

REPUBLIC OF KENYA
IN THE MATTER OF THE COPYRIGHT TRIBUNAL
COPTCA - E001 OF 2025

- BETWEEN -

ARYEH MOVEMENT LIMITED.....APPELLANT

-VERSUS-

CYNTHIA BELDINA AKOTH.....1ST RESPONDENT

KENYA COPYRIGHT BOARD (KECOBO).....2ND RESPONDENT

(Being an appeal from the decision of the Kenya Copyright Board (Ms. Sharon Wata, Deputy Executive Director) dated 15th July 2025)

J U D G M E N T

I PRELIMINARY AND INTRODUCTION

1. The instant Appeal before the Hon Tribunal, has been instituted by **ARYEH MOVEMENT LIMITED** (hereafter “the Appellant”), who by way of the Notice of Appeal dated 22nd day July 2025, invoke our Jurisdiction under Section 21(1), Copyright Act. The Appellant’s grievance is against the decision of the Kenya Copyright Board - KECOBO (hereafter “the 2nd Respondent”) dated 15th July 2025, on the grounds set-out under Part 2 of the Notice of Appeal.
2. The Appellant on its part has filed a Certificate of Urgency, Notice of Appeal as well as a List and Bundle of Documents all dated 22nd July, 2025. Equally, the Appellant has filed its Further Rebuttal Grounds in Support of Appeal (sic) dated 5th August, 2025, its written Submissions as well as a List and Bundle of Authorities both dated 9th August, 2025.
3. In answer to the Appeal, **CYNTHIA BELDINA AKOTH** (hereafter “the 1st Respondent”) did file Grounds of Opposition dated 1st August, 2025, and written Submissions dated 12th August, 2025.

4. Of note the Tribunal by its Order of 28th July, 2025 did find and hold that “KECOBO’s joinder in the Appeal is necessary to enable the Tribunal effectually and completely adjudicate upon, and settle all questions involved in the Appeal” and consequently *suo moto* Ordered that KECOBO, was thereby joined as the 2nd Respondent. Further Section 21(2), Copyright Act provides that, “The Board **shall** *provide written comments on any matter over which an appeal has been submitted to the Copyright Tribunal under this section upon request from the Copyright Tribunal.*” Regrettably no appearance was entered on behalf of KECOBO, though it had been joined as the 2nd Respondent. Equally, no filings were ever made on KECOBO’s behalf to aid the Tribunal’s determination of the subject matter.

I. CONTEXTUAL BACKGROUND

5. The material facts upon which this judgment is premised, is as presented to us in the Parties’ pleadings as detailed above under *paragraphs 2 and 3* of this Judgment. We have considered these factual averments in detail as well as the arguments made by the Parties in support of their rival positions, and briefly highlight as follows:
6. Indubitably KECOBO did issue a letter dated 15th June, 2025 (produced at pages 13 and 14 of the Appellant’s List and Bundle of Documents) in which KECOBO asserts and invokes its mandate and authority under **Section 5(g), Copyright Act and Regulation 4(7), Copyright Regulations**, to *inter alia* observe that the first owner of Copyright works is the author; the publisher has a related right in the same work” and further that, “*in this matter however no publishing agreement exists. Therefore, the Board requires that the two parties meet and reach a written agreement on the percentage of copyright interest that will be registered on literary work.*” Ultimately the KECOBO observed that, “*Accordingly, our determination is that unless paragraph 2 above is complied with in the next seven (7) days, the Board shall expunge the registered work.*” This letter by KECOBO is the subject of the dispute before the Hon Tribunal.
7. In the main, the Appellant via the *Certificate of Urgency, Notice of Appeal and its Further Rebuttal Grounds in Support of Appeal* (sic), contends that:
 - a. The KECOBO supposedly acted *ultra vires* as it did not have jurisdiction and/or legal authority to find, hold and observe as it did in the impugned letter of 15th June, 2025.
 - b. Ms Akoth, the 1st Respondent is supposedly not the author of the subject literary works and that the authorship was disputed.
 - c. Further that KECOBO supposedly considered extraneous factors not before it, in arriving at the impugned decision in the letter of 15th June, 2025.

