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MATRIC no: 16/law01/007

LEGAL ISSUE

The legal issue in this case are:

1. whether or not John can file an action for copyright against Ope for infringing on his right

2.Whether or not he has a right over the work

3.Whether or not his nationality could serve as a barrier

The first issue which is whatever or not John can file an action against Ope? Yes he can, because his work ie eligible for copyright as it original and it has the ingredient of fixation. A work is protected once it has this three requirements

•Three requirements:

1.Originality

2.Fixation

3.Qualification of the Author

The second issue which is whatever he has a right in the work or not, he has a right in the work because it fall under the three requirements as stated above, as John has originality and fixation. He possesses originality because his work was not a copy of chimamanda Adichie’s work although the plot was similar, the expression of the idea was completely different, and copy right is not the protection of the work, but the protection of the expression of idea. Originality means:

1. Sufficient time, effort, skill has been expended on the work by the author.

2. The work is not copied from another work.

In the case of Feist Publications, Inc. v. Rural Telephone Service, the U.S. Supreme Court explained that the requirement of originality is not particularly stringent and is comprised of two elements: that the work be independently created by the author (as opposed to copied from other works) and that it possesses at least some minimal degree of creativity.

John’s work also contained fixation.A fixed work is defined as a work that is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration. For example, a sandcastle or ice sculpture that you worked all day on would probably not be considered fixed so it’s not copyrightable. However, as soon as you take a photograph of your sandcastle or ice sculpture, thus fixing it in reproducible medium other than your own memory, the image and design of the sandcastle can legal protection.

A literary, musical or artistic wok shall not be eligible for copyright unless

a. the work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with aid of any machine or device.

In Yeni Anikulapo Kuti& Ors v. T.M Iseli & Ors, the survivors of the great Nigerian music icon, Olufela Anikulapo Ransome-Kuti(Fela) had sued the defendants for damages and perpetual injunction to restrain the defendants from reproducing the composed Musical works of the late Fela, but which had neither been produced nor sold for public consumption. Stated clearly, Fela had not put the songs in CD’s, DVD’s and had not disseminated the songs for public use before he died. Since Fela actually recorded the music in master tape, he had fixated it in a tape from which it can be perceived and observed by others directly or by using a machine. In summary, the court granted a perpetual injunction under the Copyright Act of Nigeria.

The third issue is whether or not his nationality can serve as a barrier which is in the negative as he qualifies as an author. How does he qualify as an author?

The third requirement for protection, unlike the previous two requirements, implies to all categories of works, is qualifying factor. Before a person can qualify for copyright protection under Nigerian law, there must be some connection between the work and Nigeria.

The required connection could be in respect of the status of the author, the place of first publication, government works, and by virtue of international agreements. The law provides for these provisions succinctly. In the case of Francis, Day and Hunter v. Feldman and co, a copy of a work was sent to the British Museum, one was filed at the London office of the plaintiffs, four were sent to agents for university libraries and six were exposed on the counter in the retail department of the plaintiff’s business premises. It was held that these acts sufficed to constitute publication. John is connected to Nigeria as he domiciled in Nigeria at the time the work was being made.

Furthermore, what are the works that are eligible for copyright?

It should be noted that before a work can be granted copyright, it must be eligible. Also, one must make enquires to know whether the alleged work falls within the works that are protect by copyright. **Sec 1(1) t**he Act provides for the works protected under copyright namely:

i. Musical works.

ii. Literary works.

iii. Artistic works.

iv. Cinematograph films.

v. Sound recordings.

vi. Broadcasts.

John’s work, falls under sec 51 of the CA which states that fixation of any kind would qualify, not limited to music or human sound

In conclusion, John can take an action against Ope for the infringement of his copy right as it has all the necessary requirements like fixation, originality, and the qualification of the author. All which qualifies it to be copyright protected.