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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

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ELEVENTH PARLIAMENT – FOURTH SESSION

THE DEPARTMENTAL COMMITTEE

ON

FINANCE, PLANNING & TRADE

REPORT ON THE CONSIDERATION OF

PUBLIC PETITION BY THE CONSUMER FEDERATION OF KENYA (COFEK) ON  
OPERATIONALIZATION OF SECTION 94 OF THE CONSUMER PROTECTION ACT, 2012  
AND AMENDMENT OF SECTION 16(3) OF THE FINANCE ACT, 2013

CLERKS CHAMBERS

DIRECTORATE OF COMMITTEE SERVICES

PARLIAMENT BUILDINGS

NAIROBI

APRIL, 2016

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## **ABBREVIATIONS**

CAK	-	Communications Authority of Kenya
CBK	-	Central Bank of Kenya
COFEK	-	Consumer Federation of Kenya
Gok	-	Government of Kenya
KEBS	-	Kenya bureau of Standards
KENAS	-	Kenya National Accreditation Service
KLDC	-	Kenya Leather Development Council
KRA	-	Kenya Revenue Authority
No.	-	Number
NSC	-	National Standards Council
NTSA	-	National Transport and Safety Authority
SO	-	Standing Order

## PREFACE

### 1.1 Committee Mandate

On behalf of the Departmental Committee on Finance, Planning & Trade and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public petition by the Consumer Federation of Kenya (COFEK) on the operationalization of Section 94 the Consumer Protection Act and Amendment of Section 16(3) of the Finance Act, 2013. The petition was reported to the House pursuant to Standing Order No. 225 (2)(b) by the **Hon. Speaker**, on 5<sup>th</sup> March, 2014.

### 1.2 Mandate of the Committee

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

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

### 1.3 Committee Membership

The committee comprises of the following members:-

1. Hon. Benjamin Langat, MP (**Chairman**)
2. Hon. Nelson Gaichuhie, MP (**vice Chairman**)

3. Hon. Jones M Mlolwa, MP
4. Hon. Anyanga, Andrew Toboso, MP
5. Hon. Timothy M .E. Bosire, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Joash Olum, MP
8. Hon. Dr. Oburu Oginga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Abdullswamad Sheriff, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Iringo Cyprian Kubai, MP
14. Hon. Dennis Waweru, MP
15. Hon. Tiras N. Ngahu, MP
16. Hon. Sakaja Johnson, MP
17. Hon. Jimmy Nuru Angwenyi, MP
18. Hon. Ronald Tonui, MP
19. Hon. Mary Emase, MP
20. Hon. Joseph Limo, MP
21. Hon. Lati Lelelit, MP
22. Hon. Kirwa Stephen Bitok, MP
23. Hon. Sammy Mwaita, MP
24. Hon. Daniel E. Nanok, MP
25. Hon. Eng. Shadrack Manga, MP
26. Hon. Abdul Rahim Dawood, MP
27. Hon. Sakwa John Bunyasi, MP
28. Hon. Alfred W. Sambu, MP
29. Hon. Sammy Koech, MP

#### **1.4 Committal of the Petition**

The Public Petition on operationalization of Section 94 of the Consumer Protection Act and amendment of Section 16(3) of the Finance presented to the National Assembly by the Chief

Executive Officer of the Consumer Federation of Kenya (COFE) and conveyed by the Speaker on 5<sup>th</sup> March, 2014 pursuant to Standing Order 225(2)(b) and the Petition to Parliament (procedure) Act, 2012. The petition was dated 19<sup>th</sup> February, 2014 and signed by Stephen Mutoro praying “that the National Assembly, through the Departmental Committee on Finance, Planning & Trade:-

- a) Debates without delay and amends section 16(3) of the Finance Act, 2013
- b) Requires H.E. the President and all Cabinet Secretaries to immediately comply with the Provisions of Article 46 of the Constitution and especially Section 94 of the Consumer Protection Act, 2012 in ensuring consumer representation in all regulatory agencies.

### **1.5 Committee Observations**

On analysis of the petition, the Committee noted that the petition generally complied with the thresholds set in the Constitution, Petitions to Parliamentary Act, 2012 and the Standing Orders. The Committee further noted the following:-

1. Mr. Mutoro had never reached out to the Committee to address such matters as he alludes in the petition up until the time the petition was formally conveyed to the Committee on 5<sup>th</sup> March, 2014. The committee takes great exception with the petitioner’s assertion that he had made efforts to have the matter resolved by the committee without success.

#### **Amendment of Section 16(3) of the Finance Act, 2013**

2. Issues touching on section 16(3) of the Finance Act, 2013 had been extensively considered and dispensed with by the Committee and indeed the House when processing the Bill. The Public had been afforded an opportunity, through advertisements on the print media calling for memoranda, to make presentations to the Committee as provided for under Article 118 of the Constitution. It is worth noting that COFEK did not send any memoranda to the Committee at the time.
3. Section 16(3) of the Finance Act, 2013 does not in any way offend the provisions of Article 50(2) of the Constitution on Fair Administrative Justice. This is contrary to the petitioner’s submission that this section presupposes that the accused person is 30% guilty prior to the hearing.

It should be clarified that the matter under discussion here is the tax under dispute as assessed by the Commissioner and the taxpayer. If on assessment of the self assessed tax returns of the taxpayer the Commissioner finds understatement, the Commissioner normally rejects that self-assessment and requires the taxpayer to pay 30% of the tax in dispute pending appeal to the Tax Appeals Tribunal. The objective this provision is to ensure that a taxpayer does not frustrate collection of tax. This therefore cannot be construed to be unfair to the tax payer:-

- Firstly he/she understated his/her tax assessment
  - Secondly, he/she has a right to appeal,
  - Thirdly, the case should be determined within 60 days
  - And finally, if judgment is to a taxpayer's favour, he/she will be reimbursed his/her money
4. Based on the above observations, the Committee does not find merit in the petitioner's prayers.

