KTA ADVOCATES

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End of Year

Newsletter

AMANI IP NETWORK

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Dear Readers,

Welcome to the third **KTA** newsletter that coincides with the twilight of 2020. 2020 has been an unforgettable year for many reasons. This year, the world was hit by the scourge that is Covid19, a harbinger of unprecedent-ed disruption to society, health, economy and the mental wellbeing of millions.

With countless sick, many dead and many grappling with the effects of isolation, we are in uncertain times that require each of us to re-adjust and realign. World over, there has been an increase in the use of anti-depressants and pain medications as people find ways of coping with the uncertainty that Covid has brought. I also commiserate with the families of those who lost loved ones following nominations for Uganda's Presidential candidates. Kitalo nnyo!

Like you, dear reader, it hasn't been easy but I have found balance with mindfulness, exercise and being intentional about what I feed my body and mind. Carlos Castenada, reminds you to also focus on knowing yourself above all else and rid yourself of self-importance. The ego is a blind spot you should be wary about and once tamed, you start the journey of invulnerability that is a sure way to keep you happy even when the odds are seemingly stacked against you.

At KTA, it has helped that we discussed and introduced work from home arrangements where our staff have been able to cater to our clients during lockdown and after.

I urge you, fellow entrepreneur/leader to embrace technology in order to remain relevant in the digital age. The use of technology must however be balanced with emphasis on security as data has become the oil that runs society and economies world over.

On a positive note, KTA was honored to receive recognition by IFLR 1000 as a notable Financial & Corporate firm and recognition by the World Trademark Review (WTR1000) that ranks the top Intellectual Property firms in the world. KTA is ranked 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. In 2020, I was also humbled to be recognized as 2020's Africa's male partner of the year at the same awards. Our Associate Partner, Peter Nyero and Associate Ivan Ojakol were also nominated as rising star and most promising new comer respectively.

We have also been fortunate to add to our team/family, Bonita Mulelengi our new head of TMT, Patience Namanya as Business Development Manager and Margaret Kabanyoro Nyakusemera as an Associate working in corporate. We also welcomed Mary Batamuliza and John Bosco Okurut as Clerks in our litigation and commercial departments.

This newsletter issue recaps the achievements and highlights of 2020 including an enviable campaign from our Edwin Tabaro who ran for EALS President and our just concluded annual symposium. The symposium was convened and held with support from our partner, Attorney General's Alliance (AGA-Africa) who have been invaluable in imparting knowledge in the areas of cyber security and transnational crimes.

I wish you a peaceful end to the year and look forward to sharing more with you in 2021.

Enjoy the read!

Kenneth Muhangi
Managing Partner

Accolades

IFLR 1000

- IFLR 1000 Recommended Firm (2018, 2020)
- IFLR 1000 Notable Firm, Financial and Corporate, 2020

WTR 1000 Recommended Firm

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

The Africa Legal Awards 2019

- 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

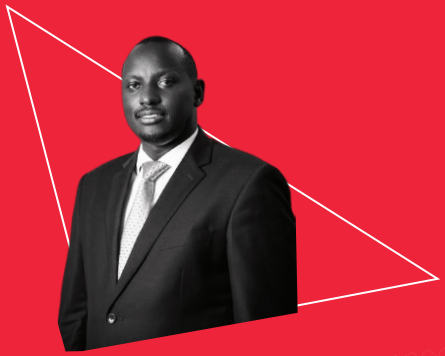
The Africa Legal Awards 2020

- Africa Legal Awards Winners 2020

Kenneth Muhangi
Partner of the year - Male

Simon Peter Lukwiya Nyero
Highly Commended
Private Practice Rising Star Award

Our Team



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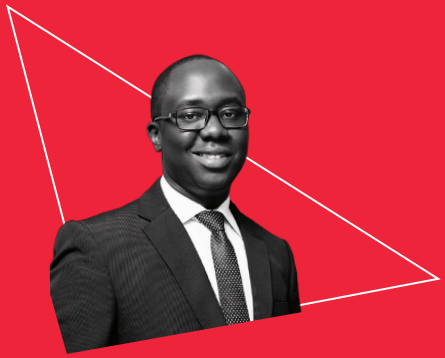

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2020

Gallery

A journey through some of the events that occured in 2020.

