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IP 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

Answers

The legal issue in the above painted scenario is whether foreigner can claim for copyright in under Nigeria’s copyright laws. Generally speaking a foreigner which is not part of the Berne Convention does not have the right to bring up actions under copyright in Nigeria however due to the fact that Ghana is part of this. According to S5 (1) CA copyright granted by virtue of international agreements shall be conferred if

1. On the date of its publication at least one of the authors is at least based in Nigeria, or a body that is a party to an obligation treaty or any other agreement with Nigeria.
2. The first work is published in a country under the above mentioned treaty, or by the UN, ECOWA etc.

S41 CA also provides that where any country is a party to an obligation treaty or any other agreement with Nigeria and the Minister is satisfied with the minister in question, the minister may, by order of the Federal Gazette extent application of copyright to said country.

In the case of Microsoft Corporation v. Franike Associates LTD the court held The application of the said foreign copyright in Nigeria is subject to a reciprocal extension of protection in accordance with section 00 of the Copyright act and in the absence of which this court will not in my view exercise the requisite Jurisdiction over the matter. This is also stated in the case of Societe Bic SA v. Charzin Ind LTD.

S5 (2) CA also provides that for where the question as to whether a country is a party to the previously mentioned treaty depends solely on the NCC

IN CONCLUSION THE FACTS THAT Ghana is part of copyright treaty with Nigeria and the fact that the author was a resident of Nigeria at the time gives him copy right privileges.