ENDA: KENYA’S FIRST HOME-GROWN RUNNING SHOE

DR. FERNANDO DOS SANTOS HANDS OVER TO DG ELECT, MR. BEMANYA TWEBAZE

THE JERUSALEMA DANCE CHALLENGE
INTRODUCTION
The African Regional Intellectual Property Organization (ARIPO) is an intergovernmental organization, which was established on 9 December, 1976 under the Lusaka Agreement signed in Lusaka, Zambia. Its mandate is to develop, harmonize and promote intellectual property in the Member States of the Organization and in Africa.

Membership of the Organization is open to all the States members of the United Nations Economic Commission for Africa (UNECA) or the African Union (AU). Currently there are twenty Member States, namely; Botswana, Eswatini, The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, Sudan, United Republic of Tanzania, Uganda, Zambia and Zimbabwe.

Substantive activities of the Organization are implemented through three treaties each focusing on a specific field of intellectual property. These treaties are: (a) the Harare Protocol on Patents and Industrial Designs; (b) the Banjul Protocol on Marks, and (c) the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore. A fourth treaty, the Arusha Protocol for the Protection of New Varieties of Plants is yet to enter into force.

The Harare Protocol was concluded in 1982 and entered into force on 25 April, 1984. Among other functions, it empowers the ARIPO Office to grant patents and register industrial designs as well as utility models on behalf of the treaty’s contracting states. The Harare Protocol incorporates other international treaties of relevance, for instance, the Paris Convention, the Patent Cooperation Treaty (PCT) and therefore enables applicants from the African region and elsewhere to file international applications and obtain protection of their intellectual property rights. The Harare Protocol has also been linked to the Budapest Treaty, which enables applicants to provide information on new micro-organisms claimed in patent applications. All Member States of ARIPO, with the exception of Somalia, are party to this Protocol.

Search services
ARIPO has custody of worldwide patent documents. With the available documentation and information retrieval systems, the organization offers several search services to the public including state of the art, novelty, validity, Bibliographic and Patent map searches.


The Protocol empowers the ARIPO Office to register marks for goods and services in respect of and on behalf of the contracting states. Similar to the Harare Protocol, the Banjul Protocol provides a centralised system of registration and provides a mechanism for the ARIPO system to co-exist with the national systems of the Banjul Protocol contracting states. Thus, an applicant can choose to register a mark with a national office for protection limited to that country or may elect to use the ARIPO route in which case the application should designate at least one contracting state up to the maximum of eleven.

The Swakopmund Protocol was concluded on 9 August, 2010 at a diplomatic conference held in Swakopmund, Namibia. It entered into force on 11 May, 2015. It acknowledges that traditional and local communities have for long utilised their traditional knowledge and culture for their survival and livelihood, and that there is now a gradual disappearance, erosion, misuse, unlawful exploitation and misappropriation of this traditional knowledge and folklore. Thus, the treaty seeks to empower and enhance capacity of custodians of traditional knowledge and folklore to realise their aspirations and prosperity through an effective protection system that will create a conducive environment for the respect, recognition, development and promotion of traditional knowledge and expressions of folklore and their continued use and development.

The Arusha Protocol for The Protection of New Varieties of Plants
The Arusha Protocol for the Protection of New Varieties of Plants was concluded by a Diplomatic Conference that was held in Arusha, the United Republic of Tanzania on 6 July, 2015. The Protocol will enter into force only when four States have deposited their instruments of ratification or accession. The Protocol will provide Member States with a regional plant variety protection system that recognizes the need to provide growers and farmers with improved varieties of plants in-order to ensure sustainable agricultural production.

Protection of Copyright and Related Rights
ARIPO’s mandate on Copyright and Related Rights aims to ensure the Organization coordinates and develops policies for the effective growth and protection of Copyright and Related Rights, recognizing the value of creative industries to the contribution of national economies and employment in Member States, the emancipation of copyright from all forms of piracy and strengthening infrastructure used for enforcement of copyright laws in the Member States and Africa at large.

Capacity Building Activities and Awareness Creation
ARIPO established a state of the art Academy, which was inaugurated on 15 February, 2006 to serve as a center of excellence in teaching, training, research and skills development in the field of intellectual property for different target audiences, including creators, inventors, artists, business managers and IP professionals, journalists, parliamentarians, policy makers, university lecturers, government officials of IP institutions, students and the civil society. The Academy provides intellectual property training in different areas including Masters in Intellectual Property, tailor-made courses, professional courses, research studies, attachments, internships and fellowships, and training programmes that focus on industrial property, copyright, enforcement, traditional knowledge, genetic resources and folklore.
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December 31, 2020, will mark the end of my tenure as the Director General of ARIPO from 2013 to 2020. During that time, I have seen the organizations grow from strength to strength through support from the team at ARIPO Secretariat, our Member States, our Cooperating partners, and Intellectual Property Agents.

