

**PROTECTION OF ECONOMIC RIGHTS OF AUTHORS OF
TRADITIONAL SONGS IN TANZANIA: ASSESSMENT OF THE
LAW AND PRACTICE**

**PROTECTION OF ECONOMIC RIGHTS OF AUTHORS OF
TRADITIONAL SONGS IN TANZANIA: ASSESSMENT OF THE
LAW AND PRACTICE**

**By
Sivonike, B**

**A Dissertation Submitted in Partial Fulfillment of the Requirements for the
Degree of Master of Laws in Commercial (LL.M-CL) of Mzumbe University**

2015

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled: *Protection of economic rights of authors of traditional songs in Tanzania: Assessment of law and practice*, in partial fulfillment of the requirements for the award of the degree of Master of Laws of Mzumbe University.

Major Supervisor

Internal Examiner

Accepted for the Board of Faculty of Law

Dean, Faculty of Law

DECLARATION AND COPYRIGHT

I, Bethsaida Sivonike, declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other university for a similar or any other master degree.

Signature -----

Date -----

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DEDICATION

This report is dedicated to my lovely daughters Hephzibah and Eunice, May our Almighty God blesses them.

LIST OF ABBREVIATIONS

CAP	Chapter
CISAC	International Confederation of Societies of Authors and Composers
COSOTA	The Copyright Society of Tanzania
DSM	Dar Es Salaam
Ed	Edition
GN	Government Notice
H.L	House of Lords
NACT	National Arts Council of Tanzania
NO	number
Para	Paragraph
R.E	Revised Edition
TLR	Tanzania Law Report
UNESCO	United Nations Educational, Scientific and Cultural Organization Charter
Vol	Volume
Vs	Versus
WIPO	World Intellectual Property Organization
W.L.R	World Law Reports

LIST OF STATUTES

LOCAL STATUTES

The Copyright and Neighbouring Rights Act [Cap 218 R.E 2002]

The Copyright Act no 61 of 1966.

The Copyright Ordinance, Cap 218 of the Laws of Tanganyika, 1924.

The National Arts Council of Tanzania Act, 23 of 1984.

The Copyright (Licensing of Public Performance and Broadcasting) Regulation, 2003. GN NO. 328

The Copyright and Neighbouring Rights (Registration of Members and their works) Regulations, 2006. GN NO 6 published on 20/01/ 2006 simply known as Registration Regulation

REGIONAL CONVENTION

African Charter on Human and Peoples Rights, 1986

INTERNATIONAL CONVENTIONS

Berne Convention, 1886

International Convention on Economic, Social and Cultural Rights, 1966

International Covenant on Civil and Political Rights, 1966

United Nations Educational, scientific and Cultural Organization, 1945

LIST OF CASES

Sprifield vs. Thame [1903]19 TLR 65

Designers Guild Limited vs. Russell Williams (Textile) Limited (2001)1 WLR 2416
(H.L)

ABSTRACT

The protection of economic rights of authors of traditional songs in Tanzania is hindered by the legal framework which does not effectively safeguard and promote the efforts and rights of authors of traditional songs. This hinders authors of traditional songs from benefiting economic rights and their consequences have been assessed and analyzed based on the existing laws.

The objective of this study was to assess the laws governing the protection of economic rights of authors of traditional songs in Tanzania Mainland; by analyzing whether The Copyright and Neighbouring Rights Act, [Cap 218 R. E 2002] is effective on the protection of the economic rights of authors of traditional songs.

In conducting this research, the researcher employed two methods of data collection these are documentary review and field research. The researcher carried an intensive review of various text books and other related materials as part of documentary review. Interview and questionnaire were also employed in collecting primary data as far as field research is concerned. The methods employed were useful in tracing the background to the problem as well as to collect different views from various scholars on the source of the problem so does the way to embark the same.

Hence it come to be known that, the authors of folk songs have never surrendered their economic rights to the state willing fully, and it was not the primary duty of the state so to do. The role of the state is just to protect and to foster the traditional songs to develop and exist. As the consequence the economic value has to be owned by the author or community itself. That the state has to facilitate the economic value of folk songs, to protect its people but not to hold copyright as how it is by now.

It is neither the state which has the moral nor economic rights of the folk songs since it is not the creator. The state is the political entity and not the cultural entity. The most critical problem is the provision of copyright to the state as a holder while the community from which that song emanates still exists and benefits nothing.

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CHAPTER ONE

GENERAL INTRODUCTION AND BACKGROUND INFORMATION

1.0 Introduction

By nature any human being has soul within which different altitudes are seen.¹ If a bad thing is done against such a human being he may become angry and if a good thing is done to him, he may be happy.² All these may be observed even by outside look at him. Therefore, where a person does good things, an appreciation of what has been done is a good thing. Such appreciation can be in different manner such as rewarding him, recognizing the work done or in any other way provided that it makes him feel somebody in the society.³

Likewise, the protection of economic rights of authors of traditional songs in various societies needs to be legally recognized and respected. It is on this point of view that the need and basis of having laws to protect the economic rights of authors of traditional songs through legislation arise.

It has been said by Lord Hoffman in *Designers Guild Limited vs. Russell Williams (Textile) Limited*,⁴ that the law on copyright rests on a very clear principle that he who by his or her own skill and labor creates an original work of whatever character and skill, for a limited period, enjoy an exclusive right to copy the work.

The House of Lords in the above case cements the truth that recognition and protection of authors work is an important thing that the world tries to achieve.

It is a settled position under the law that, using the work of another without his/her permission amounts to infringement.⁵ The protection is seen very vital for authors,

¹ Genesis Chapter 1:26 and 2:7 Holy Bible King James Version

²Genesis 4:5, 45:26-27 (*ibid*)

³Ecclesiastes 3:13 (*ibid*)

⁴ (2001)1 WLR 2416 (H.L)

⁵ Permission may either be by Licensing or assignments, section 16 and 17 of The Copyright and Neighbouring Rights Act, [CAP 218, R.E 2002]

even if a creator is unknown for the time being. That is why even anonymous and pseudonymous work is protected.⁶ The essence of all these recognition and protection of author's work is to assure that the creators enjoy the economic rights of their works.

However, it is a slight different when we turn to the economic rights of authors of traditional songs within the community. Whereas, it is true that authors of traditional songs enjoy the protection and recognition of moral rights in the community,⁷ the opposite may also be true for the economic rights of the said authors because the existing law does not expressly provide for protection of the economic rights of the authors of traditional songs within the community. It was for this reason that this research was made to assess the law and practice relating to protection of economic rights of authors of traditional songs in a view to determining the effectiveness or weaknesses of the same in Tanzania.

1.1 Background to the Problem

Man by nature is a fighting creature who involves on different activities for his survival and economic development. During primitive mode of production man could engage on activities like hunting and gathering fruits. But when the time went and due to some inventions and innovations man decided to settle and involved on various activities like farming, pastoralists, drawing, engravings, singing folk songs and sculpturing just to mention but few. At that epoch the technology was very low and again these works had no value.

Many tribes were under chiefs or tribal leaders who were responsible to govern and control all matters within their communities including songs which formed part of their culture. Ownership of traditional songs were under chiefs or tribe leader but protected by clan leaders depending on the composure of the song.⁸ It was against

⁶ Section 15 of The Copyright and Neighboring Rights Act, [CAP 218, R.E 2002]

⁷ Section 11 of The Copyright and Neighboring Rights Act, [CAP 218, R.E 2002]

⁸ Magalla. A, (N.Y) History of Copyright in Tanzania: From Tanganyika to Tanzania –where, when, and how extracted at http://www.academia.edu/15213601/THE_HISTORY_OF_COPYRIGHT_IN_TANZANIA_FROM

the ancestral spirits for one leader of a clan or any member to take another clan song without permission from the group or/ clan leader of that other clan.⁹

This was the time when creativity and innovations emerged and later the same was recognized in England and other jurisdictions for which laws were made to protect the artistic works, the aim was to award those who spent efforts in creating some works and recognize their roles within their respective societies. During British rule in Tanganyika many laws were imported to British colonies to include India and Tanganyika. Intellectual Property Law like other laws during the colonial period was imported through a reception clause.¹⁰

The first law on copyright matters in Tanzania (Tanganyika by then) was The Copyright Ordinance,¹¹ the said law was an extension of Copyright Act of England of 1911. At that particular time Tanganyika had no independent copyright law hence used that of England. Under this law for the work to be protected the evidence of proprietorship was required but expressions of traditional culture including folk songs were not covered by the said law as one among the protected works. Any offence under the Ordinance attracted penal sanctions. This Ordinance existed until when it was repealed and replaced by the Copyright Act.¹² This Act provided for an automatic protection of copyrighted material immediately after publication, the automatic protection was for literary and musical work only but for an artistic work there was a need to prove sufficient effort which had been used to give a work a mental character. The Act had no protection and prohibition on the use of

[TANGANYIKA TO TAN... on 11/9/2014](#) at 6:19pm

⁹ (Magalla. A, (N.Y) History of Copyright in Tanzania: From Tanganyika to Tanzania –where, when, and how extracted at

[http://www.academia.edu/15213601/THE_HISTORY_OF_COPYRIGHT_IN_TANZANIA_FROM_TANGANYIKA_TO_TAN... on 11/9/2014](http://www.academia.edu/15213601/THE_HISTORY_OF_COPYRIGHT_IN_TANZANIA_FROM_TANGANYIKA_TO_TAN...) at 6:19pm

¹⁰ National administration framework of intellectual...-brela extracted on <http://www.brela-tz.org/NATIONAL%2520ADMINISRTATION%2520FRAMEWORK%2520OF%2520INTELLECTUAL%2...> Accessed on 21/9/2014 at 06:10 pm

¹¹ [Cap 218 of laws of Tanganyika of 1924

¹² No 61 1966

expressions of traditional culture especially folk songs in different Tanzanian societies.

Later the Act was proved to have many weaknesses hence it was again repealed in 1999 and replaced by the current Copyright and Neighbouring Rights Act.¹³ This Act for the first time provides for the protection of expressions of folklore under section 24. The Act goes further to protect economic interests of the creator or author under section 9 but the same Act does not declare expressly on whether the author of the folk songs has any economic right over his works, and how can he benefited economically through his work especially where someone outside his community uses the work for economic gain. The law rather provides how the fees collected through folk songs are used for the purpose of promoting and safeguarding the national culture as provided under section 28(b) of the same Act.

1.2 Statement of the Problem

Rights of authors are mainly categorized into two major kinds: moral and economic rights. Notwithstanding the fact that the Copyright and Neighbouring Rights Act provides for the protection of traditional songs (folk songs),¹⁴ it does not however address directly the economic rights of the authors of such traditional songs.¹⁵ The Act seems to vest such economic rights in the Government on the ground that, where traditional songs are used by any person outside such tribe for economic gain, the government may intervene and collect fees and receive royalties from such user through the National Arts Council of Tanzania (NACT)¹⁶ for the purposes of promoting and safeguarding the national culture.¹⁷ Thereafter, the law is silent on the economic rights which the authors of such traditional songs are entitled. This implies that the authors of traditional songs do not enjoy economic rights over their works

¹³ [Cap. 218 R.E 2002]

¹⁴ Section 24(b) of The Copyright and Neighbouring Rights Act, [Cap. 218 R.E 2002]

¹⁵ Section 5 *ibid*

¹⁶ Section 29 *Ibid*

¹⁷ *Ibid* section 28 (b)

and several other rights such as right to assign, right to license, and other affiliated economic rights.

Regarding the duration of protection of authors' right (other than authors of tradition songs), the Copyright and Neighbouring Rights Act¹⁸ empowers them to enjoy economic rights as well as moral rights during the author's life time and for fifty years after his death. However, this provision does not apply to authors of folk songs. But by implication, section 4 of the same law can be interpreted to mean that traditional artistic heritage can be enjoyed, developed and maintained over generations by a community or individuals reflecting the traditional artistic expectations of their community. The absence of clear duration for authors of traditional songs to enjoy such artistic works brings confusion as to what time should the author of a traditional song enjoy such economic and moral rights.

Most of folk songs are made by unknown authors from the community, so the government faces difficulties in protecting their economic rights. This is because the sole author is unknown despite the truth that their community is well known. The reason for them to be unknown is because the law does not recognise them for accruing economic rights hence they find themselves in pessimistic mode of dealing with their creations.

Furthermore, the existing laws¹⁹ do not guarantee for the protection to authors of folk songs but rather to Competent Authority. Although a person wants to use the expressions of folk songs for commercial purposes has to mention the community from which those songs originate.²⁰ But that by itself does not give economic benefits to the composers of the same. This is discriminatory in nature because other artists under the same laws do enjoy several rights such as right to assign, right to license, and many other affiliated rights with economic nature being specifically mentioned. The emphasis on this can also evidenced by the copyright law which provides *inter alia* that, whoever uses the expression of folk songs without

¹⁸ Section 14(1) of The Copyright and Neighbouring Rights Act [Cap 218, R.E 2002]

¹⁹ Tanzanian Laws on Copyrights.

²⁰ Section 27 of the Copyright and Neighbouring Rights Act, [Cap. 218, R.E 2002]

authorization of the Competent Authority²¹ shall be liable to pay a fine to the same authority and not to the community or a person who composed the folk song.

The consequence is lack of creativity on composing new song in their communities and hence many traditional songs from different tribes are lost due to lack of motivations to include economic payments accrued from their works. The extinction of traditional culture including songs is threatening the heritage of the coming generation.

1.3 Objectives of the Study

The general objective of this research was to assess the law governing the protection of economic rights of authors of traditional songs in Tanzania Mainland.

The following were the specific objectives of this study;-

1. To analyse the laws that hinder authors of traditional songs from enjoying the economic rights of their creations.
2. To examine the extent to which the existing laws do enhance awareness to authors of folk songs on their economic rights.
3. To analyse the efficacy of the law on establishing the regional centers/bodies for the protection of expressions of traditional songs.

1.4 Significance of the Study

This study is relevant and useful in several ways as described hereunder.

First, this study is useful in reforming or amending the existing laws or provisions governing the protection of economic rights of authors of traditional songs or rather repealing the offending provisions of our copyright laws in Tanzania.

²¹ National Arts Council of Tanzania is hereby referred as the Competent Authority within the meaning of section 29 (a) of [Cap 218 R.E 2002]

Second, this study promotes development of authors and harmonizes the society at large to preserve and to make more creations within the tribe since many authors of traditional songs will be sure that their creations benefit them.

Third, this study creates awareness and knowledge to authors of traditional songs, stakeholders and other members of the public on the presence of economic rights to authors of traditional songs. Also it will bring awareness to Competent Authority and other institutions authorized in handling issues related to intellectual property rights and the protection of economic rights of authors of traditional songs. The findings will help to outline the present misapplication and misinterpretation of laws on preserving the said rights. Furthermore, the study helps other learners and researchers on similar area to have some foundation of their studies.

Fourth, this study contributes to the repository of knowledge by adding information and awareness of the legal and regulatory framework on the protection of economic rights authors of traditional songs within their tribes.

Fifth, this study is useful as a source of knowledge to the researcher on laws and regulations relating to the protection of economic rights of authors of traditional songs in Tanzanian societies.

1.5 Literature Review

Many writers have tried to provide useful information and views on the protection of expressions of traditional culture globally. Relevant reading materials are few, like text books, journals, articles, and other sources that have written in relation to the law and practice relating to the protection of economic rights of authors of traditional songs, most of them have provided the general overview of the same.

There is lack of literatures that views failure of the law to grant economic gain to the authors of traditional songs as a problem to authors and the society concerned. In the same way, writers have not pin pointed on the need to have effective and express laws which will grant authors economic rights or a certain share in case their

traditional songs are used for economic gain by other persons, instead of leaving the laws as they are since they vest the whole economic powers to the Competent Authority which is an agent of the government while, authors and the society concerned is left with nothing. No attempt have been made to give any suggestions on what should be done in order to make sure that authors of traditional songs as creators enjoy economic gain obtained from their creations within the ambit of the tribe. This research study therefore, explores on the law and practice relating to the protection of economic rights of authors of traditional songs in Tanzania.

Perullo, A (2001)²² discussed several issues relating to the protection of expressions folklore in Tanzania Mainland, he went further to mention different types of expressions of traditional culture including folk songs which are the creations of authors within the society. He then states that, where someone uses the expressions of folklore outside his community for economical gains he/she is required to mention the community which owns the same, the geographical area where the expressions of folklore came from, he has to seek authorization for using the same and has to pay fees to the Competent Authority (The National Council of Tanzania). His work is relevant to my work since it explained different types of expressions of tradition culture to include folk songs, which my work also deals with. However, the author never discussed on whether authors of traditional songs from which folk songs originate have any economic right over their creations. This work expect to cover the same.

