney General Ex-Parte Uganda Pentecostal University* [2014] eKLR; *Republic v Kenya School of Law & Another Ex-Parte Ibrahim Maalim Abdullahi* [2014] eKLR; *Monica Wamboi Ng'ang'a & Others v Council of Legal Education & 4 Others* [2017] eKLR.

of the Government of Uganda on the ground that the awards do not meet Kenya's prescribed minimum statutory requirements.⁹ Third, the Council has visited institutions already accredited by relevant national authorities of the Government of Uganda and inspected them against Kenyan standards. Following such inspection, the Council concluded that they did not meet the said standards. Fourth, while the Council recognises professional legal education service providers of the other Partner States, it has refused to accept qualifications awarded by those institutions. In light of the foregoing, this work seeks to review the Council of Legal Education's decisions in light of East African Community Law.

2.0 East African Community Law on Freedom of Movement

Once a state enters into an international treaty with one or more states, it undertakes both moral and legal obligations which it should honour. Moral, because by entering into negotiations and accepting undertakings, the state raises expectations of compliance on the part of the other states involved. It is only just, therefore, that the state in question honours its obligations undertaken under the treaty. The obligation is also legal because it is based on the fundamental and peremptory norm of international law, *pacta sunt servanda* (pacts entered into shall be followed).¹⁰ Article 26 of the 1969 Vienna Convention on the Law of Treaties provides that '[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith'. This provision is further clarified by article 27 of the Convention which provides that 'a party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty...'

The legal effect of articles 26 and 27 of the Convention is that a ratified treaty remains binding upon the state vis-à-vis other states or international persons party to the treaty at the international level. The rights against the state may, therefore, be enforced by another state in an international tribunal. This

⁹ See for instance: *Republic v Kenya School of Law & another Ex-Parte Ibrahim Maalim Abdullahi* [2014] eKLR; *Monica Wamboi Ng'ang'a & Others v Council of Legal Education & 4 Others* [2017] eKLR; *Nabulime Miriam & Others v Council of Legal Education & 5 Others* [2016] eKLR.

¹⁰ See John Ntambirweki, "Evaluation of the implications of ratifying the Convention on Biological Diversity in Uganda", [1994] FAO, 43-44.

view has been stated by the Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ).¹¹

The status of international treaties in domestic law is generally determined by domestic law itself. It depends on whether a state is monist or dualist. Kabau and Njoroge have opined that;

The dualist doctrine is premised on the view that domestic and international legal orders comprise of two distinct and independent legal systems. Therefore, to apply in the domestic sphere, international law must be legislated into domestic law. On the other hand, a monist approach is premised on the view that both international law and domestic law are part of a unified legal system. The monist doctrine, however, has two approaches with respect to the supremacy of either domestic or international law. The first approach in the monist construction of legal obligations holds that international law enjoys supremacy over domestic law, while the second approach is based on the view that domestic law has primacy over international law.¹²

The sources of law under the East African Community (EAC) regime are: the Treaty for the Establishment of the East African Community, Protocols, Acts of the East African Legislative Assembly, decisions of the East African Court of Justice and formal directives and decisions of the policy organs of the Community.¹³ Within the EAC framework, the Treaty is the main source of Community law. It outlines the areas of cooperation on which the Partner States of the Community have agreed to cooperate.

It is not possible to analyse the domestic law of each of the six East African Community Partner States in this work. In Tanzania, treaties and other international agreements whether ratified or not have no effect upon municipal law and do not affect the rights of the subjects or their property save in so far as

¹¹ See *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in Danzig Territory*, Advisory Opinion, 1932 P C I J (ser A/B) No. 44 at Pg 24; *Free Zones of Upper Savoy and District of Gex (Fr v Switz)*, 1932 P C I J (ser.A/B) No 46 (June 7) at Pg. 167; *Greco-Bulgarian Communities*, Advisory Opinion, 1930 P.C.I.J. (ser. B) No 17 (July 31) at Pg. 32; and *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion, ICJ GL No 77, [1988] ICJ Rep 12,

¹² Kabau T and Njoroge C, 'The Application of International Law in Kenya under the 2010 Constitution: Critical Issues in the Harmonisation of the Legal System' (2011) Vol. 44, No. 3 *The Comparative and International Law Journal of Southern Africa* 293.

¹³ Ruhangisa J E, 'The Scope, Nature and Effect of EAC Law ' in Ugirashebuja E, Ruhangisa J E, Ottervanger T, and Cuyvers A (eds), *East African Community Law* (Brill 2017).

they are given effect by legislation.¹⁴ The same position obtains in Uganda.¹⁵ The East Africa Court of Justice has held that where there is a conflict between treaty law and municipal law the former takes precedence.¹⁶ Prior to the promulgation of the Constitution of Kenya 2010, Kenya's position was like that of Tanzania and Uganda.¹⁷ Article 2(6) of the Constitution provides that 'any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution'. This implies that treaty law is self-executing and does not need domestication to make it operative.¹⁸

2.1.0 *The Treaty for the Establishment of the East African Community*

The East African Community is an economic community designed to facilitate economic integration. The instruments concluded among the Partner States create specific rights enjoyable by their citizens. The Treaty for the Establishment of the East African Community (the Treaty) and the Protocol on the Establishment of the East African Community Common Market (the Protocol) are positive integration-type of agreements that seek harmonisation of basic regulatory requirements.¹⁹ They constitute preferential trade agreements providing for deeper integration.

The Treaty's objectives include developing policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for the mutual benefit of the

¹⁴ See Seaton E E and Maliti S T, *Tanzania Treaty Law and Practice*, (Oxford University press, London, 1973); Kabudi P J, Liability and Redress for Damage Caused by the Transboundary Movement of Living Modified Organisms (LMOs) under the Cartagena Protocol on Biosafety: A Review of the Tanzania Legal System', (2004) ACODE Policy Research Series No 9, 3-4; *Transport Equipment Ltd And Reginald John Nolan vs. Devran P. Valambhia*, Court of Appeal of Tanzania Civil Appeal No 13 Of 1993 (unreported).

