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16/LAW01/146

INTELLECTUAL PROPERTY TEST

MRS IFE OLUBIYI

QUESTION:

John, 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. **(10 marks)**

**Answer:**

The legal issues here are:

 to determine whether John’s work can be eligible for copyright under Nigerian law.

Now, under Section 1(1) of the copyrights act 1999. As amended, it lists categories of works that are eligible for copyright. And under these categories is mentioned ‘SOUND RECORDINGS’. Now although john’s intention was for the work to be a literary work, he was not able to fix his work into that medium. He had however recorded it in audio format on his phone, which has put it under the category of ‘SOUND RECORDINGS’. This means that John’s work has passed the first criteria which is, that the work must first be eligible for copyright by falling under one of the numerous categories that are protected by law in Nigeria. And representing his work in an audio format, has made his work eligible as seen in the case of *C.B.S SONGS LTD & ORS V ARMSTRAD CONSUMER ELECTRONICS PLC*.

It has been stated above that John’s work falls under the Category of ‘SOUND RECORDING’, it has also met the requirement of being fixed in a definite medium which is the audio file (SECTION 1(2)(b) OF COPYRIGHT ACT). In terms of the originality of the work, it is made known to us that his work is based off the same storyline/plot of ‘Purple Hibiscus’. However, if his work shows sufficient effort and skill, time and judgement, it will be considered to meet the criteria for originality. As many works have inspirations from other people’s works. The main thing is not to copy the other persons’ work word for word.

Now, generally for one to have copyright in a work in Nigeria, the must be some connection between the author and Nigeria. John however being a ghananian citizen, who studies in Nigeria, doesn’t qualify him under domicile as he doesn’t permanently live here. And as regards publication, he would have copyright if it was published in Nigeria. But seeing that the work had not been put out to the public yet, he doesn’t fit this criterion.

Now as regards international treaty, Ghana and Nigeria are parties to various international treaties and organizations regarding intellectual property such as *WORLD INTELECTUAL PROPERTY ORGANIZATION (WIPO).* They are also party to the *MARRAKESH TREATY.* And according to *Section 5(1) of the Copyright Act*, works made by someone who is a citizen/domiciled in a country who is a party to an international treaty that Nigeria is also a party to, is eligible for copyright as in the case of *FRANCIS, DAY & HUNTER V FELDMAN & CO.* This means that Johns work shall be eligible for copyright based on the fact that his country is a party to several treaties which Nigeria is also party to.

My advice to John therefore is, that his work is eligible for copyright has it met all the criteria stated above. And as such he can bring an action against Ope in court for infringing on his rights over his work under *SECTION 7 OF THE COPYRIGHT ACT.*