



NR&Co Quarterly

...Legal Briefs

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Editorial team

Rosemary Kamau
Ruth Regero
Jane Muhia
Evans Ng'etich

Contributors

Patrick Karanja
Evans Ng'etich
Ngatia Wambugu

Design & layout:

Grace King'ori

Publisher

Njoroge Regeru & Company Advocates

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KARIBU!

Editor's Note



Ruth Regero
ruth@njorogeregeru.com

Human rights have the basic characteristics of being inherent, fundamental, inalienable, indivisible, universal and interdependent. Accordingly, human rights cannot be granted or earned, they can only be recognised. Additionally, they cannot be arbitrarily taken away from any individual, a characteristic well-

factored in our Constitution, 2010.

Being interdependent, the fulfillment or exercise of one right cannot be had without the realization of another. Consequently, every person has a duty to observe and respect the rights of other persons.

Chapter Four of the Constitution of Kenya recognizes various human rights including but not limited to the right to life, freedom of expression, freedom from discrimination, human dignity, right to fair administrative action and right to own property.

The freedom of expression includes the freedom of artistic creativity which, similar to other rights, should jealously be guarded. It is undeniable that creativity and innovation have the strength to change world trends whilst providing extra-ordinary solutions to some of the common problems facing the world such as access to clean water and the right to a clean and healthy environment. Consequently, various

laws have been enacted in Kenya to protect artistic creativity which laws include the Copyright Act, 2001, Industrial Property Act, 2001 and the Trade Marks Act. Additionally, Kenya is a signatory to and has adopted various treaties and conventions guarding the freedom of expression.

In this quarter, we highlight various laws and court decisions that have or may have a significant effect in various sectors in our Legislative Updates' and Case Highlights' segments.

In our Contributor's Platform segment we have included captivating articles on corporate sustainability, trade secrets and the rights of widows with respect to the constitutionally-protected right to own property.

The NR & Co team also welcomes Ms. Kendi Murungi and Ms. Wilkistar Mumbi to the Corporate Commercial and Conveyancing Department and Dispute Resolution Department respectively.

Finally, we are not oblivious of the fact that this quarter has been quite a musical one with the world recognising and celebrating various genres of music and Korean boy band, BTS, becoming the first ever K-Pop group to address the United Nations. To this end, we highlight some of the international days for rock, reggae and country music at the last page of this issue.

Enjoy our Q3 Legal Briefs!

Njoroge Regeru & Co. Advocates

Arbor House, Arboretum Drive
P.O Box 46971-00100 GPO Nairobi

Tel: +254-020-2612531/2613646

020-3586592/2319224,

Cell: 0722 206 884, 0733 608 141, 0752 431 961

Fax: +254-020-2349211, +254-020-2718485,

2375302

www.njorogeregeru.com



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THE FIRM

We are pleased to introduce Ms. Kendi Murungi who recently joined the Firm as well as Ms. Wilkistar Mumbi who was a Pupil at the Firm in 2016.

WELCOME



Kendi is an Advocate of the High Court of Kenya. She joins the Firm's Corporate, Commercial and Conveyancing Department and specializes in: Real Estate and Conveyancing Law, Banking and Commercial Law.



Mumbi is an Advocate of the High Court of Kenya. Since her admission to the Bar, she has taken keen interest in litigation particularly in Civil, Commercial law and Labour Law. Her practice focuses on aiding corporates with knowledge in matters of substantive and procedural law useful in legal compliance. She joins the Firm as an associate in the Dispute Resolution Department.



On the other hand, we bid farewell to Ms. Wanjiku Kamau who has travelled for further studies in the UK. All the best Rosemary, see you soon!!

“I am trully grateful to have the Firm as a family as well as serve clients which has trully been a fulfilling and interesting journey and am looking forward to reconnecting with the Firm....”

Ms. Wanjiku Kamau.



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LEGISLATIVE UPDATES

In this issue we highlight various Acts and Bills touching on different areas of law including but not limited to the Laws of Succession, Human Rights and Tax Laws.

