

The Role of Courts In The Resolution Of Disputes Arising From Copyright Infringement in Nigeria

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Abstract

This paper attempts to discuss the role of Courts in the resolution of disputes arising from copyright infringement in Nigeria. It is an already known fact that crisis is part of human daily life and when it comes, it has to be resolved. In Nigeria, the Federal High Court is constitutionally empowered to entertain matters arising from copyright issues. The paper highlights various acts that constitute infringement and further brings to bear the processes needed to institute proceedings against infringers. Civil and criminal actions against violators are discussed and analyzed. The paper concludes by recommending a deliberate review of the major legal frameworks in copyright matters as some or many of the provisions in the current Copyright Act appear obsolete and inconsistent with the current realities. Having realized the shortcomings of the regular courts in adjudicating copyright matters, the option of adopting ADR is suggested with its attendant advantages over litigation.

Keywords: Disputes, Copyright, courts, Litigation, ADR

Introduction

A dispute is a disagreement between two or more individuals or groups. Legal disputes involve conflicting interests.¹ This simply means that one person has something the other wants and both parties make claim of the entitlement. If both claims cannot be satisfied, then, conflict occurs. Disputes which arise consequent upon the interaction of persons are inevitable in daily lives. This confirms the popular saying that “it takes two to tangle.” When it occurs therefore, it has to be settled.

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¹ Lempert and Sanders, *Law and Society*, Oxford Handbook Online pg. 137.

By way of definition, dispute resolution is the process of resolving conflict between parties. The court is responsible for discharging justice in every legal dispute arising between parties. The relevance of the courts has been emphasized by the jurists and writers to include as part of the functioning tools in governance. A court occupies a very unique position and performs near omnipotent functions, deriving from the role assigned to it in the constitution.² Therefore the court is and remains the creation of the Constitution.³

What is Copyright?

Copyright is one of the branches of intellectual property rights that possesses the essential attributes of ownership and transmissibility.⁴ Copyright generally is protected under the Universal Declaration of Human Rights (from which many modern municipal copyright statutes derive their inspiration) which provides *inter alia* that everyone has the right to the protection of the moral and materials interest resulting from which scientific, literacy or artistic production of which he is the author. This is a conscious international policy appreciating the value of creativity and the desirability of those members of the society who through their genius and sweat have preserved chronicled and perpetuated national development through their literary or intellectual works.⁵

Garner⁶ gave the definition of Copyright to mean an intangible incorporeal right granted by statute to the author or originator of certain literary or artistic productions whereby he is vested for a limited period with the sole and exclusive privilege of multiplying copies of the same, publishing and selling them. As a property right, copyright is a relational right. It is not a right between a person and an object but a right between people with respect to objects.⁷ That is, copyright, like property, is a matter of rights.⁸ The right itself is intangible, even where the object is tangible. Individuals tend to lose track of the distinction between the physical relation between a person and

² 1999 Constitution of the Federal Republic of Nigeria (CFRN).

³ Chapter VII 1999 Constitution of the Federal Republic of Nigeria (CFRN).

⁴ Asein J.O, *Nigerian Copyright Law and Practice*. (2012) 2nd edition, Books and Gavel Ltd, Garki Abuja. p.74.

⁵ Bielu J. K, "A Legal Appraisal of Nigerian Copyright Law and the Author," (2019) 4 (1) *Library Research Journal*

⁶ Garner, B. A. *Black's law dictionary* (2009) 9th Edition. USA: Thomas West Group.

⁷ In the words of Cohen, private property is a relationship among human beings such that the so-called owner can exclude others from certain activities or permit others to engage in those activities and in either case secure the assistance of the law in carrying out his decision.' FS Cohen, "Dialogue on Private Property" (1954) 9 *Rutgers Law Review* 357, 373. See also A Mossoff, "What is Property: Putting the Pieces Back Together" (2003) 45 *Arizona Law Review* 371, 429, n 241.