- d. The impugned decision being communicated under the hand of KECOBO's Deputy Executive Director, was supposedly made by an officer not otherwise empowered by law to so act.
 - e. The Appeal was properly filed and impleaded before the Tribunal.
- 8. On her part, the 1st Respondent via her Grounds of Opposition in the main urged that:
 - a. The Appeal was defective and failed to properly invoke the Hon Tribunal's jurisdiction for want of lodgement of an Affidavit in support.
 - b. Equally, that the Appeal was defective as it supposedly sought to pre-emptively impeach an intended and/or threatened action.
 - c. The Appellant had supposedly admitted the 1st Respondent's authorship and there was inconsistency in its Appeal on the question of authorship of the subject literary works.
 - d. KECOBO is in law vested with jurisdiction and legal authority to find, hold and observe as it did in the impugned letter of 15th June, 2025.
- 9. The *viva voce* hearing on the Appeal was conducted on the 6th of August, 2025 where both the Appellant and 1st Respondent were accorded an opportunity to present their respective cases. Unfortunately the 2nd Respondent failed to attend the hearing, and having been satisfied that KECOBO was adequately served with the Tribunal directions, on joinder and filings, the Tribunal proceeded to close the hearing, with directions on filing written submissions and delivery of judgment. In the meanwhile however and in light of the arguments made, Parties were invited to consider pursuing an amicable resolution of the matter. Regrettably no consent has been filed as at the 22nd of August, 2025 and it is the Tribunal's view that Parties were unable to reach any compromise on the matter. We have therefore rendered ourselves on the issues in the Appeal before us.

I. ISSUES OF DETERMINATION

- 10. We observe that having considered the pleadings filed, and the cases respectively urged on behalf of the Parties herein, the issues for determination in this appeal are three-fold:
 - I. Whether the instant Appeal is properly before the Hon Tribunal?**
 - II. Whether KECOBO acted *ultra vires* its jurisdiction and/or legal authority to find, hold and observe as it did in the impugned letter of 15th July, 2025?**
 - III. Ownership, authorship and Copyrightability of the subject literary works.**

IV. ANALYSIS OF THE LAW ON FACTS

i Whether the instant Appeal is properly before the Hon Tribunal?

11. On this first issue, the 1st Respondent contends that, “the Appellant’s Notice of Appeal is fundamentally defective as it fails to comply with the procedural requirements for filing an appeal before the Copyright Tribunal. The Appellant has failed to accompany their Notice of Appeal with an affidavit setting out the grounds and facts relied on.” It is also asserted on behalf of the 1st Respondent that the Appeal is fatally defective as is pre-emptive and has been filed prematurely, challenging a potential future action rather than a definitive, final and actionable decision.”
12. We are minded to regard this as a peremptory challenge on whether the Appellant has properly invoked the Tribunal’s jurisdiction under the instant Appeal, to then warrant a merit interrogation of the substance of the dispute thereon. We will therefore determine it in priority:
13. First, the 1st Respondent has not particularised any specific provision of the law which has been violated in the lodgment of the Appellant as presented, or that would enjoin the Appellant to file an Affidavit. Instead the 1st Respondent submits at para 7 of its Submissions that, “While the Copyright Act may not contain an express provision mandating an affidavit for every Notice of Appeal, the general principles of civil procedure, in the Civil Procedure Rules, compels this Tribunal to order any point to be proved by affidavit.” We are unpersuaded by this argument, especially where applying unidentified applicable provisions of law or even ‘general principles of civil procedure’ would have the draconian effect of depriving a **litigant of** the entrenched Constitutional right to access justice.
14. In any event whereas the 1st Respondent urges that necessity of the affidavit would be to set-out the grounds and facts relied on: we observe that the burden to prove a case presented before the Tribunal, lies on a party moving the Tribunal. In the event the burden is not discharged, the natural consequence attaching to such a claim would be to disallow it for lack of merit: it would however not rise to a fatal defect debarring it from a hearing as to the merits (or lack thereof) of the Claim.
15. Perhaps more importantly, the Notice of Appeal dated 22nd July, 2025 at paragraph 2 details eight (8) “Grounds of Appeal”, additionally the Appellant has filed Further Rebuttal Grounds in Support of Appeal (sic) dated 5th August, 2025 setting out further suppositions why the Appeal is merited and ought to be allowed. Further, the Appellant has presented a List and Bundle of Documents, dated 22nd July, 2025 with 3 documents produced therewith, and of material importance is a letter allegedly issued by KECOBO dated 15th July, 2025.