#### **Operationalization of Section 94 of the Consumer Protection Act**

5. The petition calls for fully operationalization of the Consumer Protection Act, 2012 that also seeks to operationalize Article 46 of the Constitution on Consumer Rights.
6. Though Section 94 of the Consumer protection Act, 2012 provides that consumers should be represented in all regulatory agencies, Article 46 of the Constitution does not expressly obligate regulatory agencies to have consumer representation. This therefore means as much as Section 94 of the Act has not been operationalized, it does not, in any way, offend the provisions of Article 46 of the Constitution.
7. Regulatory agencies such as CBK, CAK, KENAs, and NTSA among other many regulatory agencies have heavy government representation. One could imagine that governments exist to serve the populace; consumers included. Therefore, the petitioner's submission that consumers have not been represented in regulatory agencies is a fallacy.



8. There are not many registered consumer organizations within the country that are legally constituted and recognized as genuine entities that can represent the consumer within the meaning of Section 94 of the Consumer Protection Act, 2012.
9. Most of the regulatory agencies are created by Acts of Parliament with clear mandate, number of members, their qualifications and who they represent (various sectors of the economy). Inclusion of representatives of consumers in each and every regulatory agency will call for amendment of all the statutes creating these regulatory bodies, a task that is not easy to accomplish.
10. Based on the above observations, the Committee is satisfied that government representatives have been and are competent to represent consumer interests in all regulatory agencies as is the case currently. It therefore follows that Section 94 of the Consumer Protection Act, 2012 has been operationalized.

#### **1.6 Committee Recommendations**

Based on the Committee's analysis of the petition and the views from the stakeholders, the Committee recommends that:-

1. Declines to grant the prayers sought on both amendment of Section 16(3) of the Finance Act, 2013 and operationalization of Section 94 of the Consumer Protection Act, 2012.
2. In making appointments to regulatory agencies, the Government should always be cognizant of Article 46 of the Constitution on Consumer Rights and faithfully implement it in letter and spirit.
3. The Commissioner General of the Kenya Revenue Authority should always come up with better and tamper proof tax assessment systems that can accurately determine tax due by a taxpayer to avoid instances of assessment disputes.
4. Taxpayers should always comply with the provisions of Income Tax Act by promptly and accurately filing their returns to avoid penalties from the Kenya Revenue Authority.
5. The Local Committee contemplated in Section 84 of the Income Tax Act and the Tax Appeals Tribunal Act and the Judiciary should, at all times consider and expeditiously

determine all tax disputes brought before them within the provided time frame to avoid business losses.


### **1.7 Acknowledgment**

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

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

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

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Finance, Planning & Trade to present this report to the House pursuant to the provisions of Standing Order 227 (2).

SIGNED:  DATE: 20-04-2016

**THE HON. BENJAMIN LANGAT, M.P.**

**CHAIRPERSON,**

**DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE**

## **2.0 BACKGROUND INFORMATION**

### **2.1 Legal basis of the petition**

Article 199(1) of the Constitution provides that every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. The Petitions to Parliament Act, 2011 and Standing Order 219 operationalize this particular provision.

The Petition by Mr. Stephen Mutoro, Chief Executive Officer of the Consumer Federation of Kenya (COFK) was conveyed by the Speaker on 5<sup>th</sup> March, 2014 pursuant to Standing Order No. 225 (2)(b). Pursuant to House rules, the petition was referred to the Departmental Committee on Finance, Planning & Trade for consideration and report pursuant to the provisions of Standing Order 227.

### **2.2 Prayers of the Petition**

The petitioner prayed that the National Assembly, through the Departmental Committee on Finance, Planning & Trade:-

- a) Debates without delay and amends section 16(3) of the Finance Act, 2013
- b) Requires H.E. the President and all Cabinet Secretaries to immediately comply with the Provisions of Article 46 of the Constitution and especially Section 94 of the Consumer Protection Act, 2012 in ensuring consumer representation in all regulatory agencies.

## **3.0 SUBMISSIONS AND EVIDENCE**

Having been seized of the Petition, the Committee called for official Government position on the petition from the Head of Public Service and Chief of Staff, the National Treasury and the Ministry of Industrialization and Enterprise Development. The Committee further received a written submission from the petitioner. The evidence adduced by the petitioner, the National Treasury, and the Ministry of Industrialization and Enterprise Development are contained hereunder. The Committee did not receive any response from the Head of Public Service and chief staff despite calling for his comments on two occasions vide:-

- a. KNA/DC/FPT/2014(36) dated 30<sup>th</sup> April, 2014
- b. KNA/DC/FPT/2014(59) dated 9<sup>th</sup> July, 2014

### **3.1 Submission by the Petitioner, Mr. Stephen Mutoro**

Through his letters dated 19<sup>th</sup> February 2014 and 30<sup>th</sup> April 2014 the Petitioner, Mr. Mutoro, submitted that COFEK is non-political and non-profit society registered under the Societies Act, Cap 108 (section) Laws of Kenya on March 26<sup>th</sup> 2010. The following is his further submission on the petition:-

#### **3.1.1 Amendment of Section 16(3) of the Finance Act, 2013**

Section 16(3) of the Finance Act, 2013 that required thirty per cent amount of tax in dispute to be paid to KRA prior to appeal should be amended on the following grounds:-

- i. This section is unconstitutional as it contravenes Article 50(2) of the Constitution of Kenya, which states “Every accused person has the right to a fair trial, which includes the right to be presumed innocent until the contrary is proved”. Section 16(3) of the Finance Act 2013 means that one is 30% guilty until the contrary is proved as regards to tax levies which are singularly determined by KRA. Percentage in guilt?
- ii. The offending Section is therefore punitive and subject to potential abuse of arbitrariness of the KRA as well as potential extortionist tendencies of its unscrupulous officers
- iii. The said Section is adversely affecting Kenya’s competitiveness and global image as an investment and thereby hurting the Foreign Direct Investments (FDI) and employment opportunities

#### **3.1.2 Operationalization of Section 94 of the Consumer protection Act, 2012**

- iv. This section requires consumer representation in all regulatory agencies such as the Central Bank of Kenya and Communications Authority of Kenya among others.
- v. Since its operationalization on 14<sup>th</sup> March, 2014, there has been no attempt by the Executive to implement the Act.
- vi. He had had two meetings with the Attorney General and sent numerous reminders to concerned appointing authorities, in vain.

