

**THE EFFECTIVENESS OF INTELLECTUAL PROPERTY LAWS IN  
ZANZIBAR**

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**2013**

**CERTIFICATION**

The Undersigned certify that he has read and hereby recommend for examination a Dissertation entitled “The Effectiveness of Intellectual Property Laws in Zanzibar”, in partial fulfillment for the Award of Master of Law Degree of the Open University of Tanzania.

.....

Prof.Ian Lloyd

(Supervisor)

Date .....

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**DECLARATION**

I, **Makame, Mwajuma Sungura** declare that this Dissertation is my own original work and that it has not been presented and will not be presented to any other University for a similar or any other degree award.

Signature.....

Date .....

**DEDICATION**

I am dedicating this dissertation to my beloved Mother Halima Haji Ibrahim and my late Father Sungura Makame Khamis, my dear husband Othman Juma Othman, and the whole family of Mr. Sungura Makame for their encouragement, love and emotional support to my endeavors.

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This report is the outcome of findings from various respondents and institution which are working daily for the purpose of preventing creators and inventors which undertook from March to July 2013. The vision of this report is to know how The Government of Zanzibar assist and protect individual rights by using laws which are used in this country. My special thanks to God who sparing my life and giving me strength throughout my research, without him nothing could have been achieved.

Most of the information included in this report has been generously finded from the Copyright Society of Zanzibar (COSOZA) office and the assistance from the Industrial Property office. This information constitutes the most important and valuable part of this report and I also would like to extend my sincere gratitude and thanks in particular the officers of the Government of Zanzibar who shared and contributed their knowledge, experiences and wisdoms and for the trust, confidence and cooperation which their contributions imply.

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**ABSTRACT**

Intellectual Property has emerged as a fundamental part of the new development in the world, it has a potential to add a higher value to creator and inventors in developed as well as in developing countries. Internationally the nature of intellectual is enclosed with the procedure of Trade Related Aspects of Intellectual Property Law (TRIPS). The research objective is to assess and evaluate the effectiveness of intellectual property laws in Zanzibar, to identify the position of intellectual property in Zanzibar, to determine the degree of public awareness of protection of creators of intellectual property inside and outside of the country and to examine the performance of rules, regulations and policies that protects the inventors and creators of intellectual property in Zanzibar. The researcher found out that in spite of having intellectual property that are copyright and industrial property in the country the major challenges exists are lack of effectiveness of legal framework, skills, government policy and laws that causes suffering loses to the creators and inventors through audio video, software and video piracy with little legal alternative. The researcher recommends that the government should reforms the Intellectual property laws and policies in order to cope with International intellectual property development and also to increase understanding and awareness of intellectual property to different people.

## TABLE OF CONTENTS

<b>CERTIFICATION .....</b>	<b>ii</b>
<b>COPYRIGHT .....</b>	<b>iii</b>
<b>DECLARATION.....</b>	<b>iv</b>
<b>DEDICATION .....</b>	<b>v</b>
<b>ACKNOWLEDGEMENT .....</b>	<b>vi</b>
<b>ABSTRACT.....</b>	<b>viii</b>
<b>LIST OF CASE .....</b>	<b>xiv</b>
<b>LIST OF LEGISLATIONS.....</b>	<b>xv</b>
<b>ABBREVIATION .....</b>	<b>xvi</b>
<b>CHAPTER ONE .....</b>	<b>17</b>
<b>1.0 INTRODUCTION.....</b>	<b>17</b>
1.1 Background to the Study.....	17
1.2 Statement of the Problem.....	18
1.3 Objectives of the Study .....	22
1.3.1 The Main Objective .....	22
1.5 General Research Questions .....	22
<b>CHAPTER TWO .....</b>	<b>24</b>
<b>2.0 LITERATURE REVIEW .....</b>	<b>24</b>
2.1 Overview.....	24
2.2 Conceptual Definitions .....	24
2.2.1The World Intellectual Property Organization (WIPO).....	24
2.2.2 The Mission of WIPO .....	24

2.2.3 Protection of Intellectual Property through WIPO .....	25
2.2.4 The funding of the WIPO .....	25
2.3 The concept of Intellectual Property .....	25
2.4 Types of Intellectual Property .....	26
2.5 The Concept of Copyright .....	27
2.5.1 Duration of Copyright .....	30
2.2.4 The Concept of Trademark .....	30
2.5.2 Registration of the Trademark .....	32
2.6 Civil Law and Criminal Law .....	33
2.6.1 Civil Law .....	33
2.6.2 Criminal Law .....	34
2.7 The Concept of Patent.....	35
2.8 Condition of Patentability .....	36
2.9 The Patent Cooperation Treaty .....	38
2.9 The Concept of Industrial Design .....	39
2.10 Registration of Industrial Designs.....	39
2.11 The Concept of Geographical Indications .....	39
I) How Geographical Indications Registered.....	40
2.2.8 The Concept of Trade Secrets .....	42
2.3 Review of Supporting Theories .....	43
2.3.1 Why Intellectual Property System .....	43
2.3.2 Evolution of Intellectual Property System .....	44
2.4 Importance of Intellectual Property Laws.....	45
2.5 Intellectual Property Problems.....	46

2.5.1 Social problems.....	46
2.5.2 Jurisdiction Problem .....	46
2.6 Review of Study Done in Tanzania .....	47
2.7 Review of study Done in Zanzibar Island.....	50
2.7.1 Copyright Society of Zanzibar (COSOZA) .....	50
2.7.2 Enforcement Organs .....	51
2.8 Problems facing Intellectual Property Worldwide.....	54
2.9 Research Variables.....	55
2.9.1 Dependent Variable.....	55
2.9.2 Independent Variable .....	55
2.9.3 Variables and Measurement Procedures .....	55
Table 1.1 The Effectiveness of Intellectual Property Laws in Zanzibar, Factors and Measures Used in the Study.....	56
2.9.4 Research Gap in the Reviewed Literature.....	56
<b>CHAPTER THREE .....</b>	<b>58</b>
<b>3.0 RESEARCH METHODOLOGY .....</b>	<b>58</b>
3.1 Introduction.....	58
3.2 Research Design.....	58
3.3 Study Population .....	58
3.4 Sample Size.....	58
3.5 Sampling Technique .....	58
3.5.1 Purposive Sampling .....	59
3.6 Types of Data .....	59
3.6.1 Primary Data .....	59

3.6.2 Secondary Data .....	59
3.7 Data Collection Methods .....	60
3.7.1 Interviews.....	60
3.7.2 Observation .....	60
3.7.3 Documentation .....	60
3.7.4 Questionnaires.....	60
3.7.4 Data Processing and Analysis .....	61
3.8 Reliability of Data .....	61
3.9 Chapter Summary .....	61
<b>CHAPTER FOUR.....</b>	<b>62</b>
<b>4.0 RESEARCH FINDINGS, DISCUSSION AND INTERPRETATION .....</b>	<b>62</b>
4.1 Introduction.....	62
4.2 Evaluation .....	62
4.3 The Effectiveness of Intellectual Property Laws in Zanzibar .....	63
4.4 The Effectiveness of Copyright Law in Zanzibar .....	63
4.5 The Effectiveness of the Zanzibar Industrial Property Act.....	67
4.6 Challenges that Enforce the Intellectual Property Laws in Zanzibar .....	75
4.7 Conclusion .....	78
<b>CHAPTER FIVE .....</b>	<b>79</b>
<b>5.0 EXECUTIVE SUMMERY OF THE FINDINGS, RECOMMENDATIONS AND CONCLUSIONS.....</b>	<b>79</b>
5.1 Executive Summery of the Findings.....	79
5.2 Recommendations .....	79

5.2.1 Reformation of Intellectual Property Laws to cope with International Intellectual Property Development .....	80
5.2.2 Policies of the Intellectual Property .....	80
5.2.3 Establishment of Intellectual Property Regulations.....	80
5.2.4 Increase Understanding and Awareness of Intellectual Property to different People.....	81
5.2.5 Encouraging the Legal Implementations of Copyright and Industrial Property.....	81
5.2.6 Assurance of Industrial Property and Copyright Protection .....	82
5.2.7 Improvement of Information Communication Technology (ICT).....	82
5.3 Conclusions.....	83
<b>APPENDICES .....</b>	<b>85</b>

**LIST OF CASE**

Norowzian v. Arks Ltd (no.2) [2000] E.M.L.R.67 (U.K.: Court of Appeal)

## LIST OF LEGISLATIONS

### Local Legislations

English Copyright Act of 1911.

Zanzibar Order of Council of 1924.

Zanzibar Order in Council of 1962.

The Universal Copyright Convention and Bern Convention under legal notice no. 113 of 1963.

Act no. 14 of The Copyright Act of 2003.

Zanzibar Patent Decree Cap 157 for Patent, Design (Protection Decree).

CAP 154 for design and Trademark Decree.

CAP 159 for trademark.

Act no. 4 of The Zanzibar Industrial Property Act, 2008.

The Trade and Service Marks Act, 1986

The Patents (Registration) Act Chapter 217

The Trade and Service Marks Act, Chapter 326

The Copyright and Neighboring Rights Act, 1999

**ABBREVIATION**

COSOTA	Copyright Society of Tanzania
COSOZA	Copyright Society of Zanzibar
GI	Geographical Indications
IP	Intellectual Property
IPR	Intellectual Property Rights
PCT	Patent Cooperation Treaty
SM	Service Mark
TRA	Tanzania Revenue Authority
UN	United Nations
US	United States
USA	United States of America
WIPO	World Intellectual Property Organization
WTO	World Trade Organization
ZBC (TV)	Zanzibar Broadcasting Cooperation (Television)

## **CHAPTER ONE**

### **1.0 INTRODUCTION**

This chapter explains about the background to the study that leads to show the information which are elaborated in the research problem, research objectives, and statement of the problem, research questions and significance of the study.

#### **1.1 Background to the Study**

Intellectual property is increasingly being recognized as an important tool for economic development and wealth creation in Tanzania. In Zanzibar Intellectual Property is based on Copyright and Industrial Property that deals with Trademark, Patent, Industrial Design and Geographical Indications.

During colonialism Zanzibar used English Copyright Act of 1911 for Copyright by using Zanzibar Order of Council of 1924 and it was repealed in 1962 under the Zanzibar Order in Council. This Order and The Universal Copyright Convention and Bern Convention under legal notice no. 113 of 1963 were used together with Zanzibar Order in Council of 1962 up to 2003 when the Act no. 14 which is known as The Copyright Act of 2003 was established.

In the side of Industrial property during colonialism and after, Zanzibar used Patent Decree Cap 157 for Patent, Design (Protection Decree) CAP 154 for design and Trademark Decree CAP 159 for trademark. Those Decree were repealed by Act no. 4 of 2008 which is known as The Zanzibar Industrial Property Act which is dealing with Patent, Trademark, industrial Design and Geographical Indications.

Intellectual property is an umbrella term it covers copyright, patents, trademarks, geographical indications and so on.

Each of these terms covers a different property and physical objects. Example Copyright is for original literary, dramatic and musical or artistic works, sound recordings, films and broadcast and the typographical arrangement of a published work and Trademark is for one or combination of words, letters and numerals. They may consists of drawings, symbols or three dimensional signs such as the shape and packaging of goods but in some countries non-traditional marks may be registered for distinguishing features such as holograms, motion, color and non visible signs (sound, smell or taste). In Zanzibar Intellectual Property is classified into copyright which is under umbrella of Copyright Society of Zanzibar (COSOZA) and Industrial property which are under supervision of the office of the Intellectual Property of Zanzibar.

### **1.2 Statement of the Problem**

The Intellectual Property is one among the important thing in this centuries but it seems to have a lot of contradictions which contradict the creators, artistic, advocates and even the interpreter (Judges and Magistrates) of the laws and policies of intellectual property.

Before 2003 when the Act no. 14 of “the Copyright Act” was established there was different laws known as Patent Decree Cap 157 for Patent, Design (Protection Decree) CAP 154, Trademark Decree CAP 159 and The Universal Copyright Convention and Bern Convention under legal notice no. 113 of 1963 were used

together with Zanzibar Order in Council of 1962 still there was a misunderstanding between the creators and users of the work of creator's example authors of different books, creators of music, novels, players etc, and the Government of Zanzibar failing to maintain economic benefits which arises from intellectual property that is why on 2003 the Government of Zanzibar decided to establish Act no. 14 of 2003.

The infringement of the rights of the creators especially in music, video player, double registration on trademark is become a big problem in Zanzibar because of failing of keeping records in the Government office. Up to now the Government uses local recording by writing in the recording book not in the computer system. The creators and inventors does not know their rights to practice or use the invention example all forms of intellectual property like patent, copyright, trademark and geographical indications provides the right of excluding others to make, use, sell, offer of selling and import the invention for the subject to the payment of maintaining fees in the relevant office example in Zanzibar the maintenance fees is paid to the office known as Copyright Society of Zanzibar (COSOZA).

Intellectual property has limited property right the government gives inventors in exchange for their agreement to share details of their inventions with the public like any other property right, it may be sold, licensed, mortgaged, assigned or transferred, given away, or simply abandoned but almost many of investors or creators of work have no knowledge about their exclusive rights and limitation of their rights. The local creators and inventors do not know the application of their invention worldwide example the inventor of trademark now can apply his or her invention in

a large selection with a single application and get full rights of protection of his or her invention.

The governing laws and policy differ from one countries to another and it seems to be a big problem to investors and creators of work for example Tanzania is union of two countries Tanganyika and Zanzibar but it has different laws, regulation and policies, Tanzania Mainland and Zanzibar have different laws and policy dealing with intellectual property and have different organs for administering the functions of intellectual property like copyright, the Copyright Society of Tanzania (COSOTA) control the copyright in Tanzania mainland and Copyright Society of Zanzibar (COSOZA) in Zanzibar administer copyright in Zanzibar only.

