



# Copyright Protection

## High Court Awards Kshs. 1.4 Billion Against Safaricom in Landmark Copyright Case

In a landmark decision in [Peter Nthei Muoki and Beluga Limited v Safaricom PLC HCCOMM/E407/202](#), the High Court found that Safaricom PLC infringed copyright belonging to Peter Nthei Muoki and Beluga Limited in relation to a youth-focused mobile wallet concept known as “M-TEEN MOBILE WALLET USSD CODE”.

The judgment is one of the most consequential intellectual property decisions in Kenya’s technology sector and raises legal issues concerning copyright protection of software-related works, evidentiary burdens in intellectual property disputes and the limits of the “idea-expression” doctrine.

### Background of the dispute

The Plaintiffs alleged that they developed a mobile wallet sub-account solution targeted at teenagers and young adults, allowing parents to monitor and control spending through a USSD-based platform. According to the Plaintiffs, the concept and detailed functionality were shared with Safaricom executives between March and June 2021.

The Plaintiffs argued that shortly thereafter, Safaricom launched a substantially similar product under the “Manage Child Account” or “M-PESA Go” functionality using USSD code \*334#. They contended

that Safaricom reproduced the structure, flow and operational logic of their product without authorization.

Safaricom denied infringement, maintaining that the underlying concept of parent-child account controls was neither novel nor protectable under copyright law. It further asserted that the product had independently been under development since 2020 through collaboration with Huawei.

### The key legal issues determined by the court

#### 1. Whether copyright subsisted in the plaintiffs’ work

The Court affirmed that the Plaintiffs’ product documentation constituted a “literary work” capable of copyright protection under the [Copyright Act, Cap 130](#). Further, the Court asserted that copyright protection did not depend on registration, although the KECOBO registration certificate provided prima facie evidence of ownership.

The Court further accepted that the Plaintiffs’ detailed USSD menu flows, operational structure and written documentation amounted to a fixed and protectable expression of the product.



## 2. The distinction between an idea and its expression

Safaricom argued that copyright does not protect ideas, concepts, methods or functionalities, but only the specific expression of those ideas. The Court agreed with this general principle, reaffirming the long-standing doctrine that copyright protects expression rather than abstract concepts.

However, the Court found that the Plaintiffs were not claiming ownership over the general idea of parental controls for minors. Instead, they claimed protection over the specific expression of that concept through detailed USSD structures, menu trees, transaction restrictions and reporting mechanisms.

The Court therefore held that Safaricom copied the Plaintiffs' particular expression of the idea rather than merely implementing a similar concept independently.

## 3. Proof of copyright infringement through access and similarity

The Court reiterated that copyright infringement is established through proof that the defendant had access to the copyrighted work and evidence of substantial similarity between the two works.

The Plaintiffs successfully demonstrated that Safaricom executives had access to the product through meetings and disclosures made to senior management personnel.

The Court also placed significant weight on the striking similarities between the Plaintiffs documented system and Safaricom's eventual product rollout, particularly the structural logic and menu functionality. Notably, the Court held that direct evidence of copying is rarely available in copyright disputes and may therefore be inferred from circumstantial evidence, including timing and similarity.

## 4. Adverse inference arising from missing documentary evidence

A major aspect of the judgment concerned Safaricom's inability to produce documentary evidence supporting its claim of independent creation.

Although Safaricom and Huawei asserted that development began in 2020, the Court found inconsistencies in their evidence and noted the absence

of key documents, including formal instructions and final functional requirement specifications.

The Court drew inference against Safaricom for failing to produce these documents, concluding that the alleged independent development narrative lacked credibility.

## 5. The role of originality in copyright law

The Court reaffirmed that originality in copyright law does not mean novelty. A work need only originate from the author and not be copied from another source.

In doing so, the Court emphasized that even where a general concept already exists in the marketplace, the author's particular arrangement, sequence and presentation may still attract copyright protection.

## 6. Damages and ongoing royalties

The Court awarded the Plaintiffs Kshs. 1.4 billion as general damages, calculated conservatively as 1% of Safaricom's M-PESA revenue for the 2024 financial year.

In addition, Safaricom was ordered to pay 0.5% of its annual gross M-PESA revenue for as long as it continues operating the disputed functionality or any substantially similar parent-child control product.

## Why the decision matters

This decision offers useful practical lessons for innovators operating in technology-driven industries.

- **Recognition of copyright in software-related works** - The decision reinforces that software-related documentation, workflow structures, USSD flows and platform architecture qualify for copyright protection where they are original.
- **Handling of innovation disclosures** - The case highlights the importance of clear protocols when innovators share ideas with potential commercial partners. In such situations, innovators should consider implementing protective measures such as non-disclosure agreements, clear documentation of ownership prior to disclosure and defined terms of engagement to safeguard their intellectual property while allowing for potential collaboration or commercial evaluation.



- **Judicial willingness to award significant commercial remedies-** The decision signals a growing judicial willingness to grant substantial monetary awards in intellectual property disputes involving the commercial exploitation of protected works.

## Conclusion

The decision marks a significant development in Kenya's intellectual property jurisprudence, particularly in relation to software-related copyright claims. The judgment reinforces the principle that while ideas themselves are not protectable, the expression of those ideas through structured systems, workflows and documented architecture attract copyright protection.

## How we can help you

At our Intellectual Property and Technology Practice, we advise innovators, startups and businesses on protecting and commercializing technology-driven innovations, including software solutions, digital platforms, fintech products and other technology-based intellectual property assets. We provide support across the full lifecycle of innovation protection, including:

- **Copyright and software protection:** Advising on protection of software-related works, platform architecture, technical documentation, workflows and digital products.
- **Confidentiality and disclosure management:** Preparing NDAs, pitch protection frameworks, internal controls and disclosure protocols when sharing ideas with third parties.
- **IP ownership and commercialization structuring:** Assisting with ownership frameworks, licensing arrangements, commercialization strategies and innovation governance.
- **IP portfolio management:** Aligning intellectual property protection strategies with business growth, investment objectives and market expansion.
- **Dispute resolution and enforcement:** Representing clients in copyright infringement, misappropriation, breach of confidence and technology-related intellectual property disputes.
- **Risk and compliance advisory:** Advising businesses on managing legal risks associated with unsolicited proposals, collaborative innovation and internal product development processes.

**If you would like to discuss how best to protect your innovation or require assistance with any intellectual property matter, please contact the contributor below or reach out to our Intellectual Property and Technology team at [tmtpractice@cmadvocates.com](mailto:tmtpractice@cmadvocates.com).**

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