Symposium-iptech 2020

Article 01

Storing traditional Cultural expressions on the block chain

Judith Kagere

TCEs may include any form of artistic or cultural expressions. TCEs are integral to the cultural and social identities of indigenous and local communities, embodying know-how skills and transmitting core values. TCEs and genetic resources are synonymous in many cases and in the Ankole cow in particular.

With the documentation of this traditional approach to cattle keeping that enables people to earn a living in otherwise inhospitable areas, and embody valuable genetics for future breeding efforts, it will substantially raise the commercial value of the products of the Ankole cow.

The importance of storing the Ankole cow traditional knowledge on the block chain is that it is easier to assert a claim on the violation of the property right than on the erosion of a cultural value. The Ankole Cow breeders through the communities they form can transform their tradition into a commodity and in turn a formidable property right.

Cultural values as part of TCE property rights can be overshadowed by IP regimes and the lack of a distinct legal regime to protect this traditional knowledge especially in the digital age where there is little distinction between local and foreign violations leaves indigenous communities particularly vulnerable.

TCE property rights are vulnerable to exploitation by those who are always on the search of new and innovative resources leaving little or no protection for the communities that possess this traditional knowledge. These compa-nies research the benefits of the product derived from TCE and then mass produce for distribution. Subsequently, on realising the potential, they patent the product and trademark the name at the expense of the indigenous community.

This buttresses the concept that employment of technology advancements can be the best alternative approach to elevating protection of TCE property rights to the level of IP rights in which case this adequate protection can cause the traditional knowledge to possess a wholesome viable property right. This will provide an economic right to the Ankole peoples whose knowledge has been commercially exploited with no return to them as an indigenous communi-ty.

This will create communal ownership of intangible property, which is their traditional knowledge and in turn also allows them to protect their cultural value.

Therefore, the associations that are the custodians of TCEs need to focus on the positive benefits of TCE commodifica-tion and how creativity of such nature can boost the commercial value of this traditional knowledge. Concerns ofdevaluation of culture amongst members can be addressed through sensitisation and community outreach programs by the associations so as to create a strong economic and social front.

HOW BLOCKCHAIN PROVIDES A SOLUTION

Like the name, it is a chain of blocks that contains information. Once data is stored, it becomes very difficult to change it. Blockchain is a distributed ledger system with the ledger being a record of transactions. It is termed a distributed ledger system because every network holds a copy of a computer record of all transactions that have ever happened. When a transaction happens, it is added and validated to existing records in all the computers in real time.

Transactions are completed by smart contracts in the ledger that automate the execution of terms and enforce-ment of obligations, in turn replacing the traditional sales agreement.

Protective measures such as "proof of work, use of P2P network, hashes create the chain and make blockchain secure.

The importance of blockchain to TCEs

Blockchain can be used for more than just bitcoin. It can be used to store information such as medical records, collecting taxes and now Traditional Cultural Expressions. Blockchain improves data quality significantly. This is because it is about ownership, how data is recorded and how it is transferred. Ownership is established by identification of the owners through smart contracts.

The way blockchain works offers a technological approach to revitalising sustainability of TCEs. One of the models used is to save a cryptographic signature of a document or file on a blockchain which gives users a way to ensure a file is untampered, without needing to save the entire file on the blockchain, When one looks at a file, they are sure it is the same version of the document that existed at another time.

Data may also be stored on the blockchain through contract data, where a contract is created and deployed on the blockchain stating out the data information. Any form of data can be stored on the block chain and the vital element is that it provides unprecedented security. This tamper resistance is highly effective in preventing counterfeiting of documents and document fraud. Blockchain security can be employed to protect TCEs and in turn raise their commercial value when they transform into a property right on the block chain.

The confidential quality of TCEs and their potential for commercialisation by exploiting the idea for mass production has created the need to apply a technological solution to the existing IP regimes. Blockchain is able to store this information and gives the owner (in this case the indigenous community or its association) the ability to decide whether or not to share the data. This way, they have a significant degree of control over the commercial value of their traditional knowledge.

It is clear the existing IP regimes are inadequate at offering protection to TCEs, blockchain is a technological solution that will raise the commercial value of TCEs by storing this information on the block and subsequently creating a wholesome package that can be negotiated with mass producers or any other third party for the benefit of the indigenous communities who are the owners through their associations or otherwise.