Prasaid, A and A. Agarwala (2009),²³ wrote on issues relating to copyright and neighbouring rights under intellectual property law. The writers discussed different aspects which are the subject matter of copyright. One among the things discussed by the authors includes cultural heritage and knowledge base of the society. The essence of the knowledge base of the society is quit importance in my work since

²² Perullo, A. (2001) *The Music Business in Tanzania*: Colour Print (T) Ltd; United republic of Tanzania at page 18

²³ Prasaid, A and A, Agarwala. (2009) *Copyright Desk Book*; University Law Publishing Co. PVT LTD; New Delhi pg 17

with knowledge the authors of traditional songs may know what to do so as to get their economic rights. However, these authors did not touch the above aspects in detail as to how cultural heritage base of the society should be protected and benefit the tribes concerned economically or how authors of traditional songs and the society at large should benefit from their songs which is one among the cultural heritage. This work can never end without settled that.

Catherine, W Ng (et al) (2010)²⁴ discussed different issues relating to copyright under which the category of expressions of folklore falls. Their writings are useful since it gives light on matters of copyright as well as expressions of folklore which my work is centered. Despite the usefulness of the authors' work, these authors expressed in detail other rights available to authors of copyrighted works than the aspect of protection of economic rights of authors of traditional songs which is one among the creations under intellectual property law. They never explained on how those songs can economically benefit the society at large from whom those authors come from. Hence need for this research to be done.

Lionel B. and B. Sherman (2001)²⁵ explained in detail different aspects relating to intellectual property law including copyright. Under this aspect the writers have spotted out different works which are the subject matter of copyright. One among the explained issue is the artistic works under which the category of traditional songs falls, and my work is centered at. Hence it is relevant to my research since some matters looks similar. However, the authors have not touched specifically on how authors of traditional songs can benefit economically basing on their creations which is the subject matter of this research paper.

Miller A. R and M. H. Davis (1990)²⁶ stated that the author of the copyright is protected as soon as a work is recorded in some concrete way, since all expressions

²⁴ Catherine et al (2010) *The Common Law of Intellectual Property*; Hart Publishing Ltd: United Kingdom. Page 221-229

²⁵ B. Leonel and B. Sherman. (2001) *Intellectual Property Law*; Oxford University Press: New York pg.62

²⁶ Miller, A. R and M. H. Davis (1990) *Intellectual Property Patents, Trademarks, and Copyright in a*

upon fixation in a tangible form are protected. Went further saying, the author or copyright owner has the exclusive right to make copies of the work and anyone who produces copies without authorization is subject to an infringement suit which provides damages and injunctive relief. The authors also explained seven categories of the protected subject matter to include; literary works, graphic works, musical works, dramatic works choreographic works, audiovisual works and sound recording and that the list is not exhaustive. By saying so it means that even traditional songs may be included in the list even if they are not specifically mentioned by the writers. Hence his work is relevant to my work. However, the authors have not said anything relating to economic rights of authors of traditional songs as one among the creators of traditional songs (folk songs) where the same are used by other persons outside their communities for commercial purposes. This work touches specifically the economic rights of authors of traditional songs.

Richard R. (*at el*) (2009)²⁷ expressed their views basing on Modern copyright law which has its roots in the middle ages, where as an effort to censor information and to regulate the book trade, government granted certain rights and privileges to guild-like organization of publishers. At the end of 17th C the government began to recognize that, authors had property rights in their intellectual creations. Property and agency theories give rise to economic rights, while privacy issues give rise to moral rights.

Authors they further explained that, intellectual regimes that focus on economic rights are termed copyright system while those that incorporate both economic rights and moral rights are termed as authors rights systems. Authors of protected works have the right to set identical duration, alienability, and waiver standards for both economic and moral interests, or may set one standard for economic rights and another for moral rights. The writers have tried to provide for the exclusive rights vested to authors of artistic works in which traditional songs falls. Therefore their

nutshell: 2nd ed; West Publishing Co: United States of America

²⁷ R. Richard at el (2009) Intellectual Property Licensing: Forms and Analysis; Law Journal Press 120 Broadway: New York. At Chapter three of the book. Page 333

work becomes relevant to my research for pin pointing those exclusive rights vested to authors of which traditional authors inclusive. But they have failed to show even in a nutshell on whether the authors of traditional songs (folk songs) or the communities from which those songs originates have any economic rights resulting from their creations especially where the same are used by other persons for economic gain. That gap is fully covered in this research.

Ryder, R.D (2003),²⁸ stated that ownership of copyright in a work is usually owned by the persons responsible for its creation. Copyright gives the owner the exclusive rights to do certain things in relation to the work. These rights include the right to copy the work, perform the work in public or make an adaptation of the work. The owner can stop anyone from copying the whole or substantial part of his work or appropriating any of the other rights which belong to him. Copyright protection arises automatically on the creation of the work. Copyright can be sold or licensed. An infringer of copyright can be sued for damages or an account of profits. On top of that the copyright owner may seek an immediate injunction to prevent repetition of the infringement.

Generally, the author has tried to point out certain works in which copyright subsists to include artistic works under which traditional songs fall. This piece of authors writing is closely related to my research for identifying the works that are subject to protection. However, he did not specifically touch economic rights which can be vested to the authors of traditional songs as creators of traditional songs and how the same can be properly done so that authors and the community should have the right to assign, license their traditional songs instead of the same being done by the government through the Competent Authority. That pitfall is covered in this research.

²⁸ Ryder, R.D (2003) Brands, Trademarks and Advertising; Butterworths: New Delhi- India, at chapter 8

Bhuvan, B.S and S.K Ghosh (2010)²⁹ tried to provide the origin of the concept of property. The term property is derived from the Latin term '*properietat*' and the French equivalent '*proprius*' which means a 'thing owned'. There can be no property without ownership and no ownership without property. The authors went further to define the term property as something that is or may be owned or possessed; an estate; intangible assets or intangible rights; an exclusive right to possess, enjoy and dispose; a quality or trait belonging to a person or a thing. Property in its general connotations means anything or matter having some value convertible into money. A thing or matter the value of which cannot be assessed or which has no value in terms of money does not amount to property in the strict legal sense.

Generally, intangible assets or rights as propounded by the author are properties which are regulated by the intellectual property rights. To them intangible properties are recognized like any other property they can be owned, mortgaged, assigned and licensed. The authors further explained the three branches of Intellectual property law among them is the copyright law which covers *inter alia* the protected traditional songs as properties belonging to communities. All what authors have written is relevant to my research since it explained into details matters which are subject of protection under copyright law of which folk songs falls therein. However, authors have never touched on the protection of economic rights of authors of traditional songs which my research is based.

Fisher, M (2010),³⁰ stated that during the literary property and anti- patent debates that raged consecutively from the mid- eighteen to the latter half of the nineteenth centuries, great deal of thought was directed towards the justification and distinction, or isolation, of property rights in the intangible. The intangible properties fall under the intellectual property law and are respected and recognized as properties like any

²⁹ Bhuvan, B.S and S.K. Ghosh (2010) Law of Adverse Possession with Special Emphasis on Property, Possession, Dispossession and Ownership; 1st edn; Orient publishing Company: New Delhi-Allahabad. at page 4

³⁰ Fisher, M (2010) Fundamentals of Patent Law Interpretation and Scope of Protection; Mohan Law House: New Delhi- India. Pages 65-66

other property. Expressions of traditional culture in which traditional songs belong are one among the intangible properties created by authors within the communities. This is relevant to my work because traditional songs fall within expressions of traditional culture. However, the author did not extent his views to cover the possible authors' economic rights arising from the intangible properties like traditional songs which can be enjoyed by the whole community especially where those songs are used by other persons outside their community for economic gain. Since, this research is based on the protection of economic rights of authors of traditional songs which is not covered by the writers. Therefore, this research is done to fill that gap.

Hansen, H.C, (1998)³¹ looked on the current developments in European copyright law. He tried to harmonize the national legislations of the member states through directives. The member states still have to implement or transpose these directives into national legislation. The writer has provided four categories of directives which the member states have to adopt in their national legislations to include; the Council Directive of May, 14, 1991 on the legal protection of computer programs, the Council Directive of November, 15, 1992 on rental rights and lending rights and certain rights related to copyright in the field of the intellectual property, the Council Directive of September, 27, 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, the Council Directive of October, 29, 1993 harmonizing the term of protection of copyright and certain related rights.

The writer tried to provide some directives for the purpose of harmonizing the copyright laws. Despite the usefulness of harmonization of copyright law which is quite needed to various countries to include Copyright Act of Tanzania, Still the area covering the economic rights of authors of traditional songs is not expressed by the author. It is still in doubt on whether authors of traditional songs have any economic rights over their creations. Many national legislation including the Copyright and

³¹ Hansen, H. C (1998) International Intellectual Property Law and Policy- Vol. 2; Juris Publishing Inc, Sweet and Maxwell: United Kingdom. At page 2

Neighbouring Rights Act (supra) of Tanzania grants powers to the competent authority to receive fees obtained through the use of the expressions of traditional culture including traditional songs and not authors or the society itself.

Yankey, G. S-A (1987),³² the author wrote basing on patents law generally, which is one among the parts of intellectual property law rights. He pointed out that a patent grant confers on the patentee a proprietary right to his invention and therefore it constitutes personal property which can be assigned, mortgaged and licensed to other persons. The grant of the patent monopoly privilege has considerable positive influence on research and development, the speedy disclosure and spread of technical knowledge, stimulation of innovation and the transfer of technology. All these activities contribute to the acceleration of technological progress and it helps to advance public welfare. The writer expressly wrote on the economic rights accorded to the patentee once the patent is granted on ones favour but he never talked on whether under copyright law which is another part of intellectual property law rights authors of traditional songs have any economic rights over their creations like those vested to the patentee. The relevance of authors work to my research is to show how economic rights of authors are essentials, despite the fact that he wrote on patent, still it is within the field of intellectual property law. Therefore, the researcher conducted the study on that area in order to explore on whether authors are supposed to get any share of economic gain on their creations when they are used by other persons outside their communities for commercial purposes.

Chowbe, V.S (2010),³³ gave much detailed information on the issues relating to acquisition of patents procedures and practice in India. Patent law is one among the three branches of intellectual property law under which once the inventor gets his/her patent he enjoys the monopoly rights over his invention in the exclusion of all others. Anyone who wants to use his invention has to seek his permission or has to

³² Yankey, G. S- A (1987) International Patent and Technology Transfer to Less Developed Countries;Gower Publishing Company Limited: England. At chapter 1 and 2

³³ Chowbe, V.S (2010) Acquisition of Patents Procedure and Practice; 1st edn: Asia Law House: India . chapter 1 of the book

pay some remuneration or royalties. This work is relevant to my writing because it shows the essence of asking permission before one has used the work of the author. Hence it recognizes the rights of authors. However, the author did not go further to cover issues relating to copyright law which is another branch of intellectual property law in which traditional songs fall. The author did not express anything on whether authors of traditional songs in which traditional songs originate have any economic rights over their creations, therefore this research was done in order to cover the said gap and to provide some measures on what should be done so that authors should enjoy economic benefits of their creations.

Torremans, P (2008),³⁴ stated that copyright has come a long way from its roots as a right to copy in the sphere of literary and artistic works. It has proven to be a very flexible tool that can also cope with various new technological developments and very different types of work. Artistic works is a category of original work which is wide in scope and can be subdivided into three parts. There are works which are protected irrespective of artistic quality which are followed by the intermediate group of works of architecture; works of craftsman, the artistic quality might play a role. The essence of authors work to my research is that, it shows various categories of artistic works of which my research also falls within the categories. Apart from the author mentioning some of the artistic works which can be protected under copyright law, still he never mentioned the traditional songs as part of artistic works which are normally made by the communities. He again never suggested anything on what should be done in order to make sure those authors of traditional songs benefit economically within their tribes. This work covers it.

Griffiths, J and U. Suthersanen (2005)³⁵ tried to give out some explanations on the relationship between copyright and free speech. They went further to say that copyright is a right conferred by the statute, interpreted and applied by the courts.

³⁴ Torremans, P (2008) *Intellectual Property Law: 5th edn*; Oxford University Press: New York. Page 169

³⁵ Griffiths, J and U. Suthersanen (2005) *Copyright and Free Speech comparative and international analyses*; Oxford University Press: New York. At page 13

Enforcement of copyright, therefore, inevitably involves state action. This literature is relevant since it shows steps taken for the one who infringes copyright; my research is also based on protection of authors of traditional songs hence relevant. But the author never drilled much on the protection of economic rights of authors of traditional songs which are one among the property rights protected under copyright law. Therefore, the researcher made the study on whether the authors as creators of traditional songs within their respective communities have any economic right over their creations once they are used by other persons outside their communities for commercial purposes.

Wilson, C (2005)³⁶ stated that copyright is a property right that subsists in certain works. It is statutory right giving the copyright owner certain exclusive rights in relation to his work, such as the right to make copies of work, to sell these copies to the public or the right to give a public performance of the work.

The author went further to mention several copyright works to include artistic works in which the protected traditional songs falls, hence it has some inputs to my research. But he did not mention or explain anything relating to the economic rights available to authors of traditional songs as creators of those songs within their communities which are the subject matter of this research. Hence this research covered the spotted gap.

Wadehra, B.L (2003)³⁷ explained that copyright is not a single right but a bundle of rights which can exist and be exploited independently. The nature of these multiple rights depends upon the categories of works, namely, literary, dramatic and musical works, original artistic works, cinematograph films and sound recording. One among the rights available to the copyright owner is the economic right. The exploitation of the work by the copyright owner may bring economic benefit. The owner may

³⁶ Wilson, C (2005) Nutshells Intellectual Property Law: 2nd edn; sweet and Maxwell Limited:London. Page 71

³⁷ Wadehra, B.L (2003) Law Relating to Patents, Trademarks, Copyright, Designs and Geographical indications; 2nd edn; Universal Law Publishing Co. Pvt. Ltd: New Delhi. At part 3 in chapter 30

exploit the work himself or license others to exploit any one or more of the rights for a consideration which may be in the form of royalty or a lump sum payment.

The explanations made by the author are very crucial and important in the sense that the owner of the copyright has all economic rights over his work either by exploiting the work himself or licensing the same to other persons who will be required to pay some amount to the owner. The author has tried to give clear position on the economic rights of the owner of copyright but on the other hand, he failed to provide a clear cut on whether authors of traditional songs as creators have any economic rights over their works especially where those songs are exploited by others. He suggested nothing on whether authors and the society at large have the right to license or assign their works to other persons upon consideration or payment of certain amount to the community concerned. This gap is fully covered through this research.

Bainbridge, D.I (2009)³⁸ stated that the owner of the copyright has the exclusive right to do certain acts in relation to that work, such as making a copy or selling copies to the public. The owner of the copyright can control the exploitation of the work by making copies or selling copies to the public or by granting permission to another to do the same on return for a payment. The author went further to say that copyright provides a very useful and effective way of exploiting a work economically. It provides a mechanism for allocation of risks and income derived from the sale of the work. Copyright is a property right and as such the owner of that right can deal with it, he can transfer the right to another person or he can grant license to others, permitting others to do some or all of the acts restricted by copyright in relation to the work.

Generally the author has given a clear understanding on the economic rights available or vested to the copyright owner regarding his work, which is quit relevant to this research, because the ultimate of this work is to see how authors of traditional

³⁸ Bainbridge, D.I (2009) intellectual Property: 7th edn; Pitman Publishing Imprint 1992: England. Pg 83-89

songs benefits economically. However, he did not extend his views to cover traditional songs as one among the protected works under copyright law and how authors of traditional songs can benefit economically through their songs as creators and again he never suggested on whether they can assign or enter in to license agreement personally incase other persons want to exploit their works for commercial purposes which is the subject matter of this research.

Acharya, N.K (2007),³⁹ explained that every author has a copyright in the work he creates. This is inherent in him by reason of being author. It creates on the author an exclusive right to produce, reproduce, publish and perform his work in all ways. He has the right to prevent any person to do any of those things. He has a special right to assign all and any of his rights either fully or for a limited time or to one or more persons and also license to do any specific acts out of many of his rights. The author has tried to give clear directives on how the copyright owner can exploit his work economically. This is the heart of this research hence authors work is important to my writings. But still he never talked on how the authors of traditional songs can enjoy the same right. He gave no opinion on whether those authors and the tribes at large can enter into a written agreement of license or assignment with other persons who wants to exploit their works. The said gap is well covered by this research.

Lindberg, V (2008)⁴⁰ had the view that shared creative expressions play an important role in our society. Human beings are social animals and are connected from each other through personal expressions.

