

## High Court Kenya at Nairobi

317/2015

### Xpedia Management Limited & 4 Others v The Attorney General & 5 Others

<b>Court</b>	:	High Court
<b>Case</b>	:	Criminal
<b>Date of Judgement</b>	:	May 11, 2016
<b>Plaintiff</b>	:	Xpedia Management Limited & 4 others
<b>Defendant</b>	:	The Attorney General & 5 Others
<b>Concept</b>	:	Copyright Legal Certainty
<b>Statue</b>	:	Arts. 36 and 40 of the Kenya Constitution, Section 30 of the Copyright Act, No 21 of 2001, Laws of Kenya

#### Panel of Justices

Judge Mumbi Ngugi

#### Case Background

The petition has been brought against the Attorney General of Kenya and 5 Others by Xpedia Management Limited and 4 others. He is sued in his capacity as the legal representative of the government of Kenya pursuant to the provisions of Article 156 of the Constitution by the applicants. The petitioners allege that section 30A of the Copyright Act is unconstitutional. They contend that it violates their right to freedom of association guaranteed under Article 36 of the Constitution, as well as their right to property under Article 40(5). They are, however, aggrieved by the requirements of section 30A of the Copyright Act which authorizes CMOs to collect payments on behalf of owners of copyrights in the nature of performing and producing rights. They argue that the section takes away their rights and those of other copyright holders to collect payments from users of their works. In their view, the CMOs represent copyright owners who are their members, and would therefore, as provided in the section 30A, collect payments but not remit such payments to copyright owners who are not members.

#### Procedural History

The High Court of Kenya at Nairobi passed judgement on the case

#### Issue

Is the section 30A of the Copyright Act, Act No. 21 of 2001, constitutional?

#### Rational

It is not mandatory for an artist to join an association. A Collective Management Organization must collect and distribute royalties to both members and non-members.

**Keywords** Constitutional rights, freedom of association, economic rights, remuneration, performance rights, Collective Management Society