

**THE COPYRIGHT ACT
(Chapter 130)**

IN EXERCISE of the powers conferred by section 49 of the Copyright Act, the Cabinet Secretary for the time being responsible for matters relating to copyright and related rights, makes the following Regulations—

**The Copyright Tribunal (Procedure) Regulations, 2022
Part I—Preliminary**

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|----------------------------|---|
| Citation | 1. These Regulations may be cited as the Copyright Tribunal (Procedure) Regulations, 2022. |
| Interpretation | 2. In these Regulations unless the context otherwise requires— |
| Cap. 130. | “Act” means the Copyright Act; |
| | “Board” means the Kenya Copyright Board established under section 3 of the Act; |
| | “close of pleadings” means a period of fourteen days after the filing of the replying affidavit by the respondent or the affidavit by the enjoined party, after which no further pleadings shall be filed without leave of the Tribunal; |
| | “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to copyright and related rights; |
| | “Parties” includes the appellant, applicant, interested party or respondent; and |
| | “Tribunal” means the Copyright Tribunal established under section 48. |
| Objects. | 3. The object of these Regulations is to provide for the procedure for the expeditious discharge of any dispute referred to the Tribunal. |
| Guiding principles. | 4. The guiding principles for the conduct of business and affairs of the Tribunal shall be the principles outlined in Articles 10(2) and 159(2) of the Constitution and shall include—
(a) providing parties with an equal platform to prosecute their case; and
(b) expeditious, fair and effective disposition of any matter within the jurisdiction of the Tribunal under the Act. |
| | Part II—Administration of the Tribunal |
| Secretary to the Tribunal. | 5. (1) There shall be a Secretary to the Tribunal appointed by Cabinet Secretary on such terms as the Cabinet Secretary may determine. |

(2) The Secretary appointed under paragraph (1), shall be a person with knowledge and expertise on matters relating to copyright and related rights.

Functions of the Secretary.

6. The Secretary shall be responsible for the—
- (a) day-to-day administration of the Tribunal;
 - (b) coordination of receipt of applications or appeals on behalf of the Tribunal; and
 - (c) orderly and prompt conduct of business of the Tribunal.

Staff of the Tribunal.

7. The Cabinet Secretary may second such number of staff to the Tribunal to enable it effectively discharge its functions under the Act.

Constitution of the Tribunal.

8. (1) The Tribunal, shall pursuant to Section 48(4) of the Act, be properly constituted for purposes of the proceedings before it, if it comprise of three members, one of whom shall be an advocate of the High court.

(2) A sitting of the Tribunal shall be presided over by the Chairperson or, in the absence of the Chairperson, such other member being an advocate of the High court, designated in writing by the Chairperson.

Part III—Appeal Proceedings

Filing of Appeal.

9. (1) An appeal against a decision of the Board shall be filed within sixty days from the date of the decision, by filing a notice in Form **CT1** in the Schedule.

(2) The notice under paragraph (1), shall be signed by the appellant or a person duly authorised by the appellant and accompanied by—

- (a) an affidavit setting out the grounds upon which relief is sought and the facts relied on by the appellant;
- (b) a copy of the ruling by the Board; and
- (c) copies of any supporting documents to be relied on at the hearing.

Service of the Appeal Notice.

10. (1) The appellant shall upon filing the appeal, serve the Board and all the affected parties with the notice of appeal within a day, accompanied by the documents referred to under paragraph 9(2) of these Regulations.

(2) The service referred to under paragraph (1), may be made by physically delivering the documents to the respondent or sending it to the last known postal address of the respondent or electronically to the last known e-mail address.

(3) An electronic service under paragraph (2), shall be deemed to have been served on the day which it is sent if it is sent—

- (a) within the official business hours on a business day in the

- jurisdiction it is sent; or
- (b) outside of the business hours and on a day that is not a business day, it shall be considered to have been served on the business day subsequent.

Response to the Appeal.

11. (1) Upon being served with the appeal, the Board shall, within fourteen days from the date of the service, file and serve a response in the prescribed Form **CT2** in the Schedule and accompanied by a supporting affidavit and any other supporting documents.

(2) A person who fails to file a response as provided for under this Regulation, shall without any reasonable cause and subject to the directions of the Tribunal, not be allowed to take part in the proceedings.

Submission by the parties.

12. A party to the proceedings may within five days after the close of the pleadings, in writing, file and serve submissions with the Registry.

