

**RUAHA CATHOLIC UNIVERSITY**



**RUCU**

**Faculty of Law**

**THE LEGAL EXAMINATION OF PRACTICABILITY OF FREE MOVEMENT OF  
PERSONS AND LABOURS IN EAST AFRICA COMMON MARKET.**

**Research Paper**

**Submitted in Partial Fulfillment of Requirements for the Award of the  
Bachelor of Laws Degree (L.L.B) of Ruaha Catholic University**

**By**

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## **CERTIFICATION**

The undersigned certifies that, he has read and hereby recommended for acceptance by the Ruaha Catholic University, a Research Paper titled: The legal examining of practicability of free movement of persons and labours in East Africa Common Market in partial fulfillment of the requirements for the award of the degree of bachelor of Laws (L.L.B) degree Ruaha Catholic University.

.....

Mr. M. Mlay

(Supervisor)

.....

Date

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## DECLARATION

I, Elizabethmercy F Musiba, hereby declare that this research paper is original and has never been presented in any other institution before that is college or University from similar or any other degree. I also declare that any secondary information used has been duly acknowledged in this research paper. It is in this regard that I declare this work as originally mine.

.....

Signature

.....

Date.

## **ACKNOWLEDGEMENT**

I first and most thanks God who allows me to complete this research at the right time required in spite of all trouble encountered God was not left me. I would like to acknowledge and to appreciate contribution of several people in one or another who contributed in either directly or indirectly to their accomplishment of this research, as it is not possible to mention all of them. Let this note of appreciation suffice to value their contribution. However, the following deserve a mention. May I first thank my supervisor, Mr. Justin M. Mlay for his tireless efforts to make me complete this research work. I mostly appreciate his academic comments and constructive criticisms which shaped this work. I admit that without him it would be difficult or impossible to finish this work timely and have the present form. I would like also to thank my family for their support financially, moral support, and spiritually, together with my A level friends can't mention them all. Honestly, they never left me.

Lastly but not least, thanks go to all of my university friend especially group number 8 for their company and support which they extended to me during our staying together in Ruaha Catholic University.

However, I stand to be solely responsible for anything arising out in this research. May you all be blessed by God. (thank you)

## **DEDICATION**

This work is dedicated to my lovely family of Mr. and Mrs. Ndojima together with my mother Catherine Ndojima and my sister Nancy, with them my fourth years course was an endless, they always support me in my studies morally, materially and finically, also by their prayers for me in order to archive my dream. For this always am grateful. Lastly, I would like to dedicate this work to my future husband and our future kids.

“May almighty God bless, and continue to provide to them each and everything they need”

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## **ABSTRACT**

This research is about the legal challenges facing the Free movement of Person and labours in East Africa Community Common Market. The aim of this research is to find out the legal practicability of free movement of persons and Labours in East Africa Common Market to Partner States, so as to analyze the provision that hinder the free movement of Persons and Labours in East Africa Common Market, also to promote common understanding of common market and cooperation among the Member State for the socio-economic development.

In East Africa Community Common Market domestic laws of Partner States do not conform to the EAC Common Market Protocol and therefore hindering the free Movement of Persons and Labours under Common Market. However, failure to conform with the provision of Common Market Protocol act as a barrier in implementation of Free Movement of persons and Labours. Due to the fact that their laws are inconsistent to the Protocol, Member States delay to achieve its goals.

Therefore, Member States should ensure that their national laws and legal system are comply with the requirement of the Protocol, this means that, each member State must cooperate fully in any procedure indicated by the Community for the purpose of effective practicability of free Movement of Persons and Labours.



**LIST OF ABBREVIATIONS**

ID	Identity card
EAC	East Africa Community
CMP	Common Market Protocol
Cap	Chapter
<i>Ibid</i>	Same source, same page
<i>Idem</i>	Same source but different page
No	Number

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## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background to the Problem

The East African Community is an intergovernmental organization composed of six countries in the African Great lakes Region in eastern Africa, which are Rwanda, Burundi, Kenya, South Sudan, Tanzania and Uganda<sup>1</sup>. East Africa Community as the regional integrations wanted to archive it goals basically on social economic and The East African community common Market Protocol of 2010political.

The Common Market is the second Regional Integration milestone of the East Africa Community (EAC), which of the East African 2010, in line with the provisions of East African Treaty.it follows the Custom Union, which became fully fledged in January 2010. To accelerate economic growth and development, it means that the East African Community partner States maintain a liberal stance towards the four freedoms movement for all the factors of production and two Rights between themselves<sup>2</sup>.

By the virtue of part D of the East African Common Market Protocol under the article 7 and 12 provides for free movement of persons and labor. However, the protocol provides some of the qualification of labors to cross the boards among the member state, but practically people fail to work in another county even though there are among the member state. The problem is the article itself contradict with it sub article since sub article provides some restrictions which do not provides the freeness of persons and labors within the member states. Hence there is no freeness. So, when the article contradicts then it is hard for it to work

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<sup>1</sup> <http://www.eac.int> (accessed on 26<sup>th</sup> june, 2020 at 20:30pm)

<sup>2</sup> *idem*

practically. Also, the issue of free movement of persons the laws of immigrants contradicts with the East African Common Market protocol on the free movement of persons.

## **1.2 Statement of the Problem**

The issue of free movement of persons and Labor within the community is being taken care of by Article 104 of the Treaty<sup>3</sup> for the Establishment Community which provides about agreement on the adoption of measures to archive free movement of persons and labor.

Again, Article 2 (2) of the treaty allows for better implementation of above provision the parties shall establish the Common Market Protocol to ensure the member states enjoy the free movement of persons and labor.

From that point of view, the Common Market Protocol stipulates free movement of persons and labor under Article 7 and 10 respectively<sup>4</sup>. Article 7 provides further that, in order to achieve the above, the partner states shall ensure reciprocal opening of border posts and keep the post opened and manner for twenty-four hours.

Also on the question of free movement of labors the article within the protocol it contradicts with it sub article since the article itself provides for free movement of labor but in some of sub articles restrict the free movement of labor, hence it is hard for the labors to work in other countries within the member states since there are restrictions of qualifications and standards. hence, these provisions remained a day dream (non-practicable).

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<sup>3</sup> Article 104 of the Treaty of East African Community provide that *“the partner states agree to adopt measures to achieves the free movement of persons, labor and services and ensure the enjoyment and residence of their citizens within the community.”*

<sup>4</sup> Article 7(1) and 12(1) of the Protocol on the Establishment of the East Africa Community Common Market, 2010

At the same time the law is very clear that, community organs and laws take precedent over domestic laws on similar matters as far as the implementation of the Treaty is concerned.<sup>5</sup> In spite of the above clear provisions, member states have not been able to surrender their laws and adopt what Treaty provides for free movement of persons and labor within the partner states. Again, the problem seems much bigger where there is nothing like time been given to the member states to change or ratifies the articles which has contradiction.<sup>6</sup>

This means there is no free movement of persons and labors in East Africa common market as it has been stated in the East Africa common market protocol. The instrument which allow free movement of persons and labors is ratified by East African member states but the same member states have not yet domesticated the deed by either amending their domestic laws or make new laws which will allow free movement of persons and labor within member states.

From two case studies one would say the main problem is how practicability of free movement person and labor once the disharmony on the Treaty and members on the free movement of persons and labor.

As the matter of law after the legal problem as been exposed the purpose of this study is to address or to establish and recommend the problem.

### **1.3 Literature Review**

There are various writers who discuss the powers of Commissioner General in their broadest.

**Steiner**<sup>7</sup> contended that, five partner states have agreed to give up part of their sovereign rights in several aspect of development including the political, economic, legal and social-

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<sup>5</sup> Article 8 (4) of the Treaty of East African Community.

<sup>6</sup> Ibid.