1. THE PUBLIC TRUSTEE (AMENDMENT) ACT, 2018

The Public Trustee (Amendment) Act, 2018 (the “Act”) amends the Public Trustee Act, Cap 168 Laws of Kenya (“the Principal Act”) by providing for the establishment of the Public Trustee Investment Board whose functions include: reviewing and overseeing matters pertaining to the investment of trust funds; formulation review and overseeing the implementation of the Public Trustee Investment Policy and advising the Attorney General on the investment portfolio.

The Act also expounds the scope of funds that the Public Trustee may receive to include payment of compensation under the Work Injury Benefits Act, Pensions Act, Civil Servants Group Accident Insurance Scheme and any other payment arising from compensation as a result of an accident.

Notably, section 9 of the Act amends section 11 of the Principal Act by increasing the monetary jurisdiction of the Public Trustee to Kenya Shillings Three Million (Kshs.3,000,000.00) from Kenya Shillings Five Hundred (Kshs.500.00).

The Act also encourages the Public Trustee to apply alternative forms of dispute resolution mechanisms to resolve disputes relating to the administration of estates and trusts.

Kindly also note that section 28 of the Act amends the Principal Act by expressly excluding the provisions of the Unclaimed Financial Assets Act No. 40 of 2011 from applying to the Public Trustee.

2. THE TAX LAWS (AMENDMENT) ACT, 2018

The Tax Laws (Amendment) Act, 2018 (the “Act”) amends section 117 of the

Stamp Duty Act Cap 480 Laws of Kenya (“the SDA”) to the effect of exempting the purchase of a house by a first time home owner under an affordable housing scheme from Stamp Duty.

It also amends section 10A of the SDA by mandating the Collector of Stamp Duties to refer to the Chief Government Valuer any conveyance or transfer of any immovable property before or after registration of the relevant instruments in order to determine the true open market value of such property as at the date of the conveyance or transfer for purposes of ascertaining whether any additional stamp duty is payable.

3. THE PREVENTION OF TERRORISM (AMENDMENT) BILL, NO. 20 OF 2018

This is a Senate Bill published on 19th July, 2018. It seeks to amend the Prevention of Terrorism Act with a view of imposing a duty of countering radicalization on the administrators of institutions, parents and guardians and County Education Management Boards.

Under the Bill, an institution administrator is defined as “a person charged with the day to day management of an early childhood education institution, a school of basic education, college or university.” Accordingly, if enacted as is, it will mandate institution administrators with the duty of ensuring measures are put in place in their respective institutions to prevent radicalization and violent extremism. The said measures include: building the resilience of learners through sensitization, building strong support and care networks for students and working with key institutions to counter ideological challenges associated with terrorism. To this end, the institution administrators will be required to keep and update records of all their students, ensure teachers are sensitized to detect extremism behaviour in students and collaborate with key stakeholders in countering radicalization.

More so, the Bill seeks to entrust County Education Management Boards with the responsibility of: formulation of county specific anti-radicalization programs, ensure the teaching of standardized curriculum in all learning institutions, carry out thorough background checks on institution administrators, ensure publicly owned resources and venues are not used for the dissemination of extremist views, designing of appropriate amnesty programmes to cater for students who turn back from radicalization.

Under the Bill, parents and guardians are required to: monitor the activities of students after school, to immediately report missing students, familiarize themselves with intervention measures and collaborate with schools, religious leaders and county leadership in building strong support networks for students to counter radicalization. To that effect, the Bill lays down a detailed framework for the reporting of missing students.

The Bill is currently pending at the Senate Committee on National Security, Defence and Foreign Relations.

4. THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF ECONOMIC AND SOCIAL RIGHTS BILL, NO. 27 OF 2018

This is also a Senate Bill which seeks to establish a framework for the preservation of human dignity and for the promotion, monitoring and enforcement of economic and social rights.

Accordingly, the Bill imposes obligations with respect to realization of social and economic rights principally on national and county governments.

Notably, section 6(3) of the Bill mandates the Kenya National Commission on Human Rights to set the minimum standards that county governments must adhere to in carrying out the said imposed obligations. Additionally, the Bill requires county governments to incorporate within

their county integrated plans, county-specific strategic plans that are aimed at ensuring the realization of economic and social rights.

