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# DIGITAL ASSET OWNERSHIP ON THE RISE IN KENYA



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## NFTs

Non-fungible tokens (**NFTs**) grant their holders ownership of digital tokens of artwork, music, videos and other online collectibles. They exist on blockchains, the technology underlying crypto-currencies like Bitcoin.

An NFT is noticeably different from crypto-currency because each NFT has a digital signature that prevents the exchange of NFTs for one another hence why they are described as “non-fungible”. This nature of NFTs has modernised ideas of digital property ownership by highlighting the existence of digital property and confirming its inherent value, similar to real property.

The originality of NFTs is what conveys their value, as NFTs cannot be reproduced, but can be resold multiple times, with ownership tracking continuing as the sales progress. NFTs can be bought and sold or otherwise exchanged on any NFT marketplace based on the same blockchain. These platforms allow people to store and display their NFTs plus sell them to others for crypto currency or money. In exchange for a fee, the NFT marketplace will typically handle the transfer of an NFT from one party to the other.

## The NFT space in Kenya

In Kenya, NFTs have introduced a new way of capturing and monetising intellectual property. There is a growing community of NFT artists and collectors and NFTs are now becoming popular with investors in Kenya. 6 percent of Kenya’s millionaires now own an NFT, while 13 percent have invested in a crypto-currency.

In April 2021, world marathon record holder Eliud Kipchoge sold two highlight videos of his record-breaking runs held on September 2018 in Berlin and May 2019 in Vienna. Kipchoge reportedly sold the two NFTs for the equivalent of USD 50,000.

Another famous participant in the Kenyan NFT scene is hip-hop artist Octopizzo, who reportedly earned over USD 2,000 from the sale of NFTs of songs from his album Fuego.

## NFTs and Kenyan Law

As developing technology, NFTs are not yet regulated in Kenya. The rapid pace of technological advancement continues to create gaps in our existing laws, and leaves legislators playing catch up.

Nonetheless, on 5th August 2022, the Kenya Copyright Board (the **Board**) issued an Advisory on Memes and Copyright Law. In it, the Board specifically mentioned the use of NFTs as a means of exploiting art for monetary gain, highlighting the Board’s interest in recent developments in the digital world and on their effect on the Intellectual Property Rights of stakeholders in the country.

## Possible Dangers in the use of NFTs

- a. Copyright Infringement- Owning an NFT grants the right to use the digital token but does not automatically transfer the copyright or reproduction rights to the actual art or media featured on the NFT, which remain with the creator, even upon resale.

This means that the person appearing as the legitimate owner of an NFT on a digital marketplace may not be the legitimate owner of the art or other media represented by the digital token. Unsuspecting purchasers may end up buying NFTs that have incorporated third party intellectual property rights without permission from their creators thus exposing themselves to litigation.

- b. Financial Crimes- Because of the anonymity available to transactors in NFTs, and the ability to instantaneously settle transactions worldwide, the NFT market is a prime target for financial crimes. NFTs, as with other blockchain technology facilitate transactions between anonymous or pseudonymous persons without involvement by third parties, such as banks. This creates an avenue for money laundering, terrorist financing and scams.
- c. Counterfeits-The websites and social media accounts of well-known NFT projects are highly attractive to hackers and once hacked, they may be used to lure unsuspecting NFT customers into scams.

## Need for Legal Evolution

Kenyan legislators need to develop regulatory frameworks to govern digital assets. This will address the growing needs of the society relating to digital asset ownership such as NFTs and minimise the risk of scams, hacks and other unlawful activity occurring on NFT marketplaces.

Amendments to existing laws governing the intellectual property rights and financial transactions will also prevent the misuse of digital assets. For instance, the **Central Bank of Kenya Act Cap. 491** would require amendment to include digital assets and currencies under the definition of “currency/unit currency” in Kenya.

Enhancing regulation will ensure more protection for participants in digital asset marketplaces and prevent them from engaging in deceptive, unfair or misleading practices.

## Conclusion

The lack of regulation of NFTs places the responsibility on participants to ensure their own safety on the marketplaces. It is advisable to stick to verified marketplaces when transacting and to seek proper authentication and consent from the original creators of the assets before finalising purchases.

NFT investors should carry out due diligence on the NFTs they are interested in and their origin and remain alert to establish whether the NFTs they want to purchase are legitimate.

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