

NAME: AGORUA JOY NWABATA

MATRIC NO: 16 /LAW01 /019

INTELLECTUAL PROPERTY TEST

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 deduced from the above pose are as follows:

- . Whether John who is a foreigner can have a Copyright in Nigeria.
- . Whether John fulfills the requirements to be granted copyright protection.
- . Whether John has the right to sue Ope for copyright infringement.

Copyright is a branch of IP which gives the owner exclusive right to authorize or prohibit certain uses of his work.

The legal issues will now be addressed seratim;

WHETHER JOHN WHO IS A FOREIGNER CAN HAVE A COPYRIGHT IN NIGERIA.

This is a question which is answered by the third requirement for copyright protection. Which is whether John is qualified to be called an author and this is answered in the affirmative. John is qualified to be an author because he has a connection with Nigeria and this is in relation with his domicile. He is physically present in Nigeria by virtue of the fact that he schools in ABUAD, which is a university in Nigeria and it is his fixed home. So yes, John has a right to copyright protection in this regard.

WHETHER JOHN FULFILLS THE REQUIREMENTS TO BE GRANTED COPYRIGHT PROTECTION.

The requirements are Originality, Fixation and Qualification of the author. He fulfills the requirement of originality because the pose states that he drew inspiration from the novel to write his own story with

similar plot/ storyline. Mind you, originality does not mean newness but when sufficient effort has been put in to give an original character Sec 1 (2)(a) Copyright Act. And although he used the same storyline he did not copy the story exactly. So yes the work fulfills the condition of originality.

Fixation, means that the work has been fixed in a definite medium of expression from which it can be perceived, reproduced etc. John made a sound recording of his work on his phone which is a definite medium. And the act says copyright is vested in the copyright owner once the work has been fixed in a definite medium of expression. Fixation protects the expression of an idea and not the idea itself, the case of *Yeni Anikulapo Kuti v TM Iseli*. So yes the condition of fixation is fulfilled.

On the condition of qualifying author, it has been answered in the affirmative above.

So in general, John fulfills the requirements which makes him qualified to receive copyright protection in Nigeria.

**WHETHER JOHN HAS THE RIGHT TO SUE OPE FOR COPYRIGHT INFRINGEMENT.**

This is resolved in the affirmative due to the nature of copyright which states that no registration is required. This is because copyright is vested in the copyright owner from the moment the work was fixed in a medium of expression and no formalities are required. And this is further embellished by Article 5(2) Berne Convention which provides that the enjoyment and exercise of this right shall not be subject to any formality.

**ADVICE**

I would advice John to go ahead with his action of infringement against OPE as he fulfills all the conditions necessary to be deemed a Copyright owner and he would be entitled to remuneration for Ope's action.