

MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED

MINUTES OF THE 30TH ANNUAL GENERAL MEETING OF THE MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED, HELD ONLINE ON THURSDAY, JULY 15, 2021, STARTING FROM 10 A.M.

DIRECTORS PRESENT:

1. Mr. Lazarus Muoki Muli-----Chairman
2. Mr. Joseph Shisia Wasira.....Vice Chairman
3. Simon Kariuki Nderitu.....Director
4. Mr. Desmond Katana Harrison-----Director
5. Mr. John Mwangi Njoroge-----Director
6. Mr. James Likembe Milulu-----Director
7. Mr. Japheth Kilonzo Kasanga-----Director
8. Mr. Paul Maina Mwangi-----Director

IN ATTENDANCE

1. Ms Milcah Kulati.....Chief Executive Officer
2. Dr. Hezekiel Oira..... Company Secretary
3. Mr. George Itotia Nganga.....for Kreston K.M.& LLP Auditors

MEMBERS PRESENT

(As per the attendance list)

MINUTE NO.1/AGM/2021: READING OF THE NOTICE FOR THE MEETING

The company secretary read the notice convening the 30th Annual General Meeting which had earlier been sent online to members and published in Nation Newspaper, issue of June 6, 2021. The company secretary confirmed that the notice requirement of twenty-one (21 days) was thus fulfilled in terms of the constitutive documents of the Society. The company secretary explained to members that the meeting was convened against the background of challenges

posed by the COVID 19 and on account of the protocols instituted by the government as part of the containment measures it was impossible to assemble all the 14000 members at one place without compromising such measures. These extraordinary circumstances therefore necessitated that a hybrid meeting be convened with the directors and regional committee members assembled at Maanzoni Lodge while members were connected online.

MINUTE NO.2/AGM/2021: QUORUM AND OPENING PRAYER

The Company Secretary having read the legal requirements for realization of quorum, at 10h30 it was observed that 1261 members had registered their online interactive participation in the meeting. The number of members so registered thus fulfilled the quorum requirement in terms of Article 19 of the Constitution of the Society which set the quorum threshold at five per centum (5%) of the total membership of the Society then standing at 14,000; whereupon an opening prayer was conducted by director John Mwangi Njoroge.

MINUTE NO.3/AGM/2021: ADOPTION OF AGENDA

Members considered and adopted the following agenda for the meeting at the proposition of Mary Wambui Kariuki membership No.3,476 and seconded by John Ilayesa Amiani membership No. 4,076.

1. To read the Notice Convening the Meeting;
2. To Confirm the Quorum for the Meeting;
3. To Adopt the Agenda for the Meeting;
4. To Confirm the Minutes of the 29th Annual General Meeting held on January 6, 2020;
5. To Discuss Matters Arising from the Minutes of the 29th Annual General Meeting;
6. To Receive, Consider and Adopt the Chairman's Report;
7. To Receive, Consider and Adopt the Financial Statement for the Year ended 30th June 2019/30th June 2020 together with the Directors' and Auditors' Reports;

8. To Consider to Re-appoint Messrs. Kreston K.M. Company Auditors as Auditors of the Company in Pursuance of the Companies Act, 2015, and Authorize the Board of Directors to Fix their Remuneration for the Subsequent Year.
9. To Consider any Business for which due Notification Would have been Received 48 Hours before the Date of the Annual General Meeting

MINUTE NO.4/AGM/2021: CONFIRMATION OF MINUTES OF PREVIOUS MEETING

The minutes of the Annual General Meeting which was held on January 6, 2020 were read and confirmed at the proposition of Mr. Matoke Okibo and seconded by Mr. Kaloki, as a true record of the business transacted then and the Chairman signed them; the confirmation was, however, subject to the following corrections:

MINUTE NO.5/AGM/2021: MATTER ARISING FROM THE PREVIOUS MEETING

I. X-MINUTE NO.5/AGM/2019 (1): AMENDMENT OF THE SOCIETY'S ARTICLES AND MEMORANDUM

Members were informed that the process modifying the articles and memorandum of association, in harmony with the Companies Act 2015, the 2020 Copyright Act, the Constitution of Kenya as well as the best practices internationally, had been slowed by the non-approval and release of funds by the Kenya Copyright Board which administers the Joint bank account where royalty revenue is banked. Members were further informed that if funds were released the process would have commenced with the regional committees collating views from members at the grassroots level and thereafter escalate the process to the headquarters for the final crafting of the final document having regard to the input of all members. Members resolved that the exercise be completed without further delay and thereupon an extraordinary Annual General Meeting be convened to adopt the amendments.

