KTA ADVOCATES

AMANI IP NETWORK

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J K G R O W D I S C O V E R Y Z

L M N O N E W S L E T T E R S T U V X

I J T R A D E K L M

J K F I N T E C H L M A I P

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Kenneth Muhangi
Managing Partner

Welcome...

to the second KTA newsletter that follows our inagural 10 year commemorative edition.

KTA was ushered into the 2020s with recognition by IFLR 1000 as a notable Financial & Corporate firm. KTA also received recognition by the World Trademark Review (WTR1000) that ranks the top Intellectual Property firms in the world as a leading Intellectual Property Firm with two of our Partners, Edwin Tabaro and Kenneth Muhangi receiving individual recognition as leading Intellectual Property lawyers.

The recognitions by IFLR & WTR 1000 follow KTA's success at the 2019 Africa Legal Awards where we emerged as the Intellectual Property Firm of the year.

KTA's successes thus far validate our strategy & reaffirms our commitment to helping our clients navigate the Fourth Industrial Revolution (4IR). As part of our tireless pursuit of excellence and to serve our clients better, KTA also welcomes three (3) new Associates (Isabel Twongyeirwe, Judith Kagere & Grace Eron Nanyonjo, one (1) Senior Associate (Keneth Kipaalu) and of course the pièce de' résistance, Hon. Dr. Justice Yorokamu Bamwine who joins us as a consultant.

We are also pleased to announce the promotion of Simon Peter Nyero Lukwiya to Associate Partner and yours truly as the new Managing Partner. This 2020 issue recaps the achievements and highlights of 2019 and we hope you, the reader will be regaled by articles on Fintech, law firm culture, cyber security, Arbitration etc.

We also look forward to hosting you at our 3rd annual symposium on 24th & 25th October, 2020 under the theme, The New World: Navigating the 4IR.

Enjoy the read!

Going **Bigger** to Serve you **Better**

WE HAVE MOVED

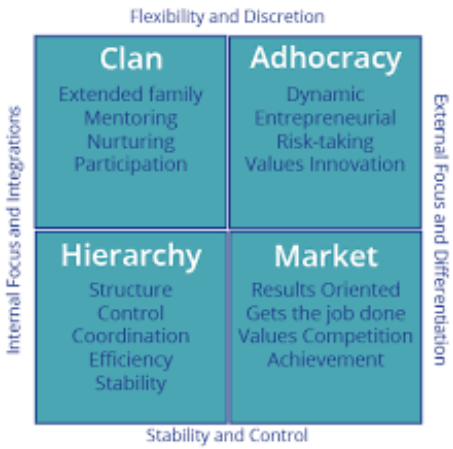
Floor 3, plot 4, Hannington road Behind ABSA Head office

Understanding Organisational Culture;
What It Means To Innovate, Grow, Dicover.

This article seeks to explore the origin of the concept of organizational culture, the meaning and relevance, and how one can easily adopt a new line of a given common thinking? The meaning of the word culture is more descriptive than definitive (in fact if you really want to get confused you may check the dictionary meaning). This is because of the general nature of custom which consists of unwritten rules and norms generally associated with everybody and accepted to be binding. As opposed to the above, organizational culture is defined by the Cambridge English dictionary as the types of attitudes and agreed ways of working shared by the employees of a company or organization. But generally it is understood to mean a concept synonymous with common believe and thinking in a given society or environment.

The documented origin of the whole concept of organizational culture can be traced from the writings by Dr. Elliott Jacques in his book The Changing Culture of a Factory. (Jacques,1951). This was a published report of a case study of developments in the social life of one industrial community between April 1948-1951 with the analysis of the corporate group behaviors. Other writers suggest that organizational culture has three key elements; the basic beliefs of the company, acceptance by the clients and sharing by employees

The term organizational culture comprises of four different types which are; clan culture, adhocracy culture, market culture and hierarchy culture. Culture may entail given set of believes, but the Way an organization chooses to express it varies. This gives rise to different types of organizational culture as noted above and a brief look at each is imperative at this stage



Clan culture is very friendly and social way in which employees share their personal experiences, stories and problems with each other. All the people in the organization treat each other nicely and this has the effect of creating a family bond among the employees.
We are that clan!!

Adhocracy culture meanwhile embodies a more liberal, flexible environment where people are allowed to come up with new and innovative ideas that are accepted and impressed by their fellow members. This kind of organizational culture is commonly found in business premises where innovation and technology are the main focus

The third type of organizational culture is what is referred to as hierarchical culture where every person plays by the rules. As opposed to adhocracy, hierarchical culture leaves no room for creative thinking and no risks are allowed. This kind of environment sets the rules and all the parties are expected to abide by them. Hmmmm.....this is where and how we came up with the Firm Policy.

Lastly, market culture puts more emphasis on the goals and aspirations of the organization other than creating a friendly workplace. Here more emphasis is put on the outcome and employees are evaluated based on how they have achieved a given set of goals. At KTA they are phrased as OKRS & CFRS where every end of quarter you set **O**bjectives and **K**ey **R**esults on which you will be appraised. Then you have a Conversation with your **P**ractice Head monthly, who gives **F**eedback hence your **R**eward.

I am, beyond certainty, that after looking at all the types of organizational culture, the KTA way of doing things is a mixture of all the elements that constitute organizational culture. In general, organizational culture is made up of the values, working beliefs and habits. KTA'S kind of ways are lived everyday by members through our Core purpose and firm values. We exist to offer an innovative service that nurtures relationships and impacts lives. Whose life you say, everyone that comes our way; employees, consultants, vendors, clients, everyone.

We are DEPENDABLE, PRAGMATIC and BOLD. Therefore, although there are numerous people in a setting like KTA with diverse cultures, the common characteristics of beliefs are exhibited in the common beliefs which are shared by everybody at the firm. It cannot be ignored that the employees are the most affected by firm culture. Organizational culture directly impacts on the ability and degree of employee's creative ability, task motivation, and work enthusiasm in a given environment. Only when employees adapt to the organizational culture, can they satisfy the job.

Then the next question should be why then should KTA have a kind of thinking mode which is approved by each other about the firm? Whereas it is noted the whole concept of firm culture has not escaped criticism from the scholars and the wider public. In fact what would really happen if nothing like organizational culture existed? To put things little more into perspective, many scholars have written that organizational culture brings too such harmful competition, leniency towards bad habits, poor communications etc. They have urged that it does encourage group thinking which is harmful to creation of an innovative and vibrant working environment. Organizational culture centers around treatment of customers, treatment of people, performance standards and accountability, innovation and change, and process orientation. Then the question should be how can something that impacts on lives of all the stakeholders in a given setting be made a foundation base for excellence.

