

Roundup of intellectual property decisions and other developments in Africa 2023

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Abstract

- This contribution offers an analysis of selected important decisions in the field of intellectual property law issued in the period 1 January to 31 December 2023 by national courts in individual African countries (Kenya, Nigeria, South Africa, Tanzania, Uganda, and Zimbabwe).
- The contribution also highlights legislative reforms and other developments in various intellectual property law fields in Africa in 2023.

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I. Introduction

This article provides a roundup of important judgments in the fields of copyright, trade marks, industrial designs, and related rights issued by national courts in individual African countries. It also provides a summary of legislative reforms and other developments in intellectual property law across Africa. In both cases, the period covered is from 1 January–31 December 2023. Part A deals with the court decisions while Part B covers legislative reforms and related developments.

The analysis in Part A is organised by country and in chronological order for each country and structured as follows:

I. Copyright

- Kenya: Due diligence requirements for digital music distributors and platforms when distributing musical works.
- South Africa: The role of courts in facilitating other uses of notice and takedown mechanisms.
- Tanzania: Whether copyright infringement constitutes a tort; elements to be established for image rights protection.
- Uganda: Responsibility of commercial copyright users.

II. Trade marks

- Kenya: Determination of a well-known status of a trade mark.
- Nigeria: Registering a famous trade mark as part of a company name.
- South Africa: Protection of well-known marks not considered as restricting lawful competition.
- Tanzania: Grounds for co- existence of two marks; Limitations on exclusive rights for generic marks.
- Zimbabwe: Unauthorised use of an element of a trade mark.

III. Industrial designs

- Kenya: Legal framework for the protection and renewal of African Regional Intellectual Property Organization (ARIPO) registered designs in Kenya.

Each selected decision is presented according to the following order: Case reference; summary; analysis; practical and broader significance.

II. PART A – Court decisions

A. Copyright

1. Kenya

1.1 Due diligence requirements for digital music distributors and platforms when distributing musical works

Kimani v Safaricom Limited and 2 others; Music Copyright Society of Kenya and another (Third party) (Civil Case 445 of 2015) [2023] KEHC 20085 (KLR) (Civ), 6 July 2023, Ongeru, J.

Summary

The plaintiff, renowned Kenyan musical artist known as "Mr. Bamboo" initiated legal action against the defendants, accusing them of copyright infringement on the Skiza Tunes platform. Despite the defendants claiming agreements with third parties and seeking indemnification, the court determined that they had infringed the plaintiff's copyright by using his musical works without proper authorization. Emphasizing the defendants' obligation to conduct due diligence on copyright ownership, the court ruled in favour of the plaintiff, awarding damages of Kshs. 4,500,000 for copyright infringement, along with costs and interest. The defendants were granted the liberty to pursue indemnity from the third parties involved.

Analysis

The court addressed critical issues, primarily centred on copyright infringement claims against the defendants regarding the plaintiff's musical works. The evidence confirmed unauthorized use of the musical works by the defendants, leading to a finding of copyright infringement. The plaintiff sought remedies such as accounts of downloads, records of

sale proceeds, general damages, and interest. Noting the absence of provided records by the defendants, the court assessed general damages at Ksh 1,500,000 per song. It ruled that the defendants were liable for copyright infringement and were obliged to compensate the plaintiffs. The defendants had alleged that they had obtained authorisation to use the musical works from the third parties in the suit – Musical Copyright Society of Kenya and another. The court granted them leave to be indemnified by the third parties.

Practical and broader significance

The significance of this decision lies in its affirmation of copyright protection in the music industry and the responsibilities of entities utilizing musical works to secure proper authorization. The court's findings underscore the crucial role of due diligence by entities in verifying copyright ownership before engaging in activities such as reproduction, publication, or distribution of musical works. Furthermore, the decision establishes a precedent for compensating artists in cases of copyright infringement, providing clarity on the liabilities of entities that infringe copyright.

2. South Africa

2.1 The role of courts in facilitating other uses of notice and takedown mechanisms

Mdletshe and Another v Youtube Channel and Another (2022/035571) [2023] ZAGPJHC 724, South Gauteng High Court, Johannesburg, 23 June 2023, Wanless J.