⁸ See GF Gaus, "Property, Rights and Freedom" (1994) 11 *Social Philosophy and Politics* 209, 211-216.

an object and between the normative - moral or legal - nature of property that determines relationships between persons with respect to things, because the two concepts are frequently conflated in everyday life. This becomes, as Waldron puts it, “our conversational habit.”⁹ In the words of Adegoke,¹⁰ copyright is understood to mean the exclusive right of ownership conferred on the creator of a copyrighted work. It is the right to stop others from exploiting the work without the consent of the owner of the copyright. Intellectual property which is an area that concerns or associated with creative effort or commercial reputation and goodwill is in two major aspects, the first one is the Industrial property which comprises Trademarks, and Patents and Designs, while the second category is the Copyright.

Justification for Copyright

The justification for copyright is not farfetched. The reason is that the system must not be seen to rob Paul to pay Peter. Following the expansion of intellectual property rights, the nature of intellectual property rights protection and its propensity to result in a monopoly, various justifications for the protection of these rights have been propounded.¹¹ Corroborating the position above, Aboki¹² opines that the economic basis of the copyright law is to make sure that people who make inventions secure the pride, reward, encouragement and incentive of their labor. According to the position of Kolawole and Osinachi¹³ the policy objectives of the copyright protection is to protect the creator of the work against infringement, to guarantee commercial exploitation and to stimulate new ideas. Public welfare is however the modern objective of copyright law the world over. This is with the deliberate intent for further production. Olueze,¹⁴ while agreeing with the previous learned authors, added that apart from being a proprietary right, copyright is a means of employment and economic sustenance of the owner. He argued further

⁹ Waldron J, *The Right to Private Property*, (Oxford University Press, 1988), 27-30.

¹⁰ Adegoke, S, *Intellectual Property Rights in Sub Saharan African*’ (2011) at pg 19.

¹¹ Onyeagbako V, “Justifications for Copyright and Patents Protection.” (2020) *Research Gate SSRN Electronic Journal* DOI:10.2139/ssrn.3596193.

¹² Aboki, Y, “Economic and Cultural for Copyright Protection in Nigeria,” (2002) In J. O. Asein, & E. S. Nwauche (Eds.), *A decade of Copyright Law in Nigeria*. Abuja: Nigeria Copyright Commission.

¹³ Kolawole O and Onu K, “Legal Framework for Copyright Protection in Nigeria,” (2020) *BIU Law Journal*.

¹⁴ Olueze I, *Nigerian Copyright Law*, (Maghlink Publishing; 1998) pP.1-5 28 Nwogu. M.I.O, “The Challenges of the Nigerian Copyright Commission in the fight against copyright piracy in Nigeria,” (2010) 2 (5) *Global Journal of Politics and Law Research* 22- 34.

that the creator of a copyright work expended some labor and skills in his creation which is worthy of being protected from those who may like to reap from where they did not sow.

General Nature of Copyright Law

Copyright law is concerned in essence with the negative right of preventing the unauthorized copying of physical material. General Nature of Copyright-according to Section 6 of the Copyright Act,¹⁵ Copyright in work shall be the exclusive right to control the doing in Nigeria, in the case of a literary or musical work, to do and authorize the doing of any of the following acts;

1. Reproduce the work in any material form;
2. Publish the work;
3. Perform the work in public;
4. Produce, reproduce, perform or publish any translation of the work;
5. Make any cinematograph film or a record in respect of the work;
6. Distribute to the general public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan, or similar arrangement;
7. Broadcast or communicate the work to the public by a loudspeaker or any other similar device;
8. Make any adaptation of the work;
9. Do a translation or an adaptation of the work.

Copyright Law in Nigeria

As noted by Onoyeyan and Awe,¹⁶ copyright law was governed in Nigeria by the English Copyright Act 1911 which was made applicable to Nigeria by virtue of an order-in-council under Section 25 of the Act of 1911 of Great Britain. The 1911 Act was applied by Nigeria until 1970 when it was replaced by the Copyright Act of 1970. Babafemi¹⁷ also confirmed this position when he discussed the Law and Practice of Copyright Law in Nigeria. He also began with the historical

¹⁵ Copyright Act Cap. C. 28 LFN 2004.

¹⁶ Onoyeyan G and Awe O, "Role of Librarians in the Protection of Copyright in Nigeria," (2018) 10 (7) *International Journal of Library and Information Science* 71-77.