¹⁵ See n 10.

¹⁶ *Samuel Mukira Mohochi v The Attorney General of the Republic of Uganda* Reference No 5 of 2011.

¹⁷ See *Okunda vs R* [1970] EA 453 and *East African Community vs R* [1970] EA 457

¹⁸ *Walter Osapiri Barasa v Cabinet Secretary Ministry of Interior and National Co-Ordination & 6 Others* [2014] eKLR.

¹⁹ Positive integration refers to the creation of a common sovereignty through the modification of existing institutions and the creation of new ones while negative integration implies the elimination of barriers that restrict the movement of goods services and factors of production. The European Union and the European Economic Area are examples of positive integration.

Partner States.²⁰ Accelerated, harmonious and balanced development and sustained expansion of economic activities is anticipated, the benefit of which shall be equitably shared.²¹

To strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the Partner States, the Treaty provides for four stages of integration namely, the Customs Union as the entry point, the Common Market as the transitional stage, the Monetary Union and the Political Federation as the ultimate.

To achieve the objectives of the Community, the Partner States are guided by the fundamental principles laid down in article 6 of the Treaty. These principles are: mutual trust, political will and sovereign equality; peaceful co-existence and good neighbourliness; peaceful settlement of disputes; good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights; equitable distribution of benefits; and co-operation for mutual benefit. The Treaty has the force of law in each Partner State²² and has precedence over national law.²³

The Treaty enjoins the Partner States to develop and adopt an East African Trade Regime and co-operate in trade liberalisation and development.²⁴ Chapter Seventeen establishes a Common Market among the Partner States within which there shall be free movement of labour, goods, services, capital, and the right of establishment.²⁵ At the time of its conclusion, it was envisaged that the establishment of the Common Market would be progressive and in accordance with schedules to be approved by the Council of Ministers of the Community. The Partner States were required to conclude a Protocol on a Common Market.²⁶

²⁰ Article 5(1).

²¹ Article of 5(2).

²² Article 8 (2)(b).

²³ Article 8(5). See the decision of The East African Court of Justice in *Samuel Mukira Mohochi v The Attorney General of the Republic of Uganda* Reference No 5 of 2011.

²⁴ Article 74.

²⁵ Article 76(1).

²⁶ Article 76(4).

Article 104 of the Treaty provides for the scope of co-operation. The Partner States agreed to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the Community.²⁷ The Partner States agreed to conclude a Protocol towards this end.²⁸ They also agreed, among other things, to maintain common employment policies²⁹ and make their training facilities available to persons from other Partner States³⁰ as may be determined by the Council of Ministers of the Community.

Instruments which spell out the objectives, scope of and institutional mechanisms for co-operation and integration concluded by Partner States in each area of co-operation are annexed to and form an integral part of the Treaty.³¹

2.2.0 The Protocol on the Establishment of the East African Community Common Market

On 20th November, 2009, five of the six Partner States signed the East African Community (EAC) Common Market Protocol signifying the attainment of the second stage of integration. The Common Market is guided by the Community's fundamental and operational principles as enshrined in articles 6 and 7 of the Treaty on equitable distribution of benefits and people-centeredness and market-driven co-operation. The principles of the Common Market require Partner States to observe the principle of non-discrimination as regards nationals of other Partner States; accord treatment to nationals of other Partner States, not less favourable than the treatment accorded to third parties; ensure transparency in matters concerning the other Partner States; and share information for the implementation of the Protocol.³²

The Protocol provides for free movement of goods, persons, labour or workers, services, capital and the right to establishment and residence on a non-discriminative basis.³³ However, free movement may be subject to limitations

²⁷ Article 104(1).

²⁸ Article 104(2).

²⁹ Article 104(3)(d).

³⁰ Article 104(3)(g).

³¹ Article 151(1) and (4).

³² Article 3.

³³ Article 2(4), 7(1) and (2).

imposed by the host Partner State on grounds of public policy, public security or public health.³⁴ A Partner State imposing any limitation to free movement is required to notify the other States accordingly.³⁵ The implementation of the Protocol's provisions on free movement is required to be undertaken in accordance with the East African Community Common Market (Free Movement of Persons) Regulations specified in Annex 1 to the Protocol.³⁶

Regulation 6 provides for stay of students. A citizen who is admitted as a student in an approved training establishment of another Partner State is required to apply for a student's pass within thirty days of entry.³⁷ The pass is issued without a fee,³⁸ subject to terms and conditions, for a period not exceeding one year and shall be renewable, annually, for the duration of the study.³⁹ A citizen who enters another Partner State to undergo training for a period not exceeding two months is exempted from this requirement.⁴⁰ The immigration office of a host Partner State may cancel a pass for lawful cause.⁴¹ The person in charge of a training establishment is required to ensure that all the students from the other Partner States comply with the regulations.⁴²

In *Samuel Mukira Mohochi v The Attorney General of the Republic of Uganda*,⁴³ the East African Court of Justice reaffirmed that Community citizens' freedom of movement within the territories of Partner States is a right guaranteed by the Treaty which is directly applicable in the Partner States.

To facilitate enjoyment of this right, Kenya, Rwanda and Uganda have agreed to the use of identity cards by their nationals as travel documents among the three States.⁴⁴

The integration process has seen an increase in cross-border investments. Today, banks, educational institutions, insurance firms, supermarket chains,

³⁴ Article 7 (5).

³⁵ Article 7(6).

³⁶ Article 7(9).

