

**BREAKING THE LINE, COMPARATIVELY RE-THINKING WRITIVISM, MUSIC  
AND DANCE AS FORMS OF GEOGRAPHICAL IDENTITY AND CULTURAL  
EXPRESSION TOOL IN AFRICA: A FOCUS ON KENYA AND UGANDA.**

**By**

**Mulalira Faisal Umar<sup>1</sup>**

**1. Introduction**

- 1.1 This paper explores copyright protection for singers, composers and performing artists, as well as entertainment industry work. Copyright is the legal protection given to creators through the assignment of specific rights to works that qualify for protection. Music helps us to better define and understand a country or culture.
- 1.2 The heterogeneous peoples of the Sub-Saharan African nations of Uganda and Kenya have ethnicities ranging from Nilotics, Nilo-Hamites, and Bantu speaking tribes. Within these communities, there are as many instruments as there are cultures. Music to these people is an expression of both geographical identity and culture. East African musical instruments are unique, diverse, and often melodious. However, the advent of more modern drum beats and westernized sound-engineered instruments coupled with genres of music ranging from jazz to reggae to hip-hop, and rap, poses the threat of extinction to these instruments. This paper, therefore, seeks to examine the impact of the popular music of the Western world on the rhythmic quality of African sounds; it shall further briefly interrogate the impact westernized music has over the melodic aspect of African dances.

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<sup>1</sup> See Biography at the end.

1.3 Meitus (2015, as cited in Erhart, 2016) argues that in today's "digital culture", the advancement in technology presents difficulty in identifying who owns what music or dance and studio instruments. Digital application platforms used for releasing African music often end up transforming cultural instruments by overproducing them, ultimately making them unrecognisable. The growing waves of communication on various platforms ranging from FM Radios and Televisions to SoundCloud, Deezer, and YouTube have condensed the entertainment industry into a global musical village, making it a nearly insurmountable task to trace a particular song and dance played on an international electronic platform to its source. Conversely, the magnitude of songs circulating the internet and other platforms like TikTok has created avenues for not only sharing creative works with ease; but unfortunately also aiding unchecked infringement, thereby creating jurisdictional issues in copyright monitoring, realisation and enforcement. Because of the pressure to create new content, artists continuously upload their music on these platforms to keep up with the growing needs of their audiences; in so doing, the current restrictive copyright laws are abused by the contemporary music artists, who believe that to keep trending, they must actively engage their online fans.

#### **1.4 Determinants of Copyright.**

The right to copyright is determined depending on the work in question, with the first author identified as the owner. Copyright for authorship of literary and dramatic works differs from that of musical works, cinematography and sound recording, as well as computer-generated works reflected hereunder.

- a) In a musical sound recorded work, the composer becomes the author. However, this depends on the originality and role played

by each individual, for example, the lyricist, the composer who set the music, the singer who sang the song, the musician(s) who performed the background music and the person or company who produced the sound recording.

- b) In cinematography and sound recording, the producer is the author.
- c) In computer sounds generated works the person who directs or causes the creation of the work, owns the copyright.

#### 1.5 According to Ngcono (2016):

Since the beginning of time, music and dancing have played a vital role in people's ability to communicate and celebrate events, with an array of sounds announcing important ceremonies. In Africa, music is a social activity in which almost everyone participates. Music highlights African values, with various traditions accompanied by a melody.

Erhart (2016) notes that despite these qualities in traditional African music, there is an unfortunate trend of artists from other jurisdictions writing different lyrics and performing them under similar or identifiable aspects of an existing song or beat. Such would amount to copyright infringement and abuse of the law regulating music ownership, although it should not necessarily be interpreted as a restriction on the rights of artists to express themselves.

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- In Uganda and Kenya, like in many African countries, events like marriage, birth, and ceremonial rites of passage are incomplete without music. Songs accompany daily domestic and farm activities including digging, chopping wood and farming among other things. There are songs of praise and criticism, as well as songs recounting history. Owing to the diversity of its

uses, music is often performed outdoors, in the streets, courtyards or village squares.