¹⁷ Babafemi, F, *Intellectual Property: The Law and Practice of Copyright, Trade Marks* (2007).

development of the concept and other related issues. Marret¹⁸ equally dealt with the history and development of the concept of copyright. He dealt with such issues as the nature and duration of rights, such as economic rights, moral rights, creation, ownership and transfer of rights. It should however be noted that Nigeria is also signatory to a number of international conventions. The aim of conventions is to provide that countries give the same protection to the works of the nationals of other countries as they give to their nationals. As agreed by Odunowo,¹⁹ copyright law protects the owner of property rights in literary and artistic works against those who adopt the exact form of words or arrangement employed by the author in the production of his work. In the opinion of Oguamanam²⁰ an attempt was made frantically to outline the features of Nigeria's evolving commitment and involvement with intellectual property law both as the driver and the currency of new knowledge economic order. In view of this, The Nigerian Copyright Commission was inaugurated on 19 August 1989, first as the Nigerian Copyright Council as the regulatory body charged with the responsibility to regulate the protection of the work of invention and creativity in Nigeria.

Nigerian Copyright Commission

In Nigeria, the agency that addresses the issue of copyright is the Nigerian Copyright Commission. The Nigerian Copyright Commission was established under section 34 of the Copyright Act (Cap C28, Laws of the Federation of Nigeria, 2004) on the 19 August 1989, under the nomenclature of Nigerian Copyright Council. The agency was upgraded to a status of Commission in the month of April 1996 and this upgrade could only be confirmed three years later by the Copyright (Amendment) Decree in 1999. As provided in the Copyright Act, the Commission is responsible for all matters affecting copyright in Nigeria as provided for in the Act,²¹ monitor and supervise Nigeria's position in relation to international conventions and advise government thereon; advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and other countries; enlighten and inform the public on matters relating to copyright; maintain an

¹⁸ Marett, P, *Intellectual Property, Copyright, Patent and Trademark*, (1996) Sweet & Maxwell.

¹⁹ Odunowo, T.A, "Nigerian Copyright Law: A Judicial Overview." In J. O. Asein & E. S. Nwauche (Eds.), *A decade of copyright law in Nigeria* (2002) pp54 -65. Abuja: Nigerian Copyright Commission Publishers.

²⁰ Oguamanam, C., "Beyond 'Nollywood' and Piracy: In Search of An Intellectual Property Policy for Nigeria," (2011) *Nigerian Institute of Advanced Legal Studies Journal of Intellectual Property (NJIP)* Maiden Edition.

²¹ Section. 1 Copyright Act Cap C28, Laws of the Federation of Nigeria, 2004.

effective data bank on authors and their works; and be responsible for such other matters as related to copyright in Nigeria as the Minister (who is interpreted as Minister responsible for culture).

Generally, copyright issues are primarily matters that border on intellectual property. This intellectual property may be literary, musical or artistic. As expressed by Adeyemi,²² they are generally conceptualized as “work.” Work, as interpreted under sections of the Copyright Act²³ includes translations, adaptations, new versions or arrangements of preexisting works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character. Under the same section 51, work of joint authorship is interpreted as a work produced by the collaboration of two or more authors in which the contribution of each author is inseparable from the contribution of the other author or authors.

Dispute and Copyright Infringement in Nigeria

Copyright infringement essentially requires the violation of an author's exclusive right through the unauthorized or illegal use of a copyrighted work and this is the cause of dispute in copyright matters. By the provision of the Nigerian Copyright Act²⁴ there are acts that constitute the violation of the exclusive rights of a copyrighted work. Some of them include; the unauthorized making, copying or reproduction, publication, public performance, distribution, broadcast and adaptation of the work.²⁵ The commission of any of these acts without the approval of the right owner constitutes infringement and violation unless such act falls within the scope of the exceptions from copyright control.

Copyright Infringement Examples

Following are some examples of copyright infringement.

- Downloading music or films without paying for their use
- Copying any literary or artistic work without a license or written agreement
- Recording a film in a movie theater
- Posting a video on your company’s website which features copyrighted words or songs

²² Adeyemi I O, “Copyright Issues in Nigeria: Analysis of Nigerian Copyright Commission Cases Between the Years 2008 – 2018,” (2020) 10 (1) *International Journal of Knowledge Content Development & Technology* 71-82.

²³ Sec. 51 Copyright Act Cap C28, Laws of the Federation of Nigeria, 2004.

