

ALLEN WAIYAKI GICHUHI C.Arb.

Advocate, Commissioner for Oaths & Notary Public

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Our Ref: 146/Gen

Your Ref: TBA

Date: 13th February 2018

Attention: J. K. Ndombi

Senior Deputy Clerk,
The National Assembly,
Main Parliament Buildings,
NAIROBI.

Dear Sirs,

RE: PETITION

The above matter and your letter dated 2nd February 2018 refer.

Please find enclosed herewith the amended Petition as required for your perusal and further action.

Yours faithfully,


ALLEN WAIYAKI GICHUHI C.Arb.

PETITION

*(Under Article 119(1) of the Constitution, 2010 and Section 3 of the Petition to Parliament
(Procedure) Act No. 22 of 2012, Laws of Kenya)*

**TO: THE NATIONAL ASSEMBLY
MAIN PARLIAMENT BUILDINGS
NAIROBI**

I, ALLEN WAIYAKI GICHUHI, the undersigned, a citizen of Kenya **DRAW** the attention of the House to the following:

1. Cognizant of the constitutionality of consumer protection as enshrined in Article 46 of the Constitution;
2. Cognizant of the inherent failure of the Consumer Protection Act's Part VII to adequately and comprehensively protect consumers in respect of the interest charged;
3. Cognizant of the inherent unfairness in protecting borrowers from banking institutions but not from other financial institutions including mobile lenders and microfinance institutions;
4. Further cognizant, of the inherent limitations of Section 44A of the Banking Act in respect to automatic application, debt recovery litigation, and method of application;
5. Taking into account, the necessity of uniform regulation of the credit industry so as to universally protect consumers from oppressive lending practices in line with Article 46 of the Constitution;
6. Recognizing that ordinary citizens are suffering at the hands of unscrupulous lenders and shylocks who are charging high interest rates at 5% monthly with no in duplum protection for innocent borrowers;
7. Further recognizing that the various Acts under which credit services are provided including the Microfinance Act, 2006 and The Housing Act Cap 117 do not adequately protect borrowers and mobile lending which is the fastest growing market segment remains largely unregulated;
8. Further noting, that the Money Lenders Act was repealed in 1984 and has not been replaced with any other act to regulate individuals who provide credit services; and
9. Respectful of the need to ensure equity and equality for all Kenyan Citizens before the law.

THAT this being a legislative matter solely within the purview and province of Parliament, the matter is hereby submitted for first consideration to Parliament and **THAT** the issues in respect of which this petition is made are not pending before any court of law, constitutional,

or legal body to the Petitioner's best belief and knowledge **HEREFORE your humble Petitioner prays that Parliament:**

Do consider the following amendments with respect to the Consumer Protection Act for the inclusion of *in duplum* provisions in the following terms:

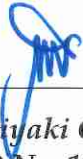
1. *In duplum* provisions shall be applicable to all credit providers and credit agreements notwithstanding nature of the parties to the credit agreement. These provisions shall, for the avoidance of doubt, apply equally to mortgage service providers and mobile lending.
2. Any lender shall be limited in what may be recovered from a debtor with respect to a non-performing loan to the maximum amount under Section 3.
3. The maximum amount referred to in subsection ii is the sum of the following:
 - i. The principal owing when the loan becomes non-performing;
 - ii. Interest, in accordance with the contract between the debtor and the institution and in accordance with the prevailing law; AND
 - iii. Expenses lawfully incurred in the recovery of any amounts owed by the debtor;

Provided that despite any provision of any other law or statute, or a credit agreement to the contrary, the amounts in 3(ii) and (iii) above that accrue during the time that a consumer is in default may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time the default occurs.

4. In all credit agreements, interest shall automatically stop to run when it equals the unpaid principal, and where the accrued interest or a part thereof is paid, it shall start to run again but only until it is again as high as the unpaid principal.
5. As long as the rule in (iv) above, suspends the running of interest, all credits to the account shall be appropriated to accrued interest before principal.
6. Recapitalization of interest shall not in any way affect compliance with rules (i) to (v) hereinabove.

And your Petitioner will ever Pray.

DATED at NAIROBI this 23RD day of JANUARY 2018.



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