- vii. There is need to establish a broad and parent Kenya Consumer Protection Authority Act and provide for other sector-specific legislations such as Financial Consumer Protection Act, Health Consumer Protection Act, among others
- viii. The issues in which the petition is premised are not pending in any court of law, or constitutional or legal body.

### **3.2 Submission by the National Treasury**

Through his letter dated 1<sup>st</sup> April 2014, the Principal Secretary for the National treasury, Dr. Kamau Thugge, adduced the following regarding the petition to amend Section 16(3) of the Finance Act, 2013:-

- (a) Section 16(3) of the Finance Act, 2013 amended Section 84 of the Income Tax Act to require the taxpayer whose tax has been assessed by the commissioner to pay tax that is not in dispute and 30% of tax in dispute before he lodges a notice of objection of the assessment of tax law with the Local Committee (Tax Appeals tribunal).
- (b) Section 84 of the Income Tax Act provides for taxpayer to file a notice of objection on tax assessed by the Commissioner, which is the First process of appealing that tax assessed by the Commissioner. If the Commissioner rejects the notice, the taxpayer has to pay 30% of the tax in dispute but he/she has a right of appeal.
- (c) The Provision for requiring the taxpayer to pay 30% of the tax assessed by the Commissioner before the taxpayer appeals to the Local Committee on the Commissioner's decision to decline a notice of objection on tax assessed is not unconstitutional as alleged by the petitioner.
- (d) The objective of the provision is to make sure that the taxpayer does not frustrate collection of taxes through appeals to the Local Committee.
- (e) If the appeal is heard and determined in favour of the taxpayer, the amount of tax paid before the appeal was heard is refunded. If the tax payer loses the appeal, he/she is required to pay the balance (70%). This must be settled within 60 days.

- (f) Section 16(3) of the Finance Act, 2013 is an improvement of the previous provision that had given the Commissioner powers to decide whether the taxpayer can pay in part or whole amount of the assessed tax relating to the objection before the taxpayer appeals to the Local Committee.
- (g) If Section 16(3) of the Finance Act, 2013 is deleted, the taxpayer will not be compelled to pay even the tax not in dispute. This will frustrate tax administration and will have negative impact on revenue collection.
- (h) The provision does not affect Kenya's competitiveness since it is an international best practice for the Commissioner to assess a taxpayer if he fails to submit a return on the due date and after he has been audited and the audit revealed tax arrears among other reasons.

Based on the above, the National Treasury requests that the petition be dismissed.

### **3.3 Submission by Ministry of Industrialization and Enterprise Development**

Through his letter dated 27<sup>th</sup> March 2014 to the Committee, the Principal Secretary for the Ministry of Industrialization and Enterprise Development (name) submitted the following regarding operationalization of Section 94 of the Consumer Protection Act, 2012:-

1. The Ministry has a number of regulatory agencies created by either Acts of Parliament or by legal notices. All these agencies of the Ministry indeed discharge their functions with Consumer interests in mind.
2. Kenya Accreditation Service Order 2009 (KENAS) that was created by Legal Notice No. 55 of 2005 under the State Corporations Act is currently working on the accreditation draft Bill. Clause 8(a)v of the Bill provides for consumer representation in the Board.
3. The Kenya Bureau of Standards (KEBS) which is run by the National Service Council (NSC) has council Members appointed by the Cabinet Secretary. Upon the expiry of the terms of the current Council Members, the Ministry shall look into the provisions of the Standards Act with a view to co-opting consumer representatives.
4. The Kenya Leather Development Council (KLDC), which was established by legal notice 114 of 2011, is currently exploring drafting a Bill to guide its operations. The Ministry will ensure consumer representation in the council in the final draft of the Bill.

5. consumer representation will be factored in future composition of all Boards under the Ministry .
6. The Ministry had requested COFEK to forward resumes/curriculum vitae for their Members for consideration as and when the Ministry constitutes Boards under the Ministry of Industrialization and Enterprise Development.

#### **4.0 COMMITTEE OBSERVATIONS**

On analysis of the petition, the Committee noted that the petition generally complied with the thresholds set in the Constitution, Petitions to Parliamentary Act, 2012 and the Standing Orders. The Committee further noted the following:

- I. Mr. Mutoro had never reached out to the Committee to address such matters as he alludes in the petition up until the time the petition was formally conveyed to the Committee on 5<sup>th</sup> March, 2014. The Committee takes great exception with the petitioner's assertion that he had made efforts to have the matter resolved by the Committee without success.

#### **Amendment of Section 16(3) of the Finance Act, 2013**

- II. Issues touching on section 16(3) of the Finance Act, 2013 had been extensively considered and dispensed with by the Committee and indeed the House when processing the Bill. The Public had been afforded an opportunity, through advertisements on the print media calling for memoranda, to make presentations to the Committee as provided for under Article 118 of the Constitution. It is worth noting that COFEK did not send any memoranda to the Committee at the time.
- III. Section 16(3) of the Finance Act, 2013 does not in any way offend the provisions of Article 50(2) of the Constitution on Fair Administrative Justice. This is contrary to the petitioner's submission that this section presupposes that the accused person is 30% guilty prior to the hearing.
- IV. It should be clarified that the matter under discussion here is the tax under dispute as assessed by the Commissioner and the taxpayer. If on assessment of the self assessed tax returns of the taxpayer the Commissioner finds understatement, the Commissioner

normally rejects that self-assessment and requires the taxpayer to pay 30% of the tax in dispute pending appeal to the Tax Appeals Tribunal. The objective this provision is to ensure that a taxpayer does not frustrate collection of tax. This therefore cannot be construed to be unfair to the tax payer:-

- Firstly he/she understated his/her tax assessment
- Secondly, he/she has a right to appeal,
- Thirdly, the case should be determined within 60 days
- And finally, if judgment is to a taxpayer's favour, he/she will be reimbursed his/her money

V. Based on the above observations, the Committee declines the petitioner's prayers.

#### **Operationalization of Section 94 of the Consumer Protection Act**

VI. The petition calls for fully operationalization of the Consumer Protection Act, 2012 that also seeks to operationalize Article 46 of the Constitution on Consumer Rights.