Article 02

Get in line or GET IN LINE : A case for the URA EFRIS system

A court's assessment of an agency's compliance with statutory limits does not depend on whether the agency's policy is good or whether the agency's intentions are laudatory. – Brett Kavanaugh

Bonita Mulelengi

Uganda Revenue Authority's Electronic Fiscal Receipting and invoicing system (EFRIS) system was birthed out of the Domestic Revenue Mobilization Strategy 2019/20 – 2023/24 presented by Ministry of Finance, Planning and Economic Development in October 2019. The Strategy highlights the challenges faced by URA in conducting tax audits where voluntary compliance fails and recognized the low tax efforts and high tax evasion rates which require a smart approach. With the limitation of lack of access to third party data, inaccurate data reporting and the failure of URA to adopt electronic receipting technology.

The EFRIS is provided for under Section 73A of the Tax Procedures Code (Amendment) Act 2014 and requires a taxpayer to issue an e-invoice or e-receipt or employ an electronic fiscal device which is linked to a centralised invoicing and receipting system, or a device authenticated by the URA. The system will be used by all business. At first sight, Section 73A (1) seems permissive on the issuance of e-receipts or e-invoices however, the subsequent provisions give power to the Commissioner to gazette a list of persons to whom it shall be mandatory to issue e-receipts or e-invoice or employ electronic fiscal devices. This was done under SI No. 82, the Tax Procedures Code (E-Invoicing and E-Receipting) Regulations, 2020 General No. 595 of 2020 and covers all VAT registered tax payers including persons who were selected and sent representatives for training of the pilot episode. This sparked off a civil suit for injunctive orders in the case of Capital Shoppers Limited and 5 Others v. Uganda Revenue Authority.

The court was hesitant to and did not grant an injunction which would prevent URA from exercising its statutory mandate derived from the Constitution. The decision from the application for judicial review is yet to be made but the conclusion to be drawn from the ruling above is that the EFRIS, until such time as it is declared unconstitutional, will remain in force. The validity of a law is not a popularity contest for the court of public opinion to vote on whether or not they like it.

The EFRIS promises efficiency for both tax payers and URA in terms of improving the record keeping culture, ensuring safety of record, verification and authentication of assessments, weeding out fraud and corruption. It goes without saying that through this system, URA also will reduce its carbon foot print, a praise to be sang for the environment. Heading in to a new normal post Covid-19, the EFRIS may be timely as it is automated and will not require a lot of physical interaction between URA and tax payers. Improvement of tax collection through a transparent system could increase the amount of tax collected which may then have a ripple effect on development.

There is truth to the old aphorism, 'not all that glitters is gold.' System or network failure is not uncommon when dealing with URA electronic systems and there is no guarantee that this one will be immune. Such matters may create gaps which can be manipulated to the detriment of not only URA but the country at large. There is of course, the question of its robustness, a matter that URA may address within its pilot episodes. After all is said and done however, URA is mandated to collect and manage taxes under the Constitution and as longer as subsequent legislation does not offend Article 2(2) of the Constitution then it would be advisable to get in line before being bulldozed to do so.

Article 03

Over 800 Money Lending Institutions Licensed as UMRA Makes Tremendous Strides in Restoring Confidence in Microfinance Sector.

UMRA

The Uganda Microfinance Regulatory Authority (UMRA) is a Government Regulatory Authority established by section 6 of the Tier 4 Microfinance Institutions and Money Lenders Act, 2016. It is mandated to regulate, license and supervise all Tier 4 Microfinance Institutions and Money Lenders in Uganda.

UMRA is aimed at promoting a sound and sustainable non-banking financial institutions' sector to enhance financial inclusion, financial stability, and financial consumer protection among clients.

The types of institutions that Uganda Microfinance Regulatory Authority supervises according to the Tier 4 Microfinance Institutions and Money Lenders Act, 2016 are outlined in the table below.

Type of Institution UMRA supervises according to Tier IV Microfinance Institutions and Money Lenders Act, 2016	
01	Money Lenders
02	SACCOs
03	Non Deposit Taking Microfinance Institutions
04	Self-Help Groups
05	Community Based Microfinance Institutions

The Authority is now in its third year of implementing its mandate and has registered tremendous strides in regulating and licensing money lending companies and Non-Deposit Taking Microfinance institutions. About 800 money lending institutions have been licensed in the past three years.

The licensing trend as seen in the matrix shows a tremendous increase in the number of companies and money lending organizations embracing the Tier 4 Microfinance Institutions and Money Lenders Act, 2016.

