LEGAL CHALLENGES IN PROTECTING GEOGRAPHICAL INDICATIONS FOR ENHANCING AGRICULTURAL COMPETITIVENESS IN TANZANIA:

A CASE STUDY OF KYELA-RICE

By:

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A Dissertation Submitted in Partial Fulfillment of the Requirements for the Award of Master of Laws (LL.M Commercial Law) of Mzumbe University

2013
CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a Dissertation titled; **legal challenges in protecting Geographical Indications for enhancing agricultural competitiveness in Tanzania: Case of Kyela –Rice**, in partial fulfillment of the requirements for the award of Master of Laws (LL.M) of Mzumbe University.

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I, NDEMBEKA, EMANUEL GIDEON, declare that this Dissertation is my own original work and the same has not been presented and will not be presented to any other university for a similar or any other degree award.

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My thanks should pass to officers of BREA officers, FCC, Tanzania Intellectual Property Rights Network (TIP-Net) team, Mzumbe University main Library, UDSM main Library and Tanganyika Library for responding to my questions and allowing me to access materials therein. These entities enabled me to fetch relevant documents and other materials relating to my research.
DEDICATION

This work is dedicated to my mother Jesca Frank Ndembeka who passed away during my LL.M studies at Mzumbe University. Your support is highly appreciated in my learning.

May your Soul Rest in Eternal Peace, Amen.
<table>
<thead>
<tr>
<th>Abbreviation</th>
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<td>ARIPO</td>
<td>African Regional Intellectual Property Organization</td>
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<td>Art</td>
<td>Article</td>
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<td>BRELA</td>
<td>Business Registrations and Licensing Agency</td>
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<td>Cap</td>
<td>Chapter of the Laws</td>
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<td>EAC</td>
<td>East Africa Community</td>
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<td>FCC</td>
<td>Fair Competition Commission</td>
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<td>IP</td>
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<td>IPRs</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GIs</td>
<td>Geographical Indications</td>
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<td>TIP-Net</td>
<td>Tanzania Intellectual Property Rights Network</td>
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<td>TRIPs</td>
<td>Trade Related Aspects of Intellectual Property Rights</td>
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<td>WIPO</td>
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This research examines legal challenges in protecting Geographical Indications (GIs) for enhancing agricultural competitiveness where Kyela Rice has been chosen to be a case study due to its peculiar characteristics.

The remarkable challenges have been drawn from Tanzania legal system. The Tanzania legal system has failed to guarantee Geographical Indications (GIs) protection in its Constitution and has also failed to encompass specific piece of legislation which would protect GI.

In doing this research, the researcher has collected data by using both library research and field research. In library research, data were collected from legislations, documents, newspapers, articles, books and case law. In field research, the researcher employed interviews and questionnaires.

The findings reveal GIs protection in Kyela Rice encounters several legal challenges which hinder agricultural competitiveness. The legal challenges include failure of the Constitution of United Republic of Tanzania to provide adequate protection in GIs, lack of both specific piece of legislation of GIs protection in Tanzania, lack of harmonized piece of legislation to cover EAC member States and lastly lack of awareness among citizens on the essence of GIs protection to Kyela Rice.

This research report has been arranged in five chapters. The first describes the theoretical information on GIs in Tanzania, the second chapter describes Conceptual framework, chapter three describes the legal framework on the protection of GIs, chapter four describes research findings and data analysis, and the last chapter describes summary of findings, observations, conclusion and recommendations.
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CHAPTER ONE

THEORETICAL INFORMATION ON GEOGRAPHICAL INDICATION IN TANZANIA

1.1 Introduction

Over 80 percent of Tanzanians live in the rural areas where agriculture is their main source of livelihood.\(^1\) Agriculture accounts for 95 percent of the food, 25 percent of the Gross Domestic Product (GDP) and 30 percent of the foreign exchange earnings.\(^2\) Agriculture holds unique position with respect to the socio-economic welfare of Tanzanians.\(^3\)

Based on the important role of agriculture in the State, Tanzania has undergone various policies in order to accelerate agricultural competitiveness. The notably policy is *Kilimo Kwanza* “Agriculture First”

Tanzania agricultural policy is aimed at improving the living standards in rural areas through increasing income generation from agricultural and livestock production, processing and marketing.\(^4\)

Tanzania has Geographical Indications (GIs) based agricultural products which have high reputation and other peculiar features attributed to their respective geographic origins.

GIs can be defined as indications which identify goods as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.\(^5\)

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\(^1\) Determinants of Rural Income in Tanzania; Retrieved on 05\(^{th}\) October 2013 from http://www.repoa.or.tz/index.php/highlights/more/feature_determinants_of_rural_income_in_tanzania


\(^3\) Ibid


\(^5\) Section 3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights(TRIPs),1994
The researcher believes strong protection of GIs can play similar roles with those of agricultural since GIs is believed to enhance to improve the living standard of citizens using GIs.

GIs protection prevents the unauthorized parties from deceiving consumers by selling them fake products. Poor protection of GIs on product would result into the damage of reputation of the product, hence affecting producers’ income.

In this research, the researcher examines the legal challenges in protecting GIs for enhancing agricultural competitiveness in Tanzania.

The researcher has chosen Kyela rice to be a case study since it is potential GIs-based product where if properly protected, would integrate Kyela rice producers and other stakeholders into the world market.

Furthermore, the researcher has chosen only the aforementioned type of rice with peculiar quality, reputation and specific characteristic to be the scope of this study.

1.2 Background of the Problem

GIs in Tanzania can be traced back from the colonial period when colonial administration introduced Intellectual Property Law (IP) into our legal system. The evolution of IP law can be categorized into three phases namely during colonial period, post-independence period and TRIPs Agreement period.

The IP law in Tanzania was introduced during the colonialism. In 1922 IP legislations can be categorized into three phases namely during colonial period, post-independence period and TRIPs Agreement period.

The IP law in Tanzania was introduced during the colonialism. In 1922 IP legislations were introduced. These legislations were Patent Act, the Trademark Act and Copyrights Act.\(^6\)

\(^6\)Johansein Rutaihwa, Ministry of Industry, Trade and Marketing Country, MITM-Tanzania.p.3
Retrieved on 26\(^{th}\) May 2013 from

http://www.google.co.tz/url?sa=t&rct=j&q=in%201922%20the%20colonial%20administration%20introduced%20chapter%20217%20&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fworks.bepress.com%2Fjohansein_rutaihwa%2Farticle%2F1013%2Ftype%2Fnative%2Fviewcontent\&ei=ZnYEUzFLOPOZ0AWHiYCoCA&usg=AFQjCNEAI4F4Tsjy5dj3VhjDzT1Ajkv17Q&bvm=by.50500085.d.d2k
During this period, IP law was mainly designed to protect the rights and interests of colonial administration.  

During post-independence period, Tanganyika did not have any significant changes in the contents of IP legal system. The Constitution of United Republic of Tanzania before 1984 was silence on IP protection. The problem of effectiveness of IP law started to emerge from this point since the Constitution failed to cover protection and promotion of IPRs.

In 1963, the Merchandise Mark Act was enacted. The Act lacked direct connection with GIs protection because there was no any specific provision in it dealing with GIs.

In 1984 the Constitution of the United Republic of Tanzania was amended to include Bill of Rights. The right to own property was for the first time enshrined in it. The Bill of Rights was not strong enough to protect GIs since the right to own property was employed to protect all kind properties including GIs. This kind of protection was looked to be too remote to cover GIs protection.

In 1986 the Trademarks Ordinance of 1922 was repealed by Act No. 12 of 1986. The notable change in the new Act was the removal of the requirement that only trademarks registered in UK be registered in Tanganyika. The Trade and service Mark Act prohibited the registration of trademark which would likely to deceive or cause confusion as to the nature, geographical or other origin.

The problem in GIs protection continued to expand because the Act only allowed the registration of trade or service mark that is distinctive and also which would likely to

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7Ibid.
8(No. 20 of 1963)
9Art.24 of the Constitution of United Republic of Tanzania, 1984 provided and guaranteed the right to own property in accordance to law.
10Esteriano Mahingila, the Former chief Executive Officer of Business Registration and Licensing Agency (BRELA) presented during Workshop of the Intellectual Property Landscape in Tanzania: The Emerging Role of BRELA in Assisting Small Medium Enterprises Use IP at p.3 .Held at Dar Es Salaam on 10th-11th May 2005
11Section 14 of the trade and Service Marks Act No.12 of 1986
12Ibid. Section 19
deceive or cause confusion as to the nature, geographical or other origin.\textsuperscript{13} However the Act did not fulfill the whole concept of GIs.

In 1990 WIPO issued a memorandum asserting the need for a treaty on IPRs protection.\textsuperscript{14} The sensitivity of the matter was based on various factors including the fact that GIs were a relatively new area of IP for a great majority of States.\textsuperscript{15}

In 1994 TRIPs Agreement was made. The Agreement defined GIs as indications which identify goods based on quality, reputation or other characteristic of the goods that is essentially attributable to its geographical origin.\textsuperscript{16} The Agreement further set general standards of protection that must be provided to prevent the use of any means which deceives or misleads the public as to the geographical origin of the goods.\textsuperscript{17}

Although TRIPs Agreement contains high sensitive matter of GIs protection, it has not given the directives on how GIs should be protected. Members have been given freedom to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.\textsuperscript{18}

However, this freedom has caused variation in legal instruments and the level of protection considerably from one State and another. As a result, member States lack uniform or harmonized legislation on protection of GIs. For instance while India protects GIs through \textit{sui generis} system; Tanzania protects it through Trademark regime.

In 1997 Banjul protocol on Marks of 1993 came into force. The protocol established a centralized filing system where a single application in one language would now be filed

\begin{flushleft}
\textsuperscript{13} Ibid section 16 and 19
\textsuperscript{14}WIPO, \textit{The Need for a New Treaty and its Possible Contents}, WIPO doc., GEO/CE/1/2 (1990)
\textsuperscript{15}See, WIPO, \textit{Geographical Indications in the International Arena – The Current Situation}, Presentation by Thu-Lang Tran Wasecha, Counsellor, Intellectual Property Division, World Trade Organisation (WTO), WIPO/GEO/BEI/07/15
\textsuperscript{16}Art. 22.1 of TRIPs Agreement, 1994.
\textsuperscript{17}Ibid Art. 22.2(a)
\textsuperscript{18}Ibid Art. 1.1
\end{flushleft}
either in a national office of contracting state or directly to the African Regional Intellectual Property Organization (ARIPO) Office in Harare, Zimbabwe. The problem persisted widely since the Protocol failed to deal with GIs protection directly and also lacked directives on how GIs should be protected.

