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**KENYA**





## SECTION 1: COUNTRY OVERVIEW

### 1.1 GENERAL INFORMATION

Capital:	Nairobi
Population:	53,77 million
Currency of government (official) fees::	USD (Foreigners) and Kenyan Shilling
Language for filing IP applications:	English
GDP per capita:	1,838.2 (World Bank, 2020)
Human Development Index:	0.547 (World bank, 2020)
Main exports:	Black tea, Fresh cut flowers and buds, Petroleum oils, Coffee, Titanium ores and concentrates.
Main imports:	Petroleum oils, Spelt, common wheat and meslin, Crude palm oil, Other medicaments of mixed or unmixed products, flat rolled products.

### 1.2 INTERNATIONAL IP AGREEMENTS AND CONVENTIONS

Kenya is a contracting state to the following international legal instruments:

- ARIPO<sup>1</sup>, both the Banjul Protocol on Marks and the Harare Protocol on Patents and Industrial Designs;
- Beijing Treaty on Audio-visual Performances
- Berne Convention for the Protection of Literary and Artistic Works
- Madrid Protocol for International Registration of Trade Marks
- Paris Convention for the Protection of Industrial Property
- Patent Cooperation Treaty
- Trademark Law Treaty
- TRIPS<sup>2</sup> Agreement
- UPOV Convention

1 ARIPO: the African Regional Intellectual Property Organization.

2 TRIPS Agreement: Agreement on Trade-Related Aspects of intellectual Property Rights the World Trade Organization (WTO).





Most of Kenya's IP laws are TRIPS-compliant although, in practice, the level of implementation may be different from other countries. This may have an impact on the effectiveness of some IP enforcement issues.

Kenya is not a member of the Nice Agreement<sup>3</sup>. However, its trade mark classification system is based on the Nice classification system.

### 1.3 REGIONAL AGREEMENTS

Kenya is a member of the following regional agreements:

- AfCFTA (the African Continental Free Trade Area) The Agreement contains a Protocol on IP rights which aims for effective protection and promotion of IP rights in Africa and may therefore have legal implications for Kenya when it comes into legal force.
- The EAC Treaty – (the East African Community Treaty)

This Treaty has an EAC Regional Intellectual Property Policy with the aim to encourage technical innovation, to promote the industrial and commercial use of technical inventions and innovations, as well as to contribute to the social, economic, industrial and technological development of the East African Community.

- COMESA (The Common Market for Eastern and Southern Africa) COMESA has no regional IP agreements, protocols, or IP registration systems in place. It has the COMESA Policy on Intellectual Property Rights. The purpose of the Policy is to promote the use of intellectual property rights by COMESA member states so that they can shift from resource-based economies to knowledge-based and innovation-driven economies.

### 1.4 LEGAL FRAMEWORK OF IP PROTECTION AVAILABLE IN KENYA

The following IP protection is available in Kenya:

- 1) trade marks: national, regional (ARIPO) and international (Madrid);
- 2) patents: national and regional (ARIPO);
- 3) utility models: national and regional (ARIPO);
- 4) industrial designs: national and regional (ARIPO);
- 5) Plant Breeder's Rights: national;
- 6) copyright and related rights: national.

### 1.5 IP REGISTRATION ROUTES

IP protection in Kenya can be secured at three levels: national, regional and international.

<sup>3</sup> Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks





## National

The six types of IP mentioned above can be protected directly in Kenya through the Kenya Industrial Property Institute (KIPI).

## Regional

Kenya is a contracting party to ARIPO's Banjul Protocol on Marks and the Harare Protocol on Patents and Industrial Designs.

It is therefore possible to register trade marks, patents, utility models and industrial designs either nationally through KIPI or regionally, through ARIPO.

## International

Kenya is also a contracting party to the Madrid Protocol and the Patent Cooperation Treaty (PCT). It is therefore possible to register international trade marks designating Kenya through the Madrid System. More information is available at: <https://www.wipo.int/madrid/en/>.

Choosing a suitable registration route: trade marks, patents, utility models and industrial designs  
A national route is suitable when trade mark protection is required in Kenya only.

A regional route through ARIPO is suitable when multi-country protection of the abovementioned IP rights is required.

An international route is advisable for trade mark protection only, when protection is required in more countries than are covered by the ARIPO regional trade mark system.

Useful information:

## Professional representation

- Foreign applicants whose principal place of business is outside Kenya must appoint a local agent. (For local applicants this is optional.) KIPI accepts signed powers of attorney without any need for notarisation. However, you should check with your IP service provider in Kenya whether hard copies are necessary or scanned copies sent by email are acceptable. A list of ARIPO representatives (by country) is available at: <https://www.aripo.org/ip-agents/>.

## Trade marks

- The ARIPO trade mark system's multiclass and state designation system closely resembles the Madrid system and for this reason is often referred to as a 'mini Madrid'.
- Kenya law has been amended to recognise both ARIPO and Madrid trade marks which, as a result, are given the same legal protection as national-route trade marks.
- Kenya is not a signatory to the Nice Agreement but uses the Nice Classification. Classifications based on the latest edition of Nice at the time of filing of an application are accepted.







## SECTION 2: OVERVIEW OF NATIONAL IP ENFORCEMENT

Kenya is a signatory of the WTO's TRIPS Agreement, and its laws are substantially TRIPS-compliant in terms of providing a legal framework for the protection and enforcement of IP rights.

Kenya's Constitution establishes protection and enforcement of Kenyans' IP rights. KIPi is responsible to enforce compliance and protection of IP in Kenya.