<sup>7</sup> Steiner.J, *Text book on European Economic Community*. Blackstone press ltd, London (2005)<sup>2nd</sup> 56



economic one for purposes of integrating their economic and ultimately political pursuits.<sup>8</sup> In an effort to avail a purposeful **modus operandi** for the achievement of these objectives the Treaty provides for the establishment and enhancement of a corporation in the following broad areas<sup>9</sup>

Also author discuss the trade liberation and development cooperation in investment and Industrial development of human infrastructure and services, the development of the resources, science and technology, movement of persons, goods and service development of agriculture and natural resources and provision of conducive environment for development which encapsulates cooperation in political matter, the ensuring of firm legal cornerstones, cooperation in legal and judicial affairs and establishment and enhancement of relation with other regional and international organization. The work of Steiner is very important to this study, because it show the significance of free movement of person. However, author discuss only free movement persons he has never touch about the issue of labor on which this research will cover such gap left by author.

**Peter**<sup>10</sup> explains about the issue of land and immigration. He goes further by saying that the administration of immigration services is one of the areas that need to be under EAC, however one disagreement by some partner states, is about land ownership. Land and immigration would continue to be administered by the respective nations until further notice, as is now the case: Speaker of the East African legislative Assembly Mr. Abdirahim Abdi say that; “These two issues have been the main challenges to us in the East African Legislative Assembly in our endeavors to move towards the creation of strong East African community.”

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<sup>8</sup> *Idem*, 59

<sup>9</sup> *Idem*, 60

<sup>10</sup> CM. Peter, *Foreign Investment in Tanzania Mainland and Zanzibar*, dsm fredrich Elbert stiftung UDSN

Like author, researcher also will discuss in details and come up with the blanket of recommendation on which author fails to point out those areas.

**Miller**<sup>11</sup> discusses free trade in two-fold. First fold was in order to ensure that proper free trade labor is essentially element. Once there is restriction on labor movement trade will not run smoothly. Second fold is Common Market depend much on free movement of persons on ground that, once border is open the trade and other related aspects with respect to the laws governing a member states will allow them to on position to take an advantage on that. The significance of this work of Miller is that he addresses the problem that once member states laws restrict free movement of people trade liberation will not easy successfully. Hence like author the researcher will look upon on how the contradictions of laws affect the members. However, author addresses this problem but never touch on East Africa Counties on which this research is going to cover such gap.

**Kibua**<sup>12</sup> the author talked about delaying of negotiations on the protocol on free movement of persons and labor of the treaty and the considerably, and shows that there is no currently frame work that can facilitate labor migration or movement of persons, goods, services, labor regimes and the need to undertake an impact analysis of common market protocol on the economies of East Africa. Here the author fails to discuss issue on the practicability of free movement of persons and labor.

**Aria V**<sup>13</sup>, The author covers on the establishment of the East African Community from where it started till it have been reached, also the author talked about the facility of intra-regional labor mobility of mostly undocumented migrants taking advantages of common

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<sup>11</sup> A.S Miller, (ed), *Free Trade: Current Issues and Prospects*, Nova Science Publishers, Inc.2004.56.

<sup>12</sup> N,Kibua, *Fast tracking East African Integration, institute of policy analysis and research Africa*,2005.

<sup>13</sup> V,Aria, *economic commission for Africa political science*,university of illiois at Urbana Champaign,2012

transportation. He also talked about the protocol on free movement of persons and the right of residence with the East African Common Market. Hence the author did not talk about practicability and restriction on the free movement of persons and labor.

#### **1.4 Hypothesis**

It seems that there is no practicability of free movement persons and labor in East Africa Community Common Market Protocol.

#### **1.5 Objectives of Research**

This research has general and specific objectives.

##### **1.5.1 General objective.**

To examine the legal practicability of free movement of persons and labors in East African Community Common Market.

##### **1.5.2 Specific Objective.**

- i. The researcher also aims to suggest the possible solutions of removing the restrictions among the member states so as the provided laws to be more practicable.
- ii. Assessment of domestic laws of Member State to show the effectiveness of free movement of persons and labours in East Africa Community Common Market.

#### **1.6 Significance of the Study**

The study will be of importance in East African community because it will have various significances such as follow.

- i. The research will be useful to the East Africa Common Market as to see the importance of having a practical free movement of person and labor within the boundaries.
- ii. To conduct an Academic research that will be referred by other future students of law on the same Research.

## **1.7 Research Methodology**

The researcher used various methods in obtaining accurate data; and the methods enable the researcher to obtain both primary and secondary data which will be useful in the collection of data and will help the researcher to easily obtain his required data.

### **1.7.1 Research Design**

The design for this research is non-doctrinal research methodology. In this methodology there is an examination of laws and data from the field. This design was chosen because the researcher obtains accurate data required direct from the field.

### **1.7.2 Sources of Data**

Primary source of data<sup>14</sup> this include Domestic laws, International laws and Regional laws, in relation to the topic. Secondary source of data<sup>15</sup> includes case laws, guideline, and articles in the relation to the research topic.

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<sup>14</sup> Is an original data source, that is, one in which the data collected first hand by the researcher for a specific researcher purpose or project, primary data can be collected in a number of ways, primary data collection is quite expensive and time consuming compared to second data collection. See H. Kara, *Collection Primary data*, policy press, 2013,6.

<sup>15</sup> Is data gathered from studies, survey, or experiment that have been run by other people or for other researcher, see J. Godwin, "SAGE Secondary Data Analysis," SAGE Amazon, 2012, 8.

### **1.7.3 Primary Data Collection**

It based on field research where by the researcher expects to get primary data, during the collection of primary data the following tools have been employed namely questionnaire and focus group discussion.

#### **1.7.3.1 Questionnaire**

In conducting the research set I prepared questions of open-ended questionnaire or closed questionnaire and these questions were on a piece of paper which required the people to respond upon those specific questions. The purpose of using this method in this study is to make sure that procures full detailed information about the proposed subject of study.

#### **1.7.3.2 Focused Group Discussion**

The researcher used this method so as to obtain detailed information about personal and group opinions, views and comments concerning practicability of free movement of persons and labors within the member states of East African Community. I used this method because it helped me to get more information concerning my study and to get the comments so as to come up with a possible solution in making the free movement of persons and labors to be practicable within the member state.so the group consisted of eight people and therefore I used two groups. Those people were an expert of East African Community.

### **1.7.4 Secondary Data Collection**

Researcher base on library research, where the data have been collected from primary source and secondary source data collection. Researcher get information from the library and particular to Ruaha Catholic University Library (Benjamin Mkapa Learning Resources Centre) kind of information, researcher get in the library is on issue payment matters.

Researcher choose Ruaha Catholic University Library (Benjamin Mkapa Learning Resources Centre) because is the nearest library and easy to access the information at any time when the researcher needs to mobile payment. Moreover, from online Library and website the researcher obtained data which are relevant to the study.

#### **1.7.5 Targeted Population and Size**

The researcher used purposive sampling method due to the information needed to be obtained as it is by approaching key informants about 20 people with the knowledge of East African Community.

#### **1.7.6 Data Analysis.**

This involved the analysis of the data anticipated to be collected from the field and secondary sourced data. The researcher involved qualitative data analysis technique. It because; the method ensures the data in quality from than in quantity form so it makes it easier to read data and to be clears in reporting the same. The researcher analyzed the data to be collected in assessing whether they support the formulated research questions and objectives of the study.

#### **1.7.7 Study Area**

The study has been conducted in Arusha were the researcher obtained primary, by interviewing different people who are working in East African Community who prove the objective of the study. The researcher gets secondary data from Ruaha Catholic University Library (Benjamin Mkapa learning Resource's center).

## **1.8 Scope and Limitation**

### **1.8.1 Scope.**

The study has been conducted in Arusha, Tanzania where the researcher obtained relevant materials and information from the head quarter of East African Community. The study was conducted in East African states but the researcher base in Tanzania specifically in Arusha since the head quarter of East African Community is there. Also, the study focus on legal examining of the practicability of free movement of persons and labors in East African Common Market through the analysis of laws dealings with the study. For example, the East African Common Market Protocol, The establishment of East African Community.

### **1.8.2 Limitation**

The Researcher was limited by number of factors which are as follows.

First, some questionnaires produced conflicting answers which made it difficult to deduce the position. For example, 14 questionnaires produced conflicting answers the researcher could not clearly understand what the respondent meant to convey.

