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**MATRICULATION NUMBER: 16/LAW01/095**

**COURSE TITLE: INTELLECTUAL PROPERTY LAW II**

**COURSE CODE: LPB 406**

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**DATE: 8TH MAY, 2020.**

**J**ohn, is a Ghanaian student of ABUAD who decided to stay back in school during the Easter break. During this period, he read the novel ‘Purple Hibiscus’ by Chimamanda Adichie. Upon inspiration he decided to also write a novel based on the same storyline/plot. Having thought about the novel and with no time to write it out, he recorded it on his phone as an audio file. Some weeks ago, his friend, Ope, listened to the music on his phone including the novel. Unknown to John, Ope has gone to publish the novel. On discovering this, he threatened to sue her. She has laughed at him that he has no copyright under Nigerian law because he is a foreigner who got the idea from reading another book and only recorded it on his phone and did not publish the work. As an intellectual property law student, John has approached you for your legal opinion. Advise him with the aid of statutory and judicial authorities

**TEST ANSWER**

The legal issues are:

1. whether John has copyright over his own expression of the book “Purple Hibiscus”
2. whether John has copyright over his recorded novel;
3. whether John is qualified to enjoy copyright as a foreigner;
4. whether Ope infringed on the rights of John.

Copyright can be defined as intellectual rights enjoyed by a person. Copyright is said to be the protection of expression of ideas and not the idea itself, as the principle stated in DONOGHUE V ALLIED NEWSPAPER. Works such as literary works, sound recording, musical works, cinematographs and broadcast are protected under copyright, according to **section 1(1) of The Copyright Act, 1988.**

**There are aslo requirements for qualification of copyright:**

1. if it falls within the category listed above;
2. originality;
3. fixation
4. qualification of author.

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According to the scenario, the novel falls under sound recording, which is a first fixation of a sequence capable of beiong perceived aurally, section 51 of The Copyright Act. The novel though the idea was gotten from the Purple Hibiscus book by Chimamanda,John did not copy verbatim of her work ,just as the case in **Donoghue v Allied Newspaper**. Such principle was also applied in the case of **Hubbard v Vosper,** where the court held that the actions of the defendant was that of fair dealing.

Moreso, when you are talking about originality, the law is paying attention to the level of skill, judgement and labour. This was the principle **in Ladbroke Football v William Hill Football.**

**Thus, the work is original, as it was his own expression.**

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**A**  characteristic of copyright is that it does not need any form of registration to qualify the aouthor, although it is just for formality sake and it also needs to be fixed in a medium. John has fixed (section 1(2) b of Copyright Act his work in a sound recording on his phone. This was the principle inYeni Anikulapo Kuti v TM Iseli Thus, he can cliam copyright, as it is the expression that matters.

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On the issue of qualification of author, we consider if:

1 ) if he is domiciled in Nigeria- section 2

2) if the work was first published (section 51) in Nigeria; section 3

3) if the country he is based in enjoys any international treatment with Nigeria.

If John can prove either that he may be a foreigner but his home is in Nigeria, or that the work was first published in Nigerai, as Ope did he can claim copyright. He can even go ahead and prove that his country enjoys some sort of international treatment as a result of some IP treaties such as BERN CONVENTION, TRIPS CONVENTION, and so on. This is stated in section 5(2) of the Copyright Act.

**Thus, if John is able to prove any of the above following the requiremnts such as a federal gazette and a report from the Commissioner or proving his nationality or even the issue of publication as stated in section 51(2) (a), he can still claim copyright. If otherwise, he may not be able to. This case is similar to Microsoft Copyright v Franike Associates,** where the court did not grant the copyright because he did not submit certificate from the NCC.

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Following the above, I am of the view that if with the necessary documents displayonthe qualification of the author either by nationality or international treatment, Ope has infringed on the rights of John. Thus, John is entiltled to remedies like damages and so on.

In conclusion, the threshold of originality under the Nigerian Law is low. As a work can be drawn or inspired by other existing works or the existing stock of knowledge, it will still qualify.