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## Copyright Infringement Law: Update

### Angella Katatumba –V- The Anti-Corruption Coalition Of Uganda (ACCU) (H.C.C.S No. 307 Of 2011)

The High Court recently passed a judgment on infringement of copyright, fair use and damages under copyright infringement.

#### Background

The Plaintiff (Katatumba) is an artist, composer singer and performer in Uganda whose song was incorporated into and released as part of an advertisement jingle by the Defendant for an environmental conservation agenda to save a forest reserve. The incorporation of the lyrics and content from Katatumba's song into the advertisement jingle by the Defendant was made knowingly and without her consent. Katatumba sued for a declaration that the Defendant had infringed her copyright, general and aggravated damages for copyright infringement.

The Court stated that in order to decide whether the Defendant had infringed Katatumba's copyright, it needed to consider if the Defendant's use of Katatumba's song in the advertisement jingle was in public interest and amounted to fair use.

#### Judgment

The Court acknowledged that it was not in dispute that the efforts to conserve the forest were in public interest and that the advertisement jingle educated the public about give away of the forest reserve. However, environmental conservation had nothing to do with use of Katatumba's song without her consent.

The Court found that public interest in this case was to be considered in the context of the fair use of Katatumba's song. As the Defendant is not a reporter, for it to successfully plead public interest, what was published should have amounted to a criticism

of Katatumba's song and not the use of it for another collateral interest such as propagating a campaign for conserving forests. The Defendant was neither making a criticism of nor making a reporting of Katatumba's song in any context.

The Court held that the Defendant's use of Katatumba's song in an advertisement jingle in relation to a campaign for forest conservation did not fall within the fair use exception and amounted to infringement.

Since there was infringement, Katatumba was entitled to the reliefs sought. The Court ordered the Defendant to pay general damages of Ug. Shs. 25 million on the basis of how much Katatumba would have charged the Defendant for the use of the song and the fact that the damage that might have been caused by the Defendant's use of the song was mitigated by the fact that Katatumba was generally involved in environmental conservation.

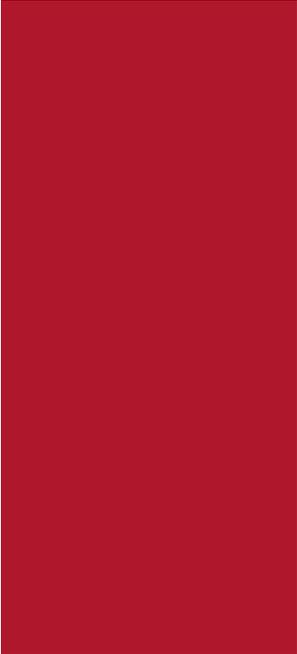
The Defendant was also ordered to pay aggravated damages of Ug. Shs. 30 million for acting in flagrant disregard of Katatumba's rights for its own benefit. The Court noted that the word benefit could not be used to mean only pecuniary benefit. Interest was awarded at 8% on both amounts from the date of judgment plus costs.

### **Conclusion**

Copyright owners have started actively enforcing their rights and there is a growing trend of copyright infringement suits. We saw the cases of Uganda Performing Rights Society vs MTN Uganda Ltd, Al Hajji Nasser Ntege Sebagala vs MTN Uganda Ltd & SMS Media Ltd, and Sylvia Nabiteeko Katende vs Bank of Uganda. Although the Plaintiffs in these cases were unsuccessful, the cases show that copyright owners are now more aware of their rights and the fact that they can be enforced.

Lately, the media has been awash with reports of an impending copyright infringement suit by Edrisa Musuuza aka Eddie Kenzo against The Coca Cola Company for USD 1 million for allegedly using extracts from the video of his BET Award winning song 'Sitya Loss'.

Fortunately for copyright owners and unfortunately for users, this decision will be of great impact to the copyright industry. Author's consent is a statutory requirement under the Copyright and Neighbouring Rights Act and this case will be an indicator of the potential damages awarded in cases of infringement where



consent was not obtained.

One lesson to be learnt is that unless one's use of copyrighted work amounts to fair use under the Copyright and Neighbouring Rights Act, the author's consent must be obtained before the work is used for one's benefit.

**For further information on this and other legal issues, please contact:**

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