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EVALUATION OF THE CIVIL ENFORCEMENT OF INDUSTRIAL
DESIGN RIGHTS IN ZIMBABWE

BY

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Abstract

An Industrial Design right is an Intellectual Property right that protects the visual design of objects that are capable of industrial application and are not purely utilitarian in nature. The Industrial Design right holder is given a bundle of rights in Zimbabwe that he can assert by taking legal action in a civil suit to ensure that no third party uses such rights without proper authorization, as well as obtaining compensation in the event of infringement. The study sought to analyse the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe and provide insight on whether the current legislation and procedures need to be reviewed or rather what is required is training and capacity building for those involved in the civil enforcement of Industrial Design rights in Zimbabwe. The methodology that was used for the study was the mixed method research which was adopted to collect both quantitative and qualitative data in a single study to provide a better insight into the civil enforcement of Industrial Design rights in Zimbabwe. The objectives of the study were to analyse the rights that are conferred on Industrial Design right holders in Zimbabwe, assess the main ways in which Industrial Design rights are infringed in Zimbabwe, evaluate the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe and evaluate whether the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe is adequate and effective. From the data that was collected it is evident that the majority of the participants were not aware of the rights conferred on Industrial Design right holders in Zimbabwe, the manner in which Industrial Design rights are infringed in Zimbabwe and the civil remedies that are applicable in the enforcement of Industrial Design rights in Zimbabwe. There is therefore need for awareness, training and capacity building for Legal Practitioners, Judges and Magistrates on the civil enforcement of Industrial Design rights in Zimbabwe through workshops and collaborations with Intellectual Property experts in Zimbabwe as well as for local universities that offer the Bachelor of Laws degree to make Intellectual Property a compulsory module and not an elective module. It is clear that there is serious lack of awareness on the civil enforcement of Industrial Design rights in Zimbabwe by Legal Practitioners, Judges and Magistrates who are key players in the enforcement of such rights and this negatively impact the jurisprudence that is being made and may not afford better protection to the Industrial Design right holder in Zimbabwe.

Key Words: Civil enforcement, Industrial Design, Industrial Design right, Industrial Design right holder, infringement

Declaration page

I declare that this dissertation is my original work except where sources have been cited and acknowledged. The work has never been submitted, nor will it ever be submitted to another university for the award of a degree.

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Copyright page

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Dedication

This project is dedicated to my husband Felix Gonzo, my son Jayden Tinovonga Gonzo and my daughter Joanna Tinevimbo Gonzo and my sister Wendie Moyo. This project is also dedicated to my late mother Alice Erifasi who believed in me and taught me that to achieve my dreams I have to put in the extra work.

List of Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
ARIPO	African Regional Intellectual Property Organisation
IP	Intellectual Property
JSC	Judicial Service Commission
LLB	Bachelor of Laws
LSZ	Law Society of Zimbabwe
MIP	Master's Degree in Intellectual Property
WIPO	World Intellectual Property Office
ZIPO	Zimbabwe Intellectual Property Office
ZIPTA	Zimbabwe Institute of Patents and Trademarks Agents
ZRP	Zimbabwe Republic Police
AUREC	Africa University Research Ethics Committee

Definition of Key Terms

Civil enforcement	Legal action taken in a civil suit to maintain Industrial Design rights by the holder and ensure that no third party uses them without proper authorization, as well as obtaining compensation in the event of unauthorised use.
Industrial Design	The outward appearance, shape, configuration, pattern of a useful article which is capable of industrial application and appeals to the eyes.
Industrial Design right	It is an IP right that protects the visual design of objects that are not purely utilitarian in nature.
Industrial Design right holder	Is the registered owner of an Industrial Design.
Infringement	It is the unauthorised use of a registered Industrial Design.

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CHAPTER 1 INTRODUCTION

1.1 Introduction

This chapter discussed the civil enforcement of Industrial Design rights in Zimbabwe. It focused on the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. The rights that are conferred on Industrial Designs right holders by the law in Zimbabwe were identified as well as the main ways in which Industrial Design rights are infringed in Zimbabwe. The chapter also evaluated the civil remedies available in the event of infringement of Industrial Design rights in Zimbabwe. For a design to qualify for protection it must be new or original and this is provided for in terms of section 6(2) and 6(3) of the (Industrial Designs Act [Chapter 26:02] Act 25, 2001).

Enforcement refers to the actions taken by the rights holder to assert their rights. In respect of Industrial Designs, it is the responsibility of the holder of the Industrial Design right, his representative or assignee to assert the rights. As such it becomes important that the holder of the Industrial Design right or his representative understand what rights are conferred on them, when infringement could have occurred and what civil remedies are available for the enforcement of such rights.

1.2 Background to the study

In terms of the (Industrial Designs Act [Chapter 26:02] Act 25,2001) a design means the outside appearance, shape, configuration, pattern of a useful article which is capable of industrial application and appeals to the eyes. Therefore, an Industrial Design right is an Intellectual Property (IP) right that protects the visual design of objects that are not

purely utilitarian in nature. The owner of the registered Industrial Design has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy of the protected design, when such acts are undertaken for commercial purposes. (Qatar IP Update, 2020.).

Protecting Industrial Designs helps economic development by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. The owner of the design can take action against any design that produces on an informed user the same overall impression that it is similar or the same with his registered design. (Qatar IP Update, 2020.). Once the owner of design becomes aware of acts of infringement on his design then the owner can sue for infringement. (Enforcing design rights. n.d.). In the case of *The Trustees of the Mukono Family Trustee + 1 vs Karpeg Investments (Pvt) Ltd t/a Kadir and Sons + 6 Others* (2018) the 2 plaintiffs approached the Harare High Court seeking for a permanent interdict against the defendants from reproducing, selling or offering for sale or otherwise dealing in the plaintiffs registered designs.

In that case of *The Trustees of the Mukono Family Trustee v Karpeg Investments (Pvt) Ltd t/a Kadir and Sons + 6 Others* (2018) the plaintiff was alleging that the defendants had infringed its exclusive rights by either making or importing or selling or offering for sale articles in respect of which the first plaintiff had registered their design. Therefore, the defendants were said to have infringed the plaintiffs' rights as conferred to them in terms of section 15(1) of the (Industrial Designs Act [Chapter 26:02] Act 25, 2001).

As such it is the responsibility of the Industrial Design right holder to enforce their rights. As such an effective and efficient legal framework for the civil enforcement of Industrial Design rights in Zimbabwe is important so as to assure designers to continue innovating and for new designers to innovate and make new designs. Therefore, an effective civil enforcement of Industrial Design rights will also benefit the public at large, since more designs are introduced onto the market at affordable prices. Those who advocate for better protection of Industrial Design right are of the view that IP rights are a crucial tool to allow innovators to reap the economic benefits of their investments. (Thomas J.R, 2010.).

In terms of the (Industrial Designs Act [Chapter 26:02] Act 25,2001) in relation to the Act, a court means the High Court, as such it is the High Court that has inherent jurisdiction to deal with disputes emanating from Industrial Design rights. Even though there is no obligation on Zimbabwe in terms of Article of the (Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994) to set up a separate judicial system for the enforcement of Intellectual Property Rights that is separate from the existing enforcement of law in general, Zimbabwe established an Intellectual Property Tribunal which is a specialised division of the High Court that adjudicates on Intellectual Property matters. The (Industrial Design Act [Chapter 26:02] Act 25, 2001) also provides for an Intellectual Property Tribunal. Muheebwa H (2008), states that the IP Tribunal was specially created, as a specialized Division of the High Court. The establishment of an IP Tribunal is not a new phenomenon attributable to Zimbabwe alone, Mauritius also established an IP Tribunal. (Goburdhun. n.d.). There is now a

specialized division of the High Court which specializes in hearing matters involving commercial disputes and the Magistrates Court has also been given jurisdiction to deal with matters of a commercial dispute that does not exceed the monetary jurisdiction of the Magistrates Court. The amendments were gazetted in the (Judicial Laws Amendment Act, 2017), which was officially promulgated into law in June 2017. The purpose of the said Act was to have a specialized court that adjudicates on particular areas of the law.

The research was inspired after reading the case of *The Trustees of the Mukono Family Trust vs Kaperg Investments (Pvt) Ltd t/a Kadir and Sons + 6 Others* (2018) which related to the civil enforcement of Industrial Design rights in Zimbabwe. Therefore, the inclination to research into the civil enforcement of Industrial Design rights in Zimbabwe and to evaluate the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. The research was also inspired after reading the case of *Newman Chiadzwa v The State* (2004) in a matter where the complainant was concerned with the basic right under the copyright law of Zimbabwe, that is the right to prevent others from making copies of his work. Chinhengo J in the case of *Newman Chiadzwa v The State* (2004) held that, the evidence adduced at the trial is not at all clear. This may be because of the obscurity of the subject matter of copyright. It is not often that our courts are called upon to decide copyright cases.

The criminal appeal against the conviction and the sentence in the *Newman Chiadzwa v The State* (2004) was upheld, and hence it is crucial to evaluate the civil enforcement of Industrial Design rights in Zimbabwe for development of IP. It is therefore crucial to evaluate the rights conferred on Industrial Design holders in Zimbabwe, and to make an

assessment if the holder of such right is aware of when infringement would have occurred in Zimbabwe and what civil remedies are available to the holder of such rights in the case of infringement in Zimbabwe.

According to World Intellectual Property Organisation [WIPO] Indicators (2019) about 1,02 million Industrial Designs applications were filed worldwide. The research also probed how many applications from the 1,02 million Industrial Designs filed the world over, what percentage did Zimbabwe constitute on that figure. Further to that according to WIPO Indicators (2019) Industrial Designs in force the world over stand at almost 4 million from 122 offices the world over. The research also probed into how many from the active 4 million Industrial Designs are from the Zimbabwe Intellectual Property Office (ZIPO). Further to that according to the WIPO Indicators (2019) South Africa received 1943 Industrial Design Applications of which 977 Industrial Designs applications were by residents and 966 by non- residents. But Zimbabwe for 2018 seems not to have received any Industrial Design application at the ZIPO. One then wonders if its lack of awareness on the rights conferred on the holder of Industrial Design in Zimbabwe that saw Zimbabwe not having even a single Industrial Design application in 2018.

According to WIPO Indicators (2019) from The Hague designation data there were 6 applications being made in respect of Zimbabwe in 2018 and there is no Industrial Design in force in 2018 on the ZIPO, but only 1 on The Hague designation data. As such there may be need for more awareness of the rights conferred on registration of an Industrial Design and the civil remedies available in the event of an infringement in

Zimbabwe. Zimbabwe is also a signatory to the Protocol on Patents and Industrial Designs Within the Framework of the African Regional Intellectual Property Organization (ARIPO) (1982) when it became a signatory on 25 April 1984. The Protocol can be used to raise awareness of the importance of registering Industrial Designs so as to be afforded protection in the event of an infringement. As such there may be a need for awareness on the rights conferred on Industrial Design holders in Zimbabwe, when such rights are infringed and the civil remedies applicable, as provided for by the (Industrial Designs Act [Chapter 26:02] Act 25, 2001.).

1.3 Statement of the problem

Enforcement refers to the actions taken by the rights holder to assert their rights since it is the responsibility of the Industrial Design holder to enforce their rights. A reading of the case of *Newman Chiadzwa v the State* (2004), *S v Ndabezihle Moyo and another* (2009) as well as the case of *The Trustees of the Mukono Family Trust + 1 vs Karpeg Investments (Pvt) Ltd t/a Kadir and Sons + 2 Others* (2018) it is evident that awareness is lacking for Industrial Design right holders and capacity building and training for Legal Practitioners, Magistrates and Judges on the enforcement of IP rights in Zimbabwe and in the context of this research, on the civil enforcement of Industrial Designs rights in Zimbabwe. Legal Practitioners, Magistrates and Judges to have good appreciation of the factual and legal issues that apply to the civil enforcement of Industrial Design rights in Zimbabwe. As such there is a problem of capacity building, training and awareness for Legal Practitioners, Magistrates and Judges and Industrial Design right holders on the civil enforcement of Industrial Design rights in Zimbabwe. It

is therefore a problem of awareness for Industrial Design right holders and capacity building and training for Legal Practitioners who assist those engaged in claims involving Industrial Design rights disputes in Zimbabwe and members of the judiciary who adjudicate on Industrial Design rights disputes in Zimbabwe.

1.4 Research objectives

The objectives of the study were to:

1. Evaluate the rights that are conferred on Industrial Design right holders in Zimbabwe.
2. Assess the main ways in which Industrial Design rights are infringed in Zimbabwe.
3. Evaluate the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe.
4. Evaluate whether the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe is adequate and effective.

1.5 Research questions

1. What are the rights conferred on the Industrial Design right holder in Zimbabwe?
2. In what ways are Industrial Design rights infringed in Zimbabwe?
3. What is the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe?

4. Is the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe adequate and effective?

1.6 Assumptions

The researcher assumed that there was no adequate knowledge and awareness on the civil enforcement of Industrial Design rights in Zimbabwe by Industrial Design right holders. The researcher further assumed that Legal Practitioners, Judges and Magistrates involved in the civil enforcement of Industrial Design rights in Zimbabwe may not have the proper training and capacity to handle matters involving the civil enforcement of Industrial Design rights in Zimbabwe.

1.7 Significance of the study

The significance of the study was to evaluate the civil enforcement of Industrial Design rights in Zimbabwe by analyzing the legal framework in Zimbabwe that is the rights that are conferred on Industrial Design right holders in Zimbabwe, the main ways in which Industrial Design rights are infringed in Zimbabwe, and the civil remedies that are available for the enforcement of Industrial Design rights in Zimbabwe. The research will provide insight on whether the legal framework in Zimbabwe is weak or not in the civil enforcement of Industrial Design rights in Zimbabwe. Whether there is need to review legislation and procedures used in the civil enforcement of Industrial Design rights in Zimbabwe. It will also provide insight on whether what is required in Zimbabwe for effective civil enforcement of Industrial Design rights in Zimbabwe is awareness by the

Industrial Design right holder and the training and capacity building for those involved in the civil enforcement of Industrial Design rights Zimbabwe.

1.8 Delimitation of the study

The research was only conducted in 1 city Harare, where data was collected and where the researcher is based. The research was restricted only to the civil enforcement of Industrial Design rights in Zimbabwe hence criminal measures were not discussed, which is the reason why public prosecutors and the Zimbabwe Republic Police (ZRP) have been excluded from this research. The research was further restricted to the civil enforcement of Industrial Design rights in Zimbabwe hence administrative measures and border measures were not discussed in this study. The research was focused on the Industrial Design right holders, judges, magistrates Legal Practitioners who are involved in the civil enforcement of Industrial Design rights in Zimbabwe as well as stakeholders, including the Judicial Service Commission (JSC), ZIPO, the Law Society of Zimbabwe (LSZ) and the Zimbabwe Institute of Patents and Trademark Agents (ZIPTA) and this category of the respondents then make up the population of the research.

1.9 Limitation of the study

The first limitation to the study was that the researcher is an employee of the JSC as a Provincial Magistrate and the Legal Practitioners from whom data was to be collected were not comfortable being interviewed by a magistrate they appeared before in court. The strategy adopted to resolve this limitation was that the researcher explained to the

Legal Practitioners from whom data was collected the purpose of the research and that information provided was confidential. The second limitation to the study was that the researcher had to interview judges who are superiors in the JSC. The strategy adopted to resolve this limitation was explaining to the judges from whom data was collected the purpose of the study and that it is to add knowledge to the area of civil enforcement of Industrial Design rights in Zimbabwe and that information provided was confidential.

The third limitation of the study was that the researcher being a Provincial Magistrate and a registered Legal Practitioner in Harare, Zimbabwe had certain biases on issues of civil enforcement of Industrial Designs rights in Zimbabwe. The strategy adopted to resolve this limitation was for the researcher to embark on the research as a Master of IP student, and nothing else but a student. The fourth limitation of the study was that due to the COVID 19 pandemic the researcher could not conduct face to face interviews and research questionnaires could not be handed in person and during part of the data collection process Zimbabwe was in a national lockdown to curb the COVID 19 pandemic. The strategy adopted to resolve this limitation was sending the consent form and the research questionnaire to the respondents via email and WhatsApp and also scheduling telephone interviews with some of the respondents.