Summary

The applicants are music producers and musicians. The second respondent carries on business as a manager and agent of artists and their music. The second respondent was the manager of the applicants and the agent for the applicants, which it distributed through third-party digital distribution platforms including that of the first respondent. The applicants were dissatisfied with the payments and the service they were receiving from the second respondent and wrote to the latter terminating the agreements between them and requesting payment of the outstanding sums due to them. Subsequently, the applicants entered into an exclusive digital distribution agreement with another company

and also established their own record label, through which they released three songs. These songs were released on the applicants' YouTube channel (the first respondent) whereupon the second respondent demanded that these songs be removed from the YouTube channel else the applicants' YouTube channel would be removed/closed. The applicants therefore approached the court asking inter alia for an order of injunction restraining the second respondent from removing and/or deleting their YouTube channel and mandating the second respondent not to raise any copyright/ownership dispute against the Applicants' works with any other Digital Streaming Platform ("DSP") pending the final determination of other reliefs sought (i.e., termination of the exclusive management agreement, artist agreement and publication agreement and the appointment of an independent auditor to determine the amounts due to the applicants).

Analysis

In granting the injunction sought, granting the applicants' application for the injunction to remain in force pending a decision on the second respondent's application for leave to appeal and,¹ ultimately refusing the first respondent's application for leave to appeal,² the Court noted that:

- the applicants were entitled to protect their contractual relationship with digital streaming platforms including YouTube.
- The principal manner in which the applicants earn money is through releasing music and music videos on YouTube and that the second respondent's conduct in taking down/removing the said YouTube channel constituted irreparable harm. Such irreparable harm was the most important factor to be considered.
- The second respondent's prospects of success on appeal is a relevant factor to be taken into consideration in deciding whether or not to suspend the injunction granted against it.

Practical and broader significance

¹ *Mdletshe and Another v Youtube Channel and Another* (2022-035571) [2023] ZAGPJHC 935, South Gauteng High Court, Johannesburg, 22 August 2023, Wanless J.

² *Ambitious Group (Pty) Ltd v Mdletshe and Another* (2022/035571) [2023] ZAGPJHC 1091, South Gauteng High Court, Johannesburg, 27 September 2023, Wanless J.

This case reaffirms the position of the judicial system in disputes involving copyright contracts. The court's decision ensured that the applicants continued to have an account on YouTube and on other digital distribution platforms and to derive revenue from their channel/accounts thereon. As practical next steps, the applicants would furnish the digital distribution platforms including YouTube with a copy of the decision in the case to reinstate any accounts/works taken down or removed. The decision further underscores the limitations of dispute resolution systems such as YouTube's notice and takedown system which were not primarily designed for royalty payment from copyright contracts.

3. Tanzania

3.1 Whether copyright infringement constitutes a tort

Anselm Tryphone Ngaiza @ Soggy Doggy Anter and 2 Others vs Home Box Office [2023] TZHC 15741, High Court of Tanzania, Dar es Salaam District Registry, 24 February 2023, Mgonya, J

Summary

This case revolves around whether copyright infringement falls within the realm of tortious matters and if the prescribed limitation period for tort is applicable to copyright issues. The facts of the case are that the plaintiffs sued the defendants for Tshs. 22,879,100,000 (\$10million approximately) for copyright infringement for unauthorised use of their sound recording in a movie. The defendants raised the objection that the action was founded in tort and was therefore time barred by virtue of the Law of Limitation Cap. 89 [R. E. 2019]. The action was instituted more than three years after the cause of action arose contrary to the requirement of the statute.

Analysis

The court held that the action for copyright infringement was not time-barred because copyright infringement is not a tort but rather, is self-dependent and governed by the Copyright and Neighbouring Rights Act, 1999. Further, the court considered that the nature of the infringement was a continuing one as movies are played at various times by

various persons which constitutes a new cause of action each time the movie is played. The court further held that the plaintiffs' copyright was indeed infringed.

Practical and broader significance

This decision reinforces that copyright infringement is governed by its unique limitation period, separate from the broader scope of tort law within the civil law landscape. The assumption that tort principles universally apply to all civil matters is erroneous. It, therefore, acts as a crucial reminder of the need for precision in understanding the individualized frameworks that govern different areas of civil law, particularly in intellectual property law.

