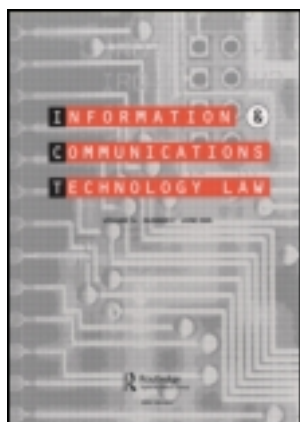


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ICT law book: a source book for information & communication technologies and cyber law

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BOOK REVIEW

ICT law book: a source book for information & communication technologies and cyber law, by Adam J. Mambi, Dar es Salaam, Mkuki na Nyota, 2010, xxiii + 292 pp., US\$34.95 (paperback), ISBN 9789987080748

The rise of computer technologies in the twentieth century and subsequently the Internet in 1990s has made the relationship between technology and law to become an important topic in legal discourse. This relationship has been studied in specific contexts: contractual relationships under e-commerce law, regulation of intellectual property rights under digital rights management systems, software and database protection, etc., criminal activities aided by modern technologies in cybercrimes, protection of personal data, the governance of the internet, forensic investigations, electronic evidence and so forth. *ICT Law Book: A Source Book for Information & Communication Technologies and Cyber Law* is undoubtedly another attempt to underscore this relationship between technology and law with special focus in developing countries: Tanzania and the East African Community (see the inside cover).

Layout and style

The book has a total number of nine chapters. Two-third of the book discusses issues on electronic commerce (Chapters 1–6), the remaining one-third of the book addresses intellectual property law issues (Chapter 7), domain names (Chapter 8) and conclusion (Chapter 9). These chapters are further sub-divided into several subtitles. There is a fair amount of repetition in the book as well as misplacements of materials in these subtitles. For example, all the materials on e-commerce in Chapter 1 (pp. 4–11) are misplaced for not relating to the general theme of this chapter: development of information technology and the law. This equally applies to inclusion of issues of the Tanzanian ICT Policy in p. 2 and p. 12. Another illustration of misplacement and repetition can be demonstrated by the materials covered in pp. 159–160, and those in pp. 160–163. In the former, the author has dealt with ‘e-ADR *vis-a-vis* ADR under the Labour Laws in Tanzania’ while in the latter ‘the impact of technology on dispute resolution at East African Community Regional Level’. Surprisingly, the author discusses various modes of service of complaint forms (CMA F1) in section 86 of the Tanzanian Employment and Labour Relations Act at p. 160 and p. 162 in both Tanzania and the East African Regional Level, respectively. Understandably, this discussion was supposed to be limited in the former part. Also, the author has repeatedly discussed issues of writing, signature, communication, and document in laws whose relevance to ICT is minimal (pp. 14, 17, 20, 27, 55, 81, 82–95, 102–104, 129–131, 152–162, 173). Similarly the discussion in pp. 184–85 on amendment of the Tanzanian Law of Evidence Act 1967 is repeated at p. 193.

Throughout, the author makes substantial reference to and comparison of laws in other jurisdictions, notably the United Kingdom, United States, South Africa, India, Australia, as well as the regional and international legal frameworks in the European Union (EU), Organisation for Economic Co-operation and Development (OECD) and the United Nations (UN) especially the UNICITRAL Model Law on e-commerce. With respect to Tanzania, Mambi refers to the law in an *ad hoc* fashion either by generally listing statutes with or without relevance to ICT law issues (pp. 49, 53–55, 82–91, 179) or contrasting legal position obtainable in those foreign laws to Tanzania (pp. 21, 26, 43, 180–93). Besides its title, the book omits any meaningful reference to the law of other East African Community (EAC) Member states namely, Kenya, Uganda, Rwanda and Burundi. Instead it makes general reference to ‘East African Community’ purporting to cover the national laws and practices of each individual member of EAC (pp. 11, 13, 15, 21, 27, 69, 97, 104–105, 135, 154, 214, 223, 269, 272–273). However, in some places the author refers to the law and practices of the regional court for East African Community (pp. 69, 154, 160–162) which has limited jurisdiction to community issues. It is hard to see why the author limited the scope of his book to ‘Tanzania and East African Community’ while the former is a member state in the latter. Also, difficulty to understand is why the author does not discuss the law and practices in other member states of EAC. It is submitted that Mambi fails to maintain a good balance of ICT law issues in his book for addressing largely e-commerce law in a book whose title promises more than just e-commerce law. Moreover, the book’s coverage is limited to Tanzania leaving unexamined the laws and practices in other members of EAC. Also the book lacks balance between descriptive explanation and critical commentary. In quite many places there are noticeable repetition of sub-themes and at times their misplacements (e.g. Chapter 7).