CHAPTER 2 REVIEW OF RELATED LITERATURE

2.1 Introduction

This research explored the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. This chapter sought to explore what rights are conferred on the Industrial Design right holders in Zimbabwe, how are those rights infringed in Zimbabwe and the legal framework for the civil enforcement of Industrial Design rights, in Zimbabwe. This chapter also made an evaluation of whether the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe is adequate and effective.

2.2 Theoretical Framework

The courts are important in the civil enforcement of Industrial Design rights in Zimbabwe since they adjudicate on Industrial Design and the issue of how courts arrive at their decisions is one that has boggled the mind of many including legal scholars and litigants since time immemorial. Theoretical framework becomes important in shaping this research to avoid generalisations, and the theories that were applied to this research on the civil enforcement of Industrial Design rights in Zimbabwe were the realist theory and the formalist theory. In analyzing the Industrial Design rights civil enforcement in Zimbabwe, the realist theory of judicial process is associated with such philosophers as Oliver Wendell Holmes, who believe that in deciding matters the presiding officer would have reached a conclusion before even analyzing precedent or statutory laws and will then look for precedent and statutory laws that will support the conclusion already reached. (Theories of Law, Natural Law, Legal positivism, The Morality of the Law

Dworkin's "Third Theory of Law" Legal Realism and Critical Legal Studies, n.d.).

It therefore follows that the realists believe that court decisions are not in accordance with the law but with the presiding officer's feelings and views of the case. The realist theory does not take into account that judicial officers have training that they undergo and in Zimbabwe both judges and magistrates take the oath that they will adjudicate on matters impartially without fear, favour or prejudice. The realists assume that judicial decisions are influenced by the presiding officer's personal perceptions of public policy and the personality of the presiding officer making the decision. (Leiter, n.d.).

On the other hand, the formalist theory maintains that every judicial opinion is capable of being broken down into the facts of the matter, the rule of law which was applied to the facts and the decision arrived at by the presiding officer. (Tumonis, 2012.). As such the formalist theory is reliant on the existence of the rule of law, which is established by precedent or statutory authority. The formalist theory therefore places more reliance on the common law and statutory law as well as the ability of the presiding officer to resort to the applicable rule of law in determining the facts of the matter before the court and in arriving at the decision. The formalists believe that the outcome of the matter is determined by the rule of law and the independence of the judiciary who can apply the law to the facts without being influenced by society and politics, and make a decision that is devoid of the emotions of the presiding officer. (Legal Formalism, n.d.).

As such from the formalist theory it is clear that it relies on the notion that court decisions are a product of facts and the rule of law, and not the presiding magistrates'

emotions. (Cockram, 1975.) views the rule of law as meaning law and order that people must obey and goes on to elaborate that this can be achieved in a dictatorship or in a democracy. On the other hand, Carpenter (1987) submits that the rule of law has become accepted as a collective term for all those principles which signify democratic governments. According to the Declaration of Delhi (1959), in 1959 there was an international gathering of 185 judges and lawyers who met in New Delhi, India and discussed what the modern concept of the rule of law entails. It was then declared at that international gathering that the rule of law implies certain rights and freedoms, an independent judiciary, social, economic and cultural conditions that are conducive to human dignity. McLeod (2006) states that the rule of law is seen in terms of the formalist theory which requires that the appropriate formalities required by the legal system should be observed, so that the legal system functions according to the law rather than emotions. Newton - Small (2009) resonates with Aristotle's views that court decisions should be based on reasoning and precedents and not the presiding officer's emotions and feelings about the matter. As such the judges' emotions and feelings have nothing to do with the matter before the court, but he must apply the provisions of the law to the facts of the matter to come up with a decision.

The research made use of the formalist theory and the justification for using this theory is that Industrial Design rights civil enforcement in Zimbabwe involves the courts which have to make a pronouncement on whether or not there has been infringement of the Industrial Design right holder's rights and the applicable order that the court can make which meets the justice of the matter. In coming up with the decision the court will be

guided by the facts of the matter, the statutory law which the court can make use of legislation pertaining to Industrial Designs, as well as precedents on the civil enforcement of Industrial Design rights from Zimbabwe and from other jurisdictions, hence the formalist theory was applied to this research.

2.3 Relevance of the theoretical framework to the study

The formalist theory was relevant to the research since it is imperative to understand how Industrial Design rights civil enforcement in Zimbabwe is done. The formalist theory was relevant to this research since the formalist theory supports the view that proper decisions can be made by a judicial officer if there is an appreciation of the factual issues and the legal principles involved in a matter involving the alleged infringement of Industrial Design rights in Zimbabwe. As such the Industrial Design right holders and their representatives must be able to articulate the facts properly so as to make sure that pleadings are properly filed at court, that disclosed the proper cause of action. The Industrial Design right holder and their representatives must know the proper legal principles that apply to the facts of their matter so as to be able to argue their matter at court in a logical and reasonable manner. In order to achieve this there is need for awareness of what rights are conferred on Industrial Design right holders in Zimbabwe, how those are infringed in Zimbabwe and the civil remedies that are available in the event of an infringement in Zimbabwe.

Furthermore, the formalist theory was relevant to the study in that the court must be able to discern the facts and the applicable principles in Industrial Design rights

infringement matters so to make a decision that builds on jurisprudence of Industrial Design rights civil enforcement in Zimbabwe. The formalist theory was relevant to the study in that Legal Practitioners who deal with Industrial Design disputes on behalf of their clients should be able to know what rights are conferred on Industrial Design right holders in Zimbabwe, when are such rights infringed in Zimbabwe and the civil remedies that are applicable in the event of an infringement in order to advise their clients accordingly as well as to articulate the issues in dispute during court proceedings.

2.4 Rights conferred on Industrial Design right holders in Zimbabwe

The Industrial Design right holder is given the exclusive right to make articles in respect of the registered design and to exclude others from copying the design or from making articles using the design without the consent of the Industrial Design right holder or their representative, who can give licenses. (Protecting and enforcing design rights: India, n.d) and this view is also expounded in (Draft law on the enforcements of Intellectual Property Rights including border measures for the Sultanate of Oman, prepared by the Secretariat of WIPO, 2020.). As such the Industrial Design right holder has the right to prevent others from marketing, selling, reproducing, copying articles with the design without the consent of the Industrial Design right holder. (Enforcement Guide (Industrial Property) BELIPO, 2007.). Industrial Design rights protection is afforded in respect of new, functional items that appeal to the eye and are capable of industrial application. (Professor Ganguli, n.d.).

The owner of the registered design is assured an exclusive right against unauthorised copying or imitation of the design by third parties. (Protecting and enforcing design rights: India. n.d.). It is important to note that in Zimbabwe Industrial Design protection is afforded to registered designs only and unregistered designs are not afforded protection in terms of the (Industrial Designs Act [Chapter 26:02] Act 25, 2001). The rights of a holder of an Industrial Design in Zimbabwe are provided for in terms of section 15(1) that,

The registration of a design under this Act shall give to the registered proprietor the copyright in the registered design, that is to say, the exclusive right in Zimbabwe to make, import or export for sale or use for the purposes of any trade or business or to sell, hire or offer for sale or hire any article in respect of which the design is registered, being an article to which the registered design or a design substantially different from the registered design has been applied, and to make anything for enabling any such article to be made as aforesaid. (Industrial Designs Act [Chapter 26:02] Act 25, 2001.)

The view of exclusive rights being given to the owner of a registered Industrial Design to use or license the Industrial Design is also noted on (Protection and enforcement of design rights in India. n.d.; Qatar IP Update, 2020). Further to that the exclusive right of the Industrial Designer right holder also includes the right to enforce the rights in the event of infringement. (HUE, Vu Anh. n.d.). The registered Industrial Design affords the holder the exclusive right to exclude others from making, selling or importing articles bearing the design without the consent of the Industrial Design right holder. (Hams,

2012.). As such Industrial Design rights grant a monopoly on the holder of such rights to prevent others from making, selling or offering for hire articles emanating from the design for commercial purposes. (Industrial Designs Brochure, n.d.; Enforcing design rights. n.d.).

From a reading of the (Industrial Designs Act [Chapter 26:02] Act 25,2001) the holder of a registered Industrial Design or their representative have the following exclusive rights in Zimbabwe:

1. To make for sale articles in respect of which the design is registered;
2. To export for sale articles for which the design is registered;
3. To import for sale articles for which the design is registered;
4. To use for the purposes of any trade an article to which the design is registered;
5. To use for the purpose of selling of articles for which the design is registered;
6. To offer for hire an article for which the design is registered;
7. To offer for sale any articles for which the design is registered.

2.5 Main ways in which Industrial Design rights are infringed in Zimbabwe

It is important to note therefore that anyone who does what is provided for in terms of section 15 (1) of the (Industrial Designs Act [Chapter 26:02] Act 25, 2001) without the consent of the registered Industrial Design right holder or their representative in Zimbabwe, would be committing an act of infringement of the registered Industrial

Design. As such Industrial Designs rights are infringed in the following manner in Zimbabwe:

1. Anyone who makes for sale articles in respect of which the design is registered, without the consent of the Industrial Design right holder would have committed an act of infringement;
2. Anyone who exports for sale articles for which the design is registered, without the authority of the Industrial Design right holder would have infringed on the rights of the Industrial Design right holder's;
3. Anyone who imports for sale articles for which the design is registered, without the authority of the Industrial Design right holder would have infringed on the registered design;
4. Anyone who uses for the purposes of any trade an article to which the design is registered, without the authority of the Industrial Design right holder would have infringed on the registered design;
5. Anyone who uses for the purpose of selling of articles for which the design is registered, without the consent of the Industrial Design right holder would have committed an infringement of the rights of the Industrial Design right holder;
6. Anyone who offer for hire an article for which the design is registered, without the consent of the Industrial Design right holder would have infringed on the Industrial Design right holder's rights;

7. Anyone who offer for sale any articles for which the design is registered, without authority of the Industrial Design right holder would have infringed on the Industrial Design right holder's rights;

2.6 Evaluation of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe

It is important to note that Zimbabwe is a signatory to the (Agreement on Trade - Related Aspects of Intellectual Property Rights, 1994), and the overview of the main enforcement provisions of the (Agreement on Trade – Related Aspects of Intellectual Property Rights, 1994) is to make sure that member countries set out the minimum required standards for the enforcement of Intellectual Property rights in their respective countries. These main enforcement provisions have a practical value to Zimbabwe since they provide Zimbabwe with a minimum required standard from which legislation can then be developed, in the context of this research for the civil enforcement of Industrial Design rights in Zimbabwe.

Article 41 of the (Agreement on Trade – Related Aspects of Intellectual Property Rights, 1994) obliges member states to set out minimum required standards for the enforcement of Intellectual Property rights at national level. The provisions of Article 41 of the (Agreement on Trade – Related Aspects of Intellectual Property Rights, 1994) have practical value the civil remedies that are available to the holder of an Industrial Design right in Zimbabwe are clearly spelt out in the (Industrial Designs Act [Chapter 26:02] Act 25, 2001).

Section 46 of the (Industrial Designs Act [Chapter 26:02] Act 25,2001) provided that an action for infringement of a registered design may be instituted in the High Court, or in the IP Tribunal or in the Magistrates Court in accordance with the Magistrates Court jurisdictional limits. As such the civil remedies that are available for the enforcement of Industrial Design right infringement, include but are not limited to, “damages, injunctions, delivery of the infringing items and an account of profits”. (Enforcement Guide (Industrial Property) BELIPO, 2007, p11). This clearly indicated that Zimbabwe has complied with its obligations in terms of Article 41 (1) of the (Agreement on Trade - Related Aspects of Intellectual Property Rights, 1994) which provided that member countries must provide for enforcement measures under their national law.

As such the civil enforcement of Industrial Design rights in Zimbabwe is provided for and found in national legislation that is the (Industrial Designs Act [Chapter 26:02] Act 25, 2001). The enforcement of Industrial Design rights through civil action is not found in Zimbabwe alone but is also corroborated on (Protecting and enforcing design rights: India. n.d). In terms of section 46 A (1) civil remedies available for infringement of Industrial Designs in Zimbabwe include,

appropriate remedy, whether damages, interdict, attachment, the rendering of account, the delivering of infringing copies or articles used or intended to be used for making infringing copies or otherwise, that is available in respect of the infringement of any other proprietary right. (Industrial Designs Act [Chapter 26:02] Act 25,2001)

Article 42 of the (Agreement on Trade – Related Aspects of Intellectual Property Rights, 1994) provides that countries must provide for fair and equitable procedures in the enforcement of IP rights in their countries. Zimbabwe is compliant with Article 42 of the (Agreement on Trade – Related Aspects of Intellectual Property Right, 1994) since the civil procedure in the Zimbabwean courts both in the Magistrates Courts and the High Courts is such that the defendants have the right to written notice in time and the basis of the claim should be sufficiently detailed, this is illustrated in the (High Court [Civil Procedure] Rules, 2004) and in (Statutory Instrument 11/2019, Magistrates Court [Civil] Rules, 2019.). In Zimbabwe a party has the right to legal representation of choice as enshrined in the (Constitution of Zimbabwe Amendment [Number 20] Act, 2013.).

2.6.1 A claim for damages

The Industrial Design right holder in Zimbabwe can approach any High Court of Zimbabwe with jurisdiction or the respective Magistrates Court with jurisdiction, depending on the monetary jurisdiction of the claim, suing the alleged infringer for damages. In complying with its obligation under Article 45 (1) of the (Agreement on Trade – Related Aspects of Intellectual Property Rights, 1994) the Zimbabwean legislature promulgated, section 46 A (2) which provided that damages for the infringement of an Industrial Design right, may at the option of the Industrial Design right holder be calculated on the,

basis of the amount that an exclusive licensee would reasonably have been expected to pay under the circumstances for his use of the design concerned. (Industrial Designs Act [Chapter 26:02] Act 25, 2001).

It is therefore clear that from the provisions of section 46 A (2) of the (Industrial Designs Act [Chapter 26:02] Act 25, 2001) the judiciary in Zimbabwe is given a wide discretion in civil matter to award damages against an infringer which damages could have been occasioned by the infringement of the Industrial Design right holders' rights. Damages are meant to compensate the Industrial Design right holder for the loss occasioned by the infringement of his Industrial Design right and at the same time deterring further infringements as well as sending a message a message to the community that the courts do not condone any form of infringement of Industrial Design rights in Zimbabwe. As such the remedy of damages seeks to put the Industrial Design holder in the position they would have occupied had the damage not been caused by the infringer.

In the case of *Clipsal Australia (Pty) Ltd v Trust Electrical Wholesalers* (2007), the Industrial Design right holders, that is the registered design holder and their licensee in South Africa made a civil claim against the respondents alleging infringement of their registered design. The purpose of the court awarding damages to the Industrial Design right holder is to place the same in the position he would have been had the alleged infringement not occurred thereby compensating the holder of Industrial Design. (Potgieter, Steynberg & Floyd, 2012.)

The Industrial Design right holder can also sue the alleged infringer for damages incurred from the alleged infringement. (Qatar IP Update, 2020.) This was also confirmed in the case of *Trustees of the Mukono Family Trust + 1 vs Karpeg Investments (Pvt) Ltd t/a Kadir Sons+ 6 Others* (2018). Section 46 A (3) of the

(Industrial Designs Act [Chapter 26:02] Act 25, 2001) provides the factors the court can take into consideration in determining the amount of damages in an action for infringement of a registered Industrial Design in Zimbabwe, which are among others, the nature and extent of the Industrial Design right infringement, the amount that could be payable to the Industrial Design right holder for the use of the registered Industrial Design and any delays on the part of the Industrial Design right holder in bringing to the attention of the infringer that the Industrial Design is registered. Further to that section 46A (4) provides that the court can grant additional damages using its own discretion taking into account the deliberateness of the infringement and the benefits which may have accrued to the infringer for the infringement of the Industrial Design. (Industrial Designs Act [Chapter 26:02] Act 25, 2001).