Considered as a whole, culture is just a product of many personal expressions mixed together. Culture as a whole is tied inseparable to the many bits of expression both individual and collective, that it contains. Culture is a short hand for the expressive efforts of many people. It consists entirely of shared copyrightable expression. The author proceeded to say that the problem of culture is that the strong personal

³⁹ Acharya,N.K (2007) Text Book on Intellectual Property Rights; 4th edn; S.P.GOGIA (H.U.F): India. Page 9

⁴⁰ Lindberg, V (2008) Intellectual Property and Open Source A Practical Guide to Protecting Code; Shroff Publishers and Distributors Pvt. Ltd: India. At page 72

protections of copyright are in conflict with the shared nature of culture. The economic benefit of copyright are built on controlling expression while the social and cultural benefits of copyright are based upon sharing expression. The control problem puts copyright into difficult economic position comparable to original market failure that prompted the development of copyright.

Generally, of so relent is that the author has tried to show the importance of shared creative expressions in our society for they are available for a new generation of authors and artists to use. He again pointed out that there is a controlling problem of economic benefits within the society because culture is shared by many persons. The same being the problem this research is dealing with but in a different angle of traditional songs. The views pin pointed by the author might be true but he never suggested on what measures should be taken into account in order to make sure that the said problem is eliminated so that the authors as creators of traditional songs do benefit economically from their creations. That is why this research work came into play.

Schechter, R.E and J.R Thomas (2003)⁴¹ have explained that copyright are freely transferable, just like all other types of personal property. They can be transferred outright, in a transaction usually denominated as an assignment, or the owner can merely give another party the right to exercise certain rights of copyright ownership by granting either an exclusive or non exclusive license. These transfers can be for compensation or can take the form of gift. Generally the author is trying to give the position of the copyright to be in a transferable form in the sense that they can change hands from one person to another upon agreement of license or assignment. Since traditional songs also falls within ambit of copyright law then all what authors have narrated has value to my research work as a matter of understanding. However, the author is silent on the issue of traditional songs which is one among the protected works under copyright law, on how authors or tribes can enter into those agreements

⁴¹ Schechter, R.V and J.R.Thomas (2003) Intellectual Property The Law of Copyright, Patents, Trademarks; West Group: United States of America. At page 14

with other persons who might be interested to use their creations so that they can get some economic benefits over their works. Hence this research was conducted on order to fill the gap.

Goldstein, P (2008),⁴² the author has tried to compile several copyright cases and few international conventions of intellectual property law such as the Rome convention and Berne convention just to mention but few. Most of cases compiled by the author are not relevant to my research problem because they does not contain facts/ or material facts relating to protected traditional songs under which this research study falls. Therefore, the need to do this research study was of utmost importance at the moment.

Cornish, W and D. Llewelyn (2007),⁴³ they stated that copyright in a work give rights that are distinct from ownership of the physical embodiment of the original work. Original literary, dramatic, musical and artistic works accords copyright under intellectual property law rights. As far artistic is concerned, this literature is relevant since traditional songs are part and parcel of artistic work under the umbrella of folk songs. That is to say there are also required to be original like any other artistic work for them to secure protection. However, the author did not go further to explain on issues relating to authors of traditional songs on how the same can benefit them economically as creators. This research work covered the revealed gap.

WIPO⁴⁴ stated that artistic heritage of a community plays significant social, spiritual and cultural roles, it can act as a source of creativity and innovation, play a role in economic development. The use of traditional cultural material as a source of contemporary creativity can contribute towards the economic development of traditional communities through the establishment of community enterprises, local job creation, skills development, appropriate tourism and foreign earnings from

⁴² Goldstein, P (2008) International Intellectual Property Law Cases and Materials: 2nd edn; Foundation Press: New York. At page 157-348

⁴³ Cornish,W and D. Llewelyn (2007) Intellectual Property: Patents, Copyright, Trademarks and Allied Rights; 6th edn; Sweet and Maxwell Limited: London. At page 417

⁴⁴ Intellectual Property and Traditional Cultural Expressions/ Folklore... extracted at http://www..wipo.int/edocs/pubdocs/en/tk/913/wipo_pub_913.pdf accessed on 29/9/2014 at 04:30pm

community products. Intellectual property protection can enable communities and their members to commercialize their traditional based creation, should they wish to do so and/ to enable free riding competitors. For this reasons this work of the authors is relevant in my research particularly on the aspect of traditional based creation.

They went further saying that some communities wish to gain and exercise intellectual property in their traditional based creations and innovations to enable them to exploit their creations and innovations commercially as a contribution to the economic development. The writers have propounded good views that communities can commercialize their creations as the contribution to their economic development, but they failed to provide the way forward on how authors of traditional songs can do the same in order to get economic gain within their tribes.

Kishebuka, L,⁴⁵ pointed out that, expressions of folklore is one among the intellectual property rights which falls under Copyright Law. Various rights explained by the author are relevant to my work because this research seeks for the rights of authors of traditional songs in a particular. Despite such relevance the author did not go further to explain on whether the authors of traditional songs (folk songs) have any right to benefit economically over their creations especially where someone outside their community decides to utilize their songs for economic purposes. Therefore this research paper intends to cover the said gap.

Prof, Nyariki, D (et al) in their report,⁴⁶ tried to point out only the protected expressions of folklore including folk songs by just mentioning them as shown under section 24 of the Copyright and Neighbouring Rights Act (supra) without any further explanations or suggestions on how authors of traditional songs as creators of the same can benefit from their creations in Tanzania. The relevance of section 24 as

⁴⁵ Titled Wipo training of trainers program on effective intellectual property asset management by small and medium- sized interprises (smes) presented on August on 22 to 26, 2011 at Blue Pear Dar-Es- Salaam, by Kishebuka, L.

⁴⁶The Economic Contribution of Copyright- Based Industry in Tanzania, Report for World Intellectual Property Organization, September 2012 accessed at http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/econ_contribution_cr_tzp..._on_8/9/2014_at_21:00_pm

quoted by the author is that the cited law is one governing the protection of authors of songs and other artistic work in Tanzania, for that fact means anything missing in the Act it is so similar in the authors' work. Therefore, this study is of essence to reveal the myth that, whether authors have any economic rights over their own creations within their tribes in Tanzania.

Nwauche, Es⁴⁷ stated that, the state has to recognize and affirm that groups like individuals can hold and exercise control and management over their intellectual capital, including expressions of folklore. This would mean that the group or community, as against the individual, would be in a position to decide how third parties use their expressions of folklore. It is important to note that any mechanism within a state that enables communities to protect their intellectual capital contributes to the protection of their right to culture. Hence that is relevant to my research work which also deals with rights of authors of traditional songs within Tanzania tribes.

The author further portrays right to culture privileges group rights over individual rights. In most cases the protection of the expressions of folklore is vested in and administered by the state or its agency and not by the communities that own the expressions of folklore. The work of the writer is closely related to my research on many areas since the nature of his work resembles what this research aiming at. However, the writer did not put any suggestions on how authors of traditional songs can have control over their traditional culture including folk songs in order to benefit them economically.

Magalla, A⁴⁸ discussed the protection of copyright in Tanzania in historical perspective, that there is no written evidence that during the ancient societies in Tanganyika there was copyright protection. This is, most of African events and rules

⁴⁷ Protecting Expressions of Folklore within the right to culture in Africa extracted at <http://www.saflii.org/za/journalPER/2010/31.html> on 2/9/2014 at 09:59am

⁴⁸The History of Copyright in Tanzania: From Tanganyika to Tanzania –where, when, and how extracted at http://www.academia.edu/15213601/THE_HISTORY_OF_COPYRIGHT_IN_TANZANIA_FROM_TANGANYIKA_TO_TAN... on 11/9/2014 at 6:19pm

were not put into physical records compared with the Europeans, and Americans where their events were recorded in fixed form so as they act as evidence as to the existence of an ancient such as copyright laws. He went further by giving an example of Gogo tribe from Dodoma, that their traditional songs such as “chimandi” and others were owned by chiefs but protected by the clan leader or a farm leader through which such a song was created. Therefore, it was considered to go against the ancestral spirits if the leader of the clan or farm organization or any member of either two, to take another group song unless otherwise permitted by the group leader. This authors’ work is so connected to my research since they both based on rights and protection of authors of traditional songs. These activities were not documented. But the author did not went further to express on whether those traditional songs were used to benefit authors and the whole tribe economically which is the subject of these research.

Ngassa, D⁴⁹ expressed several works which are subject to copyright protection including expressions of folklore carried out in Tanzania. The author provided the general overview of the works which are copyrighted by the Tanzanian laws. Since traditional songs are within folk songs hence this writing of the author is relevant to my research. Despite such relevancy the author did not explain on how authors of traditional songs and the society at large which owns those expressions of traditional culture including songs can benefit economically through their creations which is the subject matter of this research.

Kabudi, P.J⁵⁰ had the view that, the legal regime governing intellectual property rights in Tanzania is based on the classical approach developed in the western capitalist system. The classical approach is the hallmark of individualism and exclusive and sometimes absolute ownership of property. The law does not

⁴⁹ A Short Guide to Copyright Law in Tanzania- Lexglobe LLP extracted at www.lexglobelaw.com/assets/guide_copyright2.pdf on 13/9/2014 at 1:12pm

⁵⁰ Kabudi, P, J (2004) Protection of Intellectual Property Rights of Indigenous Knowledge in Tanzania: Legal Constraints and Challenges; Indilinga African Journal of African Knowledge Systems, indexed by Sabinet online. Vol. 3 Sabinet.co.za/webx/access/electronic.../linga_v3_n1_a4.pdf accessed n 13/9/2014 at 4:12pm

recognize or accommodate the communal ownership that is still common and relevant in most African communities. The copyright law provides for moral and economic rights rather than promoting indigenous knowledge to benefit those who created and developed it for generations as community.

The views expressed by the author are of most importance and connected to my research because it focuses on the promoting indigenous knowledge of which this research also deals with almost similar matter. But the author never talked specifically on authors of traditional songs which is the subject matter of this research on how those authors form tribes which developed and maintained them for long time can benefit economically from those who are using them for commercial purposes and how those communities can have fair and equitable benefit sharing.

International Bureau of WIPO,⁵¹ stated that folklore is an important element of the cultural heritage of every nation. Folklore is commercialized without due respect for the cultural and economic interests of the communities in which it originates. No share of the returns from its exploitation is conceded to the communities that have developed and maintained it. Most of the national laws providing for copyright protection of folklore authorize various national bodies to exercise such rights. In most of the countries those bodies are the competent ministries or similar national authorities of the government.

Generally, the writers have shown openly the problem facing tribes as creators of expressions of traditional culture including authors of traditional songs in as far as economic rights is concerned which is the subject matter of this research, but they never suggested on what measures should be taken in order to make sure that tribes get economic share originating from their creations. This work covers the said measures.

⁵¹ The protection of Expressions of Folklore: The Attempts at...- Tripod extracted at <http://itt.nissat.tripod.com/itt9903/folklore.htm> accessed on 28/9/2014 at 08: 45am

Bouchenaki, M⁵² was of the view that, all forms of cultural heritage including tangible and intangible heritage and natural must be respected and recognized as closely affiliated. Intangible cultural heritage includes the entire treasure house of popular arts and customs such as language, dances, songs and ceremonies that have been handed down over centuries. Expressions of folklore forms part of humanity and that it, is a powerful means of bringing together different peoples and social groups and of asserting their cultural identity, noting its social, economic, cultural and political importance, its role in the history of its people, and its place in contemporary culture, underlying the specific nature and the importance of expressions of folklore as an integral part of cultural heritage and living nature.

Traditional culture is the totality of traditional based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity, its standards and values are transmitted orally, by imitation or by other means. Expressions of traditional culture must be safeguarded by and for the group whose identity it expresses. The writer has tried to show his own views on the aspect of the importance of cultural heritage and that they have to be respected and recognized. On such doing his work becomes so relevant to my research because this research deals with importance of traditional songs and the need for its restoration of economic rights to composers of such songs.

However, he did not touch on whether the authors of traditional songs who created those expressions of traditional culture including songs have any economic rights over their creations which is the subject matter of this research.

⁵² Director Division of Cultural Heritage UNESCO in his paper titled The Recommendation on the Safeguarding of Traditional Culture and Folklore. Safeguarding Traditional Cultures- Smithsonian Center for folklife... extracted at <http://www.folklife.si.edu/resources/unesco/index.htm> on 6/9/2014 at 10:41am

1.6 Research Hypotheses

This study was guided by the following research hypotheses;-

1. Efficacy of laws and regulations providing for economic rights of authors of traditional songs is the source of stagnating traditional artistic work in Tanzania.
2. Lack of awareness by authors of traditional songs on their economic rights on their traditional songs makes them lose economic earnings.
3. Absence of centers of traditional matters within Tanzanian Districts that can control and regulate economic affairs of traditionalist is a catalyst for failure to enjoy economic rights by the traditional artists.

1.7 Research Methodology

In this study, information was gathered through both primary and secondary sources.

1.7.1 Research Design

This research was conducted through descriptive design under which information collected through interviews and questionnaires in collecting primary data. Secondary data was gathered by reviewing published and unpublished materials i.e. statutes, text books, journals articles and research reports and papers from various internet materials.

1.7.2 Research Area

This study was conducted in Dar-es-Salaam at the National Art Council of Tanzania (NACT) due to the fact that the Institution is the only key player on matters of arts which including collecting fees, controlling, publishing and authorizing the performance of traditional songs originating from various Tanzanian tribes.

It is the Council that knows better on whether these authors and the societies do benefits from their traditional works or not. On top of that the NACT is the overall in

charge of all expressions of traditional culture including folk songs in Tanzania. Therefore, the researcher got detailed information of different tribes from this Council.

1.7.3 Study Population

As pointed earlier that this research was conducted at (NACT) in Dar es Salaam, due to the nature of the topic, the study population involved staff of the National Art Council of Tanzania, lawyers who are conversant on intellectual property rights and staff of COSOTA. Some extra information was collected from authors of traditional songs in order to accomplish the necessary information on this research.

1.7.4 Sampling Techniques and Procedure

In this research, respondents were selected by both random sampling and purposive sampling. Random sampling was used in selecting lawyers who are knowledgeable on the intellectual property rights in Tanzania and other respondents.

The researcher also employed a purposive sampling in selecting the most useful representatives to be consulted in the study population. Purposive sampling method was employed in order to gather information from those persons who are experienced and knowledgeable in the research problem in question. Purposive sampling was used to pick up some respondents like the National Arts Council of Tanzania officers because they are the ones responsible for maintaining and promoting the expressions of traditional culture which includes traditional songs.

1.7.5 Sampling Size

This research involved a sample size of thirty respondents namely, eight lawyers, ten officers from the National Arts Council of Tanzania, five staffs of COSOTA who are responsible for copyright matters and seven authors from different tribes. Through this sample size the researcher was able to collect sufficient information on the problem of economic right of authors of traditional songs as creators of those songs

which faced them for many decades while, their creations are getting more popularity in different locations and media.

1.7.6 Data Collection Methods

Generally data for this study was gathered from primary and secondary sources as pointed above. Under primary sources data was gathered through unstructured interview and questionnaires. Secondary data were collected from relevant text books, journals, articles, unpublished and published materials, statutes, case laws and internet sources. The information obtained from documentary materials helped the researcher to know the historical aspects of the research problem. The information was gathered in the library of Mzumbe University and University of Dar-es- salaam. The National Arts Council of Tanzania as the legal competent authority responsible for protecting the expressions of traditional culture including traditional songs and COSOTA were consulted.

1.7.6.1 Interview

The unstructured interview was carried out with clients or respondents in order to gather the required information. The interview involved four National Art Council members, two experienced lawyers, five authors of traditional songs, and two staffs of COSOTA.

1.7.6.2 Questionnaires

This again helped the researcher to collect data from the respondents who were not accessed easily for interview due to the nature of their works. Therefore, through questionnaires the researcher managed to meet different respondents and obtain their views in respect of the research topic.

1.7.7 Data analysis

Data gathered by the researcher were analyzed by using simple statistics such as the use of factual and logical interpretation obtained through questionnaires and interviews with the respondents.

1.8 Scope of the study

Since intellectual property law is wide subject therefore, this research study confined itself to the branch of Copyright and Neighbouring Rights relating to the protection of economic rights of authors' of traditional songs who create songs within their societies in Tanzania Mainland in exclusion of derivative rights as provided for under section 6(1)(c) of the Copyright Act. The researcher selected this area of study because the economic rights of other individual authors who perform the same work (songs) are well expressed by the law. On top of that protected expressions of traditional culture are many and they cannot be managed at once accurately. This demarcation helped the researcher to collect data and materials relevant to this research study.

1.8.1 Limitations of the Study

In conducting this research, the researcher encountered budget constraints, lack of popularity on the matter researched that is to say, issues relating to the protection of economic rights of authors of traditional songs have no popularity in our societies therefore the researcher failed a bit to get good cooperation, clear and direct information from some staffs. Some staffs that have high post in offices were not easily traced by the researcher due to their positions.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

2.0 Introduction

This chapter describes the meanings and analysis of the terms and concepts used in this dissertation and examines their relationships. The chapter goes further to provide a broad understanding of the views, theories and principles of the law and practices related to protection of economic rights of authors of traditional songs in Tanzania.