16. The Court of Appeal in **Diana Katumbi Kiio v Reuben Musyoki Muli [2018] eKLR**, cited Lord Diplock's definition of a cause of action in **Letang v Coper (1964)2 ALL ER 929 at pg 934**, held thus: "a cause of action is simply a FACTUAL SITUATION that existence of which ENTITLES one person TO OBTAIN FROM THE COURT a remedy against another person." We are satisfied that the pleadings and documents filed presents a factual situation that entitles the Appellant to obtain remedy, if proven, after considering the Response thereto. We therefore do not find merit on this limb of the peremptory challenge by the 1st Respondent, and we reject the invitation to decline jurisdiction.
17. On the second limb of the peremptory challenge, indeed, we agree with the 1st Respondent that under the doctrine of justiciability, and the supplementary doctrines of ripeness, avoidance and mootness, the Tribunal would not admit nor determine a claim that "is pre-emptive and has been filed prematurely, challenging a potential future action rather than a definitive, final and actionable decision." The **Hon Mr Justice J.L. Onguto** while discussing numerous decisions on the matter, had opportunity to extensively consider the application of this legal principle and the supplementary doctrines to the Kenyan jurisdiction in his determination in **Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others [2016] eKLR** and the Learned judge held thus (*which we find instructive to quote in extenso*),

"The citadel of the power to determine disputes through the exercise of judicial authority and the capacity to commence action for such determination is based however on the rather universal concept or principle of justiciability. This concept has found much favour in most jurisdictions. It also gathers much support from the engraved supplementary doctrines of ripeness, avoidance and mootness.

By justiciability it is meant **a matter "proper to be examined in courts of justice" or "a question as may properly come before a tribunal for decision"**: see Black's Law Dictionary 9th Ed,p 943-944.

In other words, courts should only decide matters that require to be decided. Thus in *Ashwander –v- Tennessee Valley Authority* [1936] 297 U.S 288, the US Supreme Court stated that courts should only decide cases which invite "a real earnest and vital controversy." Effectively, the justiciability dogma prohibits the court from entertaining hypothetical or academic interest cases. The court is not expected to engage in abstract arguments. The court is prevented from determining an issue when it is too early or simply out of apprehension, hence the principle of ripeness. An issue before the court must be ripe, through a factual matrix, for determination..."*

*emphasis added

18. Herein, we observe that the law under **Section 2(i), Fair Administrative Actions Act(FAAA)** defines “administrative action” to include “the powers, functions and duties exercised by authorities or quasi-judicial tribunals.” **Section 2, FAAA** also defines a “decision” as “any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be.” **Section 3(1)(b)&(c), FAAA**, recognizes that, “This Act applies to all state and non-state agencies including any person- (a) exercising administrative authority; (b) performing a judicial or quasi-judicial function under the Constitution or any written law; or (c) whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.” **Section 7(2) of the FAAA** proceeds to extensively lists various matters that such administrative action and/or decision must satisfy, including of relevance to the grounds cited herein is **Section 7(2)(a)(i),(ii)&(iii) and 7(2)(c)&(f), FAAA** as read with **the Copyright Act**.
19. If at all, the 2nd Respondent's decision and/or administrative action of 15th June, 2025 fails legal muster and runs afoul the applicable legal threshold as alleged; then indeed it is amenable to review by this Tribunal. We are therefore similarly unpersuaded that the Appeal fails to properly invoke the Tribunal's jurisdiction, on the second limb of the peremptory challenge, as it presents a ripe dispute for determination.
20. On this first issue the Tribunal finds and holds that its jurisdiction has been properly invoked by the Appellant.