VII. Though Section 94 of the Consumer protection Act, 2012 provides that consumers should be represented in all regulatory agencies, Article 46 of the Constitution does not expressly obligate regulatory agencies to have consumer representation. This therefore means as much as Section 94 of the Act has not been operationalized, it does not, in any way, offend the provisions of Article 46 of the Constitution.

VIII. Regulatory agencies such as CBK, CAK, KENAs, and NTSA among other many regulatory agencies have heavy government representation. One could imagine that governments exist to serve the populace; consumers included. Therefore, the petitioner's submission that consumers have not been represented in regulatory agencies is a fallacy.

IX. There are not many registered consumer organizations within the country that are legally constituted and recognized as true entities that can represent the consumer within the meaning of Section 94 of the Consumer Protection Act, 2012.



- X. Most of the regulatory agencies are created by Acts of Parliament with clear mandate, number of members, their qualifications and who they represent (various sectors of the economy). Inclusion of representatives of consumers in each and every regulatory agencies will call for amendment of all the statutes creating these regulatory bodies; a task that is not easy to accomplish
- XI. Based on the above observations, the Committee is satisfied that government representatives have been and are competent to represent consumer interests in all regulatory agencies as is the case currently. It therefore follows that Section 94 of the Consumer Protection Act, 2012 has been operationalized.

## **5 COMMITTEE RECOMMENDATIONS**

Having considered, analyzed and engaged stakeholders on the petition and made the above observations, the Committee recommends that:-

- (1) Declines to grant the prayers sought on both amendment of Section 16(3) of the Finance Act, 2013 and operationalization of Section 94 of the Consumer Protection Act, 2012.
- (2) In making appointments to regulatory agencies, the Government should always be cognizant of Article 46 of the Constitution on Consumer Rights and faithfully implement it in letter and spirit.
- (3) The Commissioner General of the Kenya Revenue Authority should always come up with better and tamper proof tax assessment systems that can accurately determine tax due by a taxpayer to avoid instances of assessment disputes.
- (4) Taxpayers should always comply with the provisions of Income Tax Act by promptly and accurately filing their returns to avoid penalties from the Kenya Revenue Authority.
- (5) The Local Committee contemplated in Section 84 of the Income Tax Act and the Tax Appeals Tribunal Act and the Judiciary should, at all times consider and expeditiously determine all tax disputes brought before them within the provided time frame to avoid business losses.

**MINUTES OF THE 19<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE, PLANNING & TRADE HELD ON TUESDAY 15<sup>TH</sup> APRIL, 2014 IN THE  
COMMITTEE ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, AT 10.00 A.M**

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**Present**

- |                                   |   |                         |
|-----------------------------------|---|-------------------------|
| 1. Hon. Benjamin Langat, MP       | - | <b>Chairperson</b>      |
| 2. Hon. Nelson Gaichuhie, MP      | - | <b>Vice-Chairperson</b> |
| 3. Hon. Sakwa John Bunyasi, MP    |   |                         |
| 4. Hon. Iringo Cyprian Kubai, MP  |   |                         |
| 5. Hon. Timothy Bosire, MP        |   |                         |
| 6. Hon. Joseph Limo, MP           |   |                         |
| 7. Hon. Mary Emase, MP            |   |                         |
| 8. Hon. Ogendo Rose Nyamunga, MP  |   |                         |
| 9. Hon. Anyanga Andrew Toboso, MP |   |                         |
| 10. Hon. Ronald Tonui, MP         |   |                         |
| 11. Hon. Dr. Oburu Oginga, MP     |   |                         |
| 12. Hon. Kirwa Stephen Bitok, MP  |   |                         |
| 13. Hon. Eng. Shadrack Manga, MP  |   |                         |
| 14. Hon. Joash Olum, MP           |   |                         |
| 15. Hon. Jones Mlolwa, MP         |   |                         |
| 16. Hon. Sammy Mwaita, MP         |   |                         |
| 17. Hon. Alfred Sambu, MP         |   |                         |
| 18. Hon. Sakaja Johnson, MP       |   |                         |
| 19. Hon. Daniel Epuyo Nanok, MP   |   |                         |

**Apologies**

1. Hon. Patrick Makau King'ola, MP
2. Hon. Shakeel Shabbir Ahmed, MP
3. Hon. Sammy Koech, MP
4. Hon. Lati Lelelit, MP
5. Hon. Jimmy Nuru Angwenyi, MP
6. Hon. Sumra Irshadali, MP
7. Hon. Abdul Rahim Dawood, MP
8. Hon. Tiras Ngahu, MP
9. Hon. Dennis Waweru, MP
10. Hon. Abdullswamad Sheriff, MP

**IN ATTENDANCE**

**Kenya National Assembly**

Mr. Evans Oanda - Clerk Assistant

Ms. Esther Nginyo - Clerk Assistant

## **MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT**

Aden Mohamed - Cabinet Secretary  
Dr. Wilson Songa - Principal Secretary  
John Munguti - Assistant Director  
Ann Kaiga - Legal Officer  
Charles Muhinda

### **MIN.NO. DCF/91/2014 PRELIMINARIES**

The Vice Chairperson called the meeting to order at 10.30 am followed by a word of prayer. After apologizing to the Cabinet Secretary for the late start of the meeting, the vice chairperson led the introductions of the Members present and the team from the Ministry.

### **MIN.NO. DCF/92/2014: TIMELINES FOR THE SALE AND REOPENING OF PANPAPER FACTORY**

The Cabinet Secretary submitted that:

1. Panpaper was placed under receivership by the government after buying off the short term creditors to. As at the time of receivership, the factory owed its creditors about Khs. 3 billion.
2. Though the Kenya government owns about 30% of the factory, the fate of the factory lies with its five (5) long term creditors i.e as to whether to accept any sale offer or not.
3. The government is committed to the sale of the factory as paper manufacturing entity and has been actively negotiating with the debenture holders and prospective to realize the same. Towards this end, six companies had expressed interest after international advertisements were made by the Ministry. There are however concerns on the availability of market for the papers and raw materials.
4. There are however many more challenges that have to be navigated before the sale is done. For instance, there must be negotiations with NEMA, the Ministry of Environment and Energy, and assurance to protect the factory from cheap imports of paper among others.
5. The government has no intention of injecting any capital into the factory since a similar move was made on two occasions in the past without much success in terms of the operations of the factory.
6. Proceeds from the sale of the sale (if it was to happen) will accrue to the debenture holders.
7. As of now, most of the machines in the factory are idle.
8. The Ministry will report to the Committee on the progress made by the end of May, 2014.

