

COURT BARS MCSK FROM COLLECTING ROYALTIES ON BEHALF OF MUSICIANS

On 3rd March, 2025, the High Court dismissed a case filed by the Music Copyright Society of Kenya (MCSK) challenging the Kenya Copyright Board's (KECOBO) decision to license the Performing and Audio-Visual Rights Society of Kenya (PAVRISK) as the sole Collective Management Organization (CMO) authorized to manage royalty collection and distribution on behalf of musicians and audio-visual rights holders in Kenya. The ruling can be accessed *here*.

The dispute arose when KECOBO declined to issue a license to the Music Copyright Society of Kenya, effectively limiting its royalty collection activities. The Music Copyright Society of Kenya alleged that KECOBO had unfairly issued licenses to other CMOs while sidelining the Music Copyright Society of Kenya, which it claimed was to the detriment of its members and other industry stakeholders. Among the beneficiaries of these licensing decisions was PAVRISK, which was ultimately designated as the sole CMO responsible for royalty collection. This led the Music Copyright Society of Kenya to file a case in the High Court, challenging KECOBO's decision.

DETERMINATION

Justice Mongare ruled that the Music Copyright Society of Kenya had prematurely filed the case without first exhausting the dispute resolution mechanisms outlined in the Copyright Act, Cap 130(the Copyright Act). Section 48(1) of the Copyright Act provides a clear path for resolving such disputes before appealing to the High Court, whereby an appeal against KECOBO's refusal to grant a license to a CMO is under the jurisdiction of the Copyright Tribunal. The ruling underscores the importance of following due process in matters of intellectual property law in Kenya.

Consequently, the court suspended the conservatory orders previously issued, which had temporarily allowed the Music Copyright Society of Kenya to collect royalties and issue licenses for copyrighted music. This decision effectively strips the Music Copyright Society of Kenya of any legal authority to act as a CMO unless the matter is resolved through the appropriate channels. The ruling has significant implications for music and audio-visual copyrights in Kenya, as it determines the entities which are legally allowed to collect and distribute royalties.

KECOBO'S RESPONSE TO THE COURT'S DETERMINATION

Following the judgement, KECOBO issued a notice on 5th March, 2025 reiterating that the Music Copyright Society of Kenya lacks the authority to collect royalties as a CMO and that the Music Copyright Society of Kenya should cease from presenting itself to the public as a licensed CMO. The notice can be accessed *here*. Under Section 46 of the Copyright Act, any person who purports to collect royalties without the authority of KECOBO commits an offence and is liable to a fine not exceeding five hundred thousand shillings, imprisonment for a term not exceeding four years, or both. This decision reinforces the role of KECOBO in regulating CMOs and ensuring compliance with the Copyright Act.

KEY TAKEAWAYS

This ruling has significant implications for Kenya's music and creative industry. Stakeholders, including artists, music users and other CMOs, must ensure strict compliance with the current copyright laws. Stakeholders should also monitor official communications from KECOBO for updates on approved royalty collection bodies. Given the legal complexities, seeking professional legal advice is advisable to navigate this transitional period effectively.

It is important to note that while PAVRISK was initially licensed as the sole CMO, this decision was later revoked by the Copyright Tribunal. An appeal challenging the revocation is currently pending before the High Court, meaning the future of royalty collection on behalf of musicians and audio-visual rights holders in Kenya remains uncertain. This case highlights the need for transparency in CMO licensing and the efficient use of the dispute resolution mechanisms provided in law to ensure a fair and robust copyright administration system.

HOW WE CAN HELP

At **CM Advocates LLP**, we have a dynamic team of Intellectual Property Lawyers dedicated to helping secure all forms of Intellectual Property including trademarks, patents, copyrights, industrial designs and utility models. Our services also extend to the recordation of IPRs with the Anti-Counterfeit Authority as well as monitoring and enforcement of IPRs. If you would like to consult on this article or any other related matter, you may contact the contributor on the email below or the commercial team through ***commercial@cmadvocates.com***.



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