



**Sony Corporation v Sony Holdings Limited (Civil Appeal  
399 of 2019) [2026] KECA 698 (KLR) (25 March 2026) (Judgment)**

Neutral citation: [2026] KECA 698 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 399 OF 2019  
SG KAIRU, M NGUGI & P NYAMWEYA, JJA  
MARCH 25, 2026**

**BETWEEN**

**SONY CORPORATION ..... APPELLANT**

**AND**

**SONY HOLDINGS LIMITED ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of the High Court of Kenya  
at Nairobi (Tuiyott, J.) dated 29th May 2018 in HCCC No. 376 of 2015)*

**JUDGMENT**

1. This second appeal arises from the judgment delivered on 29<sup>th</sup> May 2018 by which the High Court at Nairobi (F. Tuiyott, J.) (as he then was) partially allowed the appellant’s first appeal from the decision of the Assistant Registrar of Trade Marks dated 5<sup>th</sup> June 2015. In that decision, the Assistant Registrar of Trade Marks had dismissed the appellant’s opposition to the respondent’s application for registration of Trade Mark Nos. 65981 “Sony Holdings” (words and device) and No. 65982 “Sony Holdings” (words), and directed that the same proceeds to registration.
2. The High Court on its part, in partially allowing the appellant’s first appeal stated:

“In the end, this Court can only fault the Assistant Registrar’s final determination regards to Marks under classes 35, 36, 37 and 39. Consequently the decision of the Assistant Registrar of Trade Marks dated 5<sup>th</sup> June 2015 is set aside to the extent that the opposition to the Marks under classes 35, 36, 37 and 39 only shall not proceed to registration.”
3. The appellant has faulted the decision of the learned Judge for failing to find that the respondent’s applications for registration of trade marks offended sections 14 and 15A (4) of the *Trade Marks Act* (the Act). It is contended that the learned Judge erred in: reaching the decision that the appellant’s SONY trade mark is not a well-known mark in Kenya, and in imposing an undue burden of proof on



the appellant in that regard; by imposing the requirement of “actual confusion” while only a “risk/likelihood of confusion” is required by law; and by imposing the requirement that the appellant must have a reputation in the respondent’s goods and services of interest.

4. The background to this appeal is that on 22<sup>nd</sup> July 2009, the respondent applied to register the stated Trade Mark Nos. 65981 and 65982 under classes 12, 16, 25, 35, 36, 37, 39 and 45 of the Nice Classification of goods and services for purposes of registration of Marks. Upon examination, the Registrar of Trade Marks approved the applications and published the same in the Industrial Property Journal on 31<sup>st</sup> May 2011.
5. The appellant objected to the respondent’s application for registration by filing Notices of Opposition against the registration on, among other grounds, that it is the proprietor in Kenya and globally of the Trade Mark “Sony” which is distinctive of electronic goods in class 9 of the Nice Classification; that the appellant is a leading manufacturer of electronic goods globally and is commonly referred to as “Sony”; that it has created substantial goodwill and reputation in the “Sony brand” owing to extensive promotion, use and sale of its goods bearing the trade mark “Sony”; that the goods and services in respect of which the respondent sought to be registered are similar to the goods and services in respect of which the appellant’s trade mark is used and registered in Kenya and globally; that the respondent’s trade mark “Sony Holdings” consists of the word “Sony” which is the dominant element of the trade mark and renders the same confusingly similar to the appellant’s trade mark as to be likely to cause confusion between the goods of the appellant and those of the respondent; that the respondent’s trademarks sought to be registered did not qualify as trademarks under section 20(1) of the Act; and registration would be unlawful in accordance with Sections 14, 15(1) and 15A(4) of the Act.
6. Having heard the parties and upon considering the rival submissions by counsel on their behalf, the Assistant Registrar of Trade Marks rendered her decision in the said ruling dated 5<sup>th</sup> June 2015 in which she narrowed down the dispute to three issues for determination, namely; whether the appellant’s trade mark “Sony” is well known in Kenya and therefore deserving protection under sections 15A of the Act; whether the trade mark proposed for registration by the respondent are so similar to the appellant’s as to cause a likelihood of confusion in contravention of section 15 of the Act; and whether the respondent had a valid and legal claim to the trademarks proposed for registration before applying to register them as provided under section 20(1) of the Act.
7. On the first issue, the Assistant Registrar concluded that the appellant did not furnish sufficient evidence to prove that their trade mark “Sony” is well known in Kenya and accordingly, the same does not deserve protection as a well-known trademark in accordance with section 15A of the Act.
8. On the second issue, as to whether the trade marks are similar, the Assistant Registrar found that they are not because, even though similar in appearance, the respective goods and services of the appellant and those of the respondent are not of a similar description and the registration of the respondent’s trade mark would not therefore be contrary to section 15(1) of the Act.
9. With regard to the question whether the respondent had a valid and legal claim to the trade marks it was proposing to register before applying to do so as provided under section 20 of the Act, the Assistant Registrar found in the affirmative, having determined that “there has been honest concurrent use of” the appellant’s and the respondent’s trade marks in the Kenya market; and having determined that the appellant’s trade mark is not a well-known trademark and not deserving of protection under section 15A of the Act.
10. As already indicated, the appellant challenged that decision in a first appeal before the High Court where the complaints were, among others, that the Registrar of Trade Marks: did not consider the evidence; misdirected herself in interpretation of sections 14, 15, 15A and 20(1) of the Act; failing



