

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT (SECOND SESSION)

PUBLIC PETITION
NO.012 OF 2018

PUBLIC PETITION ON LIFTING OF CAVEAT IMPOSED ON LAND
IN THE FORMAL SETTLEMENT OF THE ENTIRE MAU FOREST
COMPLEX

I, **UNDERSIGNED**, on behalf of the residents of the entire Mau Complex;

DRAW the attention of the House to the following: -

1. **THAT**, land ownership in Kenya is facing various challenges which have negatively impacted on the standards of living for the people including inter alia, under-development of property, lack of credit facilities from financial institutions, inadequate capital to do business, among others;
2. **THAT**, Agriculture has remained the sole source of livelihood for the residents of parts of the Mau Complex in parts of Baringo, Bomet, Nakuru, Narok, Kericho and Uasin Gishu counties hence land utilization as a factor of production is very key;
3. **THAT**, the major challenge facing development of land in the agricultural areas is the reluctance by financial institutions to provide loans to the residents due to lack of title ownership brought about by caveats;
4. **THAT**, as a result, majority of the residents in most parts of the aforementioned regions have resorted to borrowing money from unscrupulous money lenders who demand hefty interest payments which is disadvantageous to the citizens;
5. **THAT**, besides not being able to obtain financing from credible financial institutions, the residents have constantly been harassed by the Kenya Forest Service Wardens for using trees alleged to be from the forest making it difficult for them to put up decent housing for their families;
6. **THAT**, efforts to resolve the matter with the Ministry of Lands and the National Land Commission have been futile;

Hon. speaker,
For your approval.
28/3/18

Approved
SNA
27/3/18

PUBLIC PETITION

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7. **THAT**, issues raised in this Petition are not pending in any court of Law, Constitutional or any other legal body.

THEREFORE, your humble Petitioners pray that the National Assembly through the Departmental Committee on Lands: -

- i) recommends that the Cabinet Secretary for Lands in conjunction with the National Land Commission urgently address the land question in the Mau Complex with a view of establishing ownership and consider lifting the caveats imposed on all those who are genuine land owners; and
- ii) makes any other order or direction that it deems fit in the circumstance of this Petition.

And your **PETITIONERS** will ever pray.

PRESENTED BY:

22/03/2018

HON. GIDEON KETER, MP
NOMINATED MEMBER

Date: 

A PETITION AGAINST SECTIONS OF THE ENGINEERS ACT 2011
SUBMITTED TO THE SPEAKER OF THE NATIONAL ASSEMBLY IN
THE REPUBLIC OF KENYA

PETITIONER: Ferdinand C Nyongesa; P. O. Box 2193 – 50200 Bungoma
Cellphone: 0722 825139; Email: fcnyongesa@yahoo.com

DATE: 2nd March, 2018

✓
Honor. Zabeu Hilo.
H. Mwanjiru
Prepare a petition
for the petition
Bureau
April 12/18

1. Preamble

In a recent study conducted at the Commission for University Education (CUE), Kenya has more than 1,000 approved degree courses, majority in disciplines that are not key to its prosperity. The study observes that more than 70% of students are graduating with degrees in commerce and education arts and concludes that the trend puts the country firmly on the road towards under development.

On the other hand, in a recent report “*Expanding Tertiary Education for Well-Paid Jobs: Competitiveness and Shared Prosperity in Kenya*” the World Bank has warned that Kenya may not have the necessary professionals to catapult it to the Vision 2030. The report notes that realisation of the Vision 2030 will only be achieved by increased absorption of new technologies through an adequate supply of scientists and engineers to the labour market.

Through an initiative known as STEM (Science, Technology, Engineering and Mathematics) the country is operating at 13% output for science, technology and engineering graduates with engineering contributing a paltry 0.1%. This casts doubts as to whether Vision 2030 is achievable given the central role engineering plays in the manufacturing sector.

The Engineers Act 2011 is looked upon to fix this distortion by increasing the proportionate ratio of highly motivated engineers to drive the development agenda for the benefit of the citizens.

Experience from industrialised countries such as China indicates that there is a critical mass of engineers required for an industrial takeoff. Figures collected from the Kenyan universities indicate that the country has a cumulative number of about 60,000 engineers in various disciplines. A number of 60,000 engineers and abundant raw materials around are sufficient conditions for an industrial breakthrough to provide an unemployment solution and create wealth. However, under the Act less than 2,000 out of 60,000 engineers are registered. Under the Act, registration is a legal instrument for any engineer to be employed or to practise and be productive. What it means is that only 3% of the engineers in this country are productive. The shocking question immediately pops up: where are the remaining 97% and how are they making a living?