II. Whether KECOBO acted *ultra vires* its jurisdiction and/or legal authority to find, hold and observe as it did in the impugned letter of 15th July, 2025

21. In our decision in **Brian Abudu Shikhuyu v The Standard Newspaper Group PLC, Tribunal Case No E001 of 2023**, dated and delivered on *19th July, 2023* at **para 18(i)to(v) thereof** we discussed in great detail the jurisdiction of the Hon Tribunal, as prescribed by the **Copyright Act, 2001 (as amended)**, - material hereto we observed thus,

“The Act proceeds to provide definite instances where the Tribunal may assume and exercise its jurisdiction:

① Under Section 21(1), Copyright Act,

- *“A person aggrieved by the decision of the Board under this Act may, within sixty days from the date of the decision, appeal to the Copyright Tribunal.”*

- Therefore where the Kenya Copyright Board (KECOBO) makes a decision under the Act, the Tribunal may assume and exercise jurisdiction over an appeal by any aggrieved person.

(iv) **Under Section 48(4)(a), Copyright Act,**

- The Copyright Tribunal shall have jurisdiction to hear and determine disputes over the registration of copyright.
- Therefore, where any person disputes a decision relating to the registration of copyright by KECOBO, they may lodge a complaint or claim to the Tribunal.

22. The impugned decision by KECOBO as communicated in the letter dated 15th July 2025 is predicated on the complaint lodged by the 1st Respondent dated 16th May, 2025 as referenced RR01/25, under the subject, **“REQUEST FOR REVOCATION OF COPYRIGHT REGISTRATION FOR LITERARY WORKS AUTHORED BY CYNTHIA BELDINA AKOTH OKELLO.”**
23. The 1st Respondent through her legal counsel complained to KECOBO that, “It has come to our client’s attention that ARYEH MOVEMENT LIMITED, a third party, presented the above works to your offices for copyright registration and subsequently caused them to be registered in its name.” The complaint letter also protests at great length that the 1st Respondent never consented to the registration of the subject literary works in the name of the Appellant: and neither did the Appellant have any authority in the first place to present the works for registration in the Appellant’s name. Reference is made to pages 2 and 3 of the Appellant’s List and Bundle of Documents.
24. The Appellant via a letter dated 25th June, 2025 responds to the 2nd Respondent contending its entitlement to have sought and secured registration of the subject literary works. It also contested whether the 1st Respondent was an author, as well as the availability of legal authority for the 2nd Respondent to address the matter on the disputed registration.
25. Under **Article 5(2), of the Berne Convention for the Protection of Literary and Artistic Works, 1886** - to which Kenya is a party as at 11th June, 1993 - recognises accrual of “automatic protection” for Copyright works. It stipulates that, the “enjoyment and exercise of these (exclusive) rights (conferred by Copyright) shall not be subject to any formality.” Further, in giving effect to this fundamental nature of copyright **Section 22(5), of the Act** critically recognises that, “Rights protected by copyright shall accrue to the author automatically on affixation of a work subject to copyright in a material form, and non-registration of any copyright work or absence of either formalities shall not bar any claim from the author.”

26. Such that the act of registration of copyright, and issuance of the certificate for registration of copyright, DOES NOT, in and of itself, confer ownership. Nonetheless **Section 22D, Copyright Act** under the subheading 'voluntary Registration on the registry' unequivocally provides that "the author of copyright works or an owner of copyright may register his or her works on the Registry"; and as read with **Sections 22A(1), 22C(a)&(b), of the Act and Regs 4(1), Copyright Regulations**, KECOBO is by law required to keep and maintain a register of all works under the Act in such manner as may be prescribed.
27. Critically however, in agreeing with the Appellant, the law does not contemplate that where the registration of copyright is in dispute, KECOBO would adjudicate over such a matter. In the instant case we make reference to the often cited case **Anisminic v. Foreign Compensation Commission [1969] 2 A.C. 147** where Lord Reid instructive holding was as follows:
- "There are many cases where although the tribunal has jurisdiction to enter on the inquiry it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. **It may have made a decision which it has no power to make**. It may have failed in the course of the inquiry to comply with the requirement of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which by the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But **if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly**" [emphasis supplied].*
28. This reasoning was cited with approval in the case of **Judges and Magistrates Vetting Board & 2 others v Centre for Human Rights and Democracy & 11 others [2014] KESC 9 (KLR)** and as the courts there observed "*When Courts conduct judicial review, they are in essence ensuring that the decisions made by the relevant bodies are lawful. Consequently, should they find that the decision made is unlawful, Courts can set aside that decision. Judicial review, therefore, can be said to safeguard the rule of law, and individual rights; and ensures that decision makers are not above the law, but have taken responsibility for making lawful decisions, in the knowledge that they are reviewable.*"
29. We acknowledge that under **Reg 4(4), Copyright Reg** where an applicant is successful the Applicant will be issued with a certificate for registration of copyright. Indeed post this registration **Reg 4(7), Copyright Regulations**

