

#26AprilWorldIntellectualPropertyDay

# Intellectual Property

is all around us.

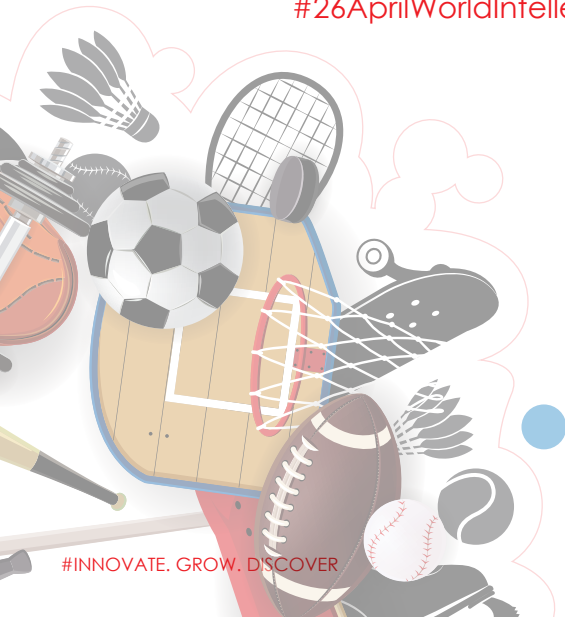


# World INTELLECTUAL PROPERTY Day

THEME

## IP & Sports

#26AprilWorldIntellectualPropertyDay



#INNOVATE. GROW. DISCOVER

[www.ktaadvocates.com](http://www.ktaadvocates.com)



# Welcome to our commemorative newsletter for the World Intellectual Property Day.

Every April, KTA celebrates World Intellectual Property Day & the role that intellectual property (IP) rights play in furthering innovation and creativity.

Since this year's theme, sports & IP coincides with KTA marking 10 years of providing innovative service that nurtures relationships and impacts lives, KTA's 2nd annual conference on copyright & IP will have sessions on topics like image rights that are important in the sports industry. Details of the conference available at [www.ktaadvocates.com](http://www.ktaadvocates.com).

Throughout the rest of the year, the firm will continue to promote intellectual property awareness through its other bespoke trainings and conferences, like the 2nd Annual Symposium on Intellectual Property, Technology & Innovation. Details of the event at <https://www.symposium-iptech.com>.

KTA is the largest fully specialized intellectual property & technology law firm in the region and we take IP seriously. Our team has put together interesting pieces about IP as facilitators of business growth and we hope you enjoy reading them as much we enjoyed writing them.

In this feature, you will find a review of the first groundbreaking image rights case in our jurisdiction, *Asege Winnie V Opportunity Bank (U) Ltd & Anor* (H.C.C.S 756 of 2013). You will also read about the defence of the successful registration of "Mpekoni, U want another rap" song by H.E. Yoweri Kaguta Museveni.

We will also talk about the Jaguza App registration, an app that assists animal health workers and farmers engaged in animal husbandry to detect diseases without interaction with the animal & via use of a smartphone.

You will get to read about the registration of the "Janzi", a music instrument with two scales and an improvement of the local "Adungu" musical instrument.

This feature will also have a review of our Geographical Indications (GI) law in light of KTA's application for a GI over the Ankole Cow breed.  
From all of us at KTA, enjoy

**Kenneth Muhangi & Edwin Tabaro**

Partners & team leaders Intellectual Property

ANNUAL  
**Copyright**  
C O N F E R E N C E

**IN AN ERA OF INNOVATION AND  
DISRUPTIVE TECHNOLOGY**

The conference is aimed at being a starting point for the formulation of robust policies from government in that regard perhaps going a long way in answering the never ending concern from many sections of the public  
Is it time to revise our copyright legal regime"!

As far as the issue of so-called "weak copyright laws" is concerned.

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# INTELLECTUAL PROPERTY IN THE DIGITAL AGE



Uganda, like the rest of the world, is undergoing a technology revolution. With each passing day, Ugandan's innovate and think of new and simpler ways of doing things.

In the last 20 years, we have seen exponential growth in the sectors of business and technology. Yet somehow, this growth has not extended to the field of intellectual property. Uganda is still one of the lowest ranked countries in Africa in intellectual property applications.

According to the World Intellectual Property Organization (WIPO), by 2016, Uganda had only 17 Patent applications compared to 4 in Rwanda, 195 in Kenya and 2,178 in South Africa. Although we are somewhat atoned by the number of Trade Mark applications; 1,340 by 2016 to be precise, this is disconcerting compared to the 6,103 in Kenya and the whopping 34,094 in South Africa.