#### **Committee Concerns**

1. After the sale and reopening of the factory, diversification possibilities should be explored especially sale of burggase, and development of an industrial park among others.

2. Cheap raw materials can be available by leasing land and planting trees. Farmers can also be encouraged to plant trees by being provided with the seedlings.
3. To expedite the process of sale and reopening the factory, the Committee is willing to mediate the divergent views that may be advanced between the creditors and the prospective investors.

**MIN.NO. DCF/93/2014:                    CONSIDERATION OF THE SCRAP METAL BILL, 2014**

The Cabinet Secretary highlighted the following about the Bill:

1. The Bill has been published after a wide range of consultations with the stakeholders
2. The main objective of the Bill is to provide for the regulation of dealings in scrap metal and establish and provide for the functions of the Scrap Metal Council
3. The establishment of the council in part II of the bill will be critical in licensing of any scrap metal dealer (clause 10) and advising the cabinet secretary from time to time
4. The Bill makes it an offence in clause 24 for any person to destroy any metal intended for government infrastructure project while clause 26 provides for the export of scrap metal
5. Part IV of the Bill deals with enforcement provisions especially on appointment of inspectors as provided for in clause 26 and their powers in clause 30
6. The Bill finally empowers the Cabinet Secretary in Clause 33 to make rules while clause 34 provides for the repeal of the Scrap Metal Act, Cap 503.

**Committee concerns**

1. The Bill should target vandalism of the telcom cables, signage, and transformers rather than being general
2. Limitations of trading scrap metals between 6:30am and 6:30 Pm goes against vision 2030 economic pillar of making Kenya a 24 hour economy
3. It is not practical for a dealer to provide all the details of each scrap metal outlined under clause 17 especially the weight, dimensions and general descriptions of minute scrap metals.
4. The huge number of inspectors to be appointed to effectively administer the regulations will highly increase the public wage bill. As to whether we have enough qualified inspectors in the country is another challenge that need to be addressed.
5. The Composition of the council under clause 4 excludes important players in the industry especially the Principle secretary for the Ministry of Industrialization.
6. What constitutes an excess scrap metal under clause 6(1)(a)?

The Cabinet Secretary undertook to relook at the Bill and advise the Committee on the issues raised at the opportune time.

**MIN.NO. DCF/94/2014      COFEK PETITION ON OPERATIONALIZATION SECTION  
94 OF THE CONSUMER PROTECTION ACT, 2012**

In its petition, the Consumer Federation of Kenya had prayed for operationalization of Section 94 the consumer protection Act, 2012. Section 94 provides **for consumer representation on all regulatory bodies and mandates the appointing authorities to have due regard to accredited consumer organizations and the advisory committee making such appointments.**

After deliberations, it was resolved as follows that though the petition appears justified, the consumer organization envisaged in the Consumer Protection Act is nonexistent at the moment. Considering that membership of all regulatory bodies in Kenya are public entities, their services are construed to mean protecting consumer interests.

**MIN.NO. DCF/95/2014      ADJOURNMENT**

The Chairperson adjourned the meeting at 12. 26 p.m.

Signed.....

Chairperson

Date.....19-04-2016.....

**MINUTES OF THE 24<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON THURSDAY 14<sup>TH</sup> APRIL, 2016 IN COMMITTEE ROOM, 5<sup>TH</sup> FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00AM.**

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**PRESENT**

1. Hon. Benjamin Langat, MP
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Anyanga Andrew Toboso, MP
4. Hon. Mary Emase, MP
5. Hon. Sammy Mwaita, MP
6. Hon. Ogendo Rose Nyamunga, MP
7. Hon. Daniel Epuyo Nanok, MP
8. Hon. Kirwa Stephen Bitok, MP
9. Hon. Sammy Koech, MP
10. Hon. Jones Mlolwa, MP
11. Hon. Abdul Rahim Dawood, MP
12. Hon. Ronald Tonui, MP
13. Hon. Timothy Bosire, MP
14. Hon. Eng. Shadrack Manga, MP
15. Hon. Patrick Makau, MP
16. Hon. Sakwa John Bunyasi, MP

**Chairperson**

**ABSENT WITH APOLOGIES**

1. Hon. Nelson Gaichuhie, MP
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Shakeel Shabbir, MP
4. Hon. Alfred Sambu, MP
5. Hon. Abdullswamad Shariff, MP
6. Hon. Sakaja Johnson, MP
7. Hon. Dennis Waweru, MP
8. Hon. Iringo Cyprian Kubai, MP
9. Hon. Joash Olum, MP
10. Hon. Sumra Irshadali, MP
11. Hon. Lati Lelelit, MP
12. Hon. Tiras Ngahu, MP
13. Hon. Joseph Limo, MP

**Vice-Chairperson**

**IN ATTENDANCE**

**NATIONAL ASSEMBLY**

- |                        |   |                       |
|------------------------|---|-----------------------|
| 1. Mr. Evans Oanda     | - | First Clerk Assistant |
| 2. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 3. Mr. Erick Ososi     | - | Research Officer      |

**MIN.NO. DCF/096/2016: PRELIMINARIES**

The Chairperson called the meeting to order at 10:35am followed by a word of prayer from Hon. Sakwa John Bunyasi, MP.

**MIN.NO. DCF/097/2016: Consideration and adoption of the report on the public petition by residents of sigowet/soin constituency on privatization of Muhoroni Sugar Company limited (in receivership)**

After some discussions, this matter was deferred to a later.

**MIN.NO. DCF/098/2016: Consideration and adoption of the report on the public petition by the Consumer Federation of Kenya (cofek) on operationalization of section 94 of the Consumer Protection Act, 2012 and amendment of section 16(3) of the Finance Act, 2013**

The Committee considered and unanimously adopted the draft report.