The Copyright Act of Kenya provides that a person who makes for sale or hire; imports into Kenya otherwise for his private and domestic use or makes any infringing copy, or has in his possession any contrivance used or intended to be used for the purpose of making infringing copies shall be liable to a fine not exceeding Kshs 400,000/- or imprisonment for a term not exceeding 10 years or to both. A person who sells or lets for hire or by way of trade exposes or offers for sale any infringing or possesses otherwise than for his private domestic use, any infringing copy, shall be liable to a fine not exceeding Kshs 100,000/- exceeding 2 years or to both.

In recent years in collaboration with Kenya Police Force, Kenya Copyright Board (KECOBO) has increased anti-piracy campaigns so as to curb copyright infringement. The Kenya Police Force has also worked with the Anti-counterfeiting Agency who through the Anti-Counterfeit Act (2008) enforce counterfeiting goods, trademarks and illegal goods into and out of Kenya. A complaint against anyone engaged in counterfeiting may be lodged with the Executive Director of the Anti-counterfeiting Agency by the owner of the intellectual property, successor in title or license.

Under penal code, trade mark counterfeiting is punishable by incarceration for a term not exceeding two years and/or an unspecified fine.

KIPi engages constantly with other stakeholders who have a role to play in combating IP infringements. These include the Interpol in Kenya who work closely with the Kenya Police Force to conduct raids of counterfeit goods such as Operation Mamba II which resulted in the seizure of hundreds of fake, unregistered and banned products which pose a potential serious risk to public health in Kenya, border officials, customs officials.

The Kenyan Revenue Authority Customs & Border Control Department as the authority responsible for monitoring IP infringements Kenya's borders also plays a crucial role. The Commissioner of Customs and Excise is granted powers to seize and detain suspected counterfeited goods. Kenyan customs officers can be designated as inspectors of counterfeit goods by the Ant-counterfeiting Authority in Kenya and they shall have full police powers in the exercise of their duties. The legal profession is also included to combat IP infringements through the Attorney-General who may appoint public prosecutors to prosecute cases relating to counterfeiting and the Courts in Kenya may make Anton Pillar (search and seizure) orders where it is proved that the counterfeit goods may be destroyed or rendered inaccessible. The Department of Trade and Consumer Affairs, retailers and the general public are also engaged by KIPi.

Despite KIPi and State efforts to curb IP infringement, rights holders must play a significant role in policing the use of their IP in Kenya. They must constantly check that the industrial and commercial markets in which they sell their goods or services take appropriate action against the infringement of their IP rights by competitors, retailers or street vendors. Kenyan Law entitles rights holders





to take civil action against infringers to recover their lost revenue and/or to have the infringing products destroyed.

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For copyrights, the Copyrights Act provides for conservatory measures that seek to prevent infringements and also to preserve relevant evidence related to an alleged infringement. In addition, the Act empowers the police to conduct searches of premises where it is suspected that infringing goods are concealed, and to seize any offending goods. Civil remedies include court interdicts or injunction, damages which are intended to restore the plaintiff to the position in which she would have been had infringement not occurred and additional or punitive damages may also be awarded, an account of the profits derived from the infringement and delivery up or destruction of any infringing product. Criminal sanctions include the imposition of substantial fines and the possibility of imprisonment. A copyright owner is expected to 'police' their work and take action against infringers of their rights. That means that the rights holder should initiate action such as reporting infringements to the police or customs (in the case of the importation of infringing goods) and also seek the intervention of the courts to fight third parties who infringe their rights.

## SECTION 3: TYPES OF AVAILABLE IP PROTECTION

### 3.1 TRADE MARKS

National, regional, and international trade marks can be registered in Kenya as explained below. Benefits of registering a trade mark

- A registered trade mark gives the owner exclusive rights to use it to market their products and services; it gives the owner protection against others using the same mark or a similar mark without authorisation.
- In the long run, a well-maintained trade mark can build the owner's brand and become an asset to their organisation. This can enable them to expand their business by licensing it to others, franchising or obtaining finance.

#### 3.1.1 Who can register a trade mark?

A natural person, a company or any other entity can apply to register a trade mark. However, a person who does not have their place of business in Kenya needs a professional representative.

#### 3.1.2 What are the registration requirements?

A trade mark application must contain the following:





- an application letter containing the full name, nationality and address of the applicant, or the full name (as on the Certificate of Incorporation) and physical address of the company;
- a completed Form TM2.
- Seven (7) prints of the mark;

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- List of goods and/ or services to be covered;
- priority document (if applicable; certified copy); and
- A Power of Attorney. (Simply signed). No legalisation or notarisation is required

#### 3.1.3 What qualifies for registration?

A trademark that is capable of distinguishing particular goods or services of one undertaking from those of other undertakings and is not in conflict with earlier registrations or pending applications and is not contrary to public order or morality.

#### 3.1.4 What cannot be registered?

A trade mark cannot be registered if it contains:

- false indications/ deceptive mark or is likely to deceive or mislead the public or cause confusion;
- if it is contrary to law or morality or any scandalous design;
- a trade mark that is likely to cause confusion with an earlier registered trade mark or pending application; and
- trade marks which constitute a name or likeness of individuals without the authorisation of such individuals;
- touch, scent, taste and sound marks;
- marks with the words 'patent', 'patented', 'registered', 'registered design', 'copyright', 'entered at Stationer's Hall', 'to counterfeit this is a forgery' or similar words;
- marks with representations of the head of state of any foreign state, or any colourable imitation thereof;
- marks that contain the phrases 'Red Cross' or 'Geneva Cross' and representations of the Geneva and other crosses in red or the Swiss federal cross in white on a red background or silver on a red background, or such representations in a similar colour or colours;
- specified emblems, likenesses and names under the National Flag, Emblems and Names Act (except where written permission has been given by a competent authority);
- any honour, award, title or abbreviation of a title created by the president;
- armorial bearings, insignia or flags of any foreign state or international intergovernmental organisation;





- any title or abbreviation of any international intergovernmental organisation; and
- marks consisting of or containing the Olympic symbol.