The disparity is alarming seeing as we are just a handful of applications for Industrial Designs or Utility Models at the Intellectual Property Office at Uganda Registration Services Bureau (URSB). It is also worth noting that most of the registrations in Uganda are handled by more or less a handful of law firms that have expertise in this field. One such firm, KTA Advocates, has filed a number of IP applications in Uganda notably "The Jaguza app" that detects an animal's attitude and is able to assist animal health workers and farmers engaged in animal husbandry to detect diseases without interaction with the animal from the comfort of the smartphone.

KTA has also advised on the protection and registration of the “Janzi”, a music instrument with two scales that was invented by a client, an improvement of the local “Adungu” musical instrument.

KTA is also presently advising the government and community that rares the Ankole Cow breed on creating a geographical indication or certified trademark of the products of the Ankole Cow, for commercial exploitation. A rare breed with low cholesterol, withstanding drought and hard conditions, its products, milk and meat, ghee and cow horn will be able to fetch a premium price when a traceability system is established as its qualities are pristine and found nowhere else.

The Firm has advised on Geographical Indications for Pepa Yam, Kola nut and cocoa as well as Kente cloth for the governments of Nigeria and Ghana respectively.

Promisingly, firms like KTA & organizations like Uganda Law Society (ULS) through its Intellectual Property Cluster & Uganda Registration Services Bureau(URSB) have embarked on sensitization programs to promote IP registrations.

The Government has also taken commendable steps to improve penetration and spur innovation through projects like the NIISP National ICT Initiatives Support Programme (NIISP) that was created to facilitate the creation of an ICT Innovation ecosystem and marketplace for Ugandan innovative digital products. Through NIISP, the government has been able to reach innovators, set up a hub & innovation fund and has ensured that innovators are educated about the importance of intellectual property.

Uganda also has a strong IP regime and has enacted IP legislation like the Trade Marks Act 2010 that protects trademarks, Copyright and Neighboring Rights Act 2006 for copyright, The Geographical Indications Act 2013, Plant Varieties Act 2014, Trade Secrets Act for trade secrets and Industrial Property Act 2014 for patents, utility models and industrial designs.

These have promoted the enforcement of IP rights but they still need constant review if they are to keep up with the ever-changing nature of IP.

The Trade Marks Act 2010 for example only recognizes a graphically represented sign or combination of signs, capable of distinguishing goods or services of one undertaking from those of other undertakings, as a trademark.

# “ Janzi

a music instrument  
with two scales that  
was invented by a  
client, an  
improvement of  
the local “Adungu”  
musical instrument.



This is in contrast with other jurisdictions like USA and the UK, that recognize domain names as registrable trademarks. In order to acquire a Trademark, an applicant would have to prove that the domain is being used for some other purpose than for people to find and contact the applicant.

Consequently, eCommerce websites, like Jumiafood.com, safeboda.com would generally be able to acquire Trademarks owing to the distinctive nature of their domain names that become synonymous to the services they offer.

Allowing eCommerce sites to be able to register their domains, is imperative as it improves the businesses brand and provides comfort against Cybersquatting and typosquatting. Cybersquatting is the practice of registering a domain name similar or deceptively similar to an existing name. Usually, the name is registered with the aim of selling the domain name to that company or to post paid advertising links on a website at the domain name in order to profit from visitors looking for the Trademark owner or its business. Or maybe the registrant is a competitor seeking to divert customers to a business competing with the trade mark owner.

Typosquatting is a variation of cybersquatting where someone registers a domain name designed to benefit from typing mistakes made by internet users. This can involve registering / using a common misspelling of the target name / trade mark. Or a typical typing error.

The act also doesn't image rights that are widely seen as an important form of brand protection. The legal regime as regards image rights in Uganda has been l

argely un-explored, that is until the case of Asege Winnie V Opportunity Bank (U) Ltd & Anor (H.C.C.S 756 of 2013, where KTA Advocates successfully argued that an individual has the right to control the commercial use of his or her name, image, likeness, or other unequivocal aspects of one's identity.

Notably, IP law generally offers protection for the final expressions of ideas but do little to protect the actual idea.

Consequently, many Tech-preneurs, lose their ideas to savvy businessmen and larger companies that are approached to fund the execution of the ideas.



Suffice to say, such business concepts/ideas, may be categorized as trade secrets, protectable under the ambit of the Trade Secret Protection Act, 2009. The act also provides a much need correlation between trade secrets and unfair competition by criminalizing espionage and acquiring of confidential information by unlawful means.

