**Systems Africa Ltd v Kalamazoo Ltd and another**

**Division:** Court of Appeal at Nairobi

**Date of judgment:** 20 December 1973

**Case Number:** 34/1971 (3/74)

**Before:** Sir William Duffus P, Spry V-P and Law JA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Kenya – Chanan Singh, J

*[1] Copyright – Artistic work – Accounting forms – Artistic work may be constituted by such forms –*

*Copyright Act* (*Cap.* 130), *s.* 2 (*K.*)*.*

*[2] Copyright – Artistic work – Original character – Whether sufficient labour and skill expended to give original character – Copyright Act* (*Cap.* 130), *s.* 3 (*K.*)*.*

*[3] Copyright – Commission – Time at which artistic work commissioned – Copyright vesting in person giving commission – Copyright Act* (*Cap.* 130), *s.* 11 (*K.*)*.*

**Editor’s Summary** The respondents produced accounting systems and forms, some general in nature and some specially designed for the needs of a particular customer. There was no obligation upon such a Customer to order the forms or to pay for the cost of design if he did not want to place an order. The appellant copied certain of the forms and on the respondents’ suit the High Court held that it had infringed the respondents’ copyright. On appeal the appellant contended that an accounting form could not be an artistic work eligible for copyright, that sufficient labour and skill had not been put into the forms to give them an original character, and that if copyright existed in the forms specially designed it vested in the firms which commissioned the forms.

**Held –**

(i) (Sir William Duffus, P. dissenting) accounting forms can be artistic works eligible for copyright;

( ii) (Law, J.A. dissenting) there was no sufficient labour and skill expended on the general forms to give them an original character;

(iii) (Sir William Duffus, P. dissenting) there was sufficient labour and skill expended on the specially designed forms to give them an original character;

(iv) (Law, J.A. dissenting) copyright in the specially designed forms vested in the customer for whom they were produced.

Appeal allowed.

**Cases referred to Judgment:**

(1) *Hollinrake v. Truswell*, [1894] 3 Ch. 420.

(2) *Van Oppen & Co. v. Leonard Van Oppen*, [1903] R.P.C. 617.

(3) *Libraco v. Shaw Walker* (1913), 30 T.L.R. 22.

(4) *Con Planck v. Kolynos*, [1925] 2 K.B. 804.

(5) *Football League v. Littlewoods Pools*, [1959] Ch. 637; [1959] 2 All E.R. 546.

(6) *Walker* (*Charles*) *v. British Picker Co*., [1961] R.P.C. 57.

(7) *Hensher v. Restawile Upholstery*, [1973] 3 W.L.R. 453; [1973] 3 All E.R. 414.

[Decision of the High Court (sub. nom. *Kalamazoo Ltd. v. Systems Africa Ltd*., [1973] E.A. 242) overruled.]

[**Editorial Note:** In *Con Planck v. Kolynos* (4) the trial judge stated at p. 813 that he found “that the defendants being the persons by whom the *original* was ordered are the first owners of the copyright, if