II. X-MINUTE NO.5/AGM/2019(ii): DIVISION OF REGIONS

Although it was reported that the proposed division of the Rift Valley, Eastern, and Central regions was put in abeyance following the introduction of the joint licensing and administration of rights, members emphatically resolved that the regions be divided as earlier contemplated for administrative structures and were a function of the Music Copyright Society and independent of joint collections.

III. X-MINUTE NO.5/AGM/2019 (iii): AMENDMENT OF ELECTION RULES

Members noted with concern that the proposed amendment of the elections rules was taking unduly long and resolved that such an exercise be carried out alongside the proposed amendment of the articles and memorandum of association of the Society as a single undertaking.

IV. X-MINUTE NO.6/AGM/2019 (VII): MEETING HEAD OF STATE

Members sought what happened with the plans to meet the head state which had been mooted in 2018. They were informed that such arrangements were put in abeyance following the global outbreak of the COVID 19 but the Chairman undertook to follow up the matter with a view to actualizing the intended meeting.

V. X-MINUTE NO.9/AGM/2019: SITTING ALLOWANCE

The Board of directors of the Society confirmed to members that the approved allowance of Kshs 7,500 was in force and that no director was on salary payroll as it was reported or rumoured in the social media.

MINUTE NO.6/AGM/2021: CHAIRMAN'S REPORT

The Chairman welcomed all members to the online AGM. He then thanked the organizers and service providers for the excellent organization of the meeting before inviting members to observe a minute of silence in honour and recognition of the following six departed members:

S/N	NAME OF DECEASED	PSEUDONYM	M. NO	REGION

1	Dalmas Orono Munemba	Dalmas	26	Nyanza
2	John Kaundo Owino		90	NYANZA
3	Joram Okhuyo Olwamba		114	Western
4	John Nyenze Amutabi	John Nyenze	127	Western
5	Julia Lucy Mwaura		175	Nairobi
6	Rick Matee festo	Matee Festo	241	Eastern
7	James Walter Githinji		283	Nairobi
8	Albert Gacheru Kiarie	Wamaitu Stars	328	Nairobi
9	Michael Njehia Jeremano	Maganzo	504	Central
10	Shem Andayi Lundu	Shem Tube	570	Western
11	Hollyn Isika Kituku	Holyday In Babylon	625	Eastern
12	Joel Mbeche Omusi	Joel Beta	683	Western
13	Mercy Wairimu kamande	Mercy Wairimu	825	Central
14	Maureen Achieng Otiu	Lady Maureen	888	Nyanza
15	Haron Kivungi Mulei	Nyarobi	1386	Eastern
16	Monica Wanjiku Mbuthia		1582	Nairobi
17	Lawrence Mboyi		1964	Western
18	John Constantine Odhiambo Amuti		2280	Western
19	Gladys Wanjiru Njenga		2586	R. Valley
20	Mary Wanja Njuki	Mary Wanja	4149	Eastern
21	Erick Omondi Odit	Omondi Longlilo	4431	Nyanza

22	Jonathan Nzioka Kimalu	Senator K	7515	Coast
23	Edna Cheronu Kosgei		7816	R. Valley
24	John Walter Muriithi	Muriithi John Walker	8067	Nairobi
25	Hellen Chepkirui Chumo	Koligen	8286	Nairobi
26	Minica Akoth Asingo	Monica	9062	Western
27	Miriam Ngina Ngahu	Miriam Ngahu	9627	Nairobi
28	Mary Gitau Wanjiru	Mary Joyce	11021	Nairobi
29	Alex Kisee Kasonzo	Alex Kasonzo	1295	Eastern
30	Samuel Ndolo Kitonyi	Mr. Kitonyo	1340	Nairobi