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### 3.1.5 Where can I file an application?

- Kenya Industrial Property Institute, KIPI.
- ARIPO, for regional marks
- country designation through the International Bureau (WIPO)

### 3.1.6 How much does it cost?

#### Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Kenyan Shilling or United States Dollars). Application forms and information on fees are available through this link: <https://www.kipi.go.ke/>

#### Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

#### Likely overall registration costs

An applicant can expect the cost of registering a trade mark to be in the region of the amounts set out in the table below (in USD), unless objections and other special circumstances that may increase the costs apply.

Description of Process/Service	Government Fees (USD)
Application fees - first class	200
Application fees – each subsequent class included in the application	150
Advertisement fees - first class	60
Advertisement fees - each subsequent class	50
Registration fees - first class	150
Registration fees - each subsequent class	100
Power of attorney filing fees	50
Stamp duty fees (approx.) on each payable fee	3





### 3.1.7 How long does registration take?

The trade mark registration process takes 2-12 months from the filing date to complete, assuming that there are no unusual delays and no oppositions. This includes an opposition period of 2 months.

### 3.1.8 What is the duration of protection?

10 years from the filing date, renewable.

## 3.2 PATENTS

### Kenya Patent Registrations

National and regional (ARIPO) patents can be registered in Kenya in the following ways.

#### National

- at KIPI.

#### Regional

- for the Harare Protocol, through ARIPO. ARIPO has 20 member states: Botswana, eSwatini (formerly Swaziland), The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Zambia and Zimbabwe. All ARIPO member states except Mauritius and Somalia can be designated in an ARIPO patent application. ARIPO's designation system allows an applicant to choose one, some or all of the remaining 18 member states in a patent application. It is therefore also possible to file an ARIPO patent application in which Kenya (or any other member state) is designated to achieve national patent protection but through a regional registration system.

Choosing between a national or regional patent registration for Kenya

The decision about whether to register a patent in Kenya through the national or ARIPO route is usually guided by the following considerations:

- whether substantive examination is required or not: The national IP office, KIPI conducts formal examination only. ARIPO conducts substantive examination as part of its technical assistance to ARIPO member states in terms of the objectives of the Lusaka Agreement. You can read more on these objectives in the Lusaka Agreement which can be accessed from [here](#).
- whether patent protection is required in Kenya only or in multiple jurisdictions: applicants will usually opt for the ARIPO route if multiple-jurisdiction protection is required;
- cost-effectiveness: ARIPO's centralised regional patent registration system is usually





considered to be more cost-effective than a national patent registration approach.

### Choosing between registration routes

Most patent applications for Kenya are registered through ARIPO because it allows applicants to designate more than one country. It is more cost-effective to file a single application in ARIPO to gain patent coverage in two or more ARIPO member states.

### Choosing a patent filing route

Kenya is a member of the PCT. Patent applications for both the KIPI and ARIPO routes for Kenya can also be filed through the PCT. However, the PCT provides a patent filing rather than a patent registration route.

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### National (KIPI) Patents

#### 3.2.1 Who can register a patent?

An inventor (or successor in title) or an assignee of an invention can apply to register a patent.

#### 3.2.2 What are the registration requirements?

A patent application must contain the following:

- a request on the prescribed form;
- the patent title, abstract, description, claims and drawings;
- the applicant's details including full name, nationality, legal status and physical address or, if it is a company, its Certificate of Incorporation;
- the Deed of Assignment, if the applicant is not the inventor;
- a certified copy of the priority document, if applicable;
- the prescribed application fees;
- when the patent is accepted: a letter of acceptance together with the publication and grant fees.
- At any time before the grant or rejection of a patent, an applicant may convert a patent application into a utility model application which will be given the filing date of the initial patent application.
- For conversion, a request for conversion of the patent application must be submitted together with all the documents filed in the patent application. An application may not be converted more than once.

#### 3.2.3 What qualifies for registration?

A patent must meet the following requirements:





- novelty which must be absolute novelty in that the invention must be a new characteristic which is not known in the body of existing knowledge in its technical field. It must not be anticipated by prior art;
- inventive step which means that, having regard to prior art, the invention is not obvious to a person skilled in the art;
- susceptible of industrial applicability in that it can be used in any kind of industry, including agriculture, and
- patentable invention under national patent law.

Unregistrable patents in Kenya are those related to the treatment of humans or animals or to pharmaceutical inventions. These inventions are not patentable to avoid undue restrictions to access to medical care and medicines by people or animals in need.

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- Any new or improved product or process in the following main sections of technology:
- Human Necessities: agriculture, foodstuff, to personal or domestic articles, health and amusement.
- Performing operations and transporting: separating, mixing, shaping, printing and transporting.
- Chemistry and metallurgy.
- Textiles and paper. Fixed Construction: Building, earth moving mining.
- Mechanical engineering, lighting, heating, weapons, blasting including engines, pumps and engineering in general.
- Physics: Instruments and nucleonic.
- Electricity.

### 3.2.4 What cannot be registered?

The following inventions cannot be patented:

- Discoveries or findings that are products or processes of nature where mankind has not participated in their creation (including, plants and microorganisms).
- Scientific and mathematical methods and theories.
- Schemes e.g. investment, methods of bookkeeping or insurance schemes.
- Business methods e.g. credit or stock methods
- Rules for playing games (however, games equipment may be patentable).
- Methods for treatment of human or animal body by surgery or therapy, as well as diagnostic methods; except products, in particular substances or compositions or apparatus for use in, any of those methods or;
- Public Health related methods of use or uses of any molecule or other substances whatsoever used for the prevention or treatment of any disease which the Minister responsible for matters relating to health may designate as a serious health hazard or as a







life threatening disease.