Also the inventors do not know which invention can be protected as patent, copyright, or trademark and even business name that is why many of them asked themselves how do they know their invention is protected by law?, they fail to determine if their invention falls under the categories of the intellectual property. Example of the case is the case of **Norowzian v. Arks Ltd (no.2) [2000] E.M.L.R. 67 (U.K.: Court of Appeal)**. The plaintiff Norowzian shot a short film called “Joy” on a building rooftop, featuring a man dancing to music. Norowzian edited the film, cutting out particular sequences. So that the dancer seemed to be doing impossible, almost surreal, moves. Later, the television advertisement for Guinness ale featured a man dancing in the same jerky way.

The dance, setting and music were different, but the advertisement (called “Anticipation”) copied Norowzian’s filming technique and the idea of a man

seeming to do impossible dance steps. When Norowzian sued the second filmmakers and the Guinness Brewery for copyright infringement, the defendants claimed they had merely copied the idea of the earlier film, not its expression.

The Court agreed with defendants and dismissed the action. And Lord Justice Nourse said that there is a striking similarity between the filming and editing styles and techniques used by the respective directors of the two films. But no copyright subsists in mere style or technique. The similarity of style and technique are insufficient to give the claimant a cause of action against the defendants.

The implementation of the laws of intellectual property rights is exactly interfere the inventors, creators, and even interpreter of the laws, regulations and policies, for example in Zanzibar there are different tribunal which are used to resolve disputes arises to the society like land tribunal, business tribunal but there is no intellectual property tribunal whenever there is an action for intellectual property infringement, all disputes is going to the court.

In most countries, there are conflict arises between the employee and employer especially journalists, almost many journalist do not agree that the ownership of their work is automatically going to their employer sometimes they make documentaries and sell it to another company or media and forget that the employers invention may pass from the inventor to their employer by rule of law if the invention was made in the course of the inventor's normal or specifically assigned employment duties, where an invention might reasonably be expected to result from carrying out those

duties, or if the inventor had a special obligation to further the interests of the employer's company.

### **1.3 Objectives of the Study**

#### **1.3.1 The Main Objective**

The overall objective of this study is to assess and evaluate the effectiveness of intellectual property laws in Zanzibar.

Specifically, the objectives will be:

- i. To identify the position of intellectual property in Zanzibar.
- ii. To determine the degree of public awareness of protection of creators of intellectual property inside and outside of the country.
- iii. To examine the enforcement of rules, regulations and policies that protects the inventors and creators of intellectual property in Zanzibar.

#### **1.4 Significance of Study**

The significance of the study would be in the following:

- i. Academically the study will contribute in making recent debates on the effectiveness of intellectual property in Zanzibar. Practically the study will benefit public, creators and inventors of works in Zanzibar.
- ii. The discussions and results from the study will assist the Government to formulate the structure of the intellectual property policies that could deliver positive effects on daily activities.

#### **1.5 General Research Questions**

The main research question of this study is “what are the effectiveness of

Intellectual Property Laws in Zanzibar''? Specifically, the questions are:

- i. To what extent public, inventors and creators understand the Intellectual Property laws in Zanzibar?
- ii. Are there any awareness and legal implementation of intellectual property laws in Zanzibar?

## **CHAPTER TWO**

### **2.0 LITERATURE REVIEW**

#### **2.1 Overview**

This chapter gives the critical review of the relevant literature concerning the effectiveness of intellectual property laws in Zanzibar. The chapter reviews related literature on the conceptual definitions, supporting theories from various literatures, review of empirical analysis, and the conceptual framework, identifies and describes variables of research problems.

#### **2.2 Conceptual Definitions**

##### **2.2.1 The World Intellectual Property Organization (WIPO)**

The World Intellectual Property Organization (WIPO) is a specialized and International agency of the United Nations (UN), its original is the agreement between Paris and Berne Conventions in 1883 to 1886. The organization was signed in Stockholm in 1967 and starting its work in 1970. The aim of establishing this organization is to guarantee the protection of the rights of the creators, inventors and owners of intellectual property is confined worldwide. The Member States of WIPO work together with other partners for the purpose of enabling to help the future and present generations of creators and inventors of the original work.

##### **2.2.2 The Mission of WIPO**

The WIPO's mission is to balance the cultural, moral, material and socio-economic reimbursement as well as to support the creation and inventions of creators and inventors for the economic, cultural and social evolution worldwide. The writer of

the book<sup>1</sup> says that the mission of WIPO is to promote through International cooperation the creations, disseminations, use and protection of works of the human mind for the economic, cultural and social progress of all mankind.

### **2.2.3 Protection of Intellectual Property through WIPO**

WIPO is a specialized and International agency of United Nations provides an opportunity to its Member States who are new and developing nations to create rules and procedures for purpose of protecting the intellectual property rights of its creator and inventors of the original work.

Also WIPO protect the intellectual property by providing global registration system to its Member States in order to ensure the industrial design, trademarks and patents are in the regular assessment even though there are rapid changes of technological improvement and increasing of global trade as well as to make availability of information on intellectual property is there in proper way.

### **2.2.4 The funding of the WIPO**

The funds of the WIPO is coming from the payments which are paid by its Members State as well as its annual budget is depends on the registration and filling arrangements worldwide.

## **2.3 The concept of Intellectual Property**

Intellectual property is the rights of the creators or inventors from their creations and inventions of the intellect which based on both moral and commercial principles.

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<sup>1</sup> WIPO INTELLECTUAL PROPERTY HANDBOOK [ 2004] on page 138

Intellectual property includes the rights of the following creations and invention:

- i. Literary and artistic works.
- ii. Scientific discoveries and scientific works.
- iii. Industrial design, trademarks and service marks.
- iv. Names, designs, symbols and images which are used in business behavior.
- v. Phonographs, broadcasts and performances of performing arts.

In general the concept of Intellectual property (IP) is expressed as a legal concept which refers to creations of the mind for which exclusive rights are accepted. The intellectual property law grants the exclusive rights to the owners to its creations such as music, literary and creative works; discoveries and design. In general an intellectual property right includes copyright, trademarks, patents, industrial design and trade secrets.

#### **2.4 Types of Intellectual Property**

In general the researcher observed that Intellectual property is divided into five types that are Copyrights, Patents, Trademarks, Geographical Indications and Industrial design. But the author Joseph Devine in his article which is known as EzineArticles<sup>2</sup> [on February 2013], explains that intellectual property is classified into four main types that are copyrights, patents, trade secrets, and trademarks, and the Author Stephan Kinsella {on March 4, 2011}<sup>3</sup> has the same idea with the author Joseph Devine also explains in his article that intellectual property is divided into four types

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<sup>2</sup> Article Source: [http://EzineArticles.com/?expert=Joseph\\_Devine](http://EzineArticles.com/?expert=Joseph_Devine). [http://EzineArticles.com/?time=22:25pm on 26 Aug. 2013](http://EzineArticles.com/?time=22:25pm+on+26+Aug.+2013)

<sup>3</sup> <http://c4sif.org/2011/03/type-of-intellectual-property/> time 22:33pm on 26 Aug. 2013

that are patent, copyright, trademark and trade secret. But The Government of Zanzibar classified intellectual property into two types that are Copyright and Industrial Property (that includes Patent and Trademark).

## **2.5 The Concept of Copyright**

Copyright is legal concept that is defined as the rights of the creators and inventors of the work, this will includes the exclusive rights that is the rights to authorise people to use the creators and inventors work or prohibit to use the creators and inventors work. Copyright only protects the form of ideas and not the idea themselves, example Mr. Jorge has a concept of writing a book which is known as ‘the reality in the jungle’ but he told his friend Mr. Tom about his ideas and his friend decided to write the same book by using the idea of Mr. Jorge, the copyright is going to Mr. Tom because of expressing the idea in material form, so that Mr. Tom has exclusive rights to authorize to use or prohibit others to use his work.

The concept of copyright is explained by different writer among of them are the writer Don R. Pember in his book of Mass Media Law [Cases and Materials on page 498], [2001/2002], he explains the concept of Copyright differently as the researcher of this research think, he explains that copyright is:

*“An area of the law which deals with intangible property, property that a person cannot touch or hold or lock away for safekeeping, this concept is sometimes confusing to people, how can the law protect something you can’t hold or touch? One good way to explain this concept is to think for a moment about a personal letter you have written to your friend, who owns it? Your*

*friend owns the piece of paper that contains the words. That is his or her personal property now and is protected by property law. But you retain ownership of the words and the words are protected by copyright law. Your friend could not publish the letter without your permission. But he or she could throw it away or set fire to it and destroy the paper. In such a case, your friend is not using your words, your property, but merely destroying the letter”.*

And the author Professor David Vaver in his book *Principles of Copyright (Cases and Materials)* of 2002 on page 11 explains the concept of copyright as: “a property right, but it is different from property in a physical thing. If I buy a book from a bookstore, I will now own the book and can do what I like with it as a physical object: read it, stand on it or throw it in garbage. But someone else will typically own the copyright in the book, either the author or whoever the author has transferred the copyright to. That person too has rights over the book without that person’s consent; I infringe his rights in the book. I may have paid for the book, and the sale price certainly did not include anything for that copyright”.

The suggestion of the writer who wrote article known as *Copyright* [modified on 21 August 2013 at 16: 44]<sup>4</sup> about copyright is that copyright is a legal concept, enacted by most governments, giving the creator of an original work exclusive right to it, usually for a limited of time. Generally, it is “the right to copy”, but also gives the copyright holder the right to be credited for the work, to determine who may adapt

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<sup>4</sup> <http://en.wikipedia.org/wiki/copyright> time 23:38pm on 26Aug. 2013

the work to other forms, who may perform the work, who may financially benefit from it, and other related rights.”

The Zanzibar Copyright Act, 2003 fails to explain the meaning of copyright in its all sections and makes the reader to know nothing about the meaning of copyright. It only explains the concept of copyright works that are literary and artistic works (herein referred to as “works”) are original intellectual creations in the literary, artistic and scientific domain, including a particular<sup>5</sup>:

- i. books, pamphlets, articles, computer programs, scientific or artistic writings and other writings;
- ii. speeches, lectures, addresses, sermons and other oral works;
- iii. dramatic, dramatic- musical works, pantomimes, choreographic works and other works created for stage productions;
- iv. musical works, with or without accompanying words;
- v. audiovisual works;
- vi. works of architecture;
- vii. works of drawing, painting, sculpture, engraving, lithography; tapestry and other works of fine art;
- viii. photographic works;
- ix. works of applied art;
- x. illustrations, maps, plans, sketches and three-dimensional works relative to

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<sup>5</sup> The Copyright Act of Zanzibar of 2003 under s. 3(1)(a-j)

geography, topography, architecture or science.

### **2.5.1 Duration of Copyright**

The duration of copyright is depends on the law of the country, some of the country protect the right of the creators and inventors in their whole life and 50 years after the death of the original owner and if the work is the joint work the duration of copyright will be after the death of the last owner.

The duration of copyright under the Bern Convention is life of the author and fifty years after his death. The protection of 50 years will be provided to the author who create film, cinematographic and anonymous work and the creator of artistic works such as photographs and applied art his protection will be 25 years after his death. The Zanzibar Copyright law of 2003 under section 18(1) to (5) explains in deep that copyright (economic rights) shall be protected during the life of the author and for fifty years after the death, and if the work is joint authorship the rights will be protected during the life of the last survival author and for fifty years after the death and in case of collective work other than a work of applied art the rights will be protected fifty years from the date on which the work was either made and in case of a work applied art, the rights shall be vested for twenty five years from the making of the work.

### **2.2.4 The Concept of Trademark**

Generally a trademark is mark or symbol used by creators or inventors of the mark for trade purposes. It can be a word, symbol, combinations of characters, device or

signature, packaging, label and even brand that can differentiate individuals or company's goods and services from one creator or inventor to another.

The trademark on a particular item guarantee the buyer that he or she is getting the real item and protects the producer or service provider from the inequitable business practices of other and may prevent to confuse the consumers in the marketplace. For example product of Coca Cola Company is differing from Fanta and the product of Super Glue, Velcro and Jell-O is differing from each other.

The author of the website<sup>6</sup> explains the concept of trademark as a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise. Also the writer of the website<sup>7</sup> has another idea about the concept of trademark, he says that Trademark is a “distinctive design, graphics, logo, words or any combination thereof that uniquely identifies a firm and or its goods or services , guarantees the item's genuineness, and gives it owner the legal rights to prevent the trademark's unauthorized use.”

The Zanzibar law, under section 2 of the Zanzibar Industrial property Act elucidate that trademark is known as “Mark” that means any sign that is capable of distinguishing goods (“trademark”) or services (“service mark”) of one activity from those of other activities. It includes personal names, designs, letters, colors or combinations of colors, numerals or the shape of goods.

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<sup>6</sup> <http://www.wipo.int/trademarks/en/trademarks.html> time 12:33 pm on 27 Aug.2013

<sup>7</sup> [http:// www.businessdictionary.com/definition/trademark.html](http://www.businessdictionary.com/definition/trademark.html) time 12:45 pm on 27Aug.2013

### 2.5.2 Registration of the Trademark

The registration of the trademark in the country can be formed according to rules, principles, law and regulations of the country by which the originality of the mark is observed. The effectiveness of the registration of trademark in one country is differing from other country.