3.2 Elements to be established for image rights protection

John Raphael Bocco vs Princess Leisure (T) Ltd, [2022] TZHC 1095, High Court of Tanzania, Dar es Salaam District Registry, 31 August 2023, Mugeta, J

Summary

Tanzanian high-profile footballer, John Raphael Bocco, instituted an action against the defendant for the unauthorized use of his image in a commercial advertisement. The defendant, a local betting company, had displayed a photograph of Bocco on its Instagram page with the caption: "*The NBC League continues today with 3 matches. The biggest one is that Simba will be the guest of Ruvu Shooting in Mwanza at the CCM Kirumba tournament. Money days are back.*"

Analysis

In its judgment, the court reasoned that for an action of unauthorized image use to succeed, the plaintiff must establish several elements including: the use of a protected attribute, such as an individual's image being utilized in the alleged infringement which establishes a direct connection between the image in question and the plaintiff, that the use of the protected attribute was for exploitative purposes or employed in a manner that could potentially exploit, commercialize, or capitalize on the individual's likeness and that such was undertaken without obtaining consent from the image owner.

The court went further, stating that even in the absence of proof that the image was used for commercial gain, the owner of the image was still entitled to compensation for the violation of his privacy. In the context of the presented case, the court found the defendant's conduct to be infringing on Bocco's protected attributes.

Practical and broader significance

This decision in which the plaintiff was awarded Tshs 200million in damages serves as a crucial precedent for image rights protection in Tanzania by highlighting the importance of securing the rights of individuals in the use of their images and sending a clear message that unauthorized commercial use of one's images will not go unchecked.

The decision in *Multichoice (T) Ltd vs Alphonse Felix Simbu & 2 Others* [2023] TZHCComD 363 High Court of Tanzania (Commercial Division), 13 October 2023, Agatho, J was also about image rights protection. The court in that case, whilst not referring to Bocco's case confirmed similar elements to be established for image rights protection and show that the legal and ethical considerations surrounding the publication of a person's image without consent involve a meticulous weighing of privacy, public interest, and commercial gain.

4. Uganda

4.1 Responsibility of commercial copyright users

Garfield Spence [a.k.a KONSHENS] v Airtel Uganda Limited & Others, Civil Suit No. 545 of 2015, High Court of Uganda (Commercial Court), 21 August 2023, Mutesi, J

Summary

The plaintiff averred that the defendants had infringed his copyright by using, without authorization, his songs as caller tunes and that the defendants had refused to account for the proceeds obtained or to pay royalties. The first defendant, a telecommunication service provider, claimed that it only provided access to its mobile network and customers

and that the second defendant, who had warranted that it had the requisite rights over the songs, was the one who obtained and distributed the caller tunes. In turn, the second defendant claimed that while it provided the platform, it was the third defendant who provided the works to be distributed and who guaranteed the necessary authorisation.

Analysis

Once the court found that the plaintiff's copyright had been infringed by the distribution and sale of the songs without his authorisation, the court turned to the issue of the defendants' liability. Rejecting the argument of the first defendant, the court held that by giving access to its mobile network system to the second defendant to distribute the songs and by advertising the said caller tunes, the former enabled the distribution of the infringing content and benefited financially therefrom. The Court further held that the first defendant could not claim immunity from liability based on the agreement as it had failed its due diligence obligation to confirm with documentary proof that the second defendant had the necessary authorisation over the songs. The court accepted the third defendant's evidence that it did not upload the infringing songs. The first and second defendants were thus found to have infringed plaintiff's copyright.

Practical and broader significance

Entities dealing with copyright-protected works should do their due diligence to ensure the correct authorisations have been obtained. It is not enough to rely on contractual warranties to avoid liability for copyright infringement.