Content

Chapter 1 (pp. 1–12) is titled, the Development of Information and Communication Technologies and The Law. This chapter opens by a definition of what is cyber law, computer law or information and communication technology law (p. 1). The author proceeds to describe generally some challenges brought about by ICT. In the rest of chapter one (pp. 4–11), Mambi deals with e-commerce issues starting with legal implications at the global level (pp. 4–7), concepts of e-commerce at the global level (pp. 7–9) and benefits of e-commerce (pp. 9–11). He closes this chapter by restatement of the Tanzanian ICT Policy statements (p. 12). In Chapter 2 (pp. 13–95), the Impact of E-Commerce and The Law in Tanzania in a Comparative Perspectives, the author deals with e-commerce law issues in Tanzania. However the discussion turns to be based on foreign jurisdictions’ law with the exception of p. 13 which generally introduces the legal implications of e-commerce in Tanzania. Chapter three (pp. 96–119), Identification under Cyberspace, discusses identification issues in connection with identifying parties to e-commerce transaction, accordingly, Chapter 3 is highly linked to the previous chapters and the rest of the chapters in the book. Mambi opens this chapter by quoting the well-known remarks by Christopher Reed: ‘on the Internet nobody knows you are a dog’ (p. 96). He proceeds to discuss about the legal regime of electronic signatures and notes that in Tanzania and other East African Community Member States the requirement of signature is only met if a physical signature is affixed to a paper document (p. 97). Mambi observes further

that the laws in Tanzania neither cover online transactions nor recognise cyberspace or digital signatures (p. 101). In Chapter 4 (pp. 120–150), Electronic Banking and Other Cyber Payments, Mambi links e-banking issues to various modes of payments in e-commerce transactions. He notes that most banks in Tanzania use ATMs and other forms of electronic payments and transfer (pp. 120–124). The author highlights security issues in the context of electronic payments. As to the legal regime regulating electronic payments in Tanzania, the author says, ‘the current legal framework on financial and other related transactions do not suit e-transactions hence it is a barrier to e-commerce development. The laws which regulate negotiable instruments, banking, etc in Tanzania do not accommodate online transactions or payment in cyberspace rather than off-line transactions’ (p. 128). Chapter 5 (pp. 151–175), the Impact of Digital Technology and E-Commerce on Other Areas of the Law, discusses the impact of digital technology and e-commerce on other branches of law, notably tort law, company law, law of agency and competition, civil procedure, e-governance and alternative dispute resolution(ADR). At p. 151, the author makes the following observations with regard to the law of tort, ‘under Tort Law the breach of duty by a person, giving rise to tort liability can happen in both the physical world, by words, or under cyberspace such as defamation by a website, email or negligent advice communicated electronically. Furthermore, a breach of duty of care under cyberspace especially e-commerce that is likely to give action in negligence would definitely be action by subject against a data controller or user of data storage.’ He is of the opinion that it might be difficult to lodge claims on tort in Tanzania. Also, the author says that consumers and businesses will be at risk when engaging in e-commerce as a result of the competition and anti-trust law being affected (p. 151). With regard to company law, the author reveals that the same is affected to the extent that electronic registration of companies has been in place elsewhere but not in Tanzania (p. 152). The author discusses similar effects regarding documents, signature and modes of communication in preparing and filing pleadings in court as well as in alternative disputes resolution as well as e-governance issues (pp. 152–175). Chapter 6 (pp. 176–96), Cyber Crimes under E-Commerce examines criminal activities that are associated with e-commerce. The author lists offences that can be committed electronically in the course of e-commerce transactions to include computer fraud, deception, identity theft, hacking, falsifying documents, piracy, and cyber money laundering (p. 178). Apart from these offences, the author deals generally with other types of cybercrimes namely, child pornography (p. 176) and violence against women, bullying, grooming, etc. (p. 176).The author argues that most penal laws in Tanzania have not been updated in line with these technological developments (p. 179), hence there is a great likelihood for culprits to evade their criminal responsibility under the current criminal provision (p. 181). Yet he cites the case of *Trust Bank Ltd v. Le-Marsh Enterprises Ltd, Joseph Mbui Magari and Lawrence Macharia*, Commercial Case No.4 of 2000, High Court of Tanzania (Commercial Division), (Unreported) to indicate that though the Tanzania Evidence Act, 1967 did not recognise electronic evidence by then, the Court still accepted such evidence which was in dispute between the parties (p. 179). The author then extends discussion of electronic evidence to the Written Laws (Miscellaneous Amendments) Act, 2007 which introduced some provisions on electronic evidence in the Tanzanian Evidence Act, 1967. According to the author, this amending law has not cured the problem of legal certainty and admissibility of electronic evidence (p. 186). He contends that the amendments introduced are only applicable to the banking

