

Legal Notice No.....

**THE COPYRIGHT ACT
(No. 12 of 2001)**

IN EXERCISE of the powers conferred by section 49 of the Copyright Act, 2001, the Cabinet Secretary for the time being responsible for matters relating to copyright and related rights, makes the following Rules–

THE COMPETENT AUTHORITY RULES, 2019

Part I- Preliminary

Citation	1. These rules may be cited as the Competent Authority rules, 2018.
Interpretation	2. In these Rules unless the context otherwise requires– "Act" means the Copyright Act, No. 12 of 2001; "Authority" means the Competent Authority established under section 48; "Board" means the Kenya Copyright Board established under section 3 of the Act; "Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to copyright and related rights; "Parties" includes the appellant, interested party or respondent.

Part II- Administration of the Authority

Secretary to the Authority.	3. (1) There shall be a Secretary to the Authority appointed by Cabinet Secretary on such terms as the Cabinet Secretary may determine. (2) The Secretary appointed under sub rule (1), shall be a person with knowledge and expertise on matters relating to copyright and related rights.
Functions of the Secretary.	4. The Secretary shall be responsible for the– (a) day to day administration of the Authority; (b) receipt of applications or appeals on behalf of the Authority; and (c) orderly and prompt conduct of business of the Authority.
Staff of the Authority.	5. The Cabinet Secretary may second such number of staff to the Authority to enable it effectively discharge its functions under the Act.

Constitution of the Authority.	<p>6. (1) The Authority, shall pursuant to Section 48(4) of the Act, be properly constituted for purposes of any proceedings before it, if it comprise of three members, one of whom shall be an advocate of the High Court.</p> <p>(2) A sitting of the Authority shall be presided over by the Chairperson or, in the absence of the Chairperson, such other member being an advocate designated in writing by the Chairperson.</p>
Remuneration.	<p>7. The chairperson, member, Secretary and staff of the Authority may be paid such allowances as the Cabinet Secretary in consultation with the Salaries and Remuneration Commission, determine.</p>
<p>Part III- Appeal Proceedings</p>	
Filing of Appeal.	<p>8. (1) An appeal against the Board shall be commenced within sixty days of the date of the decision, by filing a notice in the prescribed Form CA1 in the Schedule.</p> <p>(2) The notice under sub rule (1), shall be signed by the appellant or a person duly authorised by the appellant and accompanied by–</p> <ul style="list-style-type: none"> (a) an affidavit setting out the grounds on which relief is sought and the facts relied on by the Appellant; (b) a copy of the ruling by the Board; and (c) copies of any supporting documents to be relied on at the hearing. <p>(3) There shall be as many copies of the appeal filed as there are persons to be served, and a copy for the Authority.</p>
Service of the Appeal Notice.	<p>9. (1) The appellant shall upon filing the appeal, serve the Board and all the affected parties with the notice of appeal within a day, accompanied by the documents referred to under sub rule 7(2) of these Rules.</p> <p>(2) The appeal shall be served both electronically and physically.</p> <p>(3) Service may also be done through a registered post or an advertisement in a newspaper of national circulation.</p> <p>(3) The appellant shall upon effecting the service under sub rule (1), swear an affidavit of service stating the time and manner in which the document was served and the name and address of the person, if any, witnessing the delivery.</p>
Response to the Appeal.	<p>10. (1) Upon being served with the appeal, the Board shall, within fourteen days from the date of the service, file and serve a response in the prescribed</p>