The quantification of loss is the process by which the damages that the law has found to exist in favour of the Industrial Design right holder and for which compensation may be awarded is expressed in money in order to reach a specific amount of damages which the alleged infringer is to pay. (Potgieter, Steynberg & Floyd, 2012.). As such the object of an award of damages is to give the Industrial Design right holder compensation for the damages he has suffered as a result of the alleged infringement. (McGregor, 1961.).

2.6.2 Anton Piller Orders/Injunctions and Mareva injunctions

The Industrial Design right holder can also approach the court for an interim relief on an urgent basis in the event of an alleged infringement of their Industrial Design rights in Zimbabwe. In complying with its obligations under Article 44 of the (Agreement on Trade Related Aspects of Intellectual Property Rights, 1994) the Zimbabwean legislature

promulgated section 46B of the (Industrial Designs Act [Chapter 26:02] Act 25, 2001) it provides for orders without notice or Anton Piller Orders. An injunction or Anton Piller Order is an application that is made to the court to stop the other party from acting in a certain manner and it can be on an urgent basis without notice to the other party or by way of normal court application on notice to the other party. It must therefore be borne in mind that an injunction is not a cause of action, but a remedy and, “in order to succeed in an application for such a remedy, the plaintiff must have a cause of action in law entitling him to substantive relief.” (Prest, 1993, p109.). The court therefore has no power to grant an interlocutory injunction except in protection or assertion of some legal right which it has jurisdiction to enforce by final judgement. (Prest, 1993.).

The Industrial Design right holder can make use of the injunctive relief to assert their rights and can demand that the alleged infringer stop such infringement. An injunction is issued pending litigation between the parties and usually consist of either an order stating that the infringing articles be seized pending the hearing of the action for infringement in order to make sure that the evidence is not destroyed. (Draft law on the enforcement of IP Rights including border measures for the Sultanate of Oman, prepared by the Secretariat of WIPO, May 2020.).

In the case of Eng Kenya Ltd versus Magnate Ventures Limited (2008) the Industrial Design right holder was seeking an injunction against the respondent to interdict the respondent or their agents from using in any manner the Industrial Design of the plaintiff in the matter. In the case of Bata Shoe Company (Malawi) Limited versus Shore Rubber (Lilongwe)Limited (1999) it was held that, an interim injunction should not normally be

given on an ex parte application. Courts grant ex parte injunctions for emergency and urgency where grave injury is likely. Interlocutory injunctions are the most flexible and the speediest remedy for the enforcement of Industrial Rights. (Prest, 1991.).

As such the court can grant interim injunctions on an urgent basis and where irreparable harm will be done to the Industrial Design right holder if the same interim relief is not granted pending the hearing of the matter. In the matter of Blackberry vs Typo Products (2014) an interim injunction was granted in favour of the Industrial Design right holder Blackberry against the alleged infringer who was selling fitted keyboards for the iPhone, which the Industrial Design right holder BlackBerry was alleging, design infringement of their famous QWERTY keyboard. (Blackberry vs Typo Products, 2014.). The nature and scope of the interim injunction is that it is an interim order of the court pending the final determination of the dispute for the alleged infringement of the Industrial Design right and is directed at the maintenance of the status quo pending the final determination of the dispute between the Industrial Design right holder and the alleged infringer. (Prest, 1993.).

The Industrial Design right holder can also apply to the court for a Mareva injunction if on reasonable grounds he believes that there are assets of the alleged infringer which are within the jurisdiction of the court to meet a judgment which the Industrial Design right holder is likely to obtain against the infringer for damages and there are grounds to believe that the alleged infringer may dispose of the same before finalisation of the damages disputes. (Prest, 1993.). It is therefore to be borne in mind that the Mareva injunction is an interlocutory and not a final relief and is ancillary to a claim for

damages by the Industrial Design right holder, which is designed to prevent a judgment against the infringer for the damages being of no effect since the infringer would have disposed of his assets. (Prest, 1993.).

2.6.3 An order for the delivery of all the infringing items

The Industrial Design right holder can also seek that the alleged infringer be ordered to surrender the infringing items of the product in their possession, this remedy was confirmed in the case of Vari-Deals 101 (Pty) Ltd v Sunsmart Products (Pty) Ltd (2007). In the case of Trustees of the Mukono Family Trust + 1 vs Karpeg Investments (Pvt) Ltd t/a Kadir Sons+ 6 Others (2018) the Industrial Design right holder averred in their pleadings that they had registered Industrial Designs in respect of surge protectors and was applying to the court against the infringers seeking for, among other things that the Harare High Court makes an order for the attachment and delivery of all the infringing articles that were presently in the defendants' possession. This remedy ensures that the infringer does not continue to benefit from his infringing acts and also to make sure that the infringer does not continue to put the infringing items back on the market

The Industrial Design right holder can also apply to court to have the infringing copies disposed of and this remedy is also effective in making sure that the infringer does not continue to infringe on the registered design and not to continue benefiting from the same. (Simpson & Heer, n.d.) believe that the Industrial Design right holder should be advised of the remedies available to them before commencement of litigation in Industrial Design right infringement matters and this is one of the remedies that they propose.

2.6.4 A claim for unfair competition

The Industrial Design right holder can also sue for unfair competition on the basis that the infringer is passing off their goods as if they are those of the Industrial Design right holder. The Industrial Design right holder can also claim for passing off which according to the Bata Shoe Company (Malawi) Limited versus Shore Rubber (Lilongwe)Limited (1999) it seeks to protect the goodwill of the Industrial Design holder. This remedy was also confirmed in the case of Zimbabwe Gelatine (Private) Limited v Cairns Foods (Private) Limited (2003), although the cause of action was trademark infringement, it is the view of the researcher that the legal principles of passing off will equally apply in the event of Industrial Design right infringement involving passing off in Zimbabwe. This remedy is crucial to avoid the infringer passing off their goods as if they are those of the Industrial Design right holder in order to protect the goodwill of the Industrial Design right holder.

2.6.5 An account of profits

The Industrial Design right holder can also claim that the infringer should be made to account for all the profits they made from infringing on the registered design. It was held that by the court,

The remedy of an account of profits is not penal, it is a mechanism by which an infringer is required to pay over to the trade mark owner all profits properly attributable to the infringement. Design and Display Ltd v Ooo Abbott and another. (n.d.).

This applies equally in the event of Industrial Design right infringement in Zimbabwe as was claimed in the case of Trustees of the Mukono Family Trust + 1 vs Karpeg Investments (Pvt) Ltd t/a Kadir Sons+ 6 Others (2018), where the Industrial Design right holder was making a claim that the defendants' be ordered to pay 50% of the profits made by the defendants' from infringing the plaintiff's registered designs. Patfield (n.d.) states that this remedy is, among the pecuniary remedies given by the court. This remedy is a mechanism by which an infringer is required to pay over to the Industrial Design right holder all profits properly attributable to the infringement. As such where the Industrial Design holder alleged that the infringer has made profits through the infringement of the Industrial Design right, the court may make an order that the books of the infringer be examined and the profits obtained from infringing the Industrial Design right be paid to the Industrial Design right holder.

2.6.6 Alternative Dispute Resolution (ADR): Mediation

The Industrial Design right holder can also pursue alternative dispute resolution, in the form of mediation. The Industrial Design right holders can engage the infringers who if willing the parties can then adopt alternative dispute resolution through mediation. This remedy was confirmed in the case of Apple v Samsung (2015), where the parties saw it fit to have a "supervised court mediation to settle their ongoing patent infringement battle." The remedy of mediation is an avenue the Industrial Design right holder can take which is effective and can be taken as the first action in the event of an infringement. (Vu Anh, n.d.).

2.6.7 Cease and desist letters

The Industrial Design right holder can also write cease and desist letters to those alleged to be infringing on the registered Industrial Design. The Industrial Design right holder after having verified if there has been an act of infringement of his rights, can contact the alleged infringer through a cease and desist letter. (Industrial Design-Lawsuit for infringement, n.d.). There is a possibility that the alleged infringer may not be aware that the Industrial Design in question is registered hence may not be aware of the rights of the Industrial Design right holder and the cease and desist may make the alleged infringer aware of the rights of the Industrial Design right holder and hence may stop the infringing acts. This remedy is of paramount importance since there may be a possibility that the alleged infringer may not be aware of the rights of the Industrial Design right holder and from a cease and desist letter may become aware of the rights of the Industrial Design right holder and hence may stop the infringing acts.

2.6.8 Other Civil remedies

Further to that (Remedy for Infringement, n.d) states that the Industrial Design right holder can also demand that any person who will act in a manner that may infringe on the registered design must take measures to prevent the infringement of the registered design.

2.7 Evaluation of whether the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe is adequate and effective

The civil remedies provided by the law for the enforcement of Industrial Design rights in

Zimbabwe could be said to be adequate in cases of Industrial Design right infringement in Zimbabwe. This is based on the notion that the (Industrial Designs Act [Chapter 26:02] Act 25,2001) itself defines and states the civil remedies that are available to the holder of the Industrial Design right in the event of an infringement. It can also be argued that Zimbabwe tried to comply with its obligations under the (Agreement on Trade – Related Aspects of Intellectual Property Rights,1994), that is Article 41 (1), Article 42, Article 44 and Article 45, Article 46 and Article 50. It is to be noted therefore that civil remedies provided for in the (Industrial Designs Act [Chapter 26:02] Act 25,2001] may assist to afford compensation to the Industrial Design holder and maintain the status quo that was in existence before the alleged act of infringement.

As such the rights that are afforded to the Industrial Design right holder are clearly spelt out and the civil remedies that are available to the Industrial Design right holder are clearly spelt out. The courts in dealing with disputes involving the civil enforcement of Industrial Design rights in Zimbabwe will be guided by the (Industrial Design Act [Chapter 26:02] Act 25, 2001) in resolving the dispute, making the civil enforcement of Industrial Design rights in Zimbabwe adequate and effective. The court was called upon to interpret if there was an infringement of the rights of the Industrial Design holder as contemplated by the (Industrial Design Act [Chapter 26:02] Act 25, 2001) and the remedies applicable where civil remedies. (The Trustees of the Mukono Family Trustee + 1 vs Karpeg Investments (Pvt) Ltd t/a Kadir and Sons + 6 Others (2018).).

On the other hand, the civil remedies provided by the law for the civil enforcement of Industrial Design rights may not be effective in Zimbabwe since in respect of an

injunction the plaintiff has to show that they have a prima facie case against the infringer. (Domenico, 2002.). As such failure to properly plead a cause of action may result in the remedy of injunction not being effective.

Further to that, the application of the remedy of an account of profits may not be effective since, “it is difficult to assess the exact amount of money, which the right holder deserves.” (Domenico, 2001, p18.). Further to that the civil remedies may not be effective since the Industrial Design right holder may not even be aware of the rights conferred on them by the law. In terms of section 46 (5) of the (Industrial Designs Act [Chapter 26:02] Act 25, 2001), “there shall be no action for infringement which took place before the registration of the design.” As such protection is offered from the time the Industrial Design has been registered in Zimbabwe and not before its registration.

Furthermore, the other reason why these civil remedies may not be effective in Zimbabwe could be that the Industrial Design right holder may not be aware when the infringement may have taken place, and if it is during the subsistence of the Industrial Design or not. In terms of section 46 (6) of the (Industrial Designs Act [Chapter 26:02] Act 25,2001), “no action for infringement of copyright in a registered design may be instituted more than 3 years after the expiration of the period of copyright in that design.” The civil remedies may not be effective since the alleged infringer may not be required to pay for potential profits.

On the other hand, the civil remedies provided by the law could be effective in Zimbabwe, since traditional means of law enforcement are cumbersome and time

consuming in cases of urgency especially where the infringement of the Industrial Design had already commenced and there is need for urgent intervention hence the Anton Piller Orders and the injunctive reliefs becomes vital and dynamic in safeguarding the rights of the Industrial Design right holder. (Prest 1993.). As such the holder of the Industrial Design right successfully enforces their right through this civil remedy that accords an outcome in a speedy manner if the requirements are met for the granting of the injunctions.

However, the civil remedies provided by the law may not be adequate in Zimbabwe in the civil enforcement of Industrial Design rights in that, in a claim for damages the infringer is only liable for the loss caused by the infringing activity and may be difficult to prove the causal link. (Domenico 2002.). The Industrial Design right holder is the one who has to establish their case against the alleged infringer and the evidence to substantiate the claim may be difficult for the holder of the Industrial Design right to produce in court since the alleged infringer can conceal the same so as to frustrate the claim of the Industrial Design right holder. The civil remedies provided by the law may not be effective in Zimbabwe since the Industrial Design right holder may not even be aware of the rights conferred on them by the law, as such awareness becomes important.

Further to that, the civil remedies provided by the law may not be effective due to the failure by the Industrial Design right holder to properly plead the cause of action in their pleadings and or not knowing what evidence needs to be adduced in order to substantiate their claim. In terms of section 46(2)(c) of the (Industrial Designs Act [Chapter 26:02] Act 25,2001), the plaintiff must file full particulars of the infringement complained, as

such the particulars of claim must be adequate and concise. The other reason why the civil remedies may not be effective would be due to the failure by the Industrial Design right holder to place the evidence required to substantiate the claim for infringement of the Industrial Design. In terms of section 46 (2)(e), no further evidence, “shall be admitted of any infringement which has not been delivered”, unless leave has been granted by the court, in compliance with the provisions of section 46(2)(c). (Industrial Designs Act [Chapter 26:02] Act 25, 2001.). This is corroborated by the case of General Plastics Limited versus Safepack Limited + 1 (2006) where the petitioner wanted to adduce further evidence and that request was turned down by the court.

Furthermore, the other reason why these civil remedies may not be effective in Zimbabwe is that in respect of interlocutory injunctions, they are always made as an application to the court and evidence is placed before the court by way of an affidavit and disputes of facts normally arise making it difficult for the court to dispose of the matter on the papers without hearing oral evidence. (Prest, 1993.). As such unless in a matter where an interim or ex parte application is made and granted, civil proceedings ordinarily take a long time to be completed. In motion proceedings, the Industrial Design right holder who will be the applicant in the matter would have to file an application with the Clerk of the Magistrates Court with jurisdiction or the Registrar of the High Court depending on whether the application has been made in the Magistrates Court or in the High Court. The alleged infringer who would be the respondent will have to be served with the court application and has to file his opposing papers according to the timelines of the respective rules of the court. The Industrial Design right holder who is the

applicant then have to file an answering affidavit responding to the opposition filed by the infringer who is the respondent. The matter will then be set down for arguments and afterwards ruling by the court. In action proceedings where the process has commenced by way of summons the process is even longer as in most cases a case would take more than 6 weeks before it is set down for trial as parties will be exchanging pleadings and other documents in preparation for the trial.

2.8 Summary

It is therefore important and crucial for the Industrial Design right holder or their representative who in most cases is a registered Legal Practitioner in Zimbabwe to understand the rights that are conferred on them by the law in Zimbabwe once an Industrial Design is registered. It is equally important that the Industrial Design right or their representative when infringement would have occurred or is likely to occur in order to assert their rights. It is also crucial for Industrial Design right holders or their representatives to understand the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe so as to assert their rights fully. It is also imperative that the Magistrates and Judges are knowledgeable on the rights conferred on Industrial Design right holders in Zimbabwe since they are the ones that are to offer justice to the Industrial Design right holder in the event of an alleged infringement. It is also important for the Magistrates and Judges to be aware of the circumstances under which Industrial Design rights are infringed in Zimbabwe so as to afford better protection to the Industrial Design right holder in Zimbabwe. It is also important that Magistrates and Judges are knowledgeable of the legal framework for the civil enforcement of Industrial

Design rights in Zimbabwe so as to create jurisprudence that enhance and afford adequate civil enforcement of Industrial Design rights in Zimbabwe and promote a culture of respect for Industrial Design rights in Zimbabwe and does not promote infringement of Industrial Design rights in Zimbabwe.