Second, some questionnaires got lost in the hands of the respondents as the claimed to have misplaced them in their offices thus the researcher had to re-issue 17 questionnaires and revisit at the respondents to collect the on another day, this prolonged collection data.

Third, some of the questionnaires were not filled and returned to the researcher the respondents for their own reasons could not fill them in time and showed no interest to do that, though they took them in the first place.

Fourth, inadequate number of resources on books which have discussed the research topic was also another major challenge, for the researcher struggled a lot to in finding books which are relevant to her research study both in RUCU Library and Arusha Regional Library lack books with enough and relevant information on the researcher had to dwell on online Books.



## **CHAPTER TWO**

### **CONCEPTUAL FRAME WORKS ON FREE MOVEMENT OF PERSONS AND LABOURS IN EAST AFROCAN COMMON MARKET.**

#### **2.1 Introduction.**

In fact, this chapter it will provide or to cover the legal frame work of Common Market in East African Community by providing the meaning of key issues which are east African Community, Common market, Free movement of persons, free movement of labors, and practicability.

#### **2.2 Meaning of East Africa Community**

East Africa Community has long history traced as far back as in 1923, when the governors of the three states that is, Tanganyika, Kenya and Uganda formed a co-operation known as “East African Governors Conference” Their aim was to facilitate effective co-operation and coordinate all matters of common interest in their colonies.<sup>16</sup>

East Africa Community (EAC) is a regional intergovernmental organization of six (6) partner states, comprising Burundi, Kenya, Rwanda, with it headquarter in Arusha Tanzania. The EAC is structured into seven main organs; the summit, the council of Ministers, the Co-ordinating Committee, Secretarial Committee, the East African Court of Justice, the East Africa legislative Assembly and Secretariat.<sup>17</sup>

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<sup>16</sup> N.Nyagwine, *General Studies*, Nyambari Nyagwine Publishers, Dar es Salaam (2009) 146.

<sup>17</sup> Article 9(1) of Treaty for the Establishment of East Africa Community (As amended).

The brief history of the East Africa Community, on 1<sup>st</sup> January, 1948, the East African High Commission was formed to replace the East African Governor's Conference.<sup>18</sup> This consisted of the Kenya's, Uganda's and Tanganyika's Governors.<sup>19</sup> This continued to exist until 1967 when another community was formed by the African activists after independence. On 6<sup>th</sup> of June 1967, three heads of states; Julius Nyerere of Tanzania, Milton Obote of Uganda and Jomo Kenyatta of Kenya signed a treaty, in Kampala Uganda, to form EAC which came into effect on 1<sup>st</sup> December, 1967 and its headquarters was at Arusha in Tanzania<sup>20</sup>.

The objectives were to promote free trade of goods among the partners, to provide common services such as infrastructures including railways, roads, harbors telecommunications and airways, facilitate the free movement of people among the member countries, carrying out research in areas such as agriculture, medicine and population, to provide and secure a wider market for the members of the community and to have a common currency in order to facilitate the movement of goods and services<sup>21</sup>.

The community existed only for duration of ten years and collapsed in 1977. There were several reasons lead to the collapse of the East African Community but strong are follows; - the difference in ideology, dissatisfaction among the members, the difference currency, the overthrowing of Milton Obote and territorial war between Tanzania and Uganda.<sup>22</sup>

The legal basis governing the East Africa Community is the Treaty for Establishment of East Africa Community 2000 (as amended from time to time).

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<sup>18</sup> R. Oppong, *Legal Aspects of Economic Integration in Africa*, Cambridge Publishers Press, New York (2011), 76

<sup>19</sup> *Ibid.*

<sup>20</sup> [https:// www.eabc.org/east/African/standards/platform](https://www.eabc.org/east/African/standards/platform) accessed in 19/07/2020.

<sup>21</sup> C. Kunaka & R. Carruthers, *Trade and Transport Corridor Management Toolkit* (2014), The World Bank Publications, Washington, Dc. P161.

<sup>22</sup> *Idem*, 98

### **2.2.1 Main Objectives of East African Community**

East African Community aims to achieve prosperity, competitiveness, security, stability, and political unification in East Africa. The partner countries Kenya, Tanzania, Uganda, Rwanda, Burundi, and South Sudan aim to create a political federation that would expand and reinforce economic, political, social and cultural integration. People's quality of life is to be improved through increased security, greater competitive capacity, value added, trade and investment<sup>23</sup>.

The East African Community has recognized that economic integration can succeed only if peace stability and security are established throughout the region. It therefore focuses its efforts on crisis prevention, conflict resolution, small arms and light weapons control, and the promotion of good governance. These efforts are being hindered, however, by weak institutional structures within the EAC secretariat, including in particular, the lack of an inadequate implementation of regional strategies and standards within the countries<sup>24</sup>.

### **2.2.2 Fundamental Principles of East African Community**

The fundamental of principles of East African Community are provided under article 6 and 7. Those principles are Peaceful Settlement of Disputes, Good Governance, Co-operation for Mutual Benefits, Peaceful and Good Neighborhood, Mutual trust, Political Will and Sovereignty Equality, and Equitable Distribution of Befits<sup>25</sup>.

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<sup>23</sup> *Idem.*

<sup>24</sup> U.N Economic Commission for Africa., *Assessing Regional Integration in Africa* (2004), U.N Publishers, Washington, DC. P 46.

<sup>25</sup> W. oboka, E. Maina & A. Odhiambo, *History and Government*, East African Educational Publishers Ltd, 2007.

### 2.3 Common Market

The common Market is the second Regional integration milestone of the East African Community, which has been in force since 2010, in line with the provisions of the EAC treaty<sup>26</sup>. It became fully-fledged in January 2010. The East African Common market has been established by the East African common market protocol which entered into force on 1<sup>st</sup> july, 2010.

To accelerate economic growth and development, it means that the EAC partner states maintain a liberal stance towards the four freedoms of movement for all the factors of production and two rights between themselves<sup>27</sup>. These freedoms and rights include. Free Movement of Goods, Free Movement of Persons, Free Movement of Labor/ Workers, Right of Establishment, Right of Residence, Right Movement of Services and Right Movement of capital.

It therefore involves the integration or amalgamation of the four markets; the good market, the labor market, the service market, and the capital market.<sup>28</sup>

The East African common market had operational principles of the community; those principles are as follow, Non-discrimination of nationals of other partner states on grounds of nationality, Equal treatment to nationals of other partner states, ensure transparency in matters concerning the other partner States and Share information for the smooth implementation of the protocol<sup>29</sup>.

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<sup>26</sup> *Ibid.*

<sup>27</sup> O.Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations*, springer publishers, Newyork, 2012 page 105.

<sup>28</sup> L.S.Tax, *East African Community Integrations*, university of Dar es Salaam, 2010.

<sup>29</sup> *Ibid.*

## 2.4 Free Movement of Labor/Workers.

One of the freedoms provided for in the East African Community Common Market Protocol which entered into force on 1<sup>st</sup> July 2010 is free movement of labors. In accordance with article 10 of East African Common Market Community Protocol, the partner states guarantee the free movement of workers, who are citizens of the other partner states, within the territories<sup>30</sup>.

Indeed, free movement of workers is rights which allow workers t move from one country to another free for searching better opportunity of work as observed under article 10 of the protocol which guarantees the movement of workers who are citizens of the other Partner States within their territories<sup>31</sup>. The Protocol provides for nondiscrimination of the workers among Partner States based on their nationalities. This is in relation to employment opportunity remuneration and other condition of work are permitted and excised without any kind of restriction.

Nevertheless, the Free Movement of workers entitles a worker to apply for employment and accept offers of employment actually made. These include free movement of workers within the territories of the Partner States for the purpose of employment and conclude contracts in accordance with the national laws and administrative procedures governing the employment of workers of that Partner States.

However, almost seven years since the commencement of the implementation of East African Common Market Protocol, both workers and employers are still constrained in their

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<sup>30</sup> E. Ugirashebuja et al, *East African Community Law: Institutional, substantive and Comparative EU Aspects* 2017, Brill Nijhoff Publishers, Cambridge, UK. P 46.