³⁷ Regulation 6(1).

³⁸ Regulation 6(8).

³⁹ Regulation 6(4).

⁴⁰ Regulation 6(5).

⁴¹ Regulation 6(6).

⁴² Regulation 6(7).

⁴³ See n 16.

⁴⁴ EAC, Frequently Asked Questions', available at www.eac.int/faqs, accessed 25th January, 2017.

companies offering road transport services among others have established themselves in more than one Partner State.

3.0 East African Community Law on Mutual Recognition of Qualifications

3.1.0 *The Treaty for the Establishment of the East African Community*

Despite requiring Partner States to make their training facilities available to citizens of other Partner States, the Treaty is silent on the issue of recognition of the qualifications so earned. Access to a Partner State's training institution by a citizen of another Partner State would make no sense if that citizen's academic or professional qualification is not recognised by the other Partner States including that citizen's State of nationality.

The right to education is internationally and regionally recognised.⁴⁵ It is also enshrined in the constitutions of East African Community Partner States.⁴⁶ Non-acceptance and non-recognition of the qualifications by a Partner State amounts to a violation of the right to education of the Community's citizens. In Kenya, for instance, the High Court has considered this right and opined as follows:

Article 43(1)(f) of the Constitution provides that every person has the right to education. The right to education would make no sense if a person's academic qualification is not recognised by the State on unreasonable grounds. Where, therefore, the authorities concerned hold the view that a particular person's educational qualification is not recognised, the authority is under a Constitutional duty to furnish the person with written reasons for non-recognition.⁴⁷

⁴⁵ See Article 26 of the Universal Declaration of Human Rights; Articles 13; 14 of the International Covenant on Economic, Social and Cultural Rights; Article 28 and 29 of the Convention on the Rights of the Child; Article 4 of the Convention Against Discrimination in Education; Article 10 of the Convention on the Elimination of All Forms of Discrimination Against Women; Article 17 of the African Charter on Human and Peoples' Rights; and Article 11 of the African Charter on the Rights and Welfare of the Child.

⁴⁶ Article 30 of the Constitution of the Republic of Uganda, 1995; Article 43(1)(f) of the Constitution of the Republic of Kenya, 2010; Article 11(2) of the Constitution of the Republic of Tanzania; Article 20 of the Constitution of the Republic of Rwanda; Article 29 of the Transitional Constitution of the Republic of South Sudan; Article 34 of the Constitution of the Republic of Burundi.

⁴⁷ *Republic v Commission for Higher Education ex-parte Peter Shoita Shitanda* [2013]eKLR. See also *Republic v Kenya National Examination KNEC Ex-parte Charles Obara & 8 Others* [2013] eKLR; *Kokebe Kevin Odhiambo & 12 Others v Council of Legal Education & 4 Others* [2016] eKLR.

3.2.0 *The Protocol on the Establishment of the East African Community Common Market*

To facilitate the implementation of the Common Market, the Partner States agreed to co-operate to harmonise and mutually recognise academic and professional qualifications, ensure fair competition and promote consumer welfare.⁴⁸ The Protocol provides for the harmonisation and mutual recognition of academic and professional qualifications.⁴⁹ They undertook to mutually recognise the academic and professional qualifications granted, experience obtained, requirements met, licences or certifications granted in other Partner States.⁵⁰ Harmonisation and mutual recognition of academic and professional qualifications should be undertaken in accordance with annexes to be concluded by the Partner States.⁵¹

While no annexes on harmonisation and mutual recognition of academic and professional qualifications have been concluded, notable efforts towards that end have been made. For instance, at its 11th Meeting held on 24th October, 2009, the Sectoral Council on Legal and Judicial Affairs commissioned a study on harmonisation of legal training and certification aimed at establishing a common regional syllabus for the training of lawyers and common examination standards for training both in law and legal practice.⁵² At its 14th Meeting held on 24th October, 2012, the Council took note of the resultant report and observed that it addressed matters that were then under negotiation by the Sectoral Council on Education, Culture, Sports, Science and Technology which was developing an annex to the Common Market Protocol known as the East

⁴⁸ Article 5(3)(a) and (d).

⁴⁹ Article 11.

⁵⁰ Article 11(1)(a).

⁵¹ Article 11(2).

⁵² The report recommended—

- (a) An EAC Model Syllabus for University Law Schools;
- (b) An EAC Model Syllabus for Post-University Law-Training Institutes;
- (c) EAC Model Criteria for Admission to EAC Law Schools and Post-University Law-Training Institutes;
- (d) EAC Model Standards to be attained in examinations on the path leading to admission to law practice as an advocate in the Partner States;
- (e) EAC Model Advocates Legislation to govern admission and supervision of lawyers in the Partner States;
- (f) A Roadmap of steps to be taken and timeframes for achieving Communitywide adoption of these models;
- (g) A Roadmap towards achieving cross border legal practice within the Community; and
- (h) The Initiation of a Regional Cross Border Legal Practise Bill.

Africa Community Common Market (Harmonisation and Mutual Recognition of Academic and Professional Qualification Regulations). The Secretariat was directed to submit the report to the Partner States for comments after which the report and input would be submitted to the Sectoral Council on Education, Culture, Sports, Science and Technology for consideration in the development of regulations.⁵³

Notwithstanding the absence of annexes on harmonisation and mutual recognition of academic and professional qualifications, Partner States have already made their training institutions accessible to citizens of other Partner States. The Community's citizens have already exercised their freedom of movement, accessed training institutions of partner states and have been conferred with various academic and professional qualifications. In the absence of the annexes, how then should Partner States go about recognition of these qualifications? Lessons from the European Union on the subject would be instructive.