To understand the importance of organizational culture, one needs to understand how the same impacts on the feedback obtained from stakeholders such as employees, partners, clients and the management. The power of organizational culture cannot be ignored, because, in summary, it inspires employees, attracts clients and promotes the cooperation with partners and other people associated with the brand. The impact of a positive culture on the reputation of the firm is underscored by the fact that culture is made out of unwritten rules. At KTA, the way a person treats a client is the same irrespective of the fact that the matter is been handled by a different person. This is due to culture which is uniform and shared by all the people associated with KTA.

A firm whose culture speaks to excellent common service across will have a higher client attraction and retention rate. An innovative service should not only be the responsibility of the employee in the customer service department but it is the responsibility of every employee in the firm as a matter of Board culture.

A firm can, therefore, promote branding and Business Corporation through having a very integrated and easily identifiable culture and values so as to have competitive advantage. The importance of having a strong organizational culture is that all the business partners will do their best in order to fit within the existing cultural values and beliefs. Even in the process of conflict resolution, communication, interaction of the team, culture has important effect.
“Culture eats strategy for breakfast” is a famous quote from legendary management consultant and writer Peter Drucker. To be clear he didn’t mean that strategy was unimportant – rather that a powerful and empowering culture was a surer route to organizational success.

Juliet K. Douglas - Practice Manager

Intellectual Property, Technology and Preservation of Cultural Heritage

In 1994, The Paris Review interviewed the eclectic author, Chinua Achebe who was quoted:

'There is that great proverb – that until the lions have their own historians, the history of the hunt will always glorify the hunter. That did not come to me until much later. Once I realized that, I had to be a writer. I had to be that historian. It's not one man's job. It's not one person's job. But it is something we have to do, so that the story of the hunt will also reflect the agony, the travail – the bravery, even, of the lions.'

Achebe's words reaffirm the importance of proper documentation (storytelling) in the preservation of heritage.

According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), heritage is the legacy that we receive from the past, that we experience in the present and that we will pass on to future generations.

UNESCO, further guides that cultural heritage is not limited to monuments and collections of objects. It also includes lived expressions inherited from our ancestors and passed on to our descendants. These include oral traditions, performing arts, social manners, rituals, celebrations, practices and knowledge and techniques related to traditional handcrafts.

Africa in particular has suffered greatly with the irreverent appropriation of its heritage. Fables that were perhaps naively only passed down to the next generation at the proverbial fireplace have either been adulterated or completely lost to time. Artifacts that documented the history of its original makers/owners and their societies, have been appropriated over the years; mostly because of slavery and colonialism.

Kasubi Tombs, The cultural site where they burry all Buganda Kingdm Kings; This has been the case for thelast many years.

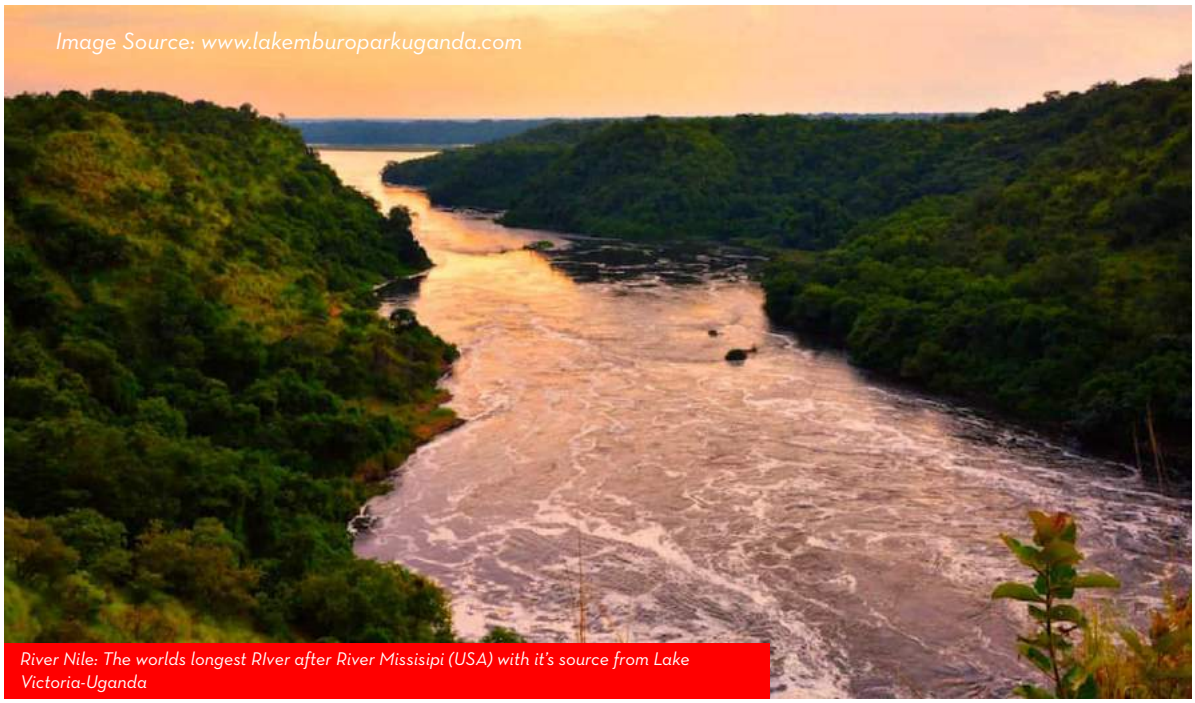
In legal parlance, heritage may be protected under Intellectual Property. In 1985, The World Intellectual Property Organization (WIPO) and UNESCO convened a Working Group meeting on the Protection of Expressions of Folklore by Intellectual Property and came up with the following definition of a an example of heritage, folklore:

'Folklore (in the broader sense, traditional and popular folk culture) is a group oriented and tradition- based creation of groups or individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity; its standards are transmitted orally, by imitation or by other means. Its forms include, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts.'

Any Intellectual Property protection accorded to heritage is in most instances for the good of a society or community and not an individual. Individuals, may however still benefit by creating derivative works which may be protected under copyright.

In 2010, H.E. Yoweri K. Museveni the President of Uganda released a rap song, before the Presidential elections of February 2011. The song was derived from two folklore poems traced to the Ankole community in Uganda. The President, applied for copyright protection from the Registrar of Copyright at the Uganda Registration Services Bureau and two Ugandan citizens objected to the registration.

