

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
ON WEDNESDAY THE 21ST DAY OF SEPTEMBER, 2022
BEFORE HIS LORDSHIP HON. JUSTICE O. O. OGUNTOYINBO
JUDGE

SUIT NO. FHC/L/CS/1303/2015

BETWEEN:
ADEWOLE OJO

AND

AIRTEL NETWORKS LIMITED

- PLAINTIFF

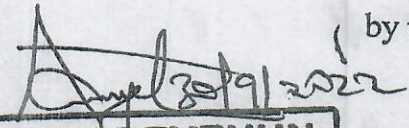
- DEFENDANT

JUDGMENT ORDER

UPON THIS WRIT OF SUMMONS dated 20th day of November, 2015 coming before the Honourable Court today the 21st day of September, 2022 for Judgment.

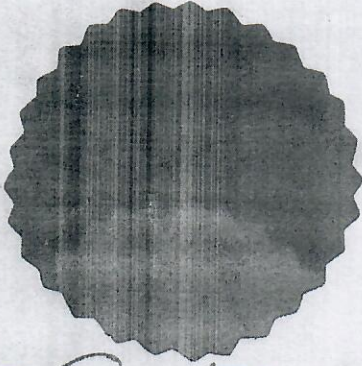
AND Simeon Njoku Esq., (holding the brief of Olumide Babalola Esq.) of Counsel for the Plaintiff and Idowu Olowu Esq., for the Defendant being present in Court.

THE COURT having delivered its Judgment today the 21st day of September, 2022 granting the reliefs sought by the Plaintiff.


A. O. ADEYEHUN
CERTIFIED TRUE COPY
CHIEF EXECUTIVE OFFICER
FEDERAL HIGH COURT LAGOS

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the Defendant's use of the Plaintiff's pictures and images constitute an infringement on the Plaintiff's copyright as protected by the Copyright Act, LFN 2004.



O. O. Oguntoyinbo
HON. JUSTICE O. O. OGUNTOYINBO

2. That the Defendant, their agents representatives, assigns, officers are hereby restrained from further using, violating and/or further violating the Plaintiff's images and/or pictures and the Plaintiff's copyrights therein without the Plaintiff's consent and/or authority.
3. That the sum of Twenty Million Naira (N20,000,000) is awarded in favour of the Plaintiff being general damages for infringement of the Plaintiff's copyrights by the Defendant.

ISSUED AT Lagos, Under the Seal of the Court by the Hand of the Presiding Judge this 21st day of September, 2022.

Angel 20/9/2022

A. O. ADEYEHUN
CERTIFIED TRUE COPY
CHIEF EXECUTIVE OFFICER
FEDERAL HIGH COURT LAGOS

[Signature]
F. O. OBALAJA.
Registrar

Regier,
pls collect from
HACO. *sa fv*
ccc *Angel*
30/9/2022

FEDERAL HIGH COURT
Lagos
Date *30/9/2022*

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30/9/2022

IN THE FEDERAL HIGH COURT OF NIGERIA
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SUIT NO. FHC/L/ CS/1303/2015

BETWEEN:

ADEWOLE OJO

- PLAINTIFF

AND

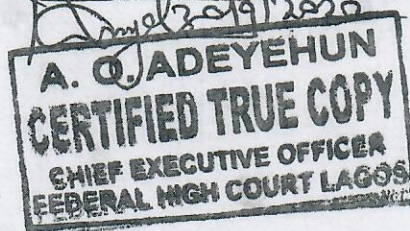
AIRTEL NETWORKS LIMITED

- DEFENDANT

JUDGMENT

By a Writ of Summons dated 20th November, 2016, the Plaintiff commenced this action and claims the following reliefs:

1. **A declaration that the defendant's use of the plaintiff's pictures and images constitutes an infringement on the plaintiff's copyright as protected by the copyright Act, LFN 2004.**
2. **A perpetual injunction restraining the defendant, their agents representatives, assigns, officers from using further using violating and/or further violating the plaintiff's images and/or pictures and the plaintiff's copyrights therein without the plaintiff consent and/or authority.**



3. The sum of One Hundred Million Naira (₦100,000,000) being general damages for infringement of the plaintiff's copyrights by the defendant.
4. Cost of this action valued at One Million Naira (₦1,000,000.00)

The Writ was accompanied by a Statement of Claim, Statement on Oath and List of documents to be relied upon.

At the commencement of trial; plaintiff gave his testimony as follows:

He is a film maker, a show business personality and primarily an actor, he adopted his Witness Statement on Oath dated 20th November, 2015 and urged the court to grant his claims. He also tendered the following documents.