CHAPTER 3 METHODOLOGY

3.1 Introduction

This chapter outlined the research methodology which was used to carry out the research, which was mixed method research. Mixed method research was adopted to collect quantitative and qualitative data in a single study to provide a better understanding of the civil enforcement of Industrial Design rights in Zimbabwe. The chapter further outlined the research design, the research approach and strategy, as well as the population from which the data was collected and the tools that were used for data collection and the methods for analyzing data.

3.2 Research design

The researcher used the mixed method research design where both qualitative and quantitative research methods were used in a single study to collect data. The qualitative research method was used mostly on telephone interviews as well as collecting questionnaires with open ended questions. The quantitative research method was used in respect of the part of the questionnaire with closed questions to collect data from the respondents. The researcher collected data from various sources and compiled the data using the research objectives and research questions to create a conclusion to the research. The test subject of the research was Harare where the researcher resided and was employed. The qualitative research was conducted through the use of open ended questionnaires and telephone interviews and the quantitative research was conducted through the use of closed questions on the questionnaire. The research questionnaire was

also used as the telephone interview guide to collect data on the awareness of the rights conferred by the law on Industrial Design right holders in Zimbabwe, awareness on the manner in which Industrial Design rights are infringed in Zimbabwe and awareness on the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. Qualitative data was also obtained when the researcher was doing case law analysis from Zimbabwe as well as from other jurisdictions as well as other relevant materials on the civil enforcement of Industrial Design rights.

3.3 Population and sampling

In determining the population and sample for the research that was making use of a mixed method research design the researcher had to determine the aim of the research, by looking at the formulated research objectives, research questions and the purpose of the study to find a proper sample for the research. The researcher made use of non-probability sampling to get an in-depth understanding of the civil enforcement of Industrial Design rights in Zimbabwe. The type of non-probability sampling that was used in the research was the judgmental or purposive sample. It was the view of the researcher that Industrial Design right holders, Legal Practitioners, Magistrates and Judges were involved in the civil enforcement of Industrial Design rights in Zimbabwe and hence important data could be extracted from them.

Data was collected from 4 Judges of the High Court, 20 Magistrates, 30 Legal Practitioners, 2 Industrial Design right holders and 4 stakeholders involved in Industrial Designs rights civil enforcement in Zimbabwe. Telephone interviews were also

scheduled with 39 of the participants. It is responsibility of the Industrial Design right holder or their representative who is most cases in a registered Legal Practitioner in Zimbabwe to enforce their right hence Industrial Design right holders and Legal Practitioners were included as part of the population. Magistrates and Judges were also included as part of the population since they are the ones who adjudicate on disputes involving the civil enforcement of Industrial Design rights in Zimbabwe.

The research sample being made up of 30 Legal Practitioners the researcher approached the LSZ, Harare Office to get the directory of registered Legal Practitioners in Zimbabwe. The researcher also visited the ARIPO website and looked up IP agents in Zimbabwe, who were all registered Legal Practitioners in Zimbabwe. The research sample being also made up of 4 Judges in Zimbabwe and 20 Magistrates in Zimbabwe, a written request was made to the JSC in order to do the data collection from judges and magistrates. The researcher wrote a letter to the JSC requesting authority to collect data from magistrates and judges. The letter that was written to the JSC requesting to collect data from judges and magistrates is attached to this dissertation as Appendix 4.

The research sample was also made up of 4 stakeholders in Zimbabwe that is the LSZ, JSC, ZIPO and the Zimbabwe Institute of Patents and Trademarks Agents (ZIPTA). Lastly the research sample was made up 2 Industrial Design right holders in Zimbabwe, since ZIPO was closed due to COVID 19, the researcher could not get hold of ZIPO to obtain more information about Industrial Design right holders in Zimbabwe so as to collect data from them and had to rely on the internet, and in the end only managed to locate 2 Industrial Design right holders to take part in the study. The researcher made

use of non-probability sampling in particular the purposive sampling since participants were selected because they are key in the civil enforcement of Industrial Design rights in Zimbabwe and as such the participants selected were more likely to generate useful data for the research. Therefore, the study population was made up of 60 participants.

3.4 Data collection instruments

Since the use of the mixed method research involve collecting both qualitative and quantitative data, the data collection instruments used was telephone interviews and open ended questionnaires for qualitative data. On the other hand, since the use of quantitative research methods involved the generation of data that is numeric the data collection instrument used was closed questions on the questionnaire to generate data on the age of the participants, their number of years' experience and those who have training on IP. The researcher made use of the Africa University Research Ethics Committee (AUREC) Letter of Authority in introducing herself to the participants, the letter was attached as Appendix 1 to this dissertation. The AUREC Letter of Authority served as proof to the respondents that the research has been approved by Africa University. The researcher made use of the informed consent guide to get the consent of the participants. A sample of the informed consent guide was attached to this dissertation as Appendix 2. As such before data was collected from the sampled population their informed consent was obtained first, this was done when a copy of the informed consent guide was sent through the WhatsApp platform and on email to the respondents.

The researcher also made use of the questionnaire to collect data from the respondents, the questionnaire consisted of both open ended and closed questions and the open ended questions enhanced the research since they gave the participants the opportunity to freely express themselves without limitations. The closed questions limited the participants to a list of answer choices. A sample of the research questionnaire that was used to collect data was attached to this dissertation as Appendix 3. No face to face interviews could be conducted with the participants due to the COVID-19 pandemic, and the researcher had to do telephone interviews with 39 of the participants to make sure that data was collected within the stipulated time periods and the research questionnaire which was sent on email and through the WhatsApp platform was used as the interview guide.

The questionnaire was designed in such a way that the participants were able to air their views and were considered so as to avoid the researcher from influencing the responses from the participants. The questionnaire also contained a general comments section at the end of the questionnaire so that the participants can add any other information which may not have been specifically asked by the researcher but which the participants believed was relevant to the subject under research and was within the personal knowledge of the participants. The questionnaire was almost the same in all material respects but due consideration was given to each and every target group. The researcher also wrote to the JSC requesting permission to collect data from judges and magistrates and the Letter of authority to collect data in the JSC was attached to this dissertation as Appendix 4.

3.5 Data collection procedure

The data collection procedure adopted for this research was the use of research questionnaires with open ended and closed ended questions and telephone interviews. The researcher made use of questionnaires to collect data from the participants and due to COVID 19 could not conduct face to face interviews. Copies of the AUREC Letter of Authority, Consent Form and the Questionnaire were sent to the participants via email as well as on the WhatsApp digital platform. The respondents were given a brief introduction outlining the purpose of the study in the emails, WhatsApp platform and on telephone interviews and their informed consent was secured. The researcher also had to schedule telephone interviews with some of the participants to make sure that data was collected within the time frames stipulated. From the population sample of 60 participants telephone interviews were conducted with 39 of the participants.

The questionnaire was structured in such a way that the research objectives and research questions were answered. This was the primary data collected from the participants. The researcher also made use of desktop research focusing on case law and other information available in respect of the civil enforcement of Industrial Design rights and this was used as secondary data. The researcher also wrote to the JSC seeking authority to collect data from magistrates and judges.

The data collection procedure was carried out and was completed within a month, taking into account that the researcher was not yet on manpower development leave, where the researcher would be excused from work when data collection commenced. Moreover,

when data collection commenced for the research Zimbabwe was on a national lockdown in a bid to curb the spread of the COVID 19 pandemic, as such the researcher had to conduct more telephone interviews to guarantee that data was collected within the stipulated time periods. A further 1 month was required for comprehensive data analysis. As such the time frame required by the researcher to do the data collection process and the data analysis was a period of 2 months. The researcher needed a budget of about \$200.00 US dollars to carry out the data collection process, that is in respect of data bundles and Wi-Fi connectivity as well as for making phone calls since data could not be collected in person due to COVID 19.

3.6 Analysis and organisation of data

After collecting data from the participants in the questionnaires and from the telephone interviews, the researcher used thematic and content analysis of data. In using thematic and content analysis of data the researcher looked at all the data that was collected in order to identify the common issues that recur and identify the main themes that summarizes all the responses from the data that was collected. The data collected was categorized according to the themes related to the research objectives and research questions. The information gathered was then presented through tables, charts and graphs and expressed in percentages so as to obtain the accurate number of times responses were made to the questions raised in the questionnaires and in the telephone interviews. The researcher required a month to do the data analysis.

3.7 Ethical considerations

Before embarking on the research an application was made to AUREC to conduct the research and the application was granted and the AUREC Letter of Authority was attached as Appendix 1. Prior permission was sought from the relevant participants who were involved in the study and this was done by sending the Informed Consent Guide to the participants via WhatsApp and email before data was collected. All the participants who took part in the study freely consented to participate in the study without undue pressure, coercion or undue influence. All the participants were well informed on what their participation entailed. Most of the participants were skeptical to give written consent and as such their verbal consent was obtained after they have gone through the Informed Consent Guide which was attached as Appendix 2 to this study. The researcher respected issues of confidentiality as all participants remained anonymous. It was important for the researcher to protect the identity of the participants in the study from whom data was collected. To avoid any doubt on the authenticity of the research, the AUREC Letter of Authority was used for the administration of the questionnaires for primary data collection purposes.

3.8 Summary

In conclusion the process and methods of collecting data were through the use of mixed research methods that combine the qualitative research method and the quantitative research method in a single study. The population that was targeted for the data collection were Industrial Design right holders, Legal Practitioners, Magistrates and

Judges. The data analysis of primary data which was collected through the use of questionnaires and telephone interviews were crucial in achieving the purpose of the research.

CHAPTER 4 DATA PRESENTATION, ANALYSIS AND PRESENTATION

4.1 Introduction

This chapter explained and presented the research findings from the data that was collected for the research. The researcher in analyzing data collected made use of the thematic and content analysis of data, by looking across all the data collected and identifying the common issues that recur and identifying the main themes that respond to the research questions and summary all the responses collected. The themes identified from the data collection process and the responses of the participants are in respect of the awareness on the rights conferred on the Industrial Design right holders in Zimbabwe, the awareness on the manner in which Industrial Design rights are infringed in Zimbabwe and the awareness of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe.

The other theme identified from the data collection process was in respect of whether the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe is adequate and effective. The presentation of the data which was collected through the use of the questionnaires and the telephone interviews was done through the use of graphs, tables and charts. In some cases, the data which was collected was presented in percentages and frequencies to show how the findings relate to the whole group of participants. The chapter began by giving a response rate and then goes on to give a presentation of the findings and analyse the results of such findings.

4.2 Data Presentation and Analysis

The data that was collected that was presented in the form of tables, graphs and charts and analysed in such a manner that it provides insight on the civil enforcement of Industrial Design rights in Zimbabwe

4.2.1 Response rate

A total of 60 respondents took part in the study that is comprising 20 Magistrates, 30 Legal Practitioners, 4 Judges, 2 Industrial Design right holders and 4 stakeholders. However, not all the questionnaires were successfully completed by the participants. The research questionnaire which was also used as the interview guide was sent to the 60 respondents together with the Consent Form. From a population sample of 60 participants, 45 participants responded to the research, 39 participants took part in the telephone interviews and 6 managed to send the research questionnaires within the agreed time and 15 participants did not respond within the agreed timelines. Telephone interviews were conducted with 39 of the participants, and as such no questionnaires were sent back by the respondents from whom telephone interviews were conducted. Therefore, from a total of 60 participants who were sampled for the research only 45 participants responded to the research and this translates to 75 % response rate. The response rate is positive and good enough to enable the researcher to obtain valid and reliable results that would provide reliable research findings, since it is above 50 %.

The success in the positive responses from the participants can be attributed to the fact that most of the respondents were people whom the researcher knew prior to her embarking on the research. As a Provincial Magistrate in the JSC of Zimbabwe, the

researcher was easily able to communicate and interact with the respondents who some are fellow magistrates in the JSC, Legal Practitioners and some Judges at the Harare High Court where the researcher once worked as a Judge's Assistant in order to obtain the required responses.

However, some of the Judges, Magistrates, Legal Practitioners, Industrial Design right holders and stakeholders could not respond to the questionnaires due to busy schedules and commitments. The response rate of the Magistrates, Judges, Legal Practitioners, Industrial Design right holders and stakeholders is shown in the table below. The response rate of the participants in the research was overwhelming since out of the population sample of 60 participants' data was collected successfully from 45 of the participants. As such there was a positive response from the population sample in respect of the research. The percentage of the population sample that did not participate in the data collection was at 25 % of the population sample.

Table 1: Response Rate

MAGISTRATES	INDUSTRIAL DESIGN RIGHT HOLDERS	JUDGES	LEGAL PRACTITIONERS	STAKEHOLDERS	TOTAL	%
17	1	2	24	1	45	75 %

Source: Data from Questionnaires and Telephone Interviews

The table above indicated the respondents who participated in the research were 17 Magistrates, 2 Judges, 24 Legal Practitioners, 1 Design right holder and 1 stakeholder making a total of 45 respondents who participated in the study. This is an overwhelming majority when compared with those who did not participate in the data collection process of the research.

4.2.2. Category of respondents

The graph below shows the category of respondents who participated in the data collection process in their respective percentages of participation. The respondents are categorized as Magistrates, Judges, Legal Practitioners, Industrial Design right holders and stakeholders as shown below. A total number of 45 respondents participated in the study, that is 17 magistrates, 2 judges, 24 Legal Practitioners, 1 Industrial Design right holder and 1 stakeholder.

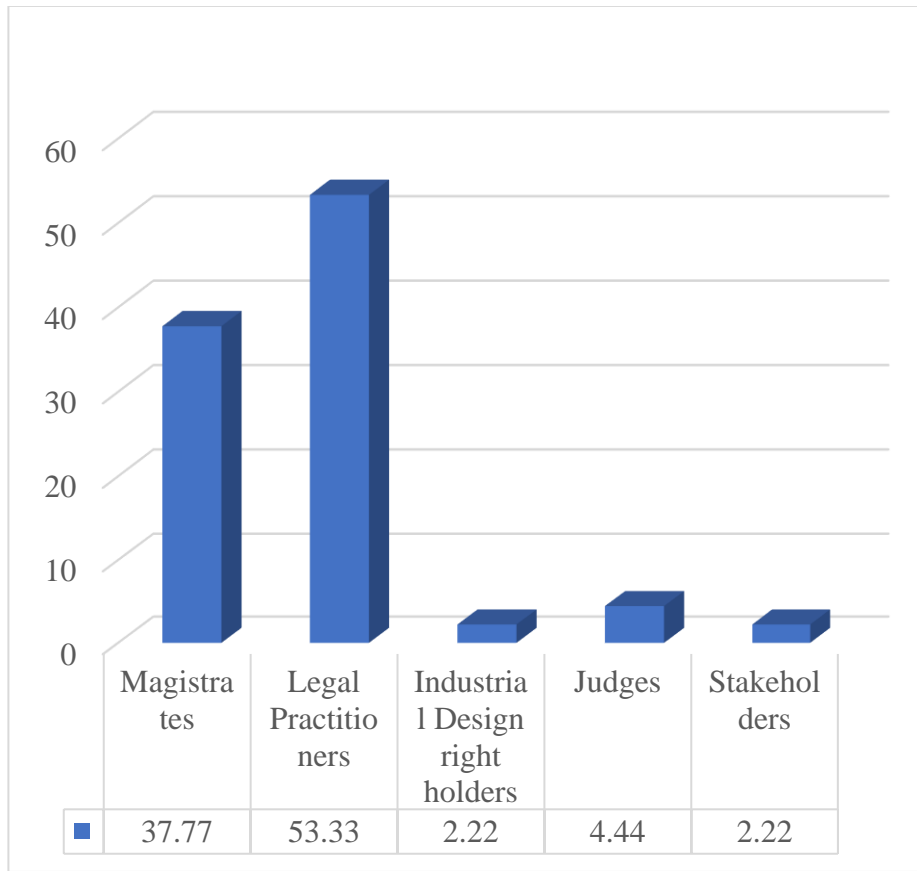


Figure 1: Category of respondents

Source: Data from Questionnaires and Telephone Interviews

The figure above shows that 37.77 % of the respondents were Magistrates, 53.33 % were Legal Practitioners, 4.44 % were Judges, 2.2 % were Industrial Design right holders and 2.22 % were stakeholders. What is clear from the figure above is that most of the targeted groups were Legal Practitioners who handle IP matters on behalf of their clients. Magistrates and Judges were also targeted since they are key in the civil enforcement of Industrial Design rights in Zimbabwe and preside over matters involving the civil enforcement of Industrial Design rights and Judges also preside over the IP Tribunal in Zimbabwe. The Industrial Design right holders input was crucial since they

are the holders of the rights in issue and have a vested interest in the civil enforcement of Industrial Design rights in Zimbabwe

4.2.3 Gender of Respondents

During the data collection process, data was also collected in respect of the gender of all the respondents who participated in the research. All the respondents were treated as equals irregardless of their gender. This section provides a presentation of the gender of the respondents from whom data was collected.