contemplates that, “*The Executive Director may, for good cause or on application by an interested party and on such conditions as the Executive Director may deem fit, amend the Copyright Register to correct errors by—*

- a. *entering relevant information in the Copyright Register that may have been wrongly omitted;*
- b. *removing any entry that may have been wrongly made or remaining in the Copyright Register; or,*
- c. *correcting an error or defect in the Copyright Register.”*

30. Contrary to the view expressed by the Appellant, we find and hold that the Executive Director of KECOBO serves as an officer (senior most nonetheless) of KECOBO, in the discharge of KECOBO’s statutory mandate as set-out under **section 5, of the Act and the Regulations**, and not as a separate office distinct from the rest of the offices in KECOBO, or KECOBO itself. **Section 12, of the Act** does in fact recognise that “*the Board may appoint such Deputy Executive Directors, Assistant Executive Directors, and such officers or other staff of the Board as are necessary for the proper discharge of its functions under this Act or any other written law upon such terms and conditions of service as the Board may determine.*” We are satisfied that the Deputy Director could in fact communicate KECOBO’s decision, as was done in the impugned letter.

31. Notwithstanding the propriety of KECOBO’s communication as set-out in the letter of 15th July, 2025 by the Deputy Executive Director, (we have already found the substance of the letter to be an administrative action or decision amenable to review before the Tribunal), was the said decision lawful? We find and hold that it was not. This is because from our discussion above, and in agreeing with the Appellant, it is apparent that the Appellant and the 1st Respondent were disputing the entitlement as to what is admitted to have been a registration of copyright by the 2nd Respondent - never mind this certificate has not been presented before the Tribunal - but the fact of registration was not disputed by either party.

32. Whereas, it was urged that the impugned decision was premised on curing a supposed error in “the narration omitting the 1st Respondent as an Author”: This Tribunal observes that an error would connote a factual mistake, and/or inadvertence even, on the part of an actor; while a dispute is a disagreement about something often involving conflicting claims or interpretations. It is evident that the matter before this Tribunal is indeed a dispute as contemplated under **Section 48 (4)(a) of the Act**. No error has been plausibly presented to us, warranting the invocation of the power otherwise lawfully vested under **reg 4(7), Copyright Regulations**. The impugned decision having been undertaken in excess of KECOBO’s mandate renders it, in law, a nullity. Contrary to the Appellant’s plea, we do not find it obligatory for this communication to have been issued under seal.

33. With the preceding we find it sufficient to dispose of the Appeal, at this stage, however as identified elsewhere herein, during the viva voce hearing, an issue emerged as to “Ownership, authorship and Copyrightability of the subject literary works” which we have proceeded to consider hereafter:

III Ownership, authorship and Copyrightability of the subject literary works

I. Whether The Works Were Commissioned Works

34. **Section 31 of the Copyright Act**, on First Ownership of Copyright, provides:

*“Copyright conferred by sections 23 and 24 shall vest initially in the author:
Provided that where a work—*

(a) is commissioned by a person who is not the author’s employer under a contract of service; or,

(b) not having been so commissioned, is made in the course of the author’s employment under a contract of service,

the copyright shall be deemed to be transferred to the person who commissioned the work or the author’s employer, subject to any agreement between the parties excluding or limiting the transfer.”