²⁴ Section 15, Copyright Act Cap C28, Laws of the Federation of Nigeria, 2004.

²⁵ Oyewunmi A.O, *Nigerian Law of Intellectual Property* ((University of Lagos Press and Bookshop Ltd, 2015).

- Using copyrighted images on your company's website
- Modifying an image and then displaying it on your company's website
- Creating merchandise for sale which features copyrights words or images

Nigerian Courts and Dispute resolution

The term 'court' has been defined as a body of people presided over by a Judge, Judges, or magistrate and acting as a tribunal in civil and criminal cases.²⁶ It is a person or body of persons having judicial authority to hear and resolve disputes in civil and criminal matters.

In Nigeria, Section 17(2) (e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) makes provision for the independence, impartiality and integrity of the Courts of law and easy accessibility thereto, while Section 6(1) of the same Constitution provides for the establishment of Courts for the Federation as well as for the Federating units. As noted by Oluwadayisi,²⁷ the court is responsible for discharging justice in every legal dispute arising between parties in any disputes. While this position is true, disputes, arising from copyright issues are inclusive. The Nigerian Legal System is modelled after the English legal system, by virtue of colonization and the reception of English law through the process of legal transplant. English Common Law and legal tradition influenced the development of the Nigerian legal system. As the *grundnorm*, the Constitution of the Federal Republic of Nigeria 1999 (as amended) is the bedrock of the Nigerian Legal system.²⁸

The Nigerian Court has as its role to uphold the principles of rule of law and equality before the law. Equal opportunities are available to litigants for the presentation of their cases. Nigeria practices an adversarial system, where two advocates present the litigants' case or position before an impartial judge or judges, based on applicable laws, the rules of evidence and court procedural laws. The judges determine the truth by placing the evidence on imaginary scales. Nigerian laws ensure free and easy access to courts. A person is empowered by law to approach the courts for the determination of his civil rights and obligations, including any question or determination by or

²⁶ Oxford dictionary of Lexico, available at <https://www.Lexico.com/definition/court> accessed 23 June, 2020.

²⁷ Oluwadayisi A O, "The Role of the Judiciary in the Application of Peace building Theory and Methods to Election Dispute Resolution in Nigeria," (2016) 45 *Journal of Law, Policy and Globalization* www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online).

²⁸ Section 1 of the Constitution of the Federal Republic of Nigeria 1999.

against any government or authority. Such persons are entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.²⁹ A party who elects to approach the court must observe all the rules of commencement of legal proceedings.

The Federal High Court and Copyrights in Nigeria

Primarily, the traditional role of the courts in the interpretation of laws is a time-hallowed duty that underpins the organic function and structure of the State³⁰ and undoubtedly, the judicial powers of the Federal Republic of Nigeria are vested in the courts.³¹ By the provision of the Nigerian Copyright Act,³² The Federal High Court has the exclusive jurisdiction to hear or entertain the trial of offences or disputes arising from copyright matters in Nigeria. Also, and as noted by Tijani,³³ in Section 251(1)(f) of the 1999 Constitution gives exclusive jurisdiction to the Federal High Court “in civil causes and matters arising from any Federal enactment relating to copyright, patent, designs, trademarks and passing-off.”

The section provides thus:

(1) Notwithstanding anything to the contrary contained in this Constitution, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters

(f) (Any Federal enactment relating to copyright, patent, designs, trademarks and passing-off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards.

A similar provision is stated in section 7(1) (f) of the *Federal High Court Act*.⁸ It provides:

²⁹ Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

³⁰ Adewopo A, "Role of the Court in the Interpretation and Development of Intellectual Property Law: The Nigerian Experience," (2015) 6 (1) *The Gravitas Review of Business & Property Law*.

³¹ Sections 6 of 1999 Constitution of Nigeria (as amended).

³² Section 46 of the Copyright Act (Cap C28, Laws of the Federation of Nigeria, 2004).

³³ Nasiru T, “The Jurisdiction of Federal High Court in Actions for Damages for Passing Off” (2005) 3 (2) *Nigerian Bar Journal* 35.

The Court shall have and exercise jurisdiction in civil cases arising from any enactment relating to copyright, patents, designs, trademarks and passing off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards.