The Bill further vests the Kenya National Commission on Human Rights with an oversight role in ensuring that the national and county governments and concerned agencies discharge their respective responsibilities in ensuring the aforesaid obligations are met.

5. THE COUNTY OUTDOOR ADVERTISING CONTROL BILL, 2018

This is a Senate Bill published on 13th July, 2017 that seeks to provide for a legal

framework for the regulation of outdoor advertisement in the counties. It is inspired by the need to achieve a balance between the need to advertise and the protection of amenity and public safety.

It makes it mandatory for a person intending to engage in non-exempted outdoor advertising to apply for an outdoor advertising license to the respective county executive committee member.

Accordingly, it prescribes the formal and substantial requirements of a valid application and further stipulates the factors to be considered by the concerned county executive committee member in determining whether to issue the license or not.

The Bill also prohibits the alteration, removal, re-erection, or an upgrade of an outdoor advertisement without the approval of the relevant county executive committee member. Additionally, the Bill provides for the revocation of an outdoor advertisement licence and the factors to be considered by the county executive committee member in that regard.

The Bill is currently pending before the Senate Committee on Information Communication and Technology.



CASE HIGHLIGHTS

The last quarter has been graced with numerous court decisions including those touching on the law of trademarks, copyright and the right to a fair hearing with respect to an employee facing disciplinary action. Below is a summary of the same:-

1. SONY CORPORATION V SONY HOLDING LIMITED (2018) eKLR

This case relates to the registration of trademarks where the main issue before the Court was on proving that a trade mark was well known in Kenya so as to be accorded protection under section 15A(1) of the Trade Marks Act (the “Act”).

In summary, the facts giving rise to this dispute were that Sony Holdings Ltd (the Respondent in the Appeal) sought to register its name “*Sony Holdings Limited*” as a Trademark. Consequently, it filed two Applications for Trademarks Registration TMA No.0065981 Sony Holdings (words and Device) and TMA No.0065902 Sony Holdings (word mark). As required by the Act, the Marks were advertised in the Industrial Property Journal on 31st May 2011. On 28th February 2012, the Appellant filed a Notice of Opposition against the Registration of the Marks on the basis that, inter alia, it is the registered proprietor of existing Trade Marks. After hearing the parties, the Assistant Registrar gave her ruling dismissing the Opposition proceedings with costs and allowed the Respondent’s Marks to proceed to Registration. Being dissatisfied with the Registrar’s decision, the Appellant filed the Appeal that was being considered by the Court.

The appellants key argument was that its existing Trade Marks are well-known marks in Kenya and thus falling within the ambit of the protection under section 15A(1) of the Trade Mark Act, which refers to trade marks entitled to protection under the Paris Convention or the WTO Agreement and requires that they ought to be **well known** in Kenya as being the mark of a person who is a national of a convention country or a person who is domiciled in or has a real and effective industrial or commercial establishment in a convention country,

whether or not that person carries on business or has any goodwill in Kenya. The question therefore was whether ‘Sony’ is a well-known Trade Mark in Kenya.

The High Court observed that the objects of section 15(A) of the Act is to circumvent the limitations of the Law of Passing off which requires the owner of a Mark to establish goodwill in the country where protection is sought and extend protection to the owner of a well-known trademark who was yet to have a business or goodwill in Kenya. **What is well-known then?** The Court was of the view that one cannot ride on evidence of international recognition or recognition as a top ranking brand in sales revenue to claim they are well-known in Kenya rather evidence in respect to Kenya is specifically required to be adduced. Additionally, the existence of Global Registrations of Trade Marks in other jurisdictions is not sufficient prove thereof. While agreeing with the Registrar the Judge upheld the principle of evidence that a Court of Law would require a party who asserts to prove any matter that is not admitted. He asserted that:

“The conclusion by the Assistant Registrar, and now upheld by this Court, that the Appellant had failed to prove that “SONY” is a well-known Trade Mark in Kenya may be a shock to many. Is it not obvious to the Assistant Registrar and the Judge that “SONY” is a Global Brand and well-known to many Kenyans, it can be asked? The trouble however is that in the absence of proof presented by the parties or matters which the Court can take judicial notice, the Assistant Registrar and this Court cannot draw a conclusion from its own personal perception. The factors for consideration in determining whether a Mark is a well-known Mark are clearly spelt out and known. A person asserting well-knownness of a Mark bears the responsibility of submitting information (evidence) in respect to factors from which the competent authority may infer that the Mark is indeed well known. This is not left to the perception or personal inclination of the competent authority.”