Article 04

Drone regulation In Africa-Way forward for Uganda

"The Imagined order is inter-subjective. Even if by some super-human effort I succeed in freeing my personal desires from the grip of the imagined order. I am just one person. In order to change the imagined order, I must convince millions of strangers to cooperate with me."- Noah Yuval Harari- Sapiens

Kenneth Muhangi

The Fourth Industrial Revolution (4IR) is in the truest sense a revolution; a very important change in the way that people do things. The term,-inter-sub jective encapsulates the 4IR. The success of any new technology requires the buy in of the human collective.

In a span of less than a decade, artificial intelligence, robotics, the Internet of Things, autonomous vehicles, 3-D printing, nanotechnology, biotechnology, materials science, energy storage, and quantum computing have become engrained in the daily fabric of society. This unprecedented growth of the 4IR reads more like fiction rather than fact; the world has taken the road not taken.

Yuval, postulates that every point in history is a crossroads. A single travelled road leads from the past to the present, but myriad paths fork into the future. Some of these paths are wider. Smoother and better marked, and are this more likely to be taken, but sometimes history or the people who make history- takes unexpected turns.

Africa like the rest of the world, has embraced the 41R and like the rest of the world, teeters at regulation of the 4IR. Uganda in 2018 for example, contro versially taxed over the top (OTT) platforms such as WhatsApp, Facebook & Twitter but is struggling to collect the taxes mostly because of technology circumventing programs such as Virtual Private Networks (VPN). Before the introduction of OTT tax, Uganda's regulatory stance in the 4IR was, 'let's wait and see' or in common parlance, Uganda utilized regulatory sandboxesA regulatory sandbox is a framework set up by a regulator to allow small scale, live testing of innovations by private firms in a controlled environment (operating under a special exemption, allowance, or other limited, time-bound exception) under the regulator's supervision.

The concept of regulatory sandboxes was developed in a time of rapid technological innovation and attempts to address the frictions between regulators desire to encourage and enable innovation and the emphasis on regulation.

Regulatory sandboxes are being applied in Africa's financial sector to foster innovation. In May, 2019, Kenya's Capital Markets Authority approved the, Regulatory Sandbox Policy Guidance Note that allows Digital Finance Services (DFS) players to deploy and conduct live-tests of their innovative products, solutions, and service for a maximum period of 12 months.

Earlier in 2018, Sierra Leone in collaboration with United Nations Capital Development Fund (UNCDF) and Financial Sector Deepening Africa (FSDA), introduced a regulatory sandbox framework, The Sierra Leone FinTech Initiative. South Africa also plans to set up its Fintech Hub and sandbox in the first half of 2020.

Multi-jurisdictional industry fintech sandboxes are also being deployed to deal with the new opportunities brought by 4IR. Ecobank Group recently announced the launch of a pan-African banking sandbox which gives its partners and fin techs across 33 African Countries access to an Application Programming Interface to develop innovative financial solutions.

Regulatory sandboxes, are not only utilized to deal with blockchain technology, but have allowed a crucial aspect of the 4IR, drones, to flourish in Uganda and most of Africa. A drone is defined simply as an unmanned propulsion system although for purposes of regulatory nomenclature, drones are more formally known as unmanned aerial vehicles (UAVs) or unmanned aircraft systems (UAS).

Drones have in the past few year gained notoriety as a cheaper, more efficient mode of transport. In 2019, the Ugandan-govern ment approved, as safe for use, medical drones procured by Infectious Disease Institute (IDI) to deliver essential medical supplies to hard-to-reach places. The project by IDI will see 'medical drones' deliver the first batch of ARVs in March, 2020 to Kalangala District, an island usually only accessible by boats and ferry. Another organization, Uganda Flying Labs, deploys drones for mapping and data analytics.

Tanzania's drone-based mapping project of Zanzi-bar, in collaboration with the World Bank, enabled open sharing of collected data with local communities and has since helped promote innovative approaches for data usage in disaster management. Regulatory sandboxes to deal with drones are also being deployed in other jurisdictions. The United Kingdom's Civil Aviation Authority launched an innovation sandbox to work with seven companies working on particular drone related projects, including Amazon's Prime Air.

In 2016, UNICEF and the Government of Malawi, piloted a drone project for early detection of HIV in infants. The project is an apt African drone success story as it reduced the time for delivery of blood samples from 11 days to less than 30 minutes; from rural clinics to testing laboratories.