4.0 European Union Law on mutual recognition of qualifications⁵⁴

The central elements of the provisions of the Consolidated Version of the Treaty on the Functioning of the European Union⁵⁵ on free movement of workers,⁵⁶ the freedom of establishment⁵⁷ and the freedom to provide services⁵⁸ contain the principles that each Member State must take into account all qualifications gained in another Member State for the undertaking of commercial activities within its sovereign territory. This basic rule results from the principle of non-discrimination or the prohibition against restrictions.

The European Parliament and the Council of the European Union are granted the power to enact provisions aimed at facilitating the entering into

⁵³ East African Community, "Priority Questions for Oral Answers, 4th Meeting of the 1st Session of the East African Legislative Assembly, Bujumbura, Burundi 20th January - 1st February 2013".

⁵⁴ For a fuller analysis see Dr Walter Obwexer and Dr Mag Esther Happacher Brezinka, 'Law of the European Organisations: The Recognition of Diplomas within the Internal Market', The European Legal Forum, 6-2000/01, 1st Year July/August 2001, 377-436.

⁵⁵ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, available at www.refworld.org/docid/4b17a07e2.html, accessed on 2nd December, 2016.

⁵⁶ Article 45.

⁵⁷ Article 49.

⁵⁸ Article 56.

and practice of independent and dependent employment.⁵⁹ This includes directives for the co-ordination of the statutory and administrative provisions of Member States on the entering into and practice of gainful employment (coordinating directives) as well as directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications (recognition directives). Coordinating and recognition directives have been enacted for some activities, for instance, in the health care area.

The vertical (sectoral) system applies to the following professions: doctors,⁶⁰ dentists,⁶¹ veterinarians,⁶² pharmacists,⁶³ midwives⁶⁴ and nurses.⁶⁵ This should be distinguished from the horizontal system which obliges the Member States to mutually recognise diplomas without correlating the types of education and the occupation law in the Member States. The horizontal system is based on the assumption that training courses which allow the practice of a particular (regulated) profession in a Member State are largely comparable, i.e. are in principle of equal standing (principle of mutual trust). This approach leads to EU citizens who are entitled to practice a particular (regulated) profession in their home State also being entitled to the admission to and practice of this profession in a host Member State. For this reason, the host Member State must recognise the diploma awarded in the home State. If the profession in the home State is not regulated, i.e. is open in respect of its access and practice, the guarantee of a certain level of knowledge inherent to a regulated profession is replaced by evidence of professional experience over a minimum period or alternatively by any prescribed regulated training.⁶⁶

⁵⁹ Articles 46 and 53.

⁶⁰ Council Directive 93/16, OJ 1993 L 165, at 1, as printed in OJ 1999 L 39, at 25.

⁶¹ Council Directive 78/686, OJ 1978 L 233, at 1, as printed in OJ 1994 L 1, at 371; Council Directive 78/687, OJ 1978 L 233, at 10, as printed in OJ 1994 L 1, at 371.

⁶² Council Directive 78/1026, OJ 1978 L 362, at 1, as printed in OJ 1994 L 1, at 371; Council Directive 78/1027, OJ 1978 L 362, at 7, as printed in OJ 1989 L 341, at 19.

⁶³ Council Directive 85/432, OJ 1985 L 253, at 34; Council Directive 85/433, OJ 1985 L 253, at 37, as printed in OJ 1994 L 1, at 371.

⁶⁴ Council Directive 80/154, OJ 1980 L 33, at 1, as printed in OJ 1994 L 1, at 371; Council Directive 80/155, OJ 1980 L 33, at 8, as printed in OJ 1989 L 341, at 19.

⁶⁵ Council Directive 77/452, OJ 1977 L 176, at 1, as printed in OJ 1994 L 1, at 371; Council Directive 77/453, OJ 1980 L 33, at 8, as printed in OJ 1989 L 341, at 30.

⁶⁶ Article 3 (b) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration; Article 3(b) and Article 4(1)(b) of Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC; in relation to regulated vocational training and education see Annex C of Council Directive 92/51.

The horizontal system is laid down in two directives from 1989⁶⁷ and 1992.⁶⁸ Moreover, special provisions exist for two occupations. A recognition directive⁶⁹ was enacted for architects. The directive for lawyers concerning the provision of services⁷⁰ as well as the established practice of law as an independent or dependent worker⁷¹ does not provide for either a standard correlation of occupation laws or standard requirements for the occupational training.⁷²

The Court of Justice of the European Union has consistently pronounced itself on the issue of recognition and approval of diplomas. The vertical system is based on a Community-wide correlation of professional training, admission and practice rules. At the same time, a mandatory minimum standard is laid down for all Member States. Diplomas which are granted in consideration of these minimum standards must be “automatically and compulsorily” recognised.⁷³ In addition, the Member States are prohibited from demanding from the beneficiaries the fulfilment of other conditions which are not laid down in the relevant directive.⁷⁴ The recognition is, therefore, restricted to a purely formal examination which must be undertaken on an application.⁷⁵

The right of nationals of a Member State to choose, on the one hand, the Member State in which they wish to acquire their professional qualifications and, on the other, the Member State in which they intend to practise their profession is inherent in the exercise, in a single market, of the fundamental freedoms guaranteed by the Treaties. The fact that the national of a Member State has chosen to acquire a professional qualification in a Member State other than

⁶⁷ Council Directive 89/48/EEC of 21 December 1988 on the general system for the recognition of higher-education diplomas awarded on the completion of professional education and training of at least three years’ duration, OJ 1989 L 19, at 16.

⁶⁸ Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC, OJ 1992 L 209, at 25, as printed in OJ 2000 L 54 at 42.

⁶⁹ Council Directive 85/384, OJ 1985 L 223, at 15, as printed in OJ 1994 L 1, at 371.

⁷⁰ Council Directive 77/249, OJ 1977 L 78, at 17, as printed in OJ 1994 L 1, at 371.