1.3 Statement of the Problem

In the light of the above background of the problem, the researcher envisages that the current Tanzania IP law encounters the following legal problems;

The Constitution of United Republic of Tanzania has not expressly obligated the State to support, promote and protect the IPRs of its citizens. The researcher thinks citizens are not strong enough to ensure effective promotion and protection of their IPRs. The right to own property which has been enshrined in the Constitution is still too remote to cover IP regime.

Lack of specific legislation on GIs protection is another enormous problem. The Trade and Service mark Act only prohibits the registration of a mark that would likely to deceive or cause confusion as to the nature, geographical or other origin and also allows registration of a trademark if it is only distinctive. Fair Competition Act as well prohibits trading, engaging in conduct that is misleading, deceiving or likely to mislead or deceive the public. However this might render its protection to be superficial for failure to define the concept of GIs and criteria for their protection.

Lack of harmonized piece of legislation in East Africa Community (EAC) Members can be another serious problem which hinders smooth GIs protection. While EAC is concerned with common market among Member States, still there is no harmonized piece of legislation on GIs protection which would control the movement of GIs goods from one State and another.

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19 Section 2 of the Banjul Protocol on Marks Adopted on November 19, 1993
20 The right to own property has been enshrined in Art. 24 of the Constitution of the United Republic of Tanzania [CAP 2], 1977 as Revised from time to time
21 Section 19 (a) of the Trade and Service mark Act [CAP 326] R.E 2002
22 Section 15(1) of the Fair Competition Act, 2003 (Act No. 8 of 2003)
The researcher has made a critical analysis on the aforesaid challenges in GIs legal framework of Tanzania which seems to be major factors that impede agricultural competitiveness on *Kyela rice*.

**1.4 Hypotheses**

From the above statement of the problem, the researcher has examined legal challenges in protecting GIs for enhancing agricultural competitiveness in Tanzania, afterward the following hypotheses have been analyzed:

(i) Whether GIs are not effectively protected under Tanzania legal regime.

(ii) Whether lack of GIs protection on *Kyela rice* has impaired agricultural competitiveness in Tanzania.

(iii) Whether citizens lack awareness on importance of GIs protection on *Kyela rice*.

**1.5 Objectives of the Research**

The general objective of this research is to examine legal challenges in protecting GIs for enhancing agricultural competitiveness in Tanzania. The researcher has examined how lack of proper GIs affects *Kyela rice* markets.

In order to assess the aforesaid legal challenges, the researcher has come up with the following specific objectives;

(i) To examine the effectiveness of GIs protection under Tanzania legal regime.

(ii) To examine how lack of GIs protection on *Kyela rice* impairs agricultural competitiveness in Tanzania.

(iii) To examine the awareness of citizens on the importance of GIs protection on *Kyela rice*.

**1.6 Significance of the Study**

This research will be extremely significant to Tanzanians particularly *Kyela rice* producers and consumers since it explains the laws relating to GIs and how agricultural competitiveness depends on GIs.
Furthermore, the research will add knowledge to scholars in understanding the relationship between GIs Protection and the enhancement of competitive agriculture. The knowledge acquired will help the State to reinforce reinforcing GIs protection to GIs-based products.

Furthermore the research will help both farmers and general public to realize GIs Protection is an important tool for enhancement of agricultural competitiveness.

Lastly the research is expected to provide important bases for future researchers in order to come up with better research than the research at hand.

1.7 Literature Review

Various authors have written about the roles of GIs on agricultural products. Most literatures have covered the general roles of GIs in the community. As far as the roles of GIs are concerned, once a product has been identified to possess characteristics and reputation due to its territory of the origin, producers can enhance the value of their products by having proper legal system governing GIs in the country concerned.

The researcher has discussed the literatures which covered both proper legal system governing GIs and the roles of GIs in the society. The researcher furthermore has discussed how the literatures relate with this research, gaps have been identified and how the same should be resolved.

Cerkia Bramley and Johann Kirsten (2007)\textsuperscript{24} have discussed the negative effects local producers would likely to suffer when GIs are protected under trademark regime. They have based on private nature of trademark that always the cost of protection is too high for poor producers to afford. Alternatively, a \textit{sui generis} system is suggested to be the best system especially if it imposes obligation to the State to institute legal action on behalf of producers.

The authors prefer the adoption of *sui generis* system since its protection is less expensive than trademark regime. Apart from economic point of view, the authors have not described the effectiveness of *sui generis* system.

In this research, the researcher will examine the effectiveness of *sui generis* system. Once *sui generis* system is realized to be better than trademark regime, the researcher will get recommend the State to adopt *sui generis* system for enhancing effective GIs protection.

**Ester O. Caceres (2007)** believe that the use of trademark regime to protect GIs is always ineffective. The author has challenged the effectiveness of trademark principle of “*first in time, first in right*” when applied to GIs protection. The author believes this principle is based on individual ownership while GIs is always communally owned. The author believes that the one who has legally registered trademark cannot prevent the rest of the community residing from that area from identifying their products with that GIs. The author thinks *sui generis* system would provide comprehensive GIs protection than trademark regime.

However, the author have only discussed the incompatibility of the said principle of “*first in time, first in right*” but has not suggested how the conflict of the said principle could be resolved. The researcher will suggest conflict resolution mechanisms for this principle in order to curb the current situation where trademark regime is currently used in protection of GIs.

This literature is very useful in this research since it will enable the researcher to examine the conflict resolution approaches between trademark regime and GIs. The principle of “*first in time, first in right*” will also be examined in order to come up with strong mechanism of GIs protection in Tanzania.

**Kasturi Das (2004)** believes the protection of GIs has its commercial significance. Without such protection, competitors not having legitimate right on a GIs might ride free

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on its reputation. Such unfair business practice might result into loss of revenue for the genuine right holders of the GIs. Moreover, the author believes such practice may eventually hamper the goodwill and reputation associated with the GIs. In order to rule out its misuse and tapping the potential economic and socio-economic benefits emanating from GIs, the author thinks effective national legal protection for GIs is associated with strong international protection since most importing States are less concerned with protection of GIs imported goods.

The author however has not address the mechanisms which should to be employed by member States in order to enhance effective international GIs protection.

This literature will enable the researcher to examine the pitfalls of both GIs laws on protection of GIs in Tanzania and the current international legal instruments for GIs protection.

The researcher will examine the proper legal mechanisms in order to have effective international GIs protection mechanisms among EAC member States.

**Michael Blackeney, Thierry Coulet, Getachew Mengistie and Marcelin Tonye Mahop (2012)** believe that when the name of a product receives protection as a GIs, a positive impact can be created on local communities, in a number of ways:

GI s can allow better redistribution of income throughout the production chain: from producers of the raw materials to the manufacturers. With GIs, all producers may be rewarded for their efforts of maintaining quality of the goods.

Some of the stakeholders can set the projects to the GIs region, develop policies, setting up some agro-tourism programs, encouraging the communication and the promotion of local products (national campaigns or traditional market during holiday times) or giving subsidies to producers, for instance, to build the associations, to finance the certification or the promotion of the product.

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The authors have not discussed the importance of these associations especially in creation of bargaining powers among producers for their products.

In doing this research, the researcher will examine how associations in Kyela district have combated price fluctuations during harvesting period since the experience shows that the rice during the said period is sold at very low price.

This literature has enabled the researcher widen the understanding of the roles of GIs which boost agricultural competitiveness.

Peter J. Kaufmann (1986) argues on competitive point of view based on originality. He notes that when the consumers are able to identify products based on originality, three things would happen; firstly the consumers will be in a better position to judge the different qualities of the products. Secondly, producers will be forced to retain consumers’ loyalty by maintaining the quality standards. Thirdly, competitors of the producers will be in a better position to try to undermine the market of the producers by drawing attention to their own substitute products.

The author has not addressed businessmen being hazardous group of persons that would undermine the market of the legitimate producers by drawing attention to their fake products. The author has only based on competitors of the producers.

This literature will enable the research to examine how competitors of the producers undermine the market of the producers by drawing attention to their own substitute products.

Peter Stoll, Jan Busche and Katrin Arend (1986) have the views that the major purposes of GIs are to add commercial value based on concepts of originality and quality. They believe the concept of originality would serve to differentiate products according to their geographical origin. They say the concept of quality ties in the good reputation or

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experience of products from a certain region, and on that basis performs an advertising function.

The authors have not discussed how lack of GIs protection would defeat market price. Therefore in this research, the researcher will discuss how quality and unique characteristics of *Kyela rice* would fetch premium price once the rice is effectively protected.

This reviewed work is similar to this research because both works address how quality and high reputed GIs-based product would fetch premium price in the market. This literature will enable the researcher to ascertain price differences between *Kyela rice* and other rice varieties.

**1.8 Research Design and Methodology**

This part was mainly based on framework of the study. It described the research design, both library research and field research, study area, sample population, sample size, sampling technique, methods of data collection, and methods of data presentation.

**1.8.1 Research Design**

In conducting this research, the researcher employed a case study research design because *Kyela rice* is GIs-based product with high reputation and other specific characteristics attributed to its place of origin.

However the rice needs adequate GIs protection in order to enhance agricultural competitiveness although the researcher believes the current Tanzania IP laws are inadequate to enhance it.

**1.8.2 Library Research and Field Research**

In conducting the research, the researcher employed both library and field research.

Library Research
The researcher employed library research in order to get theoretical overview of the legal challenges in protecting GIs for enhancing competitive agriculture.

In library research, the researcher reviewed various books, case laws, journals, different reports, electronics sources and paper works.

**Field Research**

The researcher employed field research in order to ascertain whether the practice correlates with the laws relating to GIs protection.

In doing field research, the researcher conducted interview and questionnaire methods to various categories of people.

**1.8.3 Area of the Study**

The area of study was Kyela district which is found in Mbeya region. In the Eastern part, the district borders with Makete and Ludewa districts. The district borders with Ileje district in the Western part, and Rungwe district in the Northern part. The district also borders with Lake Nyasa on the southern part.