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P. O. Box 11042, NAIROBI

The problem lies in the Act. Some sections of the Act allow implementing agencies to abuse the powers bestowed upon them. These sections are outlined in the petition and are recommended for repeal.

2. The Petition Memorandum

The petition to amend the sections of the Engineers Act 2011 is based on the following grounds:

- a) In the declaration statement the Act bestows upon itself the responsibility to train, register, license and regulate engineers in total disregard of the existence of other institutions such as universities that are mandated through other Acts to train engineers. The ‘training’ element should be deleted in the declaration.
- b) In the preliminaries, the Act correctly gives a meaning to the title “engineer” as a person registered under the Act. However, in sections 26 (3) and 47 the Act criminalises the use of the title ‘engineer’. This is misleading because the title is universal and means anybody who has undergone a training of engineering in a competent institution in line with other professions such as medicine, education, law, economics, etc. A graduate engineer who chooses not to apply for registration or who is denied registration for any reasons should be free to use the title which he obtained by way of training. Perhaps the Act should qualify the registered engineer by appending ‘Registered’ to the title and restrict it as so. This section should be amended by way of deleting 26 (2) and (3). In section 47, the word “Registered” to be inserted before “engineer” and similarly before “engineers” in (1) and (2).
- c) In section 5, the Board is established. Membership from professional institutions should not be restricted to one institution (Institution of Engineers of Kenya). Professional institutions are registered under the Societies Act for the welfare of their members and there can be many in a profession. For university representation, it is contentious since the procedure for nomination is not spelled out. To improve this section, 5 (e) should be amended by deleting the sentence and replacing with ‘a member from associations/institutions in the engineering profession’ and (g) (iii) should be amended by inserting the word ‘competitively’ before the word ‘nominated’.
- d) Section 7 as read with section 5 is self-defeating. Under section 7 (l), the Act bestows upon the Engineers Board of Kenya (EBK) powers to approve and accredit engineering programmes in universities in conflict with the Universities Act 2012 which establishes the Commission for University Education (CUE) for the same purpose among other functions. Yet under section 5 which constitutes the Board, no safeguards are put in place to admit members with minimum qualifications to manage university curricula. The problem is that under the Act unqualified persons are being assigned duties to interrogate universities over matters that are beyond their competence. For example, the standard academic requirement at the university is a

doctorate degree (PhD) and it is absurd that currently even first degree holders from among EBK members are assessing the work of PhD holders and purporting to declare them incompetent. As we speak right now teaching engineering in several universities has been disrupted by this posturing – an action that is not in public interest. I recommend the repeal of section 7 (i), (l), (o) and (v) by deleting to create harmony in the universities.

- e) The approval and accreditation programme imposed on the universities by the Act is exerting unnecessary financial pressure through EBK on the universities' budgets. At one time EBK was levying Shs. 300,000 to 'evaluate' a single course. A faculty of engineering may host up to 30 courses, meaning that such a university must remit a cheque of Shs. 9 million for the purpose. This cost is passed over to students who often rise against the university management as part of the student unrest witnessed across universities as they question value for money. Deleting of section 7 (l) as above will restore normalcy.
- f) Under the same section 7 (o), the Act establishes a school of engineering to provide facilities and opportunities for learning and which is non-existent. This is a duplication of what is already in place. The section ignores the fact that the country already has training institutions at different levels including universities offering those services. Furthermore, it is a tall order to establish such a school because engineering is dynamic and whereas we started in the early days with three disciplines namely Electrical, Mechanical and Civil Engineering, we have branched into many emerging ones as dictated by the market and more are expected. It defeats any attempt to set up a school on the model of the School of Law to satisfy such a dynamic field, which may explain why there is none so far. So the idea as stated by the Act cannot be realized. I recommend the repeal of section 7 (o) as in (c) above.
- g) Under sections 16-22, the board established under the Act, the Engineers Board of Kenya (EBK), has failed to carry out its primary mandate of registering engineers, which has adversely affected the overall performance of the profession. Registration is a practising legal instrument for an engineer. With an estimated population of 60,000 graduate engineers in the country, EBK has registered less than 2,000. The Board has relied on trivialities seen as an expression of impunity to lock out a large population of engineers, perhaps to protect the field for a chosen few who reap large. To enhance this section, I recommend insertion of the term 'or equivalent' after the words 'graduate engineer' in 16 (a) (i) and adding the sentence 'or equivalent institution as determined by the responsible minister' at the end of 16 (a) (iii). This should be done urgently to save the over 58,000 engineers wasting out there including those in employment who can't be promoted for lack of registration.
- h) Under section 18, highly qualified engineers have been deliberately denied registration despite possessing qualifications such as Masters and Doctorate (PhD) with emphasis focussed only on the Bachelor's degree. This has been discriminatory

and a demotivation to aspirations for higher qualifications in engineering contrary to common sense. Moreover, it has denied many senior engineers in this country an opportunity to optimally serve the citizens professionally. To correct this anomaly, I propose an amendment to insert the words 'or equivalent as stated by a recognized accreditation body' after the word 'engineering' and the words 'as minimum qualifications' after 'university' with the rest of the sentence deleted in 18 (a).