	<p>Form CA2 in the Schedule and supported by an affidavit and supporting documents.</p> <p>(2) There shall be as many copies to the response filed as there are persons to be served, and a copy to the Authority.</p> <p>(3) A respondent who fails to file a response as provided for under this rule, shall not be allowed to take part in the proceedings.</p>
Submission by the parties.	<p>11. At the close of the pleadings the parties, may file and serve submissions with the Secretary within five days.</p>
Scheduling conference.	<p>12. (1) After the close of the pleadings, the Authority may hold a conference involving the parties to the Appeal or application to–</p> <ul style="list-style-type: none"> (a) determine the possibility of alternative dispute resolution; (b) determine whether there is any document that the Authority may order to be produced before or during the hearing; (c) consider compliance with these Rules; (d) identify contested and uncontested issues; (e) create a timetable for the proceedings; (f) consider consolidation of complaints or appeals; or (g) consider any other form of settlement. <p>(2) A scheduling conference shall be presided over by a member of the Authority, who shall be an advocate of the High Court designated by the Chairperson for that purpose.</p> <p>(3) Where the parties reach a settlement on the matter in issue, the Authority shall record that settlement and deliver it as its own decision.</p> <p>(4) The settlement under sub rule (3) shall be final and non-appealable.</p> <p>(5) Where the parties fail to reach a settlement after the scheduling conference and alternative dispute resolution is not an option, the Authority shall within seven days from the end of the conference, issue a hearing notice and set down the appeal for hearing.</p>
Procedure of hearing.	<p>13. (1) On setting the matter for hearing, the appellant shall have the right to adduce his or her evidence first, followed by that of his or her witnesses, if any, unless the Authority orders otherwise.</p> <p>(2) At the close of the evidence of the appellant and each of the witnesses, the respondent shall have an opportunity to examine each of them.</p>

	<p>(3) At the close of the evidence of the appellant and the witnesses, the evidence of the respondent shall be heard and the appellant shall have an opportunity to examine the respondent and each of the respondent's witnesses.</p> <p>(4) The Authority may, at any time during the hearing, examine either party or any witness and may, in its discretion, call any additional evidence it considers necessary.</p> <p>(5) The Authority may at its discretion require parties to file written submissions either in addition to or in lieu of taking oral evidence.</p>
Decision of the Authority.	<p>14. (1) The decision of the Authority shall be in writing, determined by the majority and read out in open, within thirty days from the date of the close of the pleadings.</p> <p>(2) The decision shall contain—</p> <ul style="list-style-type: none"> (a) the nature of the complaint; (b) the number of the complaint; (c) the names of the parties; (d) a summary of all the relevant evidence produced before the Authority and the reasons for accepting or rejecting the evidence; (e) the order or decision and the reasons thereof; (f) the relief or remedy to which the parties are entitled; and (g) an order as to costs, if any. <p>(3) The members of the panel, with the exception of any dissenting member, shall sign the decision.</p> <p>(4) The Chairperson, the member presiding over any proceedings or the Secretary may certify orders, directions or decisions of the Authority.</p>
Part IV: Proceedings Relating to Compensation	
Application for compensation.	<p>15. (1) Where a broadcasting authority broadcasts audio-visual works in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, in the absence of any express agreement, be entitled to make an application to the Authority for the determination of the amount of compensation due.</p> <p>(2) The application referred to in sub rule (1), shall be made within seven days of the breach of that right, in the prescribed Form CA3 in the Schedule to these Rules and served upon the respondent within seven days of filing the application with the Authority.</p>

	<p>(3). Upon making the application, the applicant, shall file and serve the application on the respondent within seven days from the date of filing of the application.</p> <p>(4) The respondent shall within fourteen days of being served with the application, respond to the application accompanied by such statement of facts and evidence he or she intends to rely on.</p> <p>(5) The respondent shall on filing the response, serve the applicant with the response within fourteen days and the applicant shall make a response to the reply in the prescribed Form CA5 in the Schedule to these Rules within fourteen days of the service.</p>
Hearing of the application.	16. Where the parties to the application are unable to have a settlement, the Authority shall set down the application for hearing within thirty days from the date of the close of the pleadings as provided for in rule 12 of these rules and deliver a decision in writing within thirty days.
Part V: Anton Piller Orders	
Cases in which temporary orders may be granted.	<p>17. (1) The Authority may subject to section 37 of the Act, issue a temporary order for the preservation of property where a party to the appeal proves by way of an affidavit or otherwise, that the property is in question is in danger of being wasted or damaged or alienated by any party to the appeal.</p> <p>(2) The Order referred to in sub rule (1) may be made <i>ex parte</i> and shall be for purposes of staying, preventing the wasting, damaging, alienating, sale, removal, or disposition of the property as the Authority thinks fit until the disposal of the Appeal or until further orders.</p>
Part VI: Grant of a license	
Grant of a license.	<p>18. (1) The Authority may subject to section 33A of the Act and upon application by any person, grant a licence for works not made available in the Kenyan market during the term of copyright.</p> <p>(2) The application referred to in sub rule (1), shall be in the prescribed Form CA4 in the Schedule accompanied by a statement of fact and any other supporting document.</p>
Service.	19. (1) The applicant shall serve the respondent within seven days of filing the application.