Eight years ago, when I was interviewed in Zanzibar for the post, I pledged to offer the best years of my life to serve ARIPO. During this period, I have just done that with conviction, enthusiasm, and a sense of service to my continent. I am glad that I have accomplished what I have promised and contributed positively to the growth of the Organization and in raising its profile globally.

Some of the notable achievements during this time has been, first, the growth in the number of ARIPO Member States with the addition of Mauritius and São Tomé and Príncipe; second, the upgrade and modernization of the ARIPO ICT Infrastructure that enabled ARIPO to be one of the few offices that offer e-services in Africa and to fully automate ARIPO’s Management Systems, including in finances, human resources, assets and the library. The third one was the inauguration of the new state of the art headquarters building; the building even received 3 awards and is the new face of ARIPO and a landmark in Harare. The fourth one is the launch of two new Masters programme of Intellectual Property Degree at the University of Dar es Salam, Tanzania, and at the Kwame Nkrumah University of Science and Technology in Kumasi, Ghana. These two new master’s degrees add to the successful Master’s Degree Programme jointly organized with WIPO and the Africa University that so far has produced 358 graduates from 26 countries. The fifth achievement worth special mention is the successful rolling out of roving seminars to the general public and universities and research institutions in 17 member States, benefitting approximately 3000 people during the period 2014-2018.

Concerning ARIPO’s operations this year, it is worth stating that the COVID-19 pandemic had a negative impact on new applications for the protection of Intellectual Property rights at ARIPO. Indeed, there was a decline of 10% in the number of new patent applications. Utility models did not record significant numbers this year. There was also a decline of 27% for marks. The only positive trend in new applications was recorded in industrial designs, which grew by 9%. The copyright side was essentially marked by the finalization of the Draft Legal Framework on Voluntary Registration and Notification of Copyright and Related Rights, which is poised to be adopted in a Diplomatic Conference to be held in 2021. On the plant variety protection function, the main highlight was the Republic of São Tomé and Príncipe’s accession to the Arusha Protocol, becoming the second State after the Republic of Rwanda to join the Protocol that will enter into force once four States have acceded to it.

The eService platform proved very effective during the COVID-19 induced lockdowns as it ensured business continuity. There was an increase in the uptake of the online services, with 84% of all new applications received in 2020 filed online. Individually, patents recorded the highest percentage with 98 -100% of the applications filed online. Therefore, the COVID-19 pandemic accelerated the pace of uptake of the online system and cemented the idea that the future of ARIPO lies in the good use of Information and Communication Technologies.

I wish to take this opportunity to congratulate Mr. Bemanya Twbeaze on his election as the next Director General of ARIPO. I am confident that Mr. Bemanya will propel the organization even to greater heights. As I promised him during my handing over ceremony to him, I am available and will give him my full support to ensure a smooth transition. Matters of Intellectual Property are dear to me, and I am sure to continue preaching the IP gospel. As per the bible verse, 2 Timothy 4:7-8, I have fought a good fight, I have finished my course and kept the faith.

Wishing you Happy Holidays and a Happy 2021.

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Enda: Kenya’s First Home-Grown Running Shoe

By Katheryn Carrara, Freelance Writer

Kenyan entrepreneur Navalayo Osembo-Ombati gave up a job at the United Nations in New York to set up a business making running shoes in Kenya, fulfilling her dream of building on Kenya’s rich sporting heritage while creating livelihood opportunities for local communities.

Tell us about Enda. What makes it different?
“Enda” means “Go!” in Swahili, the local language here in Kenya, which is also spoken widely in East Africa. We work with Kenyan athletes to design running shoes and sell them to runners around the world. Most running shoe companies are based in the United States or Europe. Enda is unique; it’s the only company of its kind in Africa. We are not simply testing or marketing technical running shoes made by others, we are actually making our own shoes.

Our debut product, a lightweight trainer called the Iten is available in green, red and black, the colors of the Kenyan flag. They have been designed in close collaboration with Kenyan athletes and sports professionals. The Iten is the ideal shoe for shorter and faster runs and is named after a little village on the western edge of Kenya’s Rift Valley where Kenyan marathon champions come from.

Our second product is a daily trainer called the Lapatet – which means “run” in Kalenjin, the language spoken by many of Kenya’s great runners – and is ideal for longer, slower runs. All our shoes are designed to support a mid-foot strike and maximize the runner’s natural metatarsal footprint, in line with the Kenyan running style.

“At present, most of our shoes are sold overseas as they are too expensive for the local market. About 90 percent of our sales are in the United States, 8 percent in Europe, where we still have supply chain challenges, and the rest in Kenya. We hope to launch a more affordable model here in Kenya soon.
Why did you choose to manufacture running shoes in Kenya?
I had a strong desire to return to Kenya after spending significant time studying and working abroad. I have always been interested in sports and wanted to do something that had a positive social impact and was scalable. I decided to focus on something that takes advantage of Kenya’s sporting culture. Running was the logical conclusion. I soon discovered that there is a big market for running shoes and that no one in Kenya had manufactured a running shoe before! That’s quite something given our running heritage. So, I decided to go for it.