The Chairman highlighted the challenges the Society had faced but surmounted during the period under review ranging from the withdrawal of the licence by KECOBO, the outbreak of the pandemic COVID 19, negative publicity over the mode of royalty payment, withdrawal of police service by the Government as well as court cases revolving on, inter alia, the unconstitutionality of the amended Copyright Act 2020, unilateral lowering of tariffs by the Government, former employees claiming terminal benefits, and members challenging KECOBO's revocation of the licence. In the face of these challenges, the Chairman reported the following achievements in the period 2018-2019:

- i. Rise in revenue collections to Kshs 170.5 million from Kshs 110.7 million the previous year;
- ii. Recruitment of 863 new members;
- iii. Payment of royalties had been approved for distribution on July 19, 2021;

- iv. Increased collaborative engagement and linkages with relevant international institutions like CISAC and WIPO;
- v. Increased partnership with the Government and more especially the Ministry of ICT which had undertaken to use ICT platforms and enabling laws in order to widen the royalty collection base to cover online use of musical works as well as the broadcasting or communication to the public of such works;
- vi. Although the Society had initiated the formulation of a 3-year strategic plan as well the modification of its constitutive document, the implementation of the duo was delayed on account of KECOBO's failure to release the funds;
- vii. The Board was making arrangements on how member composers, publishers or musicians/artistes could meet with the Head of State in response to his invitation late 2018. The meeting could not be held, as contemplated in 2020, because of the COVID-19 protocols. Once the situation vis-à-vis COVID-19 normalized, the directors undertook to actualize the matter.
- viii. Reviving of the MCSK Foundation which would act as a welfare vehicle for members. All the statutory requirements and compliances were being put in place as a prelude to the full operationalization thereof.

In conclusion, the Chairman promised members that in the years to come, the financial position of the Society would be better and members would get better royalties given the new, innovative strategies that had been put in place. Thereupon, members adopted the Chairman's report.

Reactions to the Chairman's Report

- a) The Society was directed to reactivate its benevolent scheme by which the aged members or families of deceased members are assisted;
- b) The Society was directed to engage KECOBO over the monies collected with MPAKE and not accounted for as well as over the possible prolongation of the licence period from the stipulated one year which defied sound commercial imperatives;

- c) Members expressed their abhorrence at the contract between Liberty Afrika Technologies and the CMOs for which more than Kshs 80 million was being demanded by the former and directed that the same be re-examined.
- d) The Society was encouraged to weed out ghost members through a thorough vetting exercise;
- e) Members resolved that the joint bank accounts by the CMOs be terminated or stopped in view of the challenges that had been experienced by MCSK in relation to the release of funds therefrom for distribution as royalties.
- f) Members expressed their repugnance and distaste at KECOBO's frustration of CMOs which move they said amounted to the destruction of the creative industry.
- g) Members expressed its concern over the snowballing courts cases against or by the society and directed that efforts be made to avoid such situation and directed that a report on all current court cases and their financial implication be submitted to the next AGM
- h) The directors were mandated to engage all the necessary persons or organizations with a view to extricating the society from the oppressive regulatory activities
- i) The society was mandated to spare no efforts to fight the negative publicity peddled on several platforms
- j) Members directed that all provisions or recent amendments of the Copyright Act not in the best interest of the Society be sloughed off through lobbying the necessary offices as well as relevant international affiliates.
- k) Members condemned the low tariffs which were unilaterally put in place and directed that re-negotiation over be initiated.
- l) Members condemned the withdrawal of police officers who used to effectuate the licensing of users of works as well as the non-payment of royalties by broadcasters since 2015.