	<p>(2) On receipt of the application, the respondent shall respond to the application within fourteen days of the service, accompanied by a statement of facts and any other supporting document.</p> <p>(3) The respondent shall serve the applicant with the response and such supporting documents, within seven days of filing the response whereupon the applicant may file a response within fourteen days of receipt of the response.</p>
Conference, hearing and decision of the Authority.	20. The conference, hearing and decision of the Authority shall be as set out in rule 11, 12 and 13 of these Rules.
Part VII: Miscellaneous Provisions	
Royalties payable.	21. The royalties payable to a copyright owner, whose rights have been infringed, shall be as prescribed in Form CA3 in the schedule to these Rules.
Summon of witnesses.	<p>22. (1) The Authority may, at any time, either on its own initiative or at the request of any party, issue summons in the prescribed form CA8 in the First Schedule to these Rules, requiring any person to appear before the Authority, to do any of the following:-</p> <p>(a) attend as a witness before the Authority, at the time and place set out in the summons; and</p> <p>(b) answer any questions or produce any documents or other material in his or her possession or under his or her control which relate to any matter in question in the proceedings.</p> <p>(2) A request by a party for the issuance of summons under sub rule (1) shall state with reasons; -</p> <p>(a) upon which facts the witness is to be questioned and the reasons for the examination; or</p> <p>(b) the document or documents the witness is required to produce.</p>
Interested Party.	23. Any person who wishes to participate in any matter before the authority as an interested party make a request in writing to the authority stating the reasons of the interest.
Representative	24. A party to the appeal may either appear in person or through his or her appointed agent.
Disclosure of interest.	25. Where a member of the Authority has an interest in any matter before the Authority, that member shall declare the interest in the matter which shall be recorded and the member shall not participate in the hearing or decision making process of the Appeal in relation to that matter.

Notice Appear.	to	26. The Authority may, at any time, either on its own initiative or at the request of any party, issue a notice to appear in the prescribed form CA9 in the First Schedule to these Rules, requiring any person to appear before the Authority
Extention Time.	of	27(1) A party to the appeal may apply for extension of time to the Authority in the manner prescribed in the first schedule in Form CA6 and shall be accompanied by a supporting affidavit. (2) A party making the application under sub- rule (1)shall, within seven days, serve the other party. (3) The other party may oppose the application for extension of time under sub-rule (1) by filing a reply, within seven days, in the manner prescribed under Form CA7 supported by an affidavit.
Directions Procedure.	on	28. Subject to this rules,the Authority may direct its own procedure.
Fees.		29. Fees payable to the Authority shall be as prescribed in the second schedule to these Rules.

SCHEDULE

Forms

Form CA1

In the matter of the Competent Authority held at.....

Appeal No.....

Between

.....Appellant

And

.....Respondent

Notice of Appeal

TAKE NOTICE that the Appellant being dissatisfied with the Assessment/Decision/Action/Demand Notice of the Kenya Copyright Board.....dated..... 20..... do hereby appeal to the Competent Authority upon the grounds set out in paragraph 2 and will at the hearing of the appeal seek the relief (s) set out in paragraph 3.

1. The Appellant further states that the particulars of the Assessment/Decision action/demand notice appealed against are set out in paragraph 4. The names and addresses of persons directly affected by appeal are set out in paragraph 5.

