

# EAST AFRICAN COMMUNITY LAW JOURNAL

VOLUME I, NUMBER I, 2020/2021

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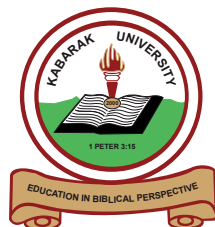
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# EAST AFRICAN COMMUNITY LAW JOURNAL

VOLUME 1, NUMBER 1, 2020/2021

A peer-reviewed publication of  
Kabarak University, School of Law



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## FOREWORD

The East African Community Law Journal has been born in the most difficult ecosystem post-World War II. While the idea behind this journal was conceived over a year ago, achieving it coincided with the declaration of an unending global pandemic inspired by the outbreak of COVID-19 virus. For the second time in 100 years, the whole world has gone into hibernation with borders closed and international travels nearly shut down. Cross-border trade and diplomatic relations have been tested to the yield point in the last six months, with many countries dithering in implementing their international commitments under various treaties. The East African Community has faced its share of the challenge as cross-border trade came to a halt and traditional diplomatic tensions resuscitated. It is not a mere coincidence that within this journal the authors had prophesized obstinate and transitory obstacles to integration.

The East African Law Journal has no peer in the region, and is the first attempt to link academic and practical issues to the realization of the East African Community. The idea behind this journal is to grant academics and practitioners opportunity to criticize, record and share their research works and practical experiences with various facets of the EAC integration. These range from practice at the East African Court of Justice, law-making processes at the East African Legislative Assembly, political decision-making at the Council of Ministers and the Summit, cross-border trade and movement experiences and impacts of EAC laws on rule of law, good governance and human rights in the partner states.

Kabarak University's School of Law has partnered with the East Africa Law Society in this unprecedented collaboration between the regional law society and an academic institution of excellence to produce a compilation of research aimed at shaping scholarship on the East African Community law. In this collaboration, Kabarak University has provided an academic platform and research expertise aimed at ensuring the journal meets the rigorous internationally acceptable research standards, while the East Africa Law Society has contributed its practical experience on regional integration being the foremost

non-governmental institution involved in the regional integration work. The partnership promises you a read like no other on the East African Community law, and a platform on which to further your research on the subject matter.

The East African Community Law Journal attempts to document in a scholarly manner the struggles, the aspirations and the experiences towards achieving the integration of the communities. This first issue contains by far the most authoritative modern commentary on the East African Community, from critique of the EAC trade regimes to remodeling the political integration agenda. The authors in this very first issue represent a new dawn for the East African Community. They are majorly modern day scholars and practitioners, young in age and fresh in mind with unadulterated views of the future of the integrated economic community. They are drawn from across the breadth of EAC partner states, highlighting the importance of integration not only to the general citizenry but also to scholars.

I am flattered to write the *Foreword* to this historical publication, believing as you do that this initial attempt will pave way for even more scintillating debate on this subject and inspire many other scholars and practitioners to share their views on the East African Community integration. At the East Africa Law Society, we are honoured to have our name and character accompany this journal even as we wish you an edifying reading.

Hannington Amol  
Chief Executive Officer  
East Africa Law Society

## EDITOR'S NOTE

We welcome you to an encounter with the Kabarak University Law School's inaugural edition of the East African Community Law Journal. The emergence of this publication must be understood in the wider context of the commitment by the Law School to be a Centre of excellence in legal pedagogy, legal research and legal publications in Kenya and the Eastern Africa region.

East African Community Law is an area of study with a rich and deep history. Unfortunately, little has been done by law schools and other research institutions in the East African, and the broader African, region to document the developments in the law on this area. Note further that more than five years ago the East African Community created a department to deal with research and planning. Unfortunately, this effort has failed to produce expected results. Yet, research and planning constitute the pillars for strategic direction, for monitoring and evaluation and churning out data that not only goes towards improving awareness creation but that which can also improve the management of EAC's programmes and projects.

Kabarak University Law School, as the Centre of excellence in legal pedagogy, legal research and legal publications in Kenya and the Eastern Africa region, is proud to be part of those who provide solutions to such like practical problems by identifying gaps, diagnosing problems, examining the nature of such problems through research, suggesting possible solutions to the problems, and publishing the results of our research for the benefit of the Community and her citizens with a view of making a contribution in narrowing the identified gaps.

By making this publication available, we hope to walk down a road which even the purported angels of African integration have for long feared to tread and in the process create an open platform for purposes of enhancing the dissemination of knowledge and ideas in Regional Integration and East African Community law making a marked departure from the hitherto inward looking, balkanized and focused conversations on this subject. We trust that this road will not only be paved with top notch academic gold but will also lead legal practitioners, judicial officers, researchers, policy makers and students looking for material in this area to a certain intellectual paradise.

The East African Community Law Journal shall be a biennial publication. It shall be hosted by the Kabarak University Law School. Its aim is to provide a platform for lawyers, scholars, judges, students, policy makers and other func-



tionaries with an interest in East African Community Law to express themselves and gain insights on various aspects of East African Community Law.

In this inaugural edition, the authors have supplied us with a rich menu of intellectual cuisine on East African Community Law. The edition has reflections on the East African Community Law Governing Economic Subsidies and their Impact on Competition, the Rendezvous Clause in the East African Community-European Union Economic Partnership Agreement, Ceding Sovereign Powers of the Partner States to the East African Community, Legal regime on Cross-Border Sale of Goods Within the East African Community, Free Movement of Capital Within the East African Community Common Market.

The other contributions in this edition are on the tension in the application of Community Law in the Partner States of the East African Community, a case for a Harmonised Anti-Money Laundering Approach in the East African Community, and, Institutional Mechanisms for Resolution of Trade Remedies Disputes Under the East African Community Customs Union and by Member States.

As always, we remain committed to the highest standards of academic integrity, a feat which can only be achieved with the generous support of experts and thought leaders in the thematic areas covered in each edition. In this regard, we would like to extend our heart-felt gratitude to the following experts who served as peer reviewers for this edition: Prof Tomasz Milej, Dr David Ngira, Dr Duncan Ojwang, Dr Victor Lando, Dr Ezekiel Oira, Dr Francis Khayundi, Mr Tom Ngeri, Mr Japheth Odhiambo, Ms Patricia Ouma, Mr Felix Odhiambo, Mr Ngure Sam, Mr Gekombe Jared, Ms Sandra Soi, Mr Otiso Justus, Ms Serah Kimani, Ms Catherine Kendi Mutungi, Mr Wilson Rading, Mr Maurice Oduor and many other people who spared time to improve the quality of this manuscript.

Finally, we also wish to extend our gratitude to Mr. Elisha Ongoya, Mr. Agutu Joseph Omolo, Ms. Lucianna Thuo and Dr Fancy Too for the key roles they have played in supporting the publishing tradition at KLS and to allow it to grow in an unfettered fashion. I notice and salute your stewardship of the ship thus far. As this dust settles, allow me to note that the East African Community Law Journal is no longer a dream but a reality. We commend and heartily congratulate the editorial team for making this vision a reality.

To all our readers, we trust that your intellectual experience with this issue shall be a good experience.

Edmond Ashivaka Shikoli  
Issue Editor



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