Over 95% of the people are peasants and their main economic activities are agriculture, fishing and livestock keeping.\(^{30}\)

The researcher has chosen Kyela district to be an area of study since it is the place where the said rice is produced.

*Kyela rice* has been chosen a case study due to its both peculiar characteristics and reputation which force businessmen from various regions in the country to brand their rice “*Kyela rice*” in order to attract customers.

**1.8.4 Sample Population**

The researcher gathered data from different areas. The sample population consisted of lawyers and officers from Business Registrations and Licensing Agency (BRELA), Fair

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Competition Commission (FCC). The sample population also consisted of Kyela rice producers, rice businessmen and ordinary people.

The researcher sampled lawyers, officers from BRELA and FCC in order to know whether GIs is effectively protected under Tanzania legal regime and also if lack of GIs protection on Kyela rice has impaired agricultural competitiveness. The aforesaid lawyers and officers have been sampled in order to know the awareness of citizens on the essence of GIs protection.

Kyela rice producers, rice businessmen and ordinary people were sampled in order to know whether lack of GIs protection on Kyela rice has impaired agricultural competitiveness. This category of respondents was also designed to know whether they are awareness of the essence of GIs protection on Kyela rice.

1.8.5 Sample Size

The researcher managed to meet 100 respondents. They answered both questionnaires and interviews. The questionnaires were answered by 70 respondents and 30 respondents answered through interviews.

1.8.6 Sampling Technique

In conducting field research, the researcher employed purposive sampling technique. In doing this sampling technique, only relevant respondents were inquired according to their respective knowledge on subject matter. Lawyers were asked both types of questions namely legal questions and non-legal questions. Other respondents who were not lawyers were asked non-legal questions.

This technique was useful tool for obtaining accurate and reliable information in order to have best research.

1.8.7 Methods of Data Collection

In collection of data, the researcher employed both interview and questionnaire methods. In conducting interview, the researcher employed both structured interview and unstructured interview.
Structured interviews were employed to officers of BRELA and FCC. This method was aimed at saving time since most of officers were busy with their daily routines. The smallness of sample size was also another reason which made the researcher to employ structured interviews.

Unstructured interviews were employed to Kyela rice producers, businessmen and ordinary people. The rationale of using this method was due to illiteracy and little understanding of respondents on the concept of GIs.

The method gave the researcher the freedom to add more questions especially where it was either not understood or needed more clarification.

Questionnaire method was employed to different officers who were either not easily found or could not respond instantly due to shortage of time and lack of preparation on the study.

In conducting questionnaire method, the researcher has employed close ended questions and open ended questions.

Close ended questions were employed in order to get direct answers from the respondents while open ended questions were employed in order to explore more information from respondents on the topic.

1.8.8 Presentation and Interpretation of Data

The data collected in the field research has been presented using tables and figures. Data collected from Swahili speaking respondents were translated into English language.
1.9 Data Analysis Techniques

The researcher used qualitative and quantitative methods in analyzing data. Data collected were analyzed and interpreted in the context of the research problems advanced in the study for which the general interpretation was made.

Attempts were made to ensure vigorous and serious analysis of data. The study was conducted to confirm that the information and data attained were authentic and reliable. In order to obtain quality research only relevant data were included in analysis.

1.10 Delimitation of the Study

During data collection process, the researcher encountered some impediments. These impediments include failure to meet respondents in time. Furthermore, most officers were not easily accessible. This situation made the researcher to arrange appointment schedule. It was also difficult to meet Kyela rice producers for interview since most of them were full occupied with rice harvesting activity.
CHAPTER TWO

CONCEPTUAL FRAMEWORK

2.0 Introduction

This chapter intends to provide wide understanding concerning technical terms, principles, rules and ideas which create the basic structure of this research in hand. However, this part of the research will enable readers to understand well about different terms used in GIs protection.

2.1 Generic Term

Generic terms are common words or terms which identify products and services and are not specific to any particular source. It is not possible to register as a trademark a term that is generic for the goods/services identified in the application. If a trademark becomes generic, often as a result of improper use, rights in the mark may no longer be enforceable.\(^\text{31}\) Ironically, product popularity and the trademark owner are often the culprits. If a trademark is used properly, it is likely to remain the exclusive property of its owner; however, once improper advertising and labeling start to cause consumers to use the mark as the “name” of the product or service, regardless of the source, the trademark loses its distinctiveness.\(^\text{32}\)

2.2 Geographical Indications

These are the aspect of industrial property which refers to the geographical indication referring to a country or to a place as the country or place of origin of that product. Normally, such a name conveys an assurance of quality, reputation, and distinctiveness that is attributable to the place of its origin in that defined geographical locality, region or country.

Article 22.1 of the TRIPS Agreement has defined GIs as indications which identify a good as originating in the territory of a [WTO] member, or a region or locality in that

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\(^{31}\) Retrieved on 24/November/2013 from http://www.inta.org/TrademarkBasics/FactSheets/Pages/TrademarksvsGenericTermsFactSheet.aspx

\(^{32}\) Ibid
territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. This definition is mainly derived from the definition of “appellation of origin established by article 2 of the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the Lisbon Agreement) However, whereas article 22.1 of the TRIPS Agreement defines GIs as indications which identify a good …. Article 2 of the Lisbon defines appellations of origin as “the geographical name … which serves to designate a product …. GIs are thus not restricted to geographical names, but may also include other signs of geographical significance whether composed of words, phrases, symbols or emblematic images.

Additionally, it can readily be seen that Article 22.1 of the TRIPS Agreement applies to “goods”, whereas Article 2 of the Lisbon applies to “products”. Moreover, article 22.1 of the TRIPS Agreement applies to goods where a given quality, reputation or other characteristic is essentially attributable to its geographical origin whereas Article 2 of the Lisbon applies to products the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors. GIs are thus not restricted to products having a quality and characteristics due to natural and human factors associated with the geographical environment of their place of origin, but rather include goods having a given quality, reputation or other characteristic which is essentially attributable to its geographical origin.

2.3 Geographical Indications Protection

GIs are protected in accordance with national laws and under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks (marks issued by an organization that the product has been tested and certified according to industry standards) or special laws for the protection of geographical indications or appellations of origin. In general, unauthorized parties may not use GIs if such use is likely to mislead the public as to the true origin of the product.
GIs are understood by consumers to denote the origin and the quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators.\textsuperscript{33} False use of geographical indications by unauthorized parties is detrimental to consumers and legitimate producers. Consumers are deceived into believing that they are buying a genuine product with specific qualities and characteristics, when they are in fact getting an imitation. Legitimate producers are deprived of valuable business and the established reputation of their products is damaged.\textsuperscript{34}

\subsection*{2.4 First in Time, First in Right}

This principle used in trademark law where the first to register or use the particular name has the right ahead of others. This principle does not mean the first in time anywhere. It is subject to the overarching principle of territoriality, typical of industrial property and trademark law; meaning that “first in time has to have happened in the same State where the application for trademark is pending or a previously registered.\textsuperscript{35} Furthermore, this principle does not only apply to the first to register but it can apply to the first using of a particular name as in the case of common law trademark of case of passing off protection.

\subsection*{2.5 Intellectual Property Rights}

These are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.\textsuperscript{36} The owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Common types of intellectual property rights include copyright, trademarks, patents, industrial design rights, trade dress, and in some jurisdictions trade secrets.\textsuperscript{37}

\textsuperscript{33} Retrieved on 24/November/2013 from \url{http://www.wipo.int/geo_indications/en/about.html}
\textsuperscript{34} Ibid
\textsuperscript{36} Retrieved on 24/November/2013 from \url{http://www.wto.org/english/tratop_e/trips_e/intel1_e.htm}
\textsuperscript{37} Retrieved on 24/November/2013 from \url{http://en.wikipedia.org/wiki/Intellectual_property}
2.6 Trademark

Trademark is a symbol that identifies for consumers the goods and services manufactured or supplied by particular persons or firms. Trade-secret law protects commercially valuable information that companies attempt to conceal from their competitors.\(^{38}\) It is a recognizable sign, design or expression which identifies products or services of a particular source from those of others. The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher or on the product itself. For the sake of corporate identity trademarks are also being displayed on company buildings.\(^{39}\)

Trademarks are used to claim exclusive use of properties or services. The usage of trademarks by its owner can cause legal issues if this usage makes him guilty of false advertising or if the trademark is offensive.\(^{40}\)

Trademarks can be owned, but also licensed. The owner of a trademark may pursue legal action against trademark infringement. Most States like Tanzania, require formal registration of a trademark as a precondition for pursuing this type of action. United States, Canada and other countries also recognize common law trademark rights, which mean action can be taken to protect an unregistered trademark if it is in use. Still common law trademarks offer the holder in general less legal protection than registered trademarks.\(^{41}\)

2.7 A Collective Mark

Is a mark owned by an organization such as an association used by its members them to identify themselves with a level of quality or accuracy, geographical origin, or other characteristics set by the organization. A collective trademark, however, can be used by a variety of traders, rather than just one individual concern, provided that the trader belongs to the association.\(^{42}\)

\(^{38}\)Retrieved on 24/November/2013 from http://www.law.harvard.edu/faculty/tfisher/iptheory.html
\(^{40}\)Ibid
\(^{41}\)Ibid
2.8 Conclusion

Essentially, this chapter acts as the core part of this research which enabling the reader to have a positive understanding concerning technical and legal terms relating to GIs protection for understanding the meaning of GIs, GIs protection, principle of first in time, first in right, IPRs, trademark and collective mark.

However, these terms and concepts which have been well defined and explained will enable the reader to have sufficient knowledge and understanding about GIs protection to the next chapters of this research.
CHAPTER THREE

LEGAL FRAMEWORK ON PROTECTION OF GEOGRAPHICAL INDICATIONS

3.1 Introduction

GI's protection plays vital role in commercial relations. Without having proper legal protection, there would be a massive risk of GI's being used by third parties and companies. Hence they can damage the reputation and goodwill of GI's by misleading consumers.

Since GI's protection vary from one State and another, this chapter has examined legal frameworks protecting GI's internationally, regionally, sub regionally and nationally.