Example in Zanzibar (under section 48 of the Zanzibar Industrial Property Act of 2008) the registration of the Mark is valid (effective) if it is dully registered in the territory or country of origin that is a Member of the Paris Union or of the World Trade Organization or that maintains a relation of reciprocity with Zanzibar (“the Country of origin”).

But the registration of the Mark can be ineffective if the following circumstances occurred in accordance with section 46 (2)(i-vii) of the Zanzibar Industrial Property Act of 2008;

- i. if it is incapable of distinguishing the goods or services of one enterprise from those of other enterprises..... from the common composition of those goods;’
- ii. if it is contrary to public order or morality, it shall be understood, however, that the nature of the goods or services to which mark is to be applied shall in no case form an obstacle to registration of the mark;
- iii. if it is likely to mislead the public .....;’
- iv. if it is identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of

the name of, or official sign or half mark adopted by, any State.....

by the competent authority of that State or organizations;’

- v. if it is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in Zanzibar for identical or similar goods or services ..... the owner of the well-known mark are likely to be damaged by such use;’
- vi. if it is identical with or similar to a mark belonging to a different proprietor and already on the Register..... such a mark as to be likely to deceive or cause confusion.
- vii. if the application has been made in bad faith or where the sign, if registered, would serve un fair co petition purposes.

## **2.6 Civil Law and Criminal Law**

### **2.6.1 Civil Law**

Is that law which governs the relations of individuals amongst themselves, in civil law the State has no direct interest in a case between private individuals, example of civil law are the law of contracts, the law of succession, the law of torts, the law of property etc. In the civil law the parties are the plaintiff and the defendant. The plaintiff is the aggrieved party who is suing while the defendant is the wrongdoer who is being sued because of the violation of the private rights of an individual.

In civil law, a defendant found to have committed a civil wrong is usually ordered to pay to the plaintiff damages [that is monetary compensation] or some other civil remedy may be granted to the plaintiff. Example of criminal law is criminal law and its punishment is usually by a term of imprisonment or imposition of a fine.

### 2.6.2 Criminal Law

Is that law which govern the public wrong against the state, the parties are the Prosecution and the Accused, the prosecution represents the State while the accused is the offender who is being prosecuted. The criminal law generally prohibits undesirable acts, that are Actus reus is coming from the latin word and meaning is “guilty act” and is the physical element of committing a crime and Mens rea is latin phrase means “guilty mind” that is an intention to commit some illegal actions. The criminal law distinguishes the personal motive from his intentions to do criminal offence.

Criminal and Civil Law of Mark in Zanzibar can be Enforced if there are the following:<sup>8</sup>

- i. The Registrar or the Court shall have authority to decide whether a mark has acquired secondary meaning or distinctiveness through continue use or in the case of honest concurrent use.
- ii. The Registrar or the Court may permit the registration of marks that are identical or nearly resemble each other in respect of the same goods or services or description of goods or services by more than one proprietor subject to such conditions and limitations.
- iii. And the Registrar may refuse to register trademark that are identical or nearly resemble each other in respect of the same, similar or related goods or services or description of goods or services unless the determination have been determined by the court.

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<sup>8</sup> Section 46(3-5) of the Zanzibar Industrial Property Act of 2008

Functions of trademark: -

- i. It shows the distinction between one seller's goods from other goods.
- ii. The trademark shows that all goods or service mark come from a various sources.
- iii. The trademark indicates that all goods bearing the mark are of an equal level of quality.
- iv. It serves as a fundamental mechanism in advertising, selling and protecting goods.
- v. Trademark can provide legal benefits in case there is infringement of one's trademark.

## **2.7 The Concept of Patent**

Patent is the right granted upon application by a government office to anyone who discovers any new, useful and non-obvious process, machine, article of manufacture or composition of matter in which the patented invention can normally only exploited {manufactured, used, sold or imported} by with the owner of the patent authorize or prohibit others from using, making, selling or distributing the patented inventions. The moment patent's rights is granted, automatically the law grants the exclusive rights to an inventor or their assignee and exclude others from offering for sale or selling the invention, making, using for a limited period of time,

The definition from Wikipedia<sup>9</sup>[modified on 26 August 2013] describes the concept of patent as a set of exclusive rights granted by a sovereign state to an inventor or

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<sup>9</sup> <http://en.wikipedia.org/wiki/Patent> time 13:28pm on 27 Aug. 2013

their assignee for a limited period of time, in exchange for the public disclosure of the invention. Also The Zanzibar Industrial Property Act of 2008 defines the word Patent is the title granted to protect an invention<sup>10</sup>.

## **2.8 Condition of Patentability**

In order the invention of patent be protected in the country it must meet several conditions for it to be eligible for patent protection among of them is that the invention must be new, useful and it is industrially applicable and must exhibit a sufficient 'inventive step' (be non-obvious).

Once the owner of an invention has been granted patented rights in any exacting nations, they will have the legal right to stop others to make, use, or sell the invented work without their consent. Patent protection in a given country does not extend to other countries; inventors must apply in each territory where they want their patent to be useful. The patent rights will be lapsed if the owner fails to pay fees to each responsible authority.

During the time of applying the right of protection of patent, the applicant must explain the details of the patented invention that are:

- i. background information (the 'state of the art')
- ii. a comprehensive explanation of the invention and how it works
- iii. Illustrations of the invention where appropriate.

What can and cannot be patented?

What can be patented – the invention can be patented if it is new, non-obvious and

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<sup>10</sup> Section 2 of the Zanzibar industrial Property Act of 2008

useful:

- i. Process
- ii. Machine
- iii. Article of manufacture
- iv. Composition of matter
- v. Improvement of any of the above

Zanzibar Industrial Property Act of 2008 explains the inventions that can be patentable that an invention shall be patentable if it is new, involves an inventive step, is industrially applicable and has not been excluded from patentability under the Zanzibar law<sup>11</sup>

What cannot be Patented?

- i. Laws of nature
- ii. Physical phenomena
- iii. Abstract ideas
- iv. Literary, dramatic, musical, and artistic works (these can be Copyright protected). Go to the Copyright Office .
- v. Inventions which are:
- vi. Not useful (such as perpetual motion machines); or
- vii. Offensive to public morality

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<sup>11</sup> Section 4 of the Act

Section 3 Explains the Inventions that cannot be Patented as:<sup>12</sup>

- i. Discoveries, scientific theories and mathematical methods;
- ii. Scheme, rules or methods for doing business, performing purely mental acts or playing games;
- iii. Methods of treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body;
- iv. New uses or forms of known product or process;
- v. Animal and plant varieties;
- vi. The human body and all elements in whole or in part;

## **2.9 The Patent Cooperation Treaty**

The Patent Cooperation Treaty (PCT) is an international agreement for filing patent applications having effect in many countries worldwide. While the PCT system does not grant an international patent, the duties and responsibilities for granting international patents remains exclusively in the hands of Patent Offices of, or acting for, the countries where protection is sought (the “designated offices”) The filing patent applications simplifies the process of having genuine patent protection and avoid the delays and expenses associated with applying for patent protection in foreign countries, and allows the inventor more time to assess the commercial viability of his/her invention. Under the PCT an inventor can file a single international patent application in one language with one patent office in order to simultaneously seek protection for an invention in the PCT member countries.

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<sup>12</sup> The Zanzibar Industrial Property Act of 2008

## **2.9 The Concept of Industrial Design**

A general concept is that, industrial design is the protection of the use of any composition of lines or colors or any three important forms, whether or not linked with lines or colors, provided that such compositions or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft.

The industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three dimensional form containing aesthetic value. Also The Wikipedia from the website<sup>13</sup> clearly explains the concept of the Industrial Design as the use of both applied art and applied science to improve the aesthetics, ergonomics, Architecture, functionality, and usability of a product, but it may also be used to improve the product's marketability and production.

## **2.10 Registration of Industrial Designs**

In order the law of the country register the inventions of industrial design, the invented industrial design must accompanied with the following:

- i.** If it is new and not be disclosed to the public or anywhere in the world, by publication in tangible form or by use or in any other way.
- ii.** And if the Industrial designs are contrary to public order or morality.

## **2.11 The Concept of Geographical Indications**

In general the explanation of the concept geographical indication is a name of the

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<sup>13</sup> [http://En.wikipedia.org/wiki/industrial\\_design](http://En.wikipedia.org/wiki/industrial_design) time 13:58 pm on 27 Aug. 2013

place of origin of goods or sign used on specific goods that have a particular geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin example town, region or country. Through national law, Geographical indications may be used for a wide variety of products, whether natural, agricultural or manufactured; in case of agricultural products the qualities that derive from their place of production such as climate and soil are known as specific local factors.

The Zanzibar law explains the concept of geographical Indication (GI) as an indication that identifies a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin<sup>14</sup>. And the Wikipedia from the website <sup>15</sup>[page modified on 12 July 2013] explain the concept of geographical indication as a name or sign used on certain products which corresponds to specific geographical location or origin (eg. Town, region, or country).

### **I) How Geographical Indications Registered**

In order the geographical indication to be registered and authorized to be used by those residing inside the geographical area the following conditions must be fulfilled:

- i. The geographical indications must relate to a good which want to be attributable to the place of origin.

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<sup>14</sup> Section 2 of the Zanzibar Industrial Property Act of 2008

<sup>15</sup> [http://en.wikipedia.org/wiki/Geographical\\_indication](http://en.wikipedia.org/wiki/Geographical_indication) time 14:13pm on 27 Aug. 2013

- ii. The geographical indications related goods must originate from a defined area;
- iii. The quality, status or other characteristics must be linked with other geographical origin of goods.

#### **ii) Protection of Geographical Indications**

The geographical indications must be protected in order to reduce infringement which can reduce the quality, reputation or characteristics of the goods which are essentially attributable to its geographical origin. Example the best quality of 'karafuu' is coming from Zanzibar although the country like Kenya they produce the goods of 'karafuu' but its quality is different from Zanzibar.

#### **iv) The Geographical Indications which cannot be Protected**

There are some circumstances which can cause the geographical indications not to be protected and the responsible organ or person can reject the application of registration of such geographical indications like the following:

- iv. Geographical indications which are contrary to public order or morality;
- v. Geographical indications which are not or cease to be protected in its originality or fails to be used in that country;
- vi. Geographical indications which respect to goods that are identical with the term customary in common language of the country.

#### **v) Civil Proceedings of Geographical Indications**

The nature of civil proceeding is coming from any interested person and any

interested group of producers or consumers may institute proceedings in the Court to prevent the following:

- i. The use of geographical indications indicates or suggests that the goods in question originate in a geographical area other than the true place of origin in a manner which misleads the public.
- ii. The geographical origin of the goods or the use of a GI identifying any goods not originating in the place indicated by the GI in question or identifying spirits not originating in the place indicated by the GI in question.
- iii. The uses of an act which shows unfair competition within the country.

#### **vi) The Relevance of GI Laws in Different Countries**

Sometimes the law of different countries relate to each depending on the matter which are protected or considered, the GI laws are relevant because of the following:

- i. it originates from a definite geographical territory
- ii. it is used to identify the undeveloped, natural or manufactured goods
- iii. the manufactured goods should be produced or processed or prepared in that territory
- iv. it should have a special quality or reputation or other characteristics.

#### **2.2.8 The Concept of Trade Secrets**

Trade secret is the right of protection which are granted to creators against unfair competition or violation of confidential information and trade secret and unauthorized use of trade information by persons other than the holder. Trade secret includes methods of selling and distribution, consumer profiles, list of suppliers and

clients, advertising strategies and manufacturing process. Example of self-protection commonly used with trade secrets is locking the pertinent information away in a bank vault. The Zanzibar Industrial Property Act of 2008 does not explain the concept of trade secret but it explains the word trade name as the name or designation identifying and distinguishing an enterprise<sup>16</sup>.

## **2.3 Review of Supporting Theories**

### **2.3.1 Why Intellectual Property System**

Intellectual property is not new concept especially in the rapid growth of information era, it is an element which is used in providing a new mode of authorizing the creators and inventors of the work to allow or prohibit other person to use his or her creation or invention. Intellectual property is coming from the output of human intelligence, this need original or be held in the country in which protection is sought but the disclosure of the features of an invention prior to the submission of an application for intellectual property will lead to rejection of the application even if the thought, creation or invention was originated from the inventor or creator.

The prospective of intellectual property has captured the attention of governments, inventors, creators and users. The developments of this area will have a substantial impact on growth and development of all sizes, regardless of industry sector, global experience, or technological knowhow. At the most basic level, intellectual property is the quick and paper exchange of critical economic and other interests of society are best served by conferring some form of exclusive rights upon an author or an

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<sup>16</sup> S.2 of The Zanzibar Industrial Property Act of 2008

inventor.

### **2.3.2 Evolution of Intellectual Property System**

The intellectual properties have emerged as the topic which is known in the world as an important aspect and have a deep discussion throughout the developed and the developing countries. The agreement on Trade-Related Aspects of Intellectual Property rights [TRIPS], which was established and come into force on 1<sup>st</sup> January, 1995 and the World Trade Organization [WTO] are standing as the organs which are used to support trade in goods and trade in service in the global arena.

Developing countries had traditionally benefited from restrictions in the intellectual property regimes and it was observed that the evolution of intellectual property systems historically is most excellent system which is known worldwide as the tool which helps the creators and inventors to have real protection through their invented works.

#### **i) National phase**

The law and regulation of Intellectual property was concerned as a basic protection which protect the rights of domestic authors and inventors within a countries border.

#### **ii) International Phase (Global Phase)**

This based on the bilateral deals for mutual protection of intellectual property and ultimately with the signing of the Bern convention for the protection of literacy and

artistic works in 1886 and the Paris convention for the protection of industrial property in 1883.