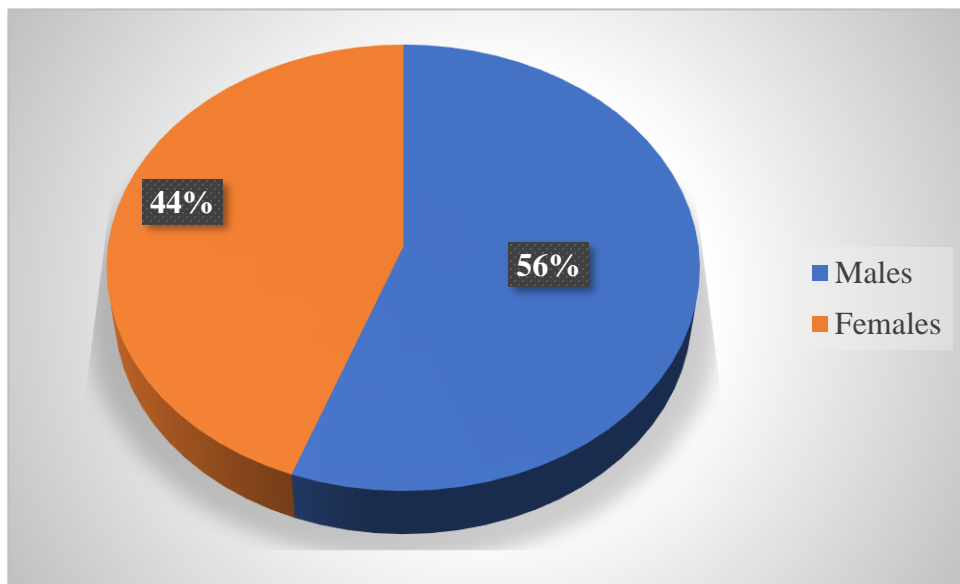


Figure 2:Gender of Respondents

Source: Data from Questionnaires and Telephone Interviews

The above chart shows that 56 % of the respondents were males whilst 44 % were females. The researcher tried to have a balanced number of females and males even though a slightly large portion showed more males responded to the research than females. However, the percentage of the participants accurately represents both sexes in

each category and as such the results are more likely to be a true reflection of gender sensitivity.

4.2.4 Age of the Respondents

During the data collection process, data was collected in respect of the age of the participants in the study. The figure below shows the age of participants who took part in this study, which age ranged from 20 - 30 years, 30 - 40 years, 40 - 50 years and 50 years and above.

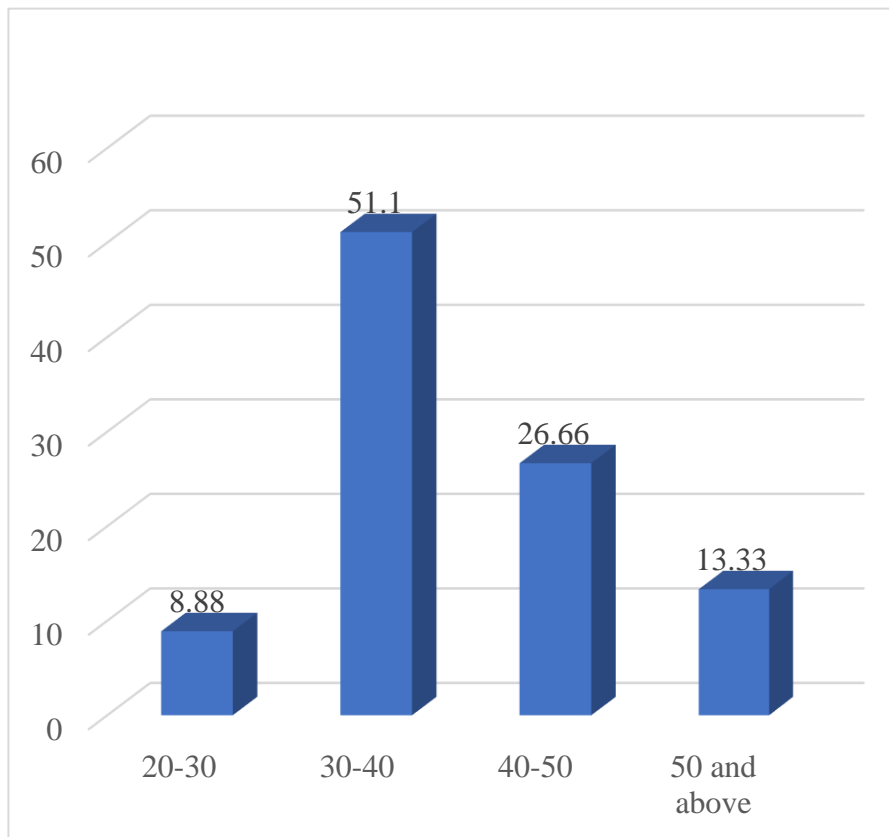


Figure 3: Age of the Respondents

Source: Data from Questionnaires and Telephone Interviews

The figure above shows that 8.88 % of the participants were aged between 20-30 years, 51.1 % were aged between 30-40 years, 26.66 % were aged between 40-50 years and 13.33 % were over the age of 50 years respectively. The figure above shows that the majority of the participants involved in the civil enforcement of Industrial Design rights in Zimbabwe were aged between 30 years and 50 years of age respectively. It was crucial to collect data on the age of the respondents so as to make an analysis of the age of the respondents who were involved in the civil enforcement of Industrial Design rights in Zimbabwe.

4.2.5 Educational and professional qualifications of the respondents

This section provides an analysis of the educational and professional qualifications of the respondents from whom data was collected. Data was collected in respect of secondary education as well as tertiary education of the respondents.

Table 2: Educational and professional qualifications of the respondents

	Industrial Design right holders	Magistrate s	Judges	Legal Practitione rs	Stakeholde r representa tive	Percentage
Ordinary Level	1	17	2	24	1	100 %
Advanced						

Level	1	17	2	24	1	100 %
Certificate	0	2	0	0	0	4.54 %
Diploma	0	0	0	0	0	0
LLB degree	Holder of a Degree in Electrical, Electronics and Control Systems Engineering	17	2	24	1	99 %
Masters	0	5	1	12	0	40.9 %
PHD	0	0	0	0	0	0

Source: Data from Questionnaires and Telephone Interviews

The table above shows that all respondents at least possess Ordinary Level and Advanced Level education. All the Judges who participated in the data collection process possessed an LLB degree and of the Judges who participated in the study 1 had a Master's degree. In respect of Magistrates, all the 17 magistrates who participated in the study were holders of an LLB degree. 2 of the Magistrates who participated in the study were also holders of a Magisterial Certificate obtained from the Judicial College of

Zimbabwe. Of the 17 Magistrates who participated in the research 5 Magistrates were holders of Masters' Degrees with 3 Magistrates out of those 5 having obtained a Masters' Degree in IP from Africa University.

Of the 24 Legal Practitioners who participated 12 of them were holders of Masters degrees with 4 Legal Practitioners being holders of a Master's Degree in IP. It is therefore evident from the table above that 99 % of the participants in the research were all holders of an LLB degree, therefore making a total of 99 % which is the majority of the participants. One of the participants was a holder of a degree in Electrical, Electronics and Control Systems Engineering. The table also shows that 40.9 % of the participants were holders of Masters' Degrees in various departments of the law. The Industrial Design right holder who participated in the study was not a holder of an LLB degree but of a degree in Electrical, Electronics and Control Systems Engineering.

4.2.6 Respondents who once received training on IP

The table below shows the number of participants who once received training on IP. From the table below it is clear that 7 of the total participants of 45 had obtained the Master's Degree in IP, making up a total of 15.55 % of the participants. It also indicated that 54.5 % of the participants did an IP module at University during their undergraduate studies for an LLB degree. Further to that the Table 3 below also indicated that out of all the 45 participants from whom data was collected, only 4 participants had received training on IP.

Table 3: Respondents who once received training on IP

	Judges	Magistrate s	Industrial Design right holders	Legal Practitione rs	Stakeholde rs' Representa tives	Percentag e
Any training on IP/ Certificate	0	0	0	4	0	8.88 %
Did IP Module during LLB degree	1	10	Not applicable	15	1	60 %
Master's Degree in Intellectual Property	0	3	0	4	0	15.55 %

Source: Data from Questionnaires and Telephone Interviews

What is evident from the table above is that there is serious lack of capacity building and training on IP matters in respect of Industrial Design right holders, Legal Practitioners, Judges and Magistrates who are key players in the civil enforcement of Industrial Design in Zimbabwe.

4.2.7 Number of years as a Legal Practitioner

The figure below shows the number of years the participants who are Legal Practitioners have been practising as Legal Practitioners in Zimbabwe. The number of years was categorised in ranges from 1 to 5 years, 5 to 10 years, 10 to 15 years, 15 to 20 years and 20 years and above respectively. This was crucial so as to indicate the years of experience each category of the participants who are Legal Practitioner have been practising as such in Zimbabwe. This was important for the research since it added value to the research topic under consideration thereby enhancing the research findings. The majority of the participants in the population sample and during the data collection process were Legal Practitioners who are very crucial in the civil enforcement of Industrial Design rights in Zimbabwe since they offer legal advice to Industrial Design right holders in the event of alleged infringement. Therefore, becoming crucial in the civil enforcement of Industrial Design rights in Zimbabwe.

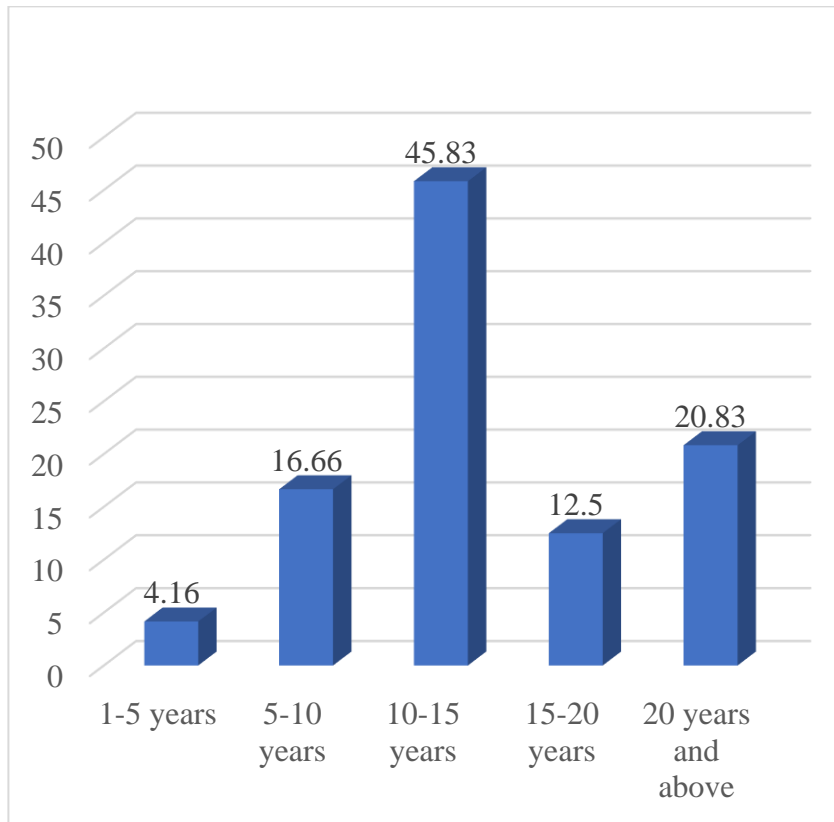


Figure 4: Number of years as a Legal Practitioner

Source: Data from Questionnaires and Telephone Interviews

The figure above shows the number of years that the participants who are Legal Practitioners have been practicing in Zimbabwe. It shows that 4.16 % have been practicing as Legal Practitioners for a period of 5 years and below. That 16.66 % of the participants have been practicing as Legal Practitioners for a period of 5 to 10 years. It also shows that 45.83 % of the participants have been practicing as Legal Practitioners for a period 10 years to 15 years, and 12.5 % for a period of 15 to 20 years and 20,83 % for a period of 20 years and above.

4.2.8 Number of years in the judiciary

The figure below shows the number of years the participants who are Judges and Magistrates have been members of the judiciary in Zimbabwe. The number of years was categorised in ranges from 1 to 5 years, 5 to 10 years, 10 to 15 years, 15 to 20 years and 20 years and above respectively. This was crucial so as to indicate the years of experience each category of the participants who are members of the judiciary in Zimbabwe have been serving in that capacity. This was important for the research since it added value to the research topic under consideration. Members of the judiciary are very crucial in the civil enforcement of Industrial Design rights in Zimbabwe since they are the ones who adjudicate on matters involving alleged infringement of Industrial Design rights in Zimbabwe. The decisions that are made especially by the Judges helps in the interpretation of the law in respect of the civil enforcement of Industrial Design rights in Zimbabwe since Judges make precedents which are then binding on the Magistrates Courts. In the administration of justice that include the protection and civil enforcement of Industrial Design rights in Zimbabwe the judgements and orders made by the judiciary are instruments in stopping infringements, preventing further acts of infringement and recovering losses incurred by the Industrial Design right holder in Zimbabwe.

The figure below shows the number of years the magistrates and judges who participated in this study have been in the judiciary in Zimbabwe. It indicates that 5.26 % have been in the judiciary for a period of 5 years and below, 15.78 % for a period of 5 to 10 years, 26.31 % for a period of 10 to 15 years, 31.57 % for a period of 15 to 20 years and 21.05 % for a period of 20 years and above respectively. Therefore, it is clear from the Figure

5 below that the majority of judges and magistrates who participated in the study have been members of the judiciary for a period of more than 5 years.