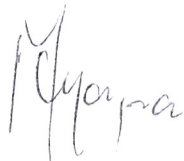
- i) Section 49 is the most contentious as regards engagement of an engineer. It is the section that accounts for the pilferage of 97% of engineers. In fact the Act labels it as *prohibition of employment of unregistered persons*. Any person who completes training and qualifies as an engineer has a right to a job. The students who are admitted for engineering are 'A' material who have a sight on big things ahead. Equally, their parents and guardians have great hopes in them. It is unfortunate that an Act of Parliament can condemn a section of innocent citizens to the life of destitute for no reasons other than the fact that somebody somewhere has failed to enter them in a register. The section does not differentiate between 'employment' and 'offering professional services'. A basic training in engineering as supported by an academic certificate of the holder is sufficient to earn one a job as an engineer without any other consideration. Their duties at entry level usually entail simple routine maintenance tasks or data collection assignments in operations that do not involve process and/or plant design. The employer thereafter should refer the employee to EBK to register for the purpose of updating the national statistics. Most employers sponsor their employees for specialised training to handle more intricate tasks and this should not be EBK's headache. EBK should only encourage such employers by highlighting the advantages of registered engineers if there are any apart from possessing the known certificate of registration. Granted, registration is a revenue generator for EBK but this should not override the greater national interests. This brings back sad memories where EBK wrote to an employer with threats to sue for employing a graduate engineer who had not been registered by them. The poor young man lost the job! What was his crime? In a high court suit filed by the graduate EBK were found guilty and slapped with a hefty fine. It is not known whether they have paid. Professional services on the other hand, should be defined to mean contractual job involving 'design and/or construction' which should require not only registration but also licensing. To improve this section, the words 'contractual' to be inserted before 'professional' and 'and licensed' after 'registered' in (1). 49 (2) to be deleted as it repeats (1) and replaced with 'A person shall not take up or continue in any employment as an engineer unless that person is a qualified engineer'. 'Qualified engineer' may be defined in the preliminaries to mean one who has graduated with a degree from a cognized university or equivalent. Section 49 (3) to be deleted since 'employment' has been covered in this section.
- j) EBK should be assisted to understand and differentiate that there exist practising engineers and research engineers. Practising engineers design and construct public

works. The minimum qualification of such an engineer is a basic first degree as stated in the EBK requirements for registration. On the other hand, research engineers conduct research to expand engineering knowledge and disseminate the same by publishing in journals for the purpose of sharing the knowledge globally. They top up by teaching at the universities where they conduct the research as determined by the senate of respective universities. The minimum requirement for this category is a Masters degree, although the standard requirement is a Doctoral degree (PhD). Generation of knowledge cannot be controlled through licensing, regulation or registration the world over. EBK have been stoking and raiding universities in search of registration certificates among the professors and lecturers of engineering some of whose registration has been rejected. Where none has been availed they have gone ahead to blacklist the host universities and declare them unfit to train engineers with a condition to sack such lecturers before reinstatement is considered in conflict with employment terms of the lecturers. This practice is not supported by any of the existing sections of the statute. It is outright harassment as an expression of arrogance exercised by a rogue board buoyed by state power for selfish interests. In fact, Parliament should reprimand and compel EBK to apologise to the universities, professors and lecturers they have so maligned and expunge their names from public reports in circulation for the sake of justice.

- k) Under the Act, EBK have championed foreign interests on the Kenyan market by supporting foreign firms to dominate businesses in consultancy and construction at the expense of local firms – a clear failure in the regulation responsibilities. The import of this is an unfortunate facilitation of a drain on foreign exchange reserves in addition to exporting the national wealth. This has been achieved by denying local engineers (a whopping 97%) the required registrations to create a demand that has attracted foreigners who pair up with a selected few that exploit a statutory requirement of 30% local content to dominate the businesses. It is a case where the Act has been abused to the core by the same clique created under the Act. Accordingly, Parliament is requested to consider investigating EBK over this scandal as deterrence.

3. Submission

It is my humble submission that The Engineers Act 2011 is not serving a useful purpose to the public in its entirety. Consequently, I petition that the said sections be repealed by Parliament.



Dr. Ferdinand Chirure Nyongesa, PhD