

IN THE FEDERAL HIGH COURT
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS, NIGERIA
ON MONDAY THE 30TH DAY OF SEPTEMBER, 2024
BEFORE THE HONOURABLE
JUSTICE K. O. OGUNDARE
JUDGE

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SUIT NO:FHC/L/CS/304/2021

BETWEEN:

SIR JUDE NNAM

AND

1. FIVE STAR MUSIC LIMITED

2. MR. EMEKA OKONKWO (aka E-MONEY)

3. MR. KINGSLEY CHINWEIKE OKONKWO (aka KCEE)

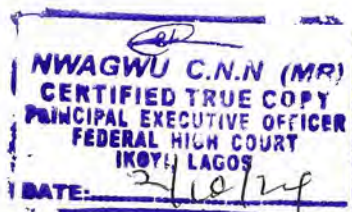
PLAINTIFF

DEFENDANTS

JUDGMENT

The Plaintiff, by an Amended Writ of Summons and Statement of Claim dated 2nd August, 2021 and filed on 4th August, 2021, claims against the Defendants severally and jointly as follows:

1. Declaration that the copyright as well as the ownership rights to the song titled 'SOM TOO CHUKWU' which was surreptitiously included in the music album titled 'CULTURAL PRAISE VOL.1' by the 3rd Defendant without the Plaintiff's consent or authorization; is vested in the Plaintiff by virtue of his composing the said song in the year 2001.
2. Declaration that the copyright as well as the ownership rights to the songs titled 'OTITO DIRI CHINEKE' and 'K' ANYI JEE N' ULO CHUKWU' which were surreptitiously included in the music album titled 'CULTURAL PRAISE

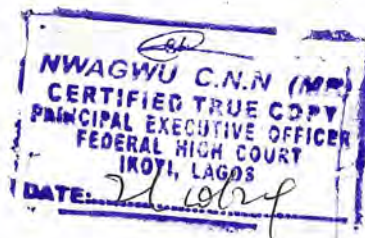


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VOL.4' by the 3rd Defendant without the Plaintiff's consent or authorization; is vested in the Plaintiff by virtue of his composing the said songs in the year 1990 and 1995 respectively.

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3. Declaration that the Defendants jointly and severally infringed on the copyright of the Plaintiff by adapting, producing, distributing, marketing, advertising and performing to the general public the song 'SOM TOO CHUKWU' without his consent or authorization (either written or oral).
4. Declaration that the Defendants jointly and severally infringed on the copyright of the Plaintiff by adapting, producing, distributing, marketing, advertising and performing to the general public the songs 'OTITO DIRI CHINEKE' and 'K' ANYI JEE N' ULO CHUKWU' without his consent or authorization (either written or oral).
5. General Damages in the sum of ₦500,000,000.00 (Five Hundred Million Naira) against the Defendants jointly and severally for the infringement of the copyright of the Plaintiff.
6. Order of the Honourable Court mandating the Defendants jointly and severally to render account of the income, benefits and profits generated from the adaptation, production, distribution, sale, advertisement, marketing and performance of the titled 'SOM TOO CHUKWU, OTITO DIRI CHINEKE' and 'K' ANYI JEE N' ULO CHUKWU' from December 2020 till judgment.
7. Order of the Honourable Court directing the Defendants to jointly and severally pay all royalties accruing from the musical works titled 'SOM TOO CHUKWU, OTITO DIRI CHINEKE' and 'K' ANYI JEE N' ULO CHUKWU' from December 2020 to the Plaintiff.



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8. Order of Perpetual Injunction restraining, preventing and prohibiting the Defendants herein whether acting by themselves, or through their servants, agents, privies, legal representatives, or any other person howsoever described acting for them and/or at their instance; from infringing on the copyright of the Plaintiff to the songs titled 'SOM TOO CHUKWU, OTITO DIRI CHINEKE' and 'K' ANYI JEE N' ULO CHUKWU' by any means howsoever.
9. The sum of ₦5,000,000 (Five Million Naira) as the cost of this action.

An 80 paragraphed Amended Statement of Claim was filed by the Plaintiff on 4th August, 2021 with the Amended List of Witness, Written Statement on Oath of the Plaintiff's witness, Jude Nnam dated 4th August, 2021 and the Amended List of Documents, viz:

1. Copy of the manuscript/original composition of the musical work titled 'SOMTOOCHUKWU' (in solfa and staff notation) created in 2001.
2. Original composition of the musical work titled 'OTITO DIRI CHINEKE' (in solfa and staff notation).
3. Original composition of the musical work titled 'K' ANYI JEE N'ULO CHUKWU (in solfa and staff notation).
4. Copy of the Plaintiff's eBook titled "Ancestor's Opium"
5. Audio recording of the song titled 'SOMTOOCHUKWU' composed by the Plaintiff.
6. Audio recordings of the musical works titled 'OTITO DIRI CHINEKE' and 'K' ANYI JEE N' ULO CHUKWU composed by the Plaintiff



7. Copy of transcribed version of the Plaintiff's songs titled 'SOMTOOCHUKWU, OTITO DIRI CHINEKE and K' ANYI JEE N' ULO CHUKWU'
8. Audio recording of the 3rd Defendant's Cultural Praise Volume 1 which contains the Plaintiff's SOMTOOCHUKWU
9. Audio copy of the 3rd Defendant's Cultural Praise Volume 4 which contains the Plaintiff's OTITO DIRI CHINEKE and K' ANYI JEE N' ULO CHUKWU
10. Videos of the 3rd Defendant performing the song titled 'SOMTOOCHUKWU
11. Videos of the 3rd Defendant performing the musical works all over Nigeria and outside Nigeria released on February 5th, 25th and 27th 2021; March 1st, 14th, and 21st 2021 all downloaded from the 3rd Defendant's social media accounts.
12. Picture of the 3rd Defendant's album titled Cultural Praise Volume 1
13. Copies of screen munched pictures of the 3rd Defendant performing the song titled 'SOMTOOCHUKWU',
14. Printouts of the 2nd and 3rd Defendants' Facebook page.
15. Letter from the Plaintiff's Solicitor to the Defendants dated January 28, 2021.
16. Waybill receipt from Red Star Express Plc.
17. Printout of the Waybill tracker from the Red Star Express Plc

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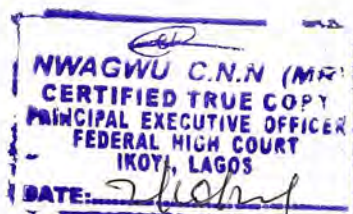


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18. Letter from the Plaintiff's Solicitors to the 2nd and 3rd Defendants dated March 18, 2021.
19. Waybill receipt from Red Star Express Plc showing delivery of the letters on March 22, 2021.
20. Pictures of the 3rd Defendant's Cultural Praise Volume 1 New album cover released on April 1, 2021
21. Picture of the 3rd Defendant's album titled Cultural Praise Volume 4
22. Short videos of the 3rd Defendant performing the musical works between April, May, June and July 2021 both in Nigeria and outside Nigeria.
23. Videos of the 3rd Defendant performing the musical works on July 16, 2021 in Oba, Anambra State
24. NEXT Legal invoice/receipt to the Plaintiff for the sum of ₦5,000,000 (Five Million Naira).

The Plaintiff filed 2 Certificates of Compliance with Section 84 of the Evidence Act 2011 (as amended) made by the Plaintiff and both dated 15th March, 2022 and filed on 16th March, 2022

The Defendants, pursuant to the leave of the Court, entered a Memorandum of Conditional Appearance dated 12th May, 2022 and filed on the same date and a 50 paragraphed Joint Statement of Defence dated 4th August, 2022 and filed on the same date with a List of Witness, Witnesses' Statements on Oath of Kingsley Chinweike Okonkwo and Dr. Sheyi Kehnnny (D.S.K.) and List of Documents, viz:



1. Manuscript of 3rd Defendant song Cultural Praise Vol 1.
2. Manuscript of 3rd Defendant song Cultural Praise Vol 4.
3. Audio of 3rd Defendant song Cultural Praise Vol 1.
4. Audio of 3rd Defendant song Cultural Praise Vol 4.
5. Video of 3rd Defendant song Cultural Praise Vol 1.
6. Soundtrack of 3rd Defendant song Cultural Praise Vol 1.
7. Soundtrack of 3rd Defendant song Cultural Praise Vol 4.
8. English Translation of the Holy Bible
9. Igbo Translation of the Holy Bible.
10. Sofa and Sound connotation of the 3rd Defendant songs Cultural Praise Vol. 1 and Cultural Praise Vol 4.
11. Digital composition of the sofa and sound notes of the 3rd Defendant songs Cultural Praise Vol. 1 and Cultural Praise Vol 4.
12. Certificate of identification

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In response to the Defendants' Joint Statement of Defence, the Plaintiff filed a 39 paragraphed Reply dated 12th February, 2024 and filed on 14th February, 2024 with Additional List of Documents, viz:

1. Printout of 3rd Defendant's online statement released on his Facebook page on March 30, 2021 (culled from www.facebook.com/watch/?v=900702994062916)



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2. Video of the 3rd Defendant's interview with 'The Convo' on May 14, 2021 downloaded from YouTube.
3. Printout of online Newspaper articles of the Headies Award ceremony of September 5, 2022.
4. Plaintiff Solicitor's letter to Smooth Promotions Nigeria Limited dated September 5, 2022.
5. Waybill receipt for the dispatch of the letter dated September 5, 2022.
6. Pictures of the streaming platforms where the musical works are available
7. Printout of online Newspaper (Vanguard and Dailypost) publications of the 3rd Defendant's claims that he has made more money from the musical works than his entire career.
8. Printout of Vanguard online newspaper of 28th January, 2024 talking about what streaming platforms pay artistes.
9. Court order made by Hon. Justice M. S. Hassan April 1, 2021.

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Certificate of Compliance with Section 84 of the Evidence Act 2011 {as amended} dated 12th February, 2024 and Additional Written Statement on Oath of the Plaintiff's Witness – Jude Nnam dated 14th February, 2024 was filed by the Plaintiff on 14th February, 2024.

With leave of the Court, the Defendant filed an Additional List of Witness dated 10th June, 2024, Witness Statement of Dr. Osita Nwagbo dated 10th June, 2024 and Further Statement of Kingsley Chinweike



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Okonkwo dated 10th June, 2024 and Additional List of Documents dated 10th June, 2024, viz:

1. Translation of the 3rd Defendant musical works by the 3rd Defendant.
2. Certificate of identification
3. Expert translation of the Plaintiff musical work
4. Expert translation of the 3rd Defendant musical work.