Pre-Hearing Conference.

13. (1) After the close of the pleadings, the Tribunal may hold a conference involving the parties to the appeal or application to—

- (a) determine the possibility of alternative dispute resolution;
- (b) determine whether there is any document that the Tribunal may order to be produced before or during the hearing;
- (c) consider compliance with these Regulations;
- (d) identify contested and uncontested issues;
- (e) create a timetable for the proceedings;
- (f) consider consolidation of complaints or appeals; or
- (g) consider any other form of settlement.

(2) Where the parties reach a settlement on a matter in issue, the Tribunal shall record that settlement and deliver it as its own decision, which shall be final and binding.

(3) Where the parties fail to reach a settlement after the pre-hearing conference and alternative dispute resolution is not an option, the Tribunal shall within seven days from the end of the conference, issue a hearing notice and set down the appeal for hearing.

Procedure of hearing.

14. (1) The proceeding of the Tribunal may be held virtually or in person, in public, save where the Tribunal, for sufficient cause, otherwise directs, taking into account the—

- (a) information, the disclosure of which would in the Tribunal's opinion be contrary to the public interest;
- (b) commercial information, the disclosure of which would or might, in the Tribunal's opinion, significantly harm the legitimate business interests of the undertaking to which the information relates; and
- (c) information relating to the private affairs of an individual the disclosure of which would, or might in the Tribunal's

opinion, significantly harm the private individual's interests.

(2) The hearing of an application for an interim order may be heard ex parte.

(3) On setting the matter for hearing, the appellant shall have the right to adduce his or her evidence first, followed by that of his or her witnesses, if any, unless the Tribunal orders otherwise.

(4) At the close of the evidence of the appellant and each of the witnesses, the respondent shall have an opportunity to examine each of them.

(5) At the close of the evidence of the appellant and the witnesses, the evidence of the respondent shall be heard and the appellant shall have an opportunity to examine the respondent and each of the respondent's witnesses.

(6) The Tribunal may, at any time during the hearing, examine either party or any witness and may, in its discretion, call any additional evidence it considers necessary.

(7) The Tribunal may at its discretion require parties to file written submissions either in addition to or in lieu of taking oral evidence.

Decision of the
Tribunal.

15. (1) A decision of the Tribunal shall be in writing, determined by a majority and read out in open, within thirty days from the date of the application or appeal.

(2) The decision shall contain—

- (a) the nature of the complaint;
- (b) the number of the complaint;
- (c) the names of the parties;
- (d) a summary of all the relevant evidence produced before the Tribunal and the reasons for accepting or rejecting the evidence;
- (e) the order or decision and the reasons thereof;
- (f) the relief or remedy to which the parties are entitled; and
- (g) an order as to costs, if any.

(3) The members of the panel, with the exception of any dissenting member, shall sign the decision.

(4) The Chairperson, the member presiding over any proceedings or the Secretary may certify orders, directions or decisions of the Tribunal.

Electronic

16. The Electronic Case Management Practice Directions, 2020, may

filing and
service.

with necessary modifications, apply to the filing and service under these Regulations.

L.N 2357/2020

Application for
compensation.

Part IV—Proceedings Relating to Compensation

17. (1) A person who owns a right to broadcast a musical work shall, where a person broadcasts audio-visual works in which a musical work is incorporated and in the absence of any express agreement, be entitled to make an application to the Tribunal for the determination of the amount of compensation due.

(2) The application referred to in paragraph (1), shall be made within seven days of the notice of the breach of that right, in the prescribed Form CT3 in the Schedule to these Regulations and served upon the respondent within seven days of filing the application with the Tribunal.

(3) Upon making the application, the applicant, shall file and serve the application on the respondent within seven days from the date of filing of the application.

(4) The respondent may within fourteen days of being served with the application, file and serve a response to the application, accompanied by such statement of facts and evidence that he or she intends to rely on at the hearing.

(5) The applicant shall within seven days after receipt of the response under paragraph (4) file a response in Form **CT5** in the Schedule to these Regulations.

Part V—Anton Piller Orders

Power to enter
premises.

18. (1) A person to whom an anton piller order has been granted, shall have the power generally to, enter any—

- (a) premises where the items to which an order has been issued, are stored;
- (b) other premises in respect of any person who is licensed under the Act or any other written law; and
- (c) premises suspected of or dealing in products regulated under the Act, or where the property in question is in danger of being wasted or damaged or alienated by any party to the appeal.

