

Africa Intellectual Property Newsletter Vol. 78

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**News**

**1. Important topics**

**Africa: Top 10 most innovative countries in Africa in 2022<sup>1</sup>**

According to the 2022 Global Innovation Index the most innovative countries in Africa are, in descending order:

*Mauritius, South Africa, Kenya, Cape Verde, Tanzania, Namibia, Rwanda, Senegal, Botswana and Malawi.*

Countries that have performed below expectation are:

*Ivory Coast, Nigeria, Zambia, Cameroon, Benin, Angola and Mauritania.*

Only two African countries fall into the global top 80 for innovation, namely Mauritius (45) and South Africa (61).

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<sup>1</sup> <http://www.ghheadlines.com/agency/pulse/20221006/157359425/top-10-most-innovative-countries-in-africa-in-2022>

## Cape Verde: Cape Verde joins ARIPO<sup>2</sup>

On 14 October 2022 Cape Verde's accession to the following agreements came into effect:

- The Lusaka Agreement.
- The Harare Protocol (patents).
- The Banjul Protocol (trademarks).
- The Swakopmund Protocol (traditional knowledge).
- The Arusha Protocol (plant varieties).

## Kenya: Court of Appeal clarifies that second appeal may lie from decision of registrar of trademarks<sup>3</sup>

The Court of Appeal has in the case of *Thermos Hong Kong Ltd v Doshi Ironmongers Ltd, Civil Appeal Application E013 of 2021 (2022) KECA 544*, ruled that a party who has unsuccessfully appealed to the High Court a decision of the Registrar of Trademarks, does have the right to lodge a further appeal to the Court of Appeal.

## Kenya: Kenya's Intellectual Property Rights Enforcement Agencies participate in workshop on Recordation of IP Rights<sup>4</sup>

From 4-5 October 2022 various Kenyan enforcement agencies involved in the protection of IP rights attended a two-day 'sensitization' workshop on the new IP rights recordal system.

There were speakers from foreign agencies, inter alia, the Mauritius Revenue Authority, the South African Revenue Service, and the EU, Algerian and the Austrian customs authorities. There were also representatives from, inter alia, the Kenya Private Sector Alliance (KEPSA), the Kenya Association of Manufacturers (KAM) and the European Business Council.

The Chairperson of the Board of Directors of the Kenyan Anti-Counterfeit Authority (ACA), Ms. Flora Mutahi, said the IPR Recordation system was one of the measures brought in by the ACA to address the threat posed by counterfeiting. She described IPR recordation as a proactive model: 'The system seeks to stop the entry of counterfeit goods at the border points and hence it is a preventive innovative system.'

## Kenya: US National Intellectual Property Rights Coordination Center Training on IP Rights<sup>5</sup>

According to a recent announcement on the website of the Kenyan Anti-Counterfeit Authority (ACA), Kenyan IP rights investigators, judges, prosecutors, regulators and customs officials from various national bodies recently received training on anti-counterfeiting at the Kenya School of Government in Nairobi.\* This training program was supported by a number of US agencies. \*\*The training included case study presentations on pharmaceuticals, electronics and investigative methods aimed at combatting transnational IP crimes.

\*The Kenyan bodies were: the Anti-Counterfeit Authority; Kenya Revenue Authority; Office of the Director of Public Prosecutions, Pharmacy and Poisons Board; and the Kenya Bureau of Standards.

\*\* The US agencies were: US State Department's Bureau of International Narcotics and Law Enforcement Affairs; Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training; Customs and Border Protection (CBP); and the US Patent and Trade mark Office

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<sup>2</sup> <https://www.aripo.org/the-harare-and-banjul-protocols-now-effective-in-cape-verde/>

<sup>3</sup> <https://www.worldtrademarkreview.com/article/court-of-appeal-clarifies-second-appeal-may-lie-decision-of-registrar-of-trademarks>

<sup>4</sup> <https://www.aca.go.ke/media-center/news-and-events/346-kenya-s-intellectual-property-rights-enforcement-agencies-participate-in-workshop-on-recordation-of-ip-rights>

<sup>5</sup> <https://www.aca.go.ke/media-center/news-and-events/344-us-national-intellectual-property-rights-coordination-center-training-on-ip-right>

### **Mozambique: New Mozambique Copyright Act**

A new Mozambique Copyright Law, the Copyright Law 9/2022, came into effect on 26 September 2022, revoking the previous law, Decree No. 4/2001. It's worth noting that Mozambique is a signatory to the Berne Convention for the Protection of Literary and Artistic Works.