- 1.7 In an interview on 3rd March 2022, I discussed the Lango cultural dance with Ms Ayaa Alma. She informed me that the Lango are the Nilotic ethnic group that lives in north central Uganda, which covers the districts of Lira, Apac, Kole, Oyam, Otuke, Alebtong and Amolatar. The Langi speak a language called "Lango " and have different dances according to rituals and ceremonies. Some of these dances include: Kiri dance (war dance), ekoce dance (drum dance), "myel rudi" (twin ritual dance), okeme dance (thump piano) among others.

1.8 "KIRI DANCE (WAR DANCE)"

This dance was historically performed when people prepared for war or after victory in war. The instruments used included drums, two-edged spears, shields, two-edged knives held by women, horns (small and big), leopard or spotted wildcat skin, cowhide sandals and bird feathers. In performing this dance, the dancers move in straight lines while shaking their bodies. They later move into a cow-horned formation while the instruments play. After dancing in a group, each person dances alone showing off their skills and styles. Later, the dancers disperse. The dance is choreographed to display the military might of the great people of Lango. In its movements, it exhibits aspects of Lango society like preparation for revenge against enemies, the importance of courage among youths, jubilation after military victory, and the continuity of culture. This dance exists to preserve the cultural elements mentioned above; it is a form of geographical identity for the people of Lango. recommends the formation of organizations that will facilitate the people to promote culture since most

people are poor and cannot afford to get that instrument. Modernized dressing has also been suggested as a means of encouraging youths to join the traditional dance. Traditionally, the dances were full of nudity so people were afraid to engage in them. The men were embarrassed to take part in the bare-chested dance. Sensitizing youths about the importance of culture and teaching them how to play instruments and dance is therefore a necessary measure to promote African culture. Similarly, it is necessary to create archives to keep cultural regalia for future use. Efforts to promote culture should pay special attention to the young generations, although the primitive behaviour which promoted nudity should be abolished.

- 1.9 In Ngono (2016), the author notes that in both Uganda and Kenya, different communities and cultures use distinctive categories of musical instruments, but that the following mostly cut across; drums, wind, self-sounding and string instruments. The African drum usually referred to as the heart of the community is the most significant instrument as it reflects people's moods and emotions, and its rhythm holds dancers together. The author also notes that Tswana music is one of Botswana's most popular forms of folk music. She describes it as a showcase of voice without drums that differs from a typical African tribal song, but that the main component of the rhythmic portion is clapping hands. Occasionally wind instruments, including whistles and lepatata (made from Kudu horn), especially in male groups, are used to enhance their performances.

- 1.10 Both countries in fulfilment of their international obligations under international, regional and municipal treaties<sup>2</sup> have come up with domestic

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<sup>2</sup> Both countries are state parties to the Berne Convention for the Protection of Literary and Artistic works (1986), the WIPO treaty and the WIPO Performers and Phonograms Treaty (1996), and above all The Treaty in Trade Related Aspects of Intellectual Property Rights - the TRIPS Agreement (1996)

legislations to address the various copyrights issues arising within their jurisdictions. According to Section 22 (2) and (3) (a) and (b) of the Copyright Act of Kenya, a broadcast cannot be eligible for copyright until it is broadcasted. In case work is literary, musical or artistic, protection is only provided if a substantial effort has been incurred on making the work to provide it with its original character. Section 22(4) of the same act also notes that protection may also be provided if the work has been transformed from a mere idea and written, recorded or reduced into a form that makes it material. Conversely, in Uganda, Section 4(1), 6 and 7 respectively of the Copyright and Neighbouring Rights Act states that protecting one's work depends on how original work is reduced to material form irrespective of method and quality of the work, or purpose for which it is created and such work is not subjected to formality. This, therefore, excludes protection of ideas, concepts, procedures, method and public benefit works.

## **2.00 Characteristics of Uganda's Music**

- 2.1 The context of Uganda is not different either. In reality, different regions are established to have their musical styling that traces back from culture, the patterns of which have been adopted and somehow incorporated by the musical artists in their creations. Indeed, according to Ekdale, "the struggles, fantasies and aspirations of the youth in the informal economy have bred a self-fashioning music styling that is neoliberal and ignores the reality of the interconnectedness of their creations with popular culture."
- 2.2 In my research, I categorized Uganda into five different musical regions each of which has its musical styling. The music played in the Northeastern part of Uganda hardly relies on instruments; it is characterized by handclaps. Their syllabic rhythm dictates their musical syllabic rhythm for the Nilotics in particular. With the Acholis, polyphony is commonly active and usually have their musical

choruses sung by over 15-20 people led by one soloist. But these will use *Agwara* during their group instrumental performances,<sup>3</sup> with the *Adungu* instrument played like a guitar with hocketing commonly demonstrated. The *Adungu* has recently become popularized and incorporated into contemporary music. This makes Ugandan dance and music highly cosmopolitan and adaptive to the evolving contemporary instrumental evolution. Uganda can thus be seen as undergoing a remix within its cultural dance expressions and music identity within its indigenous communities with its melting point because of so many mixed up cross cutting cultures.

