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Fair Use under Copyright Law: Theoretical basis and Enforcement Approaches in Selected East African States

Saudin J. Mwakaje

Abstract

The provisions of fair use in the copyright legislation afford a requisite policy balance for achieving important public developmental goals, such as facilitating access to information. However, the exact scope of fair use differs depending on the underlying priorities in a particular jurisdiction. The theoretical underpinning that substantiates fair use are also variant. The different approaches are evident in the regulatory practices across the East African States. The statutory restrictions on the applicability of fair use have been variously interpreted within the region, hence potentially creating legal and regulatory dilemma. This trend is worrisome in the context of present regional initiatives to approximate intellectual property laws within the region. The threshold of assessing fair use as reflected in local and international copyright legal texts offers inconclusive clues on fair use. Ultimately, consideration of specific conditions obtaining in a particular jurisdiction is important in devising the appropriate regulatory model for fair use.

Key words: *Copyright law, fair use, theoretical basis, copyright flexibilities, and regional harmonization.*

DRAWBACK OF DIVERGENCE: CONTRASTING COMPETITION IMPACT ASSESSMENT STANDARDS FOR SUBSIDIES IN KENYA AND TANZANIA

Elijah Oluoch Asher's

Abstract

This article probes the legal standards for the assessment of the impact on competition of subsidised goods imported from other Partner States in Kenya and Mainland Tanzania in light of the legal prescriptions of the East African Community. It applies comparative methodology in the examination of East African Community legal standards for such goods, as well as the national legal standards in the two Partner States. The article concludes that Kenya and Mainland Tanzania have divergent competition impact assessment standards for such goods. The gist of the article, therefore, is that unless the competition impact assessment standards applied by Kenya and Tanzania are harmonised, the disparity is likely to pervert the objective of a common market.

Key words: *competition, East African Community, Kenya, Partner States, subsidies, Tanzania*

INFLUENCE OF POLITICAL, SOCIAL AND ECONOMIC CONDITIONS ON RISE AND DEVELOPMENT OF CONSUMER PROTECTION LAW

Anthony Mzurikwao

Abstract

Consumer protection law is one of the mechanisms for protection of consumers. It comprises of both principal and subsidiary legislation aiming at protecting consumers' rights from being abused by producers. It is viewed as an appropriate mechanism of protecting consumers due to its coercive nature. However, the enactment and enforcement of such law depend on willingness of a state to do so. History shows that such willingness is influenced by political, social and economic interests which the state has to preserve. This article gives a brief historical account on how political, social and economic conditions from medieval era up to the present time has influenced legislative measures taken by the state to protect consumers' rights. This account is crucial in grasping reasons why the consumer protection law, be it in western developed countries or in the least developed countries like Tanzania, is in the form it is today.

Key words: *consumer, law, consumer rights, consumer duties, consumer protection law.*

COMPULSORY LAND ACQUISITION AND THIRD PARTY INTERESTS UNDER TANZANIAN LAND LAW: THE CASE OF MORTGAGEES AND TENANTS

Laurean Laurent Mussa

Abstract

The President of the United Republic of Tanzania has power to acquire, subject to payment of compensation, any land where such land is required for public purpose. The acquisition leads to extinction of both the right of occupancy and third party land interests, such as mortgages and leases, created out of it. Using documentary review of legislation and other pieces of literature, the paper explores the extent to which the law in Tanzania treats third party interests generally and leases and mortgages in particular as far as eligibility for payment of compensation is concerned. It is concluded that despite the fact that mortgagees and tenants have proprietary interests in land, laws relating to compulsory land acquisition in Tanzania focus on holders of the right of occupancy. The paper recommends amendments to relevant laws so that third party interests generally and mortgages and leases in particular are accorded the requisite attention in the compulsory acquisition process; especially eligibility for payment of compensation.

Key words: *compensation, compulsory acquisition, leases, mortgages, right of occupancy, third party land interests.*

REGULATION OF FOOD SAFETY AND QUALITY IN MAINLAND TANZANIA: EXAMINATION OF LEGAL AND INSTITUTIONAL CHALLENGES

Perfect Melkiori Marandu

Abstract

In Tanzania, there are several laws that regulate and control food safety and quality. The laws have established institutions that are responsible for regulating and controlling the safety and quality of the food. They include the Tanzania, Food Drugs and Cosmetics Act, the Standards Act, the Atomic energy Act, the Meat Industry Act, the Dairy Industry Act, the Fisheries Act, the Sugar Industry Act and the Cashewnut Industry Act. Notably, due to the recent amendments of the provisions of the Tanzania Food, Drugs and Cosmetics Act and the Standards Act by the Finance Act 2019, food safety and quality is regulated by the Standards Act and no longer the Tanzania Food, Drugs and Cosmetics Act.

Despite this plethora of the laws and institutions, presence of foods which are not safe for human consumption remains a common phenomenon. This Article provides an analysis of the existing legislative framework for regulation and control of food safety and quality in Tanzania. In doing so, the Article shows the legal and institutional challenges; these include multiplicity of laws and institutions, understaffing, inadequate resources (funds), lack of awareness on the part of consumers which results in poor enforcement and lack of specific penalties for violating provisions on food safety and quality. Lastly, the Article provides recommendations for the effective regulation of food safety and quality in Tanzania.

Key words: *Food, Food Safety, Food Quality, Regulation, Law*

ANALYSIS OF THE LAW AND PRACTICE ON THE EXPORT PROCESSING ZONES IN MAINLAND TANZANIA

Theophil Romward and Sosteness Francis Materu

Abstract

This article examines the legal framework governing Economic Processing Zones (EPZs) which are among the key investment tools in Tanzania. It focuses on selected three broad aspects of EPZs, namely incentives, creation of forward and backward economic linkages and promotion of exports. The article shows that the legal framework on EPZs in Tanzania is inadequate. Although the law focuses on creating an investment friendly environment through, for example, providing preferential treatment of EPZ investments, it fails to adequately focus on the balance between the costs of running the EPZs and the benefits to the national economy. The article emphasizes that the law should enable the government to fairly implement the host state's dual responsibility in EPZ investment i.e. protecting investors on the one hand and the national interests on the other hand. In doing this, there should not be fear that investors will be scared away. The reason is that investors are not scared of good regulation; they are scared of a regulatory framework that creates unpredictable investment environment.

Key words: *African Growth and Opportunity Act (AGOA), Economic Processing Zones Authority (EPZ Authority), Export Processing Zones (EPZs), incentives, labour laws*