Four photographs marked as Exhibit 'AD 1 –AD 4'

Letter dated 10th July, 2015 marked as Exhibit 'AD5'.

Letter of demand marked as Exhibit 'AD6'

On cross-examination, he stated that he discovered that the Defendant used his pictures for advert around April, 2015 i.e. from December, 2014 till April, 2015 when he was nominated for actor for the year and when the award was held.

A. O. Abeyehun
A. O. ABEYEHUN
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CHIEF EXECUTIVE OFFICER
FEDERAL HIGH COURT LAGOS

Exhibit 'AD1 – AD4' was shot in 2013. The agreement was to have an MNP (Mobile No Portability) advert for 1 year. The campaign was for a year. In 2014, he discovered a new campaign of a Service Centre for Airtel. The Defendant used his image from a previous contract for the Service Centre in 2014.

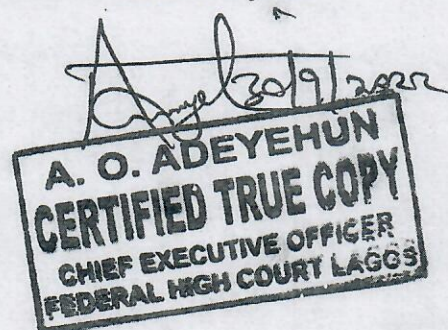
That companies use agents when hiring for model, actors. The Defendant used Prima Garnet as its agent.

He had a contract with Prima Garnet for the Defendant, PW1 identified the contract of agreement shown to him by Defendant's Counsel and same was tendered as Exhibit 'AD7'.

The duration of the contract is a year wherein he is exclusive to Airtel (the defendant)

PW1 stated that his exclusivity to the defendant is not in perpetuity. The Defendant has on previous campaigns used his pictures but he refused to take it up based on existing relationship.

In Exhibit AD7, paras 3(e) of the contract stipulates a duration of 1 year.



He stated further that by Exhibit AD7, the Defendant has the right to use the particular image that was shot for the advertisement exclusively, but however liable to pay him yearly for the agreed campaign i.e. Airtel MNP and not other campaigns.

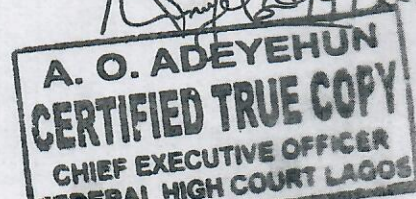
He was informed by a 3rd party that he had been put on consideration list with other telecommunications company for a large sum of money. There is no document in prove of this, as there are no documents for initial contact and negotiation.

Exhibits AD1 – AD4 are some of the images the Plaintiff is basing his claims on.

He did not claim that he earns close to One Hundred Million Naira (₦100,000,000)

He stated that at the time the pictures were used by the Defendant, he had just been nominated for the AMVCA viewer's choice award and many companies were acquiring celebrities as ambassadors.

The amount speculated could either be more or less depending on bargaining power. There is a Certificate of Nomination in prove of the nomination. It is also over the internet. There was no offer letter from STB macan.



While a photoshoot is a production process for capturing images, his brand is what he represents, his work, art and influencer capability.

The Defendant called its witness Joachim Okere who sworn on the Holy Bible, he adopted his Written Statement on Oath and gave evidence thus:

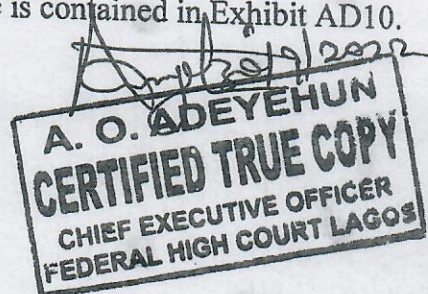
He tendered the following documents having laid the proper foundation.

Contract dated 22 nd April, 2013	-	Exhibit AD8
Plaintiff's Letter dated 10 th August, 2015	-	Exhibit AD9
Defendant's Letter dated 24 th April, 2015	-	Exhibit AD10

He prayed the court to dismiss the case with substantial cost. On cross-examination he stated that

He stated that he is not aware of any contract between the Plaintiff and the Defendant. Exhibit AD7 (para 1 A – F) is the evidence before the Court that the copyright in dispute does not reside with the Plaintiff.

He did not get permission from Prima Garnet that they were allowed to use the Plaintiff's image in perpetuity even after the contract between the Plaintiff and Prima Garnet had expired. His name and signature is contained in Exhibit AD10.