A Case For Proactive Regulation

Despite the successes above, regulators in Africa are struggling to regulate drone usage, a problem exacerbated by national security concerns. Drones are, by their nature, dispersed. They change the commercial flight model by not operating point-to-point between fixed airports but enabling a more dynamic use of airspace with limited physical infrastructure required. It is for this reason (the dynamic nature of drones) that most African countries are toying with militarizing drone regulation.

Uganda does not have a one consolidated statute governing drones, however the regulation of flying objects is found in various legislations such as the Traffic and Road Safety Act, 1978, Civil Aviation Authority Act Cap 345 (as Amended 2019), where drones are taken to be part of the remotely piloted aircraft system and fall under the purview of Uganda's Civil Aviation Authority (CAA).

Uganda Communications Act, 2013 and the Uganda Wildlife Act, 2019 also make provision for drones and their use in communication and wildlife conservation areas.

In 2017, Uganda's Chief of Defense Forces approved the Tripartite Committee composed of the Civil Aviation Authority, Commander of Defense Forces and Uganda Revenue Authority with the objective of prescribing a framework for the regulation of aerial drones.

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Performance-based regulation model

Joseph Priestly, the eighteenth-century chemist and theologian, once observed that

> *"analogy is our best guide in all philosophical investigations; and all discoveries, which were not made by mere accident, have been made by the help of it."*

In the late 1980s and early 1990s, the United States of America's energy industry underwent rapid structural changes that required dynamic changes in regulation. At the time, there was push back from some states that insisted on block regulation for vertically integrated utilities.

A vertically integrated utility is one that owns all levels of the supply chain: generation, transmission and distribution. Historically, all utilities were vertically integrated and had a monopoly on the production and sale of power.

The regulatory system created monopolies that stifled competition as some utilities had an exclusive right to sell power. The distribution utilities in some states were functionally separate from generation and transmission, and in other states the distribution utility was structurally separated. Restructuring required replacing the monopoly system of electric utilities with one that competing sellers. This precipitated the introduction of performance based regulation as an alternative to cost-of-service regulation. This model is still used to date.

Switzerland's Federal Office of Civil Aviation (FOCA) approaches oversight in this way. FOCA's early coordination with security authorities that had oversight authority over critical infrastructure assets enabled FOCA and industry coordination in a collaborative manner. In essence, FOCA employs regulatory sandboxes that sieves drone applications on a case by case basis.

FOCA's approach, follows recommendations from, the Joint Authorities for Rulemaking on Unmanned Systems, JARUS. JARUS, introduced specific operations risk assessments (SORA), a rapidly evolving document that helps facilitate performance based regulation by constantly updating operating procedures.

African Governments can support a variety of significant drone developments by enabling small areas of operations, including allocation of drone corridors for projects like the IDI medical drone project. Malawi's drone corridor in partnership with UNICEF is a best case example of the success of drone corridors. From the beginning, the vision was not necessarily to enable drone activities in Malawi but rather to explore the possibility of finding a more effective way to move blood samples in the fight against HIV/AIDS.

Performance based regulation, manage risk by requiring a planned process of continually revising policies for drone technologies pegged to key performance indicators (KPIs). Performance-based regulations combine risk profile and safety performance, address the management of risk, and ensure compliance.

In Ghana, the Ministry of Health, the Ghana Civil Aviation Authority and Zipline, a private sector drone operator collaborate to maintained data on number of drone flights, number of incidents, numbers of lives positively impacted by the operation, and number of jobs created locally that all operationalize different goals of the process thereby making the long-term sustainability more concrete and understanding the various outcomes achieved through the implementation of advanced drone operation.

The benefit of this approach can already be seen. It's allowed companies to test their technology and access airspace on a mission specific basis. Rather than instituting lengthy certification processes, the government can keep up with an area where there is rapid technological evolution. Other countries, like Tanzania have expressed interest in replication of the model.

In 2018, Switzerland became the first country in the world to allow delivery of parcels in urban areas. Although the project encountered safety challenges, performance based regulation enabled Switzerland's FOCA to assess the safety challenges by reviewing safety processes rather than putting a complete ban on the project. FOCA held the project in 2019 and just recently re-authorized Swiss Post and Matternet to transport lab samples by drone between hospitals in Switzerland.

End

The 4IR regulator must strike a careful balance between ensuring safety and enabling innovation to flourish. This requires proactive regulation that is evidence/performance based rather than needs based. The success of drone-deployment/innovation in Uganda, will depend on regulators applying regulatory sandboxes and drawing analogies from best user-case policies provide an opportunity for African regulators to proactively implement flexible legal frameworks.

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