II. Trade marks

1. Kenya

1.1. *Determination of a well-known status of a trade mark.*

[*Caterpillar \(Quingzhou\) Limited v Machinery World Limited*, \[2023\] KEHC 2442 \(KLR\), High Court of Kenya at Nairobi, Milimani Commercial Courts and Tax Division, 17 March 2023, Majanja J](#)

Summary

This involves an appeal against the decision of the Assistant Registrar of Trademarks, where the Registrar dismissed the appellant's opposition to the registration of the respondent's trade mark application for machines and machine tools. The appellant claimed that the respondent's mark was confusingly similar, likely to deceive or cause confusion, and not adapted to distinguish, among other grounds. The Registrar ruled in favour of the respondent, determining that the appellant failed to establish its mark's well-known status and that the trade marks were not confusingly similar. The High Court found that the appellant's appeal lacked merit and dismissed it with costs to the respondent.

Analysis

The court upheld the Registrar's thorough assessment of factors, encompassing the duration, registration details, and recognition of the appellant's trade mark. The court determined that the appellant failed to substantiate the well-known status of its trade mark, citing the lack of concrete evidence and the habitual use of the trade mark in conjunction with others. The court signalled agreement with the Registrar's finding of honest concurrent use.

Practical and broader significance

In practical terms, the case underscores the vital need for robust evidence, including sales documentation, to substantiate assertions of the well-known status of a trade mark. It highlights the pivotal role of factors such as consumer care, trade mark strength, and honest concurrent use in the resolution of trade mark disputes. On a broader scale, the case sets a precedent, influencing future trademark disputes by promoting the careful consideration of detailed evidence in establishing the well-known status of a trade mark. It underscores the importance of adopting a nuanced approach, considering various factors when assessing trade mark similarity.

2. Nigeria

2.1 Registering a third-party famous trade mark as part of a company name

SANOFI S.A v Sanofi Integrated Services Ltd & Others, Suit No. FHC/ABJ/CS/188/2020, Federal High Court of Nigeria, Abuja, 10 July 2023, Omotosho J

Summary

Under section 30(4) of the Companies and Allied Matters Act 2020, the Corporate Affairs Commission (CAC) may require a company to change its name where the name conflicts with an existing trade mark and the consent of the trade mark owner was not obtained. The plaintiff, SANOFI, applied to the CAC on the basis that the defendants' company names were infringing its trade mark rights by incorporating without authorisation the mark SANOFI. The plaintiff's trade mark predated the incorporation of the defendants' companies. The CAC found in favour of the plaintiff and directed the defendants to change their names. The defendants refused to do so, and the plaintiff approached the Federal High Court alleging trade mark infringement. The plaintiff further requested the Court to pronounce on whether the refusal to obey the CAC's directive to change a company name is proper in law.

Analysis

The Court found that using a trade mark as part of a company name without the right holder's consent constitutes trade mark infringement and entitles the right holder to damages. The company's sector of activity is irrelevant. The Court directed the CAC to cancel or withdraw the registration of the company names should the defendants fail to do so within the prescribed period.

Practical and broader significance

The owner of a prior trade mark may act against company names incorporating without authorisation its trade mark. It is, however, unfortunate that the Court did not rule explicitly on the powers of the CAC to cancel or withdraw a change of name upon the refusal of a company to abide by a CAC directive.

3. South Africa

3.1 Protection of well-known marks not considered as restricting lawful competition

Akzonobel Coatings International B.V and Another v Dumax Paints (Pty) Ltd and Others (1723/2023), [2023] ZAFSHC 450, Free State High Court, Bloemfontein, 9 November 2023, Daffue J

Summary

The applicants are engaged in the manufacturing, marketing and distribution of paints, varnishes and related products and services primarily under the Dulux trade name. The first and second respondents manufacture, sell and distribute paints and varnishes in South Africa under the trade name, DUMAX.

The applicants sought inter alia, a final injunction restraining the first and second respondents from infringing their registered trademarks connected with the DULUX trade name by using in the course of trade in relation to any goods or any services, any mark, company name or domain name identical or similar to the DULUX trade mark, including but not limited to the name and trading style DUMAX and/or DUMAX PAINTS and/or any other similar trade mark to the second applicant's well-known registered DULUX trade mark. The applicants also sought an order of final injunction restraining the respondents from further passing-off.

Analysis

On the issue of infringement on the grounds that the two marks were so similar as to likely deceive or cause confusion, the court held that the marks of the two parties are not identical or similar. As a result, the court ruled that no case had been made out in respect of infringement on that ground. Similarly, the court held that the passing-off claim was not sustainable as even though there was a measure of copying on the respondents' part, the entire get-up of the respective products was quite conspicuously distinguishable.