These agreements did establish common principles for all parties to observe among them non-discrimination, national treatment, and right of priority which protected rights holders from unauthorized use of the intellectual property. The global development of intellectual property might be hindered by old laws enacted at the time when it was still at best a figment of a few technologists imagination hence require uniformity rules.

#### **2.4 Importance of Intellectual Property Laws**

The law of intellectual property of the Country protects the creations and inventions of the creators or inventors due to the following reasons:

- i. It gives the statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations.
- ii. It promotes the creation, distribution and application of its results and to encourage fair trading which would contribute to economic and social development.
- iii. To safeguard creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made by those productions.
- iv. Intellectual Property gives the protection to the inventors or creators to enjoy the right and to raise the capital for working on their invention on a commercial scale and in case, the inventors or creators are not able to work

the invention commercially, they would be able to make a profitable use of their invention by selling their rights or by granting license to others, permitting the use of their invention.

- v. Intellectual property right is the legally enforceable power to exclude others from using the information created, or to set the terms on which it can be used.

## **2.5 Intellectual Property Problems**

### **2.5.1 Social problems**

#### **i) Infringement of Copyright**

The infringement of copyright constituted if the importer knew or ought reasonably to have known that the making of the article would infringe the right of creators or inventors.

In the society many people especially those who works in library cafe example film and music know that to do reproduction of the work of others is an offence and do infringe the right of the creator and inventor but they avoid the cost when the time of doing registration and using the inventors and creators work.

### **2.5.2 Jurisdiction Problem**

Although there are intellectual property laws known as the Copyright Act of 2003 and the Zanzibar Industrial Property Act of 2008, the determination of the applicable jurisdiction where parties are in dispute can also be a problem to the courts as to which regulation will apply in case of such dispute because up to this moment the

court should follow the regulation which was established during colonialism and currently the intellectual property has developed. How do the court enforce civil and criminal rules or declare judgment under current laws against a party who breach the contract which was he made by other party or uses the rights of the inventor or creators which is not under the contract, if the COSOZA stands on behalf of him or her the question arises who is the owner of the creation or invention?

The creator, inventor or COSOZA sometimes COSOZA loose the case because of the concept that COSOZA is not the owner of the creation so that it cannot stand and claim for infringement of copyright. As well as industrial property cannot claim for geographical indications of 'karafuu' because there is no regulation which explains and protect the goods of 'karafuu' as geographical indications of Zanzibar. This is due to the fact the current municipal laws are hardly applicable and hard to enforce and difficult to apply remedies unless they are amended.

## **2.6 Review of Study Done in Tanzania**

The United Republic of Tanzania is a Union of two countries, Tanganyika and Zanzibar. The Intellectual Property regime in Tanzania is regulated by two separate and independence legal systems because Intellectual Property matters are not union matters and as such for intellectual property protection, Tanzania mainland and Zanzibar are two different jurisdictions. The Intellectual Property in Tanzania mainland is still new to many Tanzanians, although few among of them are aware of the reality of intellectual property think that intellectual property came with the colonial administration, the introduction of Copyright Legislation in 1924 through

chapter 218 and chapter 218 of the Marks in 1922. After independence, Tanganyika copies those aspects of intellectual property which are used during the time colonial administration and because of this reasons the immediate post independent Tanganyika, did not have any important change in the contents of the laws of intellectual property, up to 1966 when Copyright Ordinance Cap 218 was repealed by Act no. 61 of the Copyright Act.

In 1986 the Trade Marks Ordinance of 1922 was repealed by Cap. 394 of 1958 and was also repealed by Act no. 12 of 1986 the notable changes in that the new Act included the introduction of the extension of protection of marks also cover service marks, previously only trademarks for products could be protected. It also removes the requirements that only trademarks which were registered in UK could be registered in Tanzania mainland. So the new Trade and Service Marks Legislation gives the local Industrial Property Authority the mandate to register all trade and service marks which meets the requirements as set out in the provisions of that legislation.

In 1994 the establishment of Chapter 217 of the Patents (Registration) Act was enacted in order to provide for the Patents Registration Act so as to make better provisions for the promotion in invention and innovation for the facilitation of the acquisition of technology on fair terms through the grant and regulations of patents, utility certificates and innovation certificate. In 1999 Tanzania enact the law known as The Copyright and Neighboring Rights Act for the purposes of protecting copyright and related rights in literary, artistic and folklore and forl related matters.

The main objectives of establishing this Act is to promote the creation of literary and artistic works, to safeguard expressions of traditional culture and to further productive activities in the field of communicating to the public author's works, expression of folklore, other cultural productions and events of general interest, protects the moral and economic interests of authors relating to the works, by recognizing exclusive author's rights and providing for just and reasonable conditions of lawful use of authors' work and regulated access to them.

Also the Act provides for the protection of expressions of folklore by rendering certain uses thereof subject to authorization and determining offences against lawful interests relating to their integrity and protects lawful interest of performing artists, producers of phonographs and broadcasting organizations relating to their productions, by granting them relevant rights.

In 2000 Tanzania enact the subsidiary legislation of the Trade and Service Marks Registration for the aim of protecting marks of trade and service against violation. Internationally, Tanzania is a member of the Paris and Berne Convention from 1963 and officially joined the World Intellectual Property Organization (WIPO) in 1963. Tanzania joined the Patent Corporation Treaty (PCT) in 1999 and also in the same year became a member of the Nice Agreement on the International Classification Marks.

Currently in Tanzania there are many institutions that are responsible for different aspects of intellectual property, BRELA which is an Exclusive Agency with semi

autonomous state, has the authorities on Industrial Property, COSOTA (Copyright Society of Tanzania) is statutory corporation established under the Copyright and Neighboring Rights Acts of Tanzania. So that the current by which Tanzania uses in order to protect the right of the inventors and creators are the Copyright and Neighboring Rights Act of Tanzania of 1999. COSOTA is a Copyright Collective Management Society but at the same time it is responsible for copyright administration. In any case of judicial proceedings COSOTA shall represent all nationals and foreign authors and other rights holders of copyrights and neighboring rights until the proof to the contrary is established.

## **2.7 Review of study Done in Zanzibar Island**

### **2.7.1 Copyright Society of Zanzibar (COSOZA)**

Copyright Society of Zanzibar is established under section 38 of the Act no 14 of 2003, the main functions of Copyright Society of Zanzibar are explained under section 39(a)-(e). The Copyright Society of Zanzibar is obliged to promote and protect the interest of authors, performers and producers of sound recordings, broadcasters and publishers, to maintain registration of works, productions and performance of the authors' creations.

Copyright Society of Zanzibar has standard license and agreement that are used in practice, the society is using reciprocal agreement or bilateral that is the agreement between the organs of two countries example the agreement that are made between Copyright Society of Tanzania (COSOTA) and Copyright Society of Zanzibar (COSOZA). Tanzania mainland made a contract with Zanzibar Island by using this reciprocal agreement to use the work of other country because of having different

legal framework of copyright. Also Copyright Society of Zanzibar is using procedure of authorizing license that is called blanket license to different Medias like radio and television either for six months or a year. Still Copyright Society of Zanzibar using manual contract that is the reason the license that are providing is called blanket license because they do not have detective machine for providing license.

### **2.7.2 Enforcement Organs**

The enforcement organs like Tanzania Revenue Authority [TRA] and Police trying to work together with the office of Copyright Society of Zanzibar in order to enforce present law at market only but there is no online enforcement because there are no laws, regulation or even policy that recognizes online system that is why this enforcement organs fails to encounter the online problems even if the organs want to do the job.

### **2.7.3 Tanzania Revenue Authority [TRA]**

This organ helps Copyright Society of Zanzibar doing its work effectively when goods imported in the country TRA verifies the goods together with COSOZA in order to know which goods are imported illegally example CDs films that are legally registered and protected.

Sometimes there are misunderstanding between TRA and COSOZA because of revenue, TRA says because the COSOZA for somehow increases revenue because of the contract that are made between them and other country, media or any other user, they should pay tax even though a large percent going to the creators and inventors

of the works.

#### **2.7.4 Police**

Police work together with COSOZA for somehow because when COSOZA do investigation in different music or film libraries or other public functions, they are going together with police, or police themselves do investigate to different shops and whenever have doubt with the goods that are in the market they are informing COSOZA to go and do verification together for the purpose of knowing that, the user do not breach the copyright of the creators or inventors.

But, because of corruption, policemen fail to be transparent when there are in the market and notices that, there are breach of the rights of the creators and inventors of the work, sometimes, they are trying to hide the truth and not informing the office of COSOZA or delaying to go to the scene whenever COSOZA needs them to capture the infringed work or be bias because either they have an interest with the goods or because of the blood relations.

### **2.8 Review of Study done Outside Tanzania**

Intellectual Property rights are like any other property right. It allows the creators or owners of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are summarized on Article 27 of the Universal Declaration of Human Rights. In the side of Copyright, Copyright law has a long history going back to Tudor England Law. It was concerned with printed materials such as books and the need for protection from unauthorized copying grew with the invention and development of movable type and printing press.

The first Copyright Act was passed in 1709, the Statute of Anne. Since that time, copyright law has spread throughout the world and has been developed to include many things other than the works of literature within its scope. Following initiatives by WIPO and the Copyright Treaty of 1996, both the United States and European Union introduced measures to bring copyright law into digital age by using The Digital Millennium Copyright Act of 1998. This Act introduces Computer Program and preparatory design material for a program to be protected as a literary work.

Under current law, patents are granted for inventions that are new, inventive and subjected to industrial application. A single international patent application filed under the Patent Corporation Treaty (PCT) does not allow you to obtain an international patent (there is no such thing) but it will allow you to lock in the right to apply for protection for your invention across the world over 140 member countries. Importantly, both a US patent and a European patent can be obtained via an international patent application.

The Patent Corporation Treaty is an international agreement administered by the World Intellectual Property Organization (WIPO) and covers most but not all countries of the earth. It protects the right, in a large amount of the member states, the filing or priority date of the application to convert the application into a national patent application is formed is for thirty months. Anyone who is a national or resident of US, Europe or another member country or region of the PCT may file an international patent application. If the application is a national or resident or optically at the International Bureau of the World Intellectual Property Organization (WIPO) in Geneva it may generally be filed with the receiving office of the country

or region of which the Applicant resides. In US national or residents file international applications via the USPTO. UK nationals or residents file international applications via UKIPO or EPO. The United States entered a new era of international trademark protection on November 2, 2003 by joining the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (“the Protocol”).

Many countries fail to established single trademark registration systems that provide protection in all member states and facing difficulty in obtaining trademark protection across borders by creating multiple-jurisdiction protection treaties, such as the Benelux system, the European Community Trademark and the Organization Africaine de la Propriété Intellectuelle (O.A.P.I.) system. A unified registration created through Madrid Agreement and the Protocol enable trademark owners from member states to pass by filing separate trademark applications in each country in favor of filing a single application that can then be extended to each member state.

In today’s global economy, the protection of trademarks is of utmost importance to any enterprise wishing to gain a market share among consumers worldwide. The opening of foreign markets has produced a far broader range of potential marketplaces than ever previously thought. The Protocol has brought many alteration and challenges to US Trademark inventors.

## **2.8 Problems facing Intellectual Property Worldwide**

The world-wide tug-of-war between intellectual property rights holders and copyright infringers has become increasingly problematic in the digital realm.

Digital technology and its use on the internet have revolutionized the way in which various copyright materials is captured, stored, copied and distributed. Digital technology reduces production and transactions costs and provides creators, inventors and users with a wide range of new means to create, market and share content, means which ‘old’ media (such as books, vinyl records and video tapes) do not offer.

## **2.9 Research Variables**

### **2.9.1 Dependent Variable**

A dependent variable is one which depends upon or is a consequence of the other variable (Kothari, 2000: 42).

### **2.9.2 Independent Variable**

Independent variables are also known as explanatory variables. These are the factors that the researcher thinks explain variation in the dependent variable (Donald and Delno, 2006:21). According to Landman (1988: 98) the independent variable is the circumstance or characteristics which the researcher can manipulate in his effort to determine what their connection with the observed phenomenon is. This means that the researcher has direct control over the variable. The independent variable in this study will be Effectiveness of intellectual property laws in Zanzibar.

### **2.9.3 Variables and Measurement Procedures**

The study was having only one independent variable which was Effectiveness of intellectual property laws in Zanzibar. The factors that were used to measure

independent variables as mentioned in the literature review were Understanding, awareness and legal implementation of intellectual property laws.

**Table 1.1 The Effectiveness of Intellectual Property Laws in Zanzibar, Factors and Measures Used in the Study**

<b>Factors</b>	<b>Measures</b>
Increased understanding and awareness of intellectual property laws	Day to day improvement on the way of conducting seminars and broadcasting on TV and Radio about the intellectual property laws.
Assurance of protection of the rights of creators and inventor of the works in providing services	Increase a compulsory license and contract in the intellectual property activities.
Better implementation of intellectual property laws	Amendment of intellectual property laws.
Existence of Legal implementation of intellectual property	Establishment of competition and accountability of rules, regulation and policies of intellectual property

**Source:** Developed by Researcher, 2013

#### **2.9.4 Research Gap in the Reviewed Literature**

On analyzing the literature review gathered in relation to the research objectives the researcher realized some of the research gaps, among them is that there are few studies that have analyzed the effectiveness of intellectual property laws in Zanzibar

and there is no policy that regulate the intellectual property systems. Many of the studies were done outside Tanzania especially United State, United Kingdom and India have show the effectiveness of the policy, laws and regulations that regulate the whole system of intellectual property and how can be protected from infringement of different infringers.

