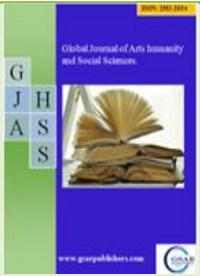
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## THE LEGAL PROTECTION OF INDUSTRIAL DESIGN IN TANZANIA MAINLAND: CHALLENGES AND PROSPECTS

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### Abstract

Industrial design protection plays vital role in safeguarding the aesthetic features of products, thereby encouraging creativity, innovation, and competitiveness in national and markets global This article critically examines the legal and institution framework for governing industrial design in mainland Tanzania. Despite Regional and International instruments ARIPO, TRIPS Agreement and Paris Convention there is no specific national legislation in mainland Tanzania that comprehensively regulates the registration, protection, and enforcement of industrial design rights. This gap raises uncertainty for designers, manufactures, innovators, and foreign investors. It analyses enforcement mechanism challenges and recommendations to ensure designers rights are safeguarded.

**Keywords:** Industrial Design.

## INTRODUCTION

### An overview of Industrial Design

Industrial design is the form of intellectual property law under industrial property that significantly emphasize the growth and competitiveness of manufacturing and creative industries. It protects the aesthetic or ornamental aspects of products including shapes, textures, colors and appearance of the goods or products that appeal to consumer preferences and add commercial value to goods<sup>i</sup>. Under international standards and mechanisms of industrial design rights has contributed product differentiation, increased market access, and stimulated industrial innovation specific in economies seeking to diversify and strengthen their manufacturing sectors<sup>ii</sup>. In any developed state the legal protection of industrial designs has become an integral mechanism and standard for supporting industrial development, entrepreneurship and foreign investment and Protection of industrial design rights is a critical in modern economies it helps distinguish products, contribute to market competitiveness and thus supports industrialization and creative sectors<sup>iii</sup>.

In mainland Tanzania lacks a dedicated Acts or regulation explicitly dealing with legislation, right and enforcement of industrial designs. This leads to legal uncertainty. Designers, manufactures, foreign firms may be unsure whether their design firms are protected, how to register or enforce right, and to what extent international treaties may be relied upon domestically. though industrial design registration can be obtained via regional or external instruments.

### International Instruments Regulating industrial design

#### Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS Agreement)

This is binding international treaty administered by the World Trade Organization (WTO) it sets minimum standards for the protection and enforcement of intellectual property rights including industrial designs for all World Trade Organization members. Tanzania become a WTO member on January 1995 and is therefore legally bound by TRIPS. Its provide that every member must provide protection for independently created industrial designs that are new or original under Article 25<sup>iv</sup>. However, Mainland Tanzania does not have a specific industrial designs law



that provides a clear definition of industrial design, a registration process, exclusive rights for the design owner and legal remedies against infringement and this creates a compliance gap with TRIPS Agreement.

#### **The Paris Convention for the Protection of Industrial Property (1883)**

is one of the oldest and most fundamental international treaties relating to intellectual property adopted in 1883 it established fundamental principles for the protection of industrial property including industrial design and Tanzania is a member since 1999. However, the Paris Convention does not create enforceable rights by itself it sets principles that member countries like Tanzania must incorporate into their domestic laws. Article 5<sup>v</sup> provide obligation to protect industrial design whereby industrial design shall be protected in all countries of the union by provide a legal system for protecting industrial design, allow for registration and enforcement of design rights. This creates an obligation for each member to provide legal protection for industrial design in their national laws.

#### **The Hague Agreement Concerning the International Registration of Industrial Designs (1925)**

An international system, The Hague system allows using a centralized method of registering an industrial design on an international basis. In joining this treaty, the owners of designs are given an allowance to receive protection in various countries based on one application. However, Tanzania is not a contracting party at the moment, and that means the access to the international protection of the works of the Tanzanian designers is considerably restricted. Consequently, local designers are exposed to bureaucratic and financial barriers in their home country when registering their designs overseas on national registration systems that tend to differ in formalities and legal requirements.