How are you leveraging the business for social good?
By making the shoes in Kenya we’re supporting local communities. Manufacturing is one of the best ways to get people out of poverty. By making our shoes here, we are not only supporting those who work with us to make them, we are also supporting various subsectors that supply us with raw materials. It would have been much easier to outsource all of the manufacturing processes to China, but we made a conscious decision to build up our manufacturing capability in Kenya.

The idea is that, progressively, our shoes will be 100 percent Kenyan-made. Right now, we’re at around 52 percent. My aim is to create an enterprise that not only supports top athletes, but also generates opportunities and benefits for the broader community. That’s why we donate 2 percent of our revenue to community projects.

Through the evolving work of the Enda Foundation, we are currently supporting a project in the slums, which protects people at risk, and a community center for children with autism. We see these community projects as an integral part of the business. Enda is a certified B-Corporation and a certified Climate Neutral company. Certified B-Corporations are businesses that meet the highest standards of verified social and environmental performance, public transparency and legal accountability to balance profit and purpose. And as a Climate Neutral company, we measure and offset our carbon footprint.

Where do you source the basic materials to make your shoes?
Not all the basic materials we need are readily available here in Kenya. We currently import some parts from China and supplement those with materials that are available locally as we progressively build the local supply chain. That said, we still lack expertise, for example, in mixing and handling the chemicals used, which can be dangerous. But we are making good progress. We have already increased local production, thanks to a local factory that has invested in the machinery for part of the manufacturing process, and a team from a partner in China that comes to Kenya to train the staff. Our aim is to train and improve the skills of our staff so we can produce a high-quality product using a range of materials.

What key challenges are you facing?
A key challenge is the need to ensure consumers are educated and can tell the difference between what’s a gimmick and what’s not. The running shoe industry is full of hype about products and claims that a shoe with a new, cool feature...
will make you run faster. This is not true. Without proper training, nutrition, running form and consistency, nothing will make you a better runner. That is the ethos of Kenyan running culture that we are trying to share with runners around the world.

Another challenge was the reluctance of local manufacturers to bet on Enda. Securing investors has been a huge challenge. Only in late 2019, when we secured our first seed funding, were we able to persuade local investors to back us.

In our first year of operation, thanks to angel funding, we developed our first prototype. Then we had to get creative and decided to launch a Kickstarter crowd-funding campaign. That enabled us to launch our first shoe, the Iten, in 2017.

A second campaign in 2019 made it possible to create and launch our long-distance Lapatet model, which went on to win first prize in the Body and Mind category at ISPO, the world’s leading trade fair for the sporting goods industry, in Munich, Germany, the same year. We were the first African company to win such a prize. That really boosted our profile and enabled us to attract five new investors, which will make a huge difference to our production, distribution and marketing capacity.

The whole idea of moving the manufacturing process from China to Kenya and training everyone is challenging, but we have chosen this as our path. In the end, we believe it will create jobs, attract investment and help build Kenya’s reputation as a manufacturing hub for sports shoes.

And as a small Kenyan enterprise?
From experience, it is much easier for a foreign direct investor than it is for a local company to operate in Kenya. Many government incentives are geared towards making foreign direct investment work. For example, a foreign manufacturer set up in the export processing zone (EPZ) is exempt from valued-added tax (VAT), import duty and other taxes for a specified period of time and also has ready access to offices and factories. But for a local company like Enda that is looking to the export market, it’s far more challenging.

“My aim is to create an enterprise that not only supports top athletes, but also generates opportunities and benefits for the broader community.”
As a contract manufacturer we don’t qualify for support because even though we do everything a foreign export-oriented manufacturer would do in Kenya, we don’t have a physical factory nor do we intend to build one. This detail is important because under Kenya’s EPZ law, to benefit from tax incentives, you must have a physical factory. This creates two problems. First, it means that only those people with enough money to build or lease a factory can benefit from the incentives. When you consider Kenya’s demography and economy, it means that young people like me will hardly ever get into export manufacturing. Second, it creates a cashflow problem with regard to working capital. When we import, we pay VAT, which is zero-rated for exports. Because most of our sales are exports, the government always owes us refunds, meaning that a good chunk of our day-to-day capital is tied up in VAT payments, which we wouldn’t have to pay if we were in a special economic export zone.

If I don’t need to own a car to move from one location to another, or to own a luxury beach house to enjoy a holiday in one, then I certainly don’t need to own a factory to be deemed a manufacturer. The regulatory and legal environments really need to reflect the realities of today’s shared economy and support local businesses.

And is being a female entrepreneur challenging?
It depends. It’s true, I am usually the youngest and the only female in most rooms and there is definitely a great absence of women in manufacturing and in decision-making roles. This points to various structural issues. But that hasn’t held me back. In general, my difference has always been an opportunity for me to express my ideas, explain my business and discuss the challenges I face. Being a woman can be difficult, but it can also be an opportunity.