The objectors argued that the folklore in the song belongs to all the Ankole people and therefore cannot be attributed to the President. Edgar Tabaro, from KTA Advocates, represented the President in this matter, and pointed out the difference between the Traditional Cultural Expression in the Ankole poems and the copyright in the musical expression created by the President. He argued that the President is only electing to protect his derivative expression "rather than restrict the use of earlier and differently expressed versions".



River Nile: The worlds longest RIver after River Missisipi (USA) with it's source from Lake Victoria-Uganda

The Registrar of Copyrights concurred with the President's counsel and ruled that the transformation of a folksong was an original creation which as expressed constituted a derivative work that was entitled to copyright protection.

In summing up her ruling, the Registrar stated that:
"I am aware that the objectors were under the impression that the applicant was attempting to monopolize a piece of heritage of the Banyankole/Bakiga. I hope that they can now rest assured that the heritage of the aforementioned people can still be enjoyed by anyone and has not in any way been misappropriated but instead can now be enjoyed by anyone including the young generation whom, I hazard to say, may relate to the applicant's new arrangement of the said works."

Dr. Anthony Kakooza, a scholar and expert in Intellectual Property, opined that both parties came out as winners in this matter;
'The President got the Copyright protection that he sought and the Objectors got the assurance that the original folklore was still free for their use...This matter, as the first legal contestation over property rights in folklore in Uganda, creates precedence in the balancing of interests between TCEs and derivative music in Uganda..'

The case above is a classic example of one of the ways technology & intellectual property can be used as a means to preserve heritage albeit in the form of a derivative work protected by copyright.

In 2019, the Italian Embassy in Uganda, hosted a digitized exhibition dedicated to showcasing the works of the Italian maestro, Leonardo Da Vinci. Copyright in creative work lasts for the lifetime of the author and 50 years after the author's death. This particular exhibit marked occasion of the 500th anniversary of the death of Italy's most renowned genius: Leonardo Da Vinci.

Image Source: www.theconversation.com

The exhibit displayed seventeen high definition and true-to-scale reproductions of the masterpieces of Italy's most renowned genius, including the "Mona Lisa" and "The Last Supper". The pieces were produced with the most advanced technologies of the graphic sector, to the point to be considered as "digital paintings".

The work displayed in the exhibition was originally protected under Copyright but which after 500 years is now considered as a part of Italian cultural heritage.
In October 2019, the National Museum of Kenya and Google announced a partnership to digitize and showcase the museum's collections online. The Google Arts and Culture project, "Utamaduni Wetu: Meet the People of Kenya" tells stories from 28 communities around Kenya.

Epitaph

The brusqueness and utilitarian nature of the digital age has exacerbated the need to preserve cultural heritage. In 2009, Nigerian Author, Chimamanda Ngonzi Adichie, eloquently made a case for the importance of preservation of culture. She opined that our lives and our cultures are composed of many overlapping stories and warned that if we hear only a single story about another person or country, we risk a critical misunderstanding.

Such stereo-typing according to Adichie, cannot be blamed on an individual but rather on the information that individual has been exposed to. Adichie believes that the more you document (write about something), the more that something becomes a reality.
This author postulates therefore that Technology and Intellectual Property are critical in documenting and preserving cultural heritage.

Kenneth Muhangi - Managing Partner

COVID-19

Force Majeure & The Effect On Business

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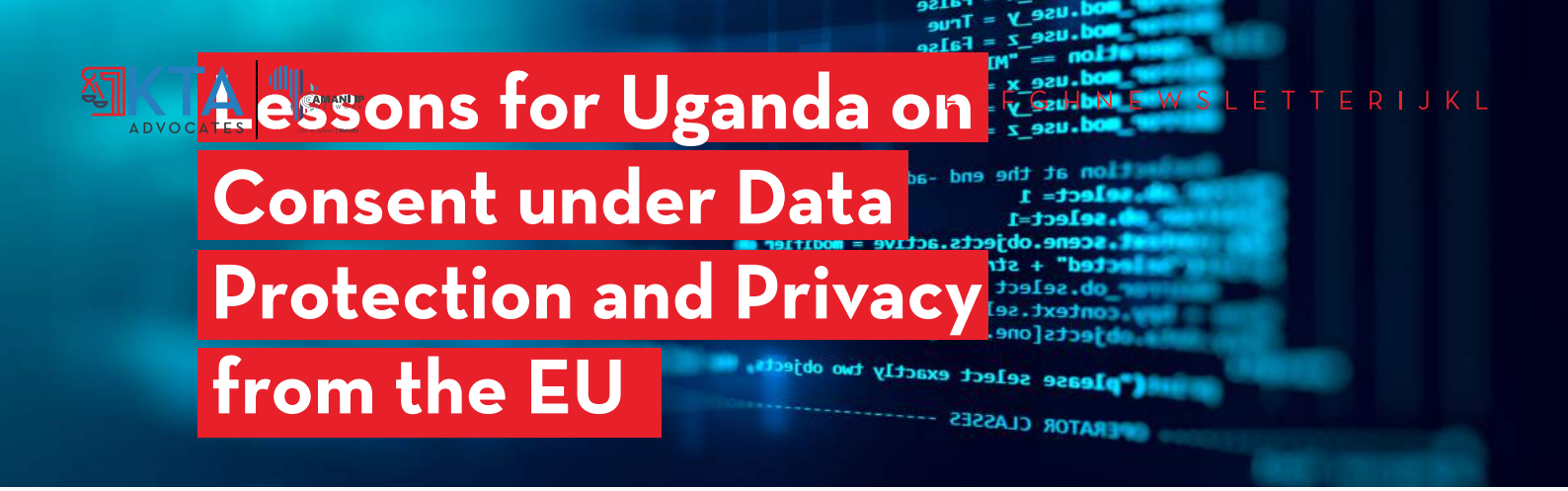


Lessons for Uganda on Consent under Data Protection and Privacy from the EU

Uganda is among the few African countries with a Data Protection and Privacy legal regime with its Data Protection and Privacy Act, 2019 that came into force in February, 2019 following in the footsteps of the seminal European Union General Data Protection Regulation, 2018 (GDPR) that came into May, 2018.

The Data Protection and Privacy Act, 2019 stipulates that data is supposed to be collected and/ or processed with the consent of the Data Subject. The subject of 'Consent' however remains a murky subject in practice and needs a certain level of clarity and direction. Thankfully the Advocate General (AG) of the Court of Justice of the European Union has recently attempted to give direction on this subject in Orange **România SA v Autoritatea Naţionalţ de Supraveghere a Prelucrţrii Datelor cu Caracter Personal (ANSPDCP) Case C 61/19** in a Preliminary Ruling delivered on the 4th of March, 2020.