- Mere presentation of information.
- Non-functional details of shape, configuration, pattern or ornamentation.
- Plant varieties, but not parts thereof or products of biotechnological processes.
- Inventions contrary to public order, morality, public health and safety, principles of humanity, and environmental conservation.

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### 3.2.5 Where can I file an application?

National applications, and PCT national phase applications must be filed at KIPI.

Regional applications can be filed at KIPI or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings. See Procedure for the filing and granting a patent or utility model at the ARIPO office. International applications filed through the PCT in which Kenya is designated are registered by KIPI.

### 3.2.6 How much does it cost?

#### **National (KIPI) fees**

Registration fees consist partly of government (official) fees and partly of professional fees, as indicated below.

#### **Government (official) fees**

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Kenya Shilling or United States Dollars). Application forms and information on fees are available through this link: <https://www.kipi.go.ke>

#### **Professional fees**

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

Likely overall registration costs for a KIPI patent

An applicant can expect the cost of registering a patent to be in the region of the amounts set out in the table below (in US\$), unless objections and other special circumstances that may increase the costs apply.

#### **ARIPO-route patent registration fees**







Description of Process/Service	KIPI Fees (USD)
Application fees with a provisional specification	50
Application fees with a final specification	150
Fee for filing a final specification	150
Fee for publication of patent application	150
Fee for grant of a patent	150
Total fees \$	650

Fees must be paid through ARIPO and in USD if an applicant chooses to register a patent for Kenya using the ARIPO route. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

Fees that are required at the stage of filing an application as follows:

**Note on professional fees**

Type of Fee	ARIPO Fee USD
Application fee, regardless of the number of states designated in the application	232
State designation fee	85 per state (multiplied by the number of designated states)
Mandatory annuity fee: for PCT-based applications, the first ARIPO annuity fee will usually be due and must be paid with the application fee	50 per state (multiplied by the number of designated states)
Total fees, assuming only Kenya is designated and payment of first annuity fee	317
Total fees, assuming all 18 Harare Protocol states, including Kenya, are designated and payment of first annuity fee	2 662





Professional fees vary depending on several factors, such as the level of experience of the professional concerned and the time spent on a task, amongst others.

It is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

### 3.2.7 How long does registration take?

National patent applications take 12-15 months to complete the registration process unless the subject matter is complicated, and the patent application is referred to ARIPO for substantive examination. Substantive examination is completed on average within 3 years from the filing date of the application. If the applicant does not request the substantive examination within the 3 years, the application is deemed to have been abandoned.

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Regional-route Kenya applications are substantively examined by ARIPO and take 3 - 4 years on average to complete registration, assuming that there are no objections.

### 3.2.8 What is the duration of protection?

Protection lasts 20 years from the filing date, subject to the payment of annual maintenance fees.

### 3.2.9 When are renewal fees paid?

#### **National patents**

Renewal fees are paid from the second anniversary of the filing date up to the 20th year. Late payment is possible, with a corresponding surcharge, within a grace period of 6 months after the due date.

#### **Annuities**

The following government (official) fees are currently applicable:





Annuity Years	Renewal Fees in (US\$)
For 2nd year to 7th year	300
For 8th year	300
For 9th year	350
For 10th year	400
For 11th year	500
For 12th year	600
For 13th year	700
For 14th year	800
For 15th year	900
For 16th year	1000
For 17th year	1500
For 18th year	1750
For 19th year	2000
For 20th year	2500
Late renewal penalty for a period not exceeding 6 months from the due date	150

### 3.3 UTILITY MODELS

In some jurisdictions utility models are referred to as ‘petty patents’ because they are similar to patents but require less stringent conditions for registration and are registered for a shorter term than a conventional patent.

Kenya Utility Model Registrations

National and regional (ARIPO) utility models can be registered in Kenya in the following ways.

#### National

- at KIPI.

#### Regional





- for the Harare Protocol, through ARIPO.

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ARIPO has 20-member states: Botswana, Eswatini (formerly Swaziland), The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Zambia and Zimbabwe.

All ARIPO member states except Mauritius and Somalia can be designated in an ARIPO utility model application. ARIPO's designation system allows an applicant to choose one, some or all of the remaining 18 member states in a utility model application. It is therefore also possible to file an ARIPO utility model application in which Kenya or any other country is designated to achieve national utility model protection but through a regional registration system. However, it is advisable to ensure that utility model protection is available in each state that is designated because it is doubtful that it would be possible to enforce rights in a designated state that actually does not provide utility model protection in its national laws.

Choosing between a national or regional utility model registration for Kenya

The decision about whether to register a utility model in Kenya through the national or ARIPO route is usually guided by the following considerations:

- cost: it may be more cost-effective to proceed through the national route if protection is required in Kenya only;
- whether utility model protection is required in Kenya only or in multiple jurisdictions: applicants will usually opt for the ARIPO route if multiple-jurisdiction protection is required;
- duration of protection: the duration of protection of a national utility model registration is 7 years, whereas it is 10 years for an ARIPO-registered utility model. This difference may influence preference for the ARIPO registration route.

Most utility model applications for Kenya are registered through ARIPO because it allows applicants to designate more than one country in a utility model application. It is more cost effective to file a single application in ARIPO to gain utility model coverage in two or more ARIPO member states.

National (KIPI) Utility Models

### 3.3.1 Who can register?

An inventor or assignee of an invention can apply to register a utility model.

It is possible for two or more persons or companies to jointly own a utility model and apply for its registration.