Non-membership in The Hague system does not only deprive, the Tanzania in the global market, but it also compromises the competitiveness of the country in exporting such goods that are rich in designs like textiles, crafts, and industrial equipment. It would be tactically wise to join this agreement and open up the avenue of reaching bigger markets with the native innovations in industrial design of Tanzania

### **Regional legal framework**

#### **Harare Protocol on Patents and Industrial Designs (1982)**

Is an important regional treaty that governs intellectual property rights in member states of the African Regional Intellectual Property Organization (ARIPO), provides a regional system for registering industrial designs in its member states Tanzania become a member on February 1983 the Harare Protocol defines industrial design as the outward appearance of a product, including the lines, colors, shape and textures. It emphasizes that the design must be new and original to be eligible for protection. Industrial design to be protected in Tanzania under Harare protocol, an industrial design must be new, meaning it cannot have been publicly disclosed before the filling of the application<sup>vi</sup>.

#### **Rights Granted**

Protection of an industrial design under the Harare protocol grants the creator the exclusive right to use the design and prevent others from using or reproducing it without authorization. The design is protected against copying, imitating or producing similar designs for the duration of the protection period and industrial design is protected for five years from the filling date, and the protection can be renewed for two additional periods of five years<sup>vii</sup>.

#### **Filing Procedure**

The applicant must file the industrial design application with the ARIPO Office while Tanzania is a member, application can be filed directly with ARIPO or through the national intellectual Property office. After filling, ARIPO examines the application to ensure it meets the criteria of novelty and originality. Once accepted, the industrial design is registered, and it is published in ARIPO Bulletin. After the industrial design is granted protection at regional level, it can be nationally enforced in Tanzania.

### **Domestic legal framework**

#### **The Constitution of United Republic of Tanzania of 1977 as amended**

The Constitution of United Republic of Tanzania is the supreme law of the land it enshrines the rights and duties of citizens. Article 24 provide right to own property which state that every person is entitled to own property and has a right to the protection of his property held in accordance with the law. Through this article provides an implicit but robust foundation for the protection of industrial designs by adopting a broad conception of property. The constitution encompasses not only tangible assets but also intangible forms of property including intellectual creations such as industrial design. It ensures that these rights are safeguarded against deprivation and aligning with the general principles of fairness and legality

#### **The Patents (Registration) Act Cap 217 RE:2023**

The Patents (Registration) Act, is the principal statute governing the protection and registration of patents and industrial designs in Tanzania. Although the Act was originally customized to be applied in patents, Part XVII specifically extends the application of the Act to industrial designs where by registration of industrial design extended to United Kingdom under the patents and design Act ,1907 to 1932 it provided under section 76<sup>viii</sup> . It gives the substantive protection in terms of law of the design by setting important conditions that include novelty, originality, and industrial applicability as conditions that have to be met before registration of a design takes place. The duration of protection accorded to industrial designs under the Act is five years starting the date of filing and can be renewed twice to five-year periods respectively providing total of 15year protection.

Although, the Act contains protective measures, it is become increasingly obsolete and inadequate in dealing with modern intellectual property issues, the Act does not significantly reflect the principles international agreements and regional systems to which Tanzania is signatory such as the TRIPS agreement and protocols to the African regional intellectual property organization

(ARIPO) that every member state must provide protection for independently created industrial designs that are new or original. Such discrepancy brings about a conflict between national legislation and international norms that cripples the competitiveness and reliability of local and foreign rights owners of Ips. This Act focuses more on patents than industrial design and Tanzania lack a dedicated and modern law explicitly tailored for design protection

### **The Copyright and Neighboring Rights Act Cap 218 RE:2023**

The Copyright and Neighboring Rights Act is the principal statute governing the protection of original literary, artistic, and scientific works in Tanzania. While its main objective is to safeguard the rights of authors and creators over their expressive creations, the Act sometimes intersects with the protection of industrial designs, particularly where such designs possess aesthetic or artistic value. Under Section 3 of the Act, artistic works including drawings, paintings, engravings, and works of applied art are eligible for copyright protection, provided they are original and fixed in a tangible form.

This overlapping becomes important whereby industrial designs have expressive characteristics rather than functionality. As an example, patterns and figures applied to a textile, ceramics or a furniture can be at the same time subject to copyright protection as well as design protection resulting in competitive rights scenario<sup>ix</sup>. The same situation applies to copyright protection where by default they are automatically granted on creation and the owner does not need to formally declare them. It lasts the lifetime of the author, plus fifty years after his death, and this provides a considerably longer period of time than that provided by the Patents (Registration) Act<sup>x</sup>

However, the scope of the Act in protecting industrial design is quite limited and the conditions under which protection applies are highly restricted. For instance, the law excludes functional elements of a design even when those elements also have aesthetic value. The Act lacks a comprehensive legal framework to regulate the infringement and enforcement of rights concerning industrial designs. The available remedies such as injunctions, damages and the seizure of infringing products have proven ineffective. This suggests a need for more robust administrative or customs enforcement mechanism.