Brief facts

A company called Orange România SA went into concluding contracts for mobile telecommunication services whereby they attached copies of customers' IDs to those contracts. However, the national regulatory authority contested this and disputed the fact that the customers had given their valid consent for the collection and storage of the copies of their ID's and resultantly Orange România SA was penalized.

Orange România SA had stated that the customers had been informed and had given their consent to the collection and storage of the copies of the ID's through the insertion of crosses in boxes in the contractual clauses. The national regulatory authority's main point of contention was that there was no evidence that Orange România Orange România SA at the time the contracts were concluded had gotten informed choices from the customers as to the collection and storage of their ID data.

Orange România SA referred the matter to the Court of Justice of the European Union (CJEU) for interpretation. The Court was called upon to determine specifically the conditions that determine the validity of consent in the processing of personal data. As is European Union Law, the matter was referred to the Advocate General for a Preliminary Ruling. To that effect the Advocate General Opinion summarized the issue as

"Against this background, I understand the two questions, which should be examined together, as the referring court seeking to ascertain whether a data subject intending to enter into a contractual relationship for the provision of telecommunication services with an undertaking gives his or her 'specific and informed' and 'freely expressed' consent within the meaning of Article 2(h) of Directive 95/46 and Article 4(11) of Regulation 2016/679, to that undertaking when he or she needs to state, in handwriting, on an otherwise standardized contract, that he or she refuses to consent to the photocopying and conservation of his or her ID documents."

It is important to note that the definition of 'Consent' under the Data protection and Privacy Act, 2019 is word for word the same as the one in the General Data Protection Regulation, 2018;

> *"Consent" means any **freely given, specific, informed and unambiguous** indication of the data subject's wish which he or she, by a statement or by clear affirmative action, signifies agreement to the collection or processing of personal data relating to him or her."[i]*

Consent is therefore a prerequisite for processing of personal data and must be ***freely given, specific, informed and unambiguous.***

As per the Data Protection and Privacy Act, 2019, one of the principles of data protection is that data should be collected fairly and lawfully[ii] and that in its collection, it must be collected and processed transparently and with the participation of the data subject[iii], the GDPR has a similar provision on the processing of data in a fair and lawful manner[iv]. The GDPR though goes further and breaks down what amounts to the lawfulness of processing personal data by stating that it should be with the consent of the Data Subject and it should be obtained for 'one or more specific purposes'.

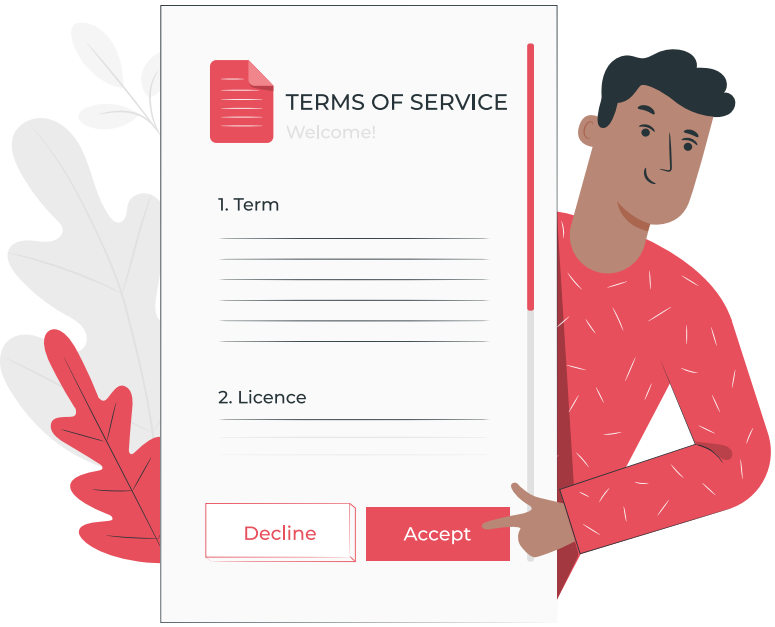
Freely given consent

Referring to an earlier decision, the Advocate general interpreted this limb as that there should be an **'indication'** that the data subject wishes to give his or her consent clearly and **that there should be 'active, rather than passive behaviour' and 'that the data subject enjoys a high degree of autonomy when choosing whether or not to give consent[v].'**

He also juxtaposed this scenario with another decided case concerning an online lottery on a website where that Court held that consent given by way of a pre-selected tick of a checkbox does not amount to **active behaviour on the part of the website user [vi].**

The Advocate General even extended his interpretation to the signing of a physical document, opining

> *"Consent in the form of a preselected tick of a checkbox cannot imply active consent on the part of the person dealing with a physical document which he or she ultimately signs. Indeed, in such a situation, one does not know whether the pre-formulated text in question has been read and digested. The situation is not unambiguous. The text may or may not have been read. The 'reader' may have omitted to do so out of pure negligence, making it impossible to establish with clarity whether consent has been freely given."*



Informed consent

In line with the principle of transparency enshrined in the GDPR and Section 3 (1) (f) of the Data Protection and Privacy Act, 2019, it must be thoroughly clear that the Data Subject was informed sufficiently during the collection and/or processing of their Personal Data. The Advocate general opined;

> *"The data subject must be informed of all circumstances surrounding the data processing and its consequences. In particular he or she must know which data are to be processed, the duration of such processing, in what way and for which specific purpose. He or she must also know who is processing the data and whether the data are intended to be transferred to third parties. Crucially, he or she must be informed of the consequences of refusing consent: is consenting to the data processing a condition for concluding the contract or not?"*

The Advocate General also in leaving no stone unturned on this sticky subject of 'Consent' pronounced himself on the '**Burden** of proof' as far as it is concerned. According to the Advocate General because the GDPR provides for the Principle of Accountability in the collection of data, also provided for in the Data Protection and Privacy Act, 2019, [vii] *'it is for the controller to demonstrate that the data subject has consented to processing of his or her data'.* The burden of proof therefore lies on the data controller/ processor. Further buttressing this point by adding that the data controller/ processor 'must not only prove that the data subject has given his or her consent, but *must also prove that all the conditions for effectiveness have been met.'*

It goes without saying that the AG held that there was no freely given consent.
It must of course be noted that the Advocate General's Opinion is not binding on the Court; we await with bated breath the Court's interpretation of this interesting case.
Nonetheless, this is a great lesson for Uganda and hopefully those drafting the Data Protection and Privacy Regulations pursuant to the mother Act look at this decision and incorporate the AG's wise direction as far as the sometimes ambiguous subject of "Consent" is concerned.