What role does intellectual property play in your business?
Intellectual property (IP) is king. Without IP rights, we would have no legal means of defending ourselves against copycats or other unscrupulous operators. IP rights enable us to protect Enda’s business interests and grow the company, ensuring that when people buy our shoes, they get an authentic, high-quality product.

In the running-shoe world, everyone is trying to revolutionize running, so there is a lot of IP. We have registered trademarks and design patents, and we are developing more of these assets. IP rights are particularly important for Enda because we are a young company with global ambitions. It’s of paramount importance that we secure our IP so we can build our commercial reputation and client base. We have to be proactive about this in today’s fiercely competitive global market.

“We want [Enda] to become a global brand with a global impact, and we want to move the entire production process to Kenya and make it environmentally sustainable.”

IP for us is precautionary – an insurance policy if you like. It enables us to protect the beautiful things we make and expand our business. You never know what the future holds.

Is IP critical for small businesses?
Yes, it certainly is, but in Kenya, unfortunately, some small businesses often
think IP is exclusively for big businesses. The fact is, IP is for everyone. In Kenya there’s a misconception that IP is expensive. It’s true, one doesn’t always see an immediate benefit when paying for an IP right, but in the long-run it is extremely important, both in protecting your business interests and creating commercial opportunities. Look at innovations like Mpesa, the banking app that grew up in Kenya and has become an international phenomenon. IP is critical in protecting it. While creators in Kenya are generally quite IP-aware and understand how it can serve their interests, more needs to be done to ensure that they are more proactive about IP.

What could be done to increase awareness of IP in Kenya?
I would like to see better access to accurate IP information. A more user-friendly process for acquiring IP rights would also be welcome. The process is cumbersome and sometimes difficult for non-specialists to navigate. I was well informed, but it still took an insane amount of time. That in itself makes the whole process more expensive, especially if you aren’t based in Nairobi. Access to basic legal assistance, practical training courses for entrepreneurs, or at the very least, access to clear and up-to-date general guidelines on how to complete different applications would be very helpful.

“IP rights enable us to protect Enda’s business interests and grow the company, ensuring that when people buy our shoes, they get an authentic, high-quality product.”

What are Enda’s plans for the future?
In January 2020, we launched our first daily distance trainer and are preparing to launch a trail shoe in early 2021. We also plan to revamp our short-distance shoe with new materials and technical features and will be launching an affordable shoe made 100 percent from local materials for the Kenyan market. Last year, we recorded good results in the US market and our focus in 2020 is on developing our presence in Europe.

What are your ambitions for the company?
Our long-term vision is to be among the top three global sports brands in the world. The more shoes we make, the more people we employ and the more revenue goes back into the community. We want to become a global brand with a global impact, and we want to move the entire production process to Kenya and make it environmentally sustainable. My dream is to make our operation 100 percent circular, so that people wear our shoes, then send them back to us to tear apart and make new ones. Complete recyclability would be awesome!

What advice do you have for aspiring young entrepreneurs?
Life is an adventure. You have one life and it’s your responsibility to find your reason for being alive. You won’t find it sitting in a corner. Try to resist the expectations of others and the fear of failure.

That takes courage.
Yes, it takes courage and luck. If I hadn’t had my job at the United Nations in New York, to be honest, I wouldn’t have been able to do this. I wouldn’t have been able to grow the business for a long time while just living from my savings. Even when you are experimenting you need to pay your bills and meet other obligations and it was important to me to give the business time to grow without saddling it with too many expenses in its formative years. I recognize how lucky I am to have been able to pursue this journey and I am always grateful for that – as well as the opportunity to establish Kenya’s and Africa’s first running shoe brand!
The Jerusalema Dance Challenge and the Law to Challenge or not to Challenge that is the Intellectual Question

By Brenda Matanga & Gilbert Majirija - BMatanga IP Attorneys

In the midst of the ravaging Covid-19 pandemic, there emerged a song from South Africa which took the world by storm and left so many with smiles on their faces. The Jerusalema song released by Master KG, real name Kyagoello Magi featuring vocal singer Nomcebo Zikode released in October 2019 has been trending on social platforms becoming a popular hit with currently over 193million views on Youtube. This song has gone around the world and has been endorsed by presidents and even clergymen. South African President, Cyril Ramaposa was urging South Africans to participate in the dance challenge as well as the country commemorated its Heritage Day.

The song is a lamentation for God to take the singer to the heavenly city of Jerusalem and has been an uplifting song to many during the difficult times of the Corona pandemic. Various people across the globe have joined in, to what is termed the “Jerusalema dance challenge” where people dance to the song in a particular routine. The dance challenge was started by a group of
young men in Angola and it was their video of them dancing to the song which sparked a global trend.

Several clips of keen dancers across the globe including nuns, monks, construction workers, police officers, waiters, lawyers, hankers, fuel attendants amongst many other people have been shared on social media platform. Even international celebrities such as Cristiano Ronaldo1 a football star have associated themselves with this “Covid hit” as the world took on this dance challenge in jubilation. Businesses too, have not been left out. Many took advantage of the dance challenge to advertise their products and services.