⁷¹ Council Directive 98/5, OJ 1998 L 77, at 36.

⁷² Case C-168/98 – *Luxembourg v Parliament and Council*.

⁷³ Case C-16/99 – *Erpelding*, par 23.

⁷⁴ Case C-238/98 – *Hocsmann*, par 33.

⁷⁵ This type of recognition applies only however to diplomas which have been awarded by a Member State. (“*Community diplomas*”). Diplomas which are awarded in a non-Member State (“*non-EC diplomas*”) are not encompassed by the vertical system even if they are recognised in one or more Member States as equivalent.

that in which he resides in order to benefit from its more favourable legislation is not, in itself, sufficient ground to conclude that there is an abuse of rights.⁷⁶

In applying their national provisions, Member States may not ignore the knowledge and qualifications already acquired by the person concerned in another Member State.⁷⁷ In *Conseil National de l'Ordre des Architectes and Nicolas Dreessen* the Court held that:

...where a Community national applies to the competent authority of a Member State for authorisation to practise a profession, access to which depends, under national legislation, on the possession of a diploma or professional qualification or on periods of practical experience, those authorities are required to take into consideration all the diplomas, certificates and other evidence of formal qualifications of the person concerned, and his relevant experience, by comparing the specialised knowledge and abilities so certified, and that experience, with the knowledge and qualifications required by the national legislation, even where a directive on the mutual recognition of diplomas has been adopted for the profession concerned, but where application of that directive does not result in automatic recognition of the applicant's qualification or qualifications.⁷⁸

In *Irene Vlassopoulou v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg* the court further held:

That examination procedure must enable the authorities of the host Member State to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. That assessment of the equivalence of the foreign diploma must be carried out exclusively taking into account the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training to which the diploma relates.⁷⁹

2014. ⁷⁶ Joined Cases C-58/13 and C-59/13 *Torresi*, paragraphs 48 and 50 of judgment of 17th July

⁷⁷ Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 38.

⁷⁸ Case C-31/00 *Dreessen* [2002] ECR I-663, Paragraph 31.

⁷⁹ Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, Paragraphs 16 and 17.

5.0 Kenya's Practice with Respect to Acceptance and Recognition of Qualifications Awarded by Institutions of other East African Community Partner States

The Treaty and the Protocol create specific rights to be enjoyed by citizens of Partner States. Mutual benefits for community citizens are not possible without mutual trust among the Partner States and their regulatory agencies. Which level of mutual trust is desirable? The stark reality is that Partner States seek to create a regulatory environment as favourable as possible to the undertakings established under their jurisdictions. While each Partner State is sovereign, mutual trust is of the essence in their peaceful co-existence.

Under Community Law, 'trust' between Partner States assumes a very different meaning, almost at the opposite end of the interpretation given of the notion when it is used in the expression 'mutual trust'. It refers to the notion that each Partner State should trust that the policies, laws and processes implemented in other Partner States are not inferior to its own and those of other Partner States. This is because they are a result of democratic processes. Trust between jurisdictions, in principle, should be based not only on substantive considerations, for instance, the nature of the regulatory framework in place in the other Partner States, but also on process-based considerations, such as the existence of monitoring mechanisms.

The ongoing regional integration process has had profound impact on governmental decision-making in East Africa. For instance, Burundi,⁸⁰ Kenya⁸¹ and Rwanda⁸² have enacted new immigration laws which encompass provisions of the Common Market Protocol in relation to the free movement of persons and labour. Equally, various courts in the East African Region have taken judicial notice of these developments.

The Ugandan High Court's decision in *Deepak K. Shah & 3 Others v Manurama Limited & 2 Others*⁸³ is one of the early judicial pronouncements of great importance in the development of East African Community Law. The Plaintiffs,

⁸⁰ The Republic of Burundi revised the Immigration Act in 2012 to provide for a six-months pass for EAC citizens.

⁸¹ Kenya Citizenship and Immigration Act, Act No 12 of 2011 and Kenya Citizens and Foreign Nationals Management Act, Act No 31 of 2011.

⁸² Law No. 04/2011 of 21/03/2011 on Immigration and Emigration in Rwanda.

⁸³ Miscellaneous Application No 361 of 2001. See also "The East African Community kicks into the reality of today's court practice", *The East African Lawyer*, (2003) October, Issue No 5, Pg 36.

who were Kenyan nationals, opposed an application for security for costs arguing that given the re-establishment of the East African Community, the question of “residence” for purposes of ordering Plaintiffs to deposit security for costs should be re-examined. The Court disregarded the fact of the Plaintiff’s residence and held that there can no longer be an automatic and inflexible presumption for courts to order payment of security for costs with regard to a plaintiff who is a resident of the East African Community.

In *Law Society of Kenya v Attorney General & 2 Others*,⁸⁴ the High Court of Kenya considered amendments to the Advocates Act which paved way for admission of Rwandan and Burundian nationals to practice law in Kenya as advocates. The Court observed that section 12 of the Advocates Act was a consequence of Rwanda and Burundi joining the East African Community hence the inclusion of their citizens in addition to those of Uganda and Tanzania being entitled to be admitted as advocates. The Court held that the amendment was clear that the citizens of the Partner States of the East Africa Community must be duly qualified as advocates in accordance with section 13 of the Advocates Act and, therefore, the issue of different standards and entrenchment of discrimination against Kenyan advocates did not arise.