Trade secrets are generally peculiar in nature and are not categorized as traditional intellectual property (IP) rights since they are usually a combination of business models and business methods. However, holders of trade secrets under the 2009 act, enjoy similar rights to intellectual property in cases of transfer and enforcement.

A trade secret is defined under Section 2 of the Trade Secret Protection Act, 2009, to mean information including but not limited to a formula, pattern, compilation, program, method, technique, or process, or information contained or embodied in a product, device or mechanism which-

- (a) is, or may be used in a trade or business;
- (b) is not generally known in that trade or business;
- (c) has economic value from not being generally known; and
- (d) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

At international level, protection of trade secrets is provided by the World Trade Organization's 1994 TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights). Article 39 of the TRIPS Agreement is specifically dedicated to "undisclosed information" and set forth the minimum requirements that information shall meet to be protected under the Agreement.



Continuation ...



# IP & Blockchain

Technology has provided a way to facilitate the protection of IP rights like trade secrets through the use of blockchain technology.

A blockchain is a continuously growing list of records, called blocks, which are linked and secured using cryptography. By design, blockchains are inherently resistant to modification of the data.

Once recorded, the data in any given block cannot be altered retroactively without the alteration of all subsequent blocks, which requires collusion of the network majority.

The versatility of blockchain means it is being widely considered as a way to manage & protect IP rights. Blockchain offers a unique code for each IP right and this code is linked to a smart key which is only held by the owner.

Transfer of the property would then require surrender of the smart key by the owner and without it, a transfer of IP cannot be effected.

Blockchain technology also underpins 'smart contracts', which are programmable contracts that self-execute when certain conditions are met, and offer the possibility that transactions could complete much more quickly when combined with a blockchain registry. For instance, a patent owner could issue a license

automatically on receipt of funds into the vendor's account.

The result would also be to speed up & cheapen the exploitation of IP rights. With the ledger updating immediately, the registration gap would be eliminated for rights like copyright.

Blockchain ledgers also create time-stamped records that cannot be altered and this makes them an ideal solution for proving authorship over IP rights. For trade secrets, the privacy of the network allows for registration that would otherwise have been impossible at a public registry because of the nature of trade secrets that are after all, secret.

For creatives that innovate concepts or processes, the blockchain provides the comfort of knowing that should an idea they pitch be appropriated, it would be easy to provide evidence of breach of evidence among other causes of action available to them.

Harnessing a blockchain-based IP enforcement system mainly through "smart IP registries" could help creators monitor exactly how and by whom their creations are being used. innovators having real time data about the exploitation of their designs would also help in IP valuation that's always a sticky issue in infringement claims & mergers and acquisitions.

Public Ledgers with ownership details of patents or trademarks would also help e-commerce as it becomes easier for potential customers to contact the rightful owners of products and possibly identify counterfeiters. These ledgers may also be used by law enforcement to check for genuine trademarks in real time thus promoting anti-counterfeit enforcement.

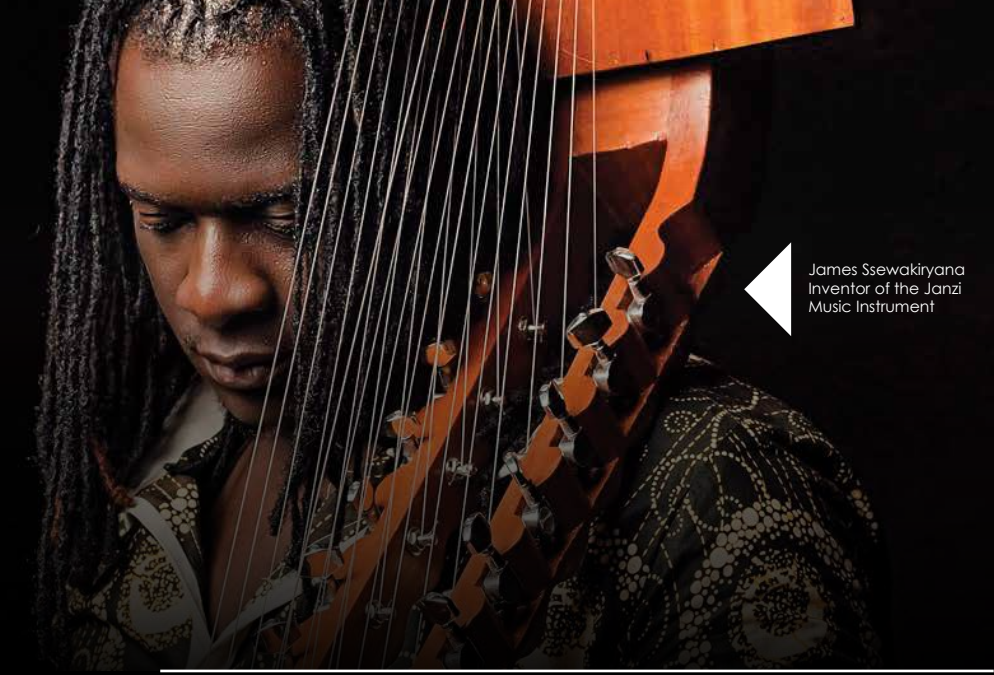
Blockchain could also integrate with certification marks that confirm that a product conforms with advised standards. With banks also embracing blockchain technology, payments will also be easier. In early 2019, it was reported that US investment bank JP Morgan had created a crypto-currency (JPM Coin) to help settle payments between clients in its wholesale payments business. These are exciting times for IP practitioners, the future is fir those who embrace technology.