[i] Article 4 (11) of the GDPR and Section 2 of the Data Protection and Privacy Act, 2019
[ii] Section 3 (1) (b)
[iii] Section 3 (1) (f)
[iv] Article 5 (1) (a)
[v]Bundesverband der Verbraucherzentralen und Verbraucherverbände Verbraucherzentrale Bundesverband eV v Planet49 GmbH, Case C-673/17 (C 673/17, EU:C:2019:801, paragraph 52
[vi] Ibid
[vii] Section 3 (1) (a)

Ivan Ojakol - Asociate

Kenya's blockade of Uganda's milk is a violation of the EAC Treaty and International Trade Instruments

There is a milk war brewing between Uganda and Kenya currently. There has been an influx of Ugandan milk products in the Kenyan market where Ugandan milk has done exceedingly well even outcompeting Kenyan milk products.

Kenya retaliated by seizing what they alleged were/are substandard milk products from Lato milk. Some press reports state that milk products worth UGX36,000,000 including 262,632 litres and 43,000kgs of milk powder of Lato milk owned by Pearl Dairy Farms Ltd have been impounded by the Kenyan Customs authorities.

Kenyan press reports further state that Kenya intends to start charging VAT of 16% on milk imports from Uganda without doing the same for their locally produced milk.

Uganda has since issued a **protest note** and threatened retaliatory measures against Kenya.

The Republic of Kenya just like Uganda is a member of the East African Community and is therefore a signatory to The Treaty Establishing the East African Community ('The Treaty'), The Protocol establishing the East African Community Common Market ('Common Market Protocol') and The Protocol establishing the East African Community Customs Union ('Customs Union Protocol').

Both countries are also a part of the multi-lateral trade system and by virtue of being members of the World Trade Organization (WTO) and are party to The General Agreement on Tariffs and Trade (GATT) that regulates trade in goods; also because, they are members of the World Trade Organization and under the WTO's principle of **Single Undertaking** are party to the World Trade Organization Trade Facilitation

Agreement (TFA) that is meant to smoothen and harmonize customs procedures and processes worldover.
The multilateral trading system under the World Trade Organization is underpinned by the **Principle of National Treatment** among the two major principles of International Trade. The other being the **Most Favoured Nation (MFN)** Principle.

Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS

The National Treatment Principle is basically to the effect that imported and locally-produced goods should be treated equally at least after the foreign goods have entered the market. This principle only applies after the imported goods have entered the market.

Article 6 of the EAC Treaty provides for fundamental principles of the Community and among these are mutual trust, peaceful co-existence and good neighbourliness. This is backed up by **Article 7** that provides for the operational principles of the Community; market driven co-operation, an adequate and enabling environment, free movement of goods, persons among others.

The Partner states are therefore not supposed to undertake any measures that are likely to jeopardize the achievements of the objectives or the implementation of the provisions of the Treaty.

Kenya's actions are without a doubt in breach of these provisions of the Treaty.

The East African Community Common Market Protocol

The Common Market Protocol as stated in Article 2 and further expounded upon in Articles 5, 6, 7, 10, 13 and 14 provides for the free movement of goods, persons, labour, services, capital, the right of establishment and the right of residence.

Under Article 3 (2), the Common Market Protocol, the Partner states undertook to observe the principles of non-discrimination of each other's nationals and accord these same nationals not less favourable treatment than the treatment accorded to third parties.

British American Tobacco V Attorney General (Reference No.07 of 2017) – EACJ stated that goods originating from another EAC Partner state are not ***"imports",*** but intra-community purchases which cannot receive a treatment which is different from locally manufactured goods.

Kenya's actions through its customs authorities are a vehement breach of the EAC Common Market Protocol.

The East African Community Customs Union Protocol

The EAC has been a Single Customs Territory (SCT) since July, 2014 and as pointed out above, the Principle of National Treatment is central to its existence.

This Customs Union Protocol among others provides for the elimination of Non-Tariff Barriers to trade under Article's 13 and 15.
Kenya's actions are a violation of the EAC Single Customs Territory.
Further still, Kenya actions of seizing Ugandan milk products are a breach of Articles 213 and 214 the East African Community Customs Management Act, 2004. These two provisions of this Act are to the effect that only an authorized police officer may seize and detain goods under reasonable grounds which he or she believes are liable for forfeiture and that before this seizure is done, a Notice of seizure must be served upon the importer.

In **Grand Lacs Suppliers S.A.R.L Ors V A.G of Burundi Reference No. 06 of 2016,** the East African Court of Justice stated that:

> *"The Notice must contain specific information about what was seized and must also states the laws applicable for the violation in justification of the seizure. When served with the Notice of seizure, the importer can object to the Notice of seizure and can institute a legal proceeding against the seizing authority."*

In that case, Court held that the decision of seizing the Applicants' goods without due process ran afoul of the principle of the 1rule of law laid out in Articles 6(d) and 7(2) of the Treaty.

Conclusion

If the Republic of Kenya does not correct its actions, Ugandan milk traders have a clear cause of action before the East African Court of Justice (EACJ). Luckily now, that Court has gotten bolder and is not granting remedies in the form of damages as stated in **Hon. Dr Margaret Zziwa V.The Secretary General of the East African Community, EACJ Appeal No. 2 of 2017 and British American Tobacco V Attorney General (Reference No.07 of 2017)**

Edwin Tabaro - Partner
Peter Nyero Lukwiya - Associate Partner
Ivan Ojakol - Associate

Fintech: The Race to Bank East Africa's Unbanked and Under Banked Population

According to the World Bank, 66% of people in E. Africa remain unbanked and yet two thirds of them own a mobile phone that could help them access financial services. Financial inclusion is the first and most important step towards financial emancipation and empowerment. With these glaring statistics, conventional banks and fintech-preneurs in East Africa need to start looking at the future of the E.A market from a different view point.

Three quarters of East Africans **have no bank account or access to the conventional bank system and so inevitably rely on unsafe and costly financial services which calls for financial inclusion.** From this, financial service providers are forced to develop fintech solutions to cover this disparity because when people have higher income, they have higher expenditure and better financial security. Fintech is not just changing the way people insure or borrow but for a population that is continuously searching for convenience, it is making unprecedented steps to solve native problems by harnessing the technology available and providing for the people, simple, smart and seamless solutions.