2.1 Author

The term author is the corner stone of the copyright law. It implies the maker of the work. According to the Copyright Law of Tanzania, the term author has been defined to mean the natural person who creates the work.⁵³ The term is further defined to mean a person who originates or gives existence to anything and whose authorship determines responsibility for what was created.⁵⁴ In other words, an author is the person who has created the work for the first time and fixed it in a tangible form or medium.⁵⁵ If it is a joint work, they are known as co- authors. In South Africa, the term author has been defined as a person including any legal person.⁵⁶ Generally speaking, the author of a work is a person who creates it. It extends to a person who embodies work in a material form through independent skills, judgments or efforts. The working definition to this research is that of the Copyright law which specified author as a natural person, since this work deals with them as original creators of the songs, specifically traditional songs. Other definitions are of similar important but not backed up with the law.

⁵³ Section 4 of the Copyright and Neighbouring Rights Act [Cap 218 R. E 2002]

⁵⁴ Author extracted at <http://en.wikipedia.org/wiki/Author> accessed on 11/4/2015 at 4:12pm

⁵⁵ Section 4 of the Copyright and Neighbouring Rights Act (*op. cit*)

⁵⁶ Section 1(1) of The Copyright Act, 1978

2.2 Authors' Rights

Generally, authors of traditional songs have two major rights which include moral rights and economic rights. These rights are accorded and enjoyed by an author who has created the original work and acquired copyright. Copyright is the sole or exclusive right granted to the author including the right to print, distribute, produce and perform the work in public. The authors' rights are of essence to be known since this work seeks to air out the economic rights of authors of traditional songs.

2.2.1 Moral Rights

The term Moral right denotes the reputation of the author in the public. It includes claiming the authorship of the work, the right to oppose changes to his work which could harm his reputation.⁵⁷ Moral rights remain with the author even if he transfers his economic rights. However, this work concentrates with economic rights of the author of traditional songs only and not moral rights.

2.2.2 Economic rights

The economic value of the arts has always been recognized and exploited. This has however been of varying degrees depending on the type of art, place and time in history. In the old times, art was produced either for own use or as free service to society. Artists were satisfied with social recognition of their services rather than any form of payment.

In recent years and especially after trade liberalization policy, the situation has changed tremendously. Now, many artists consider their creations as not free social services but as a means of earning their livelihood.⁵⁸ Art production and marketing is becoming more organized through formation of some groups, associations and companies which deals with the production of arts and the like.

⁵⁷ Section 11 of The Copyright and Neighbouring Rights Act [Cap 218 R. E 2002] and Article 6 (b) (i) of Berne Convention of 1886

⁵⁸ Basata profile at pages 3-6

Economic rights of the author refer to the adequate and financial reward or benefit which the author gets from his work. Generally speaking, authors of a copyrighted work have the exclusive right to make reproduction of the work, distribution of the work, rental of the original work, display publicly, to perform publicly just to mention but a few.⁵⁹ Generally, authors have the right to enter into several contracts or agreements which are beneficial to them and for the protection of the welfare of their activities at large. They can permit other persons to use their works through written and signed assignment or licensing agreements in return of some amount depending on the terms and conditions of the agreement itself. The centre of this research is in economic rights hence a lot has to be known here from.

2.3 Traditional Songs

The words traditional songs and folk songs are terms which are extensively used interchangeably since they refer to the same concept. In this work therefore, traditional songs has been used to mean folk songs and vice versa.

Folk song is a song written by the common people or in the style of the common people, or a song made and handed down among the common people.⁶⁰ Usually The Copyright law tries to protect the anonymous work and not the anonymous author. This being the case therefore if the author of the traditional song will be known and identified then his work may be protected under the law.

The distinction between folk song and art music is controversial one though many writers agree with the main features identified by the International Folk Music Council in 1955. Folk songs have evolved through the process of oral transmission shaped by continuity which links the present with the past and Variation which

⁵⁹ Section 9 and 10 of The Copyright and Neighbouring Rights Act [Cap 218 R. E 2002]

⁶⁰ Folk song dictionary definition|folk song defined at www.yourdictionary.com/folk-song accessed on 19/1/2015 at 04:54pm

spring from the creative impulse of the individual or the group; and selection by the community from which determines the form in which the music survives.⁶¹

A copyright can subsist where the song sung is from an identified author or group of people. Traditionally, it had been associated with rural communities and lower socio- economic classes but in the 20th century the pattern of dissemination changed with greater emphasis on written transmission and especially on recordings.⁶² At the same time many of the original functions of the folk songs have been taken over by popular music, as other forms of vernacular music. Folk songs have to be understood in deep since it is a corner stone of this research hand to hand with its author's economic rights.

2.3.1 Value of Traditional Songs

Traditional songs have much importance and values in our nation and the community in particular. Some of such importance and values are as follows;-

Traditional songs are a symbol of the community culture. Generally speaking, traditional songs act as a symbol of the tribe. When sung, it is easy for other persons to identify the tribe concerned by simply hearing the songs sung.

Traditional songs can be used during national historical events and issues that occurred at the time the song was written. To emphasize on this point, traditional songs can be written and used during campaign for national general elections in order to motivate people to participate fully in election.

The traditional songs can be used to identify a certain group of people. Songs may be used to recognize people and to make them known outside their tribe level and the nation at large. Many tribes are identified through their songs when sung or language spoken. A person from a different tribe or community can identify another tribe through their songs and dancing.

⁶¹ Folk- song- FREE folk- song information| Encyclopedia.com... extracted at www.encyclopedia.com...January2002 accessed on 19/1/2015 at 05:53pm

⁶² *Ibid*

Songs can be used again as a weapon to unite people together in order to have one goal and aim. For example, songs were used during the time of wars for the purpose of mobilizing and motivating people from different tribes to fight against enemies together. Traditional songs can help unite people from within the community of origin and outside the community.

Traditional songs have strong emotional ties as the same are sung during national holidays or other events. When sung, traditional songs can show the inner feeling of the singer which can imply happiness or sorrows. They awake people if there is any state of emergency and vice versa.

2.3.2 Protection of Traditional Songs (folk songs)

Historically, traditional songs existed with the existence of the society/people.⁶³ Different societies had their own ways of traditional beliefs, customs, mode of life, mode of dressing, mode of eating, mode of singing and arts just to mention few.⁶⁴ Every society or community had its own customs and traditions which identify their community and were to be respected by all members within the community.⁶⁵ If one member breached the traditions or customs he had to be punished by the chiefs of that community and the real intention was to protect their traditions and customs. Protection of traditional songs by then was through local means.⁶⁶ However, as the time went on the government sought the need to have law which will legally harmonize and protect the expressions of traditional culture including folk songs at national level in Tanzania.

⁶³The History of Copyright in Tanzania: From Tanganyika to Tanzania –where, when, and how extracted at http://www.academia.edu/15213601/THE_HISTORY_OF_COPYRIGHT_IN_TANZANIA_FROM_TANGANYIKA_TO_TAN... on 11/9/2014 at 6:19pm

⁶⁴ (*ibid*)

⁶⁵ (*ibid*)

⁶⁶ (*ibid*)

2.3.3 Basis for the Protection of Traditional Culture at the International Level

The essence or basis for the protection of traditional songs and other traditional creations international wise can be traced back to the establishment of the United Nations Educational, Scientific and Cultural Organization Charter (UNESCO) which was established on 16th November 1945 and came into force on 4th November 1946 after ratification by twenty countries.⁶⁷ One among the purposes of the (UNESCO) of 1945 was to contribute to peace and security by promoting collaborations among the nations through education, science and culture by fostering cultural diversity.⁶⁸

According to the UNESCO Charter, culture is the complex spiritual, material, intellectual and feature that characterize a social group and it includes not only art but also the mode of life beliefs and traditions.

In addition to that, the UNESCO Charter as a legal instrument enables states to better protect all forms of traditions among the member states of the United Nations as part of their culture. At this point therefore, it can be said that the UNESCO Charter paved the way to the recognition, safeguarding and protection of traditional culture worldwide among the member states of the United Nations.

Thus from this Charter, many states in the world got the concept of the protection of the expressions of traditional culture within their nations including Tanzania which is one of the member states of United Nations. The concept of protection of traditional songs as one among the traditional culture came into being since the charter wanted all member states to accord recognition of the same within their national legislations.

2.3.4 Local Basis for the Protection of Expression of Traditional Culture in Tanzania

The idea for the protection of expressions of traditional culture including traditional songs in Tanzania was initiated in 1966 by Mwalimu Julius Kambarage Nyerere's

⁶⁷ Charter of United Nations Educational, scientific and Cultural Organisation, 1945

⁶⁸ Article 1(1) of the Charter of United Nations Educational, scientific and Cultural Organisation, 1945

speech.⁶⁹ Since then, the protection of traditional culture including traditional songs was firstly entered in the Copyright and Neighbouring Rights Act.⁷⁰ In his speech or philosophy rendered in 1966 the (late Mwalimu Julius Kambarage Nyerere) was quoted saying that culture is the essence and spirit of any nation. A country that lacks culture is no more than a collection of people without spirit which makes a nation.⁷¹ Therefore, from these words of Mwalimu Julius Nyerere there arose the need to have a law which will recognize and protect the expression of traditional culture (traditional songs) as one of the components of culture in the nation. That has been one of the reasons for the enactment of 1999 Act which enshrines the protection of folklore particularly in part III of the Act.

2.3.5 Characteristics of Traditional Songs

Expressions of traditional culture including folk songs have the following characteristics: they are handed down from generation to generation either by verbal transmission or imitation; they are continuously utilized circulated; they evolved and developed within the community for many years; they reflect a community's cultural and social identity; and they are made by an author from that community or by communities or by individuals who have authority within their communities.⁷²

2.3.6 Conditions for the Traditional Songs to be Protected

For the expressions of folklore in which traditional songs falls to accord protection, one has to make a written application of the same to the Competent Authority that is the National Arts Council of Tanzania. The following conditions must be met for the traditional songs to be protected.

Firstly, it must be a creation based on traditions of an identified group of people or community.⁷³ This means that the group or community in which the traditional song

⁶⁹ Nyerere, J.K (1966): Freedom and Unity; Oxford University; Dar es salaam at page 49

⁷⁰ [Cap. 218 R.E 2002]

⁷¹ Nyerere, J.K (1966): (*op cit*)

⁷² Traditional Cultural Expressions at www.wipo.int/tk/en/folklore accessed on 15/ 1/2015

⁷³ Samoa Law Reform Commission: the Protection of Samoa's Traditional Knowledge and Expressions of Culture Issue Paper IP 08/10 June 2010 at pg 15

originates must be clearly mentioned and known. For instance, if there is a certain folk song which is to be protected, the community in which the folk song comes from must be identified and indicated properly. In other words, it can be said that, if the community or group in which the song comes is not identified then the same cannot be protected by the laws.

Secondly, the relevant community must accept such creations or traditional songs as adequate expression of its values, standards, social identity and culture.⁷⁴ This means, every community has its own ways of setting values, standards, social identity and culture. Thus, the community which seeks or wants their traditional songs to be protected by the law must accept such creation as theirs and that it has been made within their culture and met all the required standards and values.

Thirdly, in order for the traditional songs to be protected, they must be in tangible form. For example, a traditional song can be given protection if the notes or words are reduced to writing or recorded.⁷⁵ To insist on this point, a copyright subsists in a work which is put into writing, recorded or reduced to material form. However, most of the expressions of traditional culture are not able to satisfy this requirement like verbal expressions (folk tales).⁷⁶ The Copyright Law always protects the expression of the idea and not an idea itself or original thoughts of the author.⁷⁷ The above position is clearly provided under section 7(c).⁷⁸

This means that, when the idea is expressed and fixed in a physical form that an owner can exert possession over it then it will be protected. For example, a folk song can be protected if it is written in a paper or recorded. In other words, if one has the idea which is not reduced into writing, it cannot be protected by the Copyright Law.

⁷⁴ Samoa Law Reform Commission: the Protection of Samoa's Traditional Knowledge and Expressions of Culture Issue Paper IP 08/10 June 2010

⁷⁵ Samoa Law Reform Commission: the Protection of Samoa's Traditional Knowledge and Expressions of Culture Issue Paper IP 08/10 June 2010 at pg 16

⁷⁶ *Ibid*

⁷⁶ Traditional cultural expressions and intellectual property at www.wipo.int/tk/en/folklore. accessed on 30/1/2015 at 10:27am

⁷⁷ *Ibid*

⁷⁸ The Copyright and Neighbouring Rights Act [Cap. 218 R.E 2002]

In the case of **Sprifield v Thame**,⁷⁹ the court stated that ideas are not protected by copyright law but their expressions are protected when are written, recorded or fixed in a tangible form.

Fourthly, before the traditional song is protected by the Copyright law, the creation should be original.⁸⁰ By originality it means that the mode in which the idea is expressed is something required to be protected. The creation of the traditional songs must be a product of an independent creation of the author or (society). The creation must be able to demonstrate the minimum level of creativity which can be seen through selection and arrangements of ideas.

2.3.7 Conditions of Using Traditional Songs for Commercial Purposes in Tanzania

The law governing the protection of traditional songs (folk songs) provides some conditions for the usage of traditional songs for commercial purposes or in a way that does not fall under any of the exceptions. These conditions include:-

First, a person who wants to use or utilize traditional songs for commercial purposes outside his or her tradition and customs has to seek prior permission by making an application in writing for authorization to the Competent Authority (National Arts Council of Tanzania).⁸¹ This means that any application, reproduction and distribution of copies of traditional songs or any communication to the public including recitation, performance, broadcasting or distribution by cables of the said songs for gain intent and outside their traditional or customary are subject to authorization by the Competent Authority.

Second, once the permission is granted by the Competent Authority to use the traditional songs and other traditional creations for commercial purposes in all printed publications and in connection to any communication to the public, it has to

⁷⁹ [1903]19 TLR 65

⁸⁰ Samoa Law Reform Commission: the Protection of Samoa's Traditional Knowledge and Expressions of Culture Issue Paper IP 08/10 June 2010 at pg 16

⁸¹ Section 25 and 28 of The Copyright and Neighbouring Rights Act [Cap. 218 R.E 2002]

indicate in an appropriate manner by mentioning the community and or geographical place from where the expression utilized has been derived.⁸² This means that, a person permitted to use expressions of traditional culture for commercial purposes outside his or her tradition and customs has to indicate or to acknowledge the source in which the tradition songs he uses is derived. This condition considers the moral right of the community or society which is the creator or owners of the traditional songs within their respective communities. On top of that it intends to avoid plagiarism and infringement of copyright.

Third, once a person is allowed to utilize traditional songs for commercial purposes outside his or her tradition and customs by the competent authority, he must pay fees to the National Arts Council of Tanzania which is used to promote and safeguard the national culture.⁸³

Perullo A. in his book⁸⁴ summarizes the above conditions by stating that, the protection of expression of tradition culture hinders people coming to Tanzania to record or take expressions of folklore without recognizing the author of folklore and without paying a fee for using the folklore. In situations where someone wants to copy, distribute, broadcast or performs the expression of traditional culture, that person has to obtain permission from the National Arts Council of Tanzania; and whenever an expression of folklore is used, there must be a mention of the community and or geographical place of where the folklore came from. In addition to that, anyone using expression of folklore must pay a fee that will be used by National Arts Council of Tanzania to promote and safeguard the national culture.

It is contended therefore that, a person who uses the traditional songs for commercial purposes without fulfilling the above explained conditions or in a way that does not fall under any of the exceptions shall be held liable by the Competent Authority

⁸² Section 28 of The Copyright and Neighbouring Rights Act [Cap. 218 R.E 2002]

⁸³ Section 28 (b) of The Copyright and Neighbouring Rights Act [Cap. 218 R.E 2002]

⁸⁴ Perullo, A(2001): The Music business in Tanzania; colour print (T) Ltd; United Republic of Tanzania. At page18

(National Arts Council of Tanzania) for damages, injunctions or any other remedies that the court shall deem fit in each claim.

