

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
[MILIMANI LAW COURTS]
THE CIVIL APPELLATE DIVISION
(Coram: A.C. Mrima, J.)
CIVIL TRIBUNAL APPEAL NO. E014 OF 2025

-between-

**WANANCHI GROUP (KENYA) LIMITED
APPELLANT**

-versus-

**KADI MEDIA LIMITED.....1st
RESPONDENT**

**DIANA MBONDO.....2nd
RESPONDENT**

**SPARKS CORPORATE SOLUTIONS LIMITED.....3rd
RESPONDENT**

*[Being an appeal against the judgment of the Copyright Tribunal delivered on 15th May 2025 in COPTC No.
E001 of 2024]*

JUDGMENT

Introduction and Background:

1. Through a Statement of Claim dated 5th December 2024, the 1st Respondent, *Kadi Media Limited*, and 2nd Respondent, *Diana Mbondo*, sued the Appellant, *Wananchi Group (Kenya) Limited*, at the Copyright Tribunal [hereinafter referred to as '**the Tribunal**'] in *COPTC E001 of 2024* [hereinafter referred to as '**the suit**'] for infringement of their copyright rights.
2. The Respondents' case was that the Appellant, without authority, illegally broadcasted their film dubbed *Pwagu* in its Zuku Swahili Channel 100. They argued that this amounted to copyright infringement and asked the Appellant to pull down the film, a request which the Appellant declined. For this reason, they moved the Tribunal for judgment against the Appellant in the following terms: -

- i. An order of injunction restraining the Respondent whether by itself, agents and/or employees from in any way continuing advertising, broadcasting, reproducing or distributing to the public in any material form of the original work its translation or adaptation of the film known as Pwagu or any part thereof on its Zuku Tv platform or any other medium;*
 - ii. Special damages in the sum of Kshs. 2,217,951.00/=;*
 - iii. General damages for infringement of copyright;*
 - iv. Exemplary damages;*
 - v. Interest on (ii), (iii) and (iv) above; and*
 - vi. Costs of the suit.*
3. In their Response to the Claim dated 10th December 2024, the Appellant argued that they had received the content from the 3rd Respondent who warranted them that their rights to the content did not infringe upon the rights of any other third parties. Additionally, they stated that they removed the content to allow for an amicable resolution of the question as to whom owned the rights between the 1st and 2nd Respondents and the 3rd Respondent. In the end, they urged the Tribunal to dismiss the claim with costs.
4. The 3rd Respondent, who was joined as a third party to the proceedings, filed a Response to the claim dated 10th March 2025. They denied the averments made in the Statement of claim and further denied making any warranties to the Appellant as alleged in their response. They alleged that if indeed there were any warranties made, the same were represented to them by *Story Africa Content Company Ltd* from whom the content was obtained. In the end, they urged the Tribunal to dismiss both the Claimant's and the Appellant's claims with costs. The 3rd Respondent did not, however, participate in the main hearing at the Tribunal.

5. The hearing proceeded by way of written submissions and at the close of parties' respective cases, the Tribunal rendered its judgment on 20th May 2025 in favour of the 1st Respondent against the Appellant in the following terms: -
- i. The Appellant was found liable for the infringement of the 1st Respondent's copyright in the film Pwagu;*
 - ii. Special damages in the sum of Kshs.2,217,951/=;*
 - iii. General Damages in the sum of Kshs.5,000,000/= in favour of the 1st Respondent;*
 - iv. Costs of the claim to the 1st Respondent; and*
 - v. Interest at court rates from the date of judgment.*
6. The Appellant was aggrieved by the judgment and preferred the instant appeal which was disposed by way of written submissions.

The Appeal:

7. Through a Memorandum of Appeal dated 23rd May 2025, the Appellant preferred the following grounds of appeal: -
- 1) The Honourable Tribunal erred in law and in fact in finding the Appellant liable for infringement of the 1st and 2nd Respondents' copyright.*
 - 2) The Honourable Tribunal erred in law and in fact in making adverse findings against the Appellant while disregarding the Appellant's evidence and defence, which clearly showed that the 3rd Respondent was responsible for the alleged copyright infringement, if at all.*
 - 3) The Honourable Tribunal erred in law by failing to make any findings against the 3rd Respondent, who never participated in the hearing.*
 - 4) The Honourable Tribunal erred in law in considering the 3rd Respondent's documents which were never produced as evidence during the hearing, in arriving at its findings.*

- 5) *The Honourable Tribunal erred in law by framing its own issues for determination contrary to settled law that parties are bound by their pleadings.*
- 6) *The Honourable Tribunal erred in law and in fact in awarding the 1st and 2nd Respondents special damages contrary to settled principles of remoteness and causation.*
- 7) *The Honourable Tribunal erred in law and in fact in awarding the 1st and 2nd Respondents excessive and exorbitant damages contrary to legal principles in assessing damages.*
- 8) *The Honourable Tribunal erred in law by failing to adhere to the principles of stare decisis.*
- 9) *The Honourable Tribunal erred in law and in fact in failing to consider relevant and pertinent issues in respect to the Appellant's defence.*

8. It was upon these grounds that the Appellant urged this Court to set aside the judgment of the Tribunal in its entirety with costs.