## **CHAPTER THREE**

### **3.0 RESEARCH METHODOLOGY**

#### **3.1 Introduction**

This chapter discusses the methodology which will be used in the study. It explains the study design, study location, area of the study, sample size, methods of data collection, research variables i.e. independent and dependent variables and data analysis and presentation.

#### **3.2 Research Design**

It involves data collection techniques like the interview, observation, and documentation. The type of case study design is descriptive. The study will be conducted in Zanzibar Island- Tanzania.

#### **3.3 Study Population**

Due to the nature and objectives of the study, the population of the study constituted all public, creators and inventors of works within Zanzibar Government.

#### **3.4 Sample Size**

The appropriate sample size of this study will be the Ministry of Good Governance - Zanzibar. The samples concerned are the office of Copyright Society of Zanzibar (COSOZA), Office of Intellectual Property in Zanzibar.

#### **3.5 Sampling Technique**

These provided a range of methods that enabled the researcher to reduce the amount of data he/she needed to collect by considering only data from sub groups rather than

all possible cases or elements. The researcher will be used the following sampling techniques.

### **3.5.1 Purposive Sampling**

A purposeful sampling method will be applied to selected Ministries and departments or corporations included in the study. The Ministry of Constitution and Good governance together with creators and users of works will be selected by the researcher.

## **3.6 Types of Data**

The types of data which will be collected are primary and secondary data in this study.

### **3.6.1 Primary Data**

Primary data will be gathered from different departments and sections of Ministry of Constitution and Good Governance together with their corporations in Zanzibar-Tanzania from selected groups through observations and interviews. All interviews will be guided by an interview schedule during group meetings.

### **3.6.2 Secondary Data**

These would be those which had already been collected by some one else and which had already passed through statistical process. The researcher collected secondary data from Ministry's files, books, journals and other documents available at the organizations offices.

### **3.7 Data Collection Methods**

The researcher will be used three main types of data collection procedures. These will be interview, observation and documentation method.

#### **3.7.1 Interviews**

The interviewee will be given the opportunity to talk freely about events, behavior and beliefs in relation to the topic area. This involves presentation of oral verbal stimuli and reply in terms of oral verbal responses. Interview is important for collection of primary data.

#### **3.7.2 Observation**

The researcher visited the area of study to cross check some of the information that will be provided in the interview. Observation will be used on the intellectual property participants. The researcher's role will be to observe, listen, and communicate as well as a range of other forms of being, doing and thinking.

#### **3.7.3 Documentation**

The researcher will expect to collect secondary data from Ministries' files, books, journals and other documents available at the Ministries offices. Additionally, analytical techniques by reviewing studies doing by researchers and scholars elsewhere will also be employed to describe the general features related to Intellectual Property.

#### **3.7.4 Questionnaires**

The researcher will use the structured questionnaire during her case study in which

questions will be specified and all respondents will respond the same set of questions. The researcher will use questionnaire because it will be very reliable, simple, needs minimum costs and the required data will be collected with a minimum number of errors.

#### **3.7.4 Data Processing and Analysis**

After collecting data, the researcher will edit for accuracy and completeness both qualitatively and quantitative.

#### **3.8 Reliability of Data**

In ensuring the reliability of the study, the researcher ensured that, timing of the interviews as much as possible will be done at the respondent's convenience, striving to control variability in respondent's reactions to questions by being consistent in offering explanations and finally the opportunity to every respondent to fully answer each question.

#### **3.9 Chapter Summary**

This chapter highlighted the research methodology of the study, giving a picture on how data will be collected in relation to the topic under the study and elaborated the data processing and analysis procedure.

## **CHAPTER FOUR**

### **4.0 RESEARCH FINDINGS, DISCUSSION AND INTERPRETATION**

#### **4.1 Introduction**

This chapter presents the research findings, discussion and analysis of the data collected. The presentation is organized according to the research objectives and research questions. All views identified in the study are expressed by the officers from the office of copyright and the officers from industrial property office, users of the work and some creators of works who are in one way or another uses copyright methods and patent in operating their day to day activities within Zanzibar environment.

Based on that, the below findings, discussion and analysis was made by the researcher to the copyright society indicate clearly the current position of the copyright and industrial property office shows the position of patent and geographical indications in Zanzibar in a day to day activities.

#### **4.2 Evaluation**

The guiding research question is supported by the collected data from the Ministry of Constitution and Good Governance –Zanzibar and other stakeholders of different organizations located in Zanzibar who was considered in the survey. In this report, 80% of the people were male and others 20% were female working at different institutions and private sectors [that is library café] with aged ranging between 25 years and 60 years. The report also considered the people whose experience has

ranges between four to twenty years experience.

### **4.3 The Effectiveness of Intellectual Property Laws in Zanzibar**

The main objective was to assess and evaluate the effectiveness of intellectual property laws in Zanzibar. In fact worldwide the intellectual property is seen to be effective when the rights of the creators and inventors are well considered, protected and respected.

In the side of Zanzibar both The Copyright Act of Zanzibar of 2003 and The Zanzibar Industrial Property Act of 2008 for somehow is effective because they can be enforced and provides mechanism in case of infringement of the rights protected under the law, it gives the owner of the work exclusive rights to use, sell, hire etc as well as it authorize a competent authority like COSOZA to give permission for commercial use to other person other than the owner of the work, to stand on behalf of the owner to produce evidence if there is violation against the rights of the creators and inventors.

### **4.4 The Effectiveness of Copyright Law in Zanzibar**

#### **i. The Enforcement of Copyright Rights.**

The copyright Act of Zanzibar of 2003 explains that there are two rights protected by the Act that are economic rights and moral rights. Economic rights are those rights which are elaborated under section (6). The section says that:

*“Subject to the provision of sections 9 to 17 of this Act, the author or owner of copyright shall have the exclusive right to carry out or authorize the following*

*acts in relation to the work”:*

- i. Reproduction of the work;
- ii. Translation of the work;
- iii. Adaptation, arrangement or other transformation of the work;
- iv. Distribution to the public by sale, rental, public lending or otherwise of the original or a copy of the work that has not already been subject to a distribution authorized by the owner of copyright;
- v. Rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;
- vi. Importation of copies of the work;
- vii. Public display of the original or a copy of the work;
- viii. Public performance of the work;
- ix. Broadcasting of the work;
- x. Other communication to the public of the work.

And the moral rights are those rights which are independently of the creator or authors economic rights and even where the author or creator is no longer the owner of the said rights, the author of a work shall have the rights:

*‘To have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable (section 8(1)(a))’*

## **ii. Permission**

The Copyright Act under section 38 permits COSOZA as a corporate body to do or

perform all such acts or things as bodies corporate may by law do or perform or under his name is capable of suing and being sued. Example the body publicizes the rights of the owners and gives evidence of the ownership of these rights where there is a dispute or an infringement. And section 39 (a) says that the function of COSOZA shall be:

*“to promote and protect the interest of authors, performers, producers of sound recordings, broadcasters, publishers and in particular, to collect and distribute any royalties or other remuneration accorded to them in respect of their rights provided for in this Act”*

The COSOZA did its function of protecting Mr. Iddi Abdalla Farhan when his rights violated by Chama cha Mapinduzi (CCM), whereby Mr. Iddi Abdalla Farhan was the architecture of ‘kanga’ known as Kifimbo, Asumini and Ndege wawili he decided to transfer his rights to ASP (Afro Shirazi Party) that was the Government of Zanzibar organ before independence and after independence AASP decided to convert this right to CCM and CCM that is also a Government organ decided to transfer the right to a business man Mr. Mahmoud [Chavda] without the consent of Mr. Iddi Abdalla Farhan and do reproduction in his business. Mr. Iddi won the case and got damages of 5,000,000/= because of the infringement of his exclusive rights because Mr. Abdalla did not authorize CCM to transfer the right to Mr. Mahmoud [Chavda].

### **iii. Duration**

The Copyright Act verify that the economic rights shall be protected during the life of the author and for the fifty years after the death of the author and if the work is for

joint authorship the economic rights shall be protected for fifty years from the date on which the last surviving author and fifty years after his death.(section 18(1)and (2).

#### **iv. Dispute Settlement**

COSOZA has power to call the disputing parties when there is a misunderstanding between them and do negotiation before going to the Court whenever the creation, or invented work is registered by COSOZA example Mr. Haji Gora authorize Mr. Tom to translate his book which is known as ‘Kimbunga’ into English language but if Mr. Tom translate the book of Mr. Haji Gora into French Language without permission from Mr. Haji Gora, COSOZA will help Mr. Haji Gora to do negotiation between two parties but if COSOZA fails to resolve this dispute it will stand before the court to make evidence of the violation of the rights of Mr. Haji Gora. This is shown under section 39 © which says that:

*“The function of the COSOZA is to publicize the rights of owners and give evidence of the ownership of these rights where there is a dispute or any infringement”*

#### **v. Punishment from Infringement**

The State is doing enough to enforce through criminal law and civil law and assisting rightholders to use the civil law because The Copyright Act of Zanzibar under section 34 and 35 provides for enforcement mechanism in case of infringement of the rights protected under the law. The enforcement is available both in criminal and civil actions and provide remedies in both civil and criminal actions,

section 34(1) explains how the author rewarded civil remedy because of the infringement of his rights. The section says:

*“Any person whose rights under this Act are imminent danger of being infringed or have been infringed, may institute proceeding before the Court for:*

- i. “an injunction to prevent the infringement or to prohibit the continuation of the infringement”;*
- ii. “Payment of any damage suffered in consequences of the infringement, including any profits enjoyed by the infringing .....*”
- iii. Seizure of any object or receipts made in violation of the rights protected.*

In criminal actions the rights protected under the Zanzibar Copyright Act if infringed willfully or by gross negligence and for the profit making purposes, shall be punished by imprisonment for a period of between six months and three years, or by a fine of between three hundred thousand and two million or both (Section 35(1)).

#### **4.5 The Effectiveness of the Zanzibar Industrial Property Act**

##### **i. The Enforcement of Industrial Property Rights**

The Zanzibar Industrial Property Act under section 5(1) to (10) clarifies the rights to patent noming of inventor and the rights of priority. Example section 5(1) explains the rights to patent noming as:

*“Subject to this section, the right to a patent shall belong to the inventor”.*

And section 5(2) explains the rights of inventors who are jointly made an invention as;

*“If two or more persons have jointly made an invention, the right to the*

*patent shall belong to them jointly”*

Also the Zanzibar industrial property act explains the right of priority under section 8(1) to (4) as follows:

*“the application may contain a declaration claiming the priority, as provided for in the Paris Convention, of one or more in earlier national or regional applications filed by the applicant or his predecessor in title in or for any State party said Convention ..... Or any right of personal possession”*

The Industrial Property Act under section 12(1) and (2) confer the owner the right to prevent third parties from exploiting the patented invention in Zanzibar:

1. When the patent has been granted in respect of a product.
2. When the patent has been granted in respect of a process.

## **ii. Institution of the Court Proceedings**

The Zanzibar Industrial Property Act empower the registered owner of an industrial property to institute court proceedings against any person who infringes the rights of the creators or inventors without his agreement of making, selling or importation of articles incorporating the industrial property.

## **iii. Control of Anti-Competitive Practices in Contractual Licenses.**

The Zanzibar Industrial Property Act of 2008 under section (67)(1) protects any act or practice in the course of industrial or commercial activities that is contrary to honest practices such as breach of contract, breach of confidence and inducement to

breach and the acquisition of undisclosed information by third parties, the breach of legal duties for the purposes of obtaining illicit advantages over competitors such as breach of environment or labor law.

In general the specific objectives are to know the position of intellectual property in Zanzibar, to determine the degree of public awareness of protection creators of intellectual property inside and outside of the country and to examine the performance of rules, regulations and policies that protects the inventors and creators of intellectual property in Zanzibar.

On the side the research question of this study, generally the researcher wanted to know the effectiveness of Intellectual Property Laws in Zanzibar and specifically the researcher had an intention to understand if there is any awareness and legal implementation of intellectual property laws in Zanzibar and to what extent public, inventors and creators understand the Intellectual Property laws in Zanzibar

#### **iv. Understanding the Laws of Intellectual Property**

Understanding of copyright and industrial property and how does they apply in public creators and inventors is very important for this global world. The majority of the people who use intellectual property either in the way of copyright or industrial property in their daily activities example people who use film or music of other people in the stages understands well the concept of copyright. Most of 70% of the respondents from film and music library, 65% of the respondents at the local entrepreneurs office and 60% respondents from the people who hire or borrow from

library understand well the concept of copyright but they are deprived in understanding the concept of industrial property and how that industrial property does it apply in their daily activities.

In other country like UK the understanding and awareness of copyright system is very high they are under the stage of protecting copyright from computer programs while that thing is mentioned in our law but it seems it is very difficult to be enforced because the Government fails to protect its 'karafuu' in the side of geographical indications how can have effectively protect computer programs. In general there was no claim which was raised by suppliers during the infringement of data protection because in totality there is no system of data protection in their company, this argument was supported by the 60% of stakeholders.

#### **v. Awareness of Copyright and the Zanzibar Industrial Property Act**

A question concerning this issue was directly asked to the Copyright Society, industrial property office creators and inventors of the work who in one way or another either helps the creator or inventor of copyright, trademark and industrial design or use copyright, trademark or industrial design in their daily activities. On analyzing about the awareness of intellectual property to the users of that intellectual property the respondents varied in their perspectives, majority of respondents that is 50% blamed the government for not emphasizing strategically the industrial property systems and some of them said they do not know that geographical indications, layout-designs and trademark as the thing that is coming from industrial property.

