



Process:

The main legislation:

Plant Breeders' Rights Act, 2012.

Protection:

If plant breeders' rights with respect to any plant variety are new, distinct, uniform and stable. A variety is deemed to be distinct if it is clearly distinguishable from any other variety whose existence is common knowledge at the time of the filing of the application for the granting of plant breeders' rights or for the entering of another variety in the official register of varieties in any country. The filing of an application for the grant of plant breeders' rights or for entering of another variety in the official register is deemed to render that variety a matter of common knowledge from the date of the application (provided that, the right or listing applied for is ultimately granted). A variety is deemed to be stable, if it is able to retain its distinctive characteristics with a reasonable degree of reliability after repeated propagation or at the end of a particular cycle of propagation. A variety is deemed to be uniform if variations within that variety are describable, predictable, and commercially acceptable.

A variety is generally deemed to be new if it:

- (a) has not been sold, or otherwise disposed of to other breeders within Tanzania for trade or otherwise with the consent of the breeders (except for recognized and necessary testing purposes, made earlier than one year prior to the date of the application); and
- (b) has not been sold or otherwise disposed of to other breeders in any other country with the consent of the breeder (except for recognized and necessary purposes, made earlier than four years before the date of the application in respect of varieties other than trees of vine, for which the effective period is six years before the date of application).

The application for plant breeders' rights relating to a variety, must contain:

- (a) the name and address of the applicant;
- (b) if the applicant is an assignee or successor in title to the breeder of the new variety, the application must be accompanied by proof of title or authority in the form and content satisfactory to the Registrar and the name and address of the breeder of the new variety;
- (c) the origin and denomination, along with other description of the characteristics and properties of the new variety, including whether it has been listed pursuant to section 16 of the plant breeders' rights Act or whether application for the listing has been made;
- (d) samples of propagation material in such quantities as the Registrar may require;
- (e) a list of all countries in which application for plant breeders' rights has been made or in which plant breeders' rights have been granted, specifying the number title, the effective dates of the application and the status or the disposition;
- (f) a list of all other countries in which the variety is listed or otherwise authorized for commercial release;



(g) a location at which plants of the new variety will be available for inspection at any time during business hours; and

(h) any additional information that specified by regulations.

At the time of application, the applicant must propose a name for the new variety, which must be subject to the approval of the Registrar.(Ministry of Agriculture)

After a name has been approved for a new variety, no other name or denomination may be used in connection with that variety, whether before or after the expiration of the plant breeder's rights with respect to that variety. The breeder is not allowed to assert any right with regard to the denomination, which will prevent or limit the right of another person to use the denomination in connection with the variety.

The effective date of an application is the date that application was received by the Registrar. However, the applicant, having duly filed an application, can be accorded priority over all subsequent applications with respect to the same variety for one year from the effective date of the application. If, within twelve months prior to the effective date of the application an applicant has filed a application for plant variety protection in any country that has entered into a bilateral or multilateral agreement concerning mutual recognition of such protection, the applicant may claim a right of priority, under which the effective date of the application will be the date of the earlier application.

Any person within two months of publication of the application may lodge with the Registrar a written objection to the matters specified in that notice. The Minister responsible for agriculture, on behalf of the Government of Tanzania, may also lodge an objection. A notice of objection made under this section must: (a) specify the grounds on which the objection is based; (b) include a statement of the facts alleged in support of the grounds stated under paragraph (a); and (c) if required by the Registrar, be supported by an affidavit or other proof.

An objection lodged must be based on allegations of one or more of the following grounds:

(a) that the published notice is incomplete, or that it does not clearly describe the variety;

(b) that the application does not comply with requirements of Plant Breeders Rights Act;

(c) that the applicant infringes the rights of an interest in the variety or otherwise not entitled to make the application;

(d) that the applicant is not the owner of an interest in the variety or otherwise not entitled to make the application;

(e) that the application contains a material misrepresentation;

(f) that the variety described in the application is not a new variety;

(g) that the plant concerned is not of a specie or a sub-specie designed by regulations;

(h) that the proposed denomination should be rejected or altered;

(i) that the variety has been reproduced by the repeated use of the reproductive material of another variety for which plant breeders' rights have been granted to or applied for by a person other than the applicant, without licence or permission or in violation thereof;



(j) that any claim of priority based on an application for, or grant of plant breeders' rights under the law of another country is not valid or does not relate to the variety of the current application.

Objection:

The Registrar must notify the applicant of the filing of an objection and must provide a copy of the notice of objection and all supporting documents that are lodged with the objection within two weeks from the date of filing of the objection. The applicant may respond to the allegations of the objector, in a written reply that must be lodged with the Registrar, within one month or such further period as the Registrar may allow from the date of notification made. The written reply must set out the facts or other grounds set forth in the objection and a copy of the reply shall be provided to the objector.

Upon completion of the publication and the expiration of all time limits for objection and a reply, the Registrar will evaluate the application, based on the application itself, the objections, counter statements, if any, and the results of any tests and trials of the variety. The Minister may appoint one or more persons to advise the Registrar in the evaluation of applications and those persons must be selected based on their special knowledge in areas of - (a) plant breeding; or (b) the legal aspects of administrative decision making.

Registration:

If the Registrar concludes that:

(a) the application conforms to the requirements of this Act and the applicant is entitled to make the application;

(b) the variety is a new variety; (c) no objection has been filed and;

(d) there are no grounds for objection, and if an objection has been filed the objection does not state an impediment to the availability of plant breeders' rights for the variety, the Registrar will grant the applicant a plant breeder's right in the new variety. For each variety for which plant breeders' rights are granted,

the **Registrar will** (a) issue a certificate of registration to the applicant;

(b) enter the variety in the register; and

(c) publish a notice of the grant of plant breeders' rights.

If the Registrar cannot grant the applicant a plant breeders' right in the variety, he will reject the application and provide the applicant with a written statement of reasons for the refusal to grant plant breeders' rights within fourteen days.

Annual Fees:

In order to maintain the plant breeders' rights, the holder must pay an annual fee in advance, starting with the second year after the date of filing of the application. The holder who fails to pay annual fees on the due date may, upon payment of a surcharge, pay the fee at any time in the following six months without affecting the plant breeders' rights.

If the fee is not paid within this period, the plant breeders' rights will lapse, and the Registrar will cancel the right. At any time within twelve months following the expiration of



Registration of Plant breeders rights in Tanzania

the period six months, the holder may petition to the Registrar for restoration of the plant breeders' rights. The Registrar may grant a request for restoration of plant breeders' rights if he determines that the failure to pay was unintentional, and if the holder pays all annual fees and surcharges necessary to restore the plant breeders' rights current. If the plant breeders' rights are restored, the holder is not allowed to bring any action for infringement of the right, where the infringement arises out of any action and event occurred after the lapse of the plant breeders' rights and before the date of the order of restoration.

Kindest Regards,

Sunday Godfrey Ndamugoba