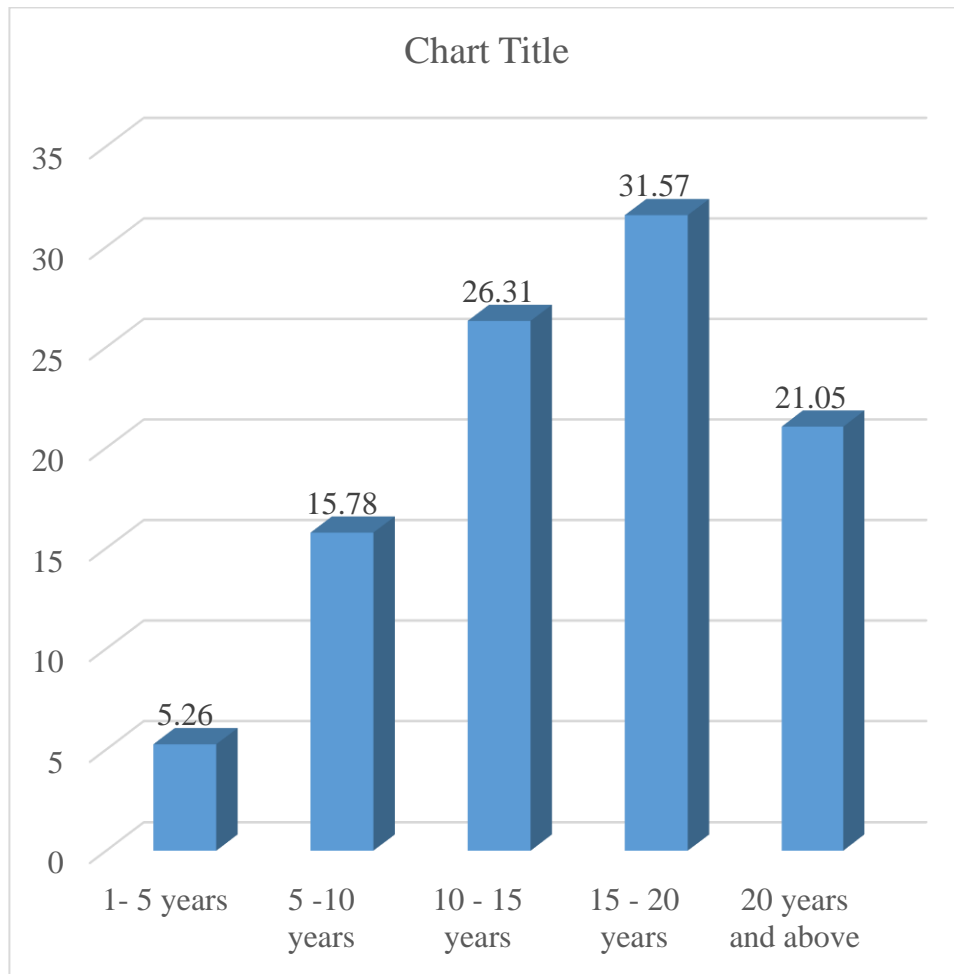


Figure 5: Number of years in the judiciary

Source: Data from Questionnaires and Telephone Interviews

4.2.9 Rights conferred on Industrial Design right holders in Zimbabwe

Below is a presentation of the data findings on rights conferred on Industrial Design right holders in Zimbabwe. It is the responsibility of the Industrial Design right holder or their representative who in most cases is a Legal Practitioner to be aware of the rights that are conferred by the law on Industrial Design right holders in Zimbabwe. This then

helps the Industrial Design right or their representative to be able to assert their rights. It is also crucial that Magistrates and Judges are aware of the rights that are conferred on Industrial Design right holders in Zimbabwe. This is very crucial since it the Magistrates and the Judges who have to interpret if there has been an infringement of such rights in the event of a dispute and make decisions and judgements and affords better protection.

4.2.9.1 Awareness rate on the rights conferred on Industrial Design right holders in Zimbabwe

The figure below shows the awareness rate of the participants in respect of the rights conferred on Industrial Design right holders in Zimbabwe. This was crucial for the research since it addressed the research question on the rights that are conferred on Industrial Design right holders in Zimbabwe. One can only assert a right that one is aware of and is entitled to in terms of the law. It is therefore imperative that there is capacity building and training for Legal Practitioners, Industrial Design right holders and members of the judiciary that is Magistrates and Judges who are key in the civil enforcement of Industrial Design rights in Zimbabwe.

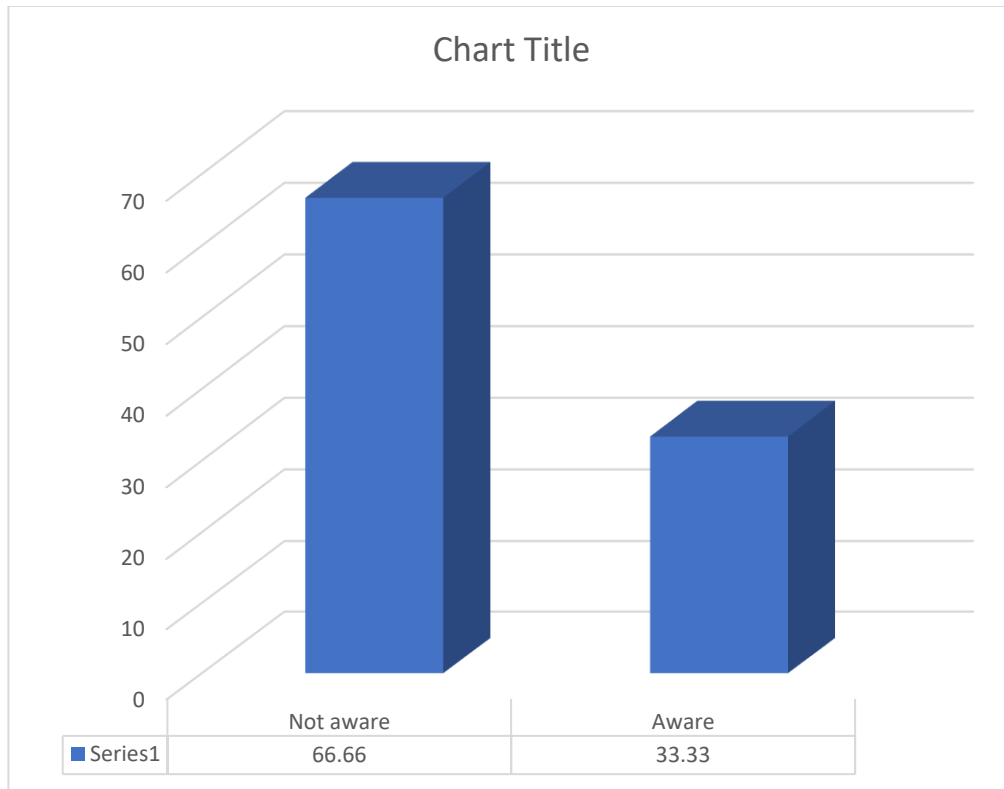


Figure 6: Awareness rate on the rights conferred on Industrial Design right holders in Zimbabwe

Source: Data from Questionnaires and Telephone Interviews

From the figure above it is clear that 66.66 % of the participants were not aware of the rights conferred on Industrial Design right holders in Zimbabwe and only 33.33 % were aware of such rights. Those respondents who were aware of the rights conferred on Industrial Design right holders in Zimbabwe seemed to agree that those rights entail the rights of protection against infringements, rights to reproduce and sell the products in the designs as well as rights to license the use of the design by third parties. The Industrial Design right holder or their representative have who in most cases in a Legal Practitioner have the mandate to assert their rights and Legal Practitioners were among those who were not aware of the rights that are conferred by the law on Industrial

Design right holders in Zimbabwe and this negatively impact the civil enforcement of Industrial Design rights in Zimbabwe. Further to that among those who were not aware of the rights conferred on Industrial Design right holders in Zimbabwe where Magistrates and Judges who are tasked with adjudicating matters involving the civil enforcement of Industrial Design rights in Zimbabwe and this can negatively impact the civil enforcement of Industrial Design rights in Zimbabwe at the expense of the Industrial Design right holder.

4.2.9.2 Information pertaining to Industrial Design rights readily available in Zimbabwe

The figure below shows the responses of the participants on the ready availability of information pertaining to Industrial Design rights in Zimbabwe. Information pertaining to Industrial Design rights should be readily available in Zimbabwe so as to promote a culture of respecting Industrial Design rights as well as encouraging innovation among the populace of Zimbabwe, which translates to more goods being designed and entering the market which can be to the advantage of consumers as well as the building of the economy by opening up new industries and also creating employment and enhancing the lives not only of the Industrial Design right holder but of the country at large. It can also encourage registration of Industrial Designs in Zimbabwe since information will be readily available.

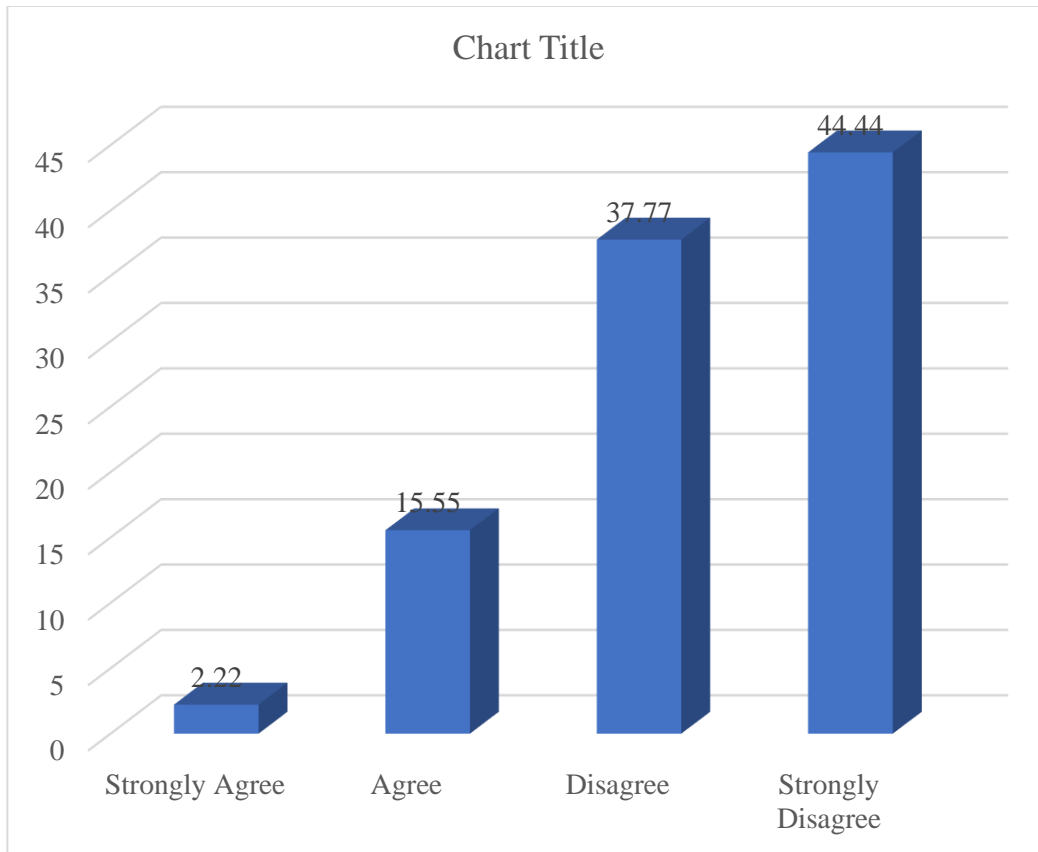


Figure 7: Information pertaining to Industrial Design rights readily available in Zimbabwe

Source: Data from Questionnaires and Telephone Interviews

The figure above shows that 2.22 % of the participants strongly agree that information pertaining to Industrial Design rights is readily available in Zimbabwe, whereas 15.55 % agree, 37.77 % disagree and 44.44 % strongly disagree respectively. The data collected from the participants indicated that it was generally agreed among the majority of the participants that information pertaining to Industrial Design rights is not readily available in Zimbabwe, this amounts to 82.21 % of the participants after having compiled together the percentages of the participants who disagreed which was 37.77 % and of those who strongly disagreed which was 44.44 %. This lack of information can

lead to infringement of Industrial Design rights due to lack of knowledge by the infringer.

4.2.9.3 Rights conferred on Industrial Design right holders are exhaustive as a means of affording protection

The figure below shows the participants' response on the exhaustiveness of the rights conferred on Industrial Design right holders as a means of affording protection.

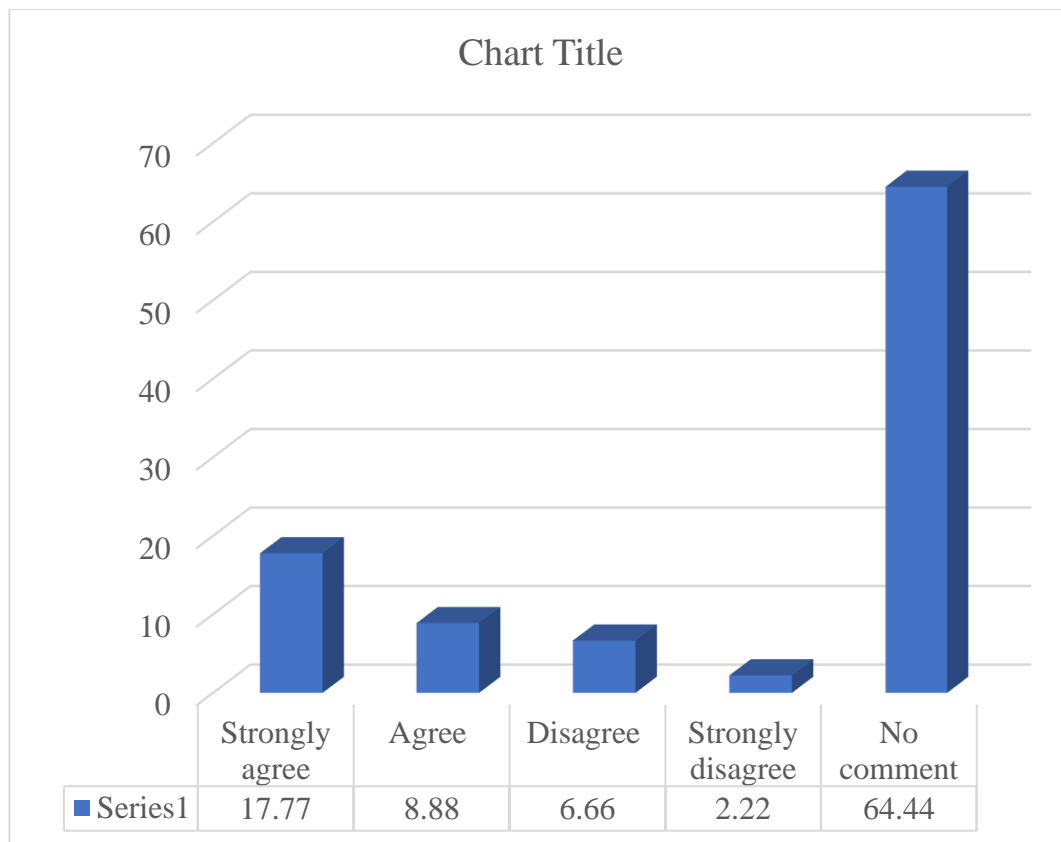


Figure 8: Rights conferred on Industrial Design right holders are exhaustive as a means of affording protection

Source: Data from Questionnaires and Telephone Interviews

The figure above shows that 17.77 % of the participants strongly agreed that the rights conferred on Industrial Design right holders in Zimbabwe are exhaustive as a means of

affording protection to the right holder, 8.88 % agreed, 6.66 % disagreed, 2.22 % strongly disagreed and 64.44 % had no comment to make on the issue. It is therefore evident that the majority of the participants had no comment on whether the rights afforded to Industrial Design right holders are exhaustive as a means of affording protection. This can be attributed lack of knowledge of such rights by the majority of the participants.

4.2.10 Awareness rate on the manner in which Industrial Design rights are infringed in Zimbabwe

The figure below indicates the level of awareness on the manner in which Industrial Design rights are infringed in Zimbabwe.