3.2 International Legal Framework

Tanzania officially joined the World Intellectual Property Organization (WIPO) in 1983. The most notably International treats administered by WIPO were the Paris Convention for the Protection of Industrial Property of 1883 and the Lisbon Agreement for the Protection of Appellations of Origin including their International Registration.

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

Tanzania is a member of the Paris Convention for the Protection of Industrial Property since 1963. The Convention was first signed in Paris in 1883 and it encompasses patents, trademarks and industrial design. The Convention is considered to be the first multilateral Agreement that sought to recognize the protection of GI's.

The Convention provides the definition of “indications of source” or “appellations of origin.” However Convention identifies GI's as a separate IPR but it does not clearly define the concept of GI's.

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The Convention provides for the certain remedies in respect unlawful use of indications of source on goods, meaning that no indication of source may be used if it refers to a geographical area from which the products in question do not originate.\(^\text{47}\)

The Convention has not expressly mentioned the appellations of origin. They are covered by the term “indications of source” since all appellations of origin are considered to be indications of the source of goods.\(^\text{48}\)

The Convention furthermore gives the basis for protection against misleading indications of source, including appellations of origin. It obliges members to provide protection against unfair competition and contains a non-exhaustive list of acts, which are to be prohibited.\(^\text{49}\)

The Paris Convention does not provide any special remedies against infringement of this provision.

**3.2.2 The 1891 Madrid Agreement for the Repression of False Indications of Source (1891)**

The Agreement was aimed at expanding larger number of countries by obtaining an international registration that has effect in each of the designated contracting parties.\(^\text{50}\)

The Agreement was the first multilateral Agreement to provide specific rules for the repression of false and deceptive indications of source.\(^\text{51}\)

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\(^{46}\) The definition of “indications of source” or “appellations of origin” is defined under Art. 1 of Paris Convention for the Protection of Industrial Property (1883)

\(^{47}\) Art. 10(1) of the Paris Convention, 1883

\(^{48}\) Ibid Art. 10

\(^{49}\) Ibid Art. 11bis


\(^{51}\) Jose Antonio Ocampo (2009), *Economic and Social Commission for Asia and Pacific. Asia-pacific Development Journal* (Vol. 16, p. 17). United Nation Publications. Retrieved on 17th April 2013 from http://books.google.co.tz/books?id=U3QFGr4qS1AC&pg=PA71&lpg=PA71&dq=The+Agreement+was+the+first+multilateral+Agreement+to+provide+specific+rules+for+the+repression+of+false+and+deceptive+indications+of+source.&source=bl&ots=NbgfjpG36a&sig=Vxs17eAKCI4uZEmt7F2kPlpKMH4PQ&hl=en&sa=X&ei=2ldtUqPEOYjSrQemkYDwCg&ved=0CDAQ6AEwAQ#v=onepage&q=The%20Agreement%20was%20the%20first%20multilateral%20Agreement%20to%20provide%20specific%20rules%20for%20the%20repression%20of%20false%20and%20deceptive%20indications%20of%20source.&f=false
The Agreement requires all goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin be seized on importation into any of the said countries.  

The Agreement did not add much to the protection already given by the Paris Convention although it extended protection to deceptive indications of source in addition to false indications.

3.2.3 The Lisbon Agreement for the Protection of Appellations of Origin (1958)

This Agreement was concluded on 31 October 1958 and then revised in Stockholm in 1967, and was amended in 1979. The Agreement has defined “appellation of origin” as geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

In order to protect GIs, the Agreement obliges member States to ensure protection against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as “kind,” “type,” “make,” “imitation,” or the like.

The Agreement further provides freedom to member to adopt their own system for designating appellations, either by judicial or administrative decision, or both. Once registered, a GIs is protected in other Member states.

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52 Art. 1(1) of the Madrid Agreement, 1891
54 Art. 2(1) of the Lisbon Agreement for the Protection of Appellations of Origin (1958)
55 Ibid Art. 3
56 Ibid Art. 8
3.2.4 TRIPs Agreement (1994)

This Agreement was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.\(^57\)

It is an International Agreement administered by the World Trade Organization (WTO) which sets down minimum standards for many forms of IP regulation as applied to nationals of other WTO Members.\(^58\)

The Agreement defines GIs as indications which identify goods as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin.\(^59\)

The Agreement requires member States to provide the legal means to prevent the designation or presentation of goods that indicates or suggests originality of goods based on geographical area other than the true place.\(^60\)

The Agreement prohibits the use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).\(^61\)

Finally, the Agreement requires member States to be, \textit{ex officio} if their legislations permit or at the request of an interested party, to refuse or invalidate the registration of a trademark which contains misleading GIs.\(^62\)

3.2.5 Regional Legal Framework

Protection of GIs under the ARIPO

This organization was created in December 1976 with the conclusion of Lusaka Agreement.\(^63\) The ARIPO was established for enabling African countries to promote the

\(^{57}\)WTO official website; Retrieved on 10\(^{th}\) October 2013 from http://www.wto.org/english/docs_e/legal_e/legal_e.htm
\(^{58}\)Art.3(1) of TRIPs Agreement, 1994
\(^{59}\)\textit{Ibid} Art. 22
\(^{60}\)Art. 22(2) \textit{Ibid}
\(^{61}\)\textit{Ibid}
\(^{62}\)\textit{Ibid}
\(^{63}\)International Trademark Association Website; Retrieved on 10\(^{th}\) October 2013 from http://www.inta.org/Advocacy/Pages/AdherencetotheARIPOBanjulProtocol.aspx
harmonization and development of industrial property laws appropriate to the needs of its
members, and to establish such common services.\textsuperscript{64}

The ARIPO administers Banjul protocol on Marks adopted in 1993 then came into force
in 1997.\textsuperscript{65} The protocol establishes a centralized filing system where a single application
in one language filed either in a national office of contracting state or directly with the
ARIPO Office in Harare, Zimbabwe.\textsuperscript{66}

The protocol has increased the jurisdiction of protection since one registration at ARIPO
office, its protection applies to all member States. It is only required once the application
has been filed at ARIPO office, then the application be checked for formalities by the
office, accorded a filing date and then sent to the designated states which have 12 months
to examine the application under their national laws.\textsuperscript{67}

Once there is no objection communicated to ARIPO office within that period, ARIPO
advertises its acceptance and registers the mark with effect in all designated states.\textsuperscript{68}

However, apart from increasing jurisdiction of GIs to member States, the Banjul Protocol
does not specifically provide for special GIs protection.

3.2.6 Sub-Regional Legal Framework

The EAC Customs Management Act, 2004

This Act was enacted as a result of EAC Treaty, signed on November 30\textsuperscript{th}, 1999 and
came into force on July 7\textsuperscript{th}, 2000 after ratification by Uganda, Kenya and Tanzania.\textsuperscript{69}

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\textsuperscript{64}International Trademark Association Adherence to the ARIPO Banjul Protocol, Retrieved on 12\textsuperscript{nd} February 2013 from http://www.inta.org/advocacy/Pages/AdherencetotheARIPOBanjulProtocol.aspx
\textsuperscript{65}\textit{Ibid}
\textsuperscript{66}Section 2 of the Banjul Protocol on Marks Adopted on November 19, 1993.
\textsuperscript{67}Section 6 of the Banjul Protocol on Marks, 1993
\textsuperscript{68}\textit{Ibid} Section 6bis
\textsuperscript{69}Retrieved on 10\textsuperscript{th} August 2013 from http://www.newvision.co.ug/news/646756-november-30-becomes-eac-public-holiday.html
\end{flushright}
The Treaty provided for the establishment of a customs union. Article 74 of the Treaty provides that:

... in order to promote the achievement of the objectives of the Community as set out in Article 5 of this Treaty, and in furtherance of Article 2 of this treaty, the Partner States shall develop and adopt an East African trade regime and cooperate in trade liberalization and development in accordance therewith.

However the Act is not directly concerned with GIs protection because the protection is not necessarily be GIs-based goods. It only puts to customs control all imported goods, or any goods subject to any restriction on exportation from the time the goods are brought to any port or place for exportation.70

The EAC Market Protocol, 2010

This protocol was signed in Arusha Tanzania on 20th November 2009 by the Presidents of the five EAC member States namely: Tanzania, Burundi, Kenya, Rwanda and Uganda.71

The protocol underlines the determination of the Member States to create a single market and investment area buttressed by the customs union already in place since 2005.72

The protocol empowers customs law of community to govern free movement of goods between Member States.73

The aforesaid customs law of the community puts to customs control imported goods, or any goods subject to any restriction on exportation from the time the goods are brought to any port or place for exportation.74

3.2.7 Tanzania Legal Framework

The Constitution of United Republic of Tanzania75

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70Section 16 of the East African Community Customs management Act 2004
72 Ibid
73 Art. 6 of East Africa Community Market Protocol, 2010
74 Ibid Article 16
The Constitution is the fundamental law in Tanzania which overriding all other legislations. In 1984 the Constitution of the United Republic of Tanzania enshrined the Bills of rights which formerly were not encompassed. The Constitution guarantees the right to own property and to protect it in accordance with the law.\textsuperscript{76}

\textbf{The Fair Competition Act}\textsuperscript{77}

The Act is aimed at protecting and promoting competition for providers of goods and services in the economy and for consumer protection. It prohibits trading, engaging in conduct that is misleading, deceiving or likely to mislead or deceive the public.\textsuperscript{78}

It further prohibits the supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services that make a false or misleading representation concerning the place of origin of goods.\textsuperscript{79}

\textbf{The Trade and Service Mark Act}\textsuperscript{80}

The Act provides for the registration of the distinctive mark.\textsuperscript{81} The Act prohibits the registration of mark which is likely to deceive or cause confusion as to the geographical origin of a product.\textsuperscript{82} The Act also prohibits registration of a trade or service mark that interferes with the bonafide use by any person of his own name or of the name of the geographical of his business.\textsuperscript{83}

\begin{flushright}
\textsuperscript{75} [CAP 2], 1977 as revised time to time. \\
\textsuperscript{76} Ibid Article 24 \\
\textsuperscript{77} Act No. 8 of 2003 \\
\textsuperscript{78} Section 15(1) of the Fair Competition Act, 2003 (Act No. 8 of 2003) \\
\textsuperscript{79} Ibid Section 16 \\
\textsuperscript{80} [CAP 326] R.E 2002 \\
\textsuperscript{81} Section 16(1) of the Trade and Service Mark Act [CAP 326] R.E 2002 \\
\textsuperscript{82} Section 19 Ibid \\
\textsuperscript{83} Section 34 Ibid
\end{flushright}
The Trade and Service Marks Regulations, 2000

This Regulation provides smooth administration of Marks by providing classification of goods and procedure on the receipt of application for registration of marks.\textsuperscript{84}

The Regulation gives power the Registrar to permit the registration of the mark the name or description of any goods or services if appears the mark varies in use provided that the applicant must state in his application that the name or description will be varied when the mark is used upon goods covered.\textsuperscript{85}

This regulation has also provided the freedom of registering descriptive marks since the main Act was not more exhaustive.

