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**MATRIC NUMBER: 16/LAW01/115**

**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 issue for determination in the above case scenario is whether john has a claim to his work in Nigeria despite the fact that he is a foreigner, and whether he has the right to sue ope for infringement on his work.

Copyright has been defined by **copinger and skone** as one of the three main branches of intellectual property right that gives the owner the exclusive right to authorise or prohibit certain uses of his work. Under the copy right act, the definition is not very explanatory. Per s.51, copyright has been defined as copy right under the act. However looking into other sections, we can understand better what copyright is about. By virtue of section 6 of the act, copyright is sqid to be the exclusive right to control the doing in Nigeria certain acts in relation to the work. The above case scenario borders on the eligibility of the work and the feasibility of ope’s claim; beig that john cannot hae copyright in his work because he is a foreigner. It should be noted that copyright does not protect ideas, rather the expression of ideas.this is proidedfor in article 9.2 of the TRIPS agreement which states that:

“copyright protection shall extend to expressions and not ideas..”

To determine whether a work will be eligible for copyright, it is important to note that Nigeria as a common law jurisdictive country has closed categories of rights. These hae been narrowed down to 6 as contained in section 1(1) of the act. They are as follows:

* Literary works
* Musical works
* Artistic works
* Cinematograph films
* Sound recordings; and
* broadcasts

once the work in question falls under any of these categories, the next thing to determine is if they fulfil the requirement for copyright protection. The requirement are:

* originality
* fixation and
* qualification of the author

Originality

Section 1(2)(a) proides for this requirement thus:

“A literary, musical or artistic work shall not be eligible for copyright unless sufficient effort has been expended in making the work to give it an original character”

As in the case of University London press v universal tutorial press, where Peterson j discussed the meaning of originality as :

“the originality which is required relztes to the expression of the though,but the act does not require it t be in an origina or noel form, but that the work must not be copied from another work. i.e it should originate from the aiuthor”

Fixation

section 1(“)(b) provides for this requirement thus:

“a literary musical or artistic work shall not be eligible for copyright unless it has ben fixed in a definite medium of expression now known or later to be developed, from which it can be perceived , reproduced or otherwise communicated either directly or with the aid of any machine or deice”

This basically means that copyright shall not subsist in a work until it has been expressed in a definite medium. In the case of yeni anikulapo kui v t.m iseli, the court held that

“the written lyrics by late music maestro fela kuti, as well as tapes containing yet to be published song sufficiently reduced the work into a permanent form which could be perceived within the meaning of this section”

Quaification of the author

This requirement applies to all categories of works. It infers that for a person to be eligible for copyright protection, there has to be a relationship between the author and Nigeria, in respect of either of the following:

* nationality or domicile of the author
* place of first publication
* wors commisiioned by the government
* international agreements

Nationality or Domicile of the Author

Also known as status of the author, this infers that the author must either be a citizen of Nigeria or be domiciled in Nigeria by irtue of secion 2 of the ca. domicile in this sense means a place a person is physically present and regards as home.

Place of First Publication

Section 3 of the act proides that a work first published in Nigeria shall be eligible for copyright. In expatiating what is deemed as copyright, the case of francis, day &hunter fieldman held that actions of sending copies to the british museum, London office, as well as exposure retail departments constituted as publication.

Works commissioned by the gornment

Section 4 proides that works made under the direction of the government, state or prescribed international body shall eligible for copyright.

International Agreements

Section 5 (1) proides that where an author is a citizen or a domicile or makes the first publication in a member state or country of an international agreement of which Nigeria is a party or where the work is foirst publishedis a member state or country of which the Nigeria is a part, UN, OAU, or ECOWAS. Subsection (2) proides that where a question arises as to the certainty of this, a certificate from th commisiio shall be concusie proof to that effect.

As such, in the case Microsoft corporation v Franike Association, microsft sued the respondent seeking a declaration that the respondednt infringed on their copyright and hence restraining the respond from infringing further.the respondent subsequently filed a motion seeking to strike out the suit for lack of jurisdiction purusuant to section 5(2). The court obliged and same was reaffirmed by the court of appeal.

It can be inferred from the principles highlighted above that although john got his idea from the book titled purple hibiscus, his expression of the ideas shall be sufficiently different from the reference point, and the fact that john although a foreigner has fulfilled all the requirements to make his work eligible for copyright control. It should be noted that Ghana is a member of the Berne convention to which Nigeria is also a member, hence he is a citizen according to the principle of national treatment.the principle of national treatment means that if you are a member of any international treaty, any person coming from a member country shall be treated as a citizen. In bringing forth an action against ope, john will successfully do so by virtue of section5 and section 41 of the copyright act.