### 3.3.2 What are the registration requirements?

A utility model application must contain the following:

- a request for registration in the prescribed Form;
- full details of the applicant, including name(s), nationality and physical address;

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- where the applicant is a company, full details of the company;
- utility model title, abstract, description, claims and drawings;
- signed power of attorney if the applicant is represented; notarisation is not required;
- the Deed of Assignment, if the applicant is not the inventor;
- the prescribed application fee;
- when the utility model is accepted: a letter of acceptance together with the grant and publications fees.

### 3.3.3 What qualifies for registration?

A registrable utility model must meet the two following requirements:

- novelty: the invention must be a new characteristic and must not be anticipated by the prior art;
- industrial applicability: the invention must be useful in any kind of industry.

### 3.3.4 What cannot be registered?

The following inventions cannot be registered as utility models in Kenya:

- utility models related to the treatment of humans or animals or to pharmaceutical inventions. These inventions are not registrable to avoid undue restriction to access to medical care and medicines by people or animals in need.
- inventions the commercial exploitation would be contrary to public policy or morality, public health and safety, and principles of humanity and environmental conservation;
- a discovery of a plant, animal, microorganism or substance as found in nature, including the human body;
- methods for treatment of the human or animal body by surgery or therapy as well as diagnostic methods practised on the human or animal body (as opposed to medical products);
- discoveries, scientific theories or mathematical method;
- a literary, dramatic, musical or artistic work or other aesthetic creation;
- a scheme, rule or method for doing business, performing mental acts or playing a game;
- presentations of information;
- software.





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### 3.3.5 Where can I file an application?

National applications for utility models must be filed at KIPI.

Regional applications can be filed at KIPI or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings. If an applicant wishes to obtain a utility model instead of a patent in Kenya on the basis of an international application, this must be indicated in the international application when filed.

### 3.3.6 How much does it cost?

#### National (KIPI) fees

Registration fees consist partly of government (official) fees and partly of professional fees, as indicated below.

#### Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Kenya Shilling or United States Dollars). Application forms and information on fees are available through this link: <https://www.kipi.go.ke>

#### Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

Likely overall registration costs for a KIPI utility model

Unless objections and other special circumstances that may increase costs apply an applicant can expect to pay the following official fees to register a utility model in Kenya:

Process/Service	Government Official Fees (USD)
Fee for application for a utility model certificate with a final specification	50
Fee for filing a final specification	50
<b>Total fees</b>	<b>100</b>





### ARIPO-route utility model registration fees

Fees must be paid through ARIPO if an applicant chooses to register a utility model in Kenya using the ARIPO route. ARIPO’s fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

Application fees consist of three components, as follows:

Type of Fee	ARIPO Fee USD
Application fee, regardless of the number of states designated in the application	<b>80</b>
State designation fees	20 per state (multiplied by the number of designated states)
Mandatory annuity fees (per designated state): 1st year: US\$20 2nd to 7th year: increases by US\$5 Each year thereafter: increases by US\$ 10	20 (1st year) per state multiplied by the number of designated states
Total fees, assuming only Kenya is designated and payment of 1st annuity fee	120
Total fees, assuming all 18 Harare Protocol states, including Kenya, are designated and payment of 1st annuity fee	800

### Note on professional fees

Professional fees vary depending on several factors, such as the level of experience of the professional concerned and the time spent on a task, amongst others.

It is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

### 3.3.7 How long does registration take?

National utility model applications are not examined substantively and therefore take a shorter time to register than ARIPO applications. The usual timeframe is between 12 and 15 months on average. It is however, advisable to check applicable processing timeframes before starting the registration process.

Regional-route filed KIPI applications are substantively examined by ARIPO and take longer than national utility model applications to reach registration. These applications can take 24-36 months to complete registration, assuming that only minimal official actions are needed and there are no objections.





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### 3.3.8 What is the duration of protection?

In Kenya, the duration of utility models is ten (10) years after the date of the filing of the application and is not renewable. This duration cannot be extended.

ARIPO-registered utility models have a duration of 10 years from the filing date.

### 3.3.9 When are renewal fees paid?

#### National Utility models

Renewal fees shall be paid each year, starting one year after the filing date of the application or the grant of the utility model. A period grace of six months shall be allowed for the late payment of the annual fees on payment of the prescribed surcharge.

Late payment of the annual fees, with a corresponding surcharge, is possible within a grace period of 6 months after the due date. If an annual fee is not paid the utility model application shall be deemed to have been withdrawn or the utility model shall lapse.

#### Government (official) fees

The following government (official) fees are currently applicable:

Annuity Years	Renewal Fees in (US\$)
Fee due in 1st year after grant	50
Fee due in 2nd year after grant	75
Fee due in 3rd year after grant	100
Fee due in 4th year after grant	125
Fee due in 5th year after grant	150
Fee due in 6th year after grant	175
Fee due in 7th year after grant	200
Fee due in 8th year after grant	225
Fee due in 9th year after grant	250
Fee due in 10th year after grant	275







### ARIPO-route filed Kenya utility models

Renewal fees are payable up to the 10th year. Before payment, it is advisable to confirm the amount of the fees on the ARIPO website as the official fees may change. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

ARIPO fees are payable per designated state.

Annuity Year	ARIPO Fee (USD)
1	20
(NB: Due the second year after the filing date)	
2	25
3	30
4	35
5	40
6	45
7	50
Each year thereafter	10
Late renewal fees consist of 2 parts	
i. Surcharge for late payment of annual maintenance fee	30
ii. Penalty fee for every month or fraction of a month for	50

The following ARIPO renewal fees are currently applicable:

### 3.4. INDUSTRIAL DESIGNS

In Kenya designs are registered without being classified as either aesthetic or functional designs. Kenya Industrial Design Registrations

National and regional (ARIPO) industrial designs can be registered in Kenya in the following ways:

#### National





- at KIPI, see below.