The Appellant's Submissions:

9. The Appellant's written submissions were dated 29th September 2025. They majorly submitted on two issues being the findings on liability and damages. On the issue of liability, the Appellant submitted that they produced an agreement between themselves and the 3rd Respondent herein where the 3rd Respondent issued warranties to the effect that their rights to the content did not infringe upon the rights of other parties. Additionally, they argued that the Tribunal disregarded this evidence in making its findings as it failed to make a finding on liability between themselves and the 3rd Respondent. They reiterated that the Tribunal failed to make a finding on liability against the 3rd Respondent and further that it considered the averments made by the 3rd Respondent which were mere denials and were not supported by evidence. They contended that the 3rd Respondent did not participate in the proceedings at the tribunal and further that they did not produce any documents thereof to enable the Tribunal consider them before making a determination. In the end, they faulted the

tribunal for making a finding based on documents which were never produced.

10. On the issue of quantum, they submitted that the amount in damages that the Tribunal awarded did not meet the legal threshold of causation, remoteness and certainty, which are principles of strict liability in tort such as the instant case. Additionally, they argued that the 1st Respondent did not justify why they should be awarded special damages arising out of expenses related to the production of the content. They reiterated that the claim for special damages was not supported by evidence.
11. In the end, they argued that the award of Kshs. 5,000,000/= was exorbitant and departs from settled legal principles of assessing damages. In conclusion, they urged this Court to set aside the decision by the Tribunal and allow the appeal with costs.

The 1st and 2nd Respondents' case:

12. The 1st and 2nd Respondent's opposed the appeal by way of written submissions dated 15th October 2025. They submitted that it was not in dispute that the Appellant had broadcasted the film in their TV Platform, further, they submitted that the Appellants did not produce any documentation to demonstrate that they received any authorization or consent from them to broadcast the film. They emphasized that 3rd Respondent had no ownership rights over the film. Additionally, they submitted that the Appellant failed to adduce any evidence to show that they had done their due diligence to verify the rightful owner of the film. For these reasons, they submitted that the Tribunal did not err in finding them liable for copyright infringement as well as in awarding the damages and costs.
13. On the issue of the 3rd Respondent not participating in the matter at the trial before the Tribunal, they submitted that the 3rd Respondent filed a response to the claim denying making any

representation that it owned the rights to the film and as such, the Tribunal could not be faulted for failing to make a finding against the 3rd Respondent in the absence of sufficient evidence.

14. On the issue of damages, the 1st and 2nd Respondents emphasized that the Tribunal properly applied settled legal principles and judicial precedent in arriving at the wards it made. In the end, they urged this Court to dismiss the appeal with costs.

The 3rd Respondent's case:

15. The 3rd Respondent did not participate in the appeal. However, as stated above, the 3rd Respondent filed a response to the claim, but, just like in this appeal, did not take part in the trial.

Analysis:

16. The Tribunal is established under *Section 48* of the *Copyright Act*, Cap. 130 of the Laws of Kenya and its members are appointed by the Hon. Chief Justice. As such, it is a subordinate Court in line with *Article 169* of the *Constitution*. Further, *Article 165(6)* and *(7)* of the *Constitution* gives the High Court powers to exercise supervision over sub-ordinate Courts and quasi-judicial bodies established by a statute. Additionally, the High Court in ***Republic v Public Procurement Administrative Review Board & 2 Others ex parte Selex Sistemi Integrati*** [2008] eKLR affirmed that statutory tribunals fall within the scope of its supervisory powers. This Court, therefore, has the requisite jurisdiction to entertain the instant appeal.
17. Being a first appeal, this Court's duty is as was stated in ***Selle and Another Vs Associated Motor Boat Company Ltd & Others*** [1968] 1EA 123 as under: -

...this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take

into account of particular circumstances or probabilities materially to estimate the evidence.

18. Having carefully considered the record, the parties' written submissions and the decisions referred thereto, the issues that arise for determination are on liability and quantum. This Court will now proceed to consider the said issues in *seriatim*.