### **Institutional framework**

The Business Registrations and Licensing Agency (BRELA) are the key institution responsible for intellectual property rights including industrial design BRELA is operates under the ministry of industrial and trade The Business Registrations and Licensing Agency. is the national agency in Mainland Tanzania responsible for registering and administering various forms of intellectual property rights such as industrial design major authority involved in the registration of industrial property rights in Tanzania, such as patents and industrial designs, according to the Patents (Registration) Act<sup>xi</sup>. BRELA, it handles national applications for industrial property and engages with regional systems such as ARIPO for those seeking regional protection also does the

procedures involving filling, examination, and issuing of certificates of registration of industrial property. It is also mandated with the responsibilities of maintaining the national register of industrial property and providing advisory services to the inventors and designers.

Currently, Mainland Tanzania lacks a fully operative national law that specifically governs registration and enforcement of industrial designs because of this industrial design owners often use regional or foreign systems to protect their designs for example ARIPO applicant can register designs through ARIPO designating Tanzania or Uk designs law there are extant laws recognizing designs registered under certain older ordinance have rights to Tanzania for the term of their registration because there is no national statutory framework specifically for industrial design registration and framework and enforcement many mechanisms are unclear. Enforcement in Mainland Tanzania is weak no clear law for infringing industrial design rights, very limited precedents and challenges in putting remedies into practice.

In addition, the digital infrastructure of BRELA is obsolete and this makes the online feature of the applications, access to records, and communication with stakeholders inefficient. Even though the process of digitalization is also launched, it is performed on a small scale. The other biggest gap is on public awareness. Most local craftsmen and designers are not aware of design protection devices, which in turn contributes to an ineffective use of legal opportunities in order to protect design

### **Challenges Facing Tanzania Due to the Absence of Comprehensive Domestic Legislation on the protection of industrial design**

Inadequate legal framework Tanzania does not have a stand-alone industrial design Act or a comprehensive section within existing laws that clearly provide definitions, procedures, and enforcement mechanism tailored to designs protection. The Patents Registration Act includes some provision but they are vague insufficient. The absence of a stand-alone industrial design Act creates legal uncertainty and makes it difficult for innovators to navigate the system. Tanzania's outdated framework thus undermines its ability to comply with evolving international standards and to foster design innovation lack of Awareness and Underutilization one of the most pressing challenges is low level of awareness among innovators, entrepreneurs, and the general public regarding industrial design protection<sup>xii</sup>. Many local artisans, small and medium-sized enterprises (SEMS), and manufactures in sectors such as textiles, crafts and furniture remain unaware that they can protect the aesthetic features of their products through registration.

High Costs and Bureaucratic Barriers many Tanzanian innovators particularly SMEs and informal sector entrepreneurs the cost of registering and enforcing design rights is probably high. Application fees, renewal fees and associated legal cost can deter potential applicants especially in a developing economy where financial resources are limited<sup>xiii</sup> However the procedural

complexity exist the lack of a completely digitized system for registration. Registration is still based on manual form submission and support document submission resulting in delays and inconsistencies. Many informative documents of intellectual property law underwrite the opinion that effective procedural rules such as simplified application process and options for speedy registration are the key drivers of promoting innovations in order to acquire IP rights includes industrial design.

Weak enforcement mechanism is the one of the key practical problems facing industrial designers in Tanzania is the lack of effectiveness of enforcement and effective remedies in the case of infringement. While the law does allow remedies as set out in the Patents Registration Act, Cap 217 R.E. 2023 such as injunctions against and damages, the actual enforcing of these rights is fraught with a whole host of challenges<sup>xiv</sup>. the presence of remedies alone does not guarantee effective access to justice without a regulatory enforcement mechanism and mechanisms for resolution of dispute. In Tanzania, disputes in industrial design are referred to regular courts, which have the tendencies to be time-consuming, costly and non-specialized, especially in the area of intellectual property issues.