In addition, the Court concluded that registration of the Trade Mark in certain classes in favor of the Respondent was contrary to section 15(1) of the Act and

thus the Appeal partially succeeded in that respect.

For more information visit: <http://kenyalaw.org/caselaw/cases/view/153543/>

2. INCOGNITO PRODUCTIONS LIMITED & ANOTHER V NATION MEDIA GROUP (2018) eKLR

The Plaintiff brought a Copyright action against the Defendant with respect to a TV and Radio show dubbed Lit360 and sought interim orders pending the hearing and determination of the main suit.

One of the prayers sought was an injunction restraining the Defendants from advertising and airing the TV and Radio Show and all corresponding promotional material related thereto until further orders of the Court.

The Parties had an ongoing relationship and had entered into various Television Presenters’ Agreements (TPAs) which have been renewed from time to time since the year 2005. The Parties had engaged on discussions on how the Defendant could contribute and advance the Local Music Industry. It was in one of the meetings that the Plaintiff introduced the idea of a TV and Radio Station Show that would be simulcast, that is, a simultaneous transmission of the same programme on Radio and Television or on two or more channels. The Plaintiff prepared a written proposal of the concept as requested by the Defendant and made a presentation. The Defendant then agreed to facilitate the shooting of the concept in a Pilot project and thereafter there were back and forth discussions on some budget proposals. In March 2017 the Defendant asked the Plaintiff to shut down the Project and the Plaintiff thought it was the end of it.

However, in May 2018 the Defendant released a media statement announcing the launch of a media Label under the name Lit 360 which the Plaintiff claimed to be a result of their proposal and pilot project. The Plaintiffs felt aggrieved as they had

not been involved nor had the Defendant sought their authorization. This prompted the Plaintiff to institute the suit.

The Court while giving its ruling highlighted various issues. On the question of whether the Plaintiff was seeking to protect an idea or an expression of an idea, the Court was of the view that the Plaintiff's proposal had evolved from an idea to an expression of an idea as the ideas had been expressed in a pilot show. *Was the expression original?* The Defendant alleged that the Plaintiff's proposal was similar to two shows in the United States of America. The Court observed that the issue would need to be ventilated during trial. Further, the Court observed that the Plaintiff ought to have insisted on a non-disclosure agreement when the issue came up if they thought that their proposal needed protection. As a consequence of the imprudence they would have to suffer the inconvenience caused until the suit is heard and determined. The Court in concluding its decision observed that it is upon the owner of Intellectual Property to safeguard the information concerning it from misuse, infringement or breach of confidence.

The Plaintiff's prayers were thus declined.

For more information visit:

<http://kenyalaw.org/caselaw/cases/view/154292/>

3. SIMON N. MWANIKI & 25 OTHERS V PERMANENT SECRETARY MINISTRY OF DEFENCE & 3 OTHERS (2018) eKLR

The Petitioners were civilians employed by the Ministry of Defence in various capacities and had undergone training with the National Industrial Training Institute (NITA).

In 2013 the Permanent Secretary of the Ministry of Defence (the 1st Respondent) instructed all the members of the civilian personnel to submit certificates issued by NITA for verification. The 1st Respondent would later communicate that the certificates had been found to be fake and the Petitioners were issued with a notice to show cause why disciplinary proceedings should not be instituted against them. They were then issued with letters informing them that they had been interdicted from exercising their duties pending the finalization of their cases. Consequently, they were placed on half-pay and their commuter allowance withheld.

One of the key issues for the Court's determination was whether the Petitioners were accorded a fair hearing in the ensuing disciplinary proceedings. It was the Petitioners case that they were condemned unheard because they were only given an

opportunity to respond in writing and there was no oral hearing.

The Court held that, in determining whether an oral hearing is necessary, it is vital to examine the circumstances of the subject disciplinary process. Accordingly, the Court was of the view that an oral hearing was indeed necessary in the Petitioners' case as they would have had an opportunity to explain the issues leading to their interdiction which explanation could have been as to when they took tests, the manner and mode in which they received the certificates and why they believed they were authentic.