The court granted the reliefs sought with respect to infringement of the applicants' trade mark as a well-known mark. For well-known marks, what was required was not a comparison between the respective goods or a likelihood of deception or confusion. The requirements are that the mark be well-known in South Africa and that the respondent makes unauthorised use of the mark which would be likely to take unfair

advantage of, or be detrimental to, the distinctive character or the repute of the applicant's registered mark. In granting that relief, the court considered that the manner and scale of use of a trade mark can in itself be sufficient and conclusive evidence that the mark is well-known. The court also held that the respondents sought to benefit from the applicants' reputation in a manner that could lead to "to the gradual consumer disassociation" of the registered trade mark of the applicants' product.

Practical and broader significance

This case emphasizes that while the courts will protect a free market and robust competition, such will not be to the detriment of the clear rights of others. The respondents has argued that as entities established by historically-disadvantaged persons under the previous apartheid regime in South Africa, they have a right to be allowed to become competitive in markets from which they were excluded during apartheid. In considering this argument through the prism of the Constitution, the court reiterated that the choice and practice of trade is regulated by law including trade mark law. As a competitor of the applicants, the respondents must adhere to the Trade Marks Act 194 of 1993.

4. Tanzania

4.1 Grounds for co-existence of two marks

Abro Industries Inc versus Abri General Traders [2023] TZHC 18205, High Court of Tanzania (Dar es Salaam District Registry), 7 June 2023, Mgonya J

Summary

The Appellant, filed an appeal against the Ruling of the Deputy Registrar of Business Registrations and Licencing Agency (BRELA) in 2021, dismissing its application for removal and rectification from the register on the grounds that there is no danger of confusion for the appellant's mark (ABRO) and the respondent's mark (ABRI) to co-exist in Tanzania regardless of non-existence of co-existing agreement. The appellant further submitted that their trade mark is a well-known trade mark, that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection

in the course of trade or rendering of services between those goods or services and person using the mark in relation to the first-mentioned goods or services.

Analysis:

The Court addressed the key issue of whether it is legally permissible for the two trade marks to co-exist without causing confusion or infringement. An essential consideration was whether the trade marks were intended for use in the same market or if market segmentation could allow for their co-existence by exploring whether the trade marks catered to different consumer base. The court also assessed whether the trade marks were used in unrelated industries or if there was potential overlap.

The Court pointed out that, similarity is a question of overall impression rather than element by element comparison of the two marks, the focus being on the buyer who might be deceived by the similarity. The court reasoned that the trade mark “ABRI” in dispute is registered a different class from the class of the respondent’s marks.

Practical and broader significance

This case serves as an illustration that the assessment of trade mark similarity extends far beyond the examination of phonetics or literal resemblance. Instead, it delves into the classes under which trade marks are registered, the nature of the commodities associated with these trade marks, and the characteristics of the target consumer base. Traditionally, when evaluating trademark disputes, the focus tends to be on the visual resemblance between the conflicting marks. However, this case gives the understanding that trade marks, as legally protected rights, are more importantly linked to specific classes denoting the nature of the goods or services they represent. Therefore, in any trade mark dispute, one must consider the classes under which the conflicting marks are registered.

4.2 Limitations on exclusive rights for generic marks

Clover SA (Proprietary) Limited versus Tropicana Products, Inc [2023] TZHC 21851, High Court of Tanzania (Dar es Salaam District Registry), 6 October 2023, Mkwizu J

Summary

This is an appeal against the decision of the Deputy Registrar of Trade and Service marks granting the respondent's application for registration of the trademark TROPICANA (and device) in TROPICANA PRODUCTS, INC. The appellant, the owner of the well-known trademark TROPIKA opposed the application by arguing that Tropicana Inc's trademark "TROPICANA" (word and Device) is similar, visually and structurally, its well-known mark "TROPIKA." The appellant also contended that the words "TROPIKA" and "TROPIKANA" denote the same thing and both marks covered goods under Class 32 of the Nice Classification, which include goods like mineral and aerated waters and other non-alcoholic drinks. Based on the afore-mentioned reasons, the appellant therefore submitted that the similarity in both marks would likely create deception or confusion to a common consumer in the marketplace.