35. With the abovementioned section in mind, indeed, for the Appellant to prove that the said works in the dispute are commissioned, an Agreement is imperative and should have been in place to support this assertion. Otherwise, the copyright would still vest in the *author or creator* of the works.

36. Based on the evidence provided by the Appellant in the List of Documents at page 6, it provides a list of roles and responsibilities allocated to the variously named parties; however, in the roles and responsibilities, none of them speak to the authorship, expressly. At page 7 of the Appellant’s bundle, under item B (a) it is stated that, “the copyright for the works would be in the name of Aryeh.” Under Item B (c) it is stated that, “Cynthia Abaja and Pauline Mwangi would be acknowledged for their contribution towards the books.” Finally, item 4 © records that, “The moral rights of the Complainant were acknowledged in the Book Blurbs for her role as one of the script writers and as illustrator (through curation and adaptation) using AI generated images.” No clarity or certainty is however availed on authorship of the subject literary works. Given that the 1st Respondent, on her part, did not lead or avail any evidence to demonstrate before this Tribunal that she was indeed the author of the said works, this Tribunal cannot be left to make any assumptions.

37. As such, the Appellant, the 1st Respondent, the other parties mentioned in page 6 of the Appellant's documents and indeed any other person involved in the project, would need to have a candid conversation to resolve the question on authorship of the subject literary works, and any consequent commercial arrangement on ownership (if at all). Section 1 of the Copyright Act, An author is defined as:

“author” in relation to — a literary, musical dramatic or artistic work, means the person who first makes or creates the work;

38. We note that the Appellant at para 5 of its Rebuttal concedes that, “Appellant acknowledges the 1st Respondent's moral rights but does not concede to authorship in the legal and copyright sense of economic rights and registration entitlement.” The actual legal consequence of this concession under **Section 32(1)(a), of the Act**, is to entitle the 1st Respondent to claim authorship (distinguished from ownership) over the work: whereas this legal presumption appears to nonetheless be disputed by the Appellant. Ownership can be transferred from author to owner, through employment or a commissioning arrangement. Nonetheless, this Tribunal observes that for a work to be deemed “Commissioned Works” or as sometimes referred to as a “Work for Hire” , an Agreement must be in place as demonstrated in Section 31(1) of the Copyright Act. In any event the dispute before us was never to interrogate who the owner is or is not, nor who the author is or is not, and in fact no evidence was led nor case urged to enable us make a finding on authorship or ownership of the subject literary work, the Tribunal was only invited to consider the legality, and premise of KECOBO's impugned decision of 15th July, 2025.

II. Whether Works Generated By Artificial Intelligence (Ai) Are Eligible For Copyright Protection

39. On this limb of the question on authorship, ownership and copyrightability it was urged by the Appellant that, “The literary works were in fact a work of joint authorship and the Claimant's role in the authorship was acknowledged as a script writer **AI-image illustrator** alongside one Pauline Mwangi.” Thus, this Tribunal deems fit to address this legal question as to whether under Kenyan law, works generated by Artificial Intelligence (AI) are copyrightable and capable of a claim of authorship and ownership.
40. Neither of the parties produced the subject literary works before this Tribunal in evidence, equally KECOBO never presented the works lodged with it and were subject of the protestations between the Parties. However, the 1st Respondent did not rebut the assertion regarding AI-generated parts of the works.