The legal framework in Uganda in particular is still novel for innovators and regulators are still formulating an appropriate regulatory framework for fintech keeping in mind that it is fundamental to appreciate the nature of a product, t**he market it is introduced into and connecting people, partnerships such as with conventional banks and the possibilities of the future.** It is vital to work with legal financial regulators and address regulation in payment, anti-money laundering, insurance, consumer protection and the entire eco system to develop the sand boxes and guidelines and together address challenges that may arise. It is important not to innovate alone because partnering and collaboration give a strong understanding of the market in which fin tech products are introduced.

For a fintech-preneur, answering these hard questions and facing these grey spaces is important so that once this is transparent, everyone can integrate this technology to provide a better customer experience and move faster towards financial inclusion. Some of the game changing technology that has transformed the way human beings live such as Apple, Facebook and Uber have become part of our everyday lives by consistently making the move from profits to purpose and finding newer and better ways of making sense of the market to keep relevant.

The financial platform of the future is not the banking hall and relationship managers but a smart phone that gives a user the ability to pick and choose what financial product they get to benefit from and leave the boring costly offers behind.

For East Africa, fintech focuses on affordable services for those who have no access or are excluded completely. As a fintech-preneur, you have to understand the East African problem so that you can offer a product that can not only transform the way financial services are delivered but offer a great user experience with access and cost saving.

Technology is shifting towards experience and personalisation because in this new world of competition, a fintech-preneur has to care about making the life of your user easier because this is what they really care about. Fintech innovation is no longer a product but an experience. AI for example, mimics human conversations and replaces passwords so you do not have to spend time logging into a device, IoT ensures that in the future a customer does not need to worry about things that are already captured and translated by their data.

In E Africa, the high population outside the cities means that for a traditional bank, a customer in this area will incur high transaction costs on the cash based system and those with low balances are regarded as "unprofitable"; for insurance companies this is not a market they even want to deal with. And so Fintech-preneurs **have to deliver with a new mechanism and invent a digitally native financial service that reaches all these customers and creates a massive million dollar market** from people who were previously unbanked and under banked. The honest conversation is that in East Africa, fintech-preneurs and conventional banks harnessing financial technology have to evolve in order to survive.

The E. African fintech eco system connects MNOs, regulators, retailers (agents), financial infrastructure providers, banks and consumers. The advantage of fintech is that the cost of a digital transaction can be brought down to literally zero and for banks this competition inclines them to have to connect and collaborate rather than compete.

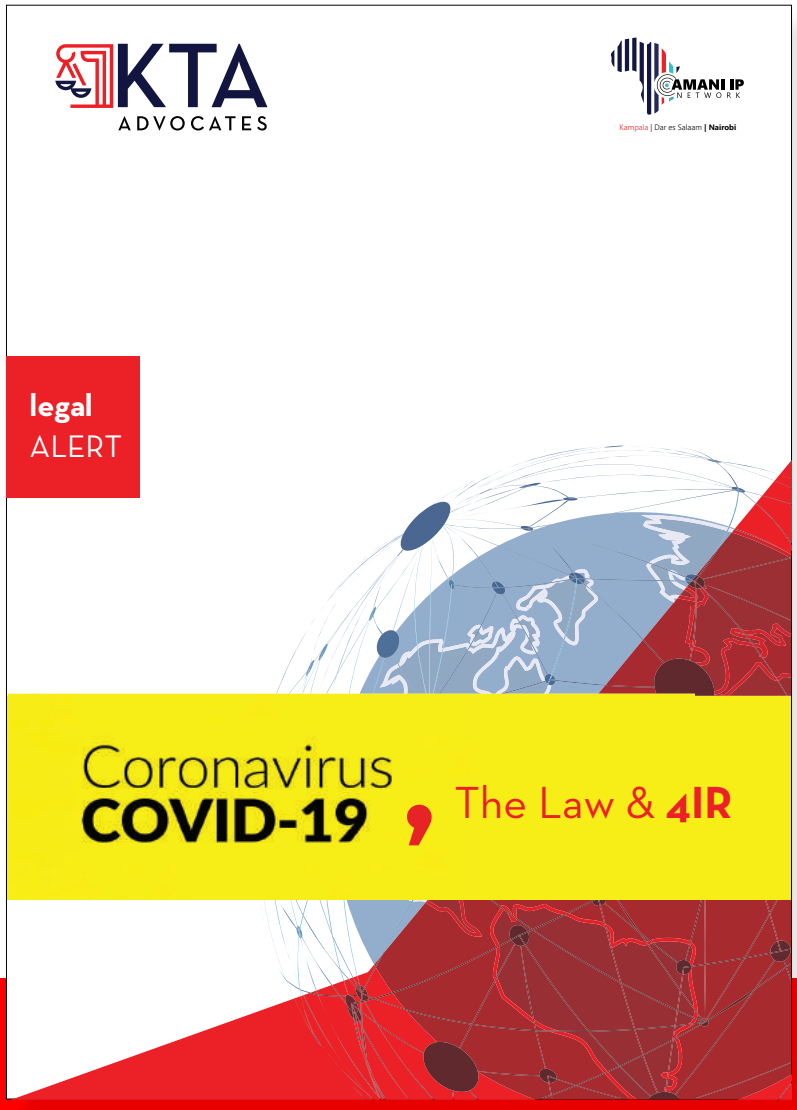
Image Source: www.outreachuganda.org

A rare image of women venders in rural areas of Uganda.

Financial regulators are harnessing fintech and working with everyone in the eco system to formulate policies and enact reforms so that we can all adapt to this new reality. Alternative native distribution network are one avenue that can be experimented because in E Africa a duuka (corner shop) can provide a new payment rail whose framework can be structured for a fintech transaction to remove the existing blocks of high transaction costs and lengthy time frames. Fintech-preneurs and regulators are looking out for ethnic financial products that are like for like products in our developing communities to shrink the divide in access because the dynamic of our population is one that is looking for a small amount of money to out poverty.

The legal regulators are aware of these disparities and that fintech provides the solutions however, what they are most conscious about is retaining control of the financial system as we face the unshaped future that is already here. The legal framework for fiat money is heavily regulated in the spheres of licensing, anti- money laundering, privacy, financial consumer protection, interoperability... **and so the question that remains is about regulation of all these legal issues as they resurface on a whole new different platform.** As a Fintech-preneur, you have to look out of all these as you develop your product and or service to ensure compliance and be able to obtain all the necessary licenses to roll out. **Regulatory challenges are around the spheres of regulating cryptocurrency, trade in digital securities, clearing and the mismatches between the technology and the existing regulation.** The Financial Authorities contemplates and insist on convention check systems and for a fintech to obtain these approvals, it has to subsume them into its system so that even if they are self -regulating and can self- clear, the Authorities can grant approval when they are satisfied that all the requisites according to the statute are still covered by your system.