In *Samuel Mukira Mohochi v The Attorney General of the Republic of Uganda*,⁸⁵ the East African Court of Justice held that a foreign country under the Treaty is ‘any country other than a Partner State’. The Treaty defines persons, formerly foreign nationals as between the individual EAC states prior to entry into force of the Treaty, as ‘nationals or citizens of Partner States’ and accords them wide-ranging, preferential and superior treatment and rights in terms of movement, establishment, residence and working within the Partner States. Thus, a citizen of a Partner State is not a foreigner. This position has been reaffirmed in Kenya.⁸⁶

In *Katungi Tony v Attorney General*,⁸⁷ the Ugandan High Court held that the Law Council did not demonstrate that it took the applicant’s bar course qualification from Kenya, a common law jurisdiction like Uganda and East African State, into account when making its decision. The court considered this to ride against the spirit of article 126(2) of the East African Community Treaty. The Court opined that Uganda as a Partner State was enjoined to harmonise the national laws in respect of the legal profession. Uganda was bound to open up the space for workers through the East African integration or devise a better approach to allow free movement of workers in order to be compliant with the EAC Common

⁸⁴ [2013] eKLR.

⁸⁵ See note 16.

⁸⁶ For instance, under the Wildlife (Conservation and Management) (National Parks) Regulations, 2010 Legal Notice No. 207 of 24th December 2010 “citizens” “means the citizens of the East African Community” and “residents” “means the residents of the East African Community”.

⁸⁷ Miscellaneous Cause No. 204 of 2017.

Market Protocol. In the court's view, the ultimate solution is harmonisation, which is, setting, through community legislation, uniform academic curricular and professional qualification standards to remove disparities between Partner States. With quality assurance guaranteed by uniform procedures and standards for accreditation of training institutions, there will be no room for protectionism.

5.1.0 Academic Qualifications in Law

At the Community level, the Inter-University Council for East Africa (IUCEA) is a community institution whose objectives are to facilitate networking among universities in East Africa, and with universities outside the region; provide a forum for discussion on a wide range of academic and other matters relating to higher education in East Africa; and facilitate maintenance of internationally comparable education standards in East Africa so as to promote the region's competitiveness in higher education. Its main roles and functions are to coordinate inter-university cooperation in East Africa, facilitate the strategic development of member universities and promote internationally comparable higher education standards and systems for sustainable regional development.

Each of the Partner States has a designated Ministry in charge of education and a higher education regulatory agency: the Commission for University Education (CUE), for Kenya; Higher Education Council (HEC), for Rwanda; Tanzania Commission for Universities (TCU), for Tanzania; and National Council for Higher Education (NCHE), for Uganda. In Rwanda, for instance, the Higher Education Council (HEC) oversees all higher education and accredits and supervises all university legal training programmes. The above notwithstanding, Tanzania⁸⁸ and Uganda⁸⁹ have each established a Council of Legal Education to exercise general supervision and control over legal education.⁹⁰ In Kenya, following the enactment of the Universities Act, 2012 and the Kenya National Qualifications Framework Act, 2014, Parliament appeared to have stripped the Council of Legal Education of this role. However, the Council of Legal Education has continued to inspect and accredit universities offering legal education.⁹¹ With the enactment of the Universities (Amendment) Act, 2016,⁹²

⁸⁸ Section 5A of the Advocates Act, Cap 341.

⁸⁹ Section 2 of the Advocates Act Cap 267.

⁹⁰ In Uganda, while under section 3(a) of the Advocates Act the function of the Council is to "exercise general supervision and control over professional legal education in Uganda" in practice the regulation of legal education at the academic level falls within the remit of the Law Council.

⁹¹ *Republic v Council of Legal Education & Another Ex-Parte Mount Kenya University* [2016] eKLR; *Moi University v Council of Legal Education & Another* [2016] eKLR.

⁹² Act No 48 of 2016.

the position that recognition, licensing, approval or accreditation of any academic programme including postgraduate degrees, diplomas including other postgraduate diplomas and other academic certificates offered at a university is the exclusive mandate of the Commission for University Education has now been clarified beyond doubt.

Decisions of the Council of Legal Education on acceptance and recognition of academic qualifications in law have been challenged in courts of law with mixed results. In *Re Rita Biwott*,⁹³ the Court held that the Council was the only body in Kenya charged with the responsibility of admitting candidates to the Kenya School of Law so that such candidates could finally become advocates of the High Court of Kenya.

In *Republic v Kenya School of Law & 2 Others Ex-Parte Juliet Wanjiru Njoroge & 5 Others*,⁹⁴ the applicants, who were graduates of Uganda Pentecostal University, had been admitted by Kenya School of Law in the Advocates Training Programme but the School, acting on a directive by the Council of Legal Education, reversed its decision to admit them. Following its visit to the said University, the Council of Legal Education issued a directive against admission of its graduates. The Court quashed the School's decision on the ground that the applicants ought to have been afforded an opportunity to be heard before the decision to rescind or revoke their admission was made. Despite the quashing of the decision, the School refused to admit the applicants, prompting them to institute contempt proceedings.

In *Republic v Council of Legal Education & Attorney General Ex-Parte Uganda Pentecostal University*, the applicant, a private university established under the Laws of the Republic of Uganda offered a Bachelor of Laws degree programme. It did so with the authorisation of and recognition by the Law Council, Uganda's legal education regulator. The Quality Assurance Compliance and Accreditation Committee of the Council of Legal Education (Kenya) visited the applicant and carried out investigations. The applicant asserted that the "partial investigation" lasted twenty minutes. Thereafter, the Council of Legal Education decided to withdraw its accreditation of the applicant's law programme thereby locking out its graduates from being admitted to the Kenya School of Law.

⁹³ [1994] eKLR.

⁹⁴ [2014] eKLR.

The Council argued that there was in place a memorandum of understanding for partnership of the legal education regulators to enable uniformity in the quality and standards of legal education. In line with the said memorandum, Uganda and Tanzania had allowed the Council to visit legal education providers in those countries and conduct inspection of the institutions with a view to ascertaining compliance with the accreditation standards to enable the Council decide whether or not to recognise their academic qualifications. According to the Council, that arrangement had enabled it to assess legal education providers in Kenya and abroad using the same benchmark. The Council further argued that its visit was with the permission of the Government of Uganda and the Law Development Centre of Uganda, the regulator of legal education in that country.