However, a person may use the expressions of traditional culture for commercial purposes or in the way that does not fall under any of the exceptions without being held liable by the Competent Authority for infringement of copyright provided that the traditional songs he uses are derived within his own tradition or customs.⁸⁵

2.4 Authority Responsible for the Protection of Traditional Songs and its Functions in Tanzania

In Tanzania, the protection of traditional songs and other traditional creations are legally vested to the Competent Authority known as National Arts Council of Tanzania.⁸⁶ This legal council has the power to receive applications for the use of traditional songs and other traditional creations; to grant permission or authorization for the utilization of the traditional songs; to collect fees from the applicants who wants to utilize the expression of traditional culture outside their traditions and customs; to promote and safeguard national culture; to sue in courts if there is infringement of expression of traditional culture copyright; and to fix the amount of fees to be collected corresponding to a tariff approved by (the supervisory authority).⁸⁷

2.5 Rights of Indigenous People to Own and Control their Traditional Songs

The economic rights of authors of traditional songs or indigenous people to their songs are very vital. Authors or the tribes are entitled to the recognition of the full ownership and control and protection of their cultural rights. Protected traditional songs (folk songs) should not be commercialized or used for tourism and advertisement purposes without prior informed consent of the indigenous peoples or authors concerned. The community should have control over their cultural and artistic performances and to share equitably in the benefits of such presentation or

⁸⁵ Section 26 of The Copyright and Neighbouring Rights Act [Cap.218 R.E 2002]

⁸⁶ Section 25 and 29 of The Copyright and Neighbouring Rights Act, [Cap.218 R.E 2002]

⁸⁷ Section 28 (b) of The Copyright and Neighbouring Rights Act, [Cap.218 R.E 2002]

performance. All funds so collected should be managed directly by the community concerned or should be held in trust by the National Commission on Indigenous Peoples for the benefits of the relevant community.

2.6 Authorization to Utilize Traditional Songs

When the model law determines the entity entitled to authorize the utilization of expressions of folklore, they refer to the “competent authority” and “community concerned” avoiding the term “owner”. They do not deal with the question of ownership of traditional songs because this may be regulated in different ways from one country to another. In some countries, the expressions of traditional culture including traditional songs may be regulated as a property of the nation; while in other countries, a sense of ownership of the artistic heritage may have developed in the communities concerned. Countries where indigenous or other traditional communities are recognized as owners and fully entitled to dispose of their songs and where such communities are sufficiently organized to administer utilization of the traditional songs, authorization may be granted by the community itself.

A community may grant permission to prospective users in a manner similar to authorization granted by authors at its own fully discretion. In other countries where the traditional artistic heritage of a community is considered as part of the cultural heritage of a nation or where communities concerned are not prepared to adequately administer the use of their expressions of traditional culture, “competent authorities” may be designated to give the necessary authorizations in the form of decisions under public law.⁸⁸

2.6.1 Traditional songs as a commodity of the authors and the community

Indigenous peoples and local communities have articulated the following objectives for the protection of expressions of traditional culture including traditional songs. Briefly, these objectives include: control over disclosure and use; commercial

⁸⁸ Wipo-The Protection of Expressions of Folklore: The Attemptsat- Tripod extracted at <http://itt.nissat.tripod.com/itt9903/folklore.htm> accessed on 10/02/2015 at 10:45am

benefit; promotion and incentives for continued tradition based creativity; acknowledgement; attribution and prevention of derogatory; and offensive and fallacious use.

Relevant objectives have been classified as offensive commercial interest, an active commercial interest and ethical concerned. A defensive commercial interest is relevant where cultural communities wish to protect their traditional songs from being exploited commercially by others. An active commercial interest would be relevant where communities wish to benefit from the economic advantage attached to treating their traditional songs as a commodity.

Most of countries regard traditional creations to include songs as property of the country as a whole (as part of the national cultural heritage). Few of them treat traditional songs as belonging to indigenous and local communities.

2.6.2 Commercial Utility of Folk Songs

Protected expressions of traditional culture amongst other things are capable of commercial use. This provides protection only to those expressions of traditional culture that have a commercial or industrial value. Traditional songs are one among the traditional creations which are capable of commercial use. The advantage of such condition may be that it requires enforcement of right in and raises transaction costs only for those expressions of traditional that are likely to be exploited.

On the other hand, indigenous peoples and traditional and other communities stress that their concerns are not only economic in nature. Many expressions of traditions are not created for economic sale but are rather vehicles for spiritual and cultural expressions. The aspirations and expectations of relevant communities address and balance both the cultural and economic aspects of development.

2.6.3 Traditional Songs as a Collective Asset of the Community

The protection and recognition of expressions of traditional culture should adhere to the following aspects as explained here under;-

Recognition of expressions of traditional culture promote the use of the expressions of folklore including folk songs for the community- based development recognizing them as a collective asset of the communities that identify with them; and promote the development of, and the expansion of marketing opportunities for authentic expressions of traditional culture particularly traditional arts.

Recognition of economic value of authors of traditional songs encourage, rewards and protect authentic tradition-based creativity and innovation, particularly when so desired by them, by indigenous peoples and traditional and cultural communities and their members.

2.7 Conclusion

This chapter carries definitions and explanations of various principles of law, theories and concepts necessary to be understood in this research work. The concepts described in this chapter are the ones often used in this work. The meaning given to the concepts herein, are the same meaning that researcher intends to be considered wherever the same concept have appeared in this work, regardless it has some optional meaning in other context. The chapter also provides some qualifications for protections and some details necessary for one to widen his knowledge on protection of economic rights of authors of traditional songs.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK

3.0 Introduction

This chapter presents the legal and institutional frameworks which govern and regulate the administration and management of expressions of traditional culture including traditional songs and the rights of authors in Tanzania mainland. Various international instruments and local legislations that deal with the protection of economic rights of authors of traditional songs are considered. Also some institutions that deal with authors' rights are covered.

3.1 Legal Framework

This section makes analysis of the international and municipal law that governs and regulates copyright in Tanzania.

3.1.1 Universal Declaration of Human Rights, 1948

This is one among the international instruments which recognize the right of the community to enjoy the economic benefits derived from their creations.⁸⁹ Traditional songs are one among the creations which can be enjoyed by individual authors and the whole society. This being the case, authors of traditional songs have the right to get the economic share especially when their songs are being used by other persons outside their community for gain. The economic share received has to benefit the whole society or tribe. This requirement is very fundamental for the purpose of bringing development within the community.

⁸⁹ Article 27(1) of Universal Declaration of Human Rights, 1948 stipulates that everyone has a right to freely participate in the cultural life of the community to enjoy the arts and the share in the scientific advancement and its benefits.

Authors of traditional songs have the right to take over the control of their economic value at the tribal level. This view is provided under Article 1(1)⁹⁰ which provides that all people have the right to self domination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development. In other words, it can be said that, authors of traditional songs have the right to take control over their songs and the economic share generated from their intellectual for the benefit of the whole community like other creators.

3.1.2 Cultural Policy (Policy Statements)

The cultural policy was inaugurated on the 23 of August, 1997 in Dodoma. In the second part of the said policy which is titled *Arts and Crafts*, it is provided that the National Arts Council shall collaborate with and promote artists and the arts and shall collect and disseminate information about prices and disseminate information about prices and markets of products of cultural industries to artists and organizations.⁹¹ Moreover, the council shall encourage artists to participate in different festivals and exhibitions.

Not only that but also the said policy proceeds to state that, artists shall be encouraged to form associations for the purpose of promoting and safeguarding their interests.⁹² By looking at the statements contained in the cultural policy, it is clear that the National Arts Council of Tanzania is the one which is responsible for promoting artists and arts in Tanzania Mainland and responsible for encouraging artists to form associations in order to promote their interests. However, this responsibility of the council has not been covered in the main Act.

⁹⁰ The International Convention on Economic, Social, and Cultural Rights, 1966 and International Covenant on Civil and political Rights, 1966

⁹¹ Item 2.1.1 of the Cultural Policy of Tanzania of 1997

⁹² Item 2.1.3 of the Policy

3.1.3 The National Arts Council of Tanzania Act No. 23 of 1984

The Act under section 2 (b) defines “artistic work” to mean “a work, irrespective of artistic quality, of any of the music which may be vocal, instrumental, recorded or written composition and which includes...folk music.”

The Act empowers the Council to carryout research in the development and production of artistic work and marketing of such works including the standard and quantity of artistic work produced in Tanzania. That is to say it is the duty of the Council to seek for the market of its artists which includes folk songs.⁹³

The function of the Council is also to assume responsibility for the revival and promotion, development and production of artistic works including the production and use of indigenous and traditional music instruments, songs, poetry and traditional dancing with a view of reviving and promoting Tanzania culture.⁹⁴ According to this law, the council has the authority to use the indigenous traditional songs and other works for the purpose of reviving Tanzania culture. The law place heavy emphasis on the production of art without mentioning the welfare of the artists and does not put any efforts to promote the interests of the artists anymore.

3.1.4 Copyright and Neighbouring Rights Act, [Cap 218 R.E 2002]

This is the important legislation in Tanzania Mainland for the protection of expressions of traditional culture under which traditional songs falls. Generally, this law aims at protecting the moral and economic rights of authors and other creators in relation to their works.⁹⁵ It also sets reasonable conditions under which protected creations can be used by other persons without injuring the economic interests of authors.⁹⁶ This law recognizes and protects traditional songs (folk songs) as enshrined under part III, particularly section 24(b) of the said Act.

⁹³ Section 4(1) (b) of the National Art Council Act No 23. of Tanzania 1984

⁹⁴ Section 4 of The National Arts Council of Tanzania No 23 of 1984

⁹⁵ Section 2(i) of The Copyright and Neighbouring Rights Act [Cap.218 R.E 2002]

⁹⁶ Section 26 ibid

Furthermore, the law recognizes even foreign expressions of folklore in which traditional songs falls provided that the country or the community from which such expressions is derived grants similar protection to expressions of folklore developed and maintained in Tanzania.⁹⁷ This means that the law extends the protection of the same subject to the condition that the foreign country has to grant the same protection as those accorded in Tanzania.

The protection of copyrighted work is not conclusive in the sense that there are certain circumstances the works under copyright may be used by another person without any authorization. Such circumstances are not considered as infringement of the copyright works. The following are the situations where by the person other than the copyright owner may use traditional songs without being sued.

The utilization of the protected traditional creations for the purpose of education is allowed as an exception to the general rule. This exception is subject to the conditions and limitations that the uses serve the purpose of teaching. Another one is the utilization by way of illustration in an original work of an author or authors, provided that the extent of such utilizations is compatible with fair practice and borrowing expressions of folklore for creating an original work of an author or authors inspired by folklore.⁹⁸

3.1.4.1 Rights of Authors of Traditional Songs under the Copyright and Neighbouring Rights Act, [Cap 218 R.E 2002]

Traditional songs derive moral rights only to the community from which the songs come from. In this respect, the law requires any person using or making communication to the public of any identifiable traditional songs to indicate its source in an appropriate manner, by mentioning the community or geographical area from which the expression utilized has been derived.⁹⁹ At this point therefore, it can

⁹⁷ Section 3(6) (b) *ibid*

⁹⁸ Section 26 The Copyright and Neighbouring Rights Act [Cap.218 R.E 2002]

⁹⁹ Section 27 *ibid*

be argued that the moral right of community or the society has been well settled by the law but not the authors of the traditional songs in particular.

Generally, authors have exclusive right to make reproduction of the work, distribution, public exhibition of the work, adaptation, translation and broadcasting.¹⁰⁰ The authors have also the right to authorize distribution of the work to other persons. The law allows them to enter into written assignment and licensing agreements with other persons for economic benefits of authors themselves.¹⁰¹ However, economic rights of authors of traditional songs who create songs within their societies have not clearly defined by the law. It is doubtful on whether these authors have the right to enjoy the economic benefits accrued from their songs like other individual authors.

In addition to that, application for authorization of any utilization of these songs must be made in writing to the competent authority and where the competent authority grants authorization it may fix any collection fees and the collected fees shall be used for the purpose of promoting or safeguarding national culture.¹⁰² The law is silence on whether authors of traditional songs have the right to authorize for the use of their songs to other persons or to enter into written assignment and licence on their own.

3.1.5 The Copyright (Licensing of Public Performance and broadcasting) Regulations, 2003. GN. NO. 328

This Regulation is set for the purpose of providing good mechanisms of handling copyrights. The regulation is divided into two main parts. The first part covers general issues and the second part covers schedules. Schedules are divided into three parts. The first part contains application forms; the second part contains tariffs; and the third part provides for distribution rules. The relevant part for the purpose of this research is part three- third schedule (distribution rules). This regulation is to the

¹⁰⁰ Section 9 ibid

¹⁰¹ Section 16 and 17 The Copyright and Neighbouring Rights Act [Cap.218 R.E 2002]

¹⁰² Section 25 and 28 The Copyright and Neighbouring Rights Act [Cap.218 R.E 2002]

effect that the royalties derived from the use of the folklore in which traditional songs falls has to be paid to the National Council of Tanzania. This requirement shows openly that authors of traditional songs have no any direct economic benefits resulting from their works or creations but the government which enjoys the same.

3.2 Institutional Framework

This section analyses the institutions which are responsible for administration and protection of copyright in Tanzania Mainland.

3.2.1 National Arts Council of Tanzania (NACT)

The National Arts Council of Tanzania is a corporate public institution established under section 3 of the Act.¹⁰³ The Act repealed the National Arts Council and the National Music Act, both of 1974 to pave the way for the establishment of one council responsible for all the arts in Tanzania.¹⁰⁴ It is a government agency for the revival, promotion and development of the arts in Tanzania.¹⁰⁵

The Council is the overall in charge which is responsible for the promotion and safeguarding national arts including traditional songs in the country. It is also responsible for collecting fees and receiving royalties accrued from traditional creations in the country. The institution strives to nurture an artistically conscious and active Tanzanian who is motivated to fully participate in production and consumption of good art. The Institution facilitates the production and consumption of good art works and services. The core values of the Institution include promoting and developing an authentic Tanzanian art tradition, upholding professionalism and excellence and promoting creativity and innovativeness in the arts.¹⁰⁶

¹⁰³The National Arts Council of Tanzania No. 23 of 1984

¹⁰⁴ Basata profile

¹⁰⁵ National Arts Council of Tanzania-wikipedia, the free encyclopaedia extracted http://en.wikipedia.org/wiki/National_Arts_Council_of_Tanzania accessed on 24/4/2015 at 8:25am

¹⁰⁶ BASATA- Artists extracted at <http://www.artistsoftanzania.org/site/index.php%3Foption%26view%3Darticle%261> .. accessed on 24/4/2015 at 10:30 am

3.2.2 The Copyright Society of Tanzania (COSOTA)

The Copyright Society of Tanzania is the statutory body corporate set up by the government of Tanzania under the Ministry of Industry and Trade established under section 46 of the Act.¹⁰⁷ The Copyright Society of Tanzania is vested with power to administer the copyright rights. This society has some key objectives which include adopting measures which will ensure effective advancement of the moral and economic interests of authors, performers, producers, broadcasters and phonograms and establishing effective machinery for collection and distribution of royalties by assuming full responsibility for the operations attaching to the administration of the rights entrusted to it.¹⁰⁸

All authors in the country who wants their creations to be protected have to consult COSOTA for copyright. This being the case, even authors of traditional songs who wants to participate in art activities for commercial purposes have to seek application for membership and registration of their works by the society for copyright so that their songs may be legally recognized and protected. The society is also an associate member of the World Intellectual Property Organization (WIPO) and the Confederation of Societies of Authors and Composers (ICSAC) and has foreign affiliated sister societies through reciprocal agreement.¹⁰⁹

The major function of the Society is to register members and protect the rights of registered members of the society. For such reason, whoever wants his/her work to be protected by the society must first be registered by COSOTA.

3.2.3 Tanzania Culture Trust Fund

Tanzania culture trust fund is not for profit making organization. It has been established in September 1998 through a trust deed to promote, develop and

¹⁰⁷ The Copyright and Neighbouring Rights act [cap.218 R.E 2002]

¹⁰⁸ Cosota extracted at <http://www.cosota-tz.org/%3Fsection%3Dabout> on 25/4/2015 at 12:18pm

¹⁰⁹ *Ibid*

strengthen the culture sectors in the country.¹¹⁰ Its establishment followed expression of concerns by cultural actors and practitioners of the absence of the organization that would empower them so that their activities not only effectively preserve the culture of Tanzania, but also provide gain employment and contribute more to the country's economic development.¹¹¹

Tanzania culture trust fund operates within the framework of the culture policy of Tanzania and its activities complement the government efforts in the field of culture. It is for this reason in the day to day activities Tanzania culture trust fund works very closely with the Ministry of information, culture and sports. Tanzania culture trust fund is working through six cultural constituencies' namely cultural heritage, film and audio visual, cultural industry, performing arts, language and literature, fine arts and crafts.¹¹² Tanzania culture trust fund discharges its responsibilities by firstly providing funding to cultural actors so as to initiate, develop and improve their marketability.¹¹³

Tanzania culture trust fund is in the frontline on providing awards to various authors including authors of traditional songs and music, actors and others. For example in 2001 Mzee Justine Doto Mayagilo won zeze award nominee conducted by Tanzania Culture Trust Fund as one among the authors of traditional songs and music who contributed significantly to the promotion of Tanzania traditional music and songs, conductor of Brass Band for over 40 years, composed songs for Brass Band, adopted and pioneered traditional songs and music into Brass Band, wrote music notations for traditional songs and music and won personal and national recognition and awards through Brass band music.¹¹⁴ To some extent this institution has shown

¹¹⁰ Mfuko wa utamaduni Tanzania (Tanzania culture trust fund) extracted at http://trickleout.net/index.php/directory-pilot/Tanzania/mfuko_wa_utamaduni_tanzania_tanza... accessed on 25/4/2015 at 3:01pm

¹¹¹ MFUKO WA UTAMADUNI TANZANIA (Tanzania Culture Trust Fund)... extracted at http://www.moe.go.tz/index.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D34%26ite... on 25/4/2015 at 5:35pm

¹¹² Mfuko wa utamaduni Tanzania (Tanzania culture trust fund) *ibid*

¹¹³ *ibid*

¹¹⁴ *ibid*

positive reaction towards the recognition and provision of the award to the author of traditional songs and music. The altitude shown by the Tanzania Culture Trust Fund has to extent to other authors of the same kind.