[a] Whether the Tribunal erred in finding the Appellant liable for copyright infringement:

19. This Court has considered the Tribunal's rendition on the aspect of liability. The Tribunal was properly guided by the law and precedents. It aptly demonstrated how the Appellant rolled out and aired the 1st Respondent's film by the name *Pwagu*, without the authorization by the duly registered copyright owner, the 1st Respondent. The Tribunal also considered the Appellant's defence. It dealt with the issue of the 3rd Respondent's alleged rights in the film and clarified that under the law, the 3rd Respondent did not possess any rights capable of alienation to the Appellant. Further, the 3rd Respondent did not take part in the trial to demonstrate such authority even after the 1st and 2nd Respondents had denied such rights alienation. The issue of infringement of the 1st Respondent's rights was, therefore, properly settled by the Tribunal.
20. The other aspect of contention was whether the Tribunal erred in not finding the 3rd Respondent herein, *Sparks Corporate Solutions Limited*, liable. According to the Appellant, it received the content from the 3rd Respondent who warranted them that their rights to the content did not infringe upon the rights of any other third parties. On its part, the 3rd Respondent denied the averments made in the Statement of claim and further denied making any warranties to the Appellant as alleged in their response. They alleged that if indeed there were any warranties made, the same were represented to them by *Story Africa Content Company Ltd* from whom the content was obtained. However, as said, the 3rd Respondent did not take part in the hearing of the suit.

21. Deriving from the foregoing, there is no doubt that the 3rd Respondent did not have any legal authorization over the 1st Respondent's copyrighted works. As such, the 3rd Respondent could not have passed any legal rights over the film to the Appellant. The judgment went further to discuss the manner in which the law required the Appellant to undertake due diligence before settling in any agreement with the 3rd Respondent, an exercise which the Appellant failed to undertake. Therefore, in terms of *Section 35* of the *Copyright Act*, both the Appellant and the 3rd Respondent were guilty of the infringement. To that extent, and with utmost respect, the Tribunal erred in not settling the aspect of the 3rd Respondent's liability. This Court, hence, finds the Appellant and the 3rd Respondent jointly and severally liable for the infringement of the 1st Respondent's rights over the film *Pwagu*.

[b] Whether the award in damages was erroneous and excessive:

22. As to an appeal on damages, the guiding principles thereto were set out by the Court of Appeal in ***Kemfro Africa Ltd t/a Meru Express & Another -vs- A. M. Lubia and Another*** [1982-1988] KAR, where it was observed that since the trial Court exercises discretion in granting damages, such discretion can only be interfered with on appeal where the trial Court considered an irrelevant factor or left out a relevant one. The discretion can also be interfered with if the award is inordinately high or low as to represent an erroneous estimate.

23. *Section 35 (4)(a)* of the *Copyright Act* provides as follows on rights infringement: -

Infringement of any right protected under this Act shall be actionable at the suit of the owner of the right and in any action for infringement the following reliefs shall be available to the plaintiff-

(a) *the relief by way of damages, injunction, accounts or otherwise that is available in any corresponding proceedings in respect of infringement of other proprietary rights;*

24. In dealing with the aspect of damages, the Tribunal rendered itself on special and general damages. On the special damages, the Tribunal found the Appellant liable in the sum of Kshs. 2,217,951/= being the costs of production, post-production and administrative costs. The Appellant claimed that such damages were not recoverable in the scheme of things in this matter since the damages were incurred before the alleged infringement and further that there is no evidence that the same were now recoverable.
25. The Tribunal referred to two decisions in affirming that special damages were due and payable. The decisions were ***Idi Ayub Omari Shabani v City Council of Nairobi*** [1985] KECA 48 (KLR) and ***Alternative Media Limited v Safaricom Limited*** [2005] KEHC 3175 (KLR). The Tribunal also stated that the 1st Respondent had demonstrated a comprehensive 'Chain of Titles' through the documents on record. This Court has intently looked into the said two decisions. The decision in ***Idi Ayub Omari Shabani v City Council of Nairobi*** case [*supra*] did not deal with infringement of copyrights, but on awarding general damages to a road traffic victim who was a minor. The decision is not, therefore, relevant in this matter.
26. The High Court in ***Alternative Media Limited v Safaricom Limited*** case [*supra*] dealt with the issue of infringement of copyrights on the twin issues of liability and damages. The Court declined to order an inquiry as to damages or an account of profits since the Plaintiff failed to first pursue the issue of liability before that of damages. This is what the Court stated: -

... I decline to order either an inquiry as to damages or an account of profits. As far as I am concerned, these two remedies would have been available to the Plaintiff only if it had opted to first have the issue of liability determined. In that event, once the court had made a pronouncement on the issue of liability,

the Plaintiff could have been put to an election, and appropriate directions would have been made for further proceedings. But, the Plaintiff already sought to prove the damages it was entitled to, albeit unsuccessfully. In these circumstances, I can do no more than to award the Plaintiff, nominal damages. Accordingly, I hereby award to the Plaintiff the sum of Kshs. 100,000/= as General damages for the infringement of its copyright. This sum shall attract interest at court rates from the date of judgement. Finally, the Defendant shall pay the costs of this suit.