The absence of specialized tribunals or enforcement agencies for designing industries also adds to the problem. Comparative empirical research has implied that where countries have special IP courts such as the Industrial Property Tribunal of Kenya, there is better protection through faster and predictable outcomes and there are greater incentives to register. Infringement often goes unchallenged weakening the deterrent effect of design protection.

## Recommendations

The Government of the United Republic of Tanzania has a principal role to undertake in creating the legal and institutional for protection of industrial designs, and thus it has a principal role to undertake in addressing challenges that have been witnessed. It is a responsibility of the Government to lead in accomplishing overall legal reforms aimed at making provisions modern. Although basic provisions exist in the Patents Registration Act, Cap 217 R.E. 2023, this act is old and insufficient in addressing vibrant demands posed by development in industry. It is imperative to enact a special act known as a special Industrial Designs Act that clearly state rights in designs, divides them from copyrights, and takes international and East African Community standards such as the TRIPS Agreement and East African Community guidelines. Formalizing such legislative reform will yield legal certainty, investors' confidence, and ensure that Tanzania be competitively positioned regionally and internationally in protection and development of creative industries.

The Government should create institutional capacity by adequately staffing the Business Registrations and Licensing Agency and related institutions with adequate human, financial, and technological infrastructures. This implies recruiting and training qualified examiners in industrial design law, putting in place consistent professional development programs, and ensuring that the agency is accompanied by state-of-the-art technological

infrastructures. Digitization of the process of registration and development of an online portal will facilitate efficiency promotion, transparency, and accessibility especially among small innovators in remote locations. Additionally, the Government should ensure that a special intellectual property tribunal is instituted or special divisions be established within existing courts to handle cases of industrial designs. Such institutional changes would facilitate timeliness in enforcement, reduce costs, and create a more predictable environment for designers.

The United Republic of Tanzania's Parliament should pass, scrutinize, and reform laws that foster national development and safeguard citizens' rights. current law on the protection of industrial designs is Patents Registration Act, Cap 217 R.E. 2023, but it is incomplete, becoming obsolete and nonconforming to international and East African community standards. Therefore, a modernized legislative framework in a stand-alone Industrial Designs Act has to be embraced by Parliament. Such a law should incorporate a functional definition of industrial designs, rigorous novelty and originality requirements, and a distinct difference between industrial designs and copyrights and any other intellectual property regimes to forestall legal confusion. In addition to this, a new law has to clearly incorporate provisions regarding international treaties like the TRIPS Agreement, and harmonize with East African Community Industrial Property Guidelines, thus making Tanzania a competitive force in the innovation economy within East Africa and internationally.

The Parliament must close procedural gaps which hinder actual protection of industrial designs. The legislative process should include clear, predictable, and easy-to-use registration, opposition, and appeal proceedings. This includes statutory examination deadlines, notification of unregistered design right entitlements, and provisions for electronic filing systems. Furthermore, Parliament should establish, through legislative action, a special court for intellectual property or special divisions in courts to preside over disputes in industrial designs. This will reduce use of busy ordinary courts and achieve expeditious and expert

The industrial sector in Tanzania is a principal stakeholder in promoting and reaping benefits from protection of industrial designs. Whilst the Government and Parliament establish and change legal and institutional regulation, reform efficacy largely depends upon active participation and response from the manufacturing community. According to this research's findings, several manufacturing actors, particularly medium and small firms and craftspeople, remain uninformed or unconvinced regarding formal protection's benefits but rather employ informal arrangements like marketplace reputation. To bridge this gap further, the manufacturing community will need to be more active in interacting with intellectual property systems in gaining competitive advantage and sustainable growth.

The industrial sector should place awareness and capacity development in its networks centrally. Chambers of commerce, manufacturing councils, and industry associations need to spearhead education campaigns highlighting the necessity of



registering and enforcing industrial designs and commercializing them. Through workshops, training programs, and mentorship programs, the sector can foster respect for intellectual property among designers, manufacturers, and artisans. By creating spaces for knowledge sharing, the industrial sector can help innovators be aware of their rights, how to conduct registration exercises, and how economically valuable it is to protect their works of creation.

It's imperative that industrial policy include intellectual property management in planning and operational practice. Businesses and business societies should establish special units or appoint intellectual property managers who will be monitoring, registering, and enforcing design rights. Large firms can assist small companies by facilitating technical services, common legal services, or common schemes of registration and hence reducing financial and procedural costs discouraging local innovators. The sector should also institutionalize technology innovations such as electronic filing systems and design tracking software since these bring together effectiveness and safeguarding against infringements both locally and internationally.