Plaintiff's Counsel referred DW1 to para 3 of the witness statement on oath where he stated that the Defendant never used images or copyright of the Plaintiff to advertise its products as the Defendant is not an advertising agency but in Exhibit AD10 paras 3 he (DW1) stated that Defendant's place advert only through Prima Garnet and that the Defendant used the Plaintiff's image on (MNP) advert.

When asked if he stills maintain that the Defendant never used the Plaintiff's images or copyright at any time he replied that they never did.

On re-examination: DW1 stated that Prima Garnet was an independent contractor for Airtel adverts.

In the Defendant's Written Address filed on the 1st of March, 2021, five issues were distilled for determination:

1. Whether there exist any privity of contract between the Plaintiff and the Defendant in this suit.
2. Whether the Plaintiff still has any copyright claim to any of his images and/or photographs (admitted in exhibit) taken during and pursuant to and in performance of his contractual obligations in the agreement/contract with Prima-Garnet Advertising Limited which contract is admitted in this proceedings as Exhibit AD7

A. O. Adeyehu
20/9/2022
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General Muhammadu Buhari & Anor. Vs. Alhaji Dikko Yusuf & Anor. (2003)

14 NWLR (pt. 841) pg. 446 at pp 474 – 475 Ratio 10 & 11,

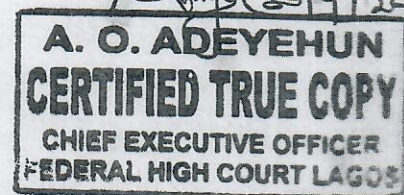
He urged the court to dismiss the case with substantial cost.

The facts building up to this case as contained in the Statement of Claim of the Plaintiff as well as the statement of defence are largely similar, reference is therefore made to the said processes. Having said this, I have carefully gone through the process of both parties in this case, the evidence of witnesses on trial as well as the profound and sound submissions of Counsel in their Written Address.

From the facts available before this court, I am of the view that there are just three issues to be resolved by this court.

1. Whether the plaintiff can claim ownership of copyright to the images before the court
2. Whether the defendant has infringed on the copyright of the plaintiff
3. Whether the plaintiff is entitled to the damages sought

These questions are interlinked and will therefore be resolved *seriatim*

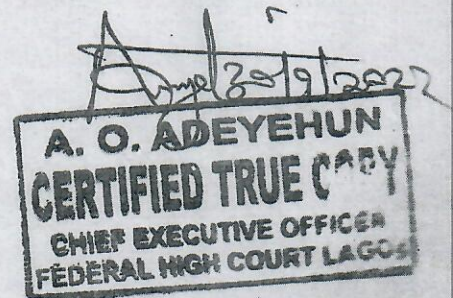


Generally, and this is elementary, the burden of proof in civil cases lies on the Plaintiff to prove what he asserts. This is an obligation placed upon him by law to present evidence in proof of the fact(s) in issue. The burden of establishing facts upon which legal rights and liability depends in accordance with *Section 131 – 132 of the Evidence Act 2011* on he who asserts such facts.

It is therefore without any iota of doubt that the burden is on the Plaintiff in this case. It is when this burden is proved by the said Plaintiff that it shifts to the Defendant and it keeps on swinging until it rests on the party against whom judgment would be given if no more evidence is adduced.

Onobruchere V. Esegine (1986) 1 NWLR (Pt.19) 799

Marine Global Services Ltd V. Southern Ijaw Local Government Council (2018) LPELR – 44175 (CA). Therefore, the Plaintiff has the onus of proving his case on the balance or probabilities. This is because in civil cases, the standard of proof is on the balance of probabilities or preponderance of evidence. *Section 134 of the Evidence Act 2011*. The onus is therefore incumbent on the Plaintiff to prove what he asserts, with good and credible evidence to discharge the burden of proof placed on him by law. *UBN Plc V. Onuorah & Ors (2007) LPELR-11845 (CA)*



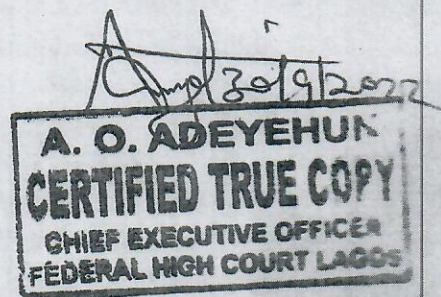
After parties have presented their case before the court. It is the duty of the court to place such pieces of evidence on either side of the imaginary scale and see what side the balance tilts.