Kenneth Muhangi

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James Ssewakiryana  
Inventor of the Janzi  
Music Instrument

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# New musical instrument officially launched in Uganda

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James Ssewakiryana known to many as Ssewa Ssewa is the founder of Janzi Band, one of the leading bands in the country. Besides owning a band, Ssewa Ssewa also came up with an idea of starting his own instrument. Even though he has been playing the Janzi for about two years now, Ssewa Ssewa had not gotten the chance to launch the instrument to Ugandans until Saturday 13. April 2019



# IMAGE RIGHTS

## In the Ugandan sports industry; lessons from Mo Salah

This year's World Intellectual Property Day is aptly themed & quote; Reach for Gold: IP and Sports." The World Intellectual Property Organization (WIPO) that comes up with these themes annually most definitely framed this one, not only, in recognition of just how transcendent a phenomenon sports is, but also the fact that sports is a multi-billion dollar industry that is now estimated at 3% of global trade.

Central to this global upsurge in the commercial value of Sports has been Intellectual

Property (IP) and as the industry gets more innovative and creative; Intellectual Property Rights (IPR's) have even taken on a more prominent role.

From patents that protect smart sports equipment that is being churned out on a daily and the high-tech sports stadia and arenas that are rising up in the developed world, to trademarks that have enabled sports teams and individual athletes leverage their brand, to broadcasting rights that are now a source of immense revenue for sports organizations and media houses or even industrial designs that protect the aesthetic identity of sports products thus making them stand out in the market; IP and sports are more or less now joined at the hip.

From the above list of IPR's, I have deliberately left out a certain "Image Rights". Image rights are by and large nascent and developing IPR's even in more developed jurisdictions.

In the Ugandan case of Winnie Asege V Opportunity Bank & MAAD Advertising High Court Civil Suit No. 756 of 2013 argued and won by KTA Advocates, Justice

Henry Adonyo borrowing from common law jurisprudence where “image rights” are interchangeably referred to as “personality rights” defined the former as the right of an individual to control the commercial use of his or her name, image, likeness, or other unequivocal aspects of one’s identity.

The Learned judge further went ahead to break down image rights or the right to personality as;

***“The right of publicity or to keep one’s image and likeness from being commercially exploited without permission or contractual compensation and the right to privacy, and;***

***The right to be left alone and not have one’s personality represented publicly without permission.”***

The same judgment concluded that for one to succeed in an action for infringement of image rights, they have to prove that; they are identifiable, the other party’s actions were intentional and that party must have acted for the purpose of commercial gain.

## **Mohamed Salah Vs the Egypt Football Association (EFA)**



<https://www.joe.co.uk/sport/mohamed-salah-liverpool-dispute-egypt-world-cup-175814>

Last year, a public spat ensued between Egyptian and world football superstar, Mohamed “Mo” Salah and the Egyptian Football Association (EFA) over the latter’s unauthorized use of his image.

The EFA used the Egyptian star’s image to endorse the official team sponsor of the EFA, a telecommunications company called ‘WE’, who are a competitor to Vodafone.

To add context to this, in the world of professional football where image rights are big business, many of the elite football players license their image rights to an Image Rights Company (IRC). Even a footballer's club will usually contract with the player's IRC so as to lawfully exploit the player's image rights.

Mo Salah, through his IRC got an endorsement and Brand Ambassador deal with Vodafone Egypt. Enter, the EFA that goes ahead to use Salah's image without his authorization to endorse 'WE', a telecommunication company in Egypt which is also in competition with Vodafone.