<sup>31</sup> The East African Common Market Protocol.

efforts to utilize the freedom of movement of workers<sup>32</sup>. Partner state still continue to restrict movement of workers within the region with Tanzania demanding for permit fees in excess of USD 500 while Kenya has put restrictions on the age of 35 years and a monthly salary in excess of USD 2000 Making it almost impossible for the youth to be the beneficiaries of the freedom of free movement of workers in Kenya. In addition, the schedule on free movement of workers in the protocol has never been revised. Other challenges on movement of workers include; delay of issuance work permit, limited numbers of occupations opened up in the schedule on free movement of workers-Annex ii of the EAC CMP, delay of issuing residence permit; existence of harmonized work permit regimes in the EAC partner states<sup>33</sup>.

The common market Protocol differentiae are a worker from a person supplying a service. It first commences by defining labor to include worker and self-employed person. It thereafter defines a self-employed person as a person engaged in an economic activity not under any contract of employment or supervision and who earns a living through this activity and a worker as a person who performs services for and under the direction of another person in return for remuneration<sup>34</sup>.

## **2.5 Free Movement of Persons**

The free movement of persons in EAC can be traced back to the treaty for east African cooperation between Kenya, Uganda and United Republic of Tanzania from 1967, which ensured the free movement of persons within the region as one of the key cooperation elements<sup>35</sup>. Member states adopted measures to archive the free movement of persons, labor and services, and the right of establishment and residence of their citizens in the EAC region

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<sup>32</sup> K.G.Adar, Building Regionalism from Below: *The Role of the Parliament and Civil Society in Regional Integration in Africa*, P.I.E Peters publishers, Nairobi, 2018 page 234.

<sup>33</sup> *Idem*.

<sup>34</sup> L.Lovelock&J.Evans, *New South Wales Legislative Council*, Federation press, Wales, 2008 page 320.

<sup>35</sup> <https://www.eac.int/handle.com>.(accessed on 20 February,2021)

under Article 104 of the treaty Establishing EAC passport followed in (1999) the official launch of the EAC passport followed in 1999 and is presently operational for EAC region for a period of six months. Plans to have it formally adopted as an international travel document are ongoing.<sup>36</sup>

Migration in the context of a common market, is reflected under article 104 of the treaty Establishing EAC and in Article 5 of the protocol on the establishment of the EAC common market that was adopted in 2009. The protocol states the right of cross-border movement of persons, the adaption of integrated border management; the removal of restrictions on movement of labor and services; and the rights of establishment and residence<sup>37</sup>. Furthermore, the harmonization of labor policies for the purpose of guaranteeing free movement of labor, as stated in Article 12 of the protocol, provides that member states harmonize labor policies, laws and programs to enable the free movements of labor within the EAC region.<sup>38</sup>

### **2.5.1 The Establishment of Free Movement In East African Community**

Free movement of persons is one of the fundamental rights guaranteed in the Common Market Protocol. It is the most important right for a worker as it enables him/her to take up a job in another partner state as the worker is able to move freely within the region with his/her dependents, stay in in the territory of the partner states together with his/her dependents, be protected while in the territory of the partner states based on national laws and exits the territories of the partner state without restrictions.<sup>39</sup>

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<sup>36</sup> *Idem.*

<sup>37</sup> L.Lovelock&J.Evans, *New South Wales Legislative Council*, Federation press, Wales, 2008 page 143.

<sup>38</sup> *Ibid.*

<sup>39</sup> R., Mshomba, *Economic Integration in Africa: The East African Community in Comparative Perspective* 2017, Philadelphia, New York.

According to the Common Market Protocol, the partner states agreed to eliminate all obstacles to the freedom movement of persons by establishing a standard identification system of issuing national identification documents to nationals, which shall be the basis of identifying the partner states in the Community<sup>40</sup>. The citizens of the partner states agreed to eliminate all obstacles to freedom movement of persons by establishing a standard identification documents to nationals, which shall be the basis of identifying the citizens of the partner states in the Community<sup>41</sup>. The citizens of the partner state will therefore be able to use machines-readable national identity cards as a travel document. Rwanda and Uganda are currently issuing standardized machine-readable national identification. However, Kenya, Burundi and Tanzania are yet to commence the issuance of the standardized machine-readable identifications. Nevertheless, there is currently an understanding between Kenya, Uganda and Rwanda that their nationals can use the national identity cards as travel documents across their borders.<sup>42</sup>

The Partner States further agreed to have a common standard travel document for the nationals of partner states. The common standard travel document, which is the EAC passport, is currently being used by many nationals of the partner states. In addition, Sectoral Council of ministers responsible for EAC affairs and planning during 22<sup>nd</sup> meeting held on 14<sup>th</sup> August 2015, developed and adopted a schedule of activities that will ensure that EAC e-passport is launched by the 17<sup>th</sup> ordinary Summit of the EAC Head of State.

The provision on free movement persons contained in article 7 of the Common Market Protocol is implemented through the EAC Common Market<sup>43</sup>. The regulations require partner states to effectively manage their borders through ensuring ease of border crossing for citizens

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<sup>40</sup> *Ibid.*

<sup>41</sup> <https://dictionary.cambridge.org/dictionary/english/customs-union> accessed on 19/07/2020.

<sup>42</sup> <https://www.eac.int/handle/11671/449>. Accessed on 20.07.2020, on tuesday 20:05 P.M.

<sup>43</sup> *Ibid.*



of partner states; reciprocal opening of border posts; operational hours for the border posts; manning of border posts on 24hours basis; harmonization of certain measures, including immigration procedures. Implementation in some partner states of border management requirements is ongoing. For example, in Kenya, a recent study reported that seven border posts are operational on 24hours basis; Jomo Kenyatta Airport, Mombasa International Airport, Namanga, Lunga Linga, Taveta, Mlaba and Busia. All these borders are electronically interconnected and have integrated border management systems<sup>44</sup>.

## 2.6 Conclusion

The East Africa Community Common Market have many benefits among the Member States through establishment of Free Movement of goods, persons and labours within member States, the increase in productivity thereof, exchange of goods and raise per capital income both individually and national wise. This provided under the Treaty of EAC which provide that,

“there shall be established a common market among the Partner States and there shall be free movement of labours, goods, services, capital and right of establishment of partnership or a firm within the partner States under the Common Market”.<sup>45</sup>

Common Market Member States enjoys easy cross-border trade, in the sense that the Partner States harmonized trade policies across all member of the Community to facilitate such entries and exit’ that the partner States undertake reciprocal bases to keep opened and manned their border posts for 24 hours. The Partner States shall also in accordance with their

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<sup>44</sup> P. Drummond, S. K Wajid, & O. Williams, *The East African Community: Quest for Regional Integration* 2014, International Monetary Fund Publication Services, Washington, DC., P 37.

<sup>45</sup> Article 76 of the Treaty Establishing the East Africa Community, 2006

National laws, guarantee the protection of citizens of the other Partner State while are in their country.

In addition to that, Common Market creates opportunity to both businessmen and consumers within the Community. This means, Common Market Protocol aim to facilitate in large extent the establishment of single market which is very competitive. It is due to the fact that, it promotes the creation of the firms which benefit from economies, hence increase competitiveness and lower costs by determining the benefit of consumer from the Common Market through bringing them cheaper products more efficient and responsive service providers and increased choice of products.<sup>46</sup>

East Africa Common Market provide job opportunities, in the sense that people who are highly trained and professionals have a chance to be employed to accomplish various activities from other member States that increase efficient to the common market tasks and personal development.<sup>47</sup>

Another benefit is sharing of technology system, citizens of a member states have an opportunity to acquire technology of another state, and these are contained under Article of the Protocol which means that workers are entitled to move free to the territory of another Partner State.<sup>48</sup> Thus citizen of any of the member State from the Community have great opportunities to use their talent in their neighboring States so as to achieve a single market which will create opportunities for higher wages.