Based on the foregoing, the Court held that the Petitioners' rights under Articles 41, 47 and 50 of the Constitution were infringed upon and it awarded each Petitioner Kshs. 500, 000 as damages for the breach.

Consequently, according an employee who is facing disciplinary action the right to only respond in writing may not be sufficient and could give rise to liability in the form of damages.

For more information visit:

<http://kenyalaw.org/caselaw/cases/view/156269/>



INTERLUDE.....



'It is said that when someone is telling you the truth they look you straight in the eye which is why you should believe pirates 50% of the time...'

Wilty

'One Sunday morning, an old cowboy entered a church just before the services were to begin. Although the old man and his clothes were spotlessly clean, he wore jeans, a denim shirt and boots that were worn and ragged. In his hand he carried a worn-out old hat and an equally worn, dog eared Bible.

The Church he entered was in a very upscale and exclusive part of the city. It was the largest and most beautiful church the old cowboy had ever seen. The people of the congregation were all dressed with expensive clothes and fine jewelry. As the cowboy took a seat, the others moved away from him. No one greeted, spoke to, or welcomed him. They were all appalled by his appearance and did not attempt to hide it.

As the old cowboy was leaving the church, the preacher approached him and asked the cowboy to do him a favor, "Before you come back in here again, have a talk with God and ask him what he thinks would be appropriate attire for worship in church." The old cowboy assured the preacher he would.

The next Sunday he showed back up for services wearing the same ragged jeans, shirt, boots and hat. Once again he was completely shunned and ignored. The preacher approached the cowboy and said, 'I thought I asked you to speak to God before you came back to our church.'

"I did," replied the old cowboy.

"And what was his reply?" asked the preacher.

"Well, sir, God told me that he didn't have a clue what I should wear. He said he'd never been in this church."

<http://boredomtherapy.com/cowboy-in-church/>



People, Planet and Profits: The Dynamics of Corporate Sustainability



Patrick Karanja
karanja@njorogeregeru.com

Corporate Sustainability has been defined as an approach that creates long-term stakeholder value by implementing a business strategy that considers every dimension of how a business operates in the ethical, social, environmental, cultural, and economic spheres. Notwithstanding the size of a business venture, corporate sustainability is now recognized as a key priority for any business that is intent on growth and remaining relevant to its consumers. This is particularly driven by consumer awareness which demands that companies not only return profit to their shareholders but more importantly that they demonstrate compliance with ethical standards and commitment to deliver their goods and services in a sustainable manner.

Understanding the Concept of Sustainability

While there is no homogenous universal definition of the term sustainability, it is commonly understood to mean the ability to meet the needs of the present without compromising the ability of future generations to meet their own needs. This definition emanated from the 1987 report by the World Commission on Environment and Development (Brundtland Commission Report) which introduced the concept of sustainable development.

Today, the term sustainability has evolved and become part of corporate culture with a focus on the need for companies to pursue growth and profitability strategies that take into consideration the relationship between the Company and its stakeholders who include not only the shareholders but also their consumers and the community affected by their business. This requires that companies incorporate sustainable development, environmental protection, social equity and justice in their economic development agenda.

The Pillars of Corporate Sustainability: People, Planet and Profits

Sustainability is perceived to constitute three (3) key pillars which include social, environment and economic pillars which are commonly referred to as people, planet and profits. It is from this agenda that the United Nations in 2016 adopted the 17 Sustainable Development Goals (SDGs) as a global blueprint to achieve a better and more sustainable future for all by the year 2030. The SDGs seek to address the global challenges which include ending extreme poverty and hunger, access to good health and quality education, promoting gender equality and access to clean water and sanitation, affordable clean energy, decent work and economic growth among others. These are also in line with Kenya's Vision 2030 and the Big Four Agenda setting out Kenya's development agenda and priorities.