3.3 Conclusion

Both the present legal framework and institution framework of protection of economic rights of authors of traditional songs are not self sufficient because the law does not recognize authors of traditional songs as one among the groups which deserve certain economic share accrued from their creations. The available legislation grants economic benefits to the government through the council which is responsible for the promotion and safeguarding the national culture in the country.

The institutions which are vested with the power of administering and protecting the economic interests of authors are very few all over the country and are not committed to their responsibilities; hence the economic rights of authors of traditional songs remain vulnerable and unprotected.

CHAPTER FOUR

RESEARCH FINDINGS AND DATA ANALYSIS

4.0 Introduction

This chapter presents data analysis and research findings. The chapter contains various data gathered by the researcher in the field from different offices and sources through questionnaires and interviews.

4.1 Effectiveness of the Law on Protection of Economic Rights of Authors of Traditional Songs in Tanzania

In explaining the effectiveness of the Law and Regulations on protection of economic rights of authors, one Officer from NACT during interview¹¹⁵ said, cultural creations including traditional songs have no copyright at all or in other words it can be said that there is no copyright on all expressions of folklore. Copyright is something very crucial to authors in general for the purpose of protecting their intellectual works. Copyright gives sole legal right to authors to publish, print, perform film or record a literary or artistic or musical work.¹¹⁶ Therefore, in order to overcome such situation, NACT and the Minister of Information, Youth, Culture, and Sports are on the way to prepare Regulations in order to curb the problem.

He was of the view that authors and tribes concerned have the right to get copyright of their creations provided that there will be known traditional groups to be established in each tribe with recognized leaders in order to control, protect and to administer authors rights, including economic rights at the tribal level.

¹¹⁵ Information obtained from National Art Council of Tanzania (NACT) by the researcher from Interview Conducted at BASATA Dar es salaam on 5th May 2015 at 1100HRS between Researcher and Senior Art Officer Grade One of the NACT.

¹¹⁶ The officer made reference to Section 4 of The Copyright and Neighbouring Rights Act [Cap. 218 R.E 2002]

The officer went on opining that, authors of traditional songs have the right to get economic rights over their creations especially where they are used by other persons for commercial intent or gain. This is because nowadays it is observed that, some cultural creations including traditional songs are properties which can be sold like any other property to third parties. The bad thing is, there is no legislated express law or regulations to govern, administer and protect the economic rights of authors of traditional songs at the tribal level. The administration of all cultural creations including traditional songs has been left on the hands of the government and not the authors or communities from which such songs originated.

It is observed from the information obtained that, there is no law for safeguarding the economic rights of authors of traditional songs. Despite this truth, it is still agreed that authors of traditional songs are entitled to economic rights over their creations once used for commercial purposes. Even though they are entitled to earn from their works, the law does not favor them. This discourages them too much. For this reasons and finding, the assumption that absence of clear laws and regulations providing for the economic gain of authors of traditional songs is the source of stagnating traditional artistic work in Tanzania is hereby tasted positively.

Researchers' views further observed that, the information obtained tallies with the provision of section 28 para (b)¹¹⁷ which among other things provides that, where the Competent Authority grants authorization, it may fix the amount of any collection fees corresponding to any tariff approved by (the supervisory authority) the fees collected shall be used for the purpose of promoting or safeguarding national culture. The National Art Council Act¹¹⁸ further provides that among the functions of the Council which is the agency of the government is to assume responsibility for the revival and promote the development and production of artistic works including the production and use of indigenous and traditional music instruments, songs, poetry and traditional dancing with a view of reviving and promoting Tanzania culture.

¹¹⁷ The Copyright and Neighbouring Rights Act [Cap.218 R.E 2002]

¹¹⁸ Section 4 of The National Arts Council of Tanzania No 23 of 1984

Moreover, Part three of the third schedule to the Copyright Act, (Distribution Rules)¹¹⁹ expressly provides that, the royalties derived from the use of the folklore in which traditional songs falls has to be paid to the National Council of Tanzania. Arguing from these laws point of view, it is obvious that authors of traditional songs and the community at large have no any direct economic benefits over their works or creations. It is the government which enjoys the same. This diminishes the morale for the authors of traditional songs to keep on creating new songs.

The authors of traditional songs like other authors have the right for their works to be protected and enjoy the economic rights. In Tanzania there are some songs which are popular and are being broadcasted in different media, ceremonies and national ceremonies.¹²⁰ Many people are benefiting from these songs but authors of the same have been neglected due to the fact that they have no direct control over their economic rights.

There is no doubt that authors' works in other music (other than traditional songs) are protected under the Copyright and Neighbouring Rights Act (supra). It is further understood that they enjoy fully, the economic rights accrued from their works through assignment and licensing.¹²¹ However, authors of traditional songs do not directly enjoy the aforesaid rights. The economic rights that they are supposed to receive normally fall under the hand of the government through the competent authority.¹²² That is to say, neither the author nor the society which he/she is coming from benefits.

It is further noted that even the artists who sacrifice their time to create traditional songs for the purpose of awakening face many challenges. These authors need economic support but support goes to the society which the author comes from. That

¹¹⁹ The Copyright (Licensing of Public Performances) Regulations, 2003GN No 328 published on 10/10/2003 simply known as Licensing Regulation

¹²⁰ Some of the traditional songs are like Ngoni Songs and melod, Makonde Songs and Dances (Sindimba), Zaramo, Zigua songs etc.

¹²¹ Section 16 and 17 respectively (*ibid*)

¹²² Section 28 of the Copyright and Neighbouring Rights Act [Cap 218 R.E 2002]

is to say they don't have direct benefit neither economically nor morally rather it is the society that at least get the moral rights. Worse still, the society does not enjoy such right fully because of inefficiency of the law.

The state do protects and preserve the products of people culture which has been common owned such as folk songs. It holds such copyright to various expressions of folklore and the so called products of popular culture. The rationale to cover folklore is that it is the country which has diversity of ethnic tribes and culture as well as wealth in the field of arts and literature which needs the protection of copyright for the intellectual property originating from the diversity. Folk songs are specific basing on the cultural community owning it, it is not the state. It is the cultural community who owns the folk songs or generations fostered by tradition

4.1.1 Awareness of Composers on their Economic Rights Accrued From Traditional Songs.

An information officer from the National Art Council during the interview explained that,¹²³ cultural creations including traditional songs came into being with the existence of the society. It is the community which creates the same by using their own human intellect; hence it is the property of the community and on top of that it is the community which has the right to use them as a source of income and not the government only as it is now. The laws in place grant authority to the government agency (NACT) to use royalties and fees collected through traditional culture instead of the community concerned. The government could only facilitate and put suitable mechanisms which could help communities to protect, use and enjoy their cultural creations to the best of their interests.¹²⁴

There are two major challenges which are facing the traditional songs composures. First is the lack of knowhow on the economic rights and, second is the nationalization of al folk songs by the government through the National Arts Council

¹²³ Information from Interview with the NACT of 5th, May 2015 (*op cit*)

¹²⁴ Interview of 5th May 2015(*Op cit*)

of Tanzania (NACT).¹²⁵ These authors have their songs which are now popular in our country and used in many activities by individual persons as well as the state at large. The society knows that the songs were created and performed in their societies but they do not benefit from their songs (artistic works).

Most of authors of traditional songs in Tanzania have no knowledge of their economic rights due to the fact that the owner of those songs is the government through the Competent Authority namely National Arts Council of Tanzania (NACT). Nowadays, their traditional songs are being broadcasted in different media, ceremonies, national ceremonies just to mention few, but the society as the owner of those songs is not aware if they have any economic interest over such songs especially where the songs are used by persons outside their community for commercial purposes.

Many traditional creations are gone, no good follow-up and records kept showing what exactly happened. Many rights of authors of traditional creations and members of the community at large are not met simply because there is no strict measures taken by the government and its agencies to make sure that these authors know their economic rights accrued from their songs. The lack of awareness by the authors on economic rights to their traditional songs leads them loose the same.

The government could even know the trend and the extent to which Tanzanian culture is falling down but still it has hard neck to release the economic earnings to the composers of traditional songs. The authors stand unaware of their rights, hence lose the economic earnings. With this therefore, the second hypothesis is hereby tested positively.

4.1.2 Procedural Requirements for the author to benefits from his work

Through interview, the researcher observed that all groups, companies and individual artists who want to participate on arts activities are required to apply for

¹²⁵ Section 28 of the Copyright and Neighbouring Rights Act [Cap 218 R.E 2002]

registration to NACT in order to perform their activities legally.¹²⁶ After complying with all requirements of registration including payment of fees then NACT grants them a registration certificate. This being the case, all authors of traditional songs in the country who wants to participate on artistic activities are required to follow this procedure in order to legalize their activities.¹²⁷

The interviewed officer went ahead saying that the NACT grants to authors the legal right to participate on artistic activities as pointed above and not the copyright. If it happens that an individual author, group or a company wants to participate in artistic activities for the purpose of gaining income, then they have to make an application to COSOTA for membership as provided under regulation 5 and 7.¹²⁸ Having been approved as members of COSOTA then they have to register their works.¹²⁹ This requirements applies *mutatis mutandis* even to authors of traditional songs who wants their songs to be protected have to go to COSOTA after getting the registration certificate from NACT. There is no need to go to COSOTA if their work does not require copyright.¹³⁰

Once a group or an individual person has been approved as a member of COSOTA, his or her work will get copyright. This being the case, any person who wants to use the registered work has to negotiate with the society on the amount to be paid for using the protected work.¹³¹ Therefore, all royalties accrued from expressions of folklore including traditional songs are given to NACT as the government's competent authority responsible for the promotion and safeguarding the national

¹²⁶ Interview held on 7th May 2015 between researcher and Arts' Registrar Officer at NACT held in DSM

¹²⁷ *Op cit*

¹²⁸ The Copyright and Neighbouring Rights (Registration of Members and their works) Regulations, 2006. GN NO 6 published on 20/01/ 2006 simply known as Registration Regulation.

¹²⁹ Regulation 6 *ibid*

¹³⁰ Regulation 6 (*Op Cit*)

¹³¹ Interview held on 11th May 2015 between researcher and COSOTA Officers held in Dar es Salaam

culture in the country.¹³² At this point therefore, it can be said that there are close relationship between COSOTA and NACT in as far as traditional arts is concerned.

4.2. Traditional Centers for controlling and regulating economic affairs of authors of traditional songs

The NACT as a legal competent authority which is vested with all powers to deal with and to look after and to promote the national culture within the country has never attained this goal.¹³³ This being the case therefore many rights of artists or authors including economic right of traditional authors are not preserved. Tanzanian arts including traditional songs are being used by third parties for economic gain without strict prohibition from the competent authority. On the other hand, authors have no authority to do the same over their creations. Infringement of traditional arts in Tanzania is high. Therefore, authors of traditional songs are disappointed because there is no direct economic benefit given to them.

Through this research it was observed that there are no specialized centers and institutions established by the law at the tribal level to deal with the protection of the economic rights of authors of traditional songs.¹³⁴ Lack of the institutions to deal with the protections of the authors' rights has lead to the uncontrolled infringements and failure for the preservation of culture from the grass root. Therefore, there is no strict protection of traditional creations against third parties. This affirms the assumption of this research that, absence of tribal centers to control and regulate economic affairs of tribal authors is the catalyst for failure to get and enjoy their economic earnings.

¹³² The Copyright (licensing of public performances and Broadcasting) Regulations, 2003 GN NO 328 published on 10/10/2003 simply known as Licensing Regulation, third schedule- distribution rules under sub- heading Rights of Authors of Musical, Literary, Drammatic Works. see letter D

¹³³ Interview held on 11th May 2015 (*op cit*)

¹³⁴ (*Ibid*)

4.3 The Role of the Competent Authority in Promoting and Safeguarding Traditional Songs in Tanzania

The Director of the NACT explained that, in each district all over the country there is an assistant art officer who among other things is responsible to receive applications for registration of artists' creations.¹³⁵

The government through its agency (NACT) after receiving fees and royalties accrued from traditional creations including traditional songs in practice do return 25% of all benefits received by it to the district assistant art officer who is responsible to use the said money for promoting culture in the community. The said money is not used as a means of providing motivations to authors and development to the community at large.¹³⁶

He went on saying that the big challenge is lack of records and follow up by NACT to know whether the said money is really used for the intended purpose or not. Failure to have those records from the assistant district art officer makes it likely not to be used for the intended purpose. Most of the community members are not aware of the presence of the said share which has to promote and to develop their culture. Since there is no one to ask, then the district assistant art officer may use the money not for the intended purpose.

Various authors of traditional songs during interview said¹³⁷ that Traditional songs nowadays are a business oriented product which needs promotions in order to be known and bought by others. Therefore, non provision of economic right to those authors or the tribal concerned causes their songs to be unknown. Traditional songs lack wide market due to the fact that they are not well promoted by creators even the government in particular.¹³⁸ Authors of traditional songs need money to make

¹³⁵ NACT information officer response given from his interview with the researcher on 7th, May 2015 at around 10:30 Am

¹³⁶ NACT Information officer (*Op Cit*)

¹³⁷ Five traditional Artist who have been interviewed by the researcher at BASATA premises on 6 and 7th May 2015.

¹³⁸ NACT (*Op Cit*)

advertisement of their songs in several media including radios, televisions and newspapers in order for Tanzanians to know the value of their culture.

Failure of the government, associations and other stake holders to bring awareness to Tanzanians and other members of the community at different levels contributes much to disregarding their own culture.¹³⁹ Most of Tanzanians do not even know the importance of their own culture. They further contend that, the experience reveals that foreign people are the ones who like our culture including traditional songs than indigenous.

This habit in a large extent has been contributed by the failure of the authorities to bring awareness to the people. Despite of foreign exchange earnings, nothing beneficial is apportioned to the society and authors except the Council.

Interviews with COSOTA officials¹⁴⁰ revealed that the functions of the competent authority places heavy emphasis on the production of works of art without mentioning the welfare of the artists. Most of artists have been disappointed by the government for not taking into consideration their economic benefits. As a result most of urban artists produce artistic works which bear no correspondence to the maintenance of national culture and tribes in particular. There are very few tribes which still maintain their cultural values including Maasai. Others do ignore their culture including language and songs because they have no direct benefit to them. They further admit that no copyright has yet been given to any author of traditional songs.

On the other hand, Senior Art Officers of the NACT also said that there is a great demand for products of folk art on the part of urban customers and foreign visitors which results in mass production industry. No informal mass education on the part of folk artists by the competent authority. The Ministry of Information and Culture

¹³⁹ NACT information officer response given from his interview with the researcher on 7th, May 2015 at around 10:30 Am

¹⁴⁰ Interview Conducted between researcher and Five officers of COSOTA on 5th May 2015 at their Premises at Posta Dar es Salaam.

seems to have been conceived in order to rectify this problem. Informal education has not been given to authors even of traditional songs in order for them to be aware on the value of their creation and the benefits accrued with them.

When the council has collected money from traditional creations, a certain share is returned to the community as a means of recognizing their efforts by providing development at the end of financial year.¹⁴¹ The said share is not given to the specific community in which the traditional song originates but the share can be used to provide development in any other community in Tanzania. They are opinions are good but still does not directly help authors and communities in which those creations comes from to have their economic benefits accrued from their creations.

The information received revealed further that there are no specialized institutions or groups established at the tribal level to deal with the protection of economic rights of authors of traditional songs. The presence of those groups in each society would help to administer and protect the affairs of authors and the tribal at large from the grass root. Through those groups the government would be placed in a better position to know several problems facing authors in different communities and their interests.