More over the Common Market Protocol unites EAC Partner States to create a unified increase globally competitive market and economy. For instance, the free movement of

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<sup>46</sup> [www.fes-uganda.org/media/documents/East African Common Market Protocol and Free Movement of Labours](http://www.fes-uganda.org/media/documents/East_African_Common_Market_Protocol_and_Free_Movement_of_Labours) (accessed on 4<sup>th</sup> April 2021).

<sup>47</sup> *ibid*

<sup>48</sup> The East Africa Community Common Market Protocol.

workers provides EAC Partner States with access to pool qualified labour allowing each member state to increase productivity.

Therefore, EAC Partner States consist the benefit of power interconnection which become easier and allow domestic national consumers to enjoy cheaper prices on electricity imported from their neighbors, with some of the interconnection lines jointly financed with investors from the neighboring countries.

Besides that, other benefits include common and coordinated policies that increase efficiency especially in those countries that are behind in instituting good policies. In addition, the common regulatory regime and frameworks ensure that the best practice within the regional framework is not only in place but adhered to.

The East African Common Market provides protection in boundaries in the sense that it gives an opportunity for the countries to deal with shared threats like Burundi and Uganda has contributed to peace keeping force in Somali.<sup>49</sup> So among the policy of member States is to make sure that boundaries are protected within the community.

However Common Market improves a single bigger market which is more attractive to investors and increase productivity, the Free movement is a factor of production across borders which increase competition in the market into a cheaper consumer goods and an increased choice of products. Goods and services acquire a large market size, giving manufacturers and service provider's economy of scale in production, which leads to cheaper goods. This single market is also more attractive to investors than a smaller national market.<sup>50</sup>

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<sup>49</sup><http://www.imf.org/external/np/afr/2012/2017.pdf> (accessed on 4th April 2021)

<sup>50</sup> *ibid*

## **CHAPTER THREE**

### **LEGAL FRAME WORK GORVENING THE FREE MOVEMENT OF PERSONS AND LABOURS IN EAST AFRICAN COMMON MARKET.**

#### **3.1 Introduction.**

This chapter examine the statutes used in research concerning free movement of person and labor and it examine the legal framework which including the international framework, regional framework and domestic instrument which governing the free movement of people and of persons and labors in East Africa Common Market.

It seems there is no free movement of persons and labors in East Africa common market as it has been stated in the East Africa common market protocol. The instrument which allow free movement of persons and labors is ratified by East African member states but the same member states have not yet domesticated the deed by either amending their laws or make new laws which will allow free movement of persons and labor within member states.

The partner states under the common market protocol guarantee the free movement of workers who are citizen of partner states within their territories. In addition, the warrant that the said workers shall not be discriminated in their territories based on their nationalities in relation to employment, and other conditions of work and employment.<sup>51</sup> It should be noted that workers may only take up employment in private sectors; hence they cannot be employed

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<sup>51</sup> Article 5 of the protocol on the establishment of the East African Community Common Market.

in public sectors.<sup>52</sup> This therefore denied the public sectors the benefits that accrue of skills and experiences from other partner state.

Ratification of international treaties parliament usually play on important role in ratifying international treaties, including international human right and labour convection rules and procedures differs from country to country but normally the national executive (the presidency or a government minister) proposes the ratification of a treaty or convection and the parliament must give its consent before the executive can register it in many countries parliaments may also initiate ratification at least in a political sense, by asking the government about its plans for ratification of a particular treaty so as to domesticated and applicable within the member states.

### **3.2 International instruments.**

#### **3.2.1 Universal Declaration of Human Rights.**

“All human being is born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin property birth or other status”.<sup>53</sup>

UDHR, this is the international convention where by the United General Assembly resolution 217A (iii) 10 December 1948, under article 1 and 2 provide for the International Conventions, regional treaties, bilateral agreements and national provisions provides the framework for regulating migration and treatments of migrants. The international legal framework integrates

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<sup>52</sup>Article 10 of the protocol on the establishment of the East African Community Common Market.

<sup>53</sup> Universal Declaration of Human Right.

detailed provisions of protect the rights of migrants including migrant's workers, with measures to regulate migration and facilitate intergovernmental cooperation.<sup>54</sup>

ILO (International Labor Organization) is a United Nations agency whose mandate is to advance social and economic justice through setting international labor standards. Founded in October 1919 under the League of Nations, it is the first and oldest specialized agency of the UN.

### **3.2.2 ILO Migration for Employment Convention (Revised), 1949.**

Convention No 97 revised and brought up to earlier ILO standards included legal and regulatory provisions for migrant workers in regular situations. It contains provisions regulating the condition in which labor migration should take place including obligations to provide adequate and free services to assist migrant workers<sup>55</sup> and to take steps against misleading propaganda<sup>56</sup>, and standards for protection of workers from discrimination and exploitation while employed in countries other than their own. Article 6 establishes the principle of equal treatment of lawfully resident migrant workers and nationals on the grounds of nationality, race, religion and social security.<sup>57</sup>

### **3.2.3 African Union Charter.**

The African Union as the heads of state Executive Council adopted a broad strategic Migration Policy Framework for Africa in 2006. An entire chapter of this document provides guidelines for the adoption of conventions and specific measures to labor migration. The framework urges a comprehensive approach to regulatory and administrative measures to ensure safe, orderly and productive migration. The promotion of regional and sub-regional

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<sup>54</sup> *Ibid.*

<sup>55</sup> Article 2 of the Migration for Employment Convention (Revised), 1949.

<sup>56</sup> Article 3 of the Migration for Employment Convention (Revised), 1949.

<sup>57</sup> Article 6 of the Migration for Employment Convention (Revised), 1949.

labor mobility and calls for an AU and Regional Economic Communities Labor Migration Plan. In response, the AU Commission, together with ILO, IOM and the UN Economic Commission for Africa (UNECA), have developed a regional programme on Labor Migration Governance for Development and Integration in Africa. But still the member state faces the challenges on freeness to participate in different works there are restrictions which block the freeness of migrants' workers.

### **3.3 Regional Instrument.**

#### **3.3.1 The Treaty Establishing the East Africa Community.**

The Treaty for the Establishment of East Africa Community provides for mandatory requirement of partner States to adopt the East Africa Common Market. In this regards Article 5(2) of the Treaty establishes a Common Market mainly aimed at accelerating, harmonizing and balancing development and sustaining expansion of economic activities.<sup>58</sup>

Furthermore, Article 76(1) of the Treaty provides in extension on the enactment and adoption of the Common Market and related Regulations. It states as follows;

“there shall established of Common Market among the partner States within the Common Market and subject to Protocol provide in paragraph 4 of this article there shall be free movement of labors, persons, goods and the right of establishment”<sup>59</sup>

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<sup>58</sup> Treaty for the Establishment of the East African Community.

<sup>59</sup> *Ibid.*

Moreover, Article 104(2) of the Treaty states for purposes of paragraph 1 of this Article, the Partner States is supposed to agree to conclude a protocol on the Free Movement of persons, Labors, services, Right of Establishment.<sup>60</sup>

### **3.3.2 The Common Market Protocol of 2010.**

In order to promote the objectives of the community as so provided under Article 5 of Treaty, the Common Market Protocol was adopted. Article 2 of the protocol requires the Common Market to form an integral part of the Community.<sup>61</sup> In addition to that Article 2(4) of Protocol Provides that in accordance with the provision of article 76 and 104 of the Treaty, free movement of persons, free movement of labors, and others are to be adopted.<sup>62</sup>

### **3.4 Partner States Domestic instruments relevant to Common Market.**

#### **3.4.1 Tanzania Immigration Acts NO 7 of 1995.**

Tanzania immigration law provides highly quality service to meet both national laws and regulations in order to safeguard national security and economic interest, however in accordance with Regulation 13(1) of the Tanzania Immigration Act provides for the maximum period on visitors pass is 90 days, and nationality is not a ground for rejection of residence or work permits.<sup>63</sup> Also section 25 of the National Employment Service Act of 1999 hereinafter referred to as the (NESPA) provides that foreigners should not be employed in certain occupations reserved for nationals, due to that the provision of section 25 need to amended so as to permit free movement of workers.

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<sup>60</sup> *Ibid.*

<sup>61</sup> East African Common Market Protocol Community.