Therefore the name “Kyela” which describes the place can now be used to indicate GIs-based product subject to variation when mark is used.

The Merchandise Mark Act\textsuperscript{86}

The Act introduces offices of chief inspector and other inspectors with various powers to implement the law.\textsuperscript{87}

The responsible Minister has been given powers to make regulations for better of the merchandise Mark Act.\textsuperscript{88}

The Merchandise Mark Regulation (2008)

The Regulation empowers Customs Officials to seize any goods imported or exported which are reasonably suspected to violate the IPRs of any person that are recognized under the Act or any other written.\textsuperscript{89}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{84} Regulation 26 of the Trade and Service Marks Regulations,2000
\item \textsuperscript{85} Regulation 16 \textit{Ibid}
\item \textsuperscript{86} No. 19 (2007)
\item \textsuperscript{87} Section 4 of the Merchandise Act No. 19 of 2007
\item \textsuperscript{88} Section 49 (c)\textit{Ibid}
\item \textsuperscript{89} Merchandise Marks Regulation 52
\end{itemize}
\end{footnotesize}
**National Agricultural Policy (1997)**

The relevance of Tanzania agricultural policy is to improve standards of living in rural areas through increased income generation from agricultural and livestock production, processing and marketing.\(^{90}\)

The government has formulated various strategies including the Agricultural Sector Development Strategy (ASDS) which is the strategic blue print for the development of agriculture designed to achieve the National Strategy for Growth and Reduction of Poverty (NSGRP) targets.\(^{91}\)

**3.2.8 Conclusion**

The researcher in this chapter has analyzed the legal framework on protection of GIs. The researcher has started by analyzing the International legal framework, regional legal framework, sub-regional legal framework and lastly national legal framework. The chapter has discussed the legal framework on protection of GIs. The legal framework will be tested in order to examine legal challenges in protecting GIs for enhancing agricultural competitiveness in Tanzania.


\(^{91}\) *Creating an enabling Agriculture Policy Environment*, The Ministry of Agriculture Food security and Cooperatives Journal at p.3 Retrieved on 15\(^{th}\) August 2013 from [http://www.kilimo.go.tz/CAADP/Brief%20No%20%20%20%20%20%282%29.pdf](http://www.kilimo.go.tz/CAADP/Brief%20No%20%20%20%20%20%282%29.pdf)
CHAPTER FOUR

RESEARCH FINDINGS AND DATA ANALYSIS

4.1 Introduction
This chapter presents data collected from respondents identified in chapter one. The researcher wants to know whether GIs is effectively protected under Tanzania legal regime. Afterward the researcher will ascertain whether lack of effective GIs has impaired Kyela rice competitiveness. Lastly, the researcher will ascertain whether citizens are aware on the importance of GIs protection on Kyela rice.

Data were collected from BRELA, FCC, legal departments, Kyela rice businessmen, ordinary persons and Kyela rice producers from villages of Kilasilo, Katende, Ilope, Konjulas, Ibanda and Ushirika, all found Kyela district.

Data collected from the aforementioned respondents will be coded, analyzed and presented in tables and figures in order to testify the hypotheses guiding the research at hand.

4.2 Data Collected from BRELA and FCC
The researcher managed to interview five respondents from BRELA and FCC. The aforesaid interviewees were legal officers and other officers dealing with registration of marks.

Responding to the first hypothesis\(^92\), findings indicate that 100% of the respondents argued GIs are not effectively protected under Tanzania Legal regime.

One respondent from BRELA\(^93\) believes lack of specific legislation dealing with GIs protection is the main factor for ineffective GIs protection on Kyela rice. India was drawn as an example of a State which provides effective GIs protection by having a

\(^92\) Whether GIs are effectively protected under Tanzania Legal regime

\(^93\) Mrs. Leonila Kishebuka, the Deputy Registrar of BRELA
specific piece of legislation on GIs. The Act is believed to be comprehensive because among other things, it contains the meaning of GIs and other criteria for registration and protection of GIs.

The aforesaid respondent questioned the efficiency of the Tanzania Trade and Service Mark Act. Section 19(1) of the aforesaid Act is contended to be ineffective to cover the whole concept of GIs. GIs is regarded as a separate form of IP law, like trademark, patent, copyright. Hence, the respondent believes strong GIs protection must have respective piece of legislation with comprehensive issues such as the definition GIs, mechanism for registration of GIs, establishment of GIs registry, elaboration of the concept of authorized users and registered proprietor and remedies for infringement.

The principle of “first in time, first in right” applicable to trademark law was also argued to be incompatible to GIs law. The respondent argued that through the use of principle “first in time, first in right” applicable to trademark, it is impossible for Kyela rice producers to register their GIs especially when the name or mark is already legally owned by another private party.

The respondent supported the above argument by referring the decision in the case of Zaheb Sadrudin Jaffer T/A Ndanda Springs Natural Mineral Water v. The Registered Trustees of the Benedictine Abbey, Ndanda (unreported). The case was tried and decided by the respondent.

In this dispute the basis of claim was the desire of the plaintiff to have an exclusive right over the use of his registered trademark name “Ndanda” which is a geographical name in Mtwara region.

It was held that registration of GIs cannot prevent the rest of the community residents from using that GIs.

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84 Geographical Indications of Goods (Registration and Protection) Act, 1999 which came into force in 2003.
85 Section 2(e) of the Act
87 The provision prohibits registration of mark that deceives or cause confusions as to the nature, geographical or other origin of the goods concerned.
88 Ndanda Springs (Word and Device) in Class 32, Application No. QTM 001941
89 Mrs. Leonila Kishebuka, the Deputy Registrar of BRELA
Based on the above decision, the principle of “first in time, first in right” as provided by the Trade and Service Mark Act\textsuperscript{100} was not applicable because GIs looked to be superior to trademark.

Table below and figure represent the response of the first hypothesis.

**Table 4.1 Effectiveness of GIs Protection in Tanzania Legal Regime**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Respondents</th>
<th>Percentage (%)</th>
</tr>
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<tbody>
<tr>
<td>Not Effectively Protected</td>
<td>5</td>
<td>100</td>
</tr>
<tr>
<td>Effectively Protected</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>5</td>
<td>100</td>
</tr>
</tbody>
</table>

**Source:** Research findings, data collected through interviews

**Figure 4.1 Effectiveness of GIs Protection in Tanzania Legal Regime**

The response of the second hypothesis\textsuperscript{101} has been answered in affirmative. 100\% of respondents argued that lack of effective GIs protection in Kyela district has affected

\textsuperscript{100}Section 20(1) of the Trade and Service Mark Act [CAP 326] R.E 2002 prohibits registration of trade or service mark which belongs to a different proprietor and already on the register in respect of the same goods or services.
Kyela rice competitiveness. One respondent from BRELA\textsuperscript{102} argued that due to the current weakness GIs protection in Tanzania IP law, Kyela rice producers and consumers have automatically suffered economic loss because GIs protection has great commercial importance to both producers and consumers.

The respondents illustrated markets of Tandale and Kariakoo, Dar es Salaam being the prominent markets selling fake brands of rice using the name “Kyela rice”. These acts have deprived Kyela rice producers their valuable business and the goodwill established in their rice has been damaged.

Consumers have been buying fake Kyela rice due to lack of knowledge of distinguishing the genuine Kyela rice and the fake one.

The ongoing misuse of name “Kyela rice” is believed to have caused consumers losing trust to any rice with brand “Kyela rice”, including the genuine Kyela rice.

Due to ineffective GIs protection on Kyela rice, respondents argued that businessmen are benefiting more from using the name “Kyela rice” than Kyela rice producers.

Table 4.2 and Figure 4.2 below represent the response of the second hypothesis.

**Table 4.2. Effects of Non-Protection of GIs on Kyela Rice**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has impaired agricultural competitiveness</td>
<td>5</td>
<td>100</td>
</tr>
<tr>
<td>Not impaired agricultural competitiveness</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>5</td>
<td>100</td>
</tr>
</tbody>
</table>

**Source:** Research findings, data collected through interviews

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\textsuperscript{101} Whether lack of GIs protection on Kyela rice has impaired agricultural competitiveness.

\textsuperscript{102} SekaKasela, the Officer of BRELA
Responding to the third hypothesis\textsuperscript{103}, 100\% of respondents argued that most of Kyela rice producers lack awareness on the essence of GIs protection. The basis of their argument was based on the current situation in Kyela district where there is neither association nor group of rice producers who has registered collective mark for protecting their rice.

Lack of awareness on the importance of GIs protection is believed to have been caused by lack of specific legislation on GIs protection which would create awareness on the importance of GIs protection due to detailed GIs clarifications contained therein.

\textsuperscript{103}Whether citizens lack awareness on the importance of GIs protection on Kyela rice.
Illiteracy and poverty to most Kyela rice producers were other reasons for the said lack of awareness. It was argued in order to understand the concept of IP law; a person needs a lot of money for hiring experienced IP lawyers to teach them. The learning process is argued going together with buying legal books as well. These requirements are too expensive for Kyela rice producers to afford.

Table 4.3 below and figure 4.3 represent the response of the third hypothesis.

**Table 4.3 Awareness of Citizens on the Importance of GIs protection on Kyela Rice in Enhancing Agricultural Competitiveness**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens are not aware of GIs</td>
<td>5</td>
<td>100</td>
</tr>
<tr>
<td>Citizens are aware of GIs</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

**Source:** Research findings, data collected through interviews
Figure 4.3 Awareness of Citizens on the Importance of GIs protection on Kyela Rice in Enhancing Agricultural Competitiveness

Source: Research findings, data collected through interviews.