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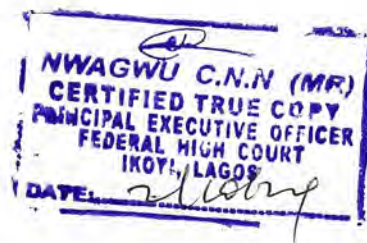
The Plaintiff's Application dated 28th June, 2024, to file a List of Additional Witness and Written Statement on Oath of Plaintiff Witness – Mr. Chukwudi Okeke, having been withdrawn by the Plaintiff's Counsel, was struck out by the Court at the close of the Defendants' case on 18th July, 2024.

At the trial of this case, one witness testified for the Plaintiff as PW1. The Plaintiff's witness, Sir (Dr) Jude NNam, the Plaintiff himself, testified on oath and adopted his two Statements on oath dated 4th August, 2021 and 14th February 2024 respectively as his evidence in this suit. Twenty-four documents were tendered in evidence by the Plaintiff, they were admitted by the Court and marked, **EXHIBITS P1, P2, P3A, P3B, P3C, P4A, P4B, P4C, P5A, P5B, P6, P7, P8A, P8B, P9A, P9B, P10A, P10B, P10C, P11A, P11B, P12A, P12B and P13** respectively. The witness prayed for justice in this case.



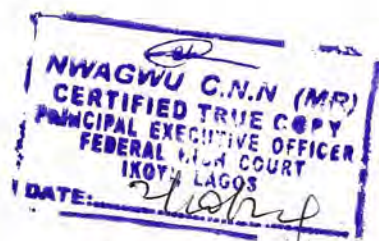
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Under Cross-examination by the Defendant's Counsel, the Plaintiff's witness stated that he has a doctorate degree in music from the Nnamdi Azikiwe University, Awka and that all the facts contained in his Statement of Claim and Written Statements on Oath are facts supplied by him to his Lawyer and the documents were not all signed in his Lawyer's Office. The witness stated further that SOMTOOCHUKWU, K' ANYI JEE N' ULO CHUKWU and OTITO DIRI CHINEKE are Igbo Languages and that he is aware that the entire verses of the English Bible has been translated to Igbo Language. He stated that he grew up speaking Igbo Language and the translation of the English Bible into Igbo Language has long been done before he was born. He stated further that the phrases Zom too Chukwu, Otito diri Chineke and K' Anyi Jee N' Ulo Chukwu are not all found in the Igbo version of the Bible. He stated that Otito diri Chineke is found in the Igbo Bible, Zom too Chukwu is not a phrase in the Bible, while K' anyi Jee N' Ulo Chukwu is from the Psalms. According to the witness, the meaning of Zom too Chukwu is an invitation to your friends to join you in praising God for what he has done for you. He stated that he does not know Psaml 34:3 off hand. He said his own translation is a personal expression of join me to praise God for what He has done for me and not what He has done. He stated further that there is community worship and individual worship. He stated that we praise God for His goodness and that he did not create the phrase Zom too Chukwu in Igbo Language because he grew up to speak the language. The witness stated further that Zom too Chukwu is a



common name in Igbo land and that he wrote the song for his son, who bears the name, on his first birthday. He stated that in Cultural Praise Vol.1, the first song is Zom too Chukwu and he did not know whether it was arranged in tracts but he identified his song there. The witness said that he never checked the number of tracks in Cultural Praise Vol.1 because it was not necessary for him. He said that the title of the 1st Defendant's song is Cultural Praise Vol.1. He stated further that the beatings in the 1st Defendant's Zom too Chukwu in Cultural Praise Vol.1 are not the same with his own but the tunes and the notes are the same, they do not flow at the same rhythm. The witness stated further that it is not true that he 3rd Defendant did not have K' Anyi Jee N' Ulo Chukwu and Otito diri Chineke in all the series of his Cultural Praise, he has the two songs in the Vol.3 of his Cultural Praise and the beatings are not the same with his own, they are distorted and the lyrics are the same but the sounds are not the same, there are personal inputs of the singer in them without permission. He stated that the rhythms are not the same, they are distorted.

The witness stated that he started writing songs in 1983, 41 years ago. He stated that choral songs have been used in the Catholic church before then, but not in the tunes that he has written. He stated further that there have been songs in Igbo Language in the Catholic Church before he started writing songs and not all songs are rooted in the Bible. He stated that songs can be written from the Bible and Liturgical books where Otito diri Chineke was found and inspiration are the

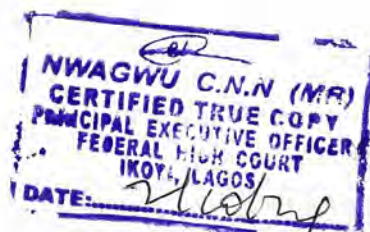


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sources of musical composition. He stated that there are phrases in Igbo Language that cannot be found in the Bible. He said the Bible guides you when you are inspired. The witness stated that he has the monopoly of the words Zom too Chukwu, K' Anyi Jee N' Ulo Chukwu and Otito diri Chineke as used in his music words and lyrics. The witness further stated that his name was not mentioned in the Shout out to all the original composer contained in Exhibit P13 and no name of any particular person was mentioned. The witness stated further that Ancestral Opium did not contain Otito diri Chineke and K' Anyi Jee N' Ulo Chukwu. He stated that Exhibit P10B is a letter from his Lawyer and it contained N5Million which he paid his Lawyers from his Zenith Bank account No. 2084333216 and he cannot remember the account the money was paid into. He stated that he did not present his bank statement to the court because it is not necessary and if it is required, he can produce it.

The witness further testified that the solfas and staff notations in Zomm too Chukwu and Cultural Praise are the same but the rhythm changed; also, in K' Anyi Jee N' Ulo Chukwu and Otito diri Chineke and it is not true that they are not the same. He stated further that in the first two pages of Exhibit P6, the words Zom too Chukwu, K' Anyi Jee N' Ulo Chukwu and Otito diri Chineke were not mentioned.

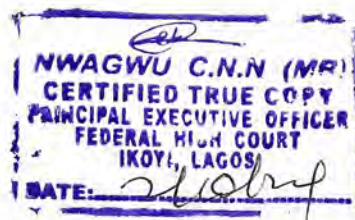
In the defence of the case, three witnesses testified for the Defendants as DW1, DW2 and DW3 respectively. The Defendant's first



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witness, Dr. Sheyi Kehny, a Musicologist and Lecturer in the Department of Creative Arts, University of Lagos and a Practitioner in the Music Industry, testified on oath and adopted his witness Statement on oath dated 4th August, 2022 as his evidence in this suit. he referred to the documents stated in paragraph 6 of his statement on oath and the two documents headed Cultural Praise Vol.1 and Cultural Praise Vol.4 were tendered in evidence, admitted by the Court and marked Exhibits D1 and D2 respectively. The DW1 stated that he created a digital version of the notation to a software to ascertain the quality after scoring it. The software was presented for identification purposes and it was received by the Court and marked ID1.

Under cross-examination by the Plaintiff counsel, the witness stated that he had a professional qualification from Trinity College of Music, London. He stated that his certificate is not before the court and he has over 30 years' experience in music. He stated further that every song has a composer although some folk songs do not have identified composers because they are songs that have been sung by unidentified composers and they have passed from one generation to another. The witness said he is not an employee of the Defendants. He stated further that the songs in Exhibit D1 was scored in sofa. He said he can sing in Sofa and staph. He stated that the writing in Exhibit P1 is not clear and he can sing it. The DW1 stated that he wrote Exhibit D1 and he sings it the way the sofa goes. He stated that he does not



know the Plaintiff in this matter. He stated that he is into music and music is universal, be it secular music or otherwise. He stated that he is from Oyo State, born in Lagos. He said he will know if the lyrics of the music in Exhibit P1 and D1 are the same by consultation. He stated that Exhibit P11A and D1 lyrics are not the same. He stated that he does not have to verify a song given to him to verify.

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The DW2, Dr. Osita Gerald Nwagbo, a Lecturer in the Department of Linguistics, African and Asian Studies, University of Lagos where he teaches linguistic courses; Igbo courses and translation courses. He adopted his Witness' Statement on Oath dated 10th June, 2024 as his evidence in the suit. The witness' translations of Zom too Chukwu, K' Anyi Jee N' Ulo Chukwu and Otito diri Chineke by Jude Nnam and Cultural Praise Vol.1 and Cultural Praise Vol.4 by Kcee & Okwesilieze Group were tendered in evidence, admitted by the Court and marked Exhibits D3, D4, D5, D6 and D7 respectively.

Under Cross-examination by the Plaintiff's Counsel, the DW2 stated that he is an expert in Language and not music and he has not quite translated songs from Igbo Language to English as this was his first translation. He stated that he did not know exactly when the Plaintiff's songs were composed. He said the songs are rendered in churches, especially in Catholic churches and he did not know personally the original composers of the songs. He stated further that he cannot tell when Cultural Praise Vols. 1 and 4 were composed. He stated that his



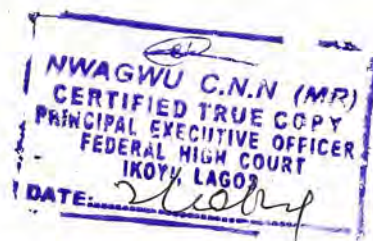
services were retained by the Defendants in this suit and he was paid for his professional services and he did not know the Plaintiff. He said the songs of the Plaintiff and the 3rd Defendant are not recent. The witness stated that the songs in Exhibits D4 and D6 are not the same syntactically. He stated further that no one has the monopoly of a particular sentence in language as the Plaintiff used prepositional phrase in his songs while the 3rd Defendant did not and their songs are not essentially the same syntactically, lexically and morphologically.

The DW3, Kingsley Okonkwo (the 3rd Defendant), testified on oath and adopted his Witness' Statements on Oath dated 4th August, 2022 and 10th June, 2024 as his evidence in this suit. Certified True Copies of the Manuscripts of Cultural Praise Vols. 1 and 4 with the Translations, Cultural Praise Audio Vols. 1 and 4 Disks, Cultural Praise Vol.1 Video Disk, Cultural Praise Sound Track Vols. 1 and 4 Disks, Digital Composition of Cultural Praise Vols. 1 and 4 Disk, the Certificate of Compliance with Section 84 of the Evidence Act 2023, New Community Bible Catholic Edition, English Version and New Community Bible Catholic Edition, Igbo Version were tendered in evidence, admitted by the court and marked Exhibits D8, D9, D10(a), D10(b), D11, D12(a), D12(b), D13, D14, D15(a) and D15(b) respectively.