Analysis:

The Court, however, decided in favour of the respondent after indicating that generic terms like "TROPIC/TROPICAL" can never receive trademark protection because they are commonly used by companies that manufacture beverages in Tanzania and are commonly used internationally in goods related to mixed soft and hard drinks. The word "tropic" alone, as reasoned by the Court, cannot be exclusively owned as a mark by one person for goods related to soft drinks falling under class 32, as is the case with the marks under contention in Tanzania because several manufactured soft drinks have incorporated the word "tropic" in their marks mostly referred for mixed fruit juice. It is not uncommon for consumers of juices to request for purchase of "tropical juice" when intending to buy mixed fruit drinks. It was therefore the Court's finding that the word "Tropical" is common in the market concerning goods falling under class 32. By conferring exclusive rights to the use of the said word to only one person would be denying others the right to use the said word which is generic.

Furthermore, the Court weighed the evaluation of the appearances, the physical look of the trademarks as used in the Juice boxes from the ordinary consumer's standpoint, and

the impression that one may draw from it. It was therefore held that the letters “ANA” added in the Respondent’s mark and the variance in fonts, colours and designs used in the Respondent’s mark conveyed a visual, physical and phonetic difference to each other. It is for these reasons that the Court was strongly convinced that there exists no resemblance between the Respondent’s Mark.

Practical and Broader Significance

A crucial aspect illuminated by this case is that generic terms, which represent common names for a category of goods or services, are generally ineligible for exclusive trademark protection because they lack the distinctiveness needed to function as unique identifiers in the marketplace. It also serves as a call for caution and awareness when dealing with generic terms during the registration process. While these terms may be provisionally accepted for registration, it is important to recognize that registrants are typically required to include disclaimers. These disclaimers explicitly convey that no exclusive rights are conferred upon the registrant concerning the generic term itself. This means that, even when registered, the generic term remains available for use by others in the ordinary course of business. Trademark applicants and businesses should, therefore, be urged to choose distinctive and non-generic elements for effective trademark protection, ensuring that their marks can truly serve as unique identifiers in the marketplace.

5. Zimbabwe

5.1. Unauthorised use of an element of a trade mark

Innskor Africa Limited v Slice Distributors (Private) Limited & Registrar of Deeds, Civil Appeal No. SC 43/23, Supreme Court of Zimbabwe, 6 October 2023, Makoni J

Summary

This is an appeal against a decision dismissing the appellant’s claim for an interdict based on trade mark infringement by the respondent. Both the appellant and the respondent are involved in the fast-food business. The appellant had registered a prior mark consisting of a chicken, two heart symbols, and the phrase 'luv dat chicken.' A disclaimer as to the

exclusive use of the word ‘CHICKEN’ was attached to the mark. The first respondent then started to use the slogan ‘I luv it’ in the packaging and marketing of the products, which were similar to the one used by the appellant.

Analysis

Rejecting the High Court’s finding that the word ‘luv’ was a singular element in the appellant’s trade mark and that the appellant had no exclusive right over it, the Supreme Court found that the appellant’s trade mark granted it exclusive rights to the phrase ‘luv dat’. The component ‘luv’ is part of the appellant’s mark and cannot be divorced from the whole mark or used singularly. It should be safeguarded because it is part of a registered mark. The Court further reiterated the proper test for a finding of trade mark infringement: would the disputed mark deceive or confuse the average customer leisurely shopping at a supermarket? Recalling that the parties are in the same field, the goods and services offered are similar, and the colour scheme used by the respondent is closely similar to the one used by the appellant, the Supreme Court allowed the interdict as the continued use of the phrase ‘I luv it’ creates deception and confusion.

Practical and broader significance

A trade mark owner is protected against infringers using part of its registered mark, except for particular words or terms that are disclaimed explicitly under the registration. It is the dominant expression given by the presentation of the mark, which must be considered in assessing trade mark infringement.