4.3 Data Collected from Lawyers/ Legal Departments

Responding to the first hypothesis\(^{104}\), both scheduled interviews and questionnaires were distributed to thirty five respondents. 60\% of the respondents disagreed by arguing that GIs are not effectively protected under Tanzania legal regime. The failure of the

\(^{104}\) Whether GIs are effectively protected under Tanzania legal regime.
Constitution of United Republic of Tanzania to address IPRs protection is regarded to be a core ground for ineffective GIs protection.

Taking into comparison to Constitution of Kenya, it has been argued that the Constitution of Kenya imposes obligation to the State to protect IPRs of its citizens.\(^{105}\) Further arguments maintained that Tanzania does not effectively protect GIs since the law imposes obligation to the owner of the mark to protect his mark. The State is left from protecting it.

Most of citizens are argued to be very poor economically to afford GIs protection costs. One respondent\(^{106}\) had the views that the State needs to do more in order to activate effective GIs. The State must establish a registry, define quality standards and take steps to protect the reputation inherent in the GIs from devaluation.

Moreover, the respondents illustrated two legislations dealing with GIs protection, namely the Tanzania Trade and Service Marks Act and Fair Competition Act, both prohibit trading, engaging in conduct that is misleading, deceiving or likely to mislead or deceive the public.\(^{107}\) They argued that protecting *Kyela rice* through Fair Competition Act would require producers to spend a considerable amount of money to seek protection and launch legal actions for their rice. On the other side, protecting *Kyela rice* through trademark involves proving the distinctiveness of the mark or that the same has not acquired generic name. These processes are argued to be too expensive for *Kyela rice* producers to afford since most of Kyela rice producers believed to have low income.

Lack of common GIs legislation in EAC was argued to be another great pitfall. One respondent\(^{108}\) argued that TRIPS Agreement requires WTO Member States to provide a minimum level of protection for GIs names, but the form and strength of IP protection granted to GIs varies greatly among countries. This freedom given to member States has

\(^{105}\) Art. 11(1)(C) of the Constitution of Kenya, R.E 2010

\(^{106}\) Richard Rwemungeza, an Advocate and managing partner of RK. Rwemungeza & Company Advocates.


\(^{108}\) Eliamani Laltaika of Tumaini University from Tanzania Intellectual Property Rights Network (TIP-Net) team.
contributed highly to ineffective GIs protection in EAC. The respondent pointed current common legislations namely EAC Custom’s management Act, 2004 and EAC Market protocol, 2010, all legislations do not give direct protect GIs protection since there protection also cover other goods.

Only 40% of respondents responded in the affirmative that GIs is effectively protected in Tanzania. Their arguments were based on the availability of two separate legislations namely the Trade and service Marks Act109 and Fair Competition Act110, both protecting GIs by prohibiting trading, engaging in conduct that is misleading, deceiving or likely to mislead or deceive the public.111

It was further argued that the establishment of BRELA whose main duty is to register marks has helped in providing effective GIs protection. The burden rests to the owner of GIs mark whether to protect it or not.

Responding to the claim that GIs protection in Tanzania is not effective due fact that trademark regime operates in rim of the principle of “first in time, first in right”, one respondent112 argued that based on section 34 of the Trade and Service mark Act113, the aforesaid principle is not applicable where a trademark acquired in good faith is similar to GIs.

The respondent has further discussed the TRIPS Agreement has attempted to resolve the conflict between trademarks and geographical indications by creating a coexistence mechanism whereby article 24(5) provides that where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either before the date of application of these provisions in that Member as defined in Part VI; or before the geographical indication is protected in its country of origin measures adopted to implement this Section shall not prejudice eligibility for or

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109[Cap. 326, R.E 2002]
110Act No. 8 of 2003
112Alexander Mzikila, An Advocate from Ame and Company Advocates
113Cap. 326Ibid.
the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

Table 4.4 below and Figure 4.4 represent the response of the first hypothesis.

**Table 3.4 Effectiveness of GIs Protection in Tanzania Legal Regime**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Effectively Protected</td>
<td>21</td>
<td>60</td>
</tr>
<tr>
<td>Effectively Protected</td>
<td>14</td>
<td>40</td>
</tr>
<tr>
<td>Total</td>
<td>35</td>
<td>100</td>
</tr>
</tbody>
</table>

**Source:** Research findings, data collected through interviews and questionnaires.

**Figure 4.4 Effectiveness of GIs Protection in Tanzania Legal Regime**

**Source:** Research findings, data collected through interviews and questionnaires.
The second hypothesis\(^{114}\) has been answered in affirmative. 85.5% of respondents believe that lack of effective GIs protection has affected *Kyela rice* competitiveness. It is argued that almost all the rice in different markets bear the name “*Kyela rice*” regardless of their origin. Consumers are no longer able to distinguish between genuine *Kyela rice* and the fake one.

It was further argued the goodwill of the rice has been damaged by third parties who use the name *Kyela rice* fraudulently. Currently only few consumers buy genuine *Kyela rice* but most consumers buy fake rice deceptively. Therefore the use of the name *Kyela rice* seems to benefit rice businessmen and not *Kyela rice* producers.

11.5% of respondents argued negatively by stating that lack of effective GIs effective protection on *Kyela rice* have helped in reduction of cost and time of *Kyela rice* producers. They believe the registration of GIs would take long time and consume a lot of money because of the workload in BRELA office. Other costs would be associated with the requirements of demonstrating that a name is distinctive.\(^{115}\)

Table 4.5 below and Figure 4.5 represent the response of the second hypothesis.

**Table 4.5 Effects of Non-protection of GIs on Kyela Rice**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has impaired agricultural competitiveness</td>
<td>31</td>
<td>88.5</td>
</tr>
<tr>
<td>Not impaired agricultural competitiveness</td>
<td>4</td>
<td>11.5</td>
</tr>
<tr>
<td>Total</td>
<td>35</td>
<td>100</td>
</tr>
</tbody>
</table>

**Source:** Research findings, data collected through interviews and questionnaires.

\(^{114}\)Whether lack of GIs protection on *Kyela rice* has impaired agricultural competitiveness.

\(^{115}\)Section19 (a) of the Trade and Service mark Act [CAP 326] R.E 2002 prohibits the registration of generic name and descriptive name.
Figure 4.5 Effects of Non-Protection of GIs on Kyela Rice

Source: Research findings, data collected through interviews and questionnaires.

Responding to the third hypothesis, 116% of respondents argued that most of Kyela rice producers lack awareness of the importance of GIs protection. Proof of their argument was based by current situation where there is no any association or group of rice producers which has registered collective mark for Kyela rice.

Lack of both specific legislation on GIs protection and national policy on IP protection is said to be another reason for citizens lacking awareness of the importance of GIs protection. Having specific legislation on GIs protection was alleged to create awareness on the essence of GIs protection due to detailed GIs information likely to contain therein.

Table 4.6 below and Figure 4.6 represent the response of the third hypothesis.

116Whether Citizens lack awareness on the importance of GIs protection on Kyela rice.
Table 4.6 Awareness of Citizens on the Importance of GIs Protection on Kyela Rice in Enhancing Agricultural Competitiveness

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens are not aware of GIs</td>
<td>29</td>
<td>83</td>
</tr>
<tr>
<td>Citizens are aware of GIs</td>
<td>6</td>
<td>17</td>
</tr>
<tr>
<td>Total</td>
<td>35</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Research findings, data collected through interviews and questionnaires.

Figure 4.6 Awareness of Citizens on the Importance of GIs Protection on Kyela Rice in Enhancing Agricultural Competitiveness

Source: Research findings, data collected through interviews and questionnaires.
4.4 Data Collected from Kyela Rice Producers, Rice Businessmen and Ordinary People

The researcher managed to interview sixty respondents. The response of the second hypothesis\textsuperscript{117} has been answered in affirmative way. 80\% of respondents agreed lack of effective GIs protection in Kyela district has impaired \textit{Kyela rice} competitiveness.

Businessmen are transporting rice produced in the regions of Rukwa and Iringa to the neighboring States of Malawi and Zambia. Furthermore, the rice produced in regions the Morogoro and Shinyanga are sold at Dar es Salaam, Tanga, Kilimanjaro and Arusha. It is argued that all rice are branded “\textit{Kyela rice}” in order to attract customers and fetch premium price.

20\% of the respondents answered negatively that \textit{Kyela rice} is becoming far more competitive inspite of poor GIs protection. They argued that once the name “\textit{Kyela rice}” is used, regardless where it has been produced, it advertises \textit{Kyela rice}. By so doing, “\textit{Kyela rice}” becomes more competitive into the world market.

It was argued that due to the goodwill built on the rice, businessmen have been buying rice before being harvested. This is done due to high demand the rice possesses. The high demand has led Kyela rice to fetch premium price in the market where 1 kilogram of the rice was said to be sold at Tsh.1, 100/= during the harvesting period. Other rice produced outside Kyela district was sold below Tsh.800/=.

Figure 4.7 below and Figure 4.7 represent the response of the second hypothesis.

\textbf{Table 4.7 Effects of Non-Protection of GIs on Kyela Rice}

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>48</td>
<td>80</td>
</tr>
<tr>
<td>No</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>100</td>
</tr>
</tbody>
</table>

\textbf{Source:} Research findings, field data collected through interviews

\textsuperscript{117} Whether there are effects for non-protection of GIs on \textit{Kyela rice} competitiveness.
Responding to the third hypothesis, 90% of the respondents were not aware on the importance of GIs protection on their rice. GIs protection looked to be new concept to them although they agree being aware on the deception of the name “Kyela rice” by third parties.

Lack of getting exposure outside Kyela district was said to be the main reason for lacking awareness. Most of producers have stayed in their respective villages for decades without travelling out of the district. This has limited their chance of learning the trend of new world market.

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Figure 4.7 Effects of Non-Protection of GIs on Kyela Rice

Source: Research findings, field data collected through interviews

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\(^{118}\) Whether citizens lack awareness on the importance of GIs protection on Kyela rice.
Illiteracy was seemed to be another reason for lacking awareness. Most producers are too illiterate to understand the importance of GIs protection for their rice. 10% of the respondents who were all businessmen were aware on the importance of GIs protection on *Kyela rice*. They became aware on importance of it during cause of their business.