(2) A person who is exercising the powers under Regulation 16, may request the presence and assistance of such law enforcement personnel as may considered necessary

(3) For purposes of this Regulation, “premises” includes a street, open space, place of public resort, or vehicle utilized for the preservation, storage or conveyance of any document.

Identification.

19. A person who exercises the power under Regulation 16 shall exhibit his or her official identification card on demand by any person affected by the exercise or performance of any power, duty or function of such authorized officer under these Regulations.

Dispute relating to the registration of a copyright.

Part VI: Dispute over registration of copyright

20. (1) A person may apply to the Tribunal to determine a dispute relating to registration of a copyright.

(2) The application referred to in paragraph (1), shall be made within seven days of the notice of the refusal, in the prescribed Form CT4 in the Schedule to these Regulations and served upon the respondent within seven days of filing the application with the Tribunal.

(3) Upon making the application, the applicant, shall file and serve the application on the respondent within seven days from the date of filing of the application.

(4) The respondent may within fourteen days of being served with the application, file and serve a response to the application, accompanied by such statement of facts and evidence that he or she intends to rely on at the hearing.

(5) The applicant shall within seven days after receipt of the response under paragraph (4) file a response in Form CT5 in the Schedule to these Regulations.

Part VII: Miscellaneous Provisions

Summon of witnesses.

21. (1) The Tribunal may, at any time, either on its own initiative or at the request of any party, issue summons in the prescribed Form CT6 in the Schedule to these Regulations, requiring any person to appear before the Tribunal, to do any of the following—

- (a) attend as a witness before the Tribunal, at the time and place set out in the summons; and
- (b) answer any questions or produce any documents or other material in his or her possession or under his or her control which relate to any matter in question in the proceedings.

(2) A request by a party for the issuance of summons under paragraph (1) shall state with reasons—

- (a) upon which facts the witness is to be questioned and the reasons for the examination; or
- (b) the document or documents the witness is required to produce.

(3) An application under paragraph (1) may be made during the

pre-trial process but before the matter is set down for hearing.

Interested
Party.

22. (1) A person who wishes to participate in any matter before the Tribunal as an interested party may make a request in writing to the Tribunal stating the reasons of the interest.

(2) An application under paragraph (1), may be made at any time, but before the matter is set down for hearing.

Representative

23. A party to the appeal may either appear in person or through his or her appointed agent.

Disclosure of
interest.

24. Where a member of the Tribunal has an interest in any matter before the Tribunal, that member shall declare the interest in the matter which shall be recorded and the member shall not participate in the hearing or decision making process of the Appeal in relation to that matter.

Directions on
Procedure.

25. The Tribunal may at any time, and without prejudice to these Regulations, give directions on any procedural issue.

Order as to
costs.

26. (1) The Tribunal may make an order as to costs, on application by a party to the proceedings before it.

(2) Despite paragraph (1), the Tribunal shall not make an order for award of costs—

- (a) against a party, including a party which has withdrawn its appeal, application or reply, if it is of the opinion that the party has acted frivolously, vexatiously or that the conduct in making, pursuing an appeal or application was wholly unreasonable;
- (b) against the Board, where it considers that the decision against which the appeal or application was brought was wholly unreasonable; and
- (c) as respects any costs or expenses incurred, or any allowances paid, as a result of a postponement or adjournment of a hearing at the request of a party.

Fees.

27. (1) The fees payable under these Regulations shall be the fees set out in the gazette notice No****

(2) Despite paragraph (1), the Tribunal may prescribe such fees payable under these Regulations.

**SCHEDULE
FORMS**

R. 9(1)

Form CT1

In the matter of the Copyright Tribunal held at.....

Appeal No.....
Between
.....Appellant
And
.....Respondent

Notice of Appeal

TAKE NOTICE that the Appellant being dissatisfied with the Assessment/Decision/Action/Demand Notice of the Kenya Copyright Board.....dated..... 20 do hereby appeal to the Copyright Tribunal upon the grounds set out in paragraph 2 and will at the hearing of the appeal seek the relief (s) set out in paragraph 3.

1. The Appellant further states that the particulars of the Assessment/Decision action/demand notice appealed against are set out in paragraph 4. The names and addresses of persons directly affected by appeal are set out in paragraph 5.

