**NAME: ADEYEMI .J. TOLULOPE**

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Answer

The legal issues present here are whether:

1. Whether John’s recording is protected by copyright in Nigeria
2. Whether Ope infringed on his copyright by publishing the novel

Copyright is the right which subsists in various works such as literary works, artistic works, musical works, films and broadcasts. According to **Section 51, Copyright Act 2004, Copyright** means copyright under this Act. This means copyright claim must be within the provisions of the act.

For a work to have copyright claim, it must be within the 6 categories of work protected by copyright i.e. literary work, artistic work, musical work, cinematograph film, sound recording and broadcast. Sound recording is defined in the act under **Section 51**.

For a work to be qualified as copyright work protected by Nigerian law, it must qualify certain criteria: **Section 5(2) CA**

1. Originality: This is the most important qualification. Originality does not necessarily mean newness, novelty or a result of inventive thought. Sufficient time, effort, skill and money must have been expended into the work by the author and not be a copy of another’s work for it to be original. The works will qualify irrespective of its quality. A work inspired by an already existing work shall be deemed original, if it is not a verbatim copying of the pre-existing work.
2. Fixation: A work shall not be eligible for protection unless it is fixed in a definite medium of expression which is capable of being reproduced, communicated, etc. Copyright protects the expression of an idea and not the idea itself. We have the case of  **Anikulapo Kuti v Iseli & Ors.**
3. Qualifying Author: For a work to qualify for protection in Nigeria there must be a connection between the author(s) and Nigeria. This could be by:

* Reference to his nationality/domicile: The author must a citizen of Nigeria by birth, naturalization or registration or Nigeria should be his domicile i.e. permanent home.
* Country of origin of the work: refers to place of first publication. A work is published if it has been made available in a manner sufficient enough to make it accessible to the public.
* Government works: Works made by or under the direction of Government or prescribed international body shall be deemed eligible.
* International agreement: Works which are made by authors who are nationals or domiciled in a member state to a treaty or union that Nigeria also belongs to shall be eligible. This is because of national treatment and fulfilment of obligations under the international Treaty. If question arises as to whether a country is a member state, a certificate from NCC shall be conclusive proof. - **S. 5(2)**.

The owner of a work is granted economic rights which include the exclusive rights of reproduction, publication, performance, etc. Any person whose does any of the acts listed under **Sections 6, 7, 8**, without the authorisation of the Copyright owner shall be said to be infringing.

Applying these rules to the case scenario given, John’s work is eligible for copyright being a sound recording. It is also eligible because it satisfied originality, fixation and he is a qualified author by virtue of international agreements. Therefore, I resolve the first issue in the affirmative; John’s work is protected.

Since John’s work has copyright protection, Ope infringed on his work by carrying out an act exclusive to John i.e. by publishing the work without his consent. I answer the second issue in the Affirmative.

In conclusion, I advise John to bring an action against Ope for infringement in the Federal High Court and get a certificate of Ghana and Nigeria’s membership in the Berne convention which gives him protection and eligibility.