2. Grounds of Appeal:
(Attach a copy of the grounds if necessary)

3. Relief (s) Sought from the Appeals Authority:
(Attach a copy if necessary)

4. Particulars of assessment/decision/action/demand notice:

- a) Name of Appellant:.....
- b) Address of Appellant:.....
- c) PIN Identification Number:.....
- d) Relevant section upon which the assessment/ decision/action/demand notice was b.
- e) Date of service of the notice of assessment/decision/action demand notice:.....
- f) Date of service of notice of objection.....
- g) Date of service of refusal to amend.....
- h) Annexure to be filed with Notice of Appeal:
 - (i) List of witnesses
 - (ii) Sworn statements of witnesses
 - (iii) Relevant documentary evidence

5. Persons directly affected by the Appeal:.....Signature.....

6. Appellant or the Legal Representative.....

7. Appellant's Address for Service:

8. Respondent's Address for Service:.....

*Note: Addresses for Service must be stated.

FORM NO. CA2

In the matter of the Competent Authority held at.....

Appeal No.....

Between

.....Appellant

And

.....Respondent

RESPONSE OF APPEAL

TAKE NOTICE that the Respondent having received the notice of appealdated..... 20 do hereby respond as follows;-

- 1.
- 2.
- 3.

Relief (s) Sought from the Authority: *(Attach a copy if necessary)*

- 1.
- 2.
- 3.

4. Particulars of the Respondent.

- i) Name of Respondent:.....
- j) Telephone number.....
- k) E-mail address.....
- l) Address of Respondent:.....

5. To be served upon;

- a) Name.....
- b) Address.....
- c) Mobile phone.....

.....

RESPONDENT

Attach the following:-

1. Affidavit supporting the grounds
- 2.any other supporting document

*Note: Addresses for Service must be stated

FORM NO. CA3

AN APPLICATION FOR COMPENSATION OR FOR PAYMENT OF ROYALTIES

TAKE NOTICE that the I/WE.....on thisday ofin the yearhereby apply for an Order for compensation/relief for the payment of royalties of (enter the details of compensation/relief for the payment of royalties is sought)

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This application is made on the following grounds;

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.....

Particulars of the Applicant seeking Compensation/Relief or for Payment of Royalties.

- I. Name of Applicant:.....
- II. Telephone number.....
- III. E-mail address.....
- IV. Address of Applicant:.....
- V. Mobile phone.....

.....

SIGNATURE OF APPLICANT/AGENT

FORM NO. CA4

AN APPLICATION FOR THE GRANT OF A LICENSE

TAKE NOTICE that the I/WE.....on thisday of
.....in the yearhereby apply for a grant of license for the
following title of work (enter the details of the title of work for which the grant of a licence is
sought)

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.....

This application is made on the following grounds;

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Particulars of the Applicant seeking the grant of licence.

- I. Name of Applicant:.....
- II. Telephone number.....
- III. E-mail address.....
- IV. Address of Applicant:.....
- V. Mobile phone.....

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SIGNATURE OF APPLICANT/AGENT

FORM NO. CA5

REPLY TO APPEAL

In the matter of the Competent Authority held at.....

Appeal No.....

Between

.....Appellant

And

.....Respondent

TAKE NOTICE that the Respondent having received the notice of appealdated..... 20 do hereby respond as follows;-

- 1.
- 2.
- 3.

Relief (s) Sought from the Authority: *(Attach a copy if necessary)*

- 1.
- 2.
- 3.

4. Particulars of the Respondent.

m) Name of Respondent:.....

n) Telephone number.....

o) E-mail address.....

p) Address of Respondent:

5. To be served upon;

d) Name.....

e) Address.....

f) Mobile phone.....

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RESPONDENT

Attach the following:-

1. Affidavit supporting the grounds
- 2.any other supporting document

*Note: Addresses for Service must be stated

FORM NO. CA6
APPOINTMENT OF AN AGENT

TAKE NOTICE that I/WE.....on
thisday ofin the year, do hereby appoint the
following person/firm to act as an agent and to act on my behalf in the matter described below.
I hereby authorise for release all communications relating to my matter thereto to be sent to
the agent at his/their address given below. I revoke all previous authorizations in respect of the
same matter.

NAME AND ADDRESS OF PERSON APPOINTING AGENT	Name	
	Physical address	
	Postal Address	Code: Town:
	Tel.	
	Email	
NAME AND ADDRESS OF AGENT	Name	
	Physical address	
	Postal Address	Code: Town:
	Tel.	
	Email	
MATTER IN RESPECT OF WHICH AGENT IS APPOINTED		

.....
SIGNATURE OF APPLICANT

FORM NO. CA7
APPLICATION FOR EXTENTION OF TIME

In the matter of the Competent Authority held at.....