**MIN.NO. DCF/099/2016: consideration and adoption of the report on the Banking (Amendment) Bill, 2015**

The Committee considered and unanimously adopted the report on the Banking (Amendment) Bill, 2015

**MIN.NO. DCF/100/2016: consideration and adoption of the report on the Controller of Budget Bill, 2015**

The Committee considered and unanimously adopted the report on Controller of Budget Bill, 2015. It was agreed that the amendments to the bill would be discussed at a later date.

**MIN.NO. DCF/101/2016: Challenges facing the Banking Sector**

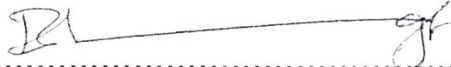
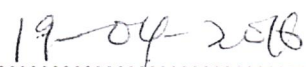
The Committee considered the Memo from the Directorate of L& P conveying the resolution of the House requesting the Committee to investigate the matter. In the Memo, the Committee was required to investigate the matter under the following terms of reference:-

1. Role of the CBK as a regulator in the Financial Sector;
2. Legal framework governing the financial sector
3. Governance issues in CBK of Kenya Prior to June, 2015
4. Role of auditors in auditing financial institutions
5. Any other issue incidental to the inquiry

The Committee resolved to invite the Parliamentary Budget Office and the Legal Department to its meeting scheduled for Tuesday 19<sup>th</sup> April, 2016 to brief it on the above matter.

**MIN.NO. DCF/102/2016: ANY OTHER BUSINESS**

There being no other business, the meeting was adjourned at 1:55pm.

Signed..........Date..........  
Chairperson

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE	TIME		
14/04/2016	10.00 AM		
AGENDA	CONSIDERATION AND ADOPTION OF REPORTS ON PETITIONS AND BILLS		
NAME	TITLE	SIGNATURE	
1 Hon. Benjamin Agat	Chairman		
2			
3 Hon. T. M. E. Busie	Member		
4 Hon. Dr. Obuan Oginge	"		
5 Hon. A. Kehinde	"		
6 Hon. Kenneth Stephen Bity	"		
7 Hon. SAKWA BUNYARI	"		
8 Hon. Jones Mlotwa	"		
9 Hon. Eng. S. R. Manna	"		
10 Hon. Patricia Mashe	"		
11 Hon. Anyanga Andrew Toboso	"		
12 Hon. Daniel Epyo Nauri	"		
13 Hon. Mary Emaase	"		
14 Hon. Sammy Wech	"		
15 Hon. RONALD TONO	"		
16 Hon. Rose Mwanuzi	"		
17 Hon. Sunny Murety	"		
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Meky Place, Block F-45  
Ngong Road/Ring Rd Kilimani  
P.O Box 2733-00200, City Square  
NAIROBI  
Website: www.cofek.co.ke



Tel: 254-020-2615496, 3867  
Cell: 254-715555550, 0770  
0733180008; Fax: 254-020-  
Email: hotline@cofek.co.ke  
Twitter: @ConsumersKenya

## Consumers Federation of Kenya

February 19, 2014

**Mr Justin N. Bundi**  
Clerk to the National Assembly  
Parliament Buildings  
NAIROBI

Dear *Mr. Bundi,*

**RE: COFEK PETITION TO PARLIAMENT OVER IMPLEMENTATION OF SECTION 16(3) OF THE FINANCE ACT, 2013 AND SECTION 94 OF THE CONSUMER PROTECTION ACT, 2012**

We, the Consumers Federation of Kenya, a non-political and non-profit Society registered under the Societies Act, Cap 108 (Section 10) Laws of Kenya on March 26, 2010 and as informed by provisions of Article 37 and 119 of the Constitution of Kenya 2010 hereby draw the attention of the House to the following;

(a) The need to urgently amend Section 16(3) of The Finance Act, 2013 which section requires thirty per cent amount of tax in dispute to be paid to the Kenya Revenue Authority (KRA) prior to appeal on the following grounds;

- i. This section is unconstitutional as it contravenes Article 50(2)(a) of the Constitution of Kenya 2010 which states that "Every accused person has the right to a fair trial, which includes the right to be presumed innocent until the contrary is proved. What this section means is that one is presumed 30% guilty until the contrary is proved as regards tax levies which are singularly determined by KRA.
- ii. The offending section is therefore punitive and subject to potential abuse of arbitrariness of the KRA as well as potential extortionist tendencies of its unscrupulous officers
- iii. The said section is adversely affecting Kenya's competitiveness and global image as an investment destination thereby hurting the foreign direct investments and employment opportunities

THAT we hereby confirm that efforts have been made to have the matter addressed by the Finance, Trade and Planning Committee of the National Assembly, in vain as our requests to meet with the Committee on the same, through the Clerk's office were not granted. /2



### Our Services:

- Consumer research
- Consumer education
- Consumer information
- Assessments & rating
- Product certification
- Consumer litigation
- Consumer publications

(b) **The need for Parliament to direct and ensure that Section 94 of the Consumer Protection Act, 2012.** This section requires consumer representation on all regulatory agencies such as the Central Bank of Kenya, Communications Authority of Kenya among others. Since the Act was operationalized on March 14, 2014 there has been no attempt by the Executive to implement the same. The petitioner has held two meetings with the Attorney General and sent numerous reminders to concerned appointing authorities, in vain.

THAT we hereby confirm that the issues in respect of which the two petition is made are not pending before any court of law, or constitutional or legal body

**HEREFORE your humble petitioners Pray that Parliament --**

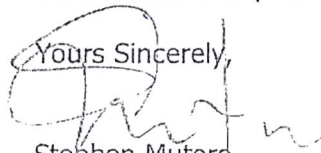
(a) Without delay, debates this matter with a view to amending the offending Section 16(3) of the Finance Act, 2013

(b) Parliament requires H.E the President and all Cabinet Secretaries to immediately comply with provisions of Article 46 of the Constitution and especially Section 94 of the Consumer Protection Act, 2012 in ensuring consumer representation on all regulatory agencies

THAT this petition is competently made and signed for and on behalf of the Consumers Federation of Kenya (Cofek) by its Secretary General, Mr Stephen Mutoro of ID No. 1371511 and of P.O Box 2733-00200, Nairobi.

I look forward to your early and favourable response.