Judith Kagere - Associate



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Copyright Infringement and Cybercrime:

Hitting Two Birds With One Digital Stone

It is interesting to think that downloading copyrighted material for free via torrent and cybercrime have even a nexus at all; but there's more than one way the common forms and means of copyright infringement today, actually enforce the existence of cybercrime in Uganda.

Should cybercrime law consider the forward movement of interdependent and interrelated fields of law like copyright to realize more practical and positive sanctioning of cybercrime in Uganda.? This is big question and the answer is yes, it definitely should.

Copyright law is a relatively longstanding field of legal practice in Uganda provided for under the **Copyright and Neighboring Rights Act 2006.** Cybercrime law, by contrast is a very new area of law that combines innovative legal theories with new takes on traditional doctrines of law like privacy and access to information under **The Computer Misuse Act 2011 as well as The Data Protection and Privacy Act 2019.**

Both have been significantly impacted by the development of technology and the growth of the internet and therefore, an intersection between cyber law and copyright infringement has been gradually broadening. Within this intersection, the struts and ties that are; ignorance of copyright and cybercrime law, the resultant complacency in its enforcement and the realities of the 21st century affecting a developing country like Uganda, are some of the reasons that this intersection is forming a girded structure.

Its unfortunate structural integrity is also strengthened by its entrenchment in the fabric of lifestyle, culture and society in Uganda with common establishments like video library kiosks which without license sell copyright protected fixations, as well as common practices within the general public like forwarded WhatsApp messages containing broadcasts, audio fixations, literary works and publications among other copyright protected content, that do not acknowledge the true authors of such material.

This also greatly diminishes the economic benefits from such material to their authors, as they occur way out of the protections of fair use and public domain presence. Essentially, these basic forms of copyright infringement in society today are also areas cybercrime law is conversely concerned with because of in this day, the means to copyright infringement and the tools to commit most cybercrimes are typically computer related.

In the end, such acts constitute piracy contrary to the present laws on unauthorized access to data, unauthorized interference with computer data, the production or use of a device or programme to overcome security measures or to commit any other cybercrime and the interception of computer services or, the unauthorized disclosure of access codes or information.
An understanding that the law is directly applied to the dynamic realities of life and living in a time where entertainment, internet access, digitalization, and technological advancement meets globalization at an unrelenting force right in Uganda, must be realized not just only within law, but be practiced and reflected in the culture of society as well.

As Uganda is at the stages of a growing sensitization to cybercrime, maybe that understanding should extent to interrelated fields of law like copyright to the end that cybercrime, and inversely copyright infringement, are dealt with in Uganda. Cyber Security is therefore the answer and the digital stone to proverbially hit not just one bird, but two at once, this way.

Isabel Twongyeirwe - Associate

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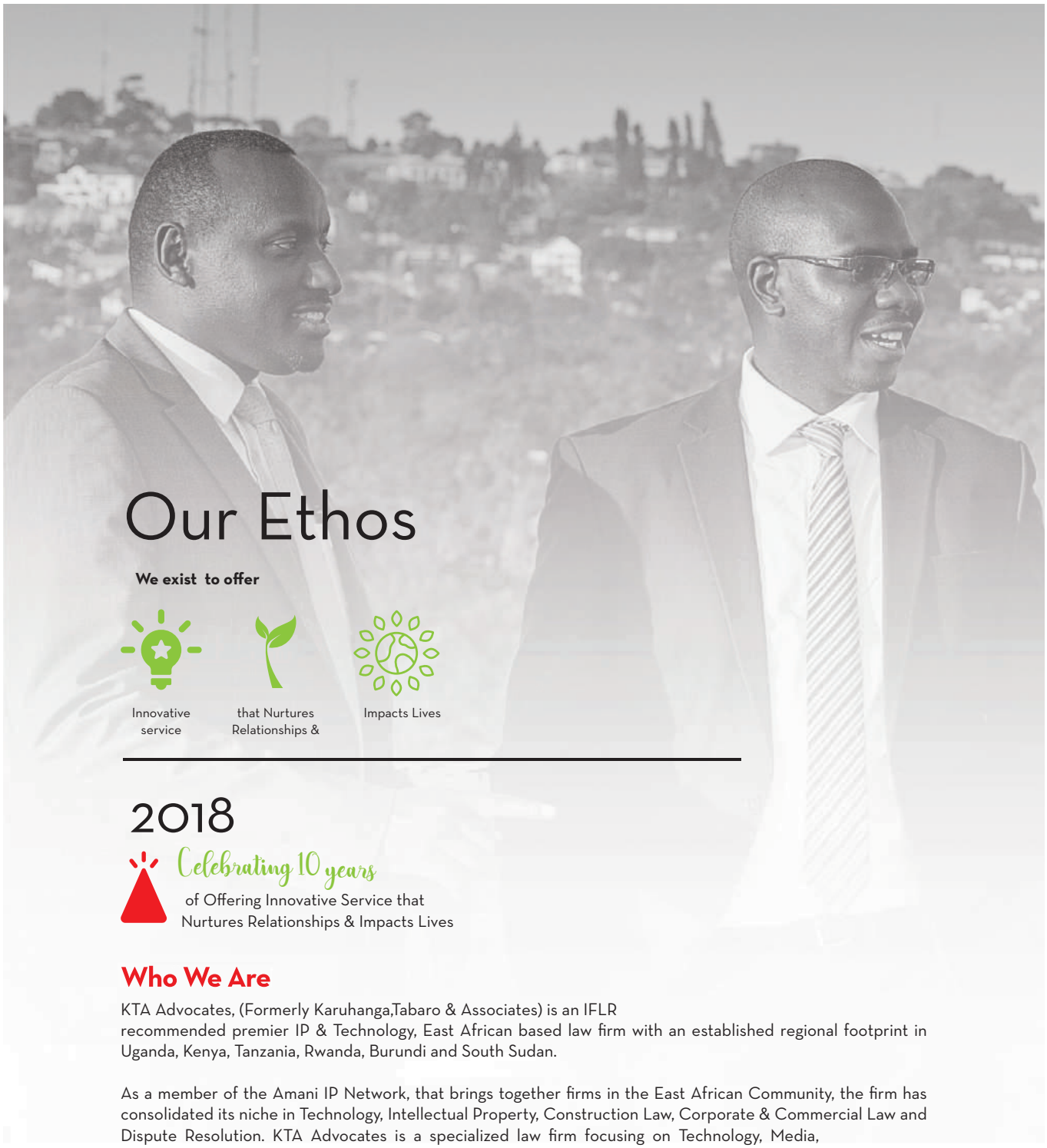