There is still limited detail available due to the fact that the legislation is in Portuguese. But here are some important features of the new legislation:

- The creator of the work is the copyright owner;
- No formality such as registration is required for copyright, although registration does confer the benefit of creating a legal presumption that the registrant is the owner;
- Registration is done with the National Institute of Cultural and Creative Industries, IP (INICC, IP);
- The copyright term is 70 years for literary works, and 50 years for computer programs and phonograms.
- There is provision for free access to copyrighted works for disabled people.
- There are civil and criminal remedies for infringement.

At the time of writing, the Official English translation of the new Act from WIPO is not yet available.

### **Nigeria: Nigerian president Muhammadu Buhari signs the Nigeria Start-up Act into law<sup>6</sup>**

The Nigeria Start-up Act, legislation that was launched in May 2021, was signed into law by the Nigerian president on 19 October 2022. The Act's purpose is to govern how start-ups (new businesses) and regulatory bodies operate and collaborate in the sphere of tech, and a body known as the Council for Digital Innovation and Entrepreneurship will administer the legislation. According to the report similar legislation has been put forward in other African countries including Tunisia, Kenya, Senegal and Ethiopia.

Although the legislation seeks to strengthen Nigeria's technology sector, it will also benefit non-technology businesses, particularly in the areas of accessing funds, platforms for exchanging skills and knowledge, and intellectual property protection. But the analyst does make the point that Nigeria - like Kenya, Tanzania and Uganda - needs to do more to promote IP registration in the country.

### **Rwanda: Counterfeit goods worth over Frw76 million seized from traders<sup>7</sup>**

The Rwandan authorities have conducted a major anti-crime and anti-counterfeiting operation in the country. Amongst the parties involved were:

- the Rwanda National Police;
- the National Intelligence and Security Service;
- the Rwanda Food and Drug Authority;
- the Ministry of Trade and Industry.

The operation targeted crimes such as drug trafficking, motor vehicle theft, and dealing in counterfeit goods, and 25 people were arrested. Substandard foods and beverages made up a significant part of the harmful products seized.

### **South Africa: Court Judgment: Blind SA v Minister of Trade, Industry and Competition and Others<sup>8</sup>**

There has been an important judgment of South Africa's Constitutional Court on the rights of blind people to access literary works (books) - *Blind SA v Minister of Trade, Industry and Competition*.

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<sup>6</sup> <https://techcrunch.com/2022/10/19/nigerian-president-muhammadu-buhari-signs-the-nigeria-startup-act-into-law/amp/?guccounter=1>

<sup>7</sup> <https://www.police.gov.rw/media-archives/news-detail/news/counterfeit-goods-worth-over-frw76-million-seized-from-traders/>

<sup>8</sup> <https://collections.concourt.org.za/handle/20.500.12144/36956>

### ***The background***

The South African copyright legislation, the South African Copyright Act of 1978, is in the process of being amended by the Copyright Amendment Bill 2015. One of the amendments creates a right for blind people to have access to literary works. But the new legislation has been much delayed because of a number of objections.

As a result of the delays, an organization that represents blind people approached the High Court for an order declaring the Copyright Act to be unconstitutional to the extent that it unjustifiably limits the availability of works under copyright in formats that are accessible to persons with print and visual disabilities (such as braille). The application was not opposed and the court granted the order.

### ***The High Court's decision***

The basis of the court's decision was this - although alternative formats such as braille are available for blind people, the Copyright Act does not allow for free conversion of works into these formats. This means that blind people need to expressly seek the consent of the copyright owners to convert the works to accessible formats. The judge said that it is this requirement to seek consent from the copyright owner that makes it discriminatory and at odds with Section 9 of the Constitution.

### ***The Constitutional Court's decision***

The case was taken on appeal to the Constitutional Court, South Africa's highest court. The court upheld the High Court's judgment, saying that there was unfair discrimination on the grounds of disability, thus infringing Section 9(3) of the Constitution. There was also an infringement of a number of other constitutional rights - dignity (Section 10), freedom of expression (Section 16,1,b), basic education (Section 29(1)(1), and language and culture (Section 30).

### ***The order***

The court ordered that until such time as the new law, the Copyright Amendment Bill, comes into effect (complete with its provision regarding access to literary works by blind people), the existing Copyright Act will be deemed to include provisions that allow organizations to convert literary works to a format that is accessible to blind people.