27. What the Court in essence stated was that the owner of a copy right must prove both liability and damages. Whereas proof of liability would be readily made, the Court expressed its concern on how damages on infringement ought to be proved. The Court opted for a process on inquiry as to damages or an account of profits upon finding liability. That, however, does not mean that the inquiry as to damages or an account of profits cannot be undertaken at the same time. It all depends on the evidence led in the matter.
28. In the ***Alternative Media Limited v Safaricom Limited*** case [supra], the Court did not directly deal with special damages arising from the costs of production, post-production and administrative costs, but its rendition threw some light in the manner in which such damages ought to be proved. The Tribunal also brought in the aspect of ‘*Chain of Titles*’ in proof of special damages.
29. To this Court the concept of ‘*chain of titles*’ comes into play in proof of ownership of works and liability on infringement. This Court says so since before acquiring any literary property, such as music, book, screenplay, teleplay or a motion picture, the buyer [like the Appellant herein] will ordinarily require proof of ownership from the seller, [say the 3rd Respondent] to ascertain the status of the seller’s [3rd Respondent’s] rights, that is, whether it has a clean chain of title. According to an article titled ***‘Successful Filmmakers Know How to Deliver Clean Chain of Title’***, by *Rodrigues Law Attorneys*, who are experts in Business and Entertainment Law in the United States of America,

'... a chain of title in film production can be seen as a comprehensive, documented history of ownership for a film's intellectual property, tracing rights from the original source material through to the finished, distributable product. It is essential for proving a producer's legal authority to produce, distribute, and exploit the project. A "clean" chain ensures no gaps or third-party claims, which is critical for securing financing and distribution....'

30. Returning to the matter at hand, since there is no dispute as to the owner of the infringed works, then for a claim on special damages based on the costs of production, post-production and administrative costs to succeed there has to be a nexus between the infringement and the actual damages demanded. For instance, there has to be evidence on the **actual market value reduction** as a result of airing the film. If say by airing the film that in itself makes it worthless or significantly reduces its value, then one may claim the production costs as evidence of the "*fair market value*" that has been destroyed. There is also the issue of **lost licensing fees**. If the amount the owner would have reasonably been paid to license the film to a third party can be reasonably ascertained, then such an amount is payable as special damages. There may also be an inquiry as to the profits made by an infringer as to sustain a claim on **unjust enrichment**. All these are facets of special damages that may arise in a claim like the one by the 1st Respondent. Therefore, the special damages in this case were to be proved by evidence and that is why the Court in **Alternative Media Limited v Safaricom Limited** case [supra], called for extreme care in the manner in which damages are claimed and proved in a matter like the one at hand.
31. According to the evidence in the suit, the 1st Respondent failed to demonstrate the aspect of actual market value reduction, lost licensing fees and/or the aspect of unjust enrichment. There is no evidence on the viewership of the Appellant's Zuku TV in the market and the effect of running the film to the larger public.

There is also no evidence on how much the 3rd Respondent would have leased its film to a third party. Likewise, there is no evidence on unjust enrichment. It is on the above that this Court finds, and with utmost respect to the Tribunal, that the special damages were not properly proved and as such were not recoverable.

32. On the general damages, the Tribunal made a comparative analysis of several decisions before settling for the sum of Kshs. 5,000,000/=. To this Court, the Appellant's attempt to distinguish the decision do not successfully demonstrate how the award is inordinately high as to justify this Court to exercise its discretion in disturbing the same. There is no doubt the 3rd Respondent spent colossal intellect, time and resources in coming up with the film and as such, the award cannot be said to be excessive. Therefore, the contention fails.

Disposition:

33. The foregoing rendition, hence, makes the appeal partially successful and the following final orders hereby issue: -

[a] The judgment of the Copyright Tribunal dated 15th May 2024 in COPTC E001 of 2024 be and is hereby varied to the extent that the Appellant and the 3rd Respondent are hereby found to be jointly and severally liable to the 1st Respondent.

[b] The award of special damages in the sum of Kshs 2,217,951/= is hereby set-aside and disallowed.

[c] The award of general damages in the sum of Kshs. 5,000,000/= is sustained as well as the order on costs and interest.

[d] Since the appeal has partially succeeded, each party shall bear its own costs.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 27th day of February, 2026.

**A. C. MRIMA
JUDGE**

Judgment virtually delivered in the presence of:

Ms Ataka for Mr. Ogara, Learned Counsel for the Appellant.

Mr. Otieno, Learned Counsel for the 1st and 2nd Respondents.

No appearance for the 3rd Respondent.

Michael/Amina - Court Assistants.