## **Regional**

- for the Harare Protocol, through ARIPO.

ARIPO has 20 member states: Botswana, Eswatini (formerly Swaziland) The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, Sudan, Tanzania, Uganda, Zambia and Zimbabwe.

All ARIPO member states except Mauritius and Somalia can be designated in an ARIPO industrial design application. ARIPO's designation system allows an applicant to choose one, some or all of the remaining 18 member states in an industrial design application.

It is therefore possible to file an ARIPO design application in which Kenya or any other country is designated to achieve national design protection but through a regional registration system.

Choosing between a national or regional industrial design registration for Kenya

The decision about whether to register a design in Kenya through the national or ARIPO route is usually guided by the following considerations:

- whether design protection is required in Kenya only or in multiple jurisdictions: applicants will usually opt for the ARIPO route if multiple-jurisdiction protection is required;
- cost-effectiveness: ARIPO's centralised regional design registration system is usually considered to be more cost-effective than a national design registration approach;
- time-effectiveness: Kenya, like some other ARIPO member states, does not receive a lot of design applications to justify staff training and deployment into industrial design sections of the IP Office. As a result, in comparison to ARIPO, national offices tend to be considerably slower to process design applications. Time is usually of essence to proprietors because designs are often short-lived. As a result, time-conscious applicants usually tend to prefer to register their designs through the ARIPO route instead of the national route.

## **Examination and novelty of designs for Kenya**

Kenya carries out a substantive examination of design applications. Applications are examined as to compliance with formal requirements which is based on a relative statement of novelty as well as substantive examination.

Similarly, ARIPO carries out a formal examination of designs, but member states are given the opportunity to carry out a substantive examination if their national laws require it.

National (KIPI) Industrial Designs

### **3.4.1 Who can register?**

A creator or assignee of an industrial design can apply to register a design in Kenya.





It is possible for two or more persons or companies to jointly own and apply for the registration of an industrial design.

### 3.4.2 What are the registration requirements?

A design application must contain the following documents:

- a formal application on a prescribed form;

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- Two identical specimens of the design;
- drawings or photographs or any other graphic representation depicting different elevations of the design, usually 3 dimensional views;
- a Power of Attorney, simply signed if the application is filed through an agent;
- a Deed of Assignment if the creator is not the applicant; a statement justifying the applicant's right to the registration of the industrial design;
- indication of the kind of products for which the industrial design or model is intended to be used;
- the prescribed application fee;
- a priority document (original or certified copy) if priority is claimed;

A design is not required to have an objectively noticeable aesthetic quality.

### 3.4.3 What qualifies for registration?

An industrial design is registrable if it is new. It shall be deemed to be new if it has not been disclosed to the public, anywhere in the world, by publication in tangible form, or in Kenya by use or in any way prior to the filing date. For a creation to qualify for design registration it must clearly identify novel features of the design in terms of:

- shape; • configuration; • pattern and/or ornament.

Multiple design applications are possible in Kenya, provided that all the designs are embodied in a single set of articles and belong to the same class.

### 3.4.4 What cannot be registered?

The following cannot be registered:

- designs that are contrary to the law, public policy or morality;
- designs for articles that are primarily literary or artistic in character, such as paintings, sculptures, drawings, enamelling, engravings, embroidery, photographs, sculptures, architecture and works of artistic craftsmanship;
- designs consisting solely of a change in the colour of already known designs;
- designs whose features correspond to or are determined by functions to be performed by





the products.

- An industrial design is not registrable in Kenya if it is protected under the Kenya Copyright Act.

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- Anything in an Industrial design which serves solely to obtain a technical result.

### 3.4.5 Where can I file an application?

National-route design applications must be filed at KIPI.

Regional-route design applications can be filed at KIPI or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO for Kenya designs can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings.

### 3.4.6 How much does it cost?

#### **National (KIPI) fees**

Registration fees consist partly of government (official) fees and partly of professional fees, as indicated below.

#### **Government (official) fees**

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Kenya Shilling or United States Dollars). Application forms and information on fees are available through this link: <https://www.kipi.go.ke/>

#### **Professional fees**

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

Likely overall registration costs for a KIPI industrial design

An applicant can expect the cost of registering an industrial design to be in the region of the amounts set out in the table below (in US\$), unless objections and other special circumstances





Type of Fees	KIPI Fees (USD)
Fee for an application for registration of an industrial design	150
Publication fee for notice of application to register an industrial design	150
Fee for registration of an industrial design	50
<b>Total fees \$</b>	<b>350</b>

which increase costs apply.

### ARIPO-route design registration fees

These fees are paid through ARIPO. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

Application fees, are as follows:

Type of Fees	ARIPO Fee (USD)
Application fees, regardless of the number of states designated in an application	40
State designation fees	10 per state (multiplied by the number of designated states)
Total fees, assuming that only Kenya is designated in the application	50
<b>Total fees, assuming that all 18 Harare Protocol states, including Kenya, are designated in the application</b>	<b>220</b>





## Note on professional fees

Professional fees vary and it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

### 3.4.7 How long does registration take?

**National**-route applications usually take 7 to 10 months to complete registration. The deadline to file missing documents is 2 months from the date of notification.

**Regional**-route applications usually take 8 -12 months to complete registration. This includes a period of 6 months for states to examine and decide if a design will have legal effect in their territories after ARIPO has issued them with a notice of intention to register a design.

### 3.4.8 What is the duration of protection?

A KIPI industrial design has an initial duration of five (5) years from the filing date, subject to a possible extension of two further consecutive 5 -year term to make 15 years.

ARIPO-route design registrations are valid for 10 years, with no possibility of extension.

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### 3.4.9 When are renewal fees paid?

