NAME: AUGUSTINE-D’ISRAEL EHBU

MATRIC NUMBER: 16/LAW01/042

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TEST:

The legal quagmires in this scenario are does the work pass the requirements that need to subsist before Copyright subsists, Whether the novel will be eligible? and is he entitled to Copyright protection in Nigeria considering the fact that he is a foreigner.

The first legal issue would be answered in the affirmative. The novel is eligible for copyright as it met the requirement of originality. In the case of University of London Press v University Tutorial press it was stated that for a work to to be original it must be as a result of the author’s intellectual creation, independent skill labour and judgement of the author. Originality does not necessarily mean novelty, an author does not have to be the first to say something in order to be able to have the first copyright protection. In the case of Yeni Anikulapo Kuti v Iseli Copyright does not protect an idea but the expression of that idea. Also in the case of Ladbroke(football) ltd v William Hill ltd Pearce said that the work original requires only that the work should not be copied but should originate from the author.

The second requirement which is fixation was met, fixation means that the work must be recorded and Copyright protection only arises when the work is complete. In the case of Hadley v Kemp the defendant had completed the writing of the song in his head and they were put into a permanent form , it was held that the song was eligible for copyright. The last requirement which is Qualification of an author. Section 5(2) of the Copyright Act provides that where the question arises as to whether a country is a member state to a treaty to whivh Nigeria is also a party , a certificate fromm NCC to that effect shall be conclusive proof.On the basis of international treaty like Berne Convention and Universal Copyright Convention which Nigeria is a party as Nigeria has a reciprocal duty to protect someone that is a party to the convention.Thus a foreigner can have Copyright protection.

The second legal issue will be answered in the affirmative. Section 1(1)of the Copyright Act provides for the categories of work which can be protected and sound recordings are protectect. Thus publication is not a prerequisite for a work to have Copyright . Once a work has been recorded it can have Copyright protection.

Applying this legal issues and case law, John can sue Ope for infringement despite being a foreigner provided that he is a country has a treaty agreement with Nigeria. Since John has met the requirements that need to be met before his work can be eligible for copyright , he has copyright over that work and according to Skone Jones copyright means the exclusive right which the owner has to authorize or prohibit certain uses of his work. He has the exclusive right of reproduction and right of publication. Thus, Ope infringed on his right of publication by making available to the public his work without his permission and without him assigning, licensing or bequeathing that right to him.

Conclusively,John can file a suit against Ope for infringement of his right of publication.