Fagbenro V. Arobadi (2006) & NWLR Pt.978 by 174.

Nnadi & Anor V. Odika & Ors (2017) LPELR – 43448 (CA)

In doing this, the court is enjoined to look at the Statement of Claim, the Affidavit in Support and the Evidence of Witness(es) at trial. I have earlier stated that standard of proof in civil cases is on the preponderance of evidence, thus the judgment is usually tilted to the side whose evidence weighs more. The Plaintiff in proving his case should rely on his own strength and not on the weakness of the Defendants.

In coming to a just determination of this case, Exhibit A7 is important to this suit. I have looked at the content of the said exhibits vis a vis the evidence of PW1 and DW1 at trial. Before delving into this, it is instructive at this point to define what copyright and ownership entails. Section 6 of the Copyright Act provides for the general nature of copyright while section 10 talks about first ownership of copyright in a work and section 11 states that copyright can be assigned subject to certain circumstances.

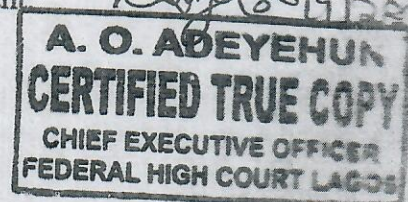


By the contract of agreement before the court, which is between the Plaintiff and Prime Garnet Ltd, the Plaintiff's pictures is exclusive for the use of the Defendant for a period of one year for its services, the Airtel MNP (Mobile No Portability). This was not disputed by the Defendant, although it was stated that by the contents of the contract, the Plaintiff's work can be used in perpetuity, what this means is that the terms of the said contract are conflicting.

To resolve this, it is noted that the Plaintiff's fee for that year was paid and was even approached to renew same for the benefit of the Defendant but he declined as he could not agree on the amount offered. This fact was not also controverted by the Defendant. The import of this is that the said images are to be used in perpetuity subject to the payment of the Plaintiff's fees.

Consequently, when agent/defendant failed to renew the contract by paying the Plaintiff, the contract ceases to exist. The Defendant cannot use the images not only for the Airtel MNP services but for any other services at all. Use of same will be deemed as an infringement on the Plaintiff's copyright.

To further reiterate this, as at 2015 when the Defendant used the Plaintiff's images, there was no contract at all in existence for the Defendant to have relied on in using the Plaintiff's picture. The contract was not renewed, howbeit the picture were made exclusively for the use of the Defendant.



Having therefore admitted that it used the Plaintiff's images subject to the contract between its independent contractor, Prima Garnet Ltd and the Plaintiff, the Defendant is deemed to have used the images without permission and thus infringed on the copyright of the Plaintiff.

Issues 1 and 2 are hereby resolved in favour of the Plaintiff.

In support of his claim for damages, Plaintiff stated that the Defendant's use of his pictures has blocked his chances of working with other giant telecommunications company; he has featured in many movies thus he has a huge reputation; he won the award for the best actor role in the AMVCA.

It is however noteworthy to state that the Plaintiff did not put any fact or evidence before this court in support of his claims and assertions. It is these facts that the court will consider in granting the damages sought for, the court is not expected to bring out facts out of the thin air or go outside the records before it. Having however held that the Plaintiff's right has been infringed, the court will have to use its discretion in making an assessment in line with the facts and evidence before it. Issues 3 is also resolved in favour of the Plaintiff.

On the issue of Solicitors fee, the Plaintiff made issue out of it and tendered a receipt, the Plaintiff did not canvass any argument as to how it became entitled to

the amount and what scale was used in arriving at the said amount. The Solicitors fee is refused.

On the whole, it is the holding of this court that the Plaintiff's claims against the Defendant has merit and succeeds as follows,

1. That the Defendant's use of the Plaintiff's pictures and images constitute an infringement on the Plaintiff's copyright as protected by the Copyright Act, LFN 2004.
2. That the Defendant, their agents representatives, assigns, officers are hereby restrained from further using, violating and/or further violating the Plaintiff's images and/or pictures and the Plaintiff's copyrights therein without the Plaintiff's consent and/or authority.
3. The sum of Twenty Million Naira (N20,000,000) being general damages for infringement of the plaintiff's copyrights by the Defendant

That is the Judgment of this Honourable Court.

Amey 30/9/2022
A. O. ADEYEHUN
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CHIEF EXECUTIVE OFFICER
FEDERAL HIGH COURT LAGOS

O. O. Oguntoyinbo
HON. JUSTICE O. O. OGUNTOYINBO
JUDGE

21ST SEPTEMBER, 2022



*Clerk,
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