2. Grounds of Appeal:
(Attach a copy of the grounds if necessary)

3.Relief(s) Sought from the Appeals Tribunal:(Attach a copy if necessary)

4. Particulars of assessment/decision/action/demand notice:

- (a) Name of appellant:.....
- (b) Address of appellant:.....
- (c) Relevant section upon which the assessment/ decision/action/demand notice was b.
- (d) Date of service of the notice of assessment/decision/action demand notice:.....
- (e) Date of service of notice of objection.....
- (f) Date of service of refusal to amend.....
- (g) Annexure to be filed with Notice of Appeal:
 - (i) List of witnesses
 - (ii) Sworn statements of witnesses
 - (iii) Relevant documentary evidence

5. Persons directly affected by the appeal:.....Signature.....

6. Appellant or the legal representative.....

7. Appellant's address for service:

8. Respondent's address for service:.....

*Note: Addresses for Service must be stated.

R. 11(2)

FORM CT2

In the matter of the Copyright Tribunal held at.....

Appeal No.....

Between

.....Appellant

And

.....Respondent

RESPONSE OF APPEAL

TAKE NOTICE that the Respondent having received the notice of appealdated..... 20 do hereby respond as follows—

- 1.
- 2.
- 3.

Relief (s) Sought from the Tribunal: *(Attach a copy if necessary)*

- 1.
- 2.
- 3.

4. Particulars of the Respondent.

- (a) Name of Respondent:.....
- (b) Telephone number.....
- (c) E-mail address.....
- (d) Address of Respondent:

5. To be served upon;

- (a) Name.....
- (b) Address.....
- (c) Mobile phone.....

.....

RESPONDENT

Attach the following:-

- 1. Affidavit supporting the grounds
- 2.any other supporting document

*Note: Addresses for Service must be stated.

FORM CT3

AN APPLICATION FOR COMPENSATION OR FOR PAYMENT OF ROYALTIES

TAKE NOTICE that the I/We.....on thisday of
.....in the yearhereby apply for an Order for
compensation/relief for the payment of royalties of (enter the details of compensation/relief
for the payment of royalties is sought)

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This application is made on the following grounds;

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.....

Particulars of the Applicant seeking Compensation/Relief or for Payment of Royalties.

- (a) Name of applicant:.....
- (b) Telephone number.....
- (c) E-mail address.....
- (d) Address of applicant:.....
- (e) Mobile phone.....

.....
SIGNATURE OF APPLICANT/AGENT

FORM CT4
APPLICATION FOR THE GRANT OF A LICENSE

TAKE NOTICE that the I/We.....on thisday ofin the yearhereby apply for a grant of license for the following title of work (enter the details of the title of work for which the grant of a licence is sought)

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.....

This application is made on the ground(s) that;

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.....

Particulars of the applicant seeking the grant of licence.

- (a) Name of applicant:.....
- (b) Telephone number.....
- (c) E-mail address.....
- (d) Address of applicant:.....
- (e) Mobile phone.....

.....
SIGNATURE OF APPLICANT/AGENT

FORM NO. CT5
REPLY TO APPLICATION

In the matter of the Copyright Tribunal held at.....

Appeal No.....

Between

.....Applicant

And

.....Respondent

TAKE NOTICE that the applicant having received the notice of appealdated..... 20 do hereby respond as follows—

- 1.
- 2.
- 3.

Relief (s) Sought from the Tribunal: *(Attach a copy if necessary)*

- 1.
- 2.
- 3.

Particulars of the applicant.

- a) Name of applicant:.....
- b) Telephone number.....
- c) E-mail address.....
- d) Address of applicant:

5. To be served upon;

- a) Name.....
- b) Address.....
- c) Mobile phone.....

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RESPONDENT

Attach the following—

- 1. Affidavit supporting the grounds.
- 2. Any other supporting document.

*Note: Addresses for Service must be stated

FORM CT6
WITNESS' SUMMONS

In the matter of the Copyright Tribunal held at.....

Appeal No.....

Between

.....Appellant

And

.....Respondent

To.....(Witness)

You are hereby summoned to attend before this Tribunal at..... town at
.....O'clock on..... day of20.....to
testify all that you know in the above-mentioned appeal.

You will also be required to tender the following documents:

- (a)
- (b)
- (c)

You are summoned on behalf of

Issued at town on day of 20.....

Fees paid.....