MINUTE NO.7/AGM/2021: FINANCIAL STATEMENTS AND AUDITOR'S REPORTS

The Annual report and financial statements dated June 30, 2020 which had earlier been distributed to members were formally tabled before the meeting by Mr. George Itotia Nganga on behalf of M/S Kreston K.M. & Co. LLP, Certified Public Accountants. The report covered the period ended June 30, 2020. According to the report, the performance of the Society in the period under review registered a surplus of Kshs 875,947.00. The previous year recorded a deficit of Kshs 124,484 821.00. The accumulated losses as at June 30, 2020 amounted to Kshs 195,120,063. On the other hand, the company's current liabilities for the period and review exceeded its current assets by Kshs 202,573,532.00. The bad performance during the period under review was attributed to several factors that bedeviled the company. First, the revocation of the operating licence by KECOBO. Secondly, the withdrawal of the police service which was critical for licensing operation. Thirdly, downward review of the tariffs by the Attorney general. Fourthly, the hostile political environment in which CMOs operate. Fifthly the effects of COVID-19. Sixthly and lastly, the poor working relationship between the regulator and the CMOs as well as the snowballing widespread piracy.

The auditors expressed concern that the current liabilities of the company exceeded the current assets and that the accumulated losses as at June 30, 2020 stood at Kshs 195, 120,065 a situation that could compromise the operations and existence of the company as a going concern. The auditors however, did not qualify the accounts having regard to the fact that the Board of directors had put in place remedial, mitigating measures that would make the company viable and financially sound in the next twelve months. On account of the foregoing, members resolved unanimously to adopt the report and financial statements for the year ended June 30, 2020 together with the Auditors and Directors' reports thereon or appurtenant thereto.

Reactions:

Some members expressed concern that they never had enough time to study and internalize the Auditors' report and financial statements.

MINUTE NO.8/AGM/2021: RE-APPOINTMENT OF AUDITORS

Having expressed satisfaction with the services rendered by the external auditors, M/S Kreston K.M. & Co. LLP, Certified Accountants, members resolved that they be and were re-appointed for the financial year ending June 30, 2021.

MINUTE NO. 9/AGM/2021: CONSIDER MEMBERS' NOTIFICATIONS

The company secretary notified Members that he had received a total five member notifications received with forty-eight hours before the holding of the AGM for consideration by the meeting. He read them aloud one after the other as follows:

- (i) James Wahome Ngunyi
Mr. Ngunyi, MCSK NO.1303 sent to the company secretary two propositions dated July 5, 2021. The first proposal was that Sikiza money be brought back to the CMOs and the second that the term of the sitting directors be elongated by another one year because of the disruptions brought about by COVID-19. Members considered the propositions and adopted them as the resolutions of the meetings with a rider that Sikiza money to be brought to the management of CMOs relate to the members only.
- (ii) Nixon Kasembeni Watika
Mr. Watika, MCSK NO. 2284 sent a letter dated July 12, 2021 and made a single proposition for elongation of the term of the directors' term for a duration of six months which members noted but aligned to the earlier resolution made in relation to Ngunyi's proposition.
- (iii) Joseph Waweru Gichia
Mr. Gichia, MCSK No. 706 addressed his letter on July 2, 2021 and made a request for the postponement of the directors' elections for a duration not later than six months from October 2021. The Board noted the proposition but aligned the extension to one year as resolved above

(iv) Francis Kavuu Danger

Mr. Kavuu, MCSK NO. 218 wrote and sent his propositions dated July 10, 2021. The propositions were three in number. First, that the Articles and Memorandum of Association of the MCSK be effected before calling for elections. Secondly, that the forthcoming MCSK election be postponed and the term of the directors in office then be extended. The members noted the propositions and resolved that they had made resolutions on all the proposition made.

(v) Nancy Indiazi

Madam Indiazi, MCSK NO.2989 addressed her letter dated July 13, 2021 to the company secretary and made five propositions. First, a sum of Kshs 3million be allocated to the amendment of the constitutive documents of the MCSK. Secondly, the directors follow the implementation of the presidential decree that the management of MCSK be removed from the Office of the Attorney to ministry of ICT. Thirdly, the roles of KECOBO and CMOs be clearly defined to avoid conflicts. Fourthly, account be given for the delay in the distribution of royalties for this year. Fifthly and lastly, the CMOs should not operate joint accounts but have their own independent accounts. Members considered and adopted the resolutions subject to any earlier approvals and that any approved proposition requiring administrative measures be initiated by the directors without delay.

There being no other business and owing to the power failure the meeting ended at 3.30 P.M.

Signed as the correct record this-----day of.....2021

Chairman.....

