EGHE-ABE OGHOSA AGNES

16/LAW01/067

400 LEVEL

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

The legal issue in the case scenario presented is whether John has copyright in the work. **Section 1(1)** of the Copyright Act 1988 (as amended) lists literary works as one of the 6 categories of copyright. **Section 51(1)** further states the type of works that are literary works and this includes novels, stories and poetic works; irrespective of literary quality.

Davey LJ further defined literary work in **Hollinrake v Truswell** [1894] as work attempting to offer information, instruction or pleasure for literary enjoyment.

There are certain requirements which must be met in order for a literary work to be eligible for copyright protection and they are:

1. **Originality:**

This is contained in **section 1(2)(a)** of the Copyright Act and it states that sufficient effort must be expended on making the work to give it an original character. In other words, the work does not have to be new but must be a result of effort, creativity, time and labour by the author and the work must not have been copied from someone else.

It should be noted at this point that copyright protects the *expression of the idea and not the idea itself* and so as far as an author did not copy previously existing work verbatim but merely got inspiration from it, it will satisfy the requirement of originality if sufficient effort was expended.

Therefore, since John was only inspired by Chimamanda’s Purple Hibiscus and did not copy it verbatim but merely made an expression of his idea based on an already existing one, he has satisfied the requirement of originality and will be granted copyright.

1. **Fixation:**

**Section 1(2)(b)** further states that the work must be fixed in any definite medium of expression from which it can be perceived, reproduced or otherwise communicated to others. In the case of ***Anikulapo Kuti & Ors v. T.M Iseli & Ors*** the court illustrated that as far as the work has been fixed in a definite medium such as a voice recording, it will satisfy the requirement of fixation.

John recorded his work and based on the case cited above, a voice recording will suffice to satisfy the requirement of fixation and as such, will grant him copyright.

1. **Qualification of the author:**

Before a person can qualify for copyright protection under Nigerian law, there must be some connection between the author and Nigeria. This could be in respect of the nationality or domicile of the author, place of first publication, government works and by virtue of international agreements.

**Section 5** states that a citizen of a country which is signatory to the Organisation of African Unity will have copyright of the work. It should be noted that Ghana of which John is a citizen, is a signatory to the Organisation of African Unity and as such, John has copyright of his work.

**Section 6(1)(ii)** grants the author sole right to publish the work and this right has been infringed upon by Ope who published it without his permission. **Section 51(2)(a)** states that a work shall be deemed to be published when copies of it have been made available in a manner sufficient to render the work accessible to the public.

 John can therefore sue Ope on the grounds of infringement of his copyright as it has been stated already that John’s work satisfies the 3 requirements for copyright protection.