Thus, the Federal High Court is conferred with the exclusive jurisdiction to hear and determine causes and matters, whether criminal or civil, relating to intellectual property (IP) rights in Nigeria.

Enforcement of Copyright Law in Nigeria

It is the responsibility of the Court to adjudicate on the disputes, arising from copyright issues, and in spite of the general efforts to protect and solidify intellectual property rights in the country, there is an increase in the infringement of the IP rights of which copyright is one, most especially by corporate entities. Infringement of copyright occurs when a person without the licence or authorization of the copyright owner does or causes any other person to do any of the acts reserved to the copyright owner under the Act. The major issue arising from copyright everywhere in the world is the enforcement of rights arising from violation of rights to copyrighted works. Enforcement is defined as “the act or process of compelling compliance with a law, mandate, command, decree or agreement.”³⁴ In this situation, the Nigerian courts have over the years lived up to expectation in resolving crises arising from copyrights issues. For this to happen, the following legal processes are germane for the court to invoke its constitutional powers of adjudication in copyright matters:

First, there must be a suit at the very instance of a Plaintiff against a person who is seen to have caused any other person to do an act, the doing of which is controlled by copyright in relation to the Plaintiff’s work or creation.³⁵ It must be stated here that it is the responsibility of the Plaintiff to establish the fact that “the work involved is one for which copyright subsists under the Act; that the alleged infringer without his prior consent and authorization, did at least one of those acts reserved for the copyright owner; and that the use made of that portion of the work that was taken

³⁴ Bailey C, “Strong Copyright + DRM + Weak Net Neutrality = Digital Distopia?” (2006) 25(3) *Information Technology & Libraries* 11.

³⁵ Section 39 of the Copyright Act Cap C28, Laws of the Federation of Nigeria, 2004.

is not otherwise excused under the law.”³⁶ The Plaintiff is under legal obligation to justify that he has sufficient interest in the work to institute the suit.

The Roles of the Court and Copyright Issues in Nigeria

By the express provision of the Nigerian Copyright Act,³⁷ the specific way and manner of initiating action against any form of copyright violation is stated. Specifically, it states thus:

Subject to this Act, infringement of copyright shall be actionable at the suit of the owner, assignee or an exclusive licensee of the copyright, as the case may be, in the Federal High Court exercising jurisdiction in that place where the infringement occurred; and in any action for such an infringement, all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

There are both civil and criminal actions for infringement of copyright.³⁸ Therefore, after all the conditions are met, then, the court is adequately empowered to grant the following reliefs as the case may be. Such reliefs are: (i) injunctions (ii) damages (iii) accounts for profit (iv) order for inspection (v) seizure, as well as (v) delivery up of infringing materials,³⁹ (vi) imprisonment (vii) fine or both, in criminal cases.⁴⁰ All of these the Nigerian courts have been performing as a role since the copyright law came into being. Some of them will now be discussed below.

Damages

“Damages” as a legal remedy can be defined as the pecuniary compensation which the law awards to a person for the injury he has sustained by the reason of the act or default of another person. The act or default can be a breach of contract or tort or other wrong another person has done to him or her.⁴¹ The purpose of awarding damages is primarily to ensure the restoration of the injured party as much as possible to the same position as he was or would have been, had the infringement

³⁶ Asein J, *Nigerian Copyright Law & Practice* (2nd edition, Abuja: Books and Gravel Ltd. 2012) p. 280.

³⁷ Section 46 of the Copyright Act (Cap C28, Laws of the Federation of Nigeria, 2004.

³⁸ Kolawole O and Onu K, “Legal Framework for Copyright Protection in Nigeria” available at <http://oer.biu.edu.ng/wp>

content/uploads/2020/02/LEGAL_FRAMEWORK_FOR_COPYRIGHT_PROTECTION_IN_NIGERIA.

³⁹ Section 16(1) of the Copyright Act Cap C28, Laws of the Federation of Nigeria, 2004.

⁴⁰ Section 20 of the Copyright Act Cap C28, Laws of the Federation of Nigeria, 2004.