## **Uganda: Counterfeit hotspots in Uganda that brand owners must be aware of<sup>9</sup>**

In an article that was published in World Trademark Review (WTR) on 28 September 2022, *Counterfeit hotspots in Uganda that brand owners must be aware of*, Jamina Apio of the firm Apio Byabazaire Musanase and Company Advocates makes the following points:

- Counterfeiting is a major problem in Uganda, with estimates that more than 54% of products on sale in Uganda are counterfeit and/or substandard.
- Anyone wishing to take steps against counterfeiting in Uganda must ensure that their documentation is in order – this includes copies of trademark registration certificates, powers of attorney, letters of indemnity for customs officers, and proof of counterfeit goods.
- Criminal proceedings are likely to be far quicker and cheaper than civil actions – another reason for taking the criminal route is that very few counterfeiters will be able to pay any civil damages award.
- There are certain anti-counterfeiting bodies in Uganda including the Anti-Counterfeit Network and the Uganda Manufacturers Association.
- In Uganda a landlord is not liable for counterfeiting that takes place on their premises.
- The counterfeiting hotspot in Uganda is the capital, Kampala. Particular locations include St. Balikuddembe (formerly Owino market), Mutaasa Kafeero Plaza and Kikuubo, Kiseka Market.
- Major entry points for counterfeit goods include Busia Border, Malaba Border and Elegu Border.
- Well-known brands that are subject to counterfeiting in Uganda include Adidas, Apple, Colgate, Gucci, HP, Mitsubishi, Nike, Nokia, Subaru and Toyota.

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<sup>9</sup> <https://www.worldtrademarkreview.com/article/counterfeit-hotspots-in-uganda-brand-owners-must-be-aware-of>

## Zambia: A written trademark decision (judgment) by the Zambian registry

In a rare development the Zambian Registry, the Patents and Companies Registration Agency (PACRA<sup>10</sup>), has handed down written reasons for refusal in a trademark case (920/2022) – these reasons were handed down on 26 September 2022.

The issue here was whether the trademark Trust Protection You Can Trust & Label in class 10 for contraceptive devices in the name of Population Services International was registrable. The application was refused for lack of distinctiveness.

Written reasons provided by the Deputy Registrar cited US, UK and EU case law, including the famous EU decisions of Windsurfer and Libertel. The Deputy Registrar said that the main element/overall impression of the trademark is the word Trust, a word that is not distinctive for the goods in issue.

Furthermore, the evidence of use (acquired distinctiveness) that had been submitted was not sufficient to make the mark registrable. The Deputy Registrar made the point that evidence of use does not necessarily equate to evidence of acquired distinctiveness.

## 2. Additional topics

### **Africa:**

Educate people about how piracy robs Africa's artists, musicians and actors

<https://mg.co.za/opinion/2022-10-24-educate-people-about-how-piracy-robs-africas-artists-musicians-and-actors/>

### **Africa:**

SADC ARVs value chain companies receive Intellectual Property Rights training

<https://www.chronicle.co.zw/sadc-arvs-value-chain-companies-receive-intellectual-property-rights-training/>

### **Africa:**

WIPO Resolves to Change Copyright Landscape in Africa

<https://www.voicegambia.com/2022/10/26/wipo-resolves-to-change-copyright-landscape-in-africa/>

### **ARIPO:**

Bemanya Twebaze LinkedIn post on Regional Seminar on Copyright and Related Rights in the Audio-visual sector in ARIPO Member and the Observer States

[https://www.linkedin.com/posts/bemanya-twebaze-922255192\\_copyright-audiovisual-activity-6985217735211290624-fZ7X?utm\\_source=share&utm\\_medium=member\\_ios](https://www.linkedin.com/posts/bemanya-twebaze-922255192_copyright-audiovisual-activity-6985217735211290624-fZ7X?utm_source=share&utm_medium=member_ios)

### **ARIPO:**

Bemanya Twebaze LinkedIn post on Southern African Development Community Intellectual Property Rights (IPR) training

[https://www.linkedin.com/feed/update/urn:li:activity:6983461061823741952?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/feed/update/urn:li:activity:6983461061823741952?utm_source=share&utm_medium=member_desktop)

### **Ghana:**

Coachella files copyright infringement lawsuit against Afrochella

<https://theindependentghana.com/coachella-files-copyright-infringement-lawsuit-against-afrochella/>

### **OAPi:**

Penja Pepper to conquer international markets

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<sup>10</sup>[www.pacra.org.zm](http://www.pacra.org.zm)

<http://oapi.int/index.php/fr/component/k2/itemlist/category/99>

**South Africa:**

Address by President Cyril Ramaphosa on the occasion of Heritage Day

<https://www.thepresidency.gov.za/speeches/address-president-cyril-ramaphosa-occasion-heritage-day>

**South Africa:**

Address By The Minister Of Higher Education, Science And Innovation, Dr Blade Nzimande, At The 15th Annual South African Innovation Summit, 27 September 2022

<https://www.dst.gov.za/index.php/media-room/media-room-speeches/minister/3757-address-by-the-minister-of-higher-education-science-and-innovation-dr-blade-nzimande-at-the-15th-annual-south-african-innovation-summit-27-september-2022>

**Zimbabwe:**

Is IP the answer to Zimbabwe's troubled economy?

<https://lawyer2investor.wordpress.com/2022/09/29/is-intellectual-property-the-answer-to-zimbabwes-troubled-economy/>

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