It is no doubt that the song has earned Master KG a lot of fame and maybe, good fortune2. However, many people have turned a blind eye to the law and have never considered that the exploitation of the song is also regulated by law. This article therefore seeks to ventilate on the rights of the authors of the song as well as the legality of the dance challenges which have sprouted across the globe. Many have wondered whether Master KG still has any legal rights to the song and what exactly governs this sort of musical frenzy. Let me hasten to say, it is not new, many songs have been global hits3 and the same questions may have arisen but this one in particular, has sparked a lot of debate amongst legal minds, ours4 included.

Firstly, it must be noted that songs/music belong to the branch of law which is called intellectual property law. Intellectual property law seeks to protect intangible rights which arise as a result of mental labour, human activity and creativity. Intellectual property protects creations of the mind. The law recognises the right of an author of a creative work to exclude others from doing certain acts with respect to that song which acts would be the preserve of the author. With respect to music, such protection is afforded through what is termed copyright. Copyright grants on exclusive right to an author of a creative work, which enables the author to use his work, gain profit from it, and be credited for it, among other derived rights. It seeks to create a system whereby the creator of the original work is afforded a qualified monopoly in the use or exploitation of his works in order to:

i. Compensate and reward him for the effort, creativity and talent expended and utilised in the creation of his work.

ii. Also act as an incentive for the author to create more and better works or products from his skills or talent.

In every country, the law determines the required conditions for a work to be considered a creative original work that is entitled for a copyright protection. In most countries, the copyright consists of two types of rights: an economic right and a moral right. An economic right is the right to use the work and receive all benefits from it whereas a moral right is the right to be attributed for a work and to keep the work’s integrity.

With respect therefore to the Jerusalema song, there are acts which are a preserve of the author of the song which if done without their authority, violates their copyright in the song. The question for determination with respect to the challenge becomes, does public performance of the song Jerusalema violate Master KG’s copyright to the song? An interesting issue to note here is that the dance routine which led to the Global music challenge was not originated by Master KG but the Angolan guys who shot

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1 He posted the song on Twitter
2 There were reports of him purchasing a new Ferrari Sports car presumably from the proceeds of the hit
3 To mind is a song by a South Korean singer Psy. Gangnam Style whose dance was attempted by political leaders such as British Prime Minister David Cameron, U.S. President Barack Obama, and United Nations Secretary-General Ban Ki-moon who hailed it as a force for world peace
4 It was the subject of a staff discussion at BMatanga IP Attorneys and it was that discussion which inspired this article
a video dancing to the song. This brought transformation to the song and maybe a whole new meaning to the song which may have been a local hit in South Africa at the time but had not really been a global hit. That said, it does not take away Master KG’s legal entitlements which come from any form of exploitation of the song.

Before dealing with whether there was any violation of Master KG’s copyright in the song it ought to be noted that intellectual property rights are territorial. This means the rights afforded to the authors of the Jerusalema song differ from one country to another. Some acts may be lawful in one country and unlawful in another hence one needs to have an understanding of their national laws before exploiting the song. Be that as it may, there are International treaties which also govern copyright and related rights. These apply to a country depending on whether it is a signatory to them. To note in this instance is the Berne Convention which has 166 member states as well as the TRIPS agreement.

In Zimbabwe, for example copyright in a work is protected through the Copyright and Neighbouring Rights Act [Chapter 26:05]. This Act gives the author of a musical work the exclusive right to reproduce the work; publish the work; import the work into Zimbabwe or export it from Zimbabwe, otherwise than for the personal and private use of the person importing or exporting it; perform the work in public; broadcast the work and make an adaptation of the work. It is mandatory for anyone who seeks to use an author’s work that they seek their permission. If you are going to use Jerusalema in a movie for example, the legal position is that you seek a license from the artist. The license will determine how you can use the music, for how long and for what cost. A song will retain copyright protection for the duration of the authors life PLUS another fifty years after the year of their death. It is only at this point where the song is no longer under copyright protection and can now be exploited freely without the permission of the former copyright owner. Jerusalema is not in the public domain as may be assumed. In fact, it will not be anytime soon anyway therefore, whoever uses this song or makes a public performance of the song, should attribute it to its creator and seek permission use in any manner or for whatever purposes. This is what the law dictates, generally.

However, copyright law is not applied as such in every circumstance. It provides exceptions where copyrighted works can be used without necessarily obtaining permission from the author. These include fair dealing with copyrighted work say for educational purposes or in news reporting. Generally, there is a test which is used to ascertain whether the use of the copyright work amounts to fair use/fair dealing. It is a rather complicated area of the law as it is often awfully hard to figure out what is considered fair use and what is not. The determination, however, depends on four considerations:

1. the purpose and character of the use, especially whether it is commercial or not,
2. the nature of the copyrighted work,
   • the proportion between the used part and the whole work, in terms of quantity and substantiality, and
3. the effect the use has upon the potential market of the original work.