The pillars of corporate sustainability can be summarized as follows:-

- 1) Environmental pillar: sustainable businesses are expected to adopt environmentally friendly practices and avoid waste.
- 2) Social pillar: sustainable companies are expected to treat their employees fairly and be a good neighbor and community member both in their

localities and globally. This means also ensuring that businesses in their supply chain adopt and implement sustainable corporate culture which includes non-discrimination, fair labour standards, respect for human rights and entrenching ethical practices to prevent bribery and corruption in their dealings.

- 3) Economic pillar: Sustainable companies are expected to return profit to their shareholders but this should not be at the expense of the other two pillars.

While many companies focus on financial reporting on the third pillar, sustainable companies are expected to also prepare nonfinancial report on all aspects of the business. This is referred to as sustainability reporting which provides data on non-financial aspects of a company's performance, including environmental, social, employee and ethical matters, and defining measurements, indicators and sustainability goals based on the company's strategy.

Why is this Relevant to Businesses in Kenya?

The three pillars of corporate sustainability are reflected in the Directors duties under section 143 (d) of the Companies Act, 2015 which require Directors of a Company to act in the way in which the director considers, in good faith, would promote the success of the company for the benefit of its members as a whole, and in so doing the director shall have regard to the impact of the operations of the company on the community and the environment. Section 143 (3) further obligates the Directors in exercise of their mandate to consider the desirability of the company to maintain a reputation for high standards of business conduct.

CONTRIBUTORS' PLATFORM

In addition to the statutory duties of Directors, corporate sustainability also ensures that a company attracts and retains high cadre of employees, business partners, financiers and customers that are conscious on the need for corporate responsibility beyond returning value for shareholders. As observed by the former CEO of Royal Dutch Shell, Jeroen van der Veer “the successful companies of the future will be those that integrate business and employees’ personal values. The best people want to do work that contributes to society with a company whose values they share, where their actions count and their views matter.”

What is Expected of Businesses to Ensure Compliance?

Kenyan laws prescribe various policies that are expected to be maintained and implemented by businesses operating in Kenya. These include, among others:-

- 1) Sexual Harassment Policy (Section 6 of the Employment Act, 2007);
- 2) Prevention of Bribery and Corruption Policy/Procedure (Section 9 of the Bribery Act, 2016);

- 3) Human Rights Policy (Employees’ Rights Policy) – (Section 15 of the Employment Act, 2007);
- 4) Privacy and Data Protection Policy (Article 31 of the Constitution of Kenya, 2010)

There are also various global guidelines that a company may require to consider in its efforts to entrench a culture of corporate sustainability. These include:-

- 1) OECD Guidelines on Multinational Enterprises;
- 2) IFC Performance Standards;
- 3) United Nations Global Compact;
- 4) Equator Principles for Project Finance;
- 5) United Nations Guiding Principles on Business and Human Rights.

These guidelines are particularly important in ensuring that a business mitigate its legal risks against potential criminal and civil liability, avoids reputational risks and is compliant with ever growing stringent requirements to become part of supply chain of multinational or leading local corporations that are particularly cautious of engaging with entities that may pose

potential noncompliance with modern slavery, bribery and corruption, human rights abuse and breach of privacy concerns which pose astronomical financial and reputational risks both for the local corporate entities and overseas parent companies.

Conclusion

Every company or business can in accordance with its size and resources decide what commensurate actions to take towards entrenching a culture of corporate sustainability and promoting sustainable development in its sphere of operation. This will not only add value towards holistic growth into a profitable friendly work environment, but also mitigate risks and losses associated with unsustainable corporate practices. To start or enhance this journey, a business should consult dynamic and knowledgeable corporate lawyers, such as Njoroge Regeru & Company Advocates, to provide relevant due diligence and guidance on compliance with corporate sustainability requirements.

Trade Secrets



Evans Ng'etich
lawyers@njorogeregeru.com

Businesses and individuals often create or deal in information assets albeit unknowingly at times. Such informational

assets may be related to a business strategy, confidential customer database, contact list, prospect list, a list of suppliers and contractors, product development and acquisition plans, contract bids, cost and profit margins, a formula or an algorithm. Most of the said information comprise assets which if leveraged may give business concerned competitive advantage over its peers. Accordingly, protection of such informational assets is indispensable in the struggle for survival in times such as the Information Age in which we live.