⁴¹ See *BFN Plc v. A.G Federation*. (2008) 7 NLWR 121 S.C.

not occurred.⁴² A vivid instance of the award of damages in Copyright cases is that between *Onyeka Onwenu & Anor v. iROKING Ltd.*⁴³ In this case, the Plaintiff (Onyeka Onwenu) instituted a copyright infringement claim against the Defendant, seeking the sum of NGN200, 000,000 (Two Hundred Million Naira) as damages. The Defendant, by virtue of a contract, had agreed to distribute and monetize the Plaintiff's works across its online streaming platforms for a period of 24-months. Upon the expiration of the contract, the Defendant inadvertently retained the Plaintiff's works on their platform for an additional 12 months, without the Plaintiff's consent. The Court in its judgment agreed with the submissions of the Plaintiff and consequently awarded damages in the sum of NGN500, 000.00 (Five Hundred Thousand Naira). In addition, in the case of *T.V. Extra Production v National Universities Commission (NUC) & Airtel (previously Zain Nigerian Limited)*, as reported by Aniche & Umeh,⁴⁴ on the 7th May, 2020, the court awarded damages of Seven Hundred and Three Million Naira against the defendants for their unlawful use of the plaintiff's work which they aired on African Independent Television and Nigerian Television Authority respectively.⁴⁵

Injunction

Generally speaking, an injunction is granted by the Court to prevent a person from doing or continuing to do a wrong. Injunction appears to be the most commonly sought remedy. The operation of injunction illustrates the equitable maxim, equity acts *in personam*.⁴⁶ The overriding purpose of injunctive relief is to ensure that IPR infringements cease as soon as possible.⁴⁷ It is an equitable order of the court restraining the commission or continuance of a wrongful act. Once this order is made, the Respondent shall be liable in contempt if he deliberately disobeys the order of Court.⁴⁸ One major injunctive role the Nigerian court has played over time on the issue copyright

⁴² *General Tire & Rubber Co. v Firestone Tyre & Rubber Co. Ltd.* [1975] 1 WLR p.819.

⁴³ FHC/L/CS/1486/2017: *Onyeka Onwenu (MFR) & Anor. v. iROKING Limited*. Judgement delivered by Hon. Justice Aneke on January 16, 2020.

⁴⁴ Aniche, C and Umeh, S, "The Impediments Facing the Court in Copyright Enforcement in Nigeria," (2020) *AJCAL*.

⁴⁵ *T.V. Extra Production v National Universities Commission (NUC) & Airtel (previously Zain Nigeria Limited)*, Suit No. FHC/ABJ/CS/680/2008 available at <http://nlipw.com>.

⁴⁶ *Nassar v. Moses* (1960) LLR 170.

⁴⁷ European Observatory on Counterfeiting and Piracy. "Injunctions in Intellectual Property Rights" at <https://euipo.europa.eu/ohimportal/documents/11370/80606/Injunctions+in+Intellectual+Property+rights>.

⁴⁸ *Seaward v Paterson* [1897] 1 Ch. P.545.

is the one served on Omoli Oboli, over her film titled “Okafor’s Law.”⁴⁹ After months of preparation and publicity, the actress was served a court injunction instituted by a Canada-based writer, Jude Idada at 5pm just an hour before the premiere, because of a lawsuit filed by a third party over allegations that she infringed on a writer’s intellectual property. Jude Idada accused Omoni of stealing his story and idea for her new movie, Okafor’s Law, in September 2016. The court may also issue a perpetual injunction against the defendant at the end of the case.

Delivery up of Possession

By the provision of the Copyright Act,⁵⁰ it is required that:

All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates, master tapes, machines, equipment or contrivances used, or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner, assignee or exclusive licensee, as the case may be, of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

The provision of the Act above is in tandem with the recently invoked decision of the court in *N.C.C. v. Okojie*⁵¹ and *N.C.C. v. Chekwesiri*.⁵²

Imprisonment

Despite the fact that monetary compensation is more prevalent as a preference in copyright issues, it is more effective to apply criminal sanctions. By the provision of the Act⁵³ if the infringer is found guilty after arraignment, he will face imprisonment, fine, or both imprisonment and fine. In

⁴⁹ <https://www.premiumtimesng.com/entertainment/nollywood/227118-court-injunction-halts-omoni-obolis-movie-screening.html>.

⁵⁰ Section 18 of the Copyright Act (Cap C28, Laws of the Federation of Nigeria, 2004).