Some of the respondents were blamed the government, they said for somehow they are aware of industrial property systems but the cost of registration of their invented work is very high and if they register their works they think they could not reap the fruits from their inventions. But the respondents from the office of industrial property said that people are aware of the existence of industrial property but they fail to register their work in their office, he continued to say that one of the inventor invent the kind of soap and put its mark in his invention, he went to his office claimed for the infringement of his mark, when the officer advised him to register his invention he claimed the cost of registration and said he will get nothing but he will lose his energy and finally the benefit will go to the Government by providing tax every year even though he has registered his work and using a lot of his money for registration.

Also there is awareness to the public concerning the issue of copyright in Zanzibar but the problem which encounter this system is the negligence of the Copyright law and the user did not want to protect the rights of the owner of copyright, they use the rights of the owner without considering the damage that the owner of the work got. When the researcher asked one of the respondents who is a creator of work known as “Mali ya Baba” remarked that:

*“to some extent the user of our work have awareness of the thing known as copyright because COSOZA itself arrange the program “Amka na ZBC” in the Zanzibar Broadcasting Cooperation and educate people about the right of the creator and inventor of the work and the responsibility of the user of the work and even the director of the work when they help the creator of the*

*film to produce their work not to take the work of the creator as their own but the problem which they have, they do not want to follow the Copyright law.”*

**vi. Legal Implementation of Copyright Act of Zanzibar of 2003 and the Zanzibar Industrial Property Act of 2008.**

The question was well answered by all respondents from different sectors; almost the respondents said the level of performance of implementation of copyright and industrial property in Zanzibar is neither bad nor good.

The majority of the respondents that is 60% especially the creators and inventors of the work commented on the existence of legal implementation of copyright and industrial property in Zanzibar. They said that the implementation of the intellectual property laws are not enough good in practice, it can be good in the documents but not in its implementation and 40% percent of the respondents agreed to have high performance of implementation of copyright in Zanzibar.

The respondents from the Copyright Society commented that, the law is there that is Copyright Act of 2003 but its implementation is very slow due to many reasons like weaknesses of the Copyright law example the Copyright Act does not explain even the meaning of copyright under section 2 of the Act, problem in administration of Copyright this is clearly shown to our Representatives, they do not even know the Copyright Act and the things that contribute the infringement of copyright from that problem which they have how can they help the law to be implemented critically and properly in the Country.

One of the respondents who is among the actor of the film “Husda” marked with anger when the researcher asked about the implementation of the law by saying that:

*“The reality is that we are doing our work, we are using our mind and time, but the problem which we face is that the user of our work especially video café have no soul they want to use our work as their own this is all happens because our law is not directly protect us and I think its implementation is not good”.*

In a view of the analysis of above question, 70% of the respondents showed negative response on understand the legal implementation of copyright especially in Zanzibar. They said that, they did not see any Rules, Regulation or Directives imposed by the Government of Zanzibar or even the Tanzania in general regarding to the copyright systems. 20% of the respondents said, they saw some programs in ZBC –TV (Zanzibar Broadcasting Cooperation –Television) which is directed by COSOZA which educates the users of the work and creator and inventors of the work to know what is Copyright Society, its duties and responsibilities and how this Society protect the users and creators of the created or invented work.

10% of the respondents said nothing and remained silent because they did not know even the meaning of copyright, trademark, patent and even geographical indications. The analysis made by a researcher on a direct observation at a field visit showed that 60% of daily activities people using the work of others in terms of negotiation or uses it without ordering the consent from the copyright owner. Some of the respondents from library cafe sections agreed to have part of copyright and mostly

they use copyright when they do their daily activities because that is their work to hire some film to public for some days. The uses of copyright is about 80%, the problem which they face during the uses of copyright is that the COSOZA going to their offices and take all their property and command them to pay fees when they want to have their property again.

50% of the who in one way or another participate either in creation or invention of the work responded to the researcher when she did a physical conversations advised the Zanzibar government to have better legal implementation and clear plan in order to make specific provisions for protecting the rights of the creators and inventors throughout society and assisting the society to provide better services by improving process, saving time and avoiding unnecessary cost especially when a conflict is before the court.

The researcher in her field recognized that even though there is no Rules and Regulation which are used to protect the uses of copyright in daily activities, the copyright and industrial property offices need effective legal framework in order to avoid misunderstanding or ineffectiveness of the laws which is daily uses in the copyright and industrial property functions. And on the side of the industrial property the researcher do a field visit and asked the responsible officer about the legal implementation of the industrial property, he said that the implementation of the law is very good but the problem which they face is that they fail to protect “Karafuu of Zanzibar” because of difficulties of implementing the presence law with the absence of its regulations.

#### **4.6 Challenges that Enforce the Intellectual Property Laws in Zanzibar**

##### **i. There are no Intellectual Property Policies which Guide the whole System of Intellectual Property**

In order to have effective legal framework for industrial property and copyright the Government must have policy that includes the enforcement and accountability, creators and inventors protection, decision making process, and enforcement powers for the purpose of increasing creators and inventors welfare as well as develop environment. When Zanzibar recognizes the importance of copyright and industrial property laws it fails to establish their policies for the purpose of having effective legal framework. When the researcher asked the copyright society officer about the copyright policy she marked that:

*“up to this moment we do not have the policy of copyright and it is among of the reasons we are failing to work effectively but we have decided to amend our Copyright Act this year and we are doing with the level best to see the establishment of copyright policy is done before the amendment of our Act go to the House of Representatives for discussion”.*

Also the copyright officer continued to say that the big problem which they have in Zanzibar is that up to now there is no policy and regulations of copyright because of this the development of copyright within the community is hampered by a number of legal obstacles to the proper functioning of the copyright user and creator. And the industrial property officer responded that:

*“in fact Zanzibar does not have policies for intellectual property because intellectual property includes copyright and industrial property, both areas*

*seems to be hanged because there are no direction for them to follow it but we are doing our level best to ask the Government of Zanzibar to establish intellectual property policies this year for the purpose of having effecting laws and regulations”*

**ii. The Copyright law of Zanzibar Does not Show the Overview of the International treaty (TRIPS agreement) or Convention**

All forms of intellectual property law are based upon international conventions example Patent is under the Paris Convention and Patent Co-operation Treaty and the European Patent Convention. Trademarks are under the Trademark Directives and Regulation and Copyright is under the Bern Convention. The Copyright Act of Zanzibar does not show that COSOZA is a contracting party of the Bern Convention or WIPO copyright Treaty of 1996 and Zanzibar is not among the countries which are binded under the Article 3 of the Bern Convention. The Article says:

*“Contracting Parties shall apply mutatis mutandis as literary works within the meaning of Article 2 to 6 of the Bern Convention”.*

The Bern Convention requires its signatories to recognize the copyright of works of authors from other signatory countries (known as members of the Bern Union) in the same way as it recognizes the copyright of its own nationals as well as the Bern Convention protects the Convention applies to nationals and residents of signatory countries. That is the reasons authors of literary and artistic works fails to enjoy effectively their exclusive rights of authorizing any communications to the community, by the form of wire and wireless.

The solution of this problem can be occurred when the expected Copyright Act amendment will regard the Bern Convention procedures in order to allow the unhampered development of copyright and to help its legal framework to be clear and simple, predictable and consistent with the rules applicable at international level so that it does not adversely affect the competitiveness or impede innovation in that sector.

### **iii. The Copyright Law does not Explain the Concept of Internet Usage and File Sharing of Music**

#### **1. The Internet Usage**

The present Copyright Act of 2003 is not clearly protect the internet usage that can prevent from hindering of the distribution of sound recordings, the facilitation and commercialization of music transfers, that is the reason the internet usage fails to benefits most of the sectors of the music copyright industries. The illegal downloading of files containing copyright-protected materials via the internet has become a source of vigorous conflict between the interest of copyright owners on the one hand and the developers and users of increasingly sophisticated technologies on the other.

#### **2. The uses of File Sharing**

The Copyright Act of Zanzibar fails to enlighten the concept of filesharing of music in order to enable musicians to distribute music for promotional purposes that show that original musical compositions and sound recording can be exchanged over a network using technology without infringing any rights. Although filesharing is not illegal, it can benefits creators and inventors on meeting the demands of consumers,

because of the absence of the legal resolution in the Copyright Act of Zanzibar of 2003 the COSOZA fails to achieve to resolve the conflict of filesharing, reducing of quality and allows the transfer and downloading to be made in a realistic time.

#### **4.7 Conclusion**

This chapter presented the research findings of the study accompanied by an analysis of the data collected from the field. The discussion of the data presentation was focused on the three research questions and research objectives of the study and analyzed that there are a number of legal obstacles that hampers the proper functioning of the copyright user and creator like lacks of intellectual property laws to cope with international intellectual property development, there are no Policies and Regulations of the intellectual property, understanding and awareness of intellectual property to different people is not sufficient, the assurance of industrial property and copyright protection is very low, the system of International intellectual property Reporting is not in a good conditions, poor system of Information Communication Technology (ICT) and ineffective of the legal implementations of copyright and industrial property.

## **CHAPTER FIVE**

### **5.0 EXECUTIVE SUMMERY OF THE FINDINGS, RECOMMENDATIONS AND CONCLUSIONS**

#### **5.1 Executive Summery of the Findings**

This Chapter summarizes the research findings by reviewing the objectives and methodology, along with conclusions found in the study findings and in the analysis, implementations and limitations drawn from the findings, and providing recommendations for future research. It should be noted that the main objective of this study is to assess and evaluate the effectiveness of intellectual property laws in Zanzibar. In addition, the study analyzes and highlights the achievements made so far on reducing the gap on legal implementations that intellectual property face.

In response, intellectual property has been impressive for its magnitude and the degree of coordination among the creators, inventors at large; these strategies help the users of the invented work to include the major issues in order to shift into short and long term perspective. Inventors and creators of the work insist the government to initiate better and effective policies that will protect the invented and created works at the same time make users to be aware with the procedures of making contract if they want to use the work of other person

#### **5.2 Recommendations**

Intellectual property should be critically supported by the government in order to avoid less attention that could retard development and causes instability in the society.

The government should speed up effort to ensure the difficulty of understanding the field of intellectual property is reduced to zero. So the users of the work should do a research and analyze the importance of following the rules, several policies and strategic reforms that can re-orient the users of the work in reducing the effect of commercial development over the infringement in Zanzibar. In this regard I would like to recommend the following:-

### **5.2.1 Reformation of Intellectual Property Laws to cope with International Intellectual Property Development**

The government should do amendment of copyright law because the existing law is not effective that is the reasons the Advocates, magistrate and even prosecutor contradict themselves when they are doing their duties.

### **5.2.2 Policies of the Intellectual Property**

To realize faster growth of copyright and industrial property without having a misunderstanding, the Government should establish intellectual property policies that can guide the creator, inventors, users, interpreter of the law and even government itself for the purpose of increasing understanding and awareness of intellectual property resulting high profit, assurance copyright and geographical indications protection in providing services, better implementation of copyright and industrial property in the society.

### **5.2.3 Establishment of Intellectual Property Regulations**

The Government is obliged to use the Regulations which were used before the enactment of the Copyright Act of 2003 and the Zanzibar Industrial Property Act of

2008, this situation bestow the difficult time the offices of the Government example the Government fails to protect its Geographical Indication of ‘Zanzibar Karafuu’ because the existing regulations by which the Government using do not consider the protection of Geographical Indications, that meant that the Government continuously missed out billions of shillings worth of business deals in the global market due to inability of current intellectual property regulations. Hence the Government should establish intellectual property regulations in order to be able to do its work properly as well as to guide the offices on the successful adoption of copyright and industrial property.

#### **5.2.4 Increase Understanding and Awareness of Intellectual Property to different People**

Nowadays, copyright and industrial property are seem to be an important for achieving good organization between the owners and users of the work but because of different social problems especially in contract, infringers of the work including the failure to understand the rights of the owners, failure to know the punishment which can get the one who violates the right of the creator and inventor and failure to follow a plan that the government should be committed to the development of copyright and industrial property. The government should also be committed to educate people how to respect the work of others and make its processes more efficient in order to achieve the interest of the owner of the work.

#### **5.2.5 Encouraging the Legal Implementations of Copyright and Industrial Property**

It seems that there are difficulties of enforcing civil and criminal laws against parties

in copyright and industrial property transactions. Therefore the government is obliged to encourage the use of law including the amendments of copyright and industrial property and their regulations, establishment of intellectual property tribunal which includes qualified Judges and Public Prosecutor for the purpose of making clear provisions for the intellectual property.

#### **5.2.6 Assurance of Industrial Property and Copyright Protection**

In all activities of copyright there must be protection of personal creativity and invention. Therefore the government should make rules, procedures and punishment to all people who would try to violate and infringe the right of the creator and inventor in all copyright and industrial property dealings.

#### **5.2.7 Improvement of Information Communication Technology (ICT)**

Poor infrastructures of information communication technology (ICT) in the country are one among the factors that affect the development of the sector of copyright and industrial property in Zanzibar. The Government offices are faced with poor network communication that make them fail to record their works electronically so that the Government needs to improve its ICT system in order to improve the daily work and avoid to contradict the citizens whenever they want to confirm their registration of their work.

#### **5.2.8 Adoption of International Intellectual Property Reporting**

Internationally, it was found that most of intellectual property processes adopt copyright and industrial property Directives. The important role of government in

setting up the conditions within which copyright and industrial property can be developed to enable amendment of necessary legislation and provision a demonstration effect by launching pilot projects, has become the global targets for improving the legal and regulatory environment. Adopting laws and other regulations is a strategic pillar, and will concentrate on the areas including internet domain for facilitating copyright and industrial property systems.