Under Cross-examination by the Plaintiff's Counsel, the DW3 stated that to create a song, one need to compose the song by playing with



words and matching the play of words with melody and that every song has a composer. He stated that the Bible verses are more than sufficient to make a song. He stated that one can use the song of another person with his permission if the song was his original work. He stated that his own version of his song was his creation. The witness stated further that he did not know the Plaintiff as a popular figure in the music industry. He stated further that Zom too Chukwu, K' Anyi Jee N' Ulo Chukwu and Otito diri Chineke are not songs to him but words in the Bible that the Catholic Church used in some of their Hymns. He stated that the songs played to him are hymns used in the Catholic church which was put together by somebody he did not know. He stated further that the songs have been in existence from time immemorial and it might be a group of people that put the songs together because he has been hearing the songs right from his childhood at the Catholic Church. He stated that he grew up in the Catholic Church as an Altar boy and he has never heard the name of the Plaintiff as a household name in the Catholic Church and he did not know if the Plaintiff is the Music Director of the Catholics in Nigeria and Christian Association of Nigeria (CAN). The witness stated further that he stated in his interview that when the Okwesilieze Group came to perform in his brother's house, they were performing ogene music played with local witness and he got the inspiration to do ogene like music and not the cultural praise. Vivateck Flash Drive Interview of the DW3 was tendered in evidence, admitted by the Court and Marked Exhibit D16.



DW3 stated further that what he said he wanted to record in the interview was the ogene sound which instruments are local that nobody recorded in the years back. He stated that the Bible inspired the lyrics of the song while the boys inspired the percussion. He stated that copying another person's work and being inspired are two different things. The DW3 stated that he once had a meeting with the lawyers to the Plaintiff and another meeting with the Plaintiff. He stated that he understood copyright which rewards creativity and originality as it is the creativity that earns you money. He stated that the Plaintiff's songs are not eligible for copyrights.

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Further on Cross-examination, the DW3 stated that, he is a Christian who has served Mass for 8 years, that he tendered two copies of the Bible and most of the works are his composition and few of them are the works of Late Parthey Obasi from whom he took permission before using them. He stated that he has a contract with the family of Parthey Obasi and the lawyer before he used it. He stated that only two of the songs are owned by Parthey Obasi and he used them with authorization. He stated further that he did not know the song Zom too Chukwu and he only came across it during the course of this case and he knew Zom too Chukwu from time immemorial as hymn in the church and not song. He stated that the songs in contention are not the same with his Cultural Praise but have similarities and different in rhythm and melodies. He stated that he has never argued with the Plaintiff on the ownership of the songs as Cultural Praise were created



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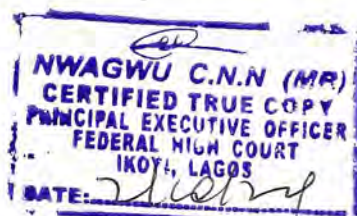
by him with inspiration from the Bible. The witness stated further that he did an interview on 30th June, 2021 on his original Facebook page to appreciate the people whose permission he took to use their works in Cultural Praise and Vibes. He stated that all of the songs have no original composers and some of them are composed by him. He stated that the songs have been used over time in churches in Eastern Nigeria and thus have no copyright. He stated that he did not know the song Zom too Chukwu and would not know if it was registered.

At the close of the cases for both the Plaintiff and the Defendant, the court directed that written addresses be filed and exchanged between the parties. The Defendant's final written address was dated 5th August, 2024 and filed on 7th August, 2024. The Plaintiff' final written address was dated 9th September, 2024 and filed on 10th September, 2024. The Defendant's Reply dated 22nd September, 2024 was filed on 23rd September, 2024.

The matter came up on the 24th day of September, 2024 when counsel adopted their respective written addresses and the Reply, and the matter was adjourned for judgment.

In the final written address dated 5th August, 2024, a sole issue for determination was raised by the Defendant's Counsel, Malam Abdulhakeem Adio, ABR. The issue is:

“Considering the facts and evidence presented before



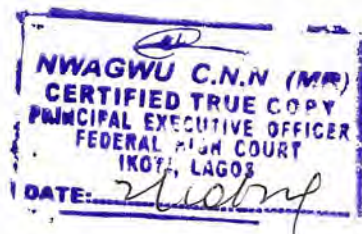
this Honourable Court, whether the Plaintiff is entitled to judgment,"

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In his arguments on the issue, Learned Counsel for the Defendant submitted the Plaintiff's case is rooted in intellectual property in which he is the sole witness claiming to have a copyright or the exclusive use of the songs, titled 'Som too Chukwu', 'Otito Diri Chineke' and 'K' anyi jee n' Ulo Chukwu' which he purportedly created at different times. He submitted that the fortress of every copyright action is the claim that the copyright owner must be the creator or originator or author of an original work of authorship presented in a tangible medium of expression and thus, the burden of proof lies on the Plaintiff because it is he who will fail if no evidence at all were given in this case. See section 132 of the Evidence Act. In compliance with this statutory requirement, Learned Counsel submit that the Plaintiff has not discharged his obligations under the law. In fact, throughout the gamut of his evidence, there was no scintilla of convincing evidence capable of crystallizing or accentuating his claim, or, to prove that he is entitled to judgment.

It was submitted that based on the foregoing premises, it will be of help to ascertain the true meaning of the words, "**creator**" and "**originator**" with reference to copyright issues, In English lexicon, "creator" means:

"a person or thing that brings something in existence." See google the free online Dictionary.



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According to the Cambridge, Advanced Learner's Dictionary, Third Edition at page 328, the word, "creator" means: "someone who has invented something."

By "originator" it means: "a person who creates or initiates something." See again google the free online Dictionary.

The Black's Law Dictionary which is a reliable source of judicial reference did not define the noun "creator" directly. What it did was to define its lexical variant "created" in the following words: "In copyright law, a work is 'created' when it is fixed in a copy or phonorecord, for the first time." See page 366 of the Black's Law Dictionary, Sixth Edition, Centennial Edition (1891-1991).

The same Dictionary did not also define 'originator' directly; however, it defines its lexical variant 'original' as follows: "First in order, nearing its own authority, and not deriving authority from an outside source ...In copyright law, means that the work owes its creation or origin to the author and this in turn means that the work must not consist in actual copying." See again page 1099 of the Black's Law Dictionary, Sixth Edition, Centennial Edition (1891-1991).

It was further submitted that a careful examination of the definitions of "creator" and "originator" presented above have shown that both words are essentially synonyms. In the context of their distinction, what



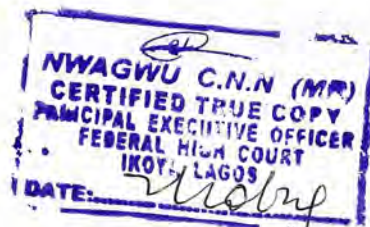
emerges is that the two words means virtually the same thing. They are used in reference to an individual who is the first person to produce any work of art presented in a tangible medium of expression for the first time. In fact, his work must not consist in actual copying of the same work from another source. The implication of this proposition is that only a creator or an originator can claim to be the owner of a copyright. By virtue of sections 16, 17 and 39 of the Copyright Act, Laws of the Federation of Nigeria, 2004, infringement of copyright shall be actionable at the suit of the owner, assignee, or an exclusive licensee as the case may be, and in any action for such infringement, all such relief by way of damages, injunction, accounts, or otherwise shall be available to the Plaintiff as it is available in any corresponding proceedings in respect of infringement of other proprietary rights. See **MULTICHOICE (NIG.) LTD. VS. M.C.S.N, LTD/GTE (2020) 13 NWLR (Pt. 1742) 415 AT 522.**

In this case, the Plaintiff's claim is that he is the owner and vested with the litigable right to sue for the alleged breach of his purported musical works, titled, 'Som too Chukwu', 'Otito Diri Chineke' and 'k' anyi jee n' Ulo Chukwu'. Whereas, evidence on record has shown that he is not the creator or originator or owner of any or all of the above musical works. In fact, he admitted under the fire of cross examination that songs can be written from the Bible and from Liturgical Books where Otito diri Chineke was found or discovered by him. This implies that PW1 did not create 'Otito diri Chineke' because by his admission,



he copied it from the Liturgical books. Clearly, these are books not originally written by him. Therefore, he submit without any fear of contradiction that PW1 is not the creator of 'Otito diri Chineke' as claimed. By definition, a liturgical book, or service book, is a book published by the authority of a church body that contains the text and directions for the liturgy of its official religious services. Manuscript of the Introit of the Mass (Florence, Italy). See google free online dictionary.

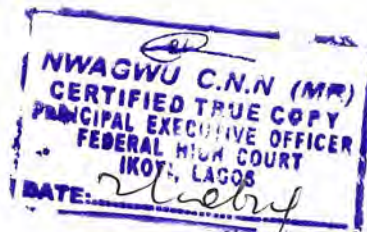
Now turning to 'Som too Chukwu' and 'K'anyi jee Ulo Chukwu', the PW1 admitted under the intense heat of cross examination that the phrase, 'Otito diri Chineke' and 'K' anyi jee ulo Chukwu' are both Igbo language expressions found in the Bible. However, he very erroneously maintained that the phrase, 'Som too Chukwu' is not a phrase which can be found in the Bible. It was at this point that Counsel asked him to interpret the phrase, 'Som too Chukwu' and his reply was, it "is an invitation to your friends to join you in praising God for what he has done for you." At this point, his attention was drawn to Psalm 34 verse 3 in the English Bible which variously interprets the phrase, 'Som too Chukwu' as "O magnify the Lord with me. And let us magnify his name together." After this interpretation was read to him, his response was that "I don't know Psalm 34 vs. 3 off hand. My own translation is a personal expression of join me to praise God for what he has done for me." Clearly, by his conduct, PW1 was only trying to be clever by half, because the English translation of the expression 'Som too Chukwu'



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read from Psalm 34 verse 3 of the English version of the Bible aligns with his own translation meaning that 'Som too Chukwu' is an expression in the Holy Bible. Putting it differently, "Som too Chukwu" is a Biblical expression which can be found in Psalm 34 verse 3 of the Holy Bible and other verses of same Bible. And in fact, its English translation can be given as "O magnify the Lord with me. And let us magnify his name together." This interpretation is certainly not different from the interpretation PW1 gave under cross examination when he said that 'Som too Chukwu' "is an invitation to your friends to join you in praising God for what he has done for you." The sentence may mean the same thing, but their construction is different. From the foregoing, it was further submitted that PW1 is not the creator of the phrase, 'Som too Chukwu' and could not have been said to possess any copyright in that regard because what he did is actual copying of the phrase from the Holy Bible. In fact, in a twist of incoherent narration, PW1 admitted under cross examination that 'Som too Chukwu' is a common name in Igbo land. That in Cultural Praise Vol. 1, the first song is 'Som too Chukwu'. That the beats in the 3rd Defendant's 'Som too Chukwu' in Cultural Praise Vol. 1 are not the same as his own 'Som too Chukwu' and that the tunes and the notes are not the same because they do not flow at the same rhythm. He also maintained that the 3rd Defendant has two songs, 'K' anyi jee Ulo Chukwu and Otito diri Chineke in Cultural Praise Vol. 3. According to him the beats are not the same as his own beats, but the lyrics are the same. He stated



further that the sounds are not the same, yet he still maintained that they are distorted.