to hold that its mark “Sony” is a well-known trademark and misdirected herself on the criteria in that regard; in holding that the respondent had been using its marks honestly in the Kenyan market; in finding that the appellant ought to have submitted evidence on the degree, knowledge and/or recognition of its mark; and in holding that the respondent’s marks should proceed to registration.

11. The learned Judge of the High Court framed three issues, for determination, namely, whether the appellant’s trade mark is a well-known mark in Kenya and therefore deserving protection under section 15 of the Act; whether the respondent’s marks are so similar to the appellant’s trademark as to cause a likelihood of confusion in contravention of sections 14 and 15 of the Act; and whether the respondent had a valid and legal claim to their marks before applying to register them under section 20 of the Act.
12. On the first issue, the Judge upheld the decision of the Assistant Registrar that “the appellant had failed to prove that “Sony” is a well-known trade mark in Kenya” and that the appellant failed to discharge its burden of proof in that regard. Regarding the question whether the respondent’s marks are so similar to the appellant’s trade mark as to cause a likelihood of confusion in contravention of sections 14 and 15 of the Act, the Judge stated that nothing prevents the use of similar or identical trademarks by different proprietors provided that the respective goods or services are of a different description. To the extent that marks in classes 35 to 39 covered services identical to those of the appellant, the court found that registration thereof in favour of the respondent would offend section 15(1) of the Act and accordingly ordered that the marks under those classes shall not proceed to registration.
13. As to whether the respondent had a valid and legal claim to its marks before applying to register them under section 20 of the

Act, the Judge found in the affirmative, expressing himself as follows:

“I take it that, for purposes of Section 20(1) a proprietorship Right in a Mark sought to be registered can be obtained in many different ways (Vitamins Ltd (supra)). It is common ground that the Respondent’s Mark ‘Sony Holdings’ was comprised in the name of the Respondent since its incorporation in 2003. It seems a fair and reasonable deduction that the Respondent has had ownership in that Mark in relation to the services it offered over the years and certainly at the point of application. This may however not cover the Marks in classes 35, 36, 37 and 39 (See earlier part of this decision) in which the Appellant is already registered.”

14. As already stated, the appellant has challenged the judgment of the High Court on grounds set out above. During the hearing of the appeal before us on 20<sup>th</sup> May 2025 learned counsel Mr. Cecil Kuyo and Miss. Arora appeared for the appellant while Mr. K. M. Mwangi, learned counsel appeared for the respondent. In addition to written submissions, counsel made oral arguments which we have also considered.
15. Counsel for the appellant Mr. Kuyo submitted that in reaching his decision, the learned Judge wrongly imported the requirements under section 15(1) of the Act when dealing with a section 14 matter. It was submitted that the High Court erred in requiring proof of “actual confusion” rather than the standard mandated by section 14(1) of the Act, which only requires a “likelihood of confusion”. The appellant asserts that the High Court improperly imposed an additional condition requiring the appellant to prove reputation in the specific goods and services of interest (classes 12, 16, 25, and 45), which is not a legal requirement under section 14 of the Act.
16. It was argued that the Judge only considered the provisions of section 15 of the Act which requires demonstration of “actual confusion” and did not consider the standard under section 14 which is “likely to cause confusion”; that sections 14 and 15 of the Act set different standards; that whereas