### **5.3 Conclusions**

Many developing countries have one main objective of protecting the wealth, rights and even status of the creators and inventors of the intellectual property like developed countries. The researcher tried to evaluate the fertility and difficulty for which the potential users, creators and inventors get in their work. The major obstacle of intellectual property lack of suitable legal framework and inadequate security instruments, corruption toward enforcement organs, poorly developed telecommunications infrastructure especially in record keeping especially in licensing process, and high rates of illiteracy of intellectual property.

In addition the intellectual property offices have failed to recognize the things that are used to hinder the performance of copyright and industrial property and it is likely the ignorance of using the electronic rules and regulations that leads to bend the rule sufficiently in the whole copyright and industrial property dealings. Despite these problems, Zanzibar's Copyright Society have achieved to educate people in recent years on the uses of the work of others by using the ZBC of Zanzibar and Industrial office for somehow succeeded to license the trademark, geographical

indications and patent toward Zanzibar Island.

On considering the development of the intellectual property in Zanzibar, it should be focused on the followings:

- i. Enforcement decision must be made quickly, decisively, and clearly to reduce uncertainty.
- ii. Penalties must be severely penalized in order to prevent violations.
- iii. The enforcement system is supposed to be fair and transparent, and decision for enforcement action must be based on objective facts and evidence and made publicly available.
- iv. The defective laws should have other means aside formal litigation or regulatory adjudication, such as alternative dispute resolution, to resolve complaints and disputes, as well as a wide variety of enforcement tools to ensure that the severity of the punishment matches the severity of the violation.

**APPENDICES**

**Appendix i: Agreement**

Between the undersigned

**THE COPYRIGHT SOCIETY OF ZANZIBAR** hereinafter designated as (COSOZA) represented by its Chief Executive Officer and Copyright Administrator, whose office is at Vuga, P. O. Box 4085 Zanzibar and email address :cosoza@yahoo.co.uk , Telephone number +255 24 2232058.

on one part and

**THE COPYRIGHT SOCIETY OF.....** hereinafter designated as (.....) represented by its Chief Executive Officer and Copyright Administrator, whose office is at ..... P. O. Box ....., .....and email address :....., Telephone number .....

on the other part

It is agreed as follows:

**Art.1(I)** By virtue of the present contract, COSOZA confers on ..... the exclusive right, in the territories in which this latter society operates (as they are defined and delaminated in Art. 6 hereafter), to grant the necessary authorizations for all public performances (as defined in paragraph III of this Article) of musical works, with or without lyrics, which are protected under the terms of national laws, bilateral treaties and multilateral international conventions relating to the author's

right (copyright, intellectual property, etc) now in existence or which may come into existence and enter into effect while the present contract is in force. The exclusive right referred to in the preceding paragraph is conferred in so far as the public performance right in the works concerned has been, or shall be during the period when the present contract is in force, assigned, transferred or granted by whatever means, for the purpose of its administration, to COSOZA by its members, in accordance with the Copyright Law and Regulations thereof, its Constitution and Register of Members and their works; the said works collectively constituting “the repertoire of COSOZA”

(II) Reciprocally, by virtue of the present contract, COSOZA confers on COSOZA the exclusive right, in the territories in which this latter society operates (as these territories are defined and delimited in Art. 6(I) hereafter) the necessary authorizations for all public performances (as defined in paragraph III of this Article) of musical works, with or without lyrics, which are protected under the terms of national laws bilateral treaties and multilateral international conventions relating to the author’s right (copyright, intellectual property, etc) now in existence while the present contract is in force. The exclusive right referred to in the preceding paragraph is conferred in so far as public performance right in the works concerned has been, or shall be, during the period when the present contract is in force, assigned, transferred or granted by whatever means, for the purpose of its administration, to COSOZA by its members, in accordance with the Copyright Laws and Regulations thereof, the said works collectively constituting “the repertoire of COSOZA.

**(III)** Under the terms of the present contract, the expression “public performance” includes all sound and performance rendered audible to the public in any place whatever within the territories in which each of the contracting Societies operate, by any means and in any way whatever, whether the said means be already known and put to use or whether hereafter discovered and put to use or whether hereafter discovered and put to use during the period when this contract is in force. "public performance includes-"(a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performance the work, or' the expression of folklore, either directly or by means of any device I or process; (b) in the case of an audio-visual work, tile showing of images in sequence and the making of accompanying sound audible; and (c) in the case of a sound recording, making the recording sounds audible, in each case at a place or places where persons outside the normal circles of the family and its closest acquaintances are or can be present, irrespective o f whether they are or can be present at the same place and time, or at different places and times or both, and where the performance can be perceived without the need for communication to the public;

The public audition of public performance by mechanical means such as phonographic records, wires, sound tracks (magnetic and otherwise) etc may only be authorized if the mechanical right owner (or his representative) has prior thereto authorized the mechanical reproduction of the sound carrier in question for the purpose of its public performance.

Authorization for wireless diffusion and transmission is subject to the condition that the broadcasting organization has received the consent of the mechanical right owner

(or his representative, on the one hand for its own recordings and on the other hand for the use of sound carriers made by third parties.

The provision of the two preceding paragraphs are not applicable in countries where law or case law do not grant the author the right to control the use of recordings the making of which he has authorized. Authorization for performance by processes of projection (sound film) is subject to the condition that the synchronization right has been duly granted by the copyright owner (or by his representative).

**Art 2 (I)** The exclusive right to authorize performance, as referred to in Art. I, entitles each of the contracting Societies, within the limits of the powers pertaining to it by virtue of the present contract and of its own constitutions and of the national legislation and Regulations of the country or country or countries in which it operates;

- i. to permit or prohibit, whether in its own name or that of the author concerned, public performances of works in the repertoire of the other society and to grant the necessary authorizations;
- ii. to collect all royalties required in return for the authorization granted by it (as provided in a) above; to receive all sums due as indemnification or damages for unauthorized performance of the works in question;
- iii. to commence and pursue, either in its own name or that of the author concerned, any legal action against any person or corporate body and any administrative or other authority responsible for illegal performances of the works in question, to transact, compromise, submit or arbitrate, refer

to any Court of Law, special or administrative tribunal;

- iv. to take any other action for the purpose of ensuring the protection of the public performance right in the works covered by the present contract.

**(II)** The present contract being personal to the contracting Societies, and concluded on that basis, it is formally agreed that, without the express written authorization of one of the contracting Societies, the other contracting may not in any circumstances assign or transfer to a third party all or part of the exercise of the prerogative, faculties or otherwise to which it is entitled under the said contract and in particular under Article 2. Any transfer effected despite of this clause shall be null and void without the fulfillment of any formality.

**Art.3 (I)** In virtue of the powers conferred by Articles 1 and 2, each of the contracting parties undertakes to enforces within the territory in which it operates the rights of the members of the other party in the same way and to the same extent as it does for its own members, and to do this within the limits of the legal protection afforded to a foreign work in the country where protection is claimed, unless, in virtue of the present contract, such protection not being specifically provided in law, it is possible to ensure an equivalent protection. Moreover, the contracting parties undertake to uphold to the greatest possible extent, by way of the appropriate measures and rules, applied in the field of royalty distribution, the principle of solidarity as between the members of both Societies, even where by the effect of local law foreign works are subject to discrimination.

In particular, each Society shall apply to works in the repertoire of the other Society the same tariffs, methods and means of collection and distribution of royalties (subject to what is agreed hereafter in Art. 7) as those which it applies to works in its own repertoire.

**II.** Each of the contracting Societies undertakes to send to the other Society any information for which it may be asked concerning the tariffs it applies to different kinds of public performance in its own territories.

**III.** For the purpose of co-ordinating their efforts to raise the level of copyright protection in their respective countries and with a view to equating the economic content of the present contract, each Society undertakes, at the request of the other Society, to consent with the other Society in seeking the most effective means to this end.

**Art.4.** Each of the contracting parties shall place at the disposal of the other all documents enabling the latter to justify the royalties it is responsible for collecting under the present contract and to take any legal or other action, as mentioned in **Art.2 (I)** above.

**Art. 5 (1)** Each contracting party shall place at the disposal of the other all documents, records and information enabling it to exercise effective and thorough control over its interests, in particular as regards notification of works, collection and distribution of royalties, and obtaining and checking performance programmes. In

particular, each contracting party shall inform the other of any discrepancy which it notes between the documentation received from the other Society and its own documentation or that furnished by another society.

(II) In addition, each of the Societies shall have the right to consult all the other society's records and to obtain all information from it relating to the collection and distribution of royalties to enable it to check the administration of its repertoire by the other society.

(III) Each contracting society may accredit a representative to the other society to carry out on its behalf the check provided for in paragraph (I) and (II) above. The choice of this representative shall be subject to the approval of the society to which he is to be accredited. Refusal of such approval must be assigned reasons.

**TERRITORY**

**Art. 6 (I)** The territory in which the COSOZA operates is ZANZIBAR.

The territories in which the ..... operates is  
.....

(II) For the duration of the present contract, each of the contracting Societies shall refrain from any intervention within the territory of the other Society in the latter's exercise of the mandate conferred by the present contract.

**DISTRIBUTION OF ROYALTIES**

**Art.7 (I)** Each Society undertakes to do its utmost to obtain programmes of all

public performances which take place in its territories and to use these programmes as the effective basis for the distribution of the total net royalties collected for these performances.

**(II)** The allocation of sums collected in respect of works performed in the territories of each Society shall be made in accordance with Article 3 and the distribution rules of the distributing Society, having regarded, nevertheless, to the following paragraphs:

(a) Where all the parties interested in a work are members of a single Society other than the distributing Society, the 70% of the royalties accruing to that work shall be retained by the Society of which the afore said royalties are collected.

(b) In the case of a work the parties interested in which are not all members of the same Society but of whom none is a member of the distributing Society, the royalties shall be distributed in accordance with the international index cards (that is, the index cards or equivalent notifications sent and accepted by the Societies of which the interested parties are members.

In the case of contradictory index cards or notifications, the distributing Society may distribute the royalties in accordance with its Rules, except where different interested parties claim the same share, when such share may be put into suspense until agreement has been reached between the Societies concerned.

- (c) In the case of a work one at least of whose original creators belongs to the distributing Society, this latter Society may distribute the royalties in accordance with its own Rules.
- (d) The publisher's share of the royalties accruing to a work, or the total share of all the publishers or sub-publishers of a work, no matter how many, shall in no case exceed one half (50%) of the total royalties accruing to the work.
- (e) Where a work, in the absence of an international index card or equivalent documentation, is identified only by the name of the composer, being a member of a Society, the total of the royalties accruing to that work is to be sent to the composer's Society. If the work is an agreement of a non-copyright work, the royalties are to be paid to the arranger's Society insofar as he is known. In the case of lyrics adapted to non-copyright work, the royalties are to be sent to the lyrics writer's Society.

The Society receiving royalties distributed according to the foregoing rules is responsible, in the case of mixed works, for making any necessary transfer to other Societies interested in the work and for informing the distributing Society by means of international index cards or equivalent.

- (f) Where a member of one of the Societies has acquired the rights to adapt, arrange, re-publish or exploit a work in the repertoire of the other Society, the distribution of royalties shall be made with due regard to the provisions of the present Article and of the "Confederal Status of Sub-publication" established by the International Confederation of Societies of Authors and Composers (hereinafter designed "the Confederation").

**Art.8 (I)** Each Society shall be entitled to deduct from the sums it collects on behalf of the other Society the percentage necessary to cover its effective administrative expenses. The necessary percentage shall not exceed that which is deducted for this purpose from sums collected for members of the distributing Society, and the latter Society shall always endeavour in this respect to keep within reasonable limits, having regard to local conditions in the territories in which it operates.

**(II)** When it does not make any supplementary collection for the purpose of supporting its members' pensions, benevolent or provident funds, or for the encouragement or the national arts, or in favour of any funds serving similar purpose, each of the Societies shall be entitled to deduct from the sums collected by it on behalf of the co-contracting Society 10% at the minimum, which shall be allocated to the said purpose.

**(III)** Any other deductions, apart from taxes, that either of the contracting Societies may make or be obliged to make from the net royalties accruing to the other Society would give rise to special arrangements between the contracting parties so as to enable the Society not making such deductions to recoup itself as far as possible from the royalties collected by it for the account of the other.

**(IV)** No part of the royalties collected by either Society for the account of the other in consideration of the authorizations which it grants solely for the copyright works which it is authorized to administer may be regarded as not distributable to the other Society. With the exception, therefore, only of the deduction mentions in paragraph (II) and (III) of this Article, the net total of the royalties collected by one of the

contracting Societies for the account of the other shall be entirely and effectively distributed to the latter.

**Art.9 (I)** Each of the contracting Societies shall remit to the other the sums due under the terms of the present contract as and when distributions are made to its own members, and at least once a year.

**(II)** Each payment shall be accompanied by a distribution statement in such form as to enable the other Society to allocate to each interested party, whatever his membership or category as member, the royalties accruing to him. These statements, in principle, shall be three in numbers:

- one for general royalties
- one for radio-television
- one for sound films.

They shall be in uniform style and material.

The statement of general royalties and radio-television royalties shall be established in six columns, the last of which is left blank at the disposal of the addressee Society (if possible). The other columns shall contain:

- Composers' names (in alphabetical order)
- For each composer, work titles (in alphabetical order)
- Interested parties
- Share accruing to the addressee Society;
- Royalty amounts preferably indicated in currency of the transmitting organization, or in default thereof, in US dollars.

The statement concerning sound films shall also have six columns, like the preceding statements, but the first two columns, instead of indicating, the names of composers and works, shall indicate respectively:

- The film title, in the language of the country of exploitation
- The original title of the said film.