The point should be made that the Plaintiff's testimony while giving his evidence in chief were mere allegations contained in his witness statements which he could not substantiate by any credible evidence. The various testimonies contained in his respective witness statements did not prove that the 3rd Defendant has any song titled, 'Som too Chukwu', 'Otito diri Chineke' and 'K'anyi jee Ulo Chukwu' and that the lyrical contents of the 3rd Defendant's musical works in his various Cultural Praises is the replica of his musical works titled, 'Som too Chukwu', 'Otito diri Chineke' and 'K'anyi jee Ulo Chukwu'. In fact, as indicated above, the evidence elicited from him under cross examination shows that 'Som too Chukwu', 'Otito diri Chineke' and 'K'anyi jee Ulo Chukwu' are all phrases found across the Holy Bible, and in fact, PW1 admitted under cross examination that 'Otito diri Chineke' was copied from the liturgical books or service book of the Catholic, which is a book published by the authority of a church body that contains the text and directions for the liturgy of its official religious services. Manuscript of the Introit of the Mass (Florence, Italy). At this point, the attention of this Honourable Court is drawn to the notable observation of **Georgewill JCA** in **AFRICAN SONGS LTD. VS. ADEGEYE (2019) 2 NWLR (Pt. 1656) 335 AT 383** where he ratiocinated on the importance of cross examination in civil proceedings since the introduction of written statements on oath as evidence in chief.



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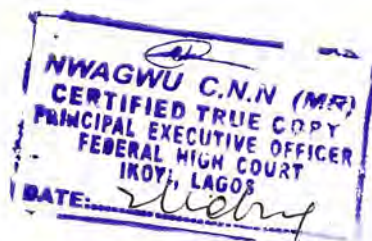
According to his Lordship:

"It has become imperative since the introduction of written statement of oath as evidence in chief in civil proceedings that cross examination is now the real test of the veracity of witnesses. The reason being that most written statement of oath nowadays are a mere replica of the pleadings of the parties. It is thus by the cross-examination evidence the true worth of the evidence of a witness is ascertained."

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According to the Defendant's Counsel, the point being made is that even though in his evidence in chief, PW1 created the impression that the expressions, 'Som too Chukwu', 'Otito diri Chineke', 'K'anye jee Ulo Chukwu', are not Biblical expression, he admitted the contrary under the intense heat of cross examination that they are Biblical expressions. As pointed out earlier, the Defendants called Dr. Sheyi Kehnnny, who testified as DW1 and Dr. Osita Nwagbo who testified as DW2. From all indications, DW1 and DW2 are both expert witnesses. However, they are expert witnesses in different dimensions. For example, DW1 holds a Doctorate Degree in Music, and he is currently a Lecturer and an Associate Professor of Music in the Department of Creative Arts, University of Lagos. He has over thirty (30) years professional experience. See paragraph 3 of his witness statement sworn to on the 4th of August 2022 and see also his evidence in chief presented on the 23rd of April 2024.

In his own right, DW2, Dr. Osita Nwagbo is an expert in Linguistics, which is the scientific study of language and its structure, including the



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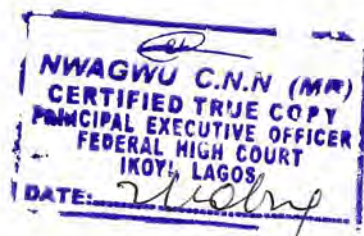
study of grammar, syntax and phonetics. Like Dr. Sheyi Khenny, the DW1, he is a Lecturer in the Department of Linguistics, African and Asian Studies in the University of Lagos. Therefore, he teaches Linguistic Courses, Igbo Courses and Translation Courses in the University of Lagos. It is instructive to note that DW2 has over sixteen (16) years' professional experience. In this connection, he has translated several audios, written documents from Igbo to English Language. He has been involved as a co-translator of the National Identity Management Commission (NIMC) Registration Material to Igbo in 2013, a co-translator of the Chinese TV Series to Igbo Language for Belling Gold KayGee Consultancy Co. Ltd. 2025 to 2017. At one time, he was appointed as resource person in the production of bilingual (English-Igbo) learning modules for Green Bee Mobile Ltd. Lagos, Nigeria, 2019 till date. These testimonies were contained in his witness statement sworn to on the 10th of June 2024 which he adopted on the 13th of June 2024.

From all indications, the duo of DW1 and DW2 are both expert witnesses whose testimonies, though not binding on the Court, will go a long way to assist the Court to form an opinion on certain technical issues outside the scope of the Court's knowledge. This is because, what is in contention is an alleged breach of copyright of a musical work wherein the Plaintiff is claiming that the lyrical contents of his work in 'Som too Chukwu', 'Otito diri Chineke' and 'K'nyi jee Ulo Chukwu' were copied by the 3rd Defendant. To determine the veracity



of this claim, it is imperative to examine the sofa and staff notations for these musical works as drawn by PW1 on the one hand, and as drawn by the Defendants on the other hand. Furthermore, the similarity of the lyrical or lexical contents of musical tracks can best be ascertained with the help of a Linguist who has been involved in the scientific study of languages, including its structure, syntax and phonology. Learned Counsel submits that these are technical areas of human discipline or profession where, as earlier noted, the Court has a very limited knowledge. In circumstances of this nature, the Court is urged to rely on the testimonies of DW1 and DW2 because they are expert witnesses whose testimonies will be extremely useful to the Court. According to the Black's Law Dictionary, Sixth Edition page 578, an expert witness is: "One who by reason of education or specialized experience possesses superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or deducing correct conclusions... A witness who has been qualified as an expert and who thereby will be allowed (through his/her answers to questions posted) to assist the jury in understanding complicated and technical subject not within the understanding of the average lay person. One possessing, with reference to particular subject, knowledge not acquired by ordinary persons. One skilled in a particular act, trade, or profession, being possessed of peculiar knowledge concerning the same, and one who has given subject in question particular study,

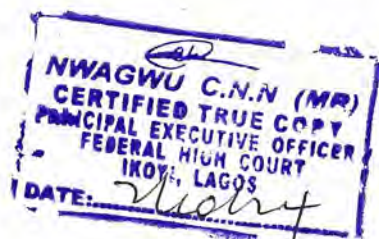
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practice, or observation. One who by habit of life and business has peculiar skill in forming opinion on subject in dispute."

This definition is all encompassing, and its implication is that to be regarded as an expert witness, the person must have been trained either formally or informally. It could be formally by reason of education or informally by reason of his experience in that specific venture which is the subject of litigation. This implies that to be regarded as an expert, a person must not be a lay person because the subject of litigation which requires expert evidence is always a technical subject and not an ordinary subject anybody can be called upon to comment on. The Evidence Act 2011 which will regulate the admissibility of evidence in the trial of this action has clearly defined who an expert witness is. This is found in section 68 of the Act, which is headed as, "Opinions of Experts." For clarity of presentation, may we reproduce the entire provisions as follows:

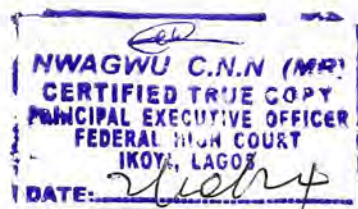
- "68. **Opinions of experts, when admissible. When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible.**
- (2) **Persons so specially skilled as mentioned in subsection (1) of this section are called experts."**



Clearly, the description of an expert has been provided for by section 68(1) of the Act while subsection 2 of the said section made the confirmation for that description. Essentially, according to section 68 of the Act, an expert witness is a witness who is especially skilled in issues of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions. Several case laws have adopted this definition, particularly, **ANPP VS. USMAN (2008) 12 NWLR (Pt. 1100) 1, OMISORE V. AREGBESOLA (2015) 15 NWLR (Pt. 1482) 205 at 302 AND UDOM V. UMANA (NO. 1) (2016) 12 NWLR (Pt. 1526) 179 at 241.**

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As indicated above, the opinions of DW1 and DW2 are crucial in this case since the Court is expected to form an opinion on an issue of art in terms of the interpretation of the solfa and staff notations of some musical works and the lexical structure of their lyrical contents which involves the scientific interpretation of the words on whether the words used by the Plaintiff and Defendants are the same. In this connection, DW1, Dr. Shey Kehnnny was invited to testify, and in summary, his testimony was that he scored the 3rd Defendant's single titled, Cultural Praise Vols. 1 and 4 sometime in October 2020 and February 2021 respectively. Aside scoring the said songs prior to their production in 2020 and 2021 respectively, he also created the digital version of the songs in Solfa and Staff notations. He maintained that the musical works of PW1 do not bear any resemblance whatsoever to the musical work of the 3rd Defendant as the lyrical composition musical



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tunes and soundtrack are entirely different. See paragraphs 6, 7 and 8 of his witness statements sworn to on the 4th of August 2022.

DW1's testimony was not discredited under the fire of cross examination. In fact, his testimony was fortified under cross examination when Exhibit 11A and Exhibit D1 he scored for the Defendants were presented to him to read in open court. He read both Exhibits and pointed out the lyrical differences and maintained that the tunes and soundtracks are not the same at all. In like manner, DW2's corroborated the testimony DW1 made by concluding that the lyrical contents in the Plaintiff's purported musical works, 'Som too Chukwu, Otito diri Chineke and K'anyi Jee Ulo Chukwu' when compared with that contained in the 3rd Defendant's Cultural Praise Vols. 1 and 4 are lexically, morphologically and syntactically different from those used in the Plaintiff's musical works. DW1 and DW2's various testimonies were not discredited under cross examination, and for this reason, this Honourable Court is urged to rely on them. Generally, the position of the law is that where the testimony of a witness is not discredited under cross examination, the Court is bound to accept and act on it. Thus, in **ABBA VS. ABBA AJI (2022) 11NWLR (Pt. 1842) 535 at 573**, it was held that:

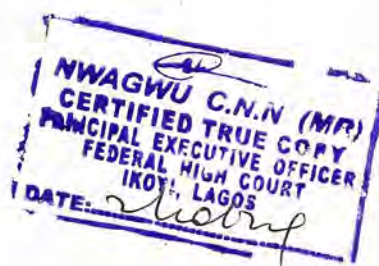
"The court is entitled to rely on pieces of evidence that are neither challenged nor contradicted under cross examination as the correct version of what the witness says."



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It was submitted further that even though PW1 described himself as Sir (Dr.) Jude Nnam and claimed to be a writer and composer of coral music, instrumentalist and producer, he can in that connection be regarded as an expert in Music. However, he cannot be regarded as an expert in Linguistics which is the scientific study of the character of languages, including its composition, syntax and phonetics. This implies that he is a layman when it comes to the evaluation of languages and their comparative analysis being the main challenge we have in the instant case. This implies that PW1 lacks the professional competence to analyze different sentences and determine their similarity which DW2, did well to resolve rendering his evidence extremely useful to the Court.