Yours Sincerely,



Stephen Mutoro  
**Secretary General**

**CC:**

Hon. J.B.N Muturi  
Speaker to the National Assembly  
Parliament Buildings  
**NAIROBI**



EVANS  
pls deal  
FA 02/4

**MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT  
Office of the Principal Secretary**

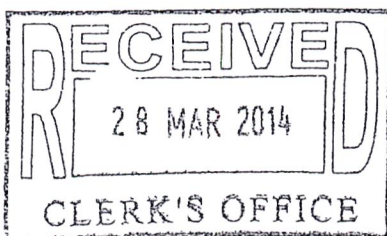
Telephone: 020-2731531-9  
0704097021/23  
0788484840/41  
Fax: 020-2731511  
Email: [ps@industrialization.go.ke](mailto:ps@industrialization.go.ke)  
When replying please quote:

Social Security House BLK 'A'  
Bishops Road, Capital Hill  
P.O. Box 30547 - 00100  
NAIROBI

**Ref: MOI/ CONF 1/21**

**Date: 27 March, 2014**

**Mr. Justin Bundi, CBS**  
Clerk of the National Assembly  
P.O Box 41842-00100  
NAIROBI



① Mrs. K...  
T...  
S...

Dear *Mr. Bundi,*

**RE: CONSUMERS FEDERATION OF KENYA (COFEK) PETITION TO PARLIAMENT OVER THE IMPLEMENTATION OF SECTION 94 OF THE CONSUMER PROTECTION ACT, 2012.**

1/27/14

I make reference to your letter dated 17<sup>th</sup> march, 2014, REF: KNA/DC/FPT 2013(15).

According to section 46(1) of the constitution consumers have the right to:-

- a) goods and services of reasonable quality;
- b) the information necessary for them to gain full benefit from goods and services;
- c) the protection of their health, safety and economic interests; and
- d) Compensation for loss or injury arising from defect in goods and services.

Parliament enacted the Consumer Protection Act 2012 to operationalise the above provisions. Section 94 of the Act provides for consumer representation on all regulatory bodies and mandates the appointing authorities to have due regard to accredited consumer organizations and the advisory committee making such appointments.

Our Ministry has taken note of the above and would wish to update as follows:



- i. The Kenya Accreditation Service (KENAS) is a State Corporations under our Ministry, whose functions include to:
- ❖ Develop, regulate and review the criteria or requirements for accreditation and conformity of assessment bodies;
  - ❖ Accredite conformity assessment bodies;
  - ❖ Promote the use of accreditation marks and certificates issued to accredited marks and certificates issued to accredited conformity assessment bodies;
  - ❖ Establish and nurture relations and co-operation with regional and International accreditation bodies, persons, associations and Organizations that Kenas may consider desirable or appropriate in furtherance of the objectives and purposes for which kenas is established.
  - ❖ Promote accreditation as a means of facilitating regional and International trade and enhancing economic performance and transformation.
  - ❖ Raise awareness on the need and importance of accreditation.

KENAS is established under Kenya Accreditation Service Order 2009 Legal Notice No. 55 of 2009 made under the State Corporations Act. KENAS is currently working on an accreditation draft Bill 2014, section 8(a)v of the bill has provided for consumer representation in the Board.

- ii. The Kenya Bureau of Standards (KEBS) is established under the Standards Act. The functions of the bureau include inter-alia to:-

Make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which and the manner in which they may be manufactured, produced, processed or treated.

The National Standards Council (NSC) is established under the Act to run the bureau. The Council members are appointed by the Minister/Cabinet Secretary. Upon the expiry of the terms of the current Council Members, we shall re-look the provisions of the Standards Act with a view to co-opting representatives from COFEK.

- iii. The Kenya Leather Development Council (LDC) is established under legal notice 114 of 9<sup>th</sup> September 2011; the functions of the Council include inter-alia to:
- ❖ Promote direct coordinate, all activities in the leather subsector
  - ❖ Advise the Government of national strategies and policies within the leather sector.
  - ❖ Undertake research and development within the Sector



The Council draws representation from Livestock Marketing Council, hides and skins traders, footwear&leather products manufacturers and tanners among others. Currently the Council is exploring ways of drafting a bill that will provide for a regulatory framework. The Ministry shall ensure that Consumers representation is factored in the bill.

- iv. Due to the ongoing reforms within the State Corporations, the Ministry will at some point re-organize some Boards. For example, there is a proposal to merge Kenya Industrial Property Institute (KIPI), Anti Counterfeit Agency (ACA) and the Kenya Copyright Board. The merger implies that the Boards shall be re-organized, at the point of constituting the Board we shall factor in consumer representation. There is also a proposal to place the Sacco Societies Regulatory Authority (SASRA) under the Capital Markets.

It is important to mention that the State Corporations within the Ministry send their drafting instructions for bills to the Attorney General through this office. When they do we shall ensure that section 94 of the Consumer Protection is fully complied with.

I have under separate cover requested COFEK to forward resumes/curriculum vitae for their members to my office for our further action.

Yours *Sincerely*



Dr. Wilson Songa, MBS  
**PRINCIPAL SECRETARY**



(3) A member of the Tribunal shall hold office for such period, not exceeding two years, specified in his appointment unless, prior to the expiration of such period—

- (a) he resigns his office by written notification under his hand addressed to the Minister; or
- (b) the Minister, being satisfied that the member is unfit by reason of mental or physical infirmity to perform the duties of his office, or that the member has failed to attend at least three consecutive meetings of the Tribunal, revokes his appointment.

(4) The quorum for a meeting of the Tribunal shall be the chairman and two other members.

(5) The members of the Tribunal shall be entitled to receive such subsistence and travelling allowances as the Minister may determine.

(6) The members of the Tribunal shall not be personally liable for any act or default of the Tribunal done or committed in good faith in the course of exercising the powers conferred by this Act.

(7) The Minister may make rules—

- (a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of an appeal;
- (b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;
- (c) prescribing the manner in which the Tribunal shall be convened and the places where and the time at which sittings shall be held;
- (d) prescribing a scale of costs which may be awarded by the Tribunal; and
- (e) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals thereto.

(8) The qualifications and disqualifications set out in sections 82(2A) and (2B) shall, with the necessary modifications, apply with respect to the members of the Tribunal.