With this in mind, can those Jerusalema dance videos qualify as fair dealing in the copyrighted work? Can we apply the fair use doctrine to this song? The song, by many, is being used for entertainment and those dancing to
the song do not have an intention to derive any benefit from it and neither do they have an intention to deprive the copyright owner of remuneration that could reasonably have been expected from the exploitation of the work. In jurisdictions where the fair use doctrine is applicable, the genuine use in entertainment would qualify as an exception to the infringement of the copyright through the Jerusalema dance challenge.

However, if the law is to be applied strictly, any form of publication of the song on any social media platform will be considered as an infringement. Any person who publishes the song without authorization from the authors would be infringing the copyright in the song. Of concern are businesses that are using the dance challenge to advertise their goods and services. Commercial use is less deserving of the fair use exception and if proved that the song was used for commercial purposes many businesses will be found wanting. Another critical question to address would be the reasonableness of the use of the copyrighted work. If the use of the work is for commercial purposes, then it follows that the authority of the proprietor of the work would be necessary.

Unfortunately, several businesses have overlooked this legal threat to their jubilation. They participated in the Jerusalema dance challenge and in the process were advertising their services without seeking the authority of the authors of the song. Some have gone further to upload the dance challenge on youtube an added a disclaimer that they do not own the copyright in the song in the background. Attribution is great but it is not sufficient if the law was to be applied strictly. It would not assist much, in the absence of express authorization from the authors of the song to use the song.

Conclusion
This is the legal position but what prevails is simply up to Master KG and his team. Whether or not copyright has been violated in this instance may not be of concern to Master KG and his team at the moment. The publicity has been phenomenal, it has placed Master KG on Me international market. Lucrative too, anyone who uploads the video on youtube is adding to the fortune of Master KG. After all, no one has claimed that they own the copyright, they are just dancing to it. Many acknowledge that the copyright in the song belongs to Master KG. Even without that acknowledgment, Master KG can still approach youtube and claim copyright of all Jerusalem dance challenges through what is called content ID and he will be paid for the views of all those videos of people doing the Jerusalem dance challenge.

The world is in the middle of a global crisis. To apply copyright law strictly in this instance would be to be unnecessarily harsh. More importantly, any prejudice suffered by Master KG is likely to have been overridden by the good fortune that he has enjoyed so far. He does not seem to have complained either. The “Covid court of public opinion” seems to have concluded that the fair use exception stands, whether the song has been used for entertainment or for commercial purposes. It seems to me the global audience has been granted an open license of the Jerusalema song and only in 2020, can the world freely share, dance and record themselves whilst they are it. Be careful though, those liberties will not be extended beyond the crisis season of Covid-19.
The Forty-Fourth Session of the Administrative Council of the African Regional Intellectual Property Organization (ARIPO) has voted Mr. Bemanya Twebaze, a candidate from Uganda, as the Organization’s next Director General (DG) for a fixed term of four years that will start on January 1, 2021, to December 31, 2024.

“Thank you to the Administrative Council of ARIPO for entrusting me to lead ARIPO for the next four years. I will give my best energy to make meaningful transformations at ARIPO,” said Mr. Bemanya Twebaze at the close of the voting on November 17, 2020.

Mr. Twebaze will be the sixth DG at the ARIPO Secretariat following the current and outgoing DG, Dr. Fernando dos Santos from Mozambique, whose eight-year term ends 31 December 2020.

Mr. Twebaze is the Chief Executive Officer of Uganda Registration Services Bureau, the National Intellectual Property Office of Uganda.

Mr. Twebaze’s election by the ARIPO Administrative Council was made through an online voting system. He emerged as the winner ahead of two other candidates.

ARIFO is an intergovernmental organization based in Harare, Zimbabwe. It was created in Lusaka, Zambia, on 9th December 1976 under the Lusaka Agreement.

ARIFO grants or register intellectual property rights such as patents, trademarks, copyrights, utility models, industrial designs, plant varieties, traditional knowledge, folklore expression, and geographical indications. ARIPO also contributes to the shaping of the African and global intellectual property landscape through capacity building, awareness creation and sharing of technological information.

Dr. Fernando dos Santos Hands Over to DG Elect, Mr. Bemanya Twebaze

The ARIPO Director General (DG), Dr. Fernando dos Santos officially handed over to the DG Elect, Mr. Bemanya Twebaze on Wednesday, 16 December 2020 at the ARIPO Secretariat.

Mr. Twebaze was in Harare, Zimbabwe at the invitation of the outgoing DG for the handover and familiarization of the Secretariat, the first of its kind to be witnessed at ARIPO.

Among the documents handed over symbolically were the Lusaka Agreement of December 9, 1976, that established ARIPO, ARIPO Protocols, and ARIPO’s Staff Rules & Procedures Handbook among other key documents.