<sup>62</sup> *Ibid.*

<sup>63</sup> The Tanzania Immigration Regulation of 1997.



### **3.4.2 The Citizens and Immigration Control Act of Uganda of 1999**

Under this law every citizen who is not a citizen of Uganda must possess a valid entry permit, certificate of permanence residence as well as pass issued under this Act as provided under section 53.<sup>64</sup> Which provides for special passes issued to persons securing employment for not more than 90 days. In addition, to worsen the matter, the Immigration Administrative Guidelines of 2010 premised on section 53(4) of Cap.66 prohibits issuance of special passes to person who intend to work in Uganda for longer than 90 days. With this type of laws and provision free movement of labours within the Partner States to the Community can never be achieved leading to the deterioration of the Common Market and non-implementation of the Common Market Protocol.

### **3.4.3 The Tanzania Employment and Labour Relations Act 2004**

This is legislation dealing with labour matters in Tanzania. Labour law can simply be defined as “set of techniques and practices for intervention into particular kinds of markets, specifically kinds of markets that will reach suboptimum results without interventions.”<sup>65</sup> Labor law governs labor matters and according to section 4 defines labor matters to include any matter relating to employment or labor relations.<sup>66</sup>

Moreover, section 7 of this Act also prohibits discrimination in working place, as such it emphasis equal opportunity to all persons without looking nationality of nationals, race trade or social origin.

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<sup>64</sup> The Citizens and Immigration Control Act of 1999 of Uganda.

<sup>65</sup> G.devidov et al, *Boundaries and frontiers of labour law*, Hort publishing, Oxford, 2006.

<sup>66</sup> The Employment and Labour Relation Act, 2004.

### **3.4.4 The Employment Act, Cap 226 of the Law of Kenya.**

As a general principle of the East Africa Community Common Market Protocol provide for non-discrimination of nationals of other Partner States which is in line with provisions of Employment Act section 5(3) of which provides that “no employer shall discriminate, directly or indirectly, against any employee or harass an employee or prospective employee on the ground of race, colour, language, religion, political or other opinion, nationality, ethnic or social origin.”<sup>67</sup> Therefore, these help the harmonization of the domestic Laws into readiness for the Common Market so as to ensure employment legislation are more users friendly.

### **3.4.5 The Uganda Investment Code 1991 of Uganda.**

This Act under regulation of foreign Investment, defines a foreign investor as a person who is not a citizen of Uganda; a company in which more than 50percent of the shares are held by a person who is not a citizen of Uganda or partnership in which the majority of partners are not citizens of Uganda. In addition to section 9(1)<sup>68</sup> of investment Code implies that firms from the other Partner States are considered foreign within the terms of laws of Uganda.

Therefore, according to the Investment Code, firms from the other partner States cannot operate in Uganda without obtaining an investment license. In adding together, a citizen of another EAC Partner State cannot engage in the business of crop and animal production except where a minister has by Statutory Instrument permitted a foreign firm engage in restricted business under section 10(4) of the Act.<sup>69</sup>

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<sup>67</sup> The Employment Act, Cap 226 of the Laws of Kenya.

<sup>68</sup> The Investment Code 1991 of Uganda, 1991.

<sup>69</sup> *ibid*

It follows that citizens of other Partner States can only engage in industry and trade. Moreover, the standards set under the law for obtaining an investment license may not be very easy to be fulfilled by small and medium size firms from the other Partner States for example; the issuance of an investment license is dependent on the capacity of a foreign firm to demonstrate.<sup>70</sup>

Hence the investors are termed as foreigners whereby the Partner States are facing the challenges of freeness as provided under the East African Common Market Protocol.

### 3.5 Conclusion

Therefore; the East African Common Market fail to achieve the goals due to fact that the laws of the Partner States are inconsistent to the Protocol. For instance, taking into consideration the free movement of workers as provided under Article 10 of Common Market Protocol where a Partner State is required to guarantee the free movement of workers who are citizens of the other Partner States within its territory.

However, this required to be exercised subject to some limitation imposed under Article 10(11) of the East African Common Market Protocol. The Protocol states that the “the free movement of workers shall be subject to limitations imposed by the host Partner State on grounds of public policy, public security or public health”. Due to that there is a possibility to disguise under public policy to deny free movement of workers from other Partner State.<sup>71</sup>

In addition to that it must be noted that, implementation of the free movement of workers shall be in accordance with East African Common Market Protocol. Also, there is free movement of Workers Regulations which provided that “a citizen who is issued with a pass

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<sup>70</sup> [https://www.fes-Kenya.org/media/activites/EAC Common Market Protocol and Free Labor Mobility](https://www.fes-Kenya.org/media/activites/EAC%20Common%20Market%20Protocol%20and%20Free%20Labor%20Mobility).

<sup>71</sup> Protocol on the Establishment of the East African Common Market.

under the Regulations shall not undertake any employment in the territory of the host Partner State except where the citizen is a student on internship or industrial training”<sup>72</sup>. This is also the same in Tanzania under Immigration law which prohibits under taken any employment in host State without permit, where a person engages in paid employment under an employer resident in Tanzania except under a permit issued in accordance with the provisions of the Act.<sup>73</sup> Because it seems that the free movement of workers in the Protocol is for a privilege of only the highly skilled and professional workers, yet the majority of workers in East Africa are semi or unskilled which cannot get that chance. This shows the restriction of free movement of workers.

Also when comes to free movement of person it is the same the citizen of Partner States does not enjoy the provided freeness of movement of persons of members since the article itself provides some restriction also the domestic laws does not compile with the protocol, so there is an need of amending the domestic laws which will go hand in hand with the protocol.

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<sup>72</sup> *Ibid.*

<sup>73</sup> Tanzania Immigration Act of 1995.

## **CHAPTER FOUR**

### **RESEARCH FINDINGS**

#### **4.1 Introduction**

In this chapter, the researcher discusses and analyses the findings from library and field research to prove or disprove the research questions which was stated from the objectives of the research that stated ‘’ **is there legal practicability of free movement of persons and labor in East African Community**’’ in regarding the movement of people from one place to another in member state countries around East African Community countries, basing on the respond of the people to the questionnaires, focused group discussion conducted on seeking for their views and some from scholar book reviews from book readings in order to develop ideas from different and authors on the relevance of the subject on the objectives of the research on seeking the legal practicability of free movement of person and labor in East African Community as to cover on the aspect of the library research finding part.

To prove or disapprove of the research questions, the researcher have used the objectives of the study case as to analyze in this chapter as to drive and arrive to the conclusion which is to give on, on either to prove or disapprove of the research questioning by analyzing every single objectives as follows:

#### **4.2 Examination of the legal practicability of free movement of person and labor in East Africa Community Common Market.**

Free movement of person and labor in East African Community is governed by two 1 major laws which are the treaty establishing East African Community, and the East African Community protocol on Common Market.

### 4.3 The East African Community Treaty.

Starting from the East African community treaty as which was amended time to time, provided for the agreement and measures to be take on complying to the free movement of person and labor member states in East African community at which on Article 104 04<sup>74</sup> Provides the free movement of person and labor freely to ensure the enjoyment of the right to establishment of the East African community to the citizen within the community

On the Article 104 2<sup>75</sup> provides for the purpose of the establishment of the East African community treaty to which the partner states agree to conclude a protocol on the free move of persons, labor, services and the right of establishing and residences at the time to be determined by the council.

From the article within the protocol providing that for members of East African community have the right to free movement of persons and labor without any complication through the treaty establishing it, though from the angle of the legal practicability of free movement of person and labor is not practicable as how its stated on above article.

On Article 104 3 (a) and (b)<sup>76</sup> issues that there will be ease border ceasing by the citizen of the partner states at which this simplify the simplicity to travel from one state to another within the boundaries of the community treaty same as in Article 104 (3)( b) which proclaim in the standard document for traveling for the citizen of the protocol establishing the East African community which provides for the room each member to travel and work freely from abstract in any member state around the East African community

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<sup>74</sup> The Treaty For The Establishment of East African Community 1999.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

In responding to the question the majority responded in the contented on the Article 104<sup>77</sup> on the examination of the legal practicability of free movement of person and laborers in East African community it seems to be oppressive for denying that there's no such right that inquires and provide the position for free movement of person and laborers, that what the community establishes is different from the legal practicability of the movement and labor for instance a citizen from Somalia is not allowed to stay or cross Uganda without passport or visa while the treaty pronated on having a common n document or permit from the council to travel freely within the state boundaries of the community.