Appeal No.....

Between

.....Appellant

And

.....Respondent

TAKE NOTICE that this Honourable Authority will be moved on the day of 20..... at the hour of 9 O'clock in the Forenoon, or so soon thereafter as the parties or their representatives may be heard praying this Honourable Authority for an application for extension of time.

Signed.....Party Seeking extension of time.

Dated this day of 20.....

Parties Address for service:

1. Party's Name:.....
.....
.....
Address:.....
Party's Name:.....
Address:.....

FORM NO. CA8
WITNESS' SUMMONS

In the matter of the Competent Authority held at.....

Appeal No.....

Between

.....Appellant

And

.....Respondent

To.....(Witness)

You are hereby summoned to attend before this Authority at..... town at
.....O'clock on..... day of20.....to
testify all that you know in the above-mentioned appeal.

You will also be required to tender the following documents:

- 1).
- 2).
- 3).

You are summoned on behalf of

Issued at town on day of 20.....

Fees paid.....

FORM NO. CA 9

NOTICE TO APPEAR

In the matter of the Competent Authority held at.....

Appeal No.....

Between

.....Appellant

And

.....Respondent

To.....(Person
to appear)

You are hereby summoned to appear before this Authority at..... town at
.....O'clock on..... day of20.....to
testify all that you know in the above-mentioned appeal.

You will also be required to tender the following documents:

- 1).
- 2).
- 3).

You are summoned on behalf of

Issued at town on day of 20.....

Fees paid.....

Further, take Notice that if no appearance is made by yourself, your agent or someone by law authorised to act for you, the same shall proceed and directions shall be taken your absence not withstanding.

Dated at this day of 20

Signature(s)

.....

Applicant(s)

A copy of the Notice and the Appeal/Application may be obtained from the Authority at
(insert postal address of registry).

SECOND SCHEDULE

[Rules 4(2), 20(2), L.N. 103/2011, r. 2, L.N. 20/2012, r. 3.]
FEES

	Description of fee	Amount of fee KShs.	Corresponding CR Form
1.	Fee for application for registration of a copyright work under regulation 8(7)	1,000	1
2.	Fee for change of name or address under regulation 9(1)	100	3
3.	Fee for recordal of a licence in the Copyright Register under regulation 9(2)	5,000	4
4.	Fee for recordal of change of ownership of a work under regulation (3)	5,000	5
5.	Fee for verification of an assignment of a copyright work under section 33(3) of the Act	1,000	6
6.	Fee for authentication of copyright work under section 36 (1) of the Act	500	8
7.	Fee for authentication device for each copyright work	4	8
8.	Fee for an application for registration of a collecting society under section 46 (2) of the Act	10,000	12
9.	Fee for an application for renewal of registration of a collecting society under regulation 15(3)	10,000	14
10.	Fee for filling annual report and audited accounts under regulation 16(2)	500	16
11.	Fee for application for a fair compensation or royalties under section 26(1) (j) 27(2) 28(2) or (4) of the Act	5,000	17
12.	Fee for application or appeal to the Authority under section 48(3) or 21(1) of the Act	10,000	18
13.	Fee for reply under regulation 18(6)	2,000	19
14.	Fee for application to use folklore under regulation 20(2) —	10,000	20
(a)	Films;	10,000	
(b)	Broadcasting;	10,000	
(c)	Theatre	10,000	
(d)	Publishing for educational property;	100	
(e)	Research Per Piece;	1,000	
(f)	Other public Interests per event per piece; and	100	
(g)	Feature film on a cultural event per piece	1,000	
15.	Fee for a certified copy of a document or extract under regulation 21	500	21
16.	Fee for uncertified copy of a document or extract under regulation 21	200	22
17.	Fee for a copy of a lost or destroyed certificate under regulation 22(2)	500	23
18.	Fee for an application for extension of time under regulation 23(2)	500	24

COLLECTING SOCIETY TARIFFS

[L.N. 192/2015.]

Revoked by L.N. 57/2017 .

Zero Draft