

Oyekunle Kofoworola Farida

16/law01/186

Intellectual property

The legal issue for determination is

1. Whether it passes the requirement of originality
2. Whether he is entitled to copyright protection in Nigeria as a Ghanaian
3. whether the novel will be eligible for copyright

Copyright is a proprietary right which confers exclusive rights to authorize or prohibit a wide range of activities relating to a qualified subject matter

Section 51 of the copyright act also provides that there can be no copyright claim outside the provision of this act as it provides the categories to fulfil to determine whether the work can qualify for copyright protection.

1. Firstly Originality,

A literary work shall not be eligible for copyright unless sufficient effort has been expended on making the work to give it an original character according to Section 1 (2) (a) of the copyright act however originality doesn't necessarily mean novelty

Originality is defined in the case of *University of London Press v University of Tutorial Press* as work that should not be copied but should originate from the author.

2. Fixation, a literary work shall not be eligible for copyright unless the work has been fixed in any medium of expression, see the case of *Yeni Anikulapo Kuti & Ors v T.M Iseli Ors* the court held that the written lyrics as well as the tapes contained "yet to be published" sufficiently reduced the work to a permanent form from which it can be perceived within the meaning of section 1(2)(b) of the copyright act.

3. Qualifying author

Before a person can qualify for copyright protection under the Nigerian law, there must be some connection between the author and Nigeria, this could be in respect to the Nationality or domicile of the author etc

And section 5 (2) of the copyright act which provides that the question arises to whether a country is a member state to a treaty which Nigeria is also part of.

*Francis Day & Hunter v Feldman & Co*

The Oscar trademark

The first issue is answered in the affirmative as the novel in question passed the test of Originality as he expended sufficient time, effort, skill, judgement and was not copied from another work also originality can be eligible where the idea was derived or inspired from an existing work provided it wasn't copied.

The second issue is answered in the affirmative as a copyright by reference to nationality or "domicile of the author", as a work qualifies if the author is a citizen or is domiciled in Nigeria, seeing as John is a student in Abuja and comes from Ghana which is a member state to treaties Nigeria is part of such as the Benne treaty satisfies this category

The third issue is answered in the affirmative as the novel passed the test of originality and the test of fixation as it was fixed in a medium of expression as provided by section 1 (2) (b) and

through fixation copyright can protect the expression of an idea not necessarily the idea itself copyright need not, John is said to have recorded it on his phone as an audio thereby granting him copyright protection.

In conclusion John can sue Ope for copyright infringement as he passed the test for required for copyright protection including being domiciled in Nigeria making him able to sue despite the fact that he is not Nigerian and also that copyright protects the express of ideas and not the idea itself so the fact that the book was not published doesn't matter.