III. Industrial designs

1. Kenya

1.1 Legal framework for the protection and renewal of ARIPO-registered designs in Kenya

Rsa Limited v Kenya Industrial Property Institute (KIPI); Toyota Kenya Limited & another (Interested Parties), Commercial Appeal 007 of 2022, [2023] KEHC 20229 (KLR) High Court of Kenya at Nairobi, Commercial and Tax Division, 7 July 2023, Majanja J

Summary

This case pertains to an appeal arising from the Industrial Property Tribunal's determination on the renewal and restoration of an Africa Regional Intellectual Property Organisation (ARIPO) Industrial Design under the Industrial Property Act 2001 (IPA) and the ARIPO Protocol on Patents and Industrial Designs (Harare Protocol). The Appellant, seeking renewal for its ARIPO-registered designs, challenges the Tribunal's decision asserting the lack of jurisdiction to renew or restore beyond the 10-year period granted by the Harare Protocol. The central contention revolves around whether the IPA or the Harare Protocol governs the renewal process. The case delves into the complex interplay between international agreements and national intellectual property laws.

Analysis

In deciding the appeal, the court emphasizes its wide discretionary powers to re-evaluate the Tribunal's decision. The central issues revolve around whether the Harare Protocol and the Industrial Property Act (IPA) conflict in terms of term and renewal provisions for ARIPO-registered designs in Kenya. The Tribunal holds that ARIPO designs, having the same effect as national designs during their 10-year term, cannot be renewed or extended under the IPA. The court concurs, stating that once the term under the Harare Protocol expires, no further renewal or restoration is possible under the IPA. It concludes that the Appellant's failure to comply with IPA provisions bars the renewal or restoration of their ARIPO designs, dismissing the appeal without costs.

Practical and broader significance

This case clarifies the legal framework for the protection and renewal of ARIPO-registered designs in Kenya. The court's decision reinforces the understanding that ARIPO designs, although enjoying the same protection as national designs during their term, cannot be subject to renewal or restoration under national legislation (IPA in this case) once their initial term under the Harare Protocol expires. The court provides legal clarity on the limitations and procedures regarding the renewal and restoration of intellectual property rights, particularly industrial designs registered through regional organizations like ARIPO.

IV. PART B – Legislative reform and other developments

- Nigeria's President assented to the Bill for an Act to repeal the Copyright Act, Cap C28 LFN, 2004 and enact a New Copyright Act 2022. The objectives of the Copyright Act 2022 include ensuring just rewards and recognition for the authors' intellectual efforts; providing appropriate limitations and exceptions to guarantee access to creative works; and enhancing the capacity of the Nigerian Copyright Commission for effective regulation, administration, and enforcement of the provisions of the Act.
- The Business Facilitation (Miscellaneous Provisions) Bill 2022, which was signed into law in February 2023, amended certain sections of the Trademark Act 1965. Specifically, paragraph 69 of the Schedule to the Business Facilitation Act defines a trade mark to include service marks. Under the Schedule, a trade mark now includes a mark used in relation to goods or services for the purpose of indicating a connection between the goods or services, and may include the shape of goods, their packaging, and combination of colours; and be used in relation to a certification trademark, registered or deemed to have been registered under the Trademark Act.
- São Tomé and Príncipe acceded to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications on 2 August 2023.
- Various WIPO instruments entered into force in Mauritius in 2023: the Madrid Protocol and Hague System, both since 6 May 2023, and the Patent Cooperation Treaty since 15 March 2023.
- The Government of Tanzania, through the Business Registrations and Licensing Agency (BRELA), signed a cooperation Agreement in July 2023 with the Zanzibar Business and Property Registration Agency (BPRA) and the Zanzibar Copyright Office with the aim of implementing the project of the Centre for Intellectual Property Training in the country.
- It was indicated in the 2022 Roundup that South Africa's National Assembly had sent a revised Copyright Amendment Bill to the National Council of Provinces for its concurrence.³ In 2023, the National Council of Provinces passed the Copyright

³ Okorie, C., 2023. Round-up of intellectual property decisions and other developments in Africa 2022. *Journal of Intellectual Property Law and Practice*, 18(3), pp.249-250.

Amendment Bill (B13-2017) and returned same to the National Assembly for further consideration and concurrence after which the Bill may now be transmitted to the President for assent (or veto).