- 2.3 In the northwestern part of Uganda, choral songs are commonly played with Odi lyres using convoluted rhythms and straightforward melodies. In the *Kwaka* music a downward pitch glide is traced as escorted with long single-headed drums with concentrated beginning pitches; they also use trumpets and practice hocketing. Unfortunately, as is shown in Bigwala (2018) , hocketing is also today showed in the Busoga Kingdom, implying that claims on copyright in the future may strictly necessitate bringing all different stakeholders onboard for their contributions. This is because copyright covers proof of origin in tangible form. It goes on to state that the Basoga are commonly known for Xylophones, panpipes, tube fiddles, four-holed flutes, and lamellophones with large instruments occasionally played by several people at a time.
- 2.4 The adaptive nature of technological sound engineered instruments within the music industry without newly written cultural rhythms and songs has made it impossible for artists to record and release entirely new songs. All new music bears a resemblance to existing cultural songs that have been sung for generations. Filmmakers and creators of the videos are in a better position to create new scenes and often record changes in existing cultural dances and songs. In light of the

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<sup>3</sup>Traditional horn blown from the sides.

above, there is a high potential of plagiarism and founded fears of copyright infringements. This limits the way artists make their songs; an environment that is further barring innovation in the entire entertainment industry. In Keyt (2016), the author asserts that music is part of a culture that has specific styles and well-developed techniques that fit into certain genres. He further maintains, which argument I agree with, that musicians usually like to build a brand through consistent sounds. As such they create works which are similar in sound and rhythm to previous works for their listeners to associate familiar tunes with memories. Many people argue that listening to a familiar sound brings back a good memory or takes the listener back to an experience or event in his journal of earthly life, which enables a person to connect with a particular artist.

2.5 In central and eastern Uganda, Bantu music demonstrates concurrent syllabic rhythms with polyrhythmic patterns in all their regional music as played through the Xylophone. Cooke (2001) further highlighted that in Uganda all the musical regions, a pentatonic pattern is followed unlike with the Konzo and Masaba groups. The Konzo advance heptatonic styles while the Masaba advance hexatonic styles but both groups play their music with a triple rhythmic style and a percussion demonstrated at the third beat. As reflected in the now taking root and ever-changing melodies, rhythms, pitch and other components mainly used during electioneering, political rallies and campaigning periods to pull mass crowds for politicians in Uganda across the divide and in all the other parts of Uganda. .

2.6 Western Uganda originally played Banyoro and Batooro music, but when the *Bito* invaded the west, this increased the populace of Nilotic music in Western Uganda. This type demonstrates duple meter rhythms with tonal characteristics. They commonly use hand drums and leg rattles. The Banyankole, on the other hand,



developed the *Esheegu* practice with slow beats; they also use rattles, pots and drums. The Hima tribe of Western Uganda also commonly uses handclaps. To them, music is a communicative and social activity. Their music is built on storytelling. Though not formally archived anywhere, it has been preserved from one generation to another through its cultural appeal to the realities within their communities as a pastoral corridor; however, it has been modified by artists like Lady Mariam (2006) a Ugandan artiste, in her song *Tindatine* to fit the times, evolving cultures and aspirations of the present Ankole people, most whom are elites, educated and scattered all over Uganda and beyond.

2.7 Instruments also followed the status quo of culture with particular tribes playing specific instruments. Though formally used to play Christian hymns, today, the *Adungu*(Harp) is popularly included in modern songs as an accompaniment to the guitar. Trumpets and drums were core in the calling of assemblies. The *amadinda* or *entaala* were played at functions in royal homes and school musical programs whereas the *entenga* (drum-chime) graced functions in which the Kabaka appreciated chiefs. The *Endingidi* on the other hand, was the preferred instrument at wedding ceremonies and during the recitation of poems. The *ntongooli* (bowl lyre) originated from Busoga and spread to the Nile region first before spreading to the entire country.