empirical evidence would be required to demonstrate “actual confusion”, no such evidence would be required to demonstrate “likelihood of confusion” and consequently the Judge set a higher evidentiary threshold for the appellant than that required by law; that had the Judge applied the correct standard, the appellant’s objection to registration of the respondent’s marks would have been sustained.

17. Counsel submitted that the Judge should have applied the test in the case of *Sabel BV v Puma AG, Rudolf Dassler Sport* [1997] ECR1-6191-Case C-251/95, and the court ought to have placed itself in the shoes of a notional customer/consumer, and had the Judge done so, he would have determined that the registration of the respondent’s marks in all the classes would result in a likelihood of confusion.
18. It was submitted that although the goods and services rendered by the parties are not similar, the marks are similar and likely to cause confusion or to deceive. It was argued that given the high degree of similarity between the marks (SONY is fully contained within ‘Sony Holdings’) and the distinctiveness of the SONY mark, confusion is deemed likely, even offsetting the dissimilarity of goods and services.
19. As to whether the appellant’s mark is well known in Kenya, and consequently whether the respondent’s marks offend section 15A(4) of the Act, it was argued that the Assistant Registrar and the High Court treated the factors set out in the Joint Recommendations for determining well-known mark as strict statutory requirements rather than guidelines. It was submitted that the guidelines/joint recommendations for determining whether a mark is well known or not are not law or statutory standards but merely guidelines, and each case must be decided on its own facts; and that the Judge erred in undertaking a “tick box exercise”; that the Judge should have considered the totality of all factors in reaching his decision.
20. It was submitted further that, in any event, the appellant provided substantial evidence supporting the well-known status of its mark, including the value associated with its mark, the duration, extent and geographic area of use of its mark, including sponsorship of major international events broadcasted in Kenya; and that the standard of proof imposed by the Judge went beyond the applicable standard of balance of probabilities.
21. In opposing the appeal, Mr. Mwangi for the respondent began by pointing out that this is a second appeal and only points of law should be entertained; that the Court must accept the findings of fact unless demonstrated that, on the evidence, no reasonable tribunal would have reached the conclusion reached by the High Court.
22. Counsel submitted that the learned Judge should not, as contended by the appellant, have limited himself to section 14 of the Act as the statute must be considered and interpreted as a whole; that both sections 14 and 15 address the same subject matter, namely the factors for consideration regarding applications for registration of trade marks, whether to register or to decline registration.
23. It was submitted that in the present case, the trade marks in question were already in the market; that section 15A deals with or governs “well known marks” and the Judge was therefore right to consider both sections 14 and 15 of the Act; that the test of likelihood to confuse relates to a situation where marks are not already in the market; that in the present case, as both marks were already in the market, evidence to demonstrate actual confusion was necessary. In that regard counsel also relied on the case of *Sabel BV v Puma AG, Rudolf Dassler Sport* [1997] ECR1-6191-Case C-251/95 as well as the case of *British Sugar PLC v James Robertson & sons Ltd* for the argument that the duration of time the two marks have co-existed in the market, however short a period, is a relevant consideration.
24. It was submitted that in the present case, proof was required to establish that the appellant’s mark is well known in Kenya; that whether a trademark is well known is a question of fact that must be established with valid and probative evidence; that under section 15A, a trade mark must be



proven to be well known in Kenya based on the established doctrine of territoriality of trade marks which limits the legal effectiveness of a trade mark to the territory in which it is used or registered; that the appellant in the present case supplied material relating to foreign jurisdictions but failed to produce direct evidence of sale or market presence in the Kenyan market. In that regard, it was argued that the Joint Recommendations Concerning Provisions on the Protection of Well-known Marks (WIPO guidelines) provide a criterion which includes the degree of knowledge, duration, extent and geographical area of use and promotion and the onus was on the appellant to provide evidence in that regard.