[Act No. 57 of 2012, s. 21.]

#### **84. Notice of objection to assessment**

(1) Any person who disputes an assessment made upon him under this Act may, by notice in writing to the Commissioner, object to the assessment.

(2) A notice given under subsection (1) of this section shall not be a valid notice of objection unless it states precisely the grounds of objection to the assessment and is received by the Commissioner within thirty days after the date of service of the notice of assessment; but if the Commissioner is satisfied that owing to absence from Kenya, sickness or other reasonable cause, the person objecting to the assessment was prevented from giving the notice within that period and there has been no unreasonable delay on his part, the Commissioner may, upon application by the person objecting, and after deposit by him with the Commissioner of so much of the tax as is due under the assessment under section 92, or such part thereof as the Commissioner may require, and the payment

of any interest due under section 94 of this Act, admit the notice after the expiry of that period and the admitted notice shall be a valid notice of objection:

Provided that the objection made within the thirty days shall not be valid unless it is accompanied by a return of income together with all the supporting documents, where applicable.

(3) A person aggrieved by the refusal of the Commissioner to admit a notice of objection under subsection (2) may, on paying to the Commissioner that part of the amount of tax assessed that is not in dispute and thirty per cent of the tax in dispute, and on paying any interest due under section 94, appeal against the refusal to a local committee whose decision shall be final.

(3A) An appeal under subsection (3) shall be determined within six months from the date the appeal is lodged.

(3B) If an appeal under subsection (3) is determined in favour of a taxpayer, the thirty per cent of the tax in dispute paid under subsection (3) shall be refunded to the taxpayer within ninety days from the date of determination of the appeal.

(4) All the provisions of this Act relating to appeals against assessments shall, so far as they are applicable and subject to the finality of the decision of the local committee, have effect with respect to an appeal under subsection (3) of this section, and the local committee hearing the appeal may confirm the decision of the Commissioner or may direct that the notice concerned shall be a valid notice of objection.

[Act No. 8 of 1991, s. 68, Act No. 9 of 1992, s. 52,  
Act No. 6 of 2005, s. 30, Act No. 38 of 2013, s. 16.]

#### **85. Powers of Commissioner on receipt of objection**

(1) Where a notice of objection has been received, the Commissioner may—

- (a) amend the assessment in accordance with the objection; or
- (b) amend the assessment in the light of the objection according to the best of his judgment; or
- (c) refuse to amend the assessment.

(2) Where the Commissioner either—

- (a) agrees to amend the assessment in accordance with the objection; or
- (b) proposes to amend the assessment in the light of the objection and the person objecting agrees with the Commissioner as to the proposed amendment,

the assessment shall be amended accordingly and the Commissioner shall cause a notice setting out the amendment and the amount of the tax payable to be served on that person.

(3) Where the Commissioner—

- (a) proposes to amend the assessment in the light of the objection and the person objecting does not agree with the Commissioner as to the proposed amendment, the assessment shall be amended as proposed by the Commissioner and he shall cause a notice setting out such amendment and the amount of the tax payable to be served on such person; or
- (b) refuses to amend the assessment, he shall cause a notice confirming the assessment to be served on such person.

## No. 38

Amendment to  
section 25 of Cap  
470.

**13. Section 25 of the Income Tax Act is amended—**

- (a) in subsection (1) by deleting the word “nineteen” appearing in paragraph (ii) of the proviso and substituting therefor the word “eighteen”;
- (b) in subsection (7) by deleting the word “nineteen” appearing in paragraph (a) and substituting therefor the word “eighteen”.

Amendment to  
section 34 of Cap  
470.

**14. Section 34 of the Income Tax Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (h) –**

“(i) winnings from betting and gaming”.

Amendment to  
section 35 of Cap  
470.

**15. Section 35 of the Income Tax Act is amended –**

- (a) in subsection (1), by inserting the following new paragraph immediately after paragraph (i) –

“(j) winnings from betting and gaming”.

- (b) in subsection (3), by inserting the following new paragraph immediately after paragraph (h) –

“(i) winnings from betting and gaming”.

Amendment to  
section 84 of Cap  
470.

**16. Section 84 of the Income Tax Act is amended by deleting subsection (3) and substituting therefor the following new subsections—**



(3) A person aggrieved by the refusal of the Commissioner to admit a notice of objection under subsection (2) may, on paying to the Commissioner that part of the amount of tax assessed that is not in dispute and thirty percent of the tax in dispute, and on paying any interest due under section 94, appeal against the refusal to a local committee whose decision shall be final.

(3A) An appeal under subsection (3) shall be determined within six months from the date the appeal is lodged.

(3B) If an appeal under subsection (3) is determined in favour of a taxpayer, the thirty percent of the tax in dispute paid under subsection (3) shall be refunded to the taxpayer within ninety days from the date of determination of the appeal.

17. Section 114 of the Income Tax Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Commissioner may, where he is satisfied that a person has committed an offence under this Act, other than an offence under section 126 of this Act, in respect of which a penalty of a fine is provided, or in respect of which anything is liable to forfeiture, compound the offence and may order that person to pay such sum of money, not exceeding the amount of the fine to which he would have been liable if he had been prosecuted and convicted of the offence, as he may deem fit;

Provided that the Commissioner shall not exercise his powers under this section unless the person admits in writing that he has committed the offence and requests the Commissioner to deal with the offence under this section.

(b) by inserting the following new subsection immediately after subsection (2) —

Amendment of  
section 114 of Cap  
470.

(2) Without prejudice to the generality of subsection (1), the regulations made under this section shall-

- (a) prescribe anything that is required to be prescribed under this Act;
- (b) provide for passenger rights and the standards of service by air carriers including access to necessary services while on a grounded air carrier, customer complaints, notification of delays, cancellations, overbooking, baggage concerns, compensation for passengers and the right to deplane where such rights are infringed.

(3) There may be annexed to a breach of the regulations made under this section a penalty of a fine not exceeding the sum of five hundred thousand shillings or imprisonment for a term not exceeding two years or both such fine and imprisonment.

**Representation.**

**94.** There shall be consumer representation on all regulatory bodies and the respective appointing authorities shall have due regard to accredited consumer organizations and the Advisory Committee in making such appointments.