⁵¹ (Unreported Suit No. FHC/1/429c /2013, judgment delivered on 29th Jan., 2018, by Musa Haruna Kurya, J. at Federal High Court, Abuja Division).

⁵² (Unreported Suit No.FHC/L/409c /2015, judgment delivered on 31st March, 2017, by Buba, J. at Federal High Court.

⁵³ Section 20 of the Copyright Act (Cap C28, Laws of the Federation of Nigeria, 2004).

the cases between *N.C.C. v. Okechukwu*⁵⁴ and *N.C.C. v. Kalu*,⁵⁵ the court convicted the infringers of copyrights (pirates).

Alternative Dispute Resolution (ADR) and Copyright Issues in Nigeria

Alternative Dispute Resolution (ADR) is fast becoming a bride as a means of settling disputes outside of the courtroom. It refers to the different ways people can resolve disputes without a trial. Common ADR processes include mediation, arbitration, and neutral evaluation. These processes are generally confidential, less formal, and less stressful than traditional court proceedings.

Mediation and Arbitration for Copyright Disputes in Nigeria: NCC-WIPO Collaboration

A framework for collaboration between the Nigerian Copyright Commission (NCC) and the World Intellectual Property Organization (WIPO) has been established upon the signing of a Memorandum of Understanding (MOU) in December 2020. Under the MOU, NCC and the WIPO Arbitration and Mediation Center collaborate to raise awareness of alternative dispute resolution (ADR) options to court litigation to resolve copyright disputes in Nigeria. To this end, World Intellectual Property Organization (WIPO) has been reported to have arbitrated up to 136 cases in 2017, to 155 in 2018, 178 in 2019 and 182 in 2020.⁵⁶

Federal High Court ADR Intervention in Copyright Dispute Settlement

By the expression of section 17 of the Federal High Court Act, it is provided that: “In any proceedings in the court, the court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.” This singular provision therefore confers on the Federal High Court, the power to facilitate amicable resolution of disputes. Issues relating to copyright and allied subjects are not an exception.

⁵⁴ (Unreported Suit No. ABJ/CR/56/2012, judgment delivered on 23rd Oct., 2012, by Kafarati, J. at Federal High Court.

⁵⁵ (Unreported Suit No. FHC/ABJ/CR/12/2012, judgment delivered on 28th March, 2012, by Adamu Bello, J. at Federal High Court, Abuja Division).

⁵⁶WIPO Caseload Summary, <https://www.wipo.int/amc/en/center/caseload.html> accessed 17 March 2021.

Similarly, Lagos State High Court Laws in 2003 state the position of the court in settling disputes outside the courtroom. Section 24 states “In any action, the court may promote reconciliation among the parties thereto, encourage and facilitate the amicable settlement thereof.” This simply indicates that these courts have the enabling powers to direct litigants to approach the option of Alternative Dispute Resolution mechanism and then approach the court for the outcome.

Conclusion and Recommendations

It has been pointed out that human interaction is an illusion without frictions which may snowball into legal issues. Matters that pertain to copyrights infringements are no exceptions. Courts have been seen and known to be institutions where disputes are heard and settled. In copyright matters, the main issue of contention is infringement of copyright which may either fall within civil or criminal actions. Nigerian courts have been up and doing in discharging their constitutional role of adjudication.

This however is not without some challenges in terms of the legislative strength or capacity. For instance, some provisions of the Act appear obsolete and fall short of meeting up to the current global and economic reality. A vivid example is the provision for the penalties for making false entries in section 23 of the Nigerian Copyright Act, 2004. It is submitted that the fine of not exceeding N10, 000 appears meagre and not grievous enough to command the required respect not to violate the provision of the law. Similarly, the provision of the Act on criminal liability in section 20 of the Act is also weak. 5 years of imprisonment or a fine of an amount not exceeding N1,000 cannot prevent violators from infringement. All these become important because of the potentials of a strong copyright law to strengthen the national economy and developmental goals.

Therefore, as the nation develops leading to growth of all aspects of the national economy, it is necessary to also encourage stakeholders to embrace the ADR process either as a mandatory first step or as complementary measures in resolving disputes. If well managed, ADR would be a cheaper, more efficient route to resolving disputes so as to engender cordiality and the sustainable management of the fragile business ecosystem we find in the creative industry.