In finding for the applicant, the Court held that it was entitled to a hearing before the decision was made and that it had not been accorded this right. The Court held, *inter alia*, as follows:

The Council opted to subject the Applicant to the provisions of the Legal Education Act. The Council mentioned that it did so as a result of a memorandum of understanding with the other bodies of equivalent jurisdiction in East Africa. Interestingly, this document was not exhibited in Court. What came out is that the memorandum of understanding was aimed at standardising legal education in the region. If this is so, why would the Council not be satisfied with the certification of the Applicant by the body charged with such responsibility in Uganda? I need not answer that question as it was not asked by any of the parties. It is however clear that the Council decided to judge the Applicant using the Kenya standards.

Regulation 3 of the Regulations clearly provides that the Regulations are to be applied to legal education providers in Kenya. Since the Council opted to subject the Applicant to Kenyan laws, then it had no option but to use the same Kenyan laws in deciding not to recognise the Applicant as a legal education provider. You cannot apply the law when it suits you and fail to apply it where it favours the other party.

I am doubtful that the 1st Respondent had the authority to inspect the Applicant's facilities in the manner it did. However, without the benefit of the alleged memorandum of understanding, I cannot firmly say that the 1st Respondent's inspection was outright illegal.⁹⁵

⁹⁵ [2014] eKLR.

In *Republic v Kenya School of Law & Another Ex-Parte Ibrahim Maalim Abdullahi*,⁹⁶ the Applicant sat for his Kenya Certificate of Secondary Education (KCSE) in 1992 and obtained a mean grade of D+ and grade D in English. In 2007, he enrolled for and was awarded a diploma in law by the Kenya School of Professional Studies. Thereafter, he enrolled for a Bachelor of Laws Degree at Makerere University which he successfully completed in August 2011. His application to the Kenya School of Law to pursue the Advocates' Training Programme was rejected on the basis that he did not meet the minimum requirements for direct entry into the programme as required by the Council of Legal Education Act (repealed).⁹⁷ The School maintained that the minimum requirements for admission to the bar course were a Bachelor of Laws degree from a recognised university, an aggregate grade C+ in the Kenya Certificate of Secondary Examination and a minimum score of grade B in English.

On his part the applicant argued that it was unreasonable for the School to consider his score in English in Kenya Certificate of Secondary Examination when he had obtained a university degree. According to the applicant, having considered comparative systems of legal education in other jurisdictions, the concept of the School did not exist. The court upheld the decision not to admit the applicant.

It is yet to be seen how the Commission for University Education and the Council of Legal Education will discharge their respective mandates under the new statutory framework. Nevertheless, the legal position enunciated in the above decisions is still good law and will apply equally to the Commission for University Education when it exercises its statutory function of accrediting institutions and recognising academic qualifications in law.

5.2.0 Professional Qualifications

Kenyan law does not prescribe that professional legal training must be undertaken at the Kenya School of Law. Therefore, Kenyans are at liberty to pursue their professional legal training anywhere in the world. The Council's practice has been to turn away applicants who invoke the provisions of section

⁹⁶ [2014] eKLR.

⁹⁷ Cap 16A of the Laws of Kenya.

13(1)(c) of the Advocates Act⁹⁸ and seek acceptance and recognition of their professional qualifications obtained in a Partner State.

In its endeavour to bring on board stakeholders involved in the legal profession from the East African region to discuss issues pertaining to legal education and training in light of globalisation and integration, the Council convened a stakeholders' workshop on "supporting legal education and training in developing a dynamic East African society and beyond".⁹⁹ The Council extended invitations to local and foreign legal education providers including Uganda's Law Development Centre (LDC), Uganda Christian University, Makerere University, Kampala International University and Rwanda's Institute of Legal Practice and Development (ILPD).

The Council presented the draft Legal Education (Accreditation & Quality Assurance) Regulations, 2015 for discussion at the said workshop. It would appear from the Council's report of the workshop that there was no meaningful discussion on the regulations. Nevertheless, the Council made negligible amendments and enacted the Legal Education (Accreditation & Quality Assurance) Regulations, 2016.¹⁰⁰ The Council has entrenched its practice into law through Regulation 7,¹⁰¹ thereby, introducing an additional requirement to those prescribed in section 13(1)(c) and (d) of the Advocates Act.¹⁰²

Partner States have made their training facilities for advocates accessible to Community citizens. For instance, Kenya, Uganda and Rwanda have been

⁹⁸ A person shall be duly qualified if—

- (a) -
- (b) -
- (c) he possesses any other qualifications which are acceptable to and recognized by the Council of Legal Education.

⁹⁹ Council of Legal Education, 'Stakeholder's Workshop on supporting Legal Education and Training in Developing a Dynamic East African Society and Beyond held on 29th and 30th January 2015 at Simba Lodge, Naivasha, Kenya'. Report of the Workshop. February 2015.

¹⁰⁰ Legal Notice No 15 of 2016 of 6th February 2016.

¹⁰¹ (1) A Kenyan who has undergone training at a foreign legal education provider and who has attained professional qualifications that would enable him or her to practice law in that place where he or she underwent training and has practiced law in that place for at least five years may apply to the Council for recognition of his or her professional qualifications.

- (2) An application under paragraph (1) shall be made in Form CLE/L/006 set out in the First Schedule to these Regulations.
- (3) The Council shall recognise or approve foreign qualifications in law for the purposes of this regulation in accordance with the quality standards set out in the Third Schedule to these Regulations.

