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INTELLECTUAL PROPERTY II

TEST

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ANSWER:

INTRODUCTION

The writer aims to outline the legal issues in this scenario and resolve them with case a=law and provisions of the Copyright Act 1970.

ISSUE AND RESOLUTION

The legal issue here in is **Whether or not John has copyright in the work**. The writer resolves this issue in the **affirmative**.

RULES

It is trite law that for a work to satisfy the requirements of Copyright are embedded in the Copyright Act per **S1** and **S2**. Before going into the requirements, it is pertinent to not the works eligible for copyright per *s1(1)*. These works are;

1. Literary works
2. Artistic works
3. Musical works
4. Cinematographic films
5. Sound recordings
6. Broadcasts.

To paraphrase, these sections dictate that for a work to be eligible for copyright it has to fulfil the requirements namely,

1. Originality
2. Fixation
3. Qualification of the Author

Originality

This requirement means that the author must have expended intellectual capacity, time and effort on making the work not necessarily that the idea is fresh. By virtue of *s.1(2)a*.

Fixation

This requirement means that the author must the idea must have been expressed because copyright protects the expression of the idea and not the idea itself. Hence the idea or work must be fixed in a definite medium which can be communicated. Per *s.1(2)b*

Qualification of the author

This requirement is embedded in *s.2(1)*. This requirements dictates that an author must be a citizen of Nigeria or domiciled in Nigeria.

APPLICATION

Flowing from the foregoing, to buttress the point earlier made in the affirmative, John has copyright in the work. This is due to the fact that he satisfied the three requirements. The requirements being that he expended the energy and time to make the work. Even though he drew inspiration from Chimamanda's *Purple Hibiscus*, it still satisfies the requirement of originality.

Secondly, he recorded it on his phone which satisfies fixation and as seen above, sound recordings are eligible for copyright.

Thirdly, even though John is not a citizen of Nigeria, he attends university in Nigeria and hence is domicile in Nigeria satisfying requirement number 3 of qualification of the author especially in *S.2(1)a*. Also, the act also stipulates in *S.3(1)* the concept of place of first publication and by virtue of John making a sound recording while in Nigeria, Nigeria becomes the place of first publication.

CONCLUSION

In conclusion, I would advice John to sue Ope as he is the author and he has copyright in the work. He can sue for the civil law remedies as conversion and remedies such as damages. Also, due to the fact that Ope published it in a literary form without his consent. This was also the case in the case of *Adenuga v. Ilesanmi Press & Sons (Nig) Ltd* where the plaintiff also sued for unauthorised publication of his work.