When you realize that the value of your informational assets lies in their secrecy, you could maintain your competitive advantage

by keeping such informational assets secret. To this end, you can protect them by way of trade secret. Whereas “trade secret” may imply technical connotation, it covers both technical and nontechnical information provided that it fits the following three-fold legal test namely; unavailability, commercial value and protection.

Firstly, the information must not be generally available or known. Secondly, the information must have actual or potential economic value that is derived from it being secret. Thirdly, reasonable measures must be taken by the proprietor to keep the said information secret.



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The aforesaid three conditions find expression in the second paragraph of article 39 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to which Kenya is a party. As such, it is obligated to provide protection for information that is secret, commercially viable owing to its secrecy and in respect of which reasonable steps have been taken to keep it secret.

Essentially, trade secret provides legal protection from unlawful misappropriation. In this regard, a proprietor of trade secret can claim remedies that are ordinarily available to intellectual property right holders upon infringement of their intellectual property rights. These remedies include damages for losses or loss of profits and accounting for profits.



Why Trade Secret?

Trade secrets offer a more readily available protection in situations where other forms of intellectual property protection are not available or financially viable. Other forms of intellectual property protection involve registration with a governmental or international authority, a process characterized by lengthy timelines and risk of disclosure.

Whereas other forms of intellectual property rights such as patents provide market exclusivity for a specified period,

trade secret secures your informational assets for as long as the information remains secret and commercially valuable.

It is less expensive compared to other forms of intellectual property protection. There are no filing costs as the only costs involved are those in respect of security. More so, the marginal cost of protecting an informational asset by way of trade secret is significantly lower than that involved in other forms of intellectual property protection.

Misgivings

Notwithstanding the foregoing, trade secret has its own misgivings. For instance, trade secrets only offer protection for as long as the information remains secret and commercially valuable.

It also only offers protection against wrongful infringement, that is, it does not protect a proprietor from persons who become aware of the information by means of independent discovery.

Additionally, other persons who independently invent a trade secret may patent such trade secret consequent upon which one could end up being the infringer irrespective of whether he or she invented it first.

It should be noted that a trade secret can be held by more than one person as long as it is generally unknown within the industry. Consequently, the proprietor cannot stop the other persons from exploitation of the trade secret unless he or she can show that they obtained it from him/her by improper means or that they are exploiting it in violation of a duty not to do so.

Reasonable measures

Protection by trade secret is lost where reasonable measures are not taken to keep the information secret. Reasonable measures in this respect mean steps that would be taken by a sensible person who is interested in keeping information secret under all circumstances. Accordingly,

the measures are context-driven. Some information demand more measures than other information.

Reasonable measures include assigning one responsible person in an organization with the responsibility of security and protection of the organization's informational assets. It may also include controls on access to informational assets by means of computer access protection, need-to-know access, system protection, encrypted transmission and storage, and keeping permanent copies under lock and key. It may also take the form of incorporating a trade secret policy in the employee guidelines and new employee orientation. Screening and pre-approving speeches, papers and presentations of members of staff helps curb loss of trade secret protection. Additionally, trade secrets ought to be thoroughly covered during employee exit. Most importantly, Non-Disclosure and Confidential Disclosure Agreements must be executed before divulging of any information that is subject to trade secret protection to third parties.

Conclusion

What really matters in the end is one's market share in which one's intellectual property rights are a means to that end. As such, work to protect your market share by identifying, profiling and securing your intellectual property assets. Let a big legal mind make decisions about your big legal issues by getting expert legal advice on your intellectual property issues.

CONTRIBUTORS' PLATFORM

Property Rights of the Widow under the Laws of Kenya



Ngatia Wambugu
lawyers@njorogeregeru.com

The widow in Kenya encounters tremendous hostility from the family of her deceased husband. The hostility is usually actuated by the desire of the family to take over/inherit the property of the deceased while totally disregarding the entitlement of the widow and her children to the same property. As a result, the rights (property rights) of the widow are denied, violated, infringed and threatened. To protect the widow and her children, the Laws of Kenya have various provisions which speak specifically to this situation. The widow and her children can thus invoke the same to forestall any violation, infringement or threat to their rights and fundamental freedoms. These various provisions of law are found in the following legal instruments:

- a) The Constitution of Kenya, 2010
- b) The Marriage Act, 2014
- c) The Matrimonial Property Act, 2013
- d) The Law of Succession Act, Cap 160
- e) Case Law.

