

TERM PAPER

APPRAISAL OF SPREEVISION LTD & Anor. v Nestle Nigeria Plc & Ors (Suit No.: FHC/IKJ/CS/183/2012, unreported ruling of 10 September 2013 per Yinusa J)

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INTRODUCTION:

This term paper discusses the case of *Spreevision Ltd & Anor v Nestle Nigeria plc* in connection with what constitutes an artistic work as outlined in *S2(6) of the Copyright Act 2022 or S1(3) of the Copyright Act 1988*. It explores the challenges in enforcing copyright, understanding artistic works, and determining intent of use in intellectual property law.

ISSUES

- Whether the plaintiffs intended for their work to be used as a model or pattern to be multiplied by industrial process.
- Whether the plaintiffs could enforce the copyright in their concept for the development of the digital kiosk pavilion as an artistic work.

FACTS OF THE CASE

In this case, the plaintiffs claimed that they built a concept for the development of a digital kiosk pavilion, which they stored in a compact disk and flash drive and sent to the defendants. The plaintiffs also alleged that the defendants further asked them to build the kiosk for demonstration based on the concept they created for inspection, which they did. According to the plaintiffs, they received no further communication from the defendants but later found out that the defendants had gone ahead to develop the kiosk and displayed it on the premises of the University of Lagos and the University of Ibadan.

Upon the discovery of this fact, the plaintiffs sought to enforce the copyright in their concept for the development of the digital kiosk pavilion as an artistic work through this suit. The defendants, in response to the suit, filed a motion of preliminary objection to the suit on the ground that the plaintiffs possessed no copyright on the subject matter. The defendants claimed that the plaintiffs had admitted in paragraphs 7, 8 and 14 of their statement of claim that the subject matter of the suit was intended to be used as a model or pattern to be multiplied by industrial process. The defendants went on to support their argument with the provision of *S1(3) of the Copyright Act (1988)*, which states that:

“an artistic work is ineligible for copyright protection, if at the time of its creation, it is intended by the creator to be used as a model or pattern to be multiplied by any industrial process.”

COURT JUDGEMENT

The court upheld the defendants' objection and in doing so commented on the subsistence of copyright under section 1(2) as follows,

"recognition of copyright is premised on some sufficient effort having been expended on the work to give it an original character [...] for a work to be eligible for copyright protection, it must be original. The essence of originality is that the author of the work must have devoted skill and labor to its creation. (p10-11)."

Although the court confirmed that the subject matter of the suit is an artistic work, it did not rule on the defendants' argument highlighted above which was the basis of their objection. Instead, the court upheld the defendants' objection on another ground. According to the court:

"the plaintiffs were unable to establish that they independently created the work or that they have obtained a license [...] of the original owner before importing into Nigeria a copy of the work. Without such consent [...] it would amount to a reproduction which in itself is an infringement [...]. The Plaintiffs are under a duty to show sufficient effort in the work, the subject matter of the action to demonstrate that they have given the work an original character thereby being the creator of the copyright. (p11-12)."

CONCLUSION

It is evident that the plaintiffs were in no position to enforce the copyright for their concept for the development of the digital kiosk as an artistic work, as they had already admitted in their statement of claim that the concept was to be used as a model to be multiplied by industrial process, which made it ineligible for protection under Copyright laws of Nigeria. Also, the court, in giving its judgment, deviated from the main issue of the case, which was whether the plaintiffs intended for their work to be used as a model or pattern to be multiplied by industrial process, as rightly argued by the defendants, weakened the foundation of the judgment.

REFERENCES

- Oriakhogba, O. (2018). "The Scope and Standard of Originality and Fixation in Nigerian and South African Copyright Law." *Journal of Intellectual Property*, 2(2), 119-135.