transactions and criminal proceedings leaving out civil cases and other types of proceedings as well as issues of integrity of electronic records (p. 186). The author calls for further amendments to include such issues as standard of proof, presumption of computer or information system integrity, proof by affidavit, burden of proof and discretion of the court to consider common law or statutory rule on admissibility of records in other circumstances (p. 186). Chapter 7 (pp. 197–257), Technology and Intellectual Property Rights extends partly discussion in Chapter 5 by examining the impact of digital technology and e-commerce on intellectual property rights (pp. 197–199). It also examines briefly digital infringement on copyrighted works (pp. 199–203). Chapter 7 also discusses liability of intermediaries in the infringement of intellectual property rights (pp. 203–215), software and copyright licensing (pp. 215–218), intellectual property rights and electronic publishing (pp. 218–222), role of internet service providers on e-publishing (pp. 222–223), commercial exploitation of intellectual property works published electronically (pp. 223–225), relevance of intellectual property law under the information society era (pp. 225–240), law of confidence and its relevance to intellectual property rights (pp. 241–249), database protection (pp. 249–255), and protection of designs and semiconductor products (pp. 255–257). The whole of the discussion in Chapter 7 is based upon foreign law with exception of few mentions of the Tanzanian Copyright and Neighbouring Rights Act (pp. 200, 217, 220, 224–225). Chapter 8 (pp. 258–271), Internet Domain Names discusses domain names-their rise, naming system, rights of owners, dispute resolution policies, problems of cyber-squatting, dispute resolution in courts and outside court system. At p. 268 the author observes that while trademarks are governed by the Trade and Service Marks Act, 1987, there is no law that governs domain names in Tanzania hence there is great likelihood of pirates cyber-squatting domain names. Chapter 9 (pp. 272–274) concludes the book.

Comments

Mambi's book is not clear on a number of issues. The book does not delimit its scope properly by referring in its title to Tanzania and East African Community. Yet at p. 232 it lists Tanzania, Kenya and Uganda as EAC while no discussion is thoroughly made to such countries. It is also unclear why the author lists only three countries leaving out the other EAC members: Rwanda and Burundi. Prospective readers should also be aware that specific discussion on privacy and data protection, electronic communications and internet governance, forensic investigations, cloudy computing are well beyond the scope of this book. Accordingly the title of the book might have captured well the issues addressed if it were changed to 'E-Commerce Law Book: A Source Book in Tanzania' as opposed to its current title. Moreover, most of the author's discussions assume that technology impacts law and not the vice versa. In this way the author does not seem to appreciate the role of law in shaping technology. Also, the discussions in most chapters provide an account of the law *as it is* in foreign jurisdictions. There is little discussion of the law in East Africa and sometimes with omissions to mention it. For example, though Chapter 7 is central to intellectual property rights, the author omits to mention how trademarks and patents are regulated. He simply confines himself to the law on copyright. In Chapter 6, p. 184, the author says, 'the topic on cyber crimes will be discussed in detail in the next part of this textbook which will mainly dwell on new types of e-crimes and

e-offences.’ Yet the meaning of the so called ‘new types of e-crimes and e-offences’ is not given anywhere and more so there is no part which advances any detailed discussion about such crimes/offences. After all one would have expected them to be dealt under chapter six as this is devoted on issues of cybercrimes than elsewhere. Despite its shortcomings, ICT Law Book is a good reference for the law in UK, USA, EU, OECD and the international frameworks under UN.

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