At this point, we reiterate that the ownership rights in copyright matters are rights to possess the copyrighted material, regardless of any actual or constructive control. Ownership rights are general, permanent and heritable and the copyright owner is one who holds an exclusive right or rights to copyrighted material. See **M.C.S. (NIG). LID/GIE VS. C.D.T. LTD. (2019) 4 NWLR (Pt. 1661) 1 at 24** and **AFRICAN SONGS LTD. VS. ADEGEYE (SUPRA) at 386**. Clearly, from the evidence adduced so far, it was submitted that the Plaintiff is not the owner of the copyright to the musical works, 'Som too Chukwu, Otito diri Chineka and K'anyi jee Ulo Chukwu'. Aside the foregoing fact which, we submit have been duly supported by evidence, the purported registration of his book Ancestor's Opium (Exhibit P8A) which PW 1



referred to during his evidence in chief has no relevance to this case because there is nothing to show that it was infringed upon by the Defendants. This is because the testimony of DW2, Dr. Osita Nwagbo whose evidence is clear and conclusive, debunked the Plaintiff's claim since he proved that the lyrics contained in his musical works are not the same with the ones contained in the 3rd Defendant's musical works. In fact, at a point during his cross examination, Exhibits D4 and D6 were given to DW2 to read. He read Exhibit D4 as follows:

**"What me (Plaintiffs) give you God.
The beautiful one whose body is full of beauty
The one prepared by the Defendant is:
"What will I give you my beautiful one?
Whose body is full of beauty."**

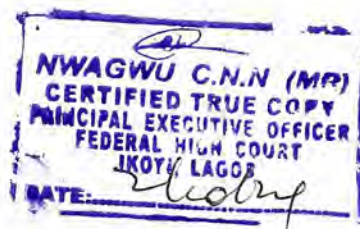
In his conclusion, he maintained that the two songs are not the same syntactically. The songs are saying the same thing save for the synthetic difference. That nobody has the monopoly of a particular sentence in a language. He stated further that the Plaintiff used prepositional phrases while the 3rd Defendant did not use prepositional phrases. The songs of the Plaintiff and that of the 3rd Defendant are not essentially the same. Synthetically, toxically, morphologically, the songs are not the same.

The point should be made that in his testimony, both during the presentation of his evidence in chief and cross examination, DW3 maintained a calm demeanor and presented his testimony coherently. As indicated above, he maintained that all the songs he



presented in his Cultural Praise Vols. 1 and 4 were produced based on the inspirations he received from reading the Holy Bible and not from musical works of the Plaintiff.

It is imperative to note that the Plaintiff's claimed general damages in the sum of ₦500,000.00 (Five Hundred Million Naira) and ₦5,000,000.00 (Five Million Naira) as cost of the action. He also entreated this Honourable Court to compel the Defendants to render accounts of the profits and benefits purportedly made from the alleged adaptation of the Plaintiff's musical works. To support these claims, the Plaintiff did not present any cogent and compelling evidence upon which this Court can rely to grant those claims. In his evidence in chief contained in his witness statement sworn to on the 4th of August, 2021, the Plaintiff claimed that owing to the failure of the Defendants to comply with the letter of January 28, 2021, he paid his lawyers the sum of ₦5,000,000 (Five Million Naira) to seek redress on his behalf in court. To support this testimony, the Plaintiff relied on an Invoice, Next Legal invoice/receipt to the Plaintiff for the sum of ₦5,000,000. This invoice was admitted as Exhibit P10C which was a mere invoice produced by the Plaintiff's Counsel (which can be easily procured). Under the intense heat of cross examination, questions were put to the Plaintiff on whether the account statement in which the alleged money was withdrawn was presented before the Court, and his response was no. He was also asked whether he presented the account statement of that of his Solicitor's to prove that the money was received. His answer



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was that he has none and truly, we submit that he has none which he can present to convince the Court that indeed, the sum of ₦5,000,000.00 was paid from his personal account into his solicitor's account. With respect, this strategy will only leave the Court to speculate, a venture it has no legal basis for embarking on. See **UTB (NIG). V. OZOEMENA (2007) 3 NWLR (PT. 1022) 448 at 487**. Having failed and refused to present any account statements in this regard, this Honourable Court is urged not to attach any probative value to the said Exhibit P10C. In fact, the Court is urged to discountenance this document and dismiss this claim. In addition to this, we submit that the claim for the said ₦5,000,000.00 (Five Million Naira) was made by the Plaintiff to claim solicitor's fee from the Defendants. In **GUINNESS NIG. PLC VS. NWOKE (2000) 15 NWLR (Pt. 689) 135 at 150**, it was held that it

"...is unethical and an affront to public policy for a litigant to pass on the burden of his solicitor's fee to his opponent in a suit."

As a corollary to the foregoing, the general damages in the sum of **₦500,000,000 (Five Hundred Million Naira)** which the Plaintiff is claiming in this suit is, with respect, not anchored on any cogent and compelling evidence. As indicated above, the evidence on record has shown that the Plaintiff is not the creator or originator of the phrases which form the expressions, **'Som too Chukwu, Ofito diri Chineke'** and **K'anyi Jee Ulo Chukwu'**. In fact, they **all have their roots in the Igbo version of the Holy Bible**. This has further proven that the Plaintiff has no monopoly of any expression in the Igbo language and



any other language at all. In **DAWUDA VS. LBI & CO. LTD. (2011) 5 NWLR (PT. 1241) 411 AT 429**, it was held that:

"General damages are those damages which the law implies in every breach and every violation of legal rights. It is the loss which flows naturally from the Defendant's act, and its quantum need not be pleaded or proved as it is generally presumed by law. The manner in which general damages is qualified is by relying on what could be the opinion and judgment of a reasonable person in the circumstances of the case."

What this dictum entails is that general damages can only be granted in favour of a party who is able to establish that his legal rights have been violated. Whereas the facts and evidence presented by the Plaintiff in this case has not supported that assertion creating an instance of paucity of evidence. In this regard, he submit that the Plaintiff is not entitled to any of the reliefs being sought in his pleadings. In **U.F.P. (NIG.) LTD. VS. OPOBIYI (2012) 6 NWLR (Pt. 1297) 429 at 455**, **Agube JCA** held that:

"The point must be rammed home that facts are the fountain heads and forerunners of the law. It is fact that determines the fate of any proceedings. Facts can convert the fortune of a matter into doom or vice versa. By law, cases are invariably decided and grounded on their peculiar facts and circumstances."

It was further submitted that, at one point, the Plaintiff made a futile attempt to bring in an additional witness, identified as Chukwudi Okeke (alias Orlando) to salvage his case. The vehicle for presenting

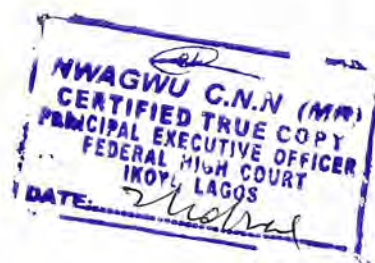


his testimony, which was an application dated the 28th of June, 2024, was abandoned leaving the Plaintiff with no expert evidence to challenge the Defendants' expert witnesses. Thus, the Court rightly struck out the application on the 18th of July 2024, thereby discountenancing whatever testimony Chukwudi Okeke, alias Orlando was coming to give in court. With respect, he submits that the failure or neglect of the Plaintiff to call an expert witness to prove that the lyrical contents of his musical works are the exact copy contained in the 3rd Defendant's Cultural Praise Vols. 1 and 4 is fatal to his case. This is because an expert witness, preferably an expert in linguistics ought to have been called as the failure to call him has left his claims opened to speculation which the Court is not entitled to engage in. In **UTB (NIG). V. OZOEMENA (SUPRA) at 487**, the Supreme Court, per **Ogbuagu JSC** held that:

"A court is not entitled to assume or speculate anything. It is dangerous and unfair to do so. Often times, it leads to a miscarriage of justice as appears in the instant case."

What this dictum crystallizes is that cases should be presented based on cogent and verifiable evidence and not on speculation. To use the words of the Supreme Court, it is "dangerous and unfair to do so." Clearly, this is what the Plaintiff has done by making relevant evidence very scarce to this Honourable Court in this case.

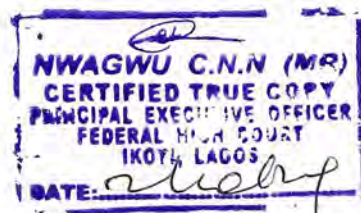
It was submitted that based on the dearth of evidence adduced by the Plaintiff in this matter and the submissions made in this address, this



Honourable Court is urged to resolve the sole issue formulated herein in favour of the Defendants, and dismiss this action, which is lacking in merit and in substance. He referred the Court to the celebrated case of **ELLAS VS. OMO-BARE (1982) 1 NLR 75 at 87 TO 88**, where the Supreme Court lamented the dearth of evidence in a land matter which came on appeal before it in the following illuminating words:

"If there was ever a land case completely starved of evidence, this is certainly one. This case clearly cries to high heavens, in vain to be fed with irrelevant admissible evidence. The appellant woefully failed to realize that Judges do not act like the oracle of Ife, which is often engaged in crystal gazing and thereafter proclaim a new Oba in succession to a deceased one Oba, Judges cannot perform miracles in the handling of civil claims, and least of all manufacture evidence for the purpose of assisting a plaintiff to win his case."

Borrowing a leaf from the Judgment of the Supreme Court, we submit that this is a classic case of an intellectual property matter starved with relevant evidence and the Court is expected to perform magic by granting relief in this action which legally and factually, is devoid of any substance. The Plaintiff appears to have come before this Honourable Court to test the waters, expecting the Court to wrought miracles for him. In the light of the foregoing, learned Counsel for the Defendants urges the Court to dismiss the instant matter with substantial cost.



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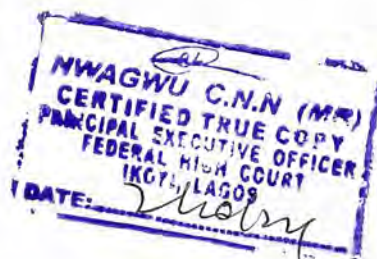
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The Plaintiff's Counsel, Chukwudiogo Onah Esq., in his Final Written Address dated 9th September, 2024 and filed on 10th September, 2024 formulated four issues for determination. The issues are:

1. **Whether from the evidence before this Honourable Court, the Plaintiff has established his ownership of the copyright in the musical works titled "Som Too Chukwu", "Otito Diri Chineke" and 'K'anyi Jee N'ulo Chukwu" (the "musical works")?**
2. **Whether based on the evidence before the Court, the Defendants' musical works titled Cultural Praise Album Vol. 1 & Vol. 4 infringes on the Plaintiff's copyright to his musical works Som Too Chukwu, Otito Diri Chineke and K'anyi Jee N'ulo Chukwu?**
3. **Whether given the circumstances of this case and the evidence presented at trial, the defence put up by the Defendants can avail them?**
4. **Whether the Plaintiff is entitled to the reliefs sought?**

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In his arguments on Issue 1, learned Counsel to the Plaintiff submitted that, it is the case of the Plaintiff based on his pleadings that he is the original creator of the musical works titled Som Too Chukwu, Otito Diri Chineke and K'anyi Jee N'ulo Chukwu ("the musical works"). The Defendants in their defence joined issues and alleged that the Plaintiff is not the original creator of the musical works and that the musical works are not eligible for copyright. It is trite that pleadings determine the issues before the court. Thus, in civil cases, the onus of proving any particular or material fact is set by the pleadings. This burden is not static but shifts from one party to the other. It usually stops at a point



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when the need for further evidence rests on the party who will fail if such evidence is not adduced. He referred to the case of **ONOGWU & ORS V. BENUE STATE CIVIL SERVICE COMMISSION & ORS [2012] LPELR-8604 (CA)**, where the Court of Appeal per **ALI ABUBAKAR BABANDI GUMEL (JCA)** held inter alia that:

"In civil cases the onus of proving a particular fact is fixed by the pleadings. This onus does not remain static but shifts from side to side like a pendulum. It stops at a point when the need for further evidence rests on the party who will fail if such evidence is not adduced."