2.8 Modern music has adopted various instruments from the traditional form like the *Adungu*; however, troupes continue to play their patterns traditionally at functions, a style which is directly identifiable and familiar with a village pattern.

### 3.0 **Abuses in enforcing copyright law for writers and the entertainment industry**

3.1 This section explores both the enforcement of copyright law in Uganda and Kenya, as well as the gaps that paved the way for the abuse of copyright law in the two countries. The Uganda Performing Right Society organization (UPRS) offers

blanket licenses to licensed users to enable upcoming Ugandan musicians to earn from their works, although Muheebwa (2018) clarifies that percentage payments on royalties are however case sensitive. However, it has been ascertained that artists expose their holders' rights to abuse either ignorantly or adamantly, in exchange for simple returns and have little if any room for their licensing authorities. This observation is further made by Mr Kato Lubwama, a local Ugandan musician who noted that the music industry in Uganda is on the verge of collapsing because most upcoming artists have not acknowledged the merits of copyright; they ignorantly adopt the faster, cheaper method of marketing through third-party managers and social media avenues while compromising the long term benefits of copyright. As highlighted above, plagiarism has therefore fast become a threat to Uganda's music and dance as a form of cultural expression and geographical identity.

- 3.2 Various gaps were identified during interviews carried out with Ugandan artists. In these interviews, it became clear that when upcoming musicians venture into the entertainment industry, they do so with unreasonably high expectations. It was noted that these emulate role models upon whose fame and achievements they set their aspirations for success. Forgetting the requirements and conditions for joining the industry, they are determined to achieve their ambitious ends by all means necessary. It was reported that some of these young artists adamantly refuse to register under their respective collective societies. Others simply evade these conditions to minimize delaying protocol and production costs. These actions, unfortunately, sabotage their efforts to succeed in the music industry and those of collective societies alike. According to Kamala, this is done in the hope of a huge upfront payment and expectations to venture into more musical compositions, leading to the frustration of the young artists and to greater convenience and benefit of their managers who are more conversant with the dynamics of the industry. Following this context, it is clear that registration of

interest and guidance on the demands of the industry is not sought from the respective collective societies by the majority if not all of the young artists.

- 3.4 It was clarified that due to insufficient funds in meeting production needs, young artists a) forego membership with collective societies, just like they do not register their creations to secure ownership, b) earn quick returns from their works, and c) seek sponsorship from prominent companies and from individual economic and political heavyweights in the country through middlemen with whom they sign-up secretive but exploitative contracts. However, to their disappointment, they end up reaping too little from their sweat because the contracts are in most cases irreversibly signed with unchallengeable disparities. To make matters worse, legal intervention cannot be pursued as they are desperate and without sufficient funds left to pursue their exploiters.
- 3.5 In the case of Kenya just like in Uganda, it is noted that much as copyright is very much adhered to, experiences of denied royalties also exist in Kenya. The ignorance of IP rights and how these can be patented is what affects them in agreement. Agreements that have granted third-party IP rights have seen many Kenyan artists and innovators denied royalties because they did not understand the terms of the legal agreement.
- 3.6 Rights are at times unknowingly surrendered in perpetuity or relinquished forever without ascertaining commercial benefits. This may be through an assignment where a person that receives IP rights can, upon payment gain, full ownership of the IP as soon as he pays the owner the amount agreed. This may also be through a license. The license allows owners to determine what kind of rights they are offering to a third party and for how long. The owner is in a position

to determine where his IP can be used, how it can be used and for how long it can be used by the third party.