Table 4.8 below and Figure 4.8 represent the response of the third hypothesis.

**Table 4.8 Awareness of Citizens on the Importance of GIs protection on Kyela Rice in Enhancing Agricultural Competitiveness**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number of Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizens are not aware of GIs</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Citizens are aware on GIs</td>
<td>54</td>
<td>90</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>100</td>
</tr>
</tbody>
</table>

**Source:** Research findings, field data collected through interviews

**Figure 4.8 Awareness of Citizens on the Importance of GIs Protection on Kyela Rice in Enhancing Agricultural Competitiveness**

**Source:** Research findings, field data collected through interviews
4.5 Conclusion

The researcher has presented data collected from respondents identified in the chapter One. The researcher has examined the legal challenges in protecting GIs for enhancing agricultural competitiveness in Tanzania.

Questionnaire and scheduled interview methods were used in collecting the aforesaid data. The collected data have been analyzed, coded and presented in tables and graphs and the same have been clarified in a simplest manner for reader to understand. The aim of using questionnaires and interviews was also intended to attain the objectives of the researcher.

Researcher has managed to present data on the legal challenges facing protection of GIs in enhancing agricultural competitiveness in Tanzania. Both Tables and figures have been used to provide clear answers of both hypotheses and objectives of this study.
CHAPTER FIVE

SUMMARY OF FINDINGS, OBSERVATIONS, CONCLUSION AND RECOMMENDATIONS

5.1 Summary of Findings

In this research, the researcher examined legal challenges in protecting GIs for enhancing agricultural competitiveness where the case study was *Kyela rice*.

The researcher has employed *Kyela rice* as the case study since the rice has peculiar features with quality, reputation and specific characteristic that are believed to be essentially attributed by such geographical origin.

However, such rice needs proper GIs protection in order to enhance competitive agriculture. Selling the rice produced outside Kyela district using the name “*Kyela rice*” creates various legal problems.

In doing this research, the researcher was guided by three hypotheses which are; *whether GIs are not effectively protected under Tanzania legal regime, whether lack of GIs protection on Kyela rice has impaired agricultural competitiveness and whether citizens lack awareness on the importance of GIs protection on Kyela rice.*

The first hypothesis intended to examine critically the effectiveness of GIs protection in Tanzania legal regime.

There were 5 respondents from both BRELA and FCC, and 35 respondents were lawyers from legal departments.

100% of the respondents from BRELA and FCC, 60%, and from Lawyers/legal departments have argued that GIs are not effectively protected under Tanzania legal regime.

Furthermore, the researcher sought to find the reasons for ineffective GIs protection in Tanzania. The respondents argued that ineffective GIs protection has been caused by failure of Constitution of United Republic of Tanzania to cover IPRs protection, lack of
specific legislation for the GIs protection in Tanzania and failure of EAC member States to have harmonized legislation for the GIs protection.

The researcher in the second hypothesis wanted to examine whether lack of GIs protection on Kyela rice has impaired agricultural competitiveness, and the same has also been answered affirmatively.

There were 5 respondents from both BRELA and FCC and 35 respondents were lawyers from legal departments.

100% of the respondents from BRELA and FCC, and 85.5% from legal departments had the views that lack of effective GIs protection on Kyela rice has impaired agricultural competitiveness in Tanzania.

They argued that lack of effective GIs protection has impaired agricultural competitiveness because Kyela rice producers have been banned from being rewarded for the goodwill of their rice. However they have pointed rice businessmen as the group of persons who extremely benefit from using the name Kyela rice.

The third hypothesis which asked whether citizens lack awareness of the importance of GIs protection on Kyela rice has been answered in affirmative.

There were 5 respondents from both BRELA and FCC, and 35 respondents were lawyers from legal departments and 60 respondents were Kyela rice producers, rice businessmen and ordinary people.

100% of the respondents from BRELA, FCC, Lawyers/legal departments and 90% Kyela rice producers, rice businessmen and ordinary people have agreed that citizens lack awareness of the importance of GIs protection on Kyela rice.

Lacks of National policy on IP protection, lack of specific legislation on GIs protection were the main reasons for lack of awareness on the importance of GIs on Kyela rice.
5.2 Observations

Based on data collected from respondents, the researcher after examining the hypotheses governing the research at hand, there are observations by the researcher which are explained hereunder;

Firstly, Constitution is an important tool for guaranteeing IPRs. All over the world the protection of Constitution is higher than other laws subordinate thereto. The Constitution of Kenya has imposed obligation to the State to protect IPRs of its citizens. However, it is difficult Tanzania to protect IPRs since the duty of protection is vested to the owner of the mark to protect his mark and not the State.

Most of citizens are very poor economically to afford GIs protection costs. The State has failed to establish a registry, define quality standards and take steps to protect the reputation inherent in the GIs from devaluation.

Secondly, Tanzania lacks specific legislation dealing with GIs as a result has caused GIs to be ineffective GIs protection. Protection of GIs through trademark regime is accompanied with cost for legal protection of GIs through trademark systems than via a sui generis regime.

The research has observed the enactment of specific legislation would be a better tool for protecting GIs since the said specific legislation can establish a registry, define the territorial limits within which an office of the GIs registry may exercise its functions.

Furthermore, the specific legislation can prohibit the registration of GIs which are determined to be generic names or indications of goods which ceased to be protected in their country of origin, or which have fallen into disuse in that country also procedure for and duration of registration.

Thirdly, lack of harmonized legislation among EAC member States which would provide the concept of GIs and other detailed information is a great pitfall. It is difficult for EAC Member State to have uniform standard of GIs protection because each Member State is free to choose IP legal system for GIs protection. Currently there is no restriction on
movement of goods, the only restriction which these States have is not for GIs protection but only putting to customs duty control of any imported goods, or any goods subject to any restriction on exportation from the time the goods are brought to any port or place for exportation. The East Africa Community Market Protocol, 2010 also empowers customs law of community to govern free movement of goods between Member States. It has not direct protected GIs goods.

Fourthly, the researcher has observed lack of awareness among citizens especially Kyela rice producers on the importance of protecting GIs. In order to understand the aforesaid importance of GIs protection the State and other organizations have better chances of creating awareness to the citizens on the importance of GIs protection. The researcher believes awareness of citizens will transform Kyela rice producers from being local producers to international exporters of their differentiated rice which could easily be identifiable in the world market, hence ensure better market.

The awareness will also assist in raising the economy of Kyela rice producers because GIs protection among other things, it ensures quality, authenticity, reputation, and goodwill of a product, hence agriculture would be their important tool for sustainable.

Fifthly, there are numerous markets in Tanzania selling rice from different regions using the name “Kyela rice” whose prominent markets are Tandale and Kariakoo, Dar es Salaam being the prominent markets selling fake brands of rice using the name “Kyela rice”. These acts have deprived Kyela rice producers their valuable business and the goodwill established in their rice has been damaged.

Consumers have been buying fake Kyela rice due to lack of knowledge of distinguishing the genuine Kyela rice and the fake one. The ongoing misuse of name “Kyela rice” is believed to have caused consumers losing trust to any rice with brand “Kyela rice”, including the genuine Kyela rice.

Due to ineffective GIs protection on Kyela rice, it has been observed that those businessmen are benefiting more from using the name “Kyela rice” than Kyela rice producers. This deception has damaged the goodwill of Kyela rice. Hence Kyela rice
producers have suffered economically since their established reputation of their *Kyela rice* has been affected.

### 5.3 Conclusion

As it was stated at the beginning of this work that over 80 percent of Tanzanians live in the rural areas where agriculture is their main source of livelihood and the same accounts for 95 percent of the food, 25 percent of the Gross Domestic Product (GDP) and 30 percent of the foreign exchange earnings.

The researcher believed strong protection of GIs can improve the living standard of citizens. GIs protection prevents the unauthorized parties from deceiving consumers by selling them fake products. Poor protection of GIs on product would result into the damage of reputation of the product, hence affecting producers’ income.

The researcher aimed at examining the legal challenges in protecting GIs for enhancing agricultural competitiveness in Tanzania. In exploring the aforesaid legal challenges, the researcher has been guided by the hypotheses namely whether GIs are not effectively protected under Tanzania legal regime, whether lack of GIs protection on *Kyela rice* has impaired agricultural competitiveness in Tanzania and lastly whether citizens lack awareness on importance of GIs protection on *Kyela rice*.

*Kyela rice* was chosen to be a case study since the rice is GIs-based product with high reputation and other specific characteristics attributed to its place of origin meanwhile it is believed businessmen from various places get advantage by using the name “*Kyela rice*” unfairly by misleading consumers.

The researcher has traced the background to the problems which has led to ineffective GIs protection on *Kyela rice*.

The researcher was found it necessary to research on the legal challenges facing GIs protection on *Kyela rice* due to the existing legal problems whereas the Constitution of United Republic of Tanzania seemed to be not strong enough to ensure effective protection of GIs. The State does not guarantee the right to either individually or in association with others, to acquire and own property to support, promote and protect the
IPRs of the its citizens. The Constitution has neither vested the obligation to the State to protect and enhance IP in biodiversity and the genetic resources of the communities.

The researcher believes the State would provide a wide range of protection because most of citizens are very poor to protect GIs throughout the State and outside it.

Lack of specific piece of legislation on GIs in Tanzania appeared to be the probable legal problem which hinders GIs protection on the rice. Tanzania has not enacted specific *sui generis* legislation to protect GIs, the existing laws governing GIs is trademarks and Fair Competition Act.

The finding reveal the existence cost in obtain legal protection of GIs through trademark systems than via a *sui generis* regime. It is very expensive for GIs producers to demonstrate that a name is neither generic nor descriptive.

Furthermore, currently there is no restriction on movement of goods on EAC member States. The only restriction which these States have is not for GIs protection but only putting to customs duty control of any imported goods, or any goods subject to any restriction on exportation from the time the goods are brought to any port or place for exportation.

Lack of harmonized piece of legislation on GIs governing EAC member States also appeared to be the serious legal problem which hinders GIs protection on the rice. The problem seemed to have been caused by the failure of TRIPS Agreement to specify any formalities as a condition for GI protection. States approach this issue differently since there is no formal procedure is required to acquire the right to use a GIs, and the right to prevent false or misleading uses of that GIs can be exercised by any interested party.