On the issue of free movement of labor is that the East African Community literally provides for the right of free movement of person and labor but practically there is no such conduct, each member state have his protocol and system that maintain and guide all the conducts under free movement of persons and labor never the less the aim of having East African Community is to insure that each member of each state around East African Community can move freely from one country to another without any discrimination or any difficulties.

#### **4.4 The protocol on the establishment of the East African Community Common Market**

The objective of establishing the EAC Common Market through the Common Market Protocols to realize accelerated economic growth and development through the attainment of free movement of persons and free movement of labor<sup>78</sup> the common market is guided by the principles of National Treatment, Most Favored Nations Treatment and predictability through

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<sup>77</sup> of the East African community treaty.

<sup>78</sup> Article 2(4) of the East African Common Market Protocol.

transparency and information sharing.<sup>79</sup> This provides the room to accelerate the growth of harmonization, peace and unity by eliminating barriers around member state as how it's provided in protocol establishing the East African Community Common Market.

The Common Market Protocol differentiates a “worker” from a person supplying a service. It first commences by defining “labor” to include a worker and a self-employed person. It thereafter defines a “self-employed person” as a person engaged in an economic activity not under any contract of employment or supervision and who earns a living through this activity and a “worker” as a person who performs services for and under the direction of another person in return for remuneration.<sup>80</sup> Hence, a worker is an employee. In light of the above, when discussing free movement of workers in the context of the East African Community (EAC) one must restrict the discussion to free movement of an employee. In the context of the EAC, this chapter will therefore commence by discussing free movement of workers and thereafter examine the link between the free movement of service providers and the free movement of workers.

The freedom of movement of workers is catered for under<sup>81</sup>, where Partner States guaranteed free movement of workers who are citizens of other Partner States within their territories. The article also provides for entitlement of workers in regard to application for employment, free movement in Partner States, conclude contracts of employment, and enjoy rights and freedoms of association. But working in some of the country in East African Community states it incurs more than application of only employment but too it needs to have permit to live within the state. This caused to the raise of issue of immigrations to which member of East African Community state treat its other member state as foreigners at which

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<sup>79</sup> Article 3 of the East African Common Market Protocol.

<sup>80</sup> Article 1 of the East African Common Market Protocol.

<sup>81</sup> article 10 of the protocol establishing the East African Common Market.



that is practicable but under laws it provided that member of east African community are to be treated equally and fairly as one but actually it's not.

Under Article 11<sup>82</sup>, Partner States undertook to mutually recognize the academic and professional qualifications granted, experience obtained requirements met, licenses or certifications granted in other Partner States; and harmonies their educational curricula, examinations, standards, certification and accreditation of education and training institutions. This article is intended to actualize free movement of labor, in legal practicability is not there because there is disgrace and disintegration of favoritism towards each state to its citizen.

In regard to harmonization of labor policies and for purposes of guaranteeing free movement of labor, Article 12<sup>83</sup> provides that, Partner States agreed to harmonization of labor policies, laws, and national laws and programmers to enable free movement of labor within the community. In addition, national social security policies, laws and systems of partner states are expected to be reviewed and harmonized.

Furthermore, the protocol under Articles 13 and 16 provide the establishment of nationals of their Partner States within their territories; and free movement of movement of services supplied by nationals of Partner States and the free movement of service suppliers who are nationals of the Partner States within the Community respectively.

In terms of refugee management, the East African Community is home to hundreds of thousands of refugees due to the region's proximity to centers of conflicts within the Great Lakes region and the Horn of Africa. Accordingly, Article 124(5) (h) of the Treaty, Partner States agreed to establish common mechanisms for management of refugees. In addition,

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<sup>82</sup> *Ibid.*

<sup>83</sup> Treaty of the protocol establishing the East African Common Market.

Article 7(8) of the Protocol, stipulates that the movement of refugees will be governed by relevant international conventions. In view of the foregoing Treaty and Protocol provisions on refugee management, the Chiefs of Refugee Management are in process of development of the EAC refugee management policy and action plan, the strategy proposed is the ongoing process of regional integration in the continent that must take account of managing cross-border labor movements within the increasing labor markets created by the integration<sup>84</sup>. The more integration happens within the continent, the wider the labor market and the more cooperation will increase among Member States facilitating the movement of persons and workers. The framework recommends that Member States within the various regional economic communities (RECs) consider adopting protocols that achieve free movement of persons and to establish regional labor exchanges aimed at facilitating employment of available human resources of one Member State in another Member State<sup>85</sup>

Free movement of persons is one of the fundamental rights guaranteed in the Common Market Protocol. It is the most important right for a worker as it enables him/her to take up a job in another Partner State as the worker is able to move freely within the region with his/her dependents, stay in the territory of the Partner State together with his/her dependents, be protected while in the territory of the Partner State based on national laws and exit the territory of the Partner State without restrictions.<sup>86</sup>

According to the Common Market Protocol, the Partner States agreed to eliminate all obstacles to the freedom movement of persons by establishing a standard identification system of issuing national identification documents to nationals, which shall be the basis of

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<sup>84</sup> African Union, 2018.

<sup>85</sup> African Union, The Migration Policy Framework for Africa (EX.CL/276 (IX), Executive Council, Ninth Ordinary Session, 25–29 June 2006, Banjul, The Gambia.

<sup>86</sup> Article 7, 8 and 9 of the Common Market Protocol.

identifying the citizens of the Partner States in the Community.<sup>87</sup> The citizens of the Partner States will therefore be able to use machine-readable national identity cards as a travel document. Rwanda and Uganda are currently issuing standardized machine-readable national identification. However, Kenya, Burundi and Tanzania are yet to commence the issuance of the standardized machine-readable identifications. Nevertheless, there is currently an understanding between Kenya, Uganda and Rwanda that their nationals can use the national identity cards as travel documents across their borders. The Partner States further agreed to have a common standard travel document for the nationals of Partner States. The common standard travel document, which is the EAC Passport, is currently being used by many nationals of the Partner States.

In addition, the Sectorial Council of Ministers responsible for EAC Affairs and Planning, during the 22nd Meeting held on 14th August 2015, developed and adopted a schedule of activities that will ensure that the EAC e-Passport is launched by the 17th Ordinary Summit of the EAC Heads of State<sup>88</sup> The provision on free movement of persons contained in Article 7 of the Common Market Protocol is implemented through the EAC Common Market (Free Movement of Persons) Regulations (Annex 1). The Regulations require Partner States to effectively manage their borders through ensuring ease of border crossing for citizens of Partner States; reciprocal opening of border posts; operational hours for the border posts; manning of border posts on 24 hour basis; harmonization of certain measures, including immigration procedures<sup>89</sup>. Implementation in some Partner States of border management requirements is ongoing. For example, in Kenya, a recent study reported that seven border posts are operational on a 24-hour basis: Jomo Kenyatta Airport, Mombasa

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<sup>87</sup> *Ibid*

<sup>88</sup> Council Report of the 32nd Meeting of the Council of Ministers held on the 10th–14th August 2015 in Arusha, Tanzania.

<sup>89</sup> Regulation 8 of the Regulations on Free Movement of Persons.

International Airport, Namanga, Lunga Linga, Taveta, Malaba and Busia. All these borders are electronically interconnected and have integrated border management systems<sup>90</sup>.