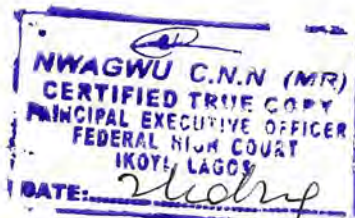
And Section 135 (1) of the Evidence Act 2011 (as amended) which provides that:

"(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist."

He submitted further that it becomes imperative to consider the applicable provisions of the Copyright Act 2022 in determining whether the plaintiff has established the ownership of the musical creation and consequently whether his musical creations are eligible for copyright.

Section 2(1) of the Act explicitly enumerates the categories of works eligible for copyright protection as follows:

**"Subject to this Act, the following works shall be eligible for copyright
(a) literary works;**



- (b) *musical works;*
- (c) *artistic works;*
- (d) *audiovisual works;*
- (e) *sound recordings; and*
- (f) *broadcasts.*

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Section 2(2) further provides as follows:

"(2) Notwithstanding the provision of subsection

(1) literary, musical or artistic work shall not be eligible for copyright unless —

(a) Some effort has been expended on making the work, to give it an original character; and

(b) The work has been fixed in any medium of expression known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.

It follows from the foregoing express provisions that eligibility for copyright is not automatic but contingent upon meeting certain requirements outlined in Section 2(2). These requirements mandate that a literary, musical, or artistic work must exhibit originality, defined by some effort to give the work its original character. Additionally, the work must be fixed in a tangible medium of expression, from which it can be perceived, reproduced, or communicated, either directly or with the aid of a device. It is also important to note **section 2(3)** of the Act which provides that:

NWAGWU C.N.N (MR)
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FEDERAL HIGH COURT
IKOYI, LAGOS
DATE: 21/07/2017

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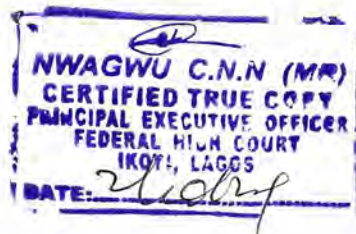
"Any work that meets the requirements set out in subsection (2) shall be eligible for copyright, notwithstanding the quality of the work or the purpose for which the work was created."

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Learned Counsel submits further that, based on section 2, the prerequisites for a work that is protected by copyright are two fundamental factors:

- (1) That sufficient effort was expended to make the work original; and
- (2) That the work has been fixed in a defined medium of expression now known or later to be developed from which it can be communicated.

The Plaintiff has presented evidence to show that he created the musical works. The plaintiff testified in his paragraph 15 as follows: "Prior to composing the musical works in solfa and staff notation, I had earlier written the entire lyrics for the musical works by hand using pen and paper". The evidence presented by the Plaintiff include copies of the original manuscript/composition of these musical works in solfa and staff notation marked as Exhibits P1 and P2. There is also the uncontroverted evidence of the Plaintiff that in fixing the aforesaid musical works in audio form, he used the help of choral groups and also relied on keyboard, African drum, wooden gong and guitar as musical instruments. The Plaintiff presented the audio recordings of the musical works - Exhibits P3A, P3B and P3C. Furthermore, there is the Plaintiff's E-book titled Ancestor's Opium which contains a collection of many of the Plaintiff's choral compositions inclusive of Som Too



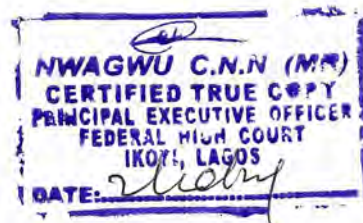
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Chukwu one of the musical works. The Ancestor's Opium which was published in 2018 has an ISBN No:13-978-978-966-966-0.

There is also the uncontroverted testimony of the Plaintiff on the years these works were created while also stating the unique circumstances and inspiration warranting the making of the musical works. See paragraphs 12, 13, 14, and 15 of the PW1's WSO. In his WSO, PW1 testified that he created Som Too Chukwu in 2001, Otito Diri Chineke was created in 1990 while K'anyi Jee N'ulo Chukwu was created in 1995. The transcribed versions of the musical works are contained in Exhibits P4A, P4B and P4C.

On the standard of proof in civil proceedings, it was held per **PHILIP NNAEMEKA - AGU (JSC) in the case of BABA V. NIGERIAN CIVIL AVIATION TRAINING CENTRE & ANOR. [1991] LPELR - 692 (SC)** that:

"...whenever on an issue, evidence comes from one side and this is unchallenged and uncontradicted, it ought normally to be accepted on the principle that there is nothing to be put on the other side of the balance, unless of course it is of such quality that no reasonable tribunal should have believed it. So, when evidence goes one way, the onus of proof is discharged on a minimal of proof. This is the result of all the decided cases including NICON V. POWER & IND. ENGINEERING CO. LTD., (1986) 1 N.W.L.R. (PT. 14) 1 P.27; NWABUOKU V. OTTIH (1961) 2 SCNLR 232; NIGERIAN MARITIME SERVICE LTD V. AFOLABI (1978) 2 S.C. 79."



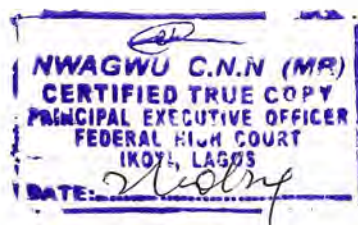
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All the above pieces of evidence which are uncontroverted is conclusive proof that the musical works are the original creation of the Plaintiff. The said evidence equally proves that the musical works are protected by copyright having satisfied the requirements under section 2 of the Copyright Act. It would then follow that the Plaintiff had discharged the burden on him under section 135 of the Evidence Act to prove the assertions made in his pleadings in respect of his creation of the musical works.

The corollary to the above is that the onus to prove otherwise shifted to the Defendants to prove that the musical works are not the original creation of the Plaintiff having alleged in paragraphs 17 and 18 of the Statement of Defence that the Plaintiff is not the original composer of the musical works. In the same vein, the onus shifted to the Defendants to prove or justify their claim that the musical works are not eligible for copyright. The Court is urged to note that nowhere in the Defendants final written address did the Defendants address or attempt to justify their claim that the musical works are not eligible for copyright or that it is not the original creation of the Plaintiff. Be that as it may, the Defendants claim that the musical works were not composed by the Plaintiff but have not provided any cogent evidence to justify or prove those assertions/claims.

It is further submitted that the plaintiff expended sufficient effort to give his songs "Som Too Chukwu," "Otito Diri Chineke," and "Kanyi Jee



Nulo Chukwu" original character and has fixed his works in a definite or tangible medium of expression such as the copy of the original manuscripts and composition of the songs, his book titled "The Ancestors Opium" which is a collection of the plaintiff's choral compositions and the bluray disc and tapes of his songs sold all over Nigeria. These are Exhibits P1, P2, P8A, P8B, P3A, P3B and P3.

One clear fact based on the repeated assertions of the 3rd Defendant in his examination and cross examination is that the Defendant is aware of the existence of the musical works and the fact that it was mainly used in worship or liturgical programs in the catholic churches. Interestingly, the 3rd Defendant under cross examination admitted that he did not know the composer of the musical works. He equally admitted that the musical works must have been composed by someone or a group of persons. The important fact to deduce from those admissions is that the 3rd Defendant does not know the original composer of the musical works. It therefore begs the question as to what the evidential basis for alleging that the Plaintiff is not the original composer of the musical works is, if the 3rd Defendant making this allegation does not know who the original composer is. Therefore, it can be clearly surmised from the foregoing that the 3rd Defendant's bare assertion that the Plaintiff is not the original composer of the musical works is either a deliberate lie, or at best a speculation based on faulty assumption that the songs existed from time immemorial. The settled law is that a Court cannot speculate. In **IKENTA BEST (NIGERIA)**



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LIMITED v. AG RIVERS STATE [2008] LPELR - 1476 (SC), the Supreme Court per **Hon. Justice Ikechi Francis Ogbuagu**, JSC held inter alia as follows:

"..Speculation, has no place in our Courts. Neither the parties nor the Court, is permitted or entitled, to speculate anything."

It was further submitted that beyond this point, the uncontroverted evidence before the Court does not support the 3rd Defendant's assumption because there is positive evidence of the dates the musical works were created. PW1's evidence is that he had started writing music since 1983 and he was specific that he is a worship song writer and a choral music composer. Therefore, there is no doubt or confusion that the Plaintiffs musical works were mainly within gospel and Christian circles and used for the worship of God. Furthermore, when the evidence of the pedigree of the Plaintiff based on his role in church/Christian music is considered, it becomes clear why the Plaintiffs musical works would have had the notoriety within the catholic and other Christian churches in Nigeria especially in the South-Eastern region. This much fact was given credence to by the testimony of the 3rd Defendant that it was a song sang in churches and he grew up learning of the songs as an altar server and a young man born to devout catholic parents. Lastly, the Defendants' argument that some of the lyrics of the Plaintiff's songs can be found in the scriptures is ludicrous. Lyrics are composed from pre-existing words, and it is impossible to create words that have never existed. Even the Holy Book acknowledges that there is no new thing under



the sun - *Ecclesiastes 1:9*. Therefore, the presence of similar lyrics in the scriptures does not impact on the Plaintiff's musical works as an original work. The Defendants' argument in this point is akin to saying that because all English words in the dictionary have been used by Michael Jackson in the composition of '*Thriller*', Michael Jackson has no copyright to the composition and musical work known as '*Thriller*'.

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Learned Counsel submitted further that it is crucial to underscore that, pursuant to the Copyright Act, no formality is required for copyright to subsist. Copyright is an inherent right that arises automatically by operation of law upon the creation of the work, provided that the statutory requirements are met. Formal registration, though beneficial, is not a prerequisite to the existence of copyright. Therefore, by the mere act of creating these musical works and satisfying the conditions set out in the Act, the Plaintiff's copyright in the works has been duly established. In light of the foregoing, it is respectfully submitted that the Plaintiff has conclusively proven ownership of the musical creations in question and has thereby established his copyright and intellectual property in them. The Plaintiff respectfully urges your Court to so hold.