41. The Kenyan Copyright Act has not provided for, nor addressed matters of copyright and AI-generated works. For *literary works*, the law at **Section 22(3)(a)&(b) of the Act** requires that such work shall not be eligible for copyright unless, “(a) sufficient effort has been expended on making the work to give it an original character; and (b) the work has been written down, recorded or otherwise reduced to material form.” A factual enquiry would have to be made on this test to qualify the subject works as eligible or not.
42. In some jurisdictions, like the United Kingdom (UK), the term Computer Generated Works (CGW) is used, while in the United States of America (USA), the term AI is most preferred.
43. Jurisprudence may vary within these two jurisdictions; however, the underlying position has been that purely AI-generated, machine-generated, and/or computer-generated works are not protectable by copyright law. There has to be an element of sufficient human intervention to determine the extent of copyrightability of works generated by AI.
44. In ***Thaler v. Perlmutter*, 130 F.4th 1039** (D.C. Cir. 2025), an image created **autonomously** by an AI system was ineligible for registration because the Copyright Act requires **human authorship**. The court affirmed the Copyright Office and made the point plain. Further, in *Thaler v. Perlmutter*, No. 22-1564, 2023 WL 5333236 (D.D.C. Aug. 18, 2023) , Judge Howell’s opinion stresses that the record showed no human creative control over the image; therefore, “the clear and straightforward answer” is **no copyright**. In the facts of the case, Thaler had interestingly listed the AI (“Creativity Machine”) as “author,” claimed ownership via work-for-hire/ownership of the machine; the Office denied; the court affirmed.
45. On the question as to how much human input is enough, **U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by AI, 88 Fed. Reg. 16,190 (Mar. 16, 2023)**, AI-generated material **without** human creative control is not protectable; applicants must **disclaim** AI portions and may claim protection in human authorship.
46. The approach adopted by the United Kingdom, under the **Copyright, Designs and Patents Act of 1988**, at **S.9(3)** reads: For a literary, dramatic, musical or artistic work that is **computer-generated**, the “author” is the person who made

the **arrangements necessary** for its creation. While under **S.178**: “Computer-generated” refers to generated by computer “in circumstances such that there is **no human author.**” In *Temple Island Collections Ltd v. New English Teas Ltd and Nicholas John Houghton* [2012] EWPCC 1 (Patents County Court, HHJ Colin Birss QC), while it was not a case involving AI/ computer generated works but involved the claimant creating a **digital photographic image** showing a red London Routemaster bus crossing Westminster Bridge with the Houses of Parliament in the background, demonstrates that the UK courts protect **human intellectual creation** with digital tools and recognize authorship where a person exercises creative judgment—even when software is involved.

47. Similarly, *Case C-5/08, Infopaq International A/S v. Danske Dagblades Forening, Judgment of the Court (Fourth Chamber) of 16 July 2009, EU:C:2009:465; [2009] ECR I-6569*, this particular case dealt with scanning newspaper articles and printing short text extracts and, in doing so, articulated the EU originality standard—protection attaches where the work is the “author’s own intellectual creation.” The *Infopaq* originality test (“author’s own intellectual creation”) has become the anchor for European Union copyright. Because that standard presupposes human intellectual creation, the prevailing view in EU commentary and policy analysis is that purely AI-autonomous outputs do not qualify as “works.”

48. Regrettably, the dispute as to copyrightability of the subject works was similarly not presented before us, and as such evidence was not led to address satisfaction (or lack thereof) of **Section 22(3)(a)&(b), of the Act** and as such we will not make a determination on the issue in as far as the subject works are concerned. In any event we observe that under Kenyan law, any aspects of works generated by AI are not eligible for copyright protection unless the Author can distinguish / demonstrate sufficient human intervention/ effort giving the work original character, as per Section 22 (3) (a) .

V. DETERMINATION

1. The Tribunal finds and holds that its jurisdiction has been properly invoked by the Appellant, AND THE appeal is NOT fundamentally defective as it does not fail to comply with the procedural requirements for filing an appeal before the Copyright Tribunal AND neither is the appeal pre-emptive NOR has it been filed prematurely, challenging a potential future action rather than a definitive, final and actionable decision

2. This Tribunal declares that KECOBO did not have jurisdiction and/or legal authority to find, hold and observe as it did in the impugned letter of 15th July, 2025 in light of Section 48 (4) (a), of the Copyright Act.
3. The decision of the Kenya Copyright Board dated 15th July 2025, and any action or decision premised thereon, be and is hereby set aside in its entirety.
4. That each Party bears their own cost.

DATED AT **NAIROBI** THIS 22ND DAY OF AUGUST, 2025.

S igned and delivered by:

Hon. Elizabeth Lenjo, Chairperson

Hon. Joseph Kihanya, Member

Hon. Wilfred Lusi, Member

Hon. Caroline Omayo, Member

Hon Hellen Kiende, Member