In Kenya Industrial designs have a duration of 5 years. They may be renewed for two further consecutive periods of five years upon payment of annuity fees. The fees for the renewal of registration of an industrial design must be paid within twelve months preceding expiration of the period of registration but a grace period of six months is allowed for the late payment of the renewal fees on payment of the surcharge

The renewal fees are currently US\$ 500 for the whole renewal period.

In ARIPO, renewal fees are payable within 6 months before the registration period expires. Late payment of the renewal fees is possible within a grace period of 6 months after the due date.

## ARIPO-registered design renewal fees

Before payment, it is advisable to confirm the amount of the fees on the ARIPO website as the official fees may change. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

ARIPO fees are payable per designated state. The following ARIPO renewal fees are currently applicable:





Annuity Year	ARIPO Fee
1	10
2	12
3	14
<b>4</b>	<b>16</b>
<b>5</b>	<b>18</b>
<b>6</b>	<b>20</b>
<b>7</b>	<b>24</b>
<b>8</b>	<b>28</b>
<b>9</b>	<b>32</b>
<b>Late renewal fees consist of 2 parts:</b>	
<b>i. Surcharge for late payment of annual maintenance fee</b>	15
<b>ii. Penalty fee for each month or fraction of a month for which the fees remain unpaid</b>	2

### Professional services renewal fees

These are usually payable as a flat-rate fee per annuity payment, regardless of the number of designated states. It is advisable to compare the fees of different IP agents.

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### 3.5. PLANT BREEDER'S RIGHTS

#### About Plant Breeder's Rights in Kenya

Kenya has a dedicated Act for the registration of Plant Breeders Rights (PBRs) namely the Seed and Plant Varieties Act, [Chapter 326] and implementing regulations the Seeds and Plant Varieties (Plant Breeder's Rights) Regulations, 1994.

The registration of PBRs falls under the powers of the Minister for Agriculture, Livestock, Development and Marketing. The Kenya Plant Health Inspectorate Service (KEPHIS) is the government parastatal whose responsible for Protecting the rights of the breeders/discoverers of new plant varieties through grant of rights to the owners of such varieties and registering them.

Although ARIPO has the Arusha Protocol on the protection on New Plant Varieties, it does not yet





have an operational PBR registration system. As a result, presently PBRs can be registered through the national route only in Kenya.

On the international plain Kenya is a signatory to the International Convention for the Protection of New Varieties of Plants (UPOV) whose objective of is to provide and promote an effective system of plant variety protection for plant breeders and to encourage the development of new varieties of plants for the benefit of society.

### 3.5.1 Who can register?

An application for registration of plant breeder's rights can be made by:

- Plant Breeders rights are granted exclusively to persons or institutions breeding, discovering and developing new varieties of plants.
- The breeders' rights (for protected varieties) are granted exclusively to persons or institutions who bred or discovered and developed the plant variety concerned or his successor in title

### 3.5.2 What are the registration requirements?

An application for the registration of Plant Breeders Rights must include:

- An application for registration must include the following documents:
- prescribed Forms, Application for Grant of Plant Breeders Rights Part 1 a Power of Attorney and Application for Grant of Plant Breeders Rights Part 2;
- a State of Protection Letter of Assignment if the applicant is not the breeder;
- Application for a Protective Direction part 1;
- Application for a Protective Direction part 2;
- a completed General technical questionnaire;

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- a certified copy of the priority document (if priority is claimed from an earlier application in a UPOV member country); and
- colour photographs showing essential characteristic of the variety.
- An application must also comply with the following legal requirements:
- Novelty (new varieties of all plant genera and species);
- DUS requirements (distinctiveness, uniformity, and stability); and
- If an acceptable denomination (variety name) is proposed and the required fee(s) have been paid

### 3.5.3 What qualifies for registration?







- Any plant that is a new variety of a prescribed kind qualifies for registration. Protection is given to new plants that have been specified by the government in the Index.
- A plant variety is regarded as new if the propagating material, whole plant or harvested material is or has not been sold or marketed, with the agreement of the owner, for longer than six (6) years (woody plants) and four (4) years (non-woody plants) outside Kenya and for more than one year inside Kenya.

### 3.5.4 What cannot be registered?

The following subject matter cannot be registered as PBRs:

- that which does not constitute a new plant variety in terms of the Act;
- that which is not distinctive, uniform, stable and novel.

### 3.5.5 Where can I file an application?

An application on the prescribed form must be submitted to the Kenya Plant Health Inspectorate (KEPHIS).

### 3.5.6 How much does it cost?

#### **(KEPHIS) fees**

Application and registration fees can be obtained from KEPHIS through this link: <https://www.kephis.org/>

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### 3.5.7 How long does registration take?

Unless substantive objections are raised in an application or there are unusual delays, a PBR application takes between 6-12 months to complete registration.

### 3.5.8 What is the duration of protection?

The term of a PBR registration in Kenya is twenty-five (25) years from the date of grant.

The prescribed protection period for fruit trees and their rootstocks, forest and ornamental trees and grape vines is not less than 18 years from grant.

For all other plant materials, the prescribed protection period is not less than 15 years from grant.

### 3.5.9 When are renewal fees paid?

There are no prescribed renewal fees that must be paid after the 10-year registration term.





### 3.6. COPYRIGHT AND NEIGHBOURING RIGHTS

About Copyrights and Neighbouring Rights in Kenya

Kenya has a dedicated Act for the protection of copyright, namely the Copyright Act (Chapter 130) The Act came into legal force on 1st February, 2003.

The Act is administered by the Kenya Copyright Board (KECOBO).

Kenya is also a signatory to the WIPO Copyright Treaty

#### 3.6.1 Can I register?

Copyright is not a registrable right in Kenya. It exists automatically when any original work is created in one of the categories that is protected by the Copyright And Neighbouring Rights Act. Kenya is a member ARIPO which is currently considering the possibility of creating a voluntary copyright registration system for its Member States. It remains to be seen if this system will become a reality.