Moreover, the industrial sector has to accelerate partnership work with governmental institutions and global institutions. By closely working with institutions such as BRELA, the sector can be part of designing user-friendly registration systems, providing feedback on procedural challenges, and benefiting from policy consultations. Private players in the sector should use partnership work with international institutions such as the World Intellectual Property Organization and regional institutions in the East African Community to be exposed to global excellence in designing. Active participation in these partnership networks will raise Tanzania's profile in global design markets and attract investment into the sector.

The industrial sector can be instrumental in fostering innovation-friendly policies within its own institutions. Its associations can create innovation funds or design awards to spur innovation and reward excellence in industrial design. By connecting design protection to overall industrial strategies such as branding, marketing, and promotion of export trade, the sector will be able to raise the value both locally and internationally of products made in Tanzania. Such efforts will not only spur competitiveness but will further guarantee that industrial designs become a catalyst in this nation's march toward sustainable industrial development.

Communities remain at the core of Tanzania's creative and industrial environment, particularly in locations where artisan production, traditional craftsmanship, and small-scale innovation remain central to livelihood and cultural practice. This study recognizes that a vast number of community people, and in particular artisans and small-scale producers, did not grasp the relevance of industrial design protection and thus utilize informal arrangements such as reputation-based practice, personal arrangements, or customary practice to safeguard their creative work. Though these arrangements ensure some grade of awareness, they put designs at risk of exploitation while limiting possibilities of commercialization. Thus, communities need to take a step

forward in embracing industrial design protection both as a facilitator of economic empowerment and a preserver of cultural heritage.

Sensitization and education regarding industrial design rights must become a community priority. Cooperatives, community-based institutions, and village leaders must roll out sensitization workshops that dispel misunderstandings regarding what an industrial design is and inform people how they relate to daily livelihood. Once people understand that registering a design protects their innovation, artisans and small producers will be in a better position to benefit from legal protection. User-friendly guides and training workshops in vernacular languages can further support ensuring that messages reach even the most marginalized groups. By such efforts, communities can create a community-wide culture that identifies and respects innovation, thereby supporting innovation and protection.

Societies should incorporate community organization and collaboration in dealing with the system of intellectual property. Most individuals evade registration due to expenditure, complexity in procedure, or lack of awareness. Artisans and small innovators can pool their resources, seek information, and utilize community strength to approach design registration through cooperatives or community associations. Cooperative structures not only reduce personal outlays but can further enable communities to negotiate en masse against government agencies, markets, and legal experts. Organized societies can better advocate reforms in policy and act in concert with government institutions such as BRELA in promoting community-friendly and accessible systems of registration.

Societies can explore ways to link industrial design protection to culturally and locally inspired heritage preservation. Most conventional designs, crafts, and artworks both represent an economic opportunity and a cultural heritage. Societies must realize that protection and registration can prevent such designs from being misappropriated or stolen by others while ensuring revenues accrue back to producers and to local economics. One such practice is community-based branding of crafts and handmade products—the likes of Sukuma crafts in Mwanza can facilitate wider market penetration and ensure that cultural produce is branded not only as a commodity but as a heritage product. Such a two-pronged approach empowers societies economically while preserving their heritage for posterity.

Societies should be active partners in collaboration with industry, society, and government to increase innovation and protection. By mutual efforts in training programs, exhibitions, and marketing campaigns, societies can prove their innovativeness while gaining wider market reach. At the same time, such collaboration can provide societies with technical and legal help that is needed to handle advanced intellectual property regimes. Such a model of participation makes societies active partners in deciding Tanzania's future of industrial design protection instead of passive beneficiaries.

## Conclusion

The protection of industrial design in Mainland Tanzania remains underdeveloped posing significant challenges to innovation, creativity and industrial competitiveness. Despite Tanzania's membership in international frameworks such as the African Regional Intellectual Property Organization the absence of a comprehensive dedicated national legal framework for industrial designs has left local creators and businesses exposed to limitation,

infringement and economic loss. This legal vacuum not only undermines the right of designers but also discourages investment in design that are essential for economic diversification and growth. The limited protection available under existing laws such as the outdated Patents Act and residual colonial era statutes is insufficient, poorly enforced and fails to meet the needs of a rapidly evolving global economy.

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