¹⁰² The Council's decision and the Regulations are the subject of a legal challenge in Nakuru High Court Petition No. 20 of 2016.

admitting Community citizens into their Advocates Training Programmes. Community citizens who have successfully completed their training have been admitted to the bar in Kenya and Uganda without first requiring them to be admitted as such by their home states. On 12th January, 2017, the Rwanda Bar Association followed suit and admitted the first batch of Kenyans to the Rwandan Bar.¹⁰³

In 2016, in a sudden retreat from the ongoing integration, the Government of Kenya through the Council of Legal Education informed the Kenya School of Law that there had been an error in the procedure of admitting foreign nationals to the Kenyan bar. The Council directed the School not to ‘admit any foreign candidates from the other East African Community member states to the Advocates Training Programme (ATP) for qualifying as candidates for automatic admission to the Roll of Advocate in Kenya under Sections 12 and 13 of the Advocates Act, Cap. 16 of the Laws of Kenya unless such persons have also been similarly admitted as advocates in their respective countries of origin’¹⁰⁴ starting from the January 2017/2018 intake. The School, by a memo dated 17th November, 2016 informed citizens of the Partner States who had applied for admission of the Council’s directive and that as a consequence its Admissions Committee had not considered their applications.¹⁰⁵ Interestingly, when the directive was challenged in *Jonnah Tusasirwe & 10 Others v Council of Legal Education & 3 Others*,¹⁰⁶ the School supported the petitioners. The position it adopted and its interpretation of the relevant provisions of the Advocates Act sharply disagreed with the interpretation by the Council of Legal Education. Ultimately, the directive was quashed, and an order of mandamus issued compelling the admissions committee of the School to admit the petitioners to the Advocates Training Programme (ATP).

¹⁰³ Schedule of interviews for candidates to the Rwanda Bar Association, available at <http://rwandabar.org.rw/#>, accessed on 1 December 2016. See also <http://rwandabar.org.rw/swearing-ceremony-of-new-members-of-the-bar-association/>, accessed 23 January 2017.

¹⁰⁴ Letter dated 25th October, 2016 reference no CLE/INS/23/Vol II/(14).

¹⁰⁵ Uganda Law Society’s reaction to the decision was swift. In a letter dated 22nd November, 2016 to the Law Society of Kenya the Society termed the development as ‘not in the spirit of integration of legal service and ... retrogressive’. The Society observed that the directive ‘which is contrary to the spirit of integration comes at a time when the EAC Partner States have just concluded negotiations under the Mutual Recognition Agreement of Advocates’.

¹⁰⁶ See note 8.

6.0 Conclusion

Since membership of the Community is voluntary, Community Partner States must play their role in abiding by the Treaty provisions in ‘good faith’, a universally accepted principle in international law. States cannot renege upon their obligations under a treaty and must refrain from any acts which would frustrate the objects of such a treaty.

Under article 8(1)(c) of the Treaty for the Establishment of the East African Community, Partner States are required to abstain from any measures likely to jeopardise the achievements of the objectives of the Treaty or its implementation. Consequently, any measures which prohibit, impede or render less attractive the exercise of the freedom of movement guaranteed by the Treaty and the East African Community Common Market Protocol must be regarded as constituting illegal restrictions. As held by the Court of Justice of the European Union, national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions. First, they must be applied in a non-discriminatory manner. Second, they must be justified by imperative requirements in the general interest. Third, they must be suitable for securing the attainment of the objective that they pursue. Fourth, they must not go beyond what is necessary in order to attain it.¹⁰⁷ In *Prof. Peter Anyang’ Nyong’o v Attorney General of Kenya*, the East African Court of Justice observed as follows:

Before taking leave of this reference we are constrained to observe that the lack of uniformity in the application of any Article of the Treaty is a matter for concern as it is bound to weaken the effectiveness of the Community law and in turn undermine the achievement of the objectives of the Community. Under Article 126 of the Treaty the Partner States commit themselves to take necessary steps to inter alia “harmonise all their national laws appertaining to the Community”. In our considered opinion this reference has demonstrated amply the urgent need for such harmonisation.

Secondly, we also are constrained to say that when the Partner States entered into the Treaty, they embarked on the proverbial journey of a thousand miles which of necessity starts with one step. To reach the desired destination they have to ensure that every subsequent step is directed forward towards that destination and not backwards or away from the destination. There are bound to be hurdles on the way. One such hurdle is balancing individual state sovereignty

¹⁰⁷ Gebhard C-55/94 ECR (1995) par 37.

with integration. While the Treaty upholds the principle of sovereign equality, it must be acknowledged that by the very nature of the objectives they set out to achieve, each Partner State is expected to cede some amount of sovereignty to the Community and its organs albeit in limited areas to enable them play their role.¹⁰⁸

Mutual trust between Partner States with the ultimate result of ensuring the implementation of the mutual recognition principle is key to the success of the common market. The notion of mutual trust requires each Partner State to treat an accreditation awarded by a Partner State at the domestic level as equivalent in principle to its own. Service providers established in another state, and operating under the laws of that state, should be recognised as being so accredited without being required to comply with the regulations of any other Partner State. Similarly, a qualification conferred on a Community citizen by such institutions should be accepted and recognised without requiring the holder to meet additional requirements.

The Council of Legal Education's (Kenya) refusal to accept and recognise professional qualifications conferred by institutions of Partner States and prescription of additional requirements hinder the enjoyment of rights created under the Treaty by Community citizens. The Council has put in place restrictions whose net effect would be to discourage Kenyans from enrolling in institutions of other Partner States. This effectively creates a monopoly for the Kenya School of Law in the training of Kenyans for admission to the Roll. These actions are in contravention of Community Law and it is now imperative for the Community to hasten the completion of all the pending processes which will provide guidance and direction to the Partner States.

¹⁰⁸ Reference No 1 of 2006.