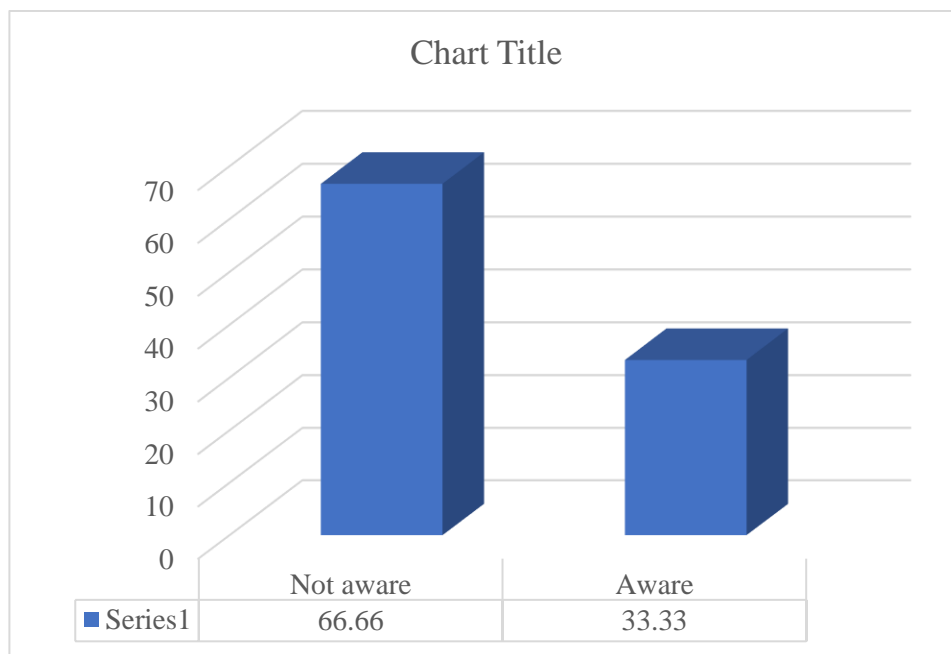


Figure 9: Awareness rate on the manner in which Industrial Design rights are infringed in Zimbabwe

Source: Data from Questionnaires and Telephone Interviews

The figure above shows that 66.66 % of the participants were not aware of how Industrial Designs are infringed in Zimbabwe and only 33.33 % were aware. As such the majority of the participants were not aware how Industrial Design rights are infringed in Zimbabwe. This figure is similar to Figure 6 on the awareness rate of the rights conferred on Industrial Design rights holders in Zimbabwe. This then showed a serious lack of awareness by the majority of the participants on the manner in which Industrial Design rights are infringed in Zimbabwe. One of the respondents indicated that Industrial Design rights in Zimbabwe are infringed by locals and foreigners who copy Industrial Designs in Zimbabwe with the help of Asian manufacturers who produce counterfeit replicas using cheap materials and then import the products under anonymous branding and sell cheaply since they incurred no design costs and as such take away market share from the original owners of the Industrial Design rights in Zimbabwe.

4.2.11 Legal framework for civil enforcement of Industrial Design rights in Zimbabwe

Below is the presentation of data that was collected in respect of the awareness rate of the respondents on the civil enforcement of Industrial Design rights in Zimbabwe among other factors.

4.2.11.1 Awareness rate on the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe

The figure below shows the awareness rate of the respondents who took part in the study on the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. It is the duty of the Industrial Design right holder or their representative who

in most cases is a Legal Practitioner to assert their rights, hence it is crucial for an Industrial Design right holder or their representative to understand the legal framework for the civil enforcement of their Industrial Design right in Zimbabwe. It is also important that Magistrates and Judges are aware of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe in order to make judgements and orders that preserve the rights of the Industrial Design right holder in Zimbabwe and not encourage infringement of Industrial Design rights in Zimbabwe.

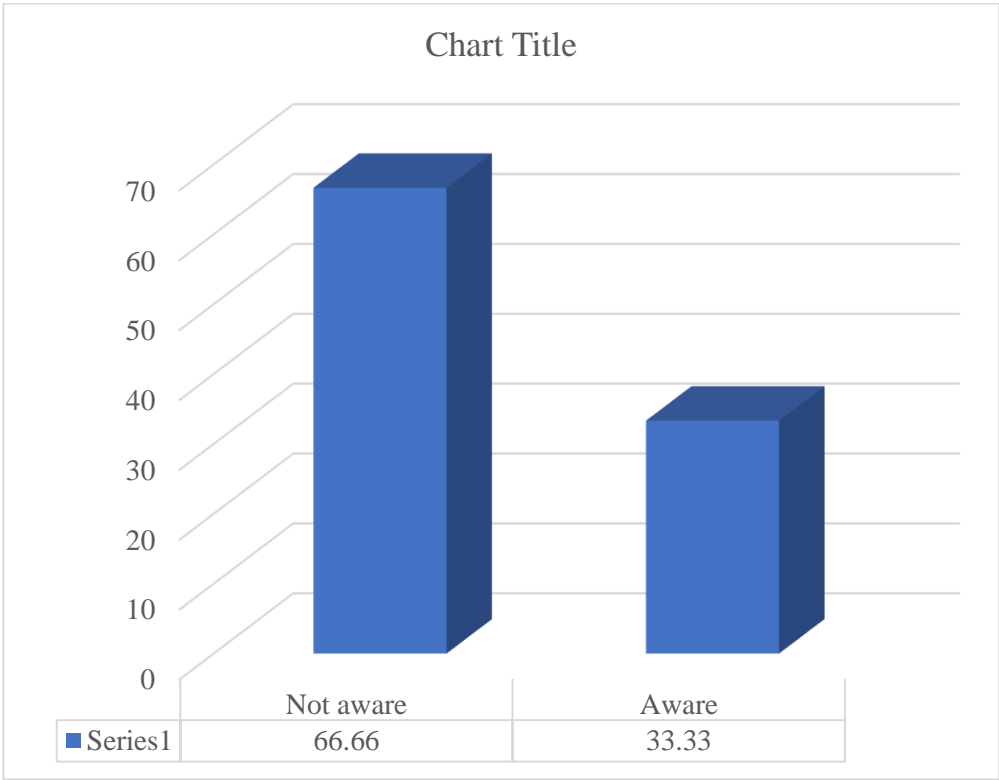


Figure 10: Awareness rate on the legal framework of the civil enforcement of Industrial Design rights in Zimbabwe

Source: Data from Questionnaires and Telephone Interviews

The figure above indicates that 66.66 % of the participants were not aware of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. It

indicated further that only 33.33 % of the participants were aware of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. It is therefore, evident that the majority of the participants were not aware of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. What is apparent is that those who are not aware of the rights conferred on Industrial Design right holders in Zimbabwe on Figure 6 above, are also not aware of the manner in which Industrial Design rights are infringed in Zimbabwe on Figure 9 above and the legal framework that is available for the civil enforcement of Industrial Design rights in Zimbabwe on Figure 10 above.

The respondents who are aware of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe seemed to agree that the process started with a cease and desist letter to the alleged infringer and then moving onto the civil court processes including but not limited to Anton Piller orders. This lack of awareness on the civil enforcement of Industrial Design rights in Zimbabwe by Legal Practitioners who are to offer legal assistance to the Industrial Design right holder in the event of infringement is a cause for concern. The lack of awareness of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe by Magistrates and Judges is a concern for concern since they are the ones who are tasked with adjudicating Industrial Design rights civil enforcement in Zimbabwe.

4.2.11.2 Information about the legal framework for civil enforcement of Industrial Design rights readily available in Zimbabwe

The figure below shows the participants responses in respect of the availability of information pertaining to civil remedies for Industrial Design rights civil enforcement readily in Zimbabwe. Information pertaining the legal framework for the civil enforcement of Industrial Design rights should be readily available in Zimbabwe in order to make it easier for the Industrial Design right holder to assert their rights in the event of an infringement of their rights in Zimbabwe.

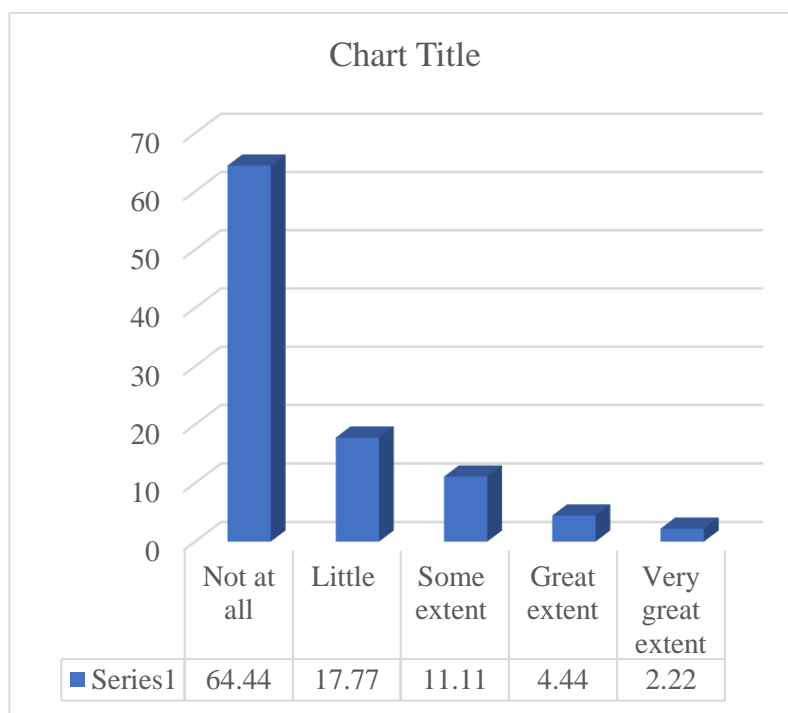


Figure 11: Information about the legal framework for civil enforcement of Industrial Design rights readily available in Zimbabwe

Source: Data from Questionnaires and Telephone Interviews

From the figure above it is clear that 2.22 % were of the view that to a very great extent information pertaining to the legal framework for civil enforcement of Industrial Design

rights is readily available in Zimbabwe. 4.44 % of the participants were of the view that information pertaining to the legal framework for the civil enforcement of Industrial Design rights is readily available to a great extent. 11.11 % of the participants were of the view that to some extent information pertaining to the legal framework for the civil enforcement of Industrial Design rights is readily available in Zimbabwe. Then 17.77 % of the participants were of the view that the information pertaining to the legal framework for civil enforcement of Industrial Design rights in Zimbabwe is available to a little extent. Then 64.44 % of the participants were of the view that information pertaining to Industrial Design rights in Zimbabwe is not available at all.

4.2.11.3 Lack of training and capacity building affecting the civil enforcement of Industrial Design rights in Zimbabwe

The figure below shows the participants' responses in respect of whether the lack of training and capacity building is affecting the civil enforcement of Industrial Design rights in Zimbabwe. It is only when Industrial Design rights are understood and respected that the civil enforcement of Industrial Design rights in Zimbabwe can be effective. An effective civil enforcement of Industrial Design rights is not achieved by the Industrial Design right holders asserting their rights in the event of an infringement. It is of paramount importance that Legal Practitioners, Magistrates, Judges as well as Industrial Design right holders get a better understanding of the civil enforcement of Industrial Design rights in Zimbabwe. This then is not an individual effort by the Industrial Design holder as the owner of the Industrial Design right in Zimbabwe, but required the judiciary that is Magistrates and Judges as well as Legal Practitioners who are key in the civil enforcement of Industrial Design rights to be trained and equipped

with knowledge on Industrial Designs as well as Intellectual Property so as to positively impact the civil enforcement of Industrial Design rights in Zimbabwe and afford better protection to the Industrial Design right holder in Zimbabwe. There is therefore for training of both Legal Practitioners, Magistrates and Judges for there to be an effective civil enforcement of Industrial Design rights in Zimbabwe.

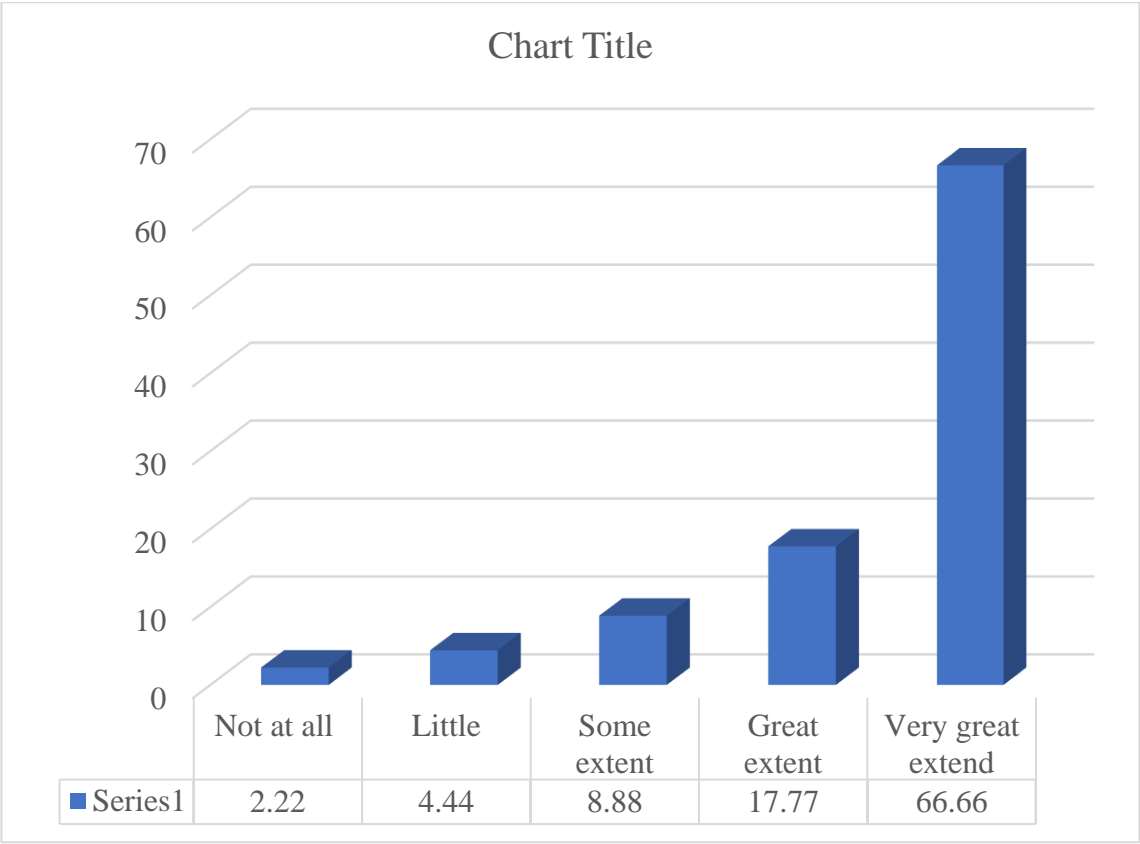


Figure 12:Lack of training and capacity building affecting the civil enforcement of Industrial Design rights in Zimbabwe

Source: Data from Questionnaires and Telephone Interviews

The figure above shows that 2.22 % of the participants were of the view that lack of training and capacity building has no effect whatsoever on the civil enforcement of

Industrial Design rights in Zimbabwe. 4.44 % of the participants believe that lack of training and capacity building affect the civil enforcement of Industrial Design rights in Zimbabwe to a little extent. On the other hand, 8.88 % of the participants believed that to some extent lack of training and capacity building have an effect on the civil enforcement of Industrial Design rights in Zimbabwe. On the other hand, 17.77 % of the participants were of the view that to a great extent lack of training and capacity building have an effect on the civil enforcement of Industrial Design rights in Zimbabwe. Then 66.66 % of the participants were of the view that to a very great extent lack of training and capacity building have an effect on the civil enforcement of Industrial Design rights in Zimbabwe. As such from the figure above it is evident that the majority of the participants are of the firm view that lack of training and capacity building have great effect on the civil enforcement of Industrial Design rights in Zimbabwe.

4.3 Discussion and interpretation

From the data that was collected from the participants and presented above there is serious lack of training, capacity building and awareness on the civil enforcement of Industrial Design rights in Zimbabwe. It is evident from the data collected and presented that the majority of the participants who are Legal Practitioners, Magistrates and Judges were not aware of the rights that are conferred on Industrial Design rights holders in Zimbabwe. It was also evident from the data that was collected that the majority of the respondents who are Legal Practitioners, Magistrates and Judges were not aware of the manner in which Industrial Design rights are infringed in Zimbabwe. It was also evident from the data that was collected that the majority of the respondents were not aware of

the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. These respondents are crucial in the civil enforcement of Industrial Design rights in Zimbabwe and hence the need for training, capacity building and awareness on the civil enforcement of Industrial Design rights in Zimbabwe.

4.4 Summary

The data collected and presented above also indicated that the majority of the respondents who are Legal Practitioners, Magistrates and Judges were not aware of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe.

CHAPTER 5 SUMMARY, CONCLUSIONS, IMPLICATIONS, RECOMMENDATIONS AND SUGGESTIONS FOR FURTHER RESEARCH

5.1 Introduction

This chapter provided the closing remarks for the whole research by highlighting the recommendation and the conclusion drawn from the research findings in Chapter 4, which indicated that there is lack of training and capacity building on the civil enforcement of Industrial Design rights in Zimbabwe.