**(III)** Settlement shall be made by each Society in the currency of its country.

**(IV)** Each Society shall remain responsible to the other for any error or omission which it may make in the distribution of the royalties accruing to works in the repertoire of the other Society.

**(V)** So long as legislative or statutory measures impede the free exchange of international payments, or exchange control agreements have been or will be concluded in the future, between the countries of the two contracting Societies, each Societies shall:-

- (a) without delay, immediately after drawing up the distribution accounting for the other Society, take all necessary steps and comply with all formalities as required by its national authorities in order to ensure that the said payment can be effected at the earliest possible moment.
- (b) inform the other Society that the said steps have been taken and formalities complied with when sending to it the statement mentioned in paragraph (II) of the present Article.

**Art.10 (I)** Each Society shall provide to the other with a complete and detailed list of real names and the pseudonyms of the members, including the date of decease of those authors and composer members who are deceased at the time when the present contract is concluded whose rights it continues to represent. It shall from time to time send to the other society, in similar form, supplementary list indicating additions, deletions or alterations to the principal list and, at least once a year, a list of its author and composer members who have died in the course of the year.

**(II)** Each Society shall also provide the other with a copy of its current Distribution Rules and Distribution Plan, and shall inform it of any subsequent modifications made thereto while the present contract is in force.

**Art.11 (I)** The members of each contracting Society shall be protected and represented by the other Society under the present contract without the said members being required by the Society representing them to comply with any formalities and without their being required to join the other Society.

**(II)** While this contract is in force, neither of the contracting Societies may, without the consent of the other, accept as member any member of the other Society or any natural person, firm or company having the nationality of one of the countries in which the other Society operates.

- (III) Nevertheless, the preceding clause shall not be interpreted as prohibiting either of the contracting Societies from representing in its own territories of operation persons who enjoy refugee status in those territories, as well as, in virtue of a unilateral mandate, other performance royalty-collecting bodies existing in the territories of the other Society when collection by a single organization is not practicable in the territories in question.
- (IV) Each contracting Society undertakes not to communicate directly with members of the other Society, but, if occasion arises to communicate with them through the intermediary of the other Society.
- (V) Any disputes or difficulties which may arise between the two contracting Societies relating to the membership of an interested party or assignee shall be settled amicably between them in the widest spirit of conciliation.

### **CONFEDERATION**

**Art. 12** The present contract is subject to the provision of the Statutes and decisions of the International Confederation of Societies of Authors and Composers.

### **DURATION**

**Art. 13** The present contract shall come into force as from ..... and, subject to the terms of Art. 14 shall continue to be in

force from year to year by automatic extension if it has not been determined by registered letter at least six (6) months before the expirations of each period.

**Art. 14** Notwithstanding the terms of Art. 13, the present contract may be terminated immediately by one of the contracting Societies

(a) If an alteration is made in the Articles of Association, Rules or Distribution Plan of the other Society such as may modify in an appreciably unfavorable way the enjoyment or exercise of the patrimonial rights of the present owners of the copyright administered by the Society represented. Any change of this nature shall be verified by the competent body of the International Confederations' Administrative Council may allow the representing Society a period of three months to remedy the situation thus created. When this period has expired without the necessary steps having been taken by the Society in question the present contract may be terminated by the unilaterally expressed with of the Society represented, if it so decides;

(b) If such a legal or factual situation arises in the country of one of the contracting Societies that the members of the other Society are placed in a less favorable position than the members of the Society of the said country, or if one of the contracting Societies puts into practice measures resulting in a boycott of works in the repertoire of the other contracting Society.

**LEGAL DISPUTES – JURISDICTION**

**Art. 15(I)** Each of the contracting Societies may seek the advice of the International Confederation’s Administrative Council about any difficulty which may arise between the two Societies regarding the interpretation or performance of this contract.

**(II)** The two Societies may, if need be, and after attempting conciliation before the body mentioned in Art. 10 (b) 6<sup>th</sup> paragraphs of the Confederation Statutes, agree to resort to arbitration by the Confederation’s appropriate authority in order to settle any dispute that may arise between them with regard to the present contract.

**(III)** If the two contracting Societies do not think it appropriate to resort to arbitration by the Confederation, or to arrange between them for arbitration, even independently of the Confederation, in order to settle their disagreement, the competent court to decide the issue between them shall be that in which the defendant Society is domiciled.

Executed in good faith, in the same number of copies as there are parties to this contract

For **COSOZA**

For .....

Read, approved and signed,

Read, approved and signed,

By power of attorney at Zanzibar,

by power of attorney at .....,

This ..... day of ....., 20.....

This ..... day of ....., 20

\_\_\_\_\_

\_\_\_\_\_

.....

.....

<b>COPYRIGHT ADMINISTRATOR &amp;</b>	<b>COPYRIGHT</b>
<b>ADMINISTRATOR &amp;</b>	<b>CHIEF EXECUTIVE OFFICER</b>
<b>CHIEF EXECUTIVE OFFICER</b>	<b>CHIEF</b>

<b>COPYRIGHT SOCIETY OF ZANZIBAR</b>	<b>COPYRIGHT SOCIETY OF</b>
--------------------------------------	-----------------------------

.....

**(COSOZA)**

**(.....)**

**Appendices ii: Example of COSOZA declaration Form**

**THE OFFICE OF THE COPYRIGHT SOCIETY OF ZANZIBAR**



**DECLARATION**

**THE COPYRIGHT ACT NO. 14, 2003**

THE COPYRIGHT (LICENSING OF PUBLIC PERFORMANCE AND  
BROADCASTING) REGULATIONS, 2009

I / We \_\_\_\_\_ proprietor(s) / Manager(s) of \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

FASCIMILE: \_\_\_\_\_

DECLARE THAT I / WE HAVE BUSINESS ESTABLISHMENT –  
DISCOTHEQUE AND SIMMILAR PREMISES WITH PERFORMANCE OF  
SOUND RECORDING BY MEANS OF RADIO / TELEVISION, RECEIVING

SETS, DISC PLAYER AND TAPE MACHINES.

NO OF DICOTHEQUES      CUSTOMER DANCING/ SEATING CAPACITIES

1.      \_\_\_\_\_

2.      \_\_\_\_\_

3      \_\_\_\_\_

4.      \_\_\_\_\_

5.      \_\_\_\_\_

TOTAL NUMBER OF DSCOTHEQUES E, T.C \_\_\_\_\_

TOTAL DANCING / SEATING CAPACITY \_\_\_\_\_

I / WE \_\_\_\_\_ the manager / Proprietor of the above establishment certify the above information is true to the best of my / our knowledge and belief.

SIGNATURE OF USER \_\_\_\_\_ DATE \_\_\_\_\_

SIGNATURE OF LICENSING OFFICER \_\_\_\_\_ DATE \_\_\_\_\_

**Appendix iii: License Contract**

THE UNDERSIGNED (hereinafter called “the Licensee”) hereby agrees with the OFFICE OF THE COPYRIGHT SOCIETY OF ZANZIBAR (hereinafter called “the Office” which term shall include his Agents as follows:

1. The OFFICE hereby grants to the licensee, licensee’s servants or agents (subject to the provisions hereof and to the conditions endorsed hereon ) a LICENCE to perform / broadcasted any and every musical work / audiovisual and cinematographic works, including any words associated therewith, for the time being in the repertoire of the Society and of the foreign societies for the time being affiliated thereto, at the premises (hereinafter called “the premises hereby licensed” known as .....  
.....  
.....)

And in the following manner

2. The LICENSEE shall furnish the Office / his Agent with such information As the society shall from time to time require to enable the society to Calculate the fees payable in accordance with any revision of tariff.
3. THE LICENSEE shall pay to the Office / his Agent the following fees:-  
T. Shs..... annually in advance within 30 days of The receipt of this letter / and the anniversary month in each succeeding year ( the month of ..... In a year hereinafter referred to as “ the anniversary month” )
4. The fees in Clause 3 above were calculated according to the Office’s

Tariff .....

- 5. Any license fee payable by the licensee in terms of this agreement which remains unpaid for a period in excess of two calendar months from the date of which it became due, shall attract interest at the prevailing legal rate as stipulated in the tariffs. Such interest shall be calculated monthly in advance and shall be payable by licensee to the Office / his Agent on demand.
- 6. Should the Office / his Agent, through failure on the part of the licensee to comply with obligations imposed on the licensee in terms of this agreement, find it necessary to the institution of legal proceedings against the licensee, the licensee shall be liable for all costs arising from such legal proceeding.
- 7. The Office / his Agent shall have the right of free entry in and upon the premises during all times of public performance, for the purpose of checking the particulars on which the fee under this license is assessed as well compliance with the terms and conditions of the license.

**TO BE COMPLETED BY LICENSEE**

For and on behalf of .....

Licensee's full name.....

Address .....

Telephone .....

Fax .....

E-mail .....

Licensee's signature.....

Date .....

**FOR OFFICIAL USE ONLY**

Signature of Licensing Officer ..... Date .....

Return to: The Copyright Administrator, Copyright Society of Zanzibar / Agent

P. O. Box 4580, Zanzibar.

Tell: + 255..... Fax: + 255.....




**Appendix v: FORM NO. CST 9**

**COPYRIGHT SOCIETY OF TANZANIA (COSOTA)**

**THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 1999 (NO. 7 OF 1999)**

**(PART I)**

**APPLICATION FOR CLEARANCE OF IMPORTED SOUND AND VIDEO RECORDINGS FROM THE CUSTOMS AND EXISE DEPARTMENT**

(Made under Regulation 9)

1. Name of Importer/Applicant: .....

2. Address: .....  
.....Tel.....Fax.....

3. (i) Title of Work(s) for which clearance is being sought

(ii) Quantity of Material being imported

4. Name of author(s) of work:.....

5. (i) Name of producers of work:.....

(ii) Address: .....

6. (i) Has the importer obtained the Authorisation of the producer or his Authorised Representative to import the said work(s)? yes/no

(ii) If yes please attach proof of authorization.

7. I/We declare on that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/our application null and void.

Declared at .....of.....200.....

.....

APPLICANT SIGNATURE

NOTE:

<p>Importer should have:(i)</p>	<p>Genuine Stickers of the Country of origin of the imported works affixed on to</p>
<p>the works, or</p>	
<p>(ii)</p>	<p>Authentication from the producer of the work to import.</p>

**Appendix vi: FORM NO. CST 10**

COPYRIGHT SOCIETY OF TANZANIA (COSOTA) (ACT NO 7 OF 1999)

THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 1999

**(PART 2)**

CERTIFICATE OF AUTHENTICATION OF IMPORTED OR LOCALLY  
PRODUCED SOUND OR VIDEO RECORDINGS

(Made under Regulation 10)

Approval is hereby given .....

to..... of  
.....

.....to clear the musical works entitled  
.....

and produced by  
.....

..... of..... from the  
Customs and Excise Department.

.....

COPYRIGHT ADMINISTRATOR

DATE

COPYRIHT SOCIETY OF TANZANIA

**Appendix vii: FORM NO. CST 11**

COPYRIGHT SOCIETY OF TANZANIA(COSOTA)

THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 1999 (ACT NO. 7 OF 1999)

(PART 3)

APPLICATION TO PURCHASE A HAKIGRAM FROM COPYRIGHT SOCIETY OF TANZANIA

( Made under Regulation 11)

1. Name of Producer .....

2. Address:.....Tel:.....Fax.....

3. Title of work for which a Hakigram is being purchased.....

4. Number of HAKIGRAMS required.....

5. Name of author(s) composer of work .....

6. (i) Has the producer obtained consent of the composer to produce the work ?

Yes/No.....

(ii) If yes attach proof of Agreement

**7. DECLARATION**

I/We declare that the information given above is true to the best of my/our knowledge and the belief and that any misinformation provided by me/us renders my/our application null and void.

Declared at .....of.....200.....

.....

**APPLICANT'S SIGNATURE**

**Appendix viii: FORM NO. CST 12**

COPYRIGHT SOCIETY OF TANZANIA (COSOTA)

THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 1999 (Act No. 7 of  
1997)

(PART 3)

APPLICATION TO PURCHASE A HAKIGRAM FROM COPYRIGHT SOCIETY  
OF TANZANIA

(Made under Regulation 11)

- 1. Name of importer/Applicant .....
- 2. Address:.....Tel:.....Fax.....
- 3. Title of the work for which a Hakigram is being purchased.....
- 4. No of HAKIGRAMS required.....
- 5. Name of author(s) composer of work .....
- 6. (i) Has the importer obtained the Authorisation of the producer or his authorized representative to import the said work(s):  
Yes/no.....
- (ii) If Yes please attach evidence.
- 7. DECLARATION I/We declare that the information given above is true to the best of my/our knowledge and the belief and that any misinformation provided by me/us renders my/our application null and void.

Declared at .....of.....20.....

APPLICANT’S SIGNATURE

Note:

Applicant should have:

(1) Genuine Stickers of the Country of Origin of the imported works affixed on to the works or

(2) Authentication from the producer of the work to import the work (S) for which this approval is being sought. .... Form

No. CST 13

COPYRIGHT SOCIETY OF TANZANIA (COSOTA)

THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 1999 Act No. 7 of 1999)

(PART 4)

APPROVAL TO PURCHASE HAKIGRAMS FROM COPYRIGHT SOCIETY OF TANZANIA

( Made under Regulation 12)

Approval is hereby	Title	Composer	Producer	Quantity	For Official
given to					use

.....

.....

...of.....

..... to

purchase

HAKIGRAMS

numbered

.....

to.....

.....

In respect of the  
audio or  
audiovisual  
recordings as  
detailed hereunder:

Serial No.

1. ....
2. ....
3. ....
4. ....
5. ....