Mr. Twebaze congratulated and thanked the outgoing Director General, Dr. Dos Santos for his great achievements in his 8-year tenure at ARIPO, including his notable contribution to IP in Africa and the Secretariat’s state-of-the-art building. Mr. Twebaze promised to build on the achievements of Dr. Dos Santos to transform the Organization to greater heights. Mr. Twebaze will officially begin his four years term on 1st January 2021.

The DG also introduced Mr. Twebaze to the ARIPO Executives and Management Team. Dr. Fernando dos Santos term as the DG comes to an end on 31st December 2020.
This tribute of the African Regional Intellectual Property Organization (ARIPO) and Member States is paid to Dr. Fernando dos Santos, Director General of ARIPO from 1 January 2013 to 31 December 2020, in recognition of his outstanding service to the Organization, in particular, his astute leadership, devotion to duty, the doubling of the Organization’s fortunes, contribution in advancing Intellectual Property (IP) in Africa, and playing a key role in elevating the image of ARIPO in the global IP arena.

During his tenure as the Director General, Dr. dos Santos instituted numerous changes at the Secretariat including the adoption of the new ARIPO logo, the implementation of the ‘Value & Growth Transformation Strategic Plan 2016-2020’, introduction of “The Most Outstanding Employee of the Month/Year Award”, the adoption of 16 internal policies, regulations, manuals, and plans as well as the inauguration of the state-of-the-art new ARIPO headquarters building.

He is credited with bringing on board São Tomé and Príncipe and Mauritius to the ARIPO family, marshalling the Member States to adopt the Swakopmund and Arusha Protocols and ushering 11 new accessions to existing ARIPO protocols. Moreover, he is credited with spearheading the adoption of The Harare Strategic Plan for the Development of Copyright and Related Rights in Africa, the adoption of the The Nairobi Strategic Plan for the Development of Copyright and Related Rights in Africa in addition to Development of the Legal Framework on establishment of a Regional Voluntary Copyright Registration and Notification System.

Other notable achievements attributed to Dr. dos Santos include the establishment of 5 new Sub-Committees of the ARIPO Administrative Council, formation of the Working Group on the Improvement of the ARIPO Industrial Property Protocols; rolling out the ARIPO National Roving Seminars 2014-2017 and Roving Seminars for Universities and the Research Institutions 2017-2020; launch of the African Journal of Intellectual Property; launch of the Master of Philosophy Degree in IP at Kwame Nkrumah University of Science and Technology (KNUST) in Kumasi, Ghana; launch of the Master of Intellectual Property Degree at University of Dar es Salam, Tanzania, launch of the ARIPO Regional Patent Examination Training program (ARPET) at ARIPO and the graduation of 358 individuals from 26 countries with the ARIPO sponsored Masters in Intellectual Property Degree programs at the Africa University, in Mutare, Zimbabwe.

Dr. dos Santos is also credited with the conclusion of the Project to Upgrade and Modernize the ARIPO ICT Infrastructure and the Launch of Polite+ Administration System, the uptake of online applications by 84%, conclusion of the digitalization of ARIPO backfiles, launch of the ARIPO Regional Database, the inclusion of the ARIPO’s published trademark and design data on the EUIPO TMview and DesignView respectively, the inclusion of ARIPO in the EUIPO TMClass and the revamping the ARIPO website.

He facilitated the execution of 25 new MoUs with partners including the signing of the WIPO/ARIPO/OAPI (WAO) Tripartite Agreement and rolling out of the WAO National IP Awareness Weeks, signing of the Reinforced Partnership Agreement with EPO and the launch of the European Union Intellectual Property Rights Action for Africa project (AfriPI).

Dr. Dos Santos has been voted thrice as one of the top 50 “Most Influential People” in IP by the United Kingdom based ‘Managing Intellectual Property’ in 2015, 2018 and in 2019. At his watch, ARIPO received the award of the best commercial property in Zimbabwe at the ‘Zimbabwe Project Management Awards 2017’, Special award from the Project Management Zimbabwe 8th Annual Project Managers Dinner and the National Business Excellence Award 2018’ at the annual Megafest.

May God richly bless you.

On behalf of ARIPO and its Member States

Atty. P. Adelyn Cooper

Chairperson of the Administrative Council of ARIPO
The Forty-Fourth Session of the Administrative Council of ARIPO Concludes on a High Note

The Forty-Fourth Session of the Administrative Council of the African Regional Intellectual Property Organization (ARIPO) was held from November 16 to 20, 2020.

The weeklong hybrid meeting held virtually and at the ARIPO Headquarters, saw the Council members elect Mr. Bemanya Twebaze, a candidate from Uganda, as the Organization’s next Director General (DG) for a fixed term of four years that will start on January 1, 2021 to December 31, 2024.

The Permanent Secretary (PS) for the Ministry Of Justice, Legal and Parliamentary Affairs, Mrs. Virginia Mabhiza, officially closed the Annual Meeting. In her closing remarks, read by Mr. Willie Mushayi, the Acting Registrar General at the Zimbabwe Intellectual Property Office, she thanked the Administrative Council’s Chairperson, Hon. Atty. Adelyn Cooper, the ARIPO DG, and the Council members for their commitment and attendance at the weeklong meeting.