25. It was further submitted that the Judge's personal views are irrelevant; that the court cannot take judicial notice of a central matter in a trial that requires to be tried and proved without evidence of notoriety. The case of *Lidl Great Britain Limited & another v Tesco Stores Limited & Another* [2024] EWCA Civ 262 was cited. It was submitted that the Court adopts the perspective of a notional customer and where marks have co-existed in the market, even for a short period, and no confusion has been reported, it is unlikely that registration will cause future confusion and no evidence of confusion was presented in the present case.
26. Counsel concluded by stressing that this Court, being a second appellate court, should decline the invitation by the appellant to re-evaluate the facts and the evidence of the case and dismiss the appeal.
27. We have considered the appeal and the submissions. As correctly pointed out by counsel for the respondent, this is a second appeal. As Onyango Otieno, JA. stated in the case of *Kenya Breweries Limited v Godfrey Odoyo* [2010] KECA 498 (KLR):

“... In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters, they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

28. The Judge in that case cited with approval a passage from the case of *Stephen Muriungi and Another v Republic* (1982- 88) 1 KAR 360 where Chesoni, Acting JA. (as he then was) stated as follows:

“We would agree with the view expressed in the English case of *Martin vs Glywed Distributors Ltd (t/a MBS Fastenings)* 1983 ICR 511 that where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the temptation to treat findings of fact as holdings of law or mixed findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.”

29. With that in mind, the overarching issue in this appeal is whether the learned Judge of the High Court erred in upholding, in part, the decision of the Assistant Registrar of Trade Marks dismissing the appellant's opposition to the registration of the respondent's trade marks. In that regard, there is the question whether the appellant established “the well-known mark status” of its SONY mark and whether, in reference to sections 14(1) and 15A of the Act, the Judge erred in requiring proof of ‘actual confusion’ rather than the lower standard of ‘likelihood of confusion’.
30. The long and short of the appellant's case is that it established that its SONY mark is well known; that the Judge erred in treating the WIPO Joint Recommendation Concerning Provisions on the Protection of well-known Marks as strict statutory requirements rather than guidelines, and imposed



an unrealistic burden of proof while the appellant had provided substantial evidence of SONY's well known status. It was argued that the Judge's own statement that the court's finding that SONY was not a well-known mark "may be a shock to many" was a tacit acknowledgment that its notoriety should have been relied upon, and the Judge ought to have taken judicial notice of that notoriety. The appellant stressed that section 14 of the Act imposes a lower standard of likelihood of confusion as opposed to the standard imposed by the court requiring that the appellant should have demonstrated actual confusion.

31. The respondent on the other hand countered the appellant's case by urging that the appellant did not establish that its SONY mark is well known in Kenya; that under section 15A, the question whether a mark has attained the 'well-known mark status' in Kenya is one that requires probative evidence; that the appellant failed to discharge its burden of proof in that regard but provided irrelevant and insufficient evidence, mostly drawn from foreign jurisdictions, but failed to provide direct evidence of sale, market presence or client lists in the Kenyan market, bearing in mind "the doctrine of territoriality of trade marks" since the requirement is that the mark should be well known in Kenya.
32. As regards the contention that the Judge should have taken judicial notice of the notoriety of the SONY mark in Kenya, it was argued that courts must rely on evidence and evidence cannot be substitute with the judge's own personal views or perception. As regards the complaint that a lower standard of likelihood of confusion as opposed to actual confusion was the appropriate standard, it was argued that trademark disputes must be resolved in the context of the market, that in this case the marks had already co-existed in the Kenyan market and there was no evidence of reported confusion, which would have been a relevant consideration in assessing the likelihood of confusion.
33. Section 14(1) prohibits registration of a trademark the use of which is likely to deceive or cause confusion. It provides that:
  - "(1) No person shall register as a trademark or part of a trademark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design." [Emphasis]
34. Section 15A (1) of the Act on protection of well-known trademarks provides as follows:

"References in this Act to a trade mark which is entitled to protection under the Paris Convention or the WTO Agreement as a well-known trade mark, are to a mark which is well known in Kenya as being the mark of a person who— (a) is a national of a convention country; or (b) is domiciled in, or has a real and effective industrial or commercial establishment in, a convention country, whether or not that person carries on business or has any goodwill in Kenya."
35. The questions whether the appellant's trademark SONY is a well-known mark in Kenya and therefore deserving protection under section 15A of the Act is a question of fact. Similarly, the question whether, for purposes of section 14(1) of the Act the respondent's trade marks, are so similar to the appellant's trade mark as to be likely to cause confusion between the goods of the appellant and those of the respondent is also a question of fact. These are matters that would require proof. In that regard the Assistant Registrar, finding support in the "Joint Recommendation Concerning Provisions on the Protection of Well- Known Marks" adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (WIPO), stated, correctly in our view, that for a trade mark to be deemed to be well known in any



jurisdiction, “there has to be evidence furnished ... to indicate that the trade mark is actually well known and recognized in the jurisdiction...”.

36. The factors against which the Assistant Registrar considered the evidence presented by the appellant included the duration, extent and geographical area of the use of the appellant’s trade mark SONY; promotion of the trade mark; degree of recognition of the trade mark in Kenya; and enforcement of the trade mark. Based on her evaluation of the evidence, the Assistant Registrar concluded that the evidence presented by the appellant was “not sufficient evidence to prove that their trade mark SONY is well known in Kenya and therefore undeserving of protection under section 15A of the Act.
37. As to whether the respondent’s trade marks were likely to cause confusion between the goods of the appellant and those of the respondent, the Assistant Registrar, in considering whether the trademarks are similar, had regard to the area and manner of concurrent use of the products; the degree of care likely to be exercised by consumers; and similarity between the marks in appearance, before concluding that the goods and services in respect of which the respondent sought to register its trademarks and those of the appellant are not of a similar description, and further that the trade marks are not similar.
38. On his part, the learned Judge of the High Court in keeping with the mandate and duty of a first appellate court reviewed the evidence stressing that “a person asserting well-knownness (sic) of a Mark bears the responsibility of submitting information (evidence) in respect to the factors from which the competent authority may infer that the mark is indeed well known” and that it is “not to the perception or personal inclination of the competent authority.” The Judge was satisfied that the appellant had not discharged its burden of proof.
39. As to whether the respondent’s trade marks had a likelihood to cause confusion, the learned Judge, guided by the principles in *Sabel BV v Puma AG, Rudolf Dassler Sport* [1997] ECR1- 6191-Case C-251/95, upheld the decision of the Assistant Registrar in that regard, with the exception of the respondent’s marks proposed to be registered in classes 35 to 39, given the similarity of the marks, and given that they cover services identical to the services covered by the appellant’s trademark, and registration thereof in those classes would have offended section 15(1) of the Act.
40. There are, therefore, concurrent findings of fact by the Assistant Registrar of Trade Marks and by the High Court on the questions whether the appellant established that its trademark is well known in Kenya and whether there is a likelihood of the respondent’s trade marks causing confusion. It has not been shown before this Court that the two courts below considered or failed to consider matters, they should have considered or that looking at the entire decision, the same is perverse. It bears repeating, as stated by the Court in the case of *John Mbuta vs Bosky Industries* [2019] KECA 44 (KLR) that this Court, on a second appeal, must restrict itself to consideration of matters of law only “as amplified in several decisions of this Court” and it must do so “unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”
41. Evidently, the learned Judge, as did the Assistant Registrar, considered the matter against both prisms of section 14 and section 15A of the Act, and we are unable to discern any misdirection on the part of the High Court in its evaluation of the evidence present before the Assistant Registrar.
42. This appeal has no merit and is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF MARCH 2026.**

**S. GATEMBU KAIRU, FCI Arb, C.Arb.**

**JUDGE OF APPEAL**



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**MUMBI NGUGI**

**JUDGE OF APPEAL**

.....  
**NYAMWEYA**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