- 3.7 I wish to argue that when sponsorship is sought, the artists usually do this through third parties, who in turn gain the entitlements of either “Manager or Producer.” Subject to Section 21 of the Copyright and Neighbouring Rights Act, an auxiliary role becomes attached in the due course, which cannot be easily dispensed or waived especially if the art piece gains a high public appeal in the market. The way the contracts are entered into and signed is what betrays the expectations of most young, upcoming and off fame struggling artists. By entering into these contracts, they are bound by deals they cannot disengage from, rendering the collective society useless in its cause. Indeed according to Wasula, by the time they seek UPRS support, it is already too late and more costly to manage and rectify the situation; some of them have been kicked out by the system itself because they did not appropriately utilize the system when they still had the opportunity.
- 3.8 During my LLM research, I found out that some artists sign contracts that reflect that they were hired by managers to produce work on their behalf, yet in actual sense, they are seeking sponsorship to publish or produce their work. Imposing liability on rights abusers becomes challenging. The ability to meet the legal costs is also very low among artistes, especially the upcoming ones. It was further established that the manpower regarding copyright infringement and licensing in the movie industry, for example, is limited by number to sufficiently serve across the country in the case of Uganda. For example, by the year 2014, UMFI only had 15 inspectors and 8 copyright coordinators serving the entire country. UMFI had 87 fully registered production members and 2000 individual members by the year 2014. According to Nsenga and Mugabo, there is limited human capacity with experience to handle copyright administration and litigation. According to Kawooya (2008), most of the cases lodged before the Commercial court lack

sufficient pre-trial well gathered evidence and investigations to prove the claims of infringement. To Wasula, while the institutions have limited manpower, their work is even more difficult when there is very limited compliance by the artists to meet their royalties. With limited resources in the pool, it is equally hard to support the young artists, especially in cases where they deliberately refuse to pay their royalties and also in tracking down the unlicensed artists in the music production industry.

- 3.9 Indeed, according to Rukidi, it was noted that although compliance measures have been taken to harmonize policies with internationally accepted Intellectual Property norms, capacity is still lacking to effectively execute and control copyright norm development due to the limited knowledge to come up with appropriate protection systems. Besides this, Kawooya notes that the administrators of copyright in Uganda have previously been uncoordinated and hopefully under the URBS the situation will improve. This has for a long time been different from the situation in Kenya where copyright issues were under a central mandate of the Copyright Board as endorsed by the Copyright Act. In Uganda, there has been a general lack of coordination among established organizations such as Uganda Performing Rights Society (UPRS) and Uganda Federation of Movie Industry (UFMI), regarding how copyright issues and piracy should be handled.
- 3.10 Needful to mention is the fact that much as there is better coordination in Kenya, elements of misrepresentation and mismanagement have been traced especially with the most influential collective management society Music Copyright Society of Kenya (MCSK). The organization has been plagued with inefficiencies and corruption as is highlighted in Mbuya (2017).
- 3.11 In line with the above, ignorance of both users and artists was revealed as supreme in the understanding of copyright benefits as well as to the enforcement of

copyright law. This is clear in the 2015 case filed by Angella Katatumba against the Anti-Corruption Coalition of Uganda (ACCU) for infringing her copyright in its advertisement campaign on forest conservation. Court held that the use of her song could not amount to fair use exception but to the benefit of ACCU, hence amounting to infringement. Consequently, 30 million Uganda Shillings was ordered to be given to Ms. Katatumba in compensation. From the proceedings of the case, it is portrayed that copyrighted works, even if not commercially used, require prior consent before use. In an Interview, Mr. Rukidi commented on the same case arguing that had Angella not secured the copyright, it would not have been easy to place a claim for compensation for infringement in the public space.

- 3.12 There is a widespread lack of knowledge of copyright laws, for the educated and uneducated alike. Indeed according to Tebusweke (2017), in Uganda today there are low levels of IP awareness, particularly in the informal sector. According to Kamala, most artists talk about copyright without understanding its implicit meaning. Parties who allege infringement end up in a state where they ignorantly signed away their rights, thus no copyright was secured and any use by third parties does not amount to infringement at all.
- 3.12 Enforcement teams, including individuals and agencies, are still ignorant about the concept of copyright and what it entails and yet the struggle to sensitize the public is entirely being shouldered by underfunded collective societies with limited external support. Uganda has experienced over 40 years of insufficient administration of copyright due to inadequate structuring. Copyright is a recent development in Uganda, with an ignorant society ranging from ambitious artists, implementers and policymakers, just like managers and producers; all these stakeholders make creative rights enforcement difficult in the country.
- 3.13 Most artists will storm the market without consulting or seeking guidance from their respective collective societies regarding the conditions and status of the

industry they have joined. Most of the key informants mentioned this as common among the overambitious young artists who are not ready to heed advice yet are ignorant of the dynamics of the industry. Unbelievably, they have the determination to seek sponsors or benefactors zealously after diligently organizing their pieces; they will disgracefully roam the streets seeking sponsors and begging from individuals. Young artists brave door-to-door visits to big companies, television and radio stations without having the right contact persons to meet. They go as far as appealing to small microphone-street broadcasters for cheap broadcasting or advertising. Whereas the right holders have cited too much piracy, they have a low degree of control. Groups of young musicians have, for instance, through piracy, gained quick exposure in the competitive industry by evading the collective society groups in charge of creative rights protection. This study revealed that high profile names in the music and creative works industry are very significant in advancing the affinity of big audiences during public performances.