The PS commended Dr. dos Santos for the achievements realized by ARIPO during his tenure that includes Sao Tome and Principe, and Mauritius joining ARIPO, bringing the total number of Member States to 20. The Adoption of the Arusha Protocol, the entry into force of the Swakopmund Protocol, and the extension and commissioning of the ARIPO Headquarters were also mentioned among other notable achievements.

The PS also congratulated the Director General elect, Mr. Bemanya Twebaze, and offered her support during his tenure at ARIPO due to start next year.

Dr. dos Santos thanked the Administrative Council for their support in the eight-year tenure that enabled him to make many strategic achievements in ARIPO. He also thanked the ARIPO Secretariat staff, whose dedication to work contributed immensely to his achievements.

At the same time, the ARIPO Intellectual Property Development Executive, Mr. Emmanuel Sackey, who retires from ARIPO in February 2020, was honoured for his 20 years at the Secretariat.

The Annual meeting also discussed and adopted several documents on the Organization’s administrative aspects, including the proposed budget and programme of activities for 2021.

The Administrative Council also agreed to hold an Extraordinary Session mid-2021 to discuss other items of its traditional agenda including the proposals to amend some of the ARIPO Protocols (Harare Protocol on Patents and Industrial Designs and Banju Protocol on Marks) to continually keep them user friendly and in line with international trends.
Masters Degree in Intellectual Property (MIP)

Jointly offered by:
The World Intellectual Property Organization (WIPO); The African Regional Intellectual Property Organization (ARIPO); and Africa University (AU)

2021/2022 ADMISSIONS

THE PROGRAM
Applications are invited from suitably qualified candidates for admission into the Masters in Intellectual Property (MIP) Program. The Degree is jointly offered by the World Intellectual Property Organization (WIPO) Academy, the African Regional Intellectual Property Organization (ARIPO) and Africa University (AU), with financial support from the Government of Japan.

The duration is twelve months, from May 1, 2021 to April 30, 2022, structured in three parts, as follows:
• **First Part** (May 1 to July 22, 2021): WIPO Academy Distance Learning Courses, undertaken via the Internet;
• **Second Part** (August 1 to December 10, 2021): Residential phase requiring physical attendance at lectures undertaken at Africa University in Mutare (Zimbabwe) and practical training sessions at ARIPO in Harare.
• **Third Part** (December 11, 2021 to April 30, 2022): Dissertation Phase requiring research and writing on an approved topic.

The Program adopts a comparative approach, with particular emphasis on Africa. Lectures are given by leading academics, intellectual property practitioners, intellectual property officers and other experts drawn from across Africa. The provisional curriculum of the Program is available on the following website: Africa University ([http://africau.edu/programmes/MastersinIntellectualproperty.html](http://africau.edu/programmes/MastersinIntellectualproperty.html)).

ADMISSION REQUIREMENTS

The MIP Programme is open to government officials, industry practitioners, senior students and young professionals from academic, research and development or other relevant background who wish to upgrade their knowledge and skills in Intellectual Property law and practice. To be eligible, candidates are required to hold a minimum of a Bachelor’s degree (second lower class) from a recognized university in any discipline and have a minimum of two years work experience as well as a pass in DL 101 (WIPO Free Course). Proof of English proficiency is required, therefore, students coming from countries where the official language is not English will need to submit evidence of proficiency in an appropriate internationally approved English examination e.g IELTS, TOEFL

AWARD

Upon satisfactory completion of the program, participants will be awarded a Masters Degree in Intellectual Property (MIP) by Africa University on behalf of WIPO and ARIPO.
FEES AND COSTS
For tuition, registration and accommodation fees (subject to annual review), please follow the link [http://africau.edu/ tuition.html](http://africau.edu/tuition.html). Cost of meals and upkeep is estimated at US$350.00 per month per person.

SCHOLARSHIPS
With a view to contributing to the development of human resources in the field of Intellectual Property in Africa, WIPO, ARIPPO and the Government of Japan will provide approximately 30 scholarships to qualified candidates from Africa. The scholarship shall cover the cost of a return air ticket, board and lodge at Africa University and ARIPPO, tuition fees, registration fees and medical insurance.

To apply for scholarships online, please use the following link:

APPLICATION PROCEDURE
Interested candidates fulfilling the above mentioned requirements are invited to apply online using the following link:
[http://www.africau.edu/applyonline.html](http://www.africau.edu/applyonline.html).

Closing date for accepting applications is February 28, 2021.

Detailed information concerning the MIP Program is provided on the websites of Africa University ([http://africau.edu/programmes/MastersinIntellectualproperty.html](http://africau.edu/programmes/MastersinIntellectualproperty.html)), the WIPO Academy ([www.wipo.int/academy](http://www.wipo.int/academy)) and ARIPPO ([www.aripo.org](http://www.aripo.org)).
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