Most of authors of traditional songs and the community at large are not aware of their economic rights accrued from their creations. Many authors of traditional songs are from rural areas, this being the case, they are not aware on whether they have any economic rights over their creations especially where those songs are being used by persons from other communities for economic gain. No strict measures have been taken by the government to make sure that authors of traditional songs and the community in general are aware of their economic rights.¹⁴² No mass awareness of the place of culture in socio- economic life, mass involvement and participation in

¹⁴¹ Senior Art Officers' statement during 5th. May 2015 Interview. (*Loc Cit*)

¹⁴² Response from Authors of traditional songs during interview with the researcher (*ibid*)

community cultural events as the progressive thought has been made to tribes or authors.¹⁴³

Traditional songs in most cases have been created by authors unknown within their respective communities. This is the reason why the government failed to identify who were the real authors.¹⁴⁴ This being the case, the government thought that it was fair and reasonable for it to take over the full control of the traditional creations without considering the community within which those creations emanates. The law also tried to justify that folk songs have been placed under the Competent Authority for the purpose of promotion and safeguarding the National Culture.¹⁴⁵ However, this thought was not fair because the communities concerned were not consulted by the government in order to get their opinions before reaching its conclusion. This situation contributed much to erode tribal culture in the country because the communities feel like having been deserted and ignored by the government¹⁴⁶ and on top of that, their creations have no direct benefit to them.

The council has conducted several trainings since its establishment in 1974. However, up to date, the council has conducted art training programmes to primary school children who have no formal art training.¹⁴⁷ In 2014 the council trained 200 children from five (5) schools of Ilala district. The training was conducted at Buguruni Viziwi primary school and it involved storytelling and drama. In 2015 the council again trained 215 children from two (2) schools of Temeke District, the training was based on drawings and *majigambo*.

The officer further stated that, through the above training, two (2) children centers were established: Msimbazi Boys for Ilala district and Apao center for Temeke

¹⁴³ Response from Authors of traditional songs during interview with the researcher (ibid)

¹⁴⁴ Information obtained from National Art Council of Tanzania (NACT) by the researcher from Interview Conducted at National Art Council of Tanzania in Dar es salaam on 5th May 2015 at 1100HRS between Researcher and Senior Art Officer Grade One of the Council.

¹⁴⁵ Section 28 of The Copyright and Neighbouring Rights Act, [Cap. 218 R.E 2002]

¹⁴⁶ (*Loc cit*)

¹⁴⁷ Information gathered through interview between the researcher and the Senior Art Officer of the NACT conducted on 7th May 2015 at 01:00HRS

district. These centers are used as children meeting point for art training.¹⁴⁸ The intention of the training was good since they had the purpose of promoting children talents and building the generation which will love their culture. However, traditional songs training are not yet in place.¹⁴⁹ Therefore, children may not understand on whether traditional songs are one among the creations which can provide them some economic benefit.

4.4 Traditional Songs as a Source of Income to Authors

The NACT profile reveals that traditionally, cultural creations were not made for economic benefit. They were just made for recreations, entertainment or to motivate people within the tribe to participate on several activities including farming, harvesting, ceremonies through which education and knowledge were imparted to the community concerned and others.¹⁵⁰ By saying so, authors of traditional songs benefited nothing. However, with time and due to ongoing developments in the country and within tribes in particular it has been observed that cultural creations including traditional songs is a property like any other property capable of being sold to third parties who want to use them for economic purposes. Once these songs are sold to other persons they can help authors and the tribe concerned in general to get some economic benefit.

A Senior Art officer of the NACT had the views that authors of traditional songs are not recognized by the law as owners of their creations. The ownership of their works is given to the government through the Ministry of Information, Youth, Culture and Sports which is not the original creator of the same.¹⁵¹ This being the case, the authors of traditional songs have no direct control over their songs even the *locus standi* at the time when their creations are being used by third parties for economic

¹⁴⁸ Art Officer's statement during 7th May 2015 Interview. (*Loc Cit*)

¹⁴⁹ Ibid

¹⁵⁰ BASATA profile

¹⁵¹ Information obtained from National Art Council of Tanzania (NACT) by the researcher from Interview Conducted at National Art Council of Tanzania in Dar es salaam on 5th May 2015 at 1100HRS between Researcher and Senior Art Officer Grade One of the Council.

gain without authorizations. Nowadays these songs do benefit non authors economically while really authors are left with nothing.

He went on saying that, there is an increase of exploitation of traditional creations in various societies by third parties.¹⁵² This is because the economic value of the traditional creations has always been increased and recognized. Traditional songs have been considered as one means of earning money for the purpose of supporting their daily activities including promoting their works outside their communities.¹⁵³ This may make traditional creations to be known nationally and internationally. The authors and the community at large may receive forex (foreign money) which can help them to improve their standard of living.

The officer argued further that authors of traditional songs and the community at large have the right to use their songs as their property as long as they live. This is a theoretical perspective. Practically, the existing laws do not expressly provide for the same and the council does not grant any economic share to those communities on the ground that the authors are unknown.¹⁵⁴ Authors and communities feel like their creations are like service oriented and not commercial one. There is no strict control of infringement over third parties at the tribal level because the community does not see the economic value of their creations.

Authors of traditional songs have the right to enter into assignment and licence contracts or agreements where third parties want to use their songs for economic gain. Assignment and licence contracts are part of the economic rights of the author in which third parties have to pay money to the author in lump sum or royalties depending on the terms of the contracts itself.¹⁵⁵ In this way, authors of traditional songs may enjoy the economic rights of their creations. However, in practice the

¹⁵² Information obtained from National Art Council of Tanzania (NACT) by the researcher from Interview Conducted at National Art Council of Tanzania in Dar es salaam on 5th May 2015 at 1100HRS between Researcher and Senior Art Officer Grade One of the Council.

¹⁵³ Ibid

¹⁵⁴ Ibid

¹⁵⁵ (*Loc cit*)

government is the one which is responsible for entering into these contracts with third parties and not authors themselves.

The officer had the opinion that members of the community have the right to enjoy neighbouring rights accrued from the original work of the authors. These are the rights relating to the performing artists who include dancers, singers and other related actions. Members of the community do not receive any neighbouring rights even if their traditional songs are being performed by other parties on various occasions like ceremonies, bars and hotels.¹⁵⁶ The existing laws do not recognize neighbouring rights of the community members hence exploitation of their rights is high by third parties.

The use of communities' traditional songs is prevalent in art and tourists industry. Domestic and foreign tourists crave to acquire communities traditional music, songs, painting just to mention but few. The communities from which these works emanated expect prior authorization and compensation. As pointed earlier, till now the authors and communities concerned desire to use their cultural creations for their economic gain but the authority of controlling and authorizing the use of the same by third parties are not on the hands of authors or communities themselves.

4.4.1 Effects of Failure to Award Economic Share to Authors of Traditional Songs

Generally speaking, Tanzania has a rich artistic heritage and practice with differences in category.¹⁵⁷ However, there is a failure of the law to recognize artistic works like those of traditional songs as one of the traditional creation which is capable of providing economic benefits to authors and the society at large on the ground that most of the authors of traditional songs are unknown. This erodes and ignores traditional creations. This being the case, many traditional works and heritage are gone. The tribe leaders are not committed to make sure that more

¹⁵⁶ Senior Art Officer's statement during 5th. May 2015 Interview. (*Loc Cit*)

¹⁵⁷ BASATA profile

traditional creations are being encouraged and preserved for the benefit of present and future generations.

Absence of strict protection on traditional songs, has led to the influx of artistic infringement to traditional authors work because most of their works can be used by modern artists and others without paying royalties. The authors or artists who wrote the original song or music often never get credit for it and as a result do not receive recognition for their creations. In addition, the artists never receive any money for writing the song or music. Instead, it is the modern artists who are covered under the Copyright Act who enjoy protection. Generally speaking, copyright is something that guarantee protection of the artistic work, without it infringement is obvious.

About eighty five percent of the people who responded to the questionnaires have viewed that traditional songs were passed on through oral traditions and many songs were never formally written down or recorded. As such, over time, many of these songs have been lost to the ages and future generations have been deprived of the songs. Since many traditional songs have been not recorded, there can be difficult to find an exhibit. In connection to that, third parties may take an advantage of using those traditional songs as their own songs for economic benefits on the ground that they are not fixed in a tangible form.

It was further seen through this research by way of interview that, there is another challenge that, most of Tanzanians do not prefer their own traditional culture including traditional songs.¹⁵⁸ The experience shows that the foreigners are the once who likes our culture and not Tanzanians themselves.¹⁵⁹ This habit contributes much to diminish our cultural creations including traditional songs which are one among the identity of the community and the nation. Most of Tanzanians ignore their traditional songs due to the fact that they do not see the economic value of the same. On the other hand, persons who use their time and labour to engage on activities of

¹⁵⁸ Views of the artists who met with researcher at NACT and respond to short interview on how do Tanzanian tribes perceive their culture. Interview conducted on 7th May 2015 at NACT DSM done around 1100hrs.

¹⁵⁹ *Ibid*

creating traditional things are not recognized and even their works are no clearly protected by the law; hence they do not see the value of maintaining and preserving traditional culture.¹⁶⁰

Non recognition of authors and their works by the law contributes much to undermine the traditional culture including traditional songs. Authors of traditional songs are like any other individual authors who have been recognized and protected by the law, but the same law does not recognize and protect authors of traditional songs. There are no new creations in various tribes simply because their works do not benefit them anymore.¹⁶¹

On the other hand, the government fails to get the revenues and fees because authors and communities concerned have no *locus standi* to prevent unauthorized exploitation of their songs at the tribe level especially when used by other persons outside their tribes. These being the case, traditional songs are being used in various occasions like public performances, ceremonies and national events without the consent of original authors or creators and the government at large. If the law would have considered the economic benefits of these authors, there would be likelihood to believe that there would be a great possibility of these authors to be in the fore front to prevent the same.

There is limited freedom to create, produce, preserve, distribute, exchange as well as in consumption of traditional songs due to the fact that authors of traditional songs are not well recognized by the law as one among the creators who are supposed to receive the benefit accrued from their songs.¹⁶² Their songs are being consumed from the tribal to the national level but the authors are not recognized. This situation

¹⁶⁰ Views of the artists who met with researcher at NACT and respond to short interview on how do Tanzanian tribes perceive their culture. Interview conducted on 7th May 2015 at NACT DSM done around 1100hrs.

¹⁶¹ *ibid*

¹⁶² Information obtained from National Art Council of Tanzania (NACT) by the researcher from Interview Conducted at National Art Council of Tanzania in Dar es salaam on 7th May 2015 at 0100HRS between Researcher and planning officer grade II of the Council.

in one way or another provides limitation for authors to create or produce more creations.

Failure of the law to consider the economic right of traditional authors, has resulted for many authors of traditional songs to engage themselves on other economic activities, hence dissemination of traditional works to modern members perishes.¹⁶³ Most of traditional artists found themselves they do not benefit from their creations at the same time other artists when they use their works they get economic benefits. With this reasons then, they opt to engage on other activities which can provide them some amount of money to run their life. To them they do interpret that those traditional creations as something which are for recreational purposes and not to benefit them economically. Their skill, labour and efforts to create the works bear no fruit.

Lack of motivations to authors of traditional songs, especially by the Government through the NACT has caused the values of specific tribes to get lost. Every tribe or community in Tanzania has its own values and standards under which each member has to preserve and attain.¹⁶⁴ Provision of motivations to authors of traditional songs could be used as a tool for them to protect and preserve the values and standards of culture within the tribe and the nation at large. Communities are not motivated to protect the same hence values of traditional culture are gone. Everyone in the community is busy with his or her own business which are able to provide him /or her with some amount of money to suffice him to earn daily bread. With this trend unless some changes are made the coming generations will be in jeopardy.

The above data gathered affirms positively the working assumption of this dissertation that lack of clear laws to safe guard economic rights of authors of traditional songs is the source of stagnating artistic work in Tanzania; and lack of

¹⁶³Views of the One artists who met with researcher at NACT and respond to short interview on how traditional songs do benefits them. Interview conducted on 7th May 2015 at NACT DSM done around 1100hrs.

¹⁶⁴ Response from the Questionnaires filled by a member from Wanji tribe situated in Iringa region

awareness by authors of traditional songs on their economic rights over their traditional songs are reasons for losing economic earnings to them.

4.5 Conclusion

At this juncture therefore, it can be concluded that data collected from various sources revealed that authors of traditional songs do not get their economic benefits due because the existing laws do not guarantee the same. On top of that, cultural creations are regarded as the property of the government and authors of traditional songs lack awareness on how to press for their economic rights. All these have been contributed by the absence of centers at the District level that control and regulate economic affairs of tribes. These being the case, creators of tribal works are not honored and recognized as owners. All fees and the royalties are collected by the Council for the purpose of promoting and safeguarding the purported national culture. This situation affects authors to a large extent. They have no morale to keep on creating new things hence traditional creations are diminishing.

In practice, it was observed that the government through the council does in rare cases return a certain amount or percentage to the society which again in turn there is no records as to whether the said money are being used only for the purpose intended or not. Hence, the money may not reach the intended persons or society due to the fact that there is no follow up by the council. There is no evidence to justify as to what extent the said share does benefit the authors and the community at large.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter contains two sub- titles namely conclusions and recommendations. The first sub- title concludes the whole work and the second sub- title provides some suggestions on what should be done in order to overcome the existing and spotted problems.

5.1 Conclusion

This research was guided by the title “*The protection of the economic rights of authors of traditional songs in Tanzania mainland.*” The research further assessed the law and practice relating to the above title in which several issues were identified as summarized here under.

The study findings revealed that the Tanzanian laws which govern and regulate protection of the economic rights of authors of traditional songs are not self sufficient to cover the ongoing modern business changes in the country and the community in particular. Most of traditional creations including songs are taken as service oriented activities rather than economic. This situation has been contributed by weak legal framework which has resulted into inadequate legal institutions. The respective institutions have not managed to advise the government on how authors of traditional songs could benefit through their creations for the purpose of promoting more traditional creations in the country. This creates loopholes for third parties to use others’ work without authorization and payment.

Generally, the research findings revealed that most of traditional creations including songs are being taken by others as theirs without payment to real authors. Authors fail to promote, advertise their creations, to improve their standard of living due to poverty. Most of authors and their works are unknown hence they fail to get foreign

money. All these have been resulted due to lack of good laws and reliable institutions.

Traditional creations including traditional songs are regulated and managed by the competent authority (NACT) which is the government agency responsible for the promotion and safeguarding of the same. However, there are a lot of challenges as to what extent the council has succeeded to promote and safeguard the national culture including traditional songs in the country. But the core focus was indulged into the findings in line with the objectives to this study.

Currently, traditional creations are considered as a property like any other property which is capable of being sold to other persons for value. However, authors of traditional songs are not regarded by the laws as owners of their own properties. Ownership of the same has been given to the government which is not the creator.

Generally, authors are supposed to have several rights including moral and economic rights. Economic right is the subject matter of this research which the existing laws do not expressly address. Economic rights include the right to receive and to enjoy the benefit accrued from their creations as a means of recognizing their own efforts and labour used to put things into being without the assistance of the government. In other words it can be said that, the existence of traditional creations came into being with the presence of the community.

All authors in the country including authors of traditional songs are required to register their activities to the competent authority for the purpose of officializing and getting the legal right to participate on art activities freely. The competent authority always grants them with a certificate after complying with all the condition and terms. Therefore, if an individual author or group of authors wants to participate on art activities for commercial gain they are supposed to go to COSOTA for copyright processes. Traditional songs can only acquire copyright after complying with the National Arts Council and COSOTA requirements. Copyright grants the author the sole legal right to deal with the work to the exclusion of all others.

In as far as traditional songs is concerned, authors and the community at large have neither legal right to authorize the usage of the same to the third parties nor to collect fees. It is the competent authority which is vested with the powers to do the same. Infringement is increasing daily due to the fact that authors have no morale to fight against the same. Authors have to be rewarded for their creations which are among the function of the intellectual property law.

Many authors of traditional songs tend to engage on other activities which may give them money for their survival instead of dealing with arts due to the fact that they do not see the physical benefits of the same to them. This contributes much to demolish talents and ambitions of authors in various communities. Authors need recognition, motivations and encouragement in order to proceed with the art activities.

Through the research done it is observed that the government receives a certain amount of fees like registration fees derived from traditional creations. The government is not supposed to take all benefits accrued from traditional songs basing on the ground that most of the authors are unknown.

It should be noted that those creations are the product of the authors' intellect from communities and not the property of the government. No government initiatives or efforts have been made in order to put those creations into existence.

5.2 Recommendations

Will the above pitfalls, it is hereby recommended as follows, the government has to take strict measures to recognize cultural creations including traditional songs as a property like any other properties which can be sold to others for the purpose of providing economic benefit to authors and the tribal at large as creators. By doing so, authors will feel like artists for having been recognized and respected. They will be placed in a better position in as far as protection of traditional creation in concerned.