- 3.14 However, this costs both the government and the music industry. For example, in a study conducted by UPRS in 2009 it is noted that the valid music industry loses as much as \$320,000 per month to pirates, the impact of which has reduced the ability of publishers to proportionately pay musicians. Musicians are therefore suspicious and have also resorted to self-producing as they believe that they are simply being exploited by the publishers. In this aspect, both the entertainment industry and government lose greatly. Similarly, as was reported in the Daily Monitor (2016), pirates within the movie industry have robbed producers of revenue while the viewers consume poor quality products without performance guarantees. Universities were also criticized for not being aware of the significance of registering a copyright. According to Ndagire and Kato, it was revealed that the movie industry is losing huge sums of money due to high-level piracy during production and at distribution and sale of copyrighted works. The producers

declare a few copies out of the total number produced and the pirated copies are sold cheaply to the detriment of the copyright owners; they recommended that the government should ban the importation of duplicating machines that mostly burn CDs.

- 3.15 Copyright adherence in Kenya was noted to be far better compared to the situation in Uganda. Copyright revenue is greatly higher than that of Uganda. Whereas Uganda was only able to collect only over \$40,000 in 2012, Kenya collected \$2 million in the same year. Additionally, information from the Uganda Registration Services Bureau ( URSB) indicated that about eight patents were granted in 2015 in Uganda compared to 207 granted by Kenya in the same period. Despite the low numbers, officials say the figure does not reflect the rate at which innovations are being churned out, and the research being undertaken.
- 3.16 Nevertheless, as ignorance remains at its peak in matters of copyright in Uganda, there is a positive step in the right direction concerning the registration of works under copyright. Individual artists, producers, policymakers and implementers can now file for copyright violation and seek redress in court; the commercial court itself manifested the powers of collecting societies to demand royalties.
- 3.17 In the context of Kenya, copyright suits have been filed, as was the case in 2015 by artists against the MCSK, the Copyright Board, and other organizations claiming the right to collect royalties for their works. The society was accused of using artists' royalties on administrative expenses when some musicians with 2 other companies sought an interpretation of Section 30A of the Copyright Act of Kenya under which a dispute arose on the collection of royalties.
- 3.18 Little can be blamed on the artists given the socio-economic environment in which they operate, which is not favourable for strict enforcement and observation of



ownership rights in artistic pieces. It was noted that, much as good laws are in place, the environment in which they are applied is non-compliant and influenced by the socio-economic conditions of both right holders and the users. This is particularly true for users of literal pieces and where the laws and policy are geared to promote and create information-rich societies. According to Mukasa, whereas it is acceptable to utilize extracts from texts for educational purposes, this right is also being abused. The challenge lies in the fact that there are many photocopying points. In Kampala, upon purchase of one textbook, copies are made and sold cheaply to numerous buyers. The buyers are hard to trace according to Mukasa, and their infringement goes unreported.

- 3.19 In both Uganda and Kenya, it is notable that the state of economic scarcity is what motivates piracy and photocopying of learning materials. While rights holders have the right to fight for their rights, they need to bear the socio-economic aspects in mind. Apart from this, it was also established that some of the claimants are mere publishers of indigenous local content on which they have no upper entitlement or claim. In this context, it would require them to have all shareholders on board, which environment directly drives artists out of business.
- 3.20 Furthermore, Uganda as a country was first exposed to socialistic market ideologies and later on the free market industry. On the other hand, in line with this, the dual report that Uganda's white paper on education is structured through UPE and USE to support the poor to acquire education. The government then spares the few resources to support the students at tertiary institutions. There is a growing population of UPE/USE poor students at universities who also need to gain access to information just like other rich students. Their only option is to pirate and photocopy information because the ability of the government to avail free information is very low. The government itself is also fully supporting and

promoting an informed society through encouraging a reading culture. In its preparations to take advantage of the information era in respect to Vision 2035, with no effort spared in creating a rich informed society, emphasizing the enforcement of copyright law would simply be a cornerstone to the national development goals of Vision 2035. According to Mukasa, the national development goals of an information-rich society should be planned carefully without compromising copyright law and undermining the effort and interest of producers. He warns that creating an open-access arrangement is likely to derail inventors and IPRS owners from engaging in further research and publication.