On Issue 2, as to whether the Defendants infringed on the copyright of the Plaintiff in respect of the musical works, learned Counsel submits that the answer to this poser, is obviously in the affirmative and the evidence before the court will bear it out as the pertinent questions



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would arise under this issue and they include? What is the nature of music copyright infringement? How does a music copyright infringement occur, or how did the Defendants infringe on the Plaintiff's copyright? Why is there an infringement of copyright in this case? What rights are available that are protected by the copyright?

It was submitted that copyright is a legal concept with universal acceptability owing to its sensitive and peculiar nature, hence there is a global framework on intellectual property protection with nuanced applicability based on specific local jurisdictions. Therefore, in canvassing arguments and with the Court's permission, reference will be made to foreign authorities from decisions in United Kingdom where there is a more robust framework and judicial precedents on copyright. Under the Nigerian Copyright Act, section 15(1) of the Act provides:

"Copyright is infringed by any person who without the license or authorization of the owner of the copyright-

"(a) Does, or causes any other person to do an act, the Doing of which is controlled by copyright;..."

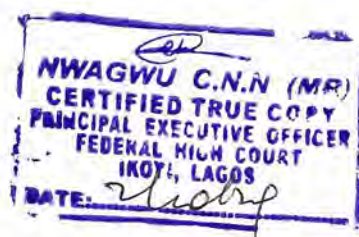
By virtue of section 9 of the Copyright Act, copyright in a literary or musical work gives the owner the exclusive rights to - reproduce the work; publish the work; perform the work in public; produce, reproduce, perform or publish any translation of the work make an audiovisual work in respect of the work; distribute to the public for commercial purposes, copies of the work; broadcast the work;



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communicate the work to the public; and, make adaptation of the work otherwise known as the derivative work right. Let's further unpack the derivative work right which is not as self-explanatory as the other rights, and which has equally been infringed in this case. The derivative work right gives a music copyright owner, the exclusive right to create adaptations, arrangements, or other new works based on the original musical work. See *section 36(2) of the Copyright Act*. This right allows the copyright owner to control the creation of new works based on their original work and to generate income from those new works. It also helps to prevent unauthorized use or distribution of the original work in new creations.

He submits further that what the Defendants have done in this case is to use or make an adaptation of the Plaintiff's musical works in their new Cultural Praise Vol. 1 & 4 without the permission of the Plaintiff. And to further buttress this point, the 3rd Defendant is well aware of these rights as he stated under cross examination that he got the permission of the family of late Patty Obasi to use his original work in the Cultural Praise Vol.1. It follows that if the 3rd Defendant sought the permission of Patty Obasi's estate before using his song, then there can be no excuse for not seeking the permission of the Plaintiff. These aforementioned rights give the Plaintiff significant control over the use of his musical works and the ability to generate income from those works. By exercising these rights, the Plaintiff can ensure that his works are used in ways that respect his rights and the value of his creations.



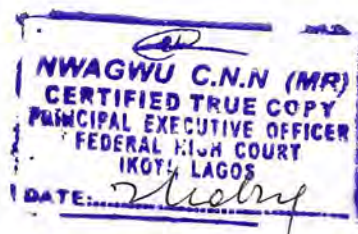
As earlier stated, the preservation of these rights in order to reward the creative ingenuity that continues to serve mankind is the basis of copyright laws. Unauthorized copying or adaptation detracts from this basis for copyright laws.

He submits further that there are several ways a musician can infringe on another musician's copyright, and they include sampling, covering a song, copying sheet music, or using lyrics.

- (1) Sampling is simply using a portion of someone's song in a new composition without his permission.
- (2) Copying sheet music is reproducing someone else's sheet music or arrangements without permission and lastly
- (3) Using lyrics is using someone else's lyrics in a new song or recording without permission. Doing just one of these is an infringement of another musician's copyright in a musical work. Interestingly, in this case, the Defendants did all three against the Plaintiff's musical works.

The 3rd Defendant sampled the Plaintiffs musical works by using substantial portions of same in his Cultural Praise Vol. 1 & 4. The 3rd Defendant also reproduced the Plaintiffs musical work sheets in his Cultural Praise Vol. 1 & 4. And thirdly, the 3rd Defendant used substantial portions (if not all) of the Plaintiffs lyrics in the musical works in his Cultural Praise Vol. 1 & 4. Under cross examination, the Plaintiff stated:

"The tunes and the notes are the same...It is not true that the 3rd Defendant did not have Kanyi Jee Ulo



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Chukwu and Ofiti Diri Chineke in all the series of his cultural praise... The lyrics are the same."

In simple terms, copying the plaintiff's musical work or making an adaptation of the Plaintiffs musical work is an infringement of the Plaintiff's copyright. On what the Court ought to do in a case of copyright infringement, he respectfully commends to the Court the English case of ***DESIGNERS GUILD V RUSSELL WILLIAMS*** [2000] 1 WLR 2416, [2001] FSR 11 P113 where Lord Millett posited as follows:

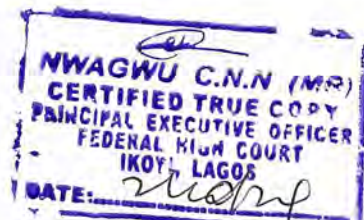
"The first step in an action for infringement of artistic copyright is to identify those features of the defendant's design which the plaintiff alleges have been copied from the copyright work. The court undertakes a visual comparison of the two designs, noting the similarities and the differences. The purpose of the examination is not to see whether the overall appearance of the two designs is similar, but to judge whether the particular similarities relied on are sufficiently close, numerous or extensive to be more likely to be the result of copying than of coincidence. It is at this stage that similarities may be disregarded because they are commonplace, unoriginal, or consist of general ideas. If the plaintiff demonstrates sufficient similarity, not in the works as a whole but in the features which he alleges have been copied, and establishes that the defendant had prior access to the copyright work, the burden passes to the defendant to satisfy the judge that, despite the similarities, they did not result from copying."

It is evident that the Plaintiff composed 'SOM TOO CHUKWU, 'OTITO DIRI CHUKWU and 'K'ANYI JEE N'ULO CHUKWU' (the musical works) in 2001, 1990 and 1995 respectively. Meanwhile, the evidence of the 3rd



Defendant is that he released the infringing musical works in the Cultural Praise albums Vols. 1 and 4 in 2020 and 2021 respectively. It is also evident that the Defendants are aware of the existence of the Plaintiff's musical works having listened to them in church while growing up. Now, a side-by side comparison of some of the Exhibits tendered by the Plaintiff and the Defendants also confirm substantial portions of the Plaintiff musical works were replicated or reproduced in the Cultural Praise vol. 1 & 4. Furthermore, substantial portions of the lyrics in the musical works were copied and used in the Defendant's Cultural Praise Vol. 1. & 4. In fact, the song verses in Exhibits P3(a) - P3(c) are the same as the songs in Exhibits D10(a) - D10(c). The words and the lyrics of the musical works are the same with portions of the 3rd Defendant's infringing musical works. He referred Exhibits P3(a) - P3(c), B3, D4, D5, D6, D7, and D10(a) - D10(e) to the Court.

It was stated further that there is no better evidence on the copying done by the Defendants than Exhibits B3, D4, D5, D6 and D7. It is worthy of note that the said exhibits are English translations of the musical works and the infringing musical works done by DW 2 - who incidentally is the Defendant's witness. For ease of reference, Counsel seeks the permission of the Court to reproduce some relevant portions of the translations in Exhibits B3, D4, D5, D6 and D7, for the Court's review. He reproduced side by side the verses in Igbo language which is the original language and then show the English translated version



side by side. For instance, the verses and the chorus of Exhibit B3 vis-a-vis D3 reads thus:

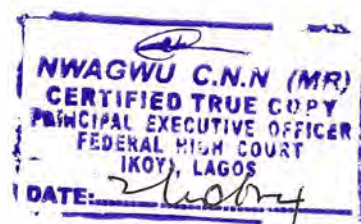
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Exhibit P3 Plaintiff's musical works Som Too Chukwu (B3)	Exhibit P3 Defendant's Infringing song Cultural Praise Vol 1 (D4)
<p>Verse Kedu ihe m ga-enye Gi Chineke Omamma mma zuru ahu Kedu ihe m ga-emere Chineke Odogwu n'agha O bu onye g'akochasi mmesoma Chineke Nani abu oma ka m ji bia niru Gi Chineke Abu ofito ka m ji bia ezi Chukwu</p>	<p>Kedu ihe m ga enye gi oka omee Oma mma mma zuru ahu mehh Kedu ihe m ga-emere Chineke Odogwu n'agha (Nisi m ehh) O bu onye ga-ako mmeso mma chineke Abu oma k'anyi jiri bia n'iru gi chineke mu o O bu ofito K'anyi jiri bi ana iru gi</p>
<p><u>Chorus</u> Soro mu n'eto ya n'eto ya n'odi mma Soro mu n'eto ya n'odi mma ndi ke Chineke bianu Agam akoro unu o ihe Chukwu mere</p>	<p>Nwa a na yo eze Soro mu na etoya Na-eto ya odi mma (E-Money) Soro mu tobe ya odi mma Ndi nke chineke bia Aga ma ako ihe Chukwu mere mu o</p>

NWAGWU C.N.N (MR)
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PRINCIPAL EXECUTIVE OFFICER
FEDERAL HIGH COURT
IKOYI, LAGOS
DATE: *2/10/2017*

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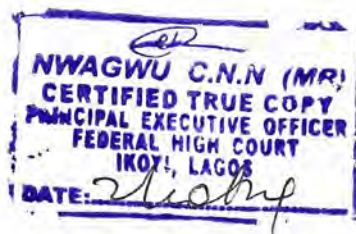
<p>mu o n'odi egwu</p> <p>I huru m n'anya Chineke karicha</p> <p>CERTIFIED TRUE COPY</p> <p>Mgbe nile mbekuru gi</p> <p>I n'azam eleghi anya n'azu</p> <p>N'ime mkpa mu kam kpokuru gi</p> <p>o kw' Izara mu o</p> <p>Chineke onye di ka Gi Ezeigwe</p> <p>O abu otifo ka m g'iji wee kelee gi, Chukwu Nna mu o</p>	<p>n'elu uwa</p> <p>Ihunanya chineke karisia Sorom too</p> <p>Chukwu</p> <p>Mghe n'iile m kpokuru gi</p> <p>I na aza m elela anya na-azu</p> <p>Nime mkpa mu kam m kpokurugi</p> <p>Ogwa izara mu o</p> <p>O chineke Onyedikagi o chineke. onyedikagi</p>
<p>English Translation of Som Too Chukwu</p>	<p>English Translation of the Infringing Musical (Vol.1)</p>
<p>What will I give you God the beautiful one whose body is full of beauty</p> <p>What will I do for God mighty one in Battle</p> <p>Who will completely tell the goodness of God</p> <p>It is only with songs of praise I have come in the presence of God</p>	<p>What will I give you He who says and does my beautiful one whose body is full of beauty</p> <p>What will I do for God mighty one in battle (On my head)</p> <p>Who will tell about the goodness of God</p> <p>It is with songs of praise that we have come in your presence my God</p>



It is with songs of praise I have come good God...	It is with songs of praise that we have come in your presence..."
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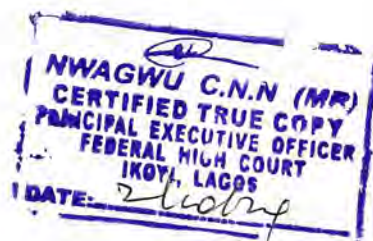
It is submitted that the above comparative glance at the transcribed versions of the Plaintiff's musical works with the Defendants' infringing musical works clearly shows that, for example, the whole verse and chorus of the Plaintiff's musical work titled Som Too Chukwu was copied and used or replicated in the Defendant's new Cultural Praise Vol. 1. It is further submitted that the appropriate comparison ought to be on the transcribed versions in the actual and original language of the lyrics of the musical works which is in Igbo language. However even a look at the English translations, shows that the lyrics of the Plaintiff's musical works and the infringing musical works mean essentially the same.