Our Ethos

We exist to offer

Innovative service

that Nurtures Relationships &

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2018

Celebrating 10 years

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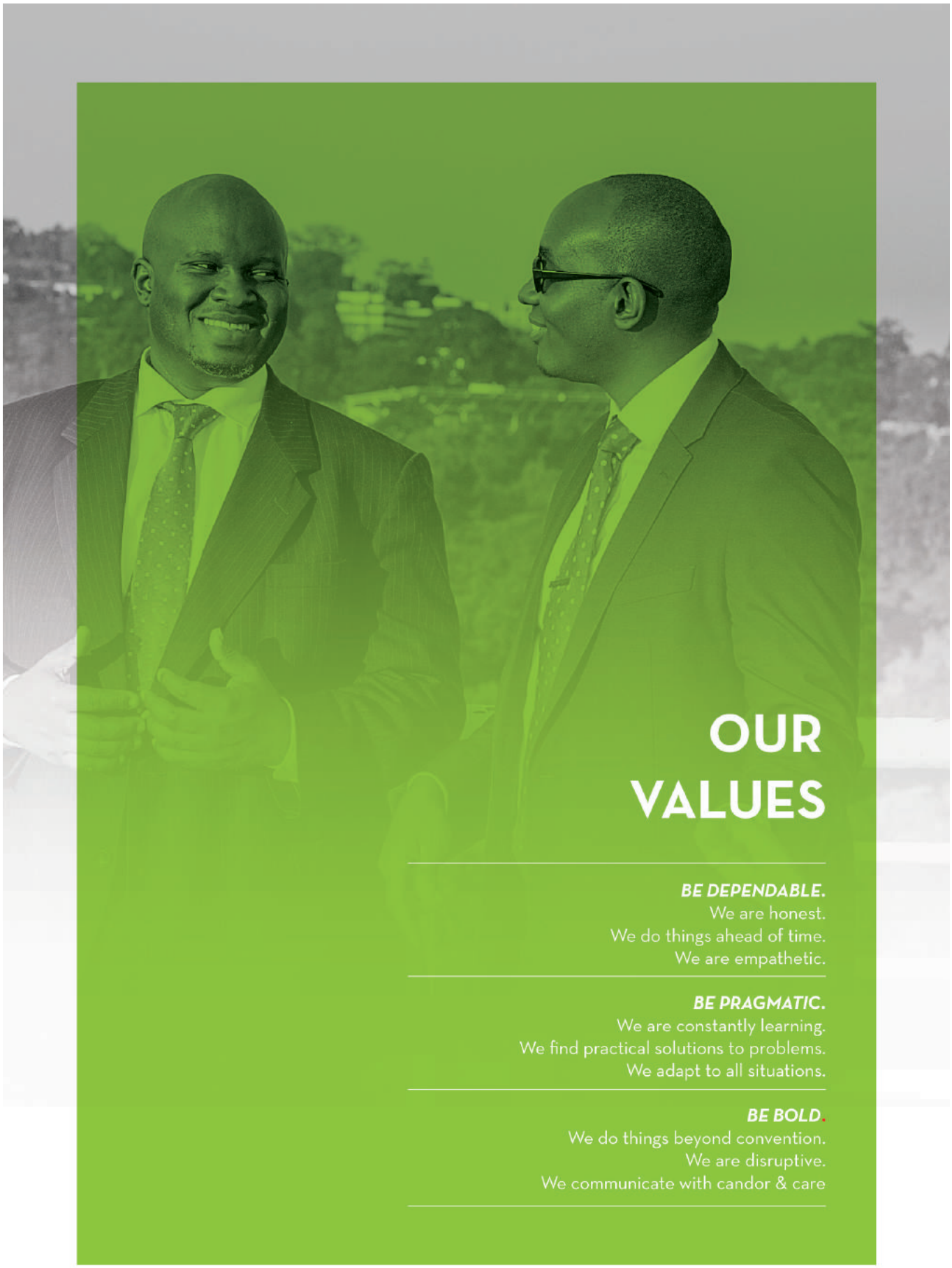
Who We Are

KTA Advocates, (Formerly Karuhanga,Tabaro & Associates) is an IFLR recommended premier IP & Technology, East African based law firm with an established regional footprint in Uganda, Kenya, Tanzania, Rwanda, Burundi and South Sudan.

As a member of the Amani IP Network, that brings together firms in the East African Community, the firm has consolidated its niche in Technology, Intellectual Property, Construction Law, Corporate & Commercial Law and Dispute Resolution. KTA Advocates is a specialized law firm focusing on Technology, Media, Telecommunications, Intellectual Property & Construction Law. We advise clients on the financing, exploitation and protection of their creative and commercial assets in these sectors.

Alongside its specialist commercial expertise, the firm provides a full legal service across corporate, tax, finance, litigation, employment and property. The firm's clients range from leading businesses in banking, e-commerce, entertainment, technology, beverage & hospitality, telecommunications, broadcast entertainment, music, and publishing through to platforms, content retailers and early stage entrepreneurs.

The firm also provides legal support and lobbies decision makers on behalf of clients on a wide range of matters, including data protection and privacy, cyber security, anti-competition, copyright, trade and e-commerce. The firm is also a member of the Amani IP Network, a network of intellectual property practitioners in the region. The firm also works with other trusted overseas law firms, with similar media, technology and IP focus, covering all key worldwide jurisdictions.



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We are honest.
We do things ahead of time.
We are empathetic.

BE PRAGMATIC.
We are constantly learning.
We find practical solutions to problems.
We adapt to all situations.

BE BOLD.
We do things beyond convention.
We are disruptive.
We communicate with candor & care

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Partner

Edgar Tabaro
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Edwin Tabaro
Partner

Kenneth Muhangi
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- Firm (Top Tier) WTR 1000 Leading Intellectual Property Individuals, 2020 (Edwin Tabaro, Kenneth Muhangi)

- Africa Legal Awards IP Team of the Year, 2019
- Finalists Specialist Firm of the Year, Partner of the Year, Boutique Law Firm of the Year Africa Legal Awards, 2019

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