The NACT officers and other stake holders are required to be trained on their duty to administer and maintain authors' rights in the country.

It is also essential to consult law practitioners in the intellectual property law particularly on the Copyright and Neighbouring Rights in order to draft effective regulation mechanisms on how author's economic rights should be handled, managed, protected and controlled for the betterment of authors.

The state has to recognize and affirm that groups like individuals can hold and exercise control and management over their intellectual capital. This means the group or community as against the individuals has to be in position to decide how third parties use their traditional songs. It is thus any mechanism within the state that enables communities to protect their intellectual capital contributes to the protection of their right to culture.

It is suggested that, the Minister for Information, Youth, Culture and Sports who is responsible for enacting or preparing regulations that will provide for the economic rights of authors of traditional songs and the manner on how the same should be preserved, handled, has to consult authors, leaders from different communities, members and other stakeholders at the time of enacting the same in order to get their opinions and directives on how the same should be made and handled. This is because the regulation to be made is going to apply to them or to deal with their welfare. The regulation to be made has to provide for the procedures of accruing such right as well as the limitation for its usage by non-tribal members.

In addition to that, the law to be made should make sure that "copyright" is given to some cultural artistic creations which are not now in place (protected). This is very important requirements because nowadays cultural creations like traditional songs are properties which are capable of creating economic benefit to authors and the tribe concerned. This will put the society in a place of being respected and to have both economic and moral rights over their creations. If this requirement will be considered by the regulations then members of the community will be in the frontline and in the better position to protect and preserve their culture in general.

It is further suggested that, some changes needs to be made, the government should not be recognized by the law as the sole owner of the traditional creations including traditional songs instead those economic rights be exclusively be enjoyed by creators especially for the tribes that their creators are known. Alternatively, the government may use those traditional creations concurrently with the authors of traditional songs or the tribe concerned in order to balance their economic interests.

There should be a mechanism which will permit authors and the tribe at large to authorize and restrict all unauthorized utilization of their songs and other creations by third parties without their prior informed consent. This will give authors and the tribe to have controlling authority over their creations instead of the same being left to the government only. By authorization the community will be put in the position to make sure that their creations are used subject to the limitations given.

The government through the council and other stakeholders has to conduct seminars in schools in order to educate students the value and importance of traditional culture in our society and the national at large. This is because in recent years many artistic creations are used as a means of earning money for livelihood. There are persons whose life depends on arts, therefore if the knowledge on the value of art will be clearly imparted on them hope they will love their cultural creations.

It is further recommended that some sessions on radios and televisions should be conducted in order to disseminate art knowledge and its importance to Tanzanians in general.

Since, the enactment of the regulation is not yet in place, therefore at the time being the fees and royalties collected by NACT through traditional creations has to be shared with the authors and communities concerned. The government may reserve and grant certain percentage to communities which have already recognized group leaders as a way of recognizing their efforts and motivating them to protect, preserve and to make them keep on creating new things within their communities.

The government, institutions, associations, groups and other stakeholders should provide to the community the knowledge of intellectual property rights by conducting seminars. This will open the mind of the authors and the communities in general on how to fight for their rights which are in jeopardy for decades.

Traditional songs should be made for the individuals in that community as well as the community itself. For the individual it is a right to be enjoyed with others, since it enables them to be unique and identified by third parties. For the community, it recognizes that it is important for the community to maintain its cultural identity by exclusively determining if and how its members and third parties have access to their traditional songs and in the context in third parties use, interpret and develop their cultural capital.

The provisions of Copyright and Neighbouring Rights Act, and the National Art Council Act which deals with cultural matters have to be amended in order to consider and include specifically rights of individual artists of traditional songs how should be protected. The amendment should further show expressly how authors of traditional songs and the community at large will benefit economically from their creations. This means that the economic rights over authors of traditional songs should be made as a mandatory right. The government should not be left alone to enjoy the benefits accrued from the traditional creations which are not its property.

It is further suggested that authors of traditional creations have to get double profit; (a) from the economic gain as any other artists in Tanzania (b) to get special assistance from the government as a way of recognizing individual efforts of preserving Tanzania culture as one among national identity. If the government will consider all these, then traditional artists and other members of the community will be eager to preserve and protect culture within their area and at national level.

The law should establish and recognize the indigenous groups and the leaders elected in each community at the grassroots who will be taking over the administration of their traditional songs and other creations instead of the

Government alone (National Council of Tanzania). These groups have to be vested with full authority of controlling, administering, protecting and safeguarding their traditional creations including traditional songs at the tribal level.

The establishment of these institutions and groups which will be responsible for the protection of economic rights of authors of traditional songs and others can be done in district level as a starting point by get use of assistant art officer by recognizing and registering each tribal song from every society. This process will be easy because even now there are assistant art officers in every district all over the country.

This should in future go to ward- level and where possible the center for each tribe to be established in wards and should get subsidies from the government for the purpose of motivating them and preserving the tribe. This position will help authors and members of the community at large as most of them are from rural areas to get services easily or to present if there is any problem facing them so that measures should be taken immediately within short time.

The government through competent authority has to facilitate the growth and revival of tribal values to include songs through giving them some cash as a means of boosting the authors of traditional songs and the like. Authors fail to get money for fixing their traditional songs in to a tangible form for the purpose of preserving them against infringement. Third parties are costless taking and fixing those songs without recognizing the community concerned. The copyright and the economic benefits accrued from those songs goes directly to a person who is not the author of the same.

The government has to surrender the whole authority and control of those songs to authors and the community concerned.

This being the case therefore, if the government will take into consideration the recommendations provided then authors of traditional songs will be placed in a better position to enjoy their fruits. This will motivate and promote art creators to keep on creating new things in the country.

The law on Intellectual Property Rights should, among other things provide for a system that will recognize and protect the rights of individuals as well as communities at the same time ensuring fair and equitable benefit sharing with communities from those who are using and profiting from that knowledge.

It is recommended that the law should recognize the intrinsic or essential value of traditional cultures including their social, cultural, economic intellectual commercial, education value and acknowledgement that traditional cultures constitutes diverse frameworks of ongoing innovation and creativity that benefit the whole humanity.

The law should be guided by the aspirations and expectations expressed directly by the indigenous peoples and by traditional and cultural communities and contribute to the welfare and sustainable economic, cultural and social development of the indigenous peoples and traditional and other cultural communities.

Protection of economic rights of authors of traditional songs has to be achieved in a manner inspired by the protection provided for intellectual creations and innovations in a manner that is balanced and equitable and that effectively empowers indigenous peoples and traditional and other cultural communities cultural expressions to exercise due authority over their own traditional cultural expressions including through moral and economic rights should they wish to do so.

Protected traditional songs should support, respect and facilitate the continuing customary use, development exchange and transmission of traditional culture by, within and between these communities.

Recognition and protection of traditional culture should contribute to the preservation and safeguarding of the traditional culture and the customary means for their development, preservation and transmission, and promote the conservation, application and wider use of the traditional culture expressions for the direct benefit of the indigenous peoples and of traditional and other cultural communities and for the benefit of humanity in general.

REFERENCES

BOOKS

- Acharya, N.K (2007) *Text Book on Intellectual Property Rights*; 4th edn; S.P GOGIA (H.U.F); India
- Bainbridge, D.I (2009) *Intellectual Property*; 7th edn; Pitman Publishing Imprint 1992; England
- Bhuvan, B.S and S.K Ghosh (2010) *Law of Adverse Possession with special emphasis on property, possession, dispossession and ownership*; 1st edn; Orient Publishing Company; New Delhi Allahabad
- Catherine W Ng et al (2010) *The Common Law of Intellectual Property*; Hart Publishing Ltd; United Kingdom
- Chowbe, V.S (2010) *Acquisition of Patent Procedure and Practice*; 1st edn; Asia Law House; India
- Cornish, W and D. Llewelyn (2007) *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights*; 6th edn; Sweet and Maxwell
- Fisher, M (2010) *Fundamentals of Patent Law Interpretation and Scope of Protection*; Mohan Law house; New Delhi- India
- Goldstein, P (2008) *International Intellectual Property Law Cases and Materials*: 2nd edn; Foundation Press; New York
- Griffiths, J and U. Suthersanen (2005) *Copyright and Free Speech comparative and International analyses*; Oxford University Press; New York
- Hansen,H.C (1998) *International Intellectual Property Law and Policy*- Vol. 2; Juris Publishing Inc.- Sweet and Maxwell; United Kingdom

- Lindberg, V (2008) *Intellectual Property and Open Source A Practical Guide to Protecting Code*; Shroff Publishers and Distributors Pvt. Ltd; India
- Lionel, B and B. Sherman (2001) *Intellectual Property Law*; Oxford University Press; New York pg 62
- Miller, A. R and M.H Davis (1990) *Intellectual Property, Patents, Trademarks, and Copyright in a nutshell: 2nd edn*; West Publishing Co.; United States of America
- Nyerere, J. K (1966) *Freedom and Unity*; Oxford University Press; Dar-es- salaam
- Perullo, A (2001) *The Music Business in Tanzania*: Colour Print (T) Ltd; United republic of Tanzania
- Prasad, A and A. Agarwala (2009) *Copyright Law Deskbook*; Universal Law Publishing Co. PVT. LTD; New Delhi pg 17
- Richard R, at el (2009) *Intellectual Property Licensing: Forms and Analysis*; Law Journal Press 120 Broadway; New York
- Ryder, R.D (2003) *Brands, Trademarks and advertising*; Butterworths; New Delhi- india
- Schechter, R.E and J.R Thomas (2003) *Intellectual Property The Law of Copyright, Patents, Trademarks*: West Group; United Sates of America
- Torremans, P (2008) *Intellectual Property Law*; 5th edn; Oxford University Press; New York
- Wadehra, B.L (2003) *Law Relation to Patents, Trademarks, Copyright, Design and Geographical Indications*; 2nd edn; Universal Law Publishing Co. Pvt. Ltd; New Delhi

Wilson, C (2005) *Nutshells Intellectual Property Law*: 2nd edn; Sweet and Maxwell Limited; London

Yankey, G.S-A (1987) *International Patents and Technology Transfer to Less Developed Countries*; Gower Publishing Company Limited; England

ELECTRONIC SOURCES

A Short Guide to Copyright Law in Tanzania- Lexglobe LLP extracted at www.lexglobelaw.com/assets/guide_copyright2.pdf on 13/9/2014 at 1:12pm

Author extracted at <http://en.wikipedia.org/wiki/Author> accessed on 11/4/2015 at 4:12pm

BASATA- Artists extracted at

http://www.artistsoftanzania.org/site/index.php?option=com_content%26view%3Darticle%261... accessed on 24/4/2015 at 10:30 am

Cosota extracted at <http://www.cosota-tz.org/%3Fsection%3Dabout> on 25/4/2015 at 12:18pm.

Director Division of Cultural Heritage UNESCO in his paper titled The Recommendation on the Safeguarding of Traditional Culture and Folklore. Safeguarding Traditional Cultures- Smithsonian Center for folklife... extracted at <http://www.folklife.si.edu/resources/unesco/index.htm>. on 6/9/2014 at 10:41am

Folk song dictionary definition|folk song defined at www.yourdictionary.com/folk-song accessed on 19/1/2015 at 04:54pm.

Folk- song- FREE folk- song information| Encyclopedia.com... extracted at www.encyclopedia.com...January2002 accessed on 19/1/2015 at 05:53pm.

Intellectual Property and Traditional Cultural Expressions/ Folklore... extracted at

http://www.wipo.int/edocs/pubdocs/en/tk/913/wipo_pub_913.pdf.

Accessed on 29/9/2014 at 04:30pm.

Kabudi, P, J (2004) Protection of Intellectual Property Rights of Indigenous Knowledge in Tanzania: Legal Constraints and Challenges; Indilinga African Journal of African Knowledge Systems, indexed by Sabinet online. Vol. 3

http://Sabinet.co.za/webx/access/electronic.../linga_v3_n1_a4.pdf.

Accessed n 13/9/2014 at 4:12pm

Mfuko wa utamaduni Tanzania (Tanzania culture trust fund) extracted at

http://trickleout.net/index.php/directorypilot/Tanzania/mfuko_wa_utamaduni_tanzania_tanza....accessed on 25/4/2015 at 3:01pm

Mfuko wa Utamaduni Tanzania (Tanzania Culture Trust Fund)... extracted at

http://www.moe.go.tz/index.php?option=com_docman%26task%3Ddoc_download%26gid%3D34%26ite... on 25/4/2015 at 5:35pm

National administration framework of intellectual...-brela extracted on

<http://www.brelatz.org/NATIONAL%2520ADMINISRTATION%2520FRAMEWORK%2520OF%2520INTELLECTUAL%2>

21/9/2014 at 06:10 pm

National Arts Council of Tanzania-wikipedia, the free encyclopaedia extracted

http://en.wikipedia.org/wiki/National_Arts_Council_of_Tanzania.

Accessed on 24/4/2015 at 8:25am

Protecting Expressions of Folklore within the right to culture in Africa extracted at

<http://www.saflii.org/za/journalPER/2010/31.html>. on 2/9/2014 at 09:59.

The Economic Contribution of Copyright- Based Industry in Tanzania, Report for World Intellectual Property Organization, September 2012 accessed at http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/econ_contribution_cr_tzp. Accessed on 8/9/2014 at 21:00.

Magalla. A, (N.Y) The History of Copyright in Tanzania: From Tanganyika to Tanzania –where, when, and how extracted at http://www.academia.edu/15213660/THE_HISTORY_OF_COPYRIGHT_IN_TANZANIA_FROM_TANGANYIKA_TO_TAN... on 11/9/2014 at 6:19pm

The protection of expressions of folklore: The Attempts at...- Tripod extracted at <http://itt.nissat.tripod.com/itt9903/folklore.htm> accessed on 28/9/2014 at 08: 45am

Wipo-The Protection of Expressions of Folklore: The Attemptsat- Tripod extracted at <http://itt.nissat.tripod.com/itt9903/folklore.htm>. accessed on 10/02/2015 at 10:45am

Traditional Cultural Expressions at www.wipo.int/tk/en/folklore. accessed on 15/1/2015

JOURNALS/ ARTICLES/ PAPERS

Kishebuka, L, *Wipo Training of the Trainers Program on effective Intellectual property asset management by small and medium – sized interprises (smes)*. A paper presented on August 22 to 26, 2011 Blue pearl Dar es salaam

Nwauche, Es “Protecting Expressions of Folklore within the right of culture in Africa”: *Potchefstroom Electronic Law Journal// Potchefstroomse Elektroniese Regsblad [2010] PER 31*

Nwauche, Es *Protecting Expressions of Folklore within the right of culture in Africa*, a paper presented in 2010

PAPERS PRESENTED

Prof, Nyariki, D in his paper titled *The Economic Contribution of Copyright – Based Industry in Tanzania*, a report presented for World Intellectual Property Organization on September, 2012

APPENDICES

Appendix

QUESTIONNAIRES TO NACT AND COSOTA AND OTHER STAKEHOLDERS

Introductory Remarks

I am Bethsaida Sivonike, LL.M candidate of Mzumbe University (main campus) pursuing master degree in commercial laws for the academic year 2013/2015. My research is titled “**Protection of Economic Rights of Authors of Traditional songs in Tanzania Mainland: Assessment of Law and Practice**”.

Your assistance is of most importance for the accomplishment of this research. I therefore, kindly request for your valuable assistance to answers the questions posed basing on your knowledge and experience.

The information obtained from you is for academic purposes only; they will never be transferred in any other means or communicated to other persons as against your wish save for academic purposes.

Respondent’s information

Gender.....

Occupation.....

Institution.....(eg. NACT, or individual Artists)

Working experience.....

For these questions the respondents are requested to tick on the appropriate corresponding box or to give details where necessary.

1. Do we have effective institutions to administer, manage and protect economic rights of authors of traditional songs in different societies in Tanzania? Yes ()
No ()

2. Do the existing laws on copyright matters self sufficient to protect the said economic rights above? Yes () No ()

If the answer above is No, do the parliament aware of the insufficiency? Please give details

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

If Yes what are the motivations to authors of traditional songs to keep on creating new works within their societies?

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

3. Do authors of traditional songs within their respective tribes have any right to enjoy the benefits accrued from their creations? Yes () No ()

If the answer above is yes what are their economic rights they are supposed to enjoy? Please mention them.

.....
.....

4. Is there any negative effects if the said rights are not granted to authors or the tribe itself?

.....
.....

5. Do individual authors of traditional songs aware of their economic rights? Yes () No ()

If the answer above is No what should be done

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

6. Is there any specialized institutions or groups established at the tribal level to deal with the protection of the economic rights of authors of traditional songs?

Yes () No ()

If the answer above is Yes please name any (group/institution) you know and the region it is situated.....

If the answer above is No is there any need of establishing the same and how should be done?

.....
.....