An individual who is a citizen of, or is domiciled or resident in, Kenya can register for copyright protection.

A body corporate which is incorporated under or in accordance with the laws of Kenya can also register for copyright protection.

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#### 3.6.2 What qualifies for protection?

Any original work in the categories listed below qualifies for protection:

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) audio-visual works;
- (e) sound recordings;
- (f) broadcasts;

- Copyright shall be conferred on every work eligible for copyright of which the author, or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a citizen of, or is domiciled or ordinarily resident in, Kenya or is a body corporate which is incorporated under or in accordance with the laws of Kenya.
- Copyright protection is also extended to persons who are citizens of, or domiciled or resident in, a country which is a party of a treaty of which Kenya is also a party, and which provides for copyright protection





### 3.6.3 What cannot be protected?

- Any work whose subject matter that does not qualify for legal protection;
- A literary, musical or artistic work where sufficient effort has not been expended on making the work to give it an original character;
- A literary, musical or artistic work where the work has not been written down, recorded or otherwise reduced to material form, the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.
- Any work that is contrary to law, public order or morality.
- Symbols, titles, short phrases or factual information that may be contained in a copyright work are not protected.
- Any work whose author is not Kenyan by:

- 1) citizenship; or
- 2) domicile; or
- 3) by virtue of being incorporated in Kenya.

### 3.6.4 What are the requirements for legal protection?

- It must be an original work;
- An original work must be any one of the following subject matters for it to qualify for copyright protection:

(a) literary works;

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- (b) musical works;
- (c) artistic works;
- (d) audio-visual works;
- (e) sound recordings;
- (f) broadcasts;

The work should be in a tangible format;

- There should be submission of two copies of the original work with the prescribed application form;
- Prescribed application forms duly filled and commissioned with a Commissioner for Oaths;
- Applicant should submit the application form accompanied by the prescribed fee; and
- A certificate of registration after verifying the application issued by KECOBO.

### 3.6.5 What are examples of acts permitted in relation to copyright works?

Permitted acts which do not infringe copyright include:





• Fair dealing – copyright in a work is not infringed by any fair dealing for the purposes of scientific research or private study by the person using the work. Fair dealing does not apply if the person who reproduces the work knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time.

- Fair dealing for purposes of criticism, review, or reporting of current events subject to knowledge of the source;
- Educational use;
- the reproduction and distribution of copies, or the inclusion in a film or broadcast, of an artistic work situated in a place where it can be viewed by the public;
- the incidental inclusion of an artistic work in a film or broadcast;
- the inclusion in a collection of literary or musical works of not more than two short passages from the work in question if the collection is designed for use in a school registered under the Education Act or any university established by or under any written law and includes an acknowledgement of the title and authorship of the work;
- the broadcasting of a work if the broadcast is intended to be used for purposes of systematic instructional activities.
- The reproduction of a broadcast referred above and the use of that reproduction in a school registered under the Education Act or any university established by or under any written law for the systematic instructional activities of any such school or university;
- Use of anonymous or pseudonymous works, subject to conditions;
- Use of work for Parliamentary or judicial proceedings or inquiries

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- Public readings and recitations or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement of the author;
- the reproduction of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific institutions as may be prescribed, where the reproduction is in the public interest and no revenue is derived; and
- the reproduction of a work by or under the direction or control of a broadcasting authority where the reproduction or copies thereof are intended exclusively for broadcast by that broadcasting authority authorized by the copyright owner of the work.

### 3.6.6 What acts are not permitted in relation to copyright works?

Unpermitted/restricted acts include:

- reproducing the work without the owner's permission;
- publishing the work without the owner's permission;





- importing or causing to be imported the work into Kenya or exporting it from Kenya, otherwise than for private use and domestic use, an article which he knows to be an infringing copy;
- causing the work to be transmitted in a cable programme service, unless the service transmits a lawful broadcast, and is operated by the original broadcaster;
- making an adaptation of the work without the owner's permission;
- removing or altering any electronic rights management information; and
- broadcasts or makes available to the public, protected works, records or copies from which electronic rights management information has been removed or has been altered without the authority of the right holder.

### 3.6.7 What is the duration of protection?

The duration of copyright protection (is as follows:

- literary works: the lifetime of the author (or last surviving author in the case of co-authored works) plus 50 years;
- performers and recording rights: 50 years from the end of the calendar year in which the performance took place;
- an audio-visual work and a photograph: 50 years from the end of the year in which the work was either made, first made available to the public, or first published, whichever date is the latest;
- a sound recording: 50 years after the end of the year in which the recording was made;
- a broadcast: 50 years from the end of the year in which the broadcast first took place;

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- a programme-carrying signal: 50 years from the end of the year in which the signal was first emitted to a satellite;
- anonymous or pseudonymous literary, musical or artistic work –the copyright therein shall subsist until the expiration of 50 years from the end of the year in which it was first published.

### 3.6.8 Can I renew copyright after its term of protection expires?

Copyright cannot be renewed in Kenya once its term has expired. The work lapses into the public domain at the end of the term of protection.

#### **Links to legislation:**

ARIPO: <https://www.aripo.org/member-states-laws/>

#### **Links to institutions:**





AfCFTA: <https://au.int/en/cfta>

ARIPO – African Regional Intellectual Property Organization: <https://www.aripo.org/>

KIPI – Companies and Intellectual Property Authority: <https://www.KIPI.co.bw/>

KECOBO – Kenya Copyright Board: <https://copyright.go.ke/>

SADC – Southern African Development Community: <https://www.sadc.int/>



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