**4.5 In taking case of United Republic of Tanzania and Uganda; the following have been analyzed on the issue of free movement of person and free movement of labor.**

Tanzania has committed herself to implement the protocol fully by 2015. The reasons for taking the long path originate from both internal and external sources. One of the reasons emanate from the fact that the area covered by Protocol under the freedom of movement of labour in Tanzania is multi-sectored and intra-ministerial. It involves several actors from both governments. Tanzania, for example, spreads acceptance of workers from other Partner States from 2010 to 2015. The list shows professionals with PhD, nurses, midwives accepted by 2010; secondary school teachers (science and foreign languages) by 2015; early to primary school by 2010; Engineers, 2011 with Railway Construction engineers, Air Traffic Controllers by 2012; Life Sciences, medical doctors and practitioners, land surveyors by 2015. Kenya, Uganda and Rwanda pegged 2010 as the year to allow free movement of labor<sup>32</sup> within their States. Save for laws relating to free movement of the listed professionals, the laws in Tanzania have not yet been amended to match the time frame set for the professions that Tanzania had committed to allow in by 2012.

One of the key challenges to effective implementation of the CMP by Tanzania is fear that the nationals will lose jobs once job seekers from other Partner States are allowed into the country. The language challenge is also seen as a comparative advantage, especially of Kenyans over Tanzanians. This is mainly in the command of English, a language most preferred by foreign investors. Fears of social dumping, inadequate national capacities, fear of

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<sup>90</sup> Victor Ogalo “*Achievements and Challenges of Implementation of the EAC Common Market Protocol in Kenya: Case of Free Movement of Labour*” (2014) Friedrich Ebert Foundation Research Report.

economic losses from the provision of public services to foreign workers and the reluctance of nationals to move to other Partner States are also part of the challenges. In addition, fear from non-standardization of employee benefits like social security and health insurance and lack of adequate funds to finance various actions in the CMP implementation process has slowed down the progress of implementation of the CMP in Tanzania<sup>91</sup>.

Challenges and Prospects of Implementing the CMP in Uganda the free movement of persons is guaranteed under Article 7 of the Uganda Constitution. However, the free movement of persons is not absolute as it must be undertaken within the best interest of the public, health and security. Consequently, entry of prohibited immigrants is illegal. The immigration controls have also not been eliminated. Entry into and exit out of Uganda must be at designated points in accordance with the national laws and immigration procedures. Uganda is yet to embrace the use of identification card as travel document<sup>92</sup>.

Uganda issues visitor's pass to EAC citizens free of charge in accordance with the protocol. However, a visitor's pass allows EAC citizens to enter and stay in Uganda for up to 2 months and not 6 months as provided in the CMP. Student or learning mobility is guaranteed. However, students are required to apply for a pupil pass within 15 days of entry. Those attending training of less than two months are exempt. The visitors and pupil passes are issued free of charge<sup>93</sup>.

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<sup>91</sup> ILO-EU Project "Managing labour migration for integration and development in Africa" Website: <http://migration-africa.itcilo.org>.

<sup>92</sup> This is a relatively recent accomplishment for Uganda. Not long ago, it was in the same situation that Tanzania is in now, where a majority of citizens did not have ID cards. In 2010, with the CMP adopted, Uganda clearly saw that it would not be able to live up to the commitments of free movement without a system of issuing IDs. IDs are a very new project in Uganda, but over the last three years almost everyone has come to possess an ID.

<sup>93</sup> Uganda is the exception in this regard, with recent revelations that there are a significant number of 'ghost refugees' registered in urban settings and rural settlements. A countrywide verification effort is ongoing. <http://observer.ug/news/headlines/57503-verification-process-unearths-7-000-ghostrefugees-in-nakivale.html>.

## 4.6 Conclusion

In order to develop human resources in the region, the Treaty provisions, among others, are geared towards “free movement of persons, labor, services, right of establishment and residence.”<sup>94</sup> There should be adaptation of a decision to ease the existing impediments to ensure free movement of persons and labor, The Council consented that free movement of people, goods and services within East Africa, must critically moves towards attainment of major objectives of the Treaty. A new development in East Africa of Fast Tracking towards East African Federation puts the issues of free movement of person and labor as to be practicable among member state. However, the Treaty goes on to provide that in order to facilitate free movement of labor, partner states will ease border crossing by its citizens, review and standardize labor laws and regulations related to labor standards.

To achieve the free movements, the Partner States have agreed to take several measures. These include the elimination of tariff, non-tariff and technical barriers to trade; harmonization and mutually recognizance of the standards and implementation of a common trade policy for the EAC.<sup>38</sup> The Partner States have, as well, agreed to ease The measures agreed by the Partner States extends to the removal of the restrictions on movement of labor, harmonization of the labor policies, programs, legislation, social services, providing for social security benefits and establishing of the common standards and measures for association of workers and employers. The other measure includes the establishment of employment promotion centers, adoption of a common employment policy and the removal of restrictions on the right of establishment and residence of nationals of other Partner States in their territory.

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<sup>94</sup> Chapter Seventeen of the East Africa Treaty.

As regards regional efforts, concrete plans have been worked out within the East African Community to deal with East African Migration issues. Chapter XVII of the Treaty for East African Community deals with Free Movement of Persons, Labor, Services, Right of Establishment and Residence. Article 104 spells out the scope of cooperation. The negotiations on the protocol on free movement of persons, labor, should include facilitation of movement of persons within the territories of the Partner States, opening and operationalization of seven border posts on a 24-hour basis, establishment of integrated border management systems and amendment of national laws and regulations to ensure nondiscrimination of the citizens of the Partner States.

Others milestones are advanced progress towards issuance of common identification documents, establishment of modalities towards harmonization of labor and employment policies, and mutual recognition of academic and professional qualifications as to ensure that there is free movement of persons and labor.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

Referring back to the previous chapter from chapter one, two, three and four and five as dealt with critically by this research in testing the research question which states, “On whether there is legal practicability of free movement of persons and labors in East African Community Common Market”. This chapter provides the sum-up of the peoples view in regard to the matter research topic and brings up, steps forwards finding solutions to the challenges analyzed in chapter four as findings of this research.

In providing conclusion and recommendations the researcher relies on the information and data collected through both library and field research to show how the laws does not support the Protocol of East Africa Common Market on the aspect of Free movement of Person and Labours in East Africa Community.

#### **5.2 Conclusion.**

The East African Common Market Protocol was intended to solve issues related to unnecessary barriers of free movement of persons and labours which hindrances to the protocol.

The issue of harmonization of laws policies and programs are different to member states hence posing a further challenge to the effective integration, for example the issue free movement of persons and labours.

Some of National laws of member states are inconsistent to the protocol and are still older than the Protocol, which need to be amended so as to reflect the Common Market



Protocol, for instance The National Employment Service Act of Tanzania, Immigration laws, and Employment Act but to mention a few, this laws impose barriers to the Protocol, that is to say member states should ensure that their national laws and legal system are comply with the requirement of the Protocol. Moreover, the analysis and findings of this research have confirmed that the implementation of EA Common Market should be observed to all member state, since domestic laws of member states do not incorporated to the Common Market Protocol which has increased the possibility for member states not to observe the implementation of the East African Common Market.

### **5.3 Recommendations.**

Basing on this reason the researcher is hereby recommends the following solutions to ensure the implementation of Common Market Protocol are observed and incorporate to member states; the following are recommendations which need to be followed by Partner States.

The Partner States should ratify National laws and polices so as to reflect the Common Market Protocol. This means that, the Partner States should reform their laws which are contrary to the Protocol so as to facilitate strong implantation of Common Market, for instance among what Partner States agreed under Article 12 of the Common Market Protocol to harmonize labours polices, laws and programs.

Partner States should promote adequate awareness to East African Common Market Protocol among the staff and the public in general, meaning that the majority of people within East Africa Community have the no common understanding of Protocol. In fact, delay other member to implement Common Market Protocol, therefore Member States should take it as a

sensitive program for staff and citizens to the effective opportunity of awareness on making implantation of market within the partner states.

Partner States should take measures on capacity of building immigration department and customs officers and other key stakeholder's to involved in trained on the current regulations and all progress made in the integration process. Therefore, National governments should make sure that Immigration Departments are the keys institutions in the implantation of the East Africa Common Market Protocol, because these departments are expected to understand the Protocol clearly so as to reflect the current community.

Hence, East African Common Market requires Member State to ratify their laws policies and programs so as to have a practicability of free movement of persons and labours since these free movement it only appears on paper and not practically.

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