Subsequently, there were back & forth exchanges that ensued between

Mohamed Salah's camp and the EFA, with the EFA initially claiming that they had the right to use to lawfully exploit the player's image rights.

Mo Salah, through his IRC got an endorsement and Brand Ambassador deal with Vodafone Egypt.

Salah's image, but then later eating humble pie and announcing that they would cease the use of Salah's image from their promotional materials.

## **Major Takeaways from Mohamed Salah Vs EFA**

National Teams/ Sports Associations and Players' Image Rights

Uganda has had its fair share of sporting heroes over the years whose exploits on both the continental and global scenes have brought the nation immense pride. The likes of among others; David Obua, Moses Kipsiro, Stephen Kiprotich, Dorcus Nzikuru, Peace Proscovia, Joshua Cheptegei, Philip Wokorach, Farouk Miya and 2016 CAF Player of the Year based in Africa, Denis Onyango have all busked in sporting glory.

As a result, it has become commonplace to see Ugandan sporting heroes appearing on billboards endorsing certain products or TV commercials like Stephen Kiprotich's "**Kip Siping**".



Many of these billboard adverts and TV commercials especially when it comes to a sport like football will usually involve about three national team stars appearing in endorsement deals that will have been entered between Federation of Uganda Football Association and a third party without the footballers' involvement.

Imperatively, it is important to find out if indeed these sportsmen have contracts with their respective national sports federations allowing their images to be used in adverts and endorsements on behalf of their national teams, and if they do, do the clauses therein make these sports stars consent to the use of their image rights by these national teams?

If Ugandan sports federations do not have any such contracts as stated above, there are a number of best practice examples to borrow a leaf from like the Football Association (FA) in England and the United States Soccer Federation (USSF) where standard contracts allow them to use their national team players' image rights but only under certain parameters.

## ***The need for the Professionalization of the sports industry is now***

It is quite telling that the Egypt Football Association (EFA) that exists in a top 3 economy in Africa, overseas African behemoth football clubs, Alhly and Zamalek whose levels of professionalism is akin to many European soccer giants, went ahead without the consent of arguably the biggest name to ever come out of Egyptian football to exploit and use his image rights. If the EFA can act in that manner, then what will the Federation of Ugandan Football Association or the Federation of Ugandan Basketball Association or Uganda Rugby Union do? The answer is that, they must professionalize their respective sports.

Perhaps it is because of the high level of professionalism that Mohamed Salah is at, that he was able to stop the EFA in their tracks from the unauthorized exploitation of his image rights through his Image Rights Company. Ugandan sportsmen must aspire to reach the zenith of their sporting powers so as to get such the exposure and opportunities that allows them to fully benefit from the commercialization of their talents.

The age-old debate on the professionalization of Ugandan sports cannot go without the now cliché but nonetheless never tiring call for a new Sports Act to revoke the now fossilized relic, the National Council of Sports Act of 1964.

## The need for a specialized dispute resolution mechanism

This dispute between Mo Salah and the EFA raises issues which yes, can be resolved before a national Court but because of the length of time that they would take before final determination, might require a more specialized tribunal or dispute body comprising well trained sports law experts.

The shell life of sportsmen presupposes that Municipal Courts are perhaps not the best forum for the resolution of disputes. There is therefore need for clarity and certainty as to the forum in which a sportsman's dispute will be resolved expeditiously and comprehensively.

A country like Uganda can borrow from Kenya's Sports Disputes Tribunal or even South Africa that has a similar mechanism.

However, this Tribunal can only be achieved with a new Sports Act and the professionalization of the sports industry.

\*Ironically, Mo Salah plays for an English football club whose mantra is “You **Will Never Walk Alone**”. We must never let our Sports heroes that bring an immense joy week in week out walk alone without reaping from their images\*



Ivan Allan Ojakol  
Associate  
KTA Advocates





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**SYMPOSIUM**  
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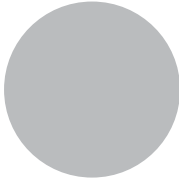
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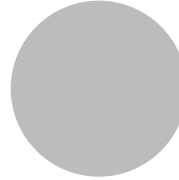
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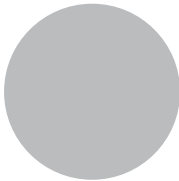
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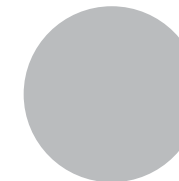
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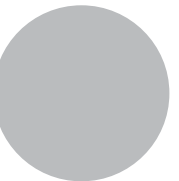
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