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THE PROTECTION OF PLANT BREEDER RIGHTS IN KENYA

In Kenya, innovation in agriculture is crucial for food security and economic growth. Protecting new plant varieties ensures that breeders are rewarded for their creativity and investment while encouraging the development of high-quality crops. Plant breeder rights in Kenya provide legal protection for breeders, allowing them to control the propagation, sale and distribution of new plant varieties.

This article explores how plant breeder rights are protected in Kenya, the requirements for securing protection and the benefits of safeguarding your plant innovations.

What are plant breeder rights?

Under the [Seeds and Plant Varieties Act, Cap 326](#) (“the Seeds and Plant Varieties Act”), plant breeder rights are exclusive rights granted to the breeder of a new plant variety. These rights allow the breeder to prevent others from reproducing, selling or using the protected variety without authorization.

A plant variety, as defined in Section 2 of the Seeds and Plant Varieties Act, refers to a plant grouping within a single botanical taxon of the lowest known rank, which is defined by the expression of characteristics resulting from a given genotype, distinguished from any other plant grouping by the expression of at least one of those characteristics, and considered as a unit with regard to its suitability for being propagated unchanged.

To qualify for protection under the Seeds and Plant Varieties Act, a new plant variety must meet three key criteria:

- **Distinct:** A new variety must exhibit clear and identifiable differences in one or more key characteristics when compared to existing varieties of the same species.
- **Uniform:** Plants within the variety should exhibit minimal variation in their appearance or performance when grown under the same environmental conditions.
- **Stable:** A new variety must continue to express its key traits in a consistent manner when reproduced by seed or other means of propagation.

Once granted, plant breeder rights are valid for a fixed period of *twenty (20) years* from the date of the grant, except in respect of trees and vines where the said period shall be *twenty-five (25) years* from the date of the grant.

The requirements for filing plant breeder rights

To apply for protection of a new plant variety in Kenya, the following documents and information are required:

- The completed application form and proposed variety name (denomination). All applications are done through the online system <https://seed.kephis.org> and payments done through eCitizen.
- The detailed description of the variety, highlighting its unique features.
- The applicant/breeder details and declaration of right to apply (if not breeder).
- The reproductive or other plant material as required for testing.
- The DUS test results, either conducted by KEPHIS or an accepted competent authority report.

The procedure for filing plant breeder rights

The process of securing plant breeder rights in Kenya is administered by the Kenya Plant Health Inspectorate Service (KEPHIS) and follows the following steps:

- **Application filing:** Submit the plant breeder right application to KEPHIS for initial verification.
- **Formal examination:** KEPHIS ensures that all submitted documents are complete; this takes approximately two (2) to three (3) months.

- **DUS Testing (Distinctness, Uniformity, Stability):** Trials are conducted to verify that the variety meets the DUS requirements. KEPHIS conducts DUS testing domestically and may accept DUS reports from competent authorities.
- **Publication:** If successful, the application is published for *sixty (60) days*, allowing third parties to file oppositions.
- **Grant of Rights:** If no oppositions arise or if oppositions are resolved in favor of the applicant, a certificate of grant is issued, effective from the date of grant.

The overall timeframe from filing to grant of plant breeder rights takes approximately two (2) to four (4) years, depending on the species and DUS testing requirements.

The benefits of protecting plant breeder rights

- **Exclusive rights:** Plant breeder rights grant the breeder exclusive control over the commercial use of the plant variety, including its propagation, sale and marketing.
- **Encouragement of agricultural innovation:** By protecting new plant varieties, the law rewards breeders for their investment in research and development, thereby encouraging continued innovation and improvement in agricultural production.
- **Revenue generation:** A protected plant variety may be licensed or sold to third parties, allowing breeders to generate income and treat the variety as a valuable commercial asset.
- **Market advantage:** Plant breeder rights enable breeders to promote superior plant varieties in the Kenyan market while distinguishing them from unprotected or competing varieties.

How CM Advocates LLP's Intellectual Property and Technology Unit can support you on plant breeder rights

At CM Advocates LLP, our Intellectual Property and Technology Unit provides comprehensive legal support in relation to plant breeder rights in Kenya. With an established regional presence in Kenya, Uganda, Tanzania, Rwanda, South Sudan, Zambia, and Ethiopia, we are well positioned to offer practical, regionally informed advice to breeders, agribusinesses and research institutions seeking to protect and commercialize new plant varieties. Our support services include:

- **Advising on eligibility and protection strategies:** We assess whether a plant variety meets the legal requirements for protection and provide strategic guidance on securing plant breeder rights.
- **Preparation and filing of plant breeder rights applications:** We assist with preparing and filing plant breeder rights' applications with KEPHIS, ensuring compliance with the statutory requirements.
- **Support during DUS testing and examination:** We guide clients through the DUS testing process and manage correspondence with the examining authorities.
- **Monitoring validity periods and renewals:** We track the duration of plant breeder rights and advise on compliance requirements to maintain protection throughout the protection period.
- **Enforcement and commercialization:** We advise on licensing, assignment and enforcement of plant breeder rights, including action against unauthorized use or infringement.

Need legal guidance?

For support with plant breeder rights' registration or related intellectual property matters, please contact:

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