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COURSE TITLE: INTELLECTUAL PROPERTY

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TEST

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.

answer

This question centers on copyright. Copyright is one of the branch of IP laws that gives the owner exclusive right to authorise or prohibit certain uses of his works by others. It is the right to copy or reproduce. From the question, john wants to reproduce using the same plot/storyline from purple hibiscus. The legal issues for determination is whether John is entitled to copyright protection in Nigeria and if he can sue Ope on the ground of infringement. We have to consider if john had copyright in the first instance.

The requirements for copyright protection are:

1. Originality: section 1(2)(a) this means that the work must have an original character. That is it originated from the author. Section 1(4) states that a work is not ineligible for reason only that the making of the work or the doing of any act in relation to the work involved an infringement of copyright in some other work.

2. Fixation: section 1(2)(b). The work has to have a definite medium of expression, it protects the expression of idea and not the idea itself. See the case of Anikulapo Kuti V Iseli

3. Qualification of the author: this means that there must be a connection between the author and Nigeria. This can be through nationality, when the author is a citizen of Nigeria section 2 of the copy right act. when the origin of the work is from Nigeria ( section 3 of the copyright act. see the case of francis day & hunter v feldman & co. copyright in government work. section 4 and also reference to international agreement.

From the requirements John does not have copyright over his work. This can be explained in the case of Microsoft corp. v Franike associates ltd. His work was a sound recording that was not published. Publication is relevant where the work has not been subject to the nationality or domicile of the author.

I answer the first legal issue in the affirmative. Therefore, John is entitled to copyright protection in Nigeria. The second legal issue is also answered in the affirmative as he can sue ope when he has copyright. He resides in lagos and one has copyright when the work is expressed in a medium