The Constitution of Kenya, 2010

The Bill of Rights is comprised in the fourth (4th) chapter of the Constitution of Kenya. It recognizes the rights and fundamental freedoms of various categories of persons (including widows). The Bill of Rights applies to all law and binds all State organs and all persons. The

rights and fundamental freedoms in the Bill of Rights belong to each individual, are not granted by the State and are subject only to the limitations contemplated in law. They include the right to own property of any description in any part of Kenya.

The Marriage Act, 2014

The Marriage Act is the substantive law of Kenya that provides for marriage and divorce. Under it, marriage is defined as the voluntary union of a man and a woman, whether in a monogamous or polygamous union, registered in accordance with the law.

In order to be recognized under the law, all marriages need to be registered with the Registrar of Marriages and all marriages so registered have the same legal status.

The determination of the validity of a marriage is important because the property rights accruing to a widow are derived from their share of matrimonial property as provided for under The Matrimonial Property Act, 2013.

The Matrimonial Property Act, 2013

The Matrimonial Property Act provides for the rights and responsibilities of spouses in relation to matrimonial property. Such property includes:

- a) the matrimonial home or homes;
- b) household goods and effects in the matrimonial home or homes; or
- c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage unless it is held in trust.

The parties to an intended marriage may enter into an agreement before their marriage to determine their property rights (prenuptial agreements). Such agreements may however be set aside by the Court if it is determined that the agreement was influenced by fraud, coercion or is manifestly unjust.

In the absence of a valid prenuptial agreement, ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition. Such contribution can be either or both monetary and non-monetary.

The Law of Succession Act, Cap 160

Although there are other laws that provide for the passing of property of a deceased person to a living person, the Law of Succession Act ('the Act') is the specific law that provides for the succession and the administration of estates of deceased persons.

The Act provides for various legal processes through which a widow may inherit or otherwise take over ownership of the property of their deceased husband. Such processes include:

- a) Testate succession (Succession by operation of a valid will).
- b) Intestate succession (Succession in absence of a valid will).
- c) Gifts by the deceased to the widow in contemplation of their death.
- d) Reasonable provision for a dependant of the deceased by an order of Court.

The other legal processes, outside of the Law of Succession Act, through which a widow may acquire the property of their deceased husband include:

- a) Survivorship.
- b) Nomination.

Conclusion

The Laws of Kenya provide for both the rights of widows and their children. Widows are entitled to matrimonial property to the extent of their contribution. They are also entitled to inherit from the estate of their husbands as well as to gifts in contemplation of death received from their now deceased husbands. Additionally, they are entitled to all of any real property (except matrimonial

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property) which they previously owned jointly with their husbands as joint tenants and to all benefits accruing to them as nominees where they were nominated as such by their deceased husbands.

The Children of widows are similarly entitled to inherit from their deceased father

and to all gifts in contemplation of death as they may receive from their father and to all benefits accruing to them as nominees where they were nominated as such by their respective fathers. To this extent, it is vital to note that there are no illegitimate children under the Laws of Kenya.

Finally, widows and their children have a right to apply for reasonable provision from the estate of their deceased husbands/fathers if they believe they have not received the same.

The End

13th July marks the International Day for Rock which genre dates back to the late 1940s and early 1950s

17th September is the International Country Music Day

1st July marks the International Reggae Day

Country Music

“What is your name?
What excites you and makes your heart beat?
Tell me your story, I want to hear your voice, I want to hear your conviction...
Speak yourself, find your name, find your voice”
BTS Address to the UN General Assembly in New York



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Tel: + (254) 020 3586592, 254 020 231 9224
 + (254) 020 2612531, 254 (020) 261 3646
 Fax: +254 020 2375302, 254 020 234911
 Mobile: 0722-206-884, 0733-608-141

Email: info@njorogeregeru.com
 Website: www.njorogeregeru.com
 Dropping Zone No.8
 Revlon Professional Plaza
 Tubman Road / Biashara Street