5.2 Discussion

From the data collected the qualifications of the participants indicated that most of the participants obtained an LLB degree. Another participant was a holder of a degree in Electrical, Electronics and Control Systems Engineering. It was clear from the data that was collected that from the participants who are holders of an LLB degree 60 % of the respondents who took part in the study undertook a module of IP during their undergraduate studies. The data further showed that only 15.55 % of the participants were holders of the MIP. This indicated that most of the participants were lacking in respect of in depth understanding of IP issues. It was clear from the data collected that most of the participants were not aware of the rights that are conferred on Industrial Design right holders in Zimbabwe. This can be an indication of lack of awareness, lack of training and capacity building on most of the participants in respect of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe.

The Industrial right holder who took part in the study seemed aware of the rights that are conferred on Industrial Design right holders in Zimbabwe. But the majority of the respondents who were Legal Practitioners, Magistrates and Judges who took part in the study seemed not to be aware of the rights that are conferred on the Industrial Design right holders in Zimbabwe. The Industrial Design right holder who took part in the study went on to state that the rights that are conferred on him by law among others the right of protection against infringements and the rights to produce and sell the products in the Industrial Designs.

Further to that the data collected also indicated that most of the participants were not aware of how Industrial Design rights are infringed in Zimbabwe. This can be another suggestion that there is very serious problem in the civil enforcement of Industrial Design rights in Zimbabwe since most of those who are not aware are Legal Practitioners who are to render legal assistance in the event of an alleged infringement. What can also be gleaned from the findings in Chapter 4 is that most of the judicial officers, that is judges and magistrates were not aware of when Industrial Design rights would have been infringed in Zimbabwe. This became a cause of concern since these judicial officers are the ones who have the mandate to interpret the law on the civil enforcement of Industrial Designs in Zimbabwe and assess if there is any infringement or not.

Lastly the data that was collected and presented in Chapter 4 also indicated that most of the participants were not aware of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. This was a great cause of concern that needed to

be addressed since most of those involved in the civil enforcement of Industrial Design rights in Zimbabwe, that is Legal Practitioner, Magistrates and Judges lack training and capacity building on the civil enforcement of Industrial Design rights in Zimbabwe. As such in order for civil enforcement of Industrial Design rights in Zimbabwe to be effective there is need for training and capacity building on the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. There is therefore the need to skill those involved in the civil enforcement of Industrial Design rights in Zimbabwe with knowledge and capacity to handle such matters. There is therefore a need for tertiary institutions in the country to promote the growth of IP by offering it as a compulsory module and not an elective so as to enhance awareness on the civil enforcement of Industrial Design rights in Zimbabwe.

5.3 Conclusion

The conclusions that have been drawn from the data collected in Chapter 4 is that there is serious lack of awareness, training and capacity building on the civil enforcement of Industrial Design rights in Zimbabwe by members of the judiciary and Legal Practitioners who are key in the civil enforcement of such rights in Zimbabwe. That Legal Practitioners, Magistrates and Judges lack training, knowledge and awareness on the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. That such lack of training and knowledge on the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe then negatively impact the civil enforcement of Industrial Design rights in Zimbabwe and the jurisprudence being made. Such lack of training and capacity building may promote infringement of Industrial

Design rights in Zimbabwe at the expense of the Industrial Design right holder. As such there is need for training and knowledge empowerment for those involved in the civil enforcement of Industrial Design rights in Zimbabwe.

5.4 Implications

The implications that can be alluded to the data that was collected and presented in Chapter 4 was that serious lack of training and knowledge empowerment by Legal Practitioner on the civil enforcement of Industrial Design rights in Zimbabwe translates to a scenario where those seeking to assert their Industrial Design rights may not get the best advice and failure by such Legal Practitioners to properly articulate the issues to be ventilated in the event of a dispute hence not affording the Industrial Design right holder the best outcome that protect their rights. Members of the judiciary, that is magistrates and judges in the absence of specialized training on the civil enforcement of Industrial Design rights may fail to properly grasp some of the issues brought before them which can lead to grave miscarriage of justice at the expense of the Industrial Design right holder in Zimbabwe and promote infringement of Industrial Design rights in Zimbabwe. The lack of training and capacity building by both Legal Practitioners and members of the judiciary may lead to poor jurisprudence being developed in Zimbabwe on issues to do with the civil enforcement of Industrial Design right in Zimbabwe.

5.5 Recommendations

From the data collected and the findings made, it is recommended that there was need for skills development training workshops for members of the judiciary as well as for

Legal Practitioners on the civil enforcement of Industrial Design rights in Zimbabwe. That WIPO, ARIPO, Africa University, ZIPO and IP experts in Zimbabwe can come together and collaborate with the JSC of Zimbabwe as well as the LSZ and have training and awareness workshops with members of the judiciary and Legal Practitioners in order to enhance appreciation of the civil enforcement of Industrial Design rights in Zimbabwe.

Members of the judiciary and Legal Practitioners can also take part in the WIPO Academy long distant courses, enroll in the MIP programs that are offered by Africa University in order to equip and enhance their appreciation of civil enforcement of Industrial Design rights in Zimbabwe. The JSC can also make room for training of members of the judiciary on IP matters and it should be a requirement by the JSC that judges who preside in the IP Tribunal must have an IP qualification and if not they undergo IP training so as to enhance judgements on the IP and create a sound jurisprudence on the civil enforcement of Industrial Design rights in Zimbabwe.

Local universities that offer the LLB degree programme can also make the IP module compulsory and even not just a module but offer extensive courses on IP at undergraduate level. This can then enhance awareness on the civil enforcement of Industrial Design rights in Zimbabwe.

5.6 Suggestions for Further Research

The COVID 19 pandemic has hit the world hard and Africa has not been excluded. The COVID 19 pandemic has seen the invention of the COVID 19 vaccine and there has

been a lot of hype on social media in respect of its suitability to African climates and its population. There may be a need to study the possibility of Africa being allowed to conduct their own research on these patented inventions without having to wait for the patent period to expire.

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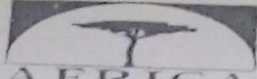
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APPENDICES

Appendix 1: AUREC letter of authority


AFRICA UNIVERSITY
(A United Methodist Related Institution)
P.O. Box 1320 Mutare, Zimbabwe. Tel: 091 800 8000, 091 800 8001 Fax: 091 800 8002, 091 800 8003 Email: info@au.ac.zw

**AFRICA UNIVERSITY
RESEARCH ETHICS
COMMITTEE (AUREC)**

Ref: AU1897/21 11 February, 2021

Gladys Moyo
CO CBPLG
Africa University
Box 1320
Mutare

RE: INDUSTRIAL DESIGN RIGHTS CIVIL ENFORCEMENT IN HARARE, ZIMBABWE

Thank you for the above titled proposal that you submitted to the Africa University Research Ethics Committee for review. Please be advised that AUREC has reviewed and approved your application to conduct the above research.

The approval is based on the following:

- a) Research proposal
- b) Data collection instruments
- c) Informed consent guide

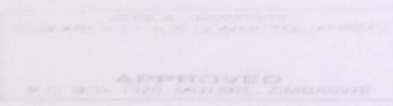
• APPROVAL NUMBER	AUREC1897/21
This number should be used on all correspondences, consent forms, and appropriate documents.	
• AUREC MEETING DATE	NA
• APPROVAL DATE	February 11, 2021
• EXPIRATION DATE	February 11, 2022
• TYPE OF MEETING	Expedited

After the expiration date this research may only continue upon renewal. For purposes of renewal, a progress report on a standard AUREC form should be submitted a month before expiration date.

SERIOUS ADVERSE EVENTS All serious problems having to do with subject safety must be reported to AUREC within 3 working days on standard AUREC form.

MODIFICATIONS Prior AUREC approval is required before implementing any changes in the proposal (including changes in the consent documents)

TERMINATION OF STUDY Upon termination of the study a report has to be submitted to AUREC.


APPROVED
P.O. BOX 1320 MUTARE, ZIMBABWE

Yours Faithfully

MARY CHINZOU – A/AUREC ADMINISTRATOR/CHAIRPERSON, AFRICA UNIVERSITY RESEARCH ETHICS COMMITTEE

Appendix 2: Consent Form

INFORMED CONSENT GUIDE

Identity

My name is Gladys Moyo. I am a student at Africa University doing a Master's Degree in Intellectual Property. I am carrying out a study on the Evaluation of the civil enforcement of Industrial Design rights in Zimbabwe.

What you should know about the study:

Purpose of the Study

The purpose of the study is to evaluate the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe. I am conducting the research and gathering information from 20 magistrates, 4 judges, 30 Legal Practitioners in Zimbabwe, 2 Industrial Design right holders in Zimbabwe and 4 stakeholders in Zimbabwe. As such 60 participants have been selected to take part in this study. You have been selected to take part in the study since you fall under the category of the population that has been sampled for this research. I am kindly asking you to freely participate in the answering of the structured questionnaire/interview guide.

Procedure and duration

If you decide to participate you will be asked some questions which are semi structured as well as a series of some open ended questions on the subject matter of the Evaluation of the civil enforcement of Industrial Design rights in Zimbabwe. It is expected that

completing the questionnaire or the telephone interview will take at least an hour.

Risks and Discomforts

There are no known legal, health, economic or psychological risks and discomforts associated with participation in the study.

Benefits and or Compensation

There are no benefits or any form of compensation that will be awarded to those that will participate in the study.

Confidentiality

Any information that is obtained in the study that can be identified with the participant will not be disclosed without their permission. Names and any other identification will not be asked for in the questionnaires.

Voluntary Participation

Participation in this study is purely voluntary. No participant will be compelled, forced or coerced into taking part in the study or into answering any question in any manner.

Offer to answer questions

Before you sign this form, please ask any questions on any aspect of study that is unclear to you. You may take as much time as necessary to think it over.

Authorisation

If you have decided to participate in the study, please sign the form in the space provided below as an indication that you have read and understood the information provided above and have agreed to participate.

.....

.....

NAME OF RESEARCH PARTICIPANT (please print)

Date

.....

SIGNATURE OF PARTICIPANT/LEGALLY AUTHORISED REPRESENTATIVE

If you have any questions concerning this study or consent form beyond those answered by the researcher including questions about the research, your rights as a research participant, or if you feel that you have been treated unfairly and would like to report or talk to someone other than the researcher, please feel free to contact the Africa University Research Ethics Committee on (020) 60075 or 60026 extension 1156 email aurec@africau.edu.

NAME OF RESEARCHER: GLADYS MOYO

Appendix 3: Research questionnaire

SECTION A: PERSONAL INFORMATION

Tick where appropriate.

1. Gender of respondent

- Male
- Female

2. Age of respondent

- 20 years to 30 years
- 30years to 40 years
- 40 years to 50 years
- 50 years and above

3. Level of education of respondent

- Ordinary level
- Advanced level
- Diploma
- Degree
- Bachelor of Laws Degree.....
- Master Degree.....

- PHD

4. Have you ever received Intellectual Property education or training?

- YES
- NO

If yes from who OR which institution?

Tick where appropriate

5. Are you a member of the judiciary?

- YES
- NO

6. Are you a registered Legal Practitioner?

- YES
- NO

7. Are you an Industrial Design right holder or stakeholder interested in the civil enforcement of Industrial Design Rights in Zimbabwe?

- YES
- NO

IF YES indicate in what capacity?

If NO, Explain.....

8. For how long have you been in the judiciary, a Legal Practitioner?

- 1-5 years
- 5 - 10 years
- 10 - 15 years
- 15 - 20 years
- 20 years and above

**SECTION B: RIGHTS CONFERRED ON INDUSTRIAL DESIGN HOLDERS
IN ZIMBABWE**

9. Are you aware of the rights that are conferred on Industrial Design right holders in Zimbabwe?

- YES
- NO

If Yes, what are those rights?

10. Tick or circle where appropriate.

Factors	Strongly	Agree	Disagree	Strongly

	agree			disagree
Is the information on the rights conferred on Industrial Design rights holders readily available in Zimbabwe?				
Are you aware of the rights conferred on Industrial Design Rights holders in Zimbabwe?				
Are these rights exhaustive as a means of affording protection to Industrial Design holders in Zimbabwe?				
Does these rights have an impact on promoting innovation in Industrial Designs, in Zimbabwe?				
Does the legal framework in Zimbabwe provide an exhaustive list of the rights of				

Industrial Design holders?				
----------------------------	--	--	--	--

11. Is there anything you wish to add in respect to the responses above?

- YES
- NO

If YES, please proceed to explain.....

SECTION C: THE MANNER IN WHICH INDUSTRIAL DESIGN RIGHTS ARE INFRINGED IN ZIMBABWE

12. Are you aware of the manner in which Industrial Design Rights are infringed in Zimbabwe?

- YES
- NO

Explain, if YES

SECTION D: LEGAL FRAMEWORK FOR THE CIVIL ENFORCEMENT OF INDUSTRIAL DESIGN RIGHTS

13. Are you aware of the legal framework for the civil enforcement of Industrial Design right holders, in Zimbabwe?

- YES
- NO

If Yes Explain.....

14. Are these civil remedies adequate and effective for the protection of Industrial Design Rights in Zimbabwe?

- YES
- NO

Why?

15. Tick or circle where appropriate. {Note: [1] = Not at all, [2] = Little, [3] = Some extent, [4] = Great extent, [5] =Very Great extent}

Factors	1	2	3	4	5
Is Information about the legal framework for the civil enforcement of Industrial Design rights readily available?					
Are you aware of the civil remedies that are available for the enforcement of Industrial Design rights, in Zimbabwe ?					

How do you rate your level of understanding of the legal framework for the civil enforcement of Industrial Design rights in Zimbabwe?					
Does lack of training and capacity building affect the civil enforcement of Industrial Design rights in Zimbabwe?					

SECTION E: GENERAL COMMENTS SECTION

16. Is there anything you feel I have left out or is there anything else you would like to add on the civil enforcement of Industrial Design rights in Zimbabwe?

.....

Appendix 4: Letter of authority to collect data in the JSC

Telephone: +263 270 131102

Fax:

COURT Your Ref:

My Ref:



PROVINCIAL MAGISTRATE'S OFFICE

CHITUNGWIZA MAGISTRATES

P.O.Box 80

Seke

CHITUNGWIZA

18 February 2021

The Provincial Head

Harare Province

Harare

RE: AUTHORITY TO DO DATA COLLECTION FOR A RESEARCH ON EVALUATION OF THE CIVIL ENFORCEMENT OF INDUSTRIAL DESIGN RIGHTS IN ZIMBABWE, IN THE JUDICIAL SERVICE COMMISSION, IN RESPECT OF MAGISTRATES AND JUDGES: GLADYS MOYO: EC NUMBER 6101620V

The above matter refers.

My name is Gladys Moyo a Provincial Magistrate currently stationed at the Chitungwiza Magistrates Court. I am currently pursuing a Master's Degree in Intellectual Property at Africa University and have been given permission by the Judicial Service Commission to undertake the said studies.

I am doing a research paper on, EVALUATION OF THE CIVIL ENFORCEMENT OF INDUSTRIAL DESIGN RIGHTS IN ZIMBABWE. I have since been granted permission by Africa University to undertake the said research and collect data. My population sample on the subject includes members of the Judicial Service Commission, that is Magistrates and Judges.

I am therefore asking for authority from the Judicial Service Commission to collect data in respect of the above named research topic from 20 Magistrates and 4 Judges on the subject matter of the civil enforcement of Industrial Design rights in Zimbabwe. Due to Covid 19 the data will be collected via email and or using WhatsApp to communicate with the research participants.

I have attached to this letter the sample of the research questionnaire that I will be using in conducting the research, a sample of the consent form to be completed by each participant and a letter from Africa University authorizing me to carry out the study. Find attached:

1. Letter of authority to conduct research from Africa University
2. Consent form
3. Research questionnaire

I hope you will find the above in order and look forward to a favorable response from you.

Yours faithfully

G. Moyo

Provincial Magistrates

Chitungwiza Magistrates Court

0782123446

gladysmoyo90@gmail.com

gladysmoyo@rocketmail.com

gmoyo@africau.edu