- 3.21 To make matters worse for the entertainment industry, though it benefits those in search of knowledge, the government recognizes ICT as central in pursuing productivity-driven growth. Indeed, according to Wabala, the massive storage of artistic and literary works on electronic and digital media creates inevitable problems for the administration of copyright law. This is epitomized by the case lodged by *Byamugisha Daniel, an innovator, against Bank of Uganda and MTN Uganda*, who claims infringed his patented mobile wallet innovation i.e. the MTN *Mokash* product and Commercial Bank of Africa were running the same systems as his innovation. It was argued that the initiatives being pushed in policy already existed and that the policy would not change what is happening in the film and music industry.
- 3.22 Copyright can only be claimed if such information cannot be held in common. Under the quality of confidence, information is expected not to be common knowledge to a class of persons for example computer analysts and programmers as well as the public. In computer creations, the matters relevant for confidence include the ideas for a new or improved system (program or database) with research and development work; company's strategy for future research and development,

production and marketing; details of existing computer systems known by analyst/programmers; lists of customers and sub-contractors. The source code programs are also viewed as confidential. However, in *Byamugisha Daniel's* case, the knowledge commodity was ignored as tradable, although enforcement mechanisms are in place. The problem remains their enforcement and administration raising a dire need to strengthen the system of justice in enforcement of litigation and regulations. This is true with the advancing technology levels towards cyberspace adoption, most especially with the support of Article 15 of the WIPO Directive which relieves service providers of the general responsibility to monitor the information they transmit or store and the responsibility to seek to prove circumstances of illegal activity. Besides this government of Uganda through Vision 2035 goes ahead to envisage equal opportunities to all groups in information access. Coming up to put up strict enforcement on copyright would simply be a boomerang in its development plans.

#### 4.0 **Conclusion**

- 4.1 As this paper has shown, Uganda and Kenya have copyright regimes that share similar aspects in terms of what is laid down in the law. If well used, both regimes have the potential to protect the works of creators and also ensure that they benefit economically. Both countries also face similar challenges regarding infringement of copyright that individual owners of work are not able to defend their work for various reasons. However, the study showed that owners of work in Kenya are seemingly more enlightened about the role of copyright in protecting their work than their Ugandan counterparts. Furthermore, the existence of the Kenya Copyright Board has enabled owners in Kenya to pursue their rights. No such

body exists in Uganda. Whereas collective societies exist in both countries, they are yet to fully benefit their members.

- 4.2 Concerning infringement of copyright in the digital age, the study showed that the internet has been abused by those seeking to infringe upon the works of authors. At the heart of all this, the study shows the ignorance (and naivety) by authors regarding copyright law in both countries, and unless checked and the law amended to suit the present times, it is obvious that using music and dance as a form of our cultural expression and identity is at the verge of collapsing and becoming a tale of the past; parents of the future will have to bear the burden of narrating to the future generations who will be listening to music which will bear no clear sign of Africa's true identity.

## BIOGRAPHY

**Mulalira Faisal Umar** is an Advocate, Management Consultant and Lecturer of Law in Uganda, he holds an *LLB, PGDLP, LLM*. He has previously practised Law with M/s Nabukenya, Mulalira & Co. Advocates, and currently serves as *an Assistant Director, Law Development Centre- Lira Campus* where he also teaches topical Corporate and Commercial law subjects. Faisal is a researcher on IPRS focusing on Copyright Law, Music, Digital Rights, Data Protection and Privacy, Computers, the ICT Law and Artificial Intelligence. He has previously presented similar papers to the Uganda Communications Commission Annual ICT conferences and other related Cyber Crime symposiums. Commentaries and views on this article can be emailed on [fmulalira@gmail.com](mailto:fmulalira@gmail.com) Dated at Lira in March 2022.

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