In order to attest these legal problems, the researcher has examined the existing legal instruments used in protection of GIs. The aforesaid legal instruments comprised of International instruments, Regional instruments, Sub-regional instruments and National instruments.

Based on the existence of aforementioned legal instruments and alleged unfair use of the name “Kyela rice” the researcher wanted to know whether GIs are not effectively
protected under Tanzania legal regime and then whether lack of protection on *Kyela rice* has impaired agricultural competitiveness. Furthermore the researcher wanted to be acquainted with whether citizens lack awareness on the importance of GIs protection on *Kyela rice*.

The findings of the research reveal GIs are not effectively protected under Tanzania legal regime as a result lack of effectiveness on GIs protection has impaired *Kyela rice* competitiveness. The findings further reveal citizens have lacked awareness on the importance of GIs protection on *Kyela rice*.

The researcher concur with the views of the findings that GIs are not effectively protected under Tanzania legal regime as a result the aforesaid lack of effectiveness on GIs protection has impaired *Kyela rice* competitiveness. The researcher agrees citizens to have lacked awareness on the importance of GIs protection on *Kyela rice*.

The pitfalls in the Constitution of United Republic of Tanzania, The Tanzania Trade and Service Mark Act, Fair Competition Act and lack of harmonized legislation governing GIs protection among EAC member States are the serious legal challenges facing GIs protection in enhancing agricultural competitiveness especially *Kyela rice*.

### 5.4 Recommendations

This study has shown that the GIs protection in Tanzania is faced with severe challenges namely GIs are not effectively protected under Tanzania legal regime, Failure of competitive agriculture I due to ineffective GIs protection and lastly Citizens lack awareness on the importance of GIs protection.

Therefore, basing on the light of the findings, literature and comments hereunder are the recommendations of this research.

**Enactment of Specific Legislation on GIs Protection**

Most States have adopted various legal principles and statutes to ensure the domestic protection of GIs. Some States have enacted specific *sui generis* legislation to protect
GIs, some States like Tanzania afford protection under existing laws governing trademarks and others use a combination of both.

The finding reveal the existence cost in obtain legal protection of GIs through trademark systems than via a *sui generis* regime. It is very expensive for GIs producers to demonstrate that a name is neither generic nor descriptive.

The research recommends the enactment of specific legislation will be a better tool for protecting GIs because the said specific legislation unlike the current trademark regime, can establish a registry, define the territorial limits within which an office of the GIs registry may exercise its functions.

Furthermore, the specific should not only address protection of GIs against the use of which would be likely to deceive or cause confusion; or the use of which would be contrary to any law for the time being in force but the Act should prohibit the registration of GIs which are determined to be generic names or indications of goods have ceased to be protected in their country of origin, or which have fallen into disuse in that country also procedure for and duration of registration.

**Constitutional Amendment to Include IPRs Protection Provisions**

The Constitutional of United Republic of Tanzania should contain provisions on protection of IPRs. The State should guarantee promotion and protection of IPRs of its citizens. The State should adopt the mechanisms of IPRs protection of Kenya Constitution\(^\text{119}\) where Article 40 (1) (5) vested obligation to the State to guarantee the right to either individually or in association with others, to acquire and own property to support, promote and protect the IPRs of the its people. Additionally, article 69 (1) (c ) vested the obligation to the State to protect and enhance IP in biodiversity and the genetic resources of the communities;

The researcher believes the State would provide a wide range of protection because most of citizens are very poor to protect GIs throughout the State and outside it.

\(^{119}\) R.E of 2010
The Need to Harmonize Conflict of Laws Between Trademark and GIs

In States where protection is granted to GIs under a law separate from the law governing registered trademarks, the question that often arises is whether identical or similar GIs and trademarks can be registered. Under certain laws, a GI can coexist with a registered trademark containing the GI that is being used or registered as long as the use is not false or misleading as to the true place of origin.

In practice, GIs and trademarks coexist in the market place. Many products are double-branded by GIs and trademarks, where several producers market one kind of product under specific standards and use their own distinct trademarks along with the GI or certification mark applicable to that product.

The researcher recommends the judicial bodies and responsible tribunals for GIs adjudication to ensure the superior of GIs to trademark. This approach will resolve disputes which could arise based on “priority date”. When the superiority approach is maintained, it will automatically resolve the dispute of a trademark principle of “first in time, first in right” which has been argued by respondents that is incompatible to GIs law. This approach must comply with section 34 of the Trade and Service Mark of Tanzania which does not allow the application of this trademark principle of “first in time, first in right” where a trademark acquired in good faith is similar to GIs.

TRIPS Agreement has resolved the conflict between trademarks and GIs by creating a coexistence mechanism whereby article 24(5) provides that where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either before the date of application of these provisions or before the GIs are protected in its country of origin.

The need to Harmonize GIs Protection within EAC Member States

The TRIPS Agreement does not specify any formalities as a condition for GI protection. States approach this issue differently because some jurisdictions, no formal procedure is required to acquire the right to use a GIs, and the right to prevent false or misleading uses
of that GIs can be exercised by any interested party. In other jurisdictions, a GIs must be registered in order to be protected.

The researcher recommends the EAC member States to enact harmonized legislation which will protect GIs and control the movement of GIs based on products from one States and another. Currently there is no restriction on movement of goods, the only restriction which these States have is not for GIs protection but only putting to customs duty control of any imported goods, or any goods subject to any restriction on exportation from the time the goods are brought to any port or place for exportation.

Creation of Adequate Awareness on Importance of GIs Protection

Since GIs play vital role of identifying a particular type of product, owners of GIs do benefits over the monopoly rights granted to them. For example, they must be registered in order to qualify for protection, and they must meet certain conditions in order to qualify for registration.

The researcher believes local people cannot understand the aforesaid importance of GIs protection if there is no awareness among them.

Since findings reveal lack of awareness on the importance of GIs among citizens including Kyela rice producers, the researcher recommends the State and other organizations to create awareness to the citizens on the essence of GIs protection.

The researcher believes awareness of citizens will transform Kyela rice producers from being local producers to international exporters of their differentiated rice which could easily be identifiable in the world market, hence ensure better market.

The awareness will also assist in raising the economy of Kyela rice producers because GIs protection among other things, it ensures quality, authenticity, reputation, and goodwill of a product, hence agriculture would be their important tool for sustainable.
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APPENDIX


The aim of this research questionnaire is to collect information concerning the Legal Challenges in Protecting of Geographical Indications for enhancing Agricultural Competitiveness in Tanzania.

Please indicate which of the following most accurately describes your organization or the part of your organization that you represent.

BRELA and FCC officials (……………)

Lawyer/ Legal advisor (……………)

Kyela rice Producers (……………)

Rice businessmen (……………)

Ordinary People (……………)

1. Name………………………………………………………………………………
2. What is the name of your organization? ………………………
3. For how long have been in this position? ………………………

Please answer all questions in part I as appropriate, except for Part II which is specifically prepared for Judges/magistrates/Lawyers/ Legal advisors

DEFINITION OF GEOGRAPHICAL INDICATION

“Geographical Indication is an Indication that serves to identify products as originating from a territory, a region, or locality within that territory, in those cases where the quality, reputation or other specific characteristic of a product may be essentially attributed to such geographical origin of a product”.

Example of these product can be Kyela rice, coffe from Kilimanjaro etc.
PART I. The Role of Geographical Indications to the Society

This Part should be answered by *Kyela rice* Producers, Rice businessmen, and Ordinary people

1. Are you aware that GIs protection on *Kyela rice* can enhance competitive agriculture?
   (i) YES [  ]
   (ii) NO [  ]

2. Have any association or group been formed for registering Geographical Indications for *Kyela rice*?
   (i) YES [  ]
   (ii) NO [  ]

If YES, mention them

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...............................................................
...............................................................

If NO, give the reason of failure to form association.

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...............................................................
...............................................................

3. Economic impact of Geographical Indications
   
a) Do *Kyela rice* producers benefit from this premium price?
      (i) YES [  ]
      (ii) NO [  ]

If NO, give the reason

...............................................................
..............................................................
b) Are you financially better because of Geographical Indications?

   (i) YES [   ]
   (ii) NO [   ]

4. Have any new businesses been introduced to area related to Geographical Indications status, such as farmers markets, local gastronomy, and tourism ventures?

   (i) YES [   ]
   (ii) NO [   ]

   If YES, mention them

   ………………………………………………………………………………………………
   ………………………………………………………………………………………………
   ………………………………………………………………………………………………

In general do you think that Geographical Indications promote competitive agriculture?

   (i) YES [   ]
   (ii) NO [   ]

If yes, explain how?

   ………………………………………………………………………………………………
   ………………………………………………………………………………………………
   ………………………………………………………………………………………………

Can you think of any additional positive effects of GIs on Kyela rice that this questionnaire has not addressed?

   ………………………………………………………………………………………………
   ………………………………………………………………………………………………
   ………………………………………………………………………………………………
   ………………………………………………………………………………………………
As far as competitive agriculture is concerned what are challenges facing protection of Geographical Indications of *Kyela rice*?

PART II: The Legal Issues on Protection of Geographical Indications

5. Do Geographical Indications get effective protection under Tanzania Legal regime?
   - YES [ ]
   - NO [ ]
   Give reasons

6. Do you think the Constitution of United Republic of Tanzania, the Trademark Act, Fair Competition Act and EAC legislations have provided effective GIs protection?
   - YES [ ]
   - NO [ ]
   Give reasons
7. What are the effects of ineffective of GIs protection on *Kyela rice* in enhancing agricultural competitiveness

8. As far as Geographical Indication protection is concerned, what are legal challenges implications you think are the main obstacles of GIs protection especially *Kyela rice*?

9. Have you received any complaints/cases on the infringement of GIs especially on *Kyela rice*?
   - YES [ ]
   - NO [ ]

10. Do you think *sui generis* system is proper tool in protection of GIs in Tanzania?
    - YES [ ]
    - NO [ ]
    Give the reason(s)

11. Which method do you think is appropriate in resolving dispute resulted by the principle of “*first in time, first in right*” as applied in trademark regime?

Thank You for Spending your valuable time