From paragraphs 25 - 41, 51 - 58 and 63 - 66 of the Plaintiffs WSO and from the foregoing portions of Exhibits B3/D3 and D6 reproduced above, it is submitted that the Plaintiff has been able to establish based on cogent and credible evidence that the Defendants infringed on his copyright in the musical works. Additionally, the Plaintiff also tendered Exhibits P5A, P6B, P6, P9A and P9B which show not only the pictorial, but also audio and video evidence of the further acts of infringement on the Plaintiff's musical works by the 3rd Defendant in connivance and with the aid of the 1st and 2nd Defendants. Consequently, it is respectfully submitted, that the



Honourable Court to so hold that the Plaintiff has established by credible evidence that the Defendants infringed on his copyrights to the musical works. Also instructive to note, is that the 3rd Defendant acknowledged the fact that he is not the original composer of the musical works in the Cultural Praise album when he released the statement in Exhibit P13. The question then is whether the 3rd Defendant has by any credible evidence showing that he did not infringe on the Plaintiffs copyright? Whether the Defendant's infringement of the musical works, are there any defences available to the Defendants?

On Issue 3, the Plaintiff's Counsel submitted that the laws on copyright admit some exceptions which may avail a person as a defence to an infringement claim. For instance, section 20 of the Copyright Act provides that copyright shall not restrict private use; use for parody, satire, pastiche or caricature; non-commercial research and private study; use for criticism, review or reporting of current events, provided that if the use is public, it shall be accompanied by an - acknowledgement of the author. Other exceptions under section 20 bother on use for broadcasting, research or generally non-commercial use. Other exceptions on copying for purposes of instruction and examination; copying/recording of broadcast by an educational institution; and restricted copying of published literary or musical works by an educational institution; can be found under sections 21 to 23 of the Copyright Act. Interestingly, Section 24 of the



Act provides that where a copy of a work for which an exception is made under sections 21 to 23 of the Act is subsequently sold or commercialised, there is an infringement of copyright. This shows that the Act never intended to provide a defence to copyright where commercialisation has occurred. In the English case of **MITCHELL V BBC [2011] EWPC 42** the Court noted thus:

However in the end, beyond stating that the matter is one for the civil standard of the balance of probabilities, it is impossible to lay down any sort of general proposition. Speaking entirely generally, it seems to me that the more strikingly similar two works may be, the more likely the proposition may seem that there has been copying, and that will mean that one might expect even more cogent evidence to rebut such a case than one might expect in a different case in which the similarities are less striking. It can only ever be a matter for weighing up the evidence.

On this note, it is important to consider the defence put forward by the Defendants to ascertain if there are cogent and credible evidence to rebut the case of the Plaintiff. On the nature of evidence required to prove facts asserted by a party in the discharge of the burden on him, the apex Court in **DIBIA & ANOR V. TUBONIMIA & ORS (2024) LPELR-61798(SC)** posited that:

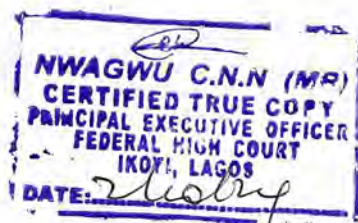
"Evidence adduced in proof of fact/s asserted by a party in the discharge of the burden of proof must be evidence which is not only admissible by law, but also credible and sufficient to satisfy the standard of proof required in order to attract probative value or worth and be the basis of a decision by the Court."



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Evidence of the Expert witnesses: The Defendants claim that the infringing musical works are not the same with the Plaintiffs. For this, the Defendant called DW1 and D2 as expert witnesses. The Defendants made a lot of fuzz in their Final Written Address which purports to suggest that the issue before the Court is technical and that your Lordship has limited knowledge of those purported technical areas. And that the evidence of the said experts was not discredited, hence should be accepted by your Lordship. It is submitted that there is nothing technical about comparing the two musical works to determine if one copied the other or not. DW2's expert opinion is that the musical arrangements of the musical works under contentions is not the same, while the DW3 expert opinion is that the lyrics of the said musical works are not the same. It is submitted that there is no credible basis for the opinion of DW1 and DW2 pursuant to section 68 of the Evidence Act. One clear point which the Defendants also echoed in their Final Written Address is that the testimony of DW1 and DW2 are not binding on the Court. However, to reiterate this point, the Plaintiff commends to the Court the case of **OYEBO & ANOR v. LASISI & ORS (2019) LPELR-47882(CA)**, where the court held thus:

"...The law is settled that the Court is not bound by the testimony, evidence and/or report of an expert witness and parties cannot by agreement (except in cases of admission which requires no further proof), make such evidence binding on the Court. For the avoidance of doubt, evaluation of evidence, which is the primary duty of the trial Court, involves the assessment of evidence so as to give value or quality to it...."



Thus, in specific response to the arguments in the Defendants Final Written Address, he submits that it is not in all circumstances that the court must rely on the opinion of an expert witness. When an expert gives an 'expert opinion', the court is duty bound to evaluate same as well as other evidence placed before the court by the parties. In the case of **COUNTY & CITY BRICKS DEVELOPMENT CO. LTD & ANOR v. MKC (NIG) LTD & ORS (2019) LPELR - 46889 (CA)**, the Court of Appeal, held as follows:

"It has to be underscored that a trial Court is not bound to accept the testimony of an expert witness... A Court is at all times fully in control of the evidence before it and does not abdicate its primary duty of assessing the evidence, including expert evidence and ascribing probative value thereto. In pungent terms, a Court is not bound to accept the evidence of any expert witness as the decision on the case is that of the Court and not that of the expert."

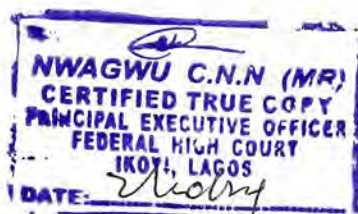
Therefore, it follows that the expert opinions such as that of DW1 and DW2 must be subjected to proper evaluation so as to determine if their testimonies qualify as expert opinion in the first place and, also to determine their relevancy, test their coherence level and ultimately decide whether any weight should be attached to any of them. Under section 68 of the Evidence Act, opinion evidence is only required when the Court has to form an opinion upon a point of foreign law, customary law or custom, or science or art or as to identity of handwriting or finger expressions. In this case, it can be deduced that the Defendants considers the question of copying the lyrics of the



musical works or making adaptation of the musical work a point of science or art, hence their need to call DW1 and DW2 as expert witnesses. Thus, we submit that for the evidence of DW1 and DW2 to be admissible as opinion evidence, it must be based on a point of science or art. The implication of this is that the opinions of DW2 and DW3 must be predicated on a scientific analysis of the fact or point in issue. It must either be premised on a methodical analysis or proper forensic analysis. Put differently, a statement of an expert does not qualify as expert opinion or evidence just by the mere fact that the statement was made by an expert. The statement must be reflective of a clear deducible premises from which a valid conclusion is reached (This is what constitutes an expert opinion).

In essence, where the evidence of an expert witness is contradictory or the opinion is not the product of proper forensic analysis or the opinion is contrary to simple logic/reasoning or the opinion/evidence is inconsistent with the facts before the court, the court would readily discountenance such expert opinion or evidence. See the case of **OBIKE & ANOR V. NEMAKA & ORS [2022] LPELR - 59093 (CA)** wherein it was held per the Court of Appeal that:

"The settled position of the law is that an expert opinion or evidence is not binding on a trial Court as the Court can reject it, if in its opinion there appears to be some in-built contradictions or that the report is not the product of proper forensic analysis or that the report is inconsistent with facts and situation which negate a belief or reliance on such an evidence"



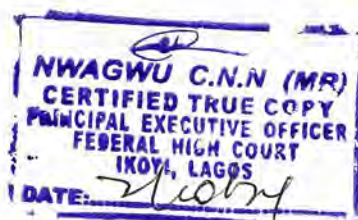
Furthermore, in the case of **AHMED IBRAHIM SHANONO INVESTMENT LTD v. FCMB PLC (2014) LPELR-22918(CA)**, in listing the Conditions to be satisfied before the opinion of an expert will be relied upon, the court stated thus:

"...It is trite law that where evidence presented to a Court is predicated on the opinion of an expert, the factual basis of the opinion must be presented to the Court and it must be complete, real and genuine...."

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In this case, DW1 merely stated that he would know if Exhibit P1 (Musical composition of Som Too Chukwu) and Exhibit D1 (Cultural Praise vol. 1) are the same without giving any scientific or logical basis for his conclusion. DW1 did not engage in any substantive analysis of the musical notes or arrangement of the musical works, neither did he offer any insight into the creative elements that would support his conclusion. His statement lacks scientific or factual basis and therefore should not be relied on by this Honourable Court.

In the same vein, it is submitted that what DW2 did is short of what is required of him as an expert witness. DW2 only translated the Plaintiffs musical works in English and also translated the Infringing musical works in English and then concluded that the lyrics were not the same. By virtue of section 68 of the Evidence Act, he is required to provide scientific bases for arriving at that conclusion by demonstrating through methodical analysis of the differences or otherwise of the lyrics and the substance of it. Under cross examination when he was



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given the chance to justify his conclusion that the lyrics are different, he admitted that the words used in both musical works are the same but then stated that they were syntactically different. It is clear that the evidence of DW2 only points to a grammatical difference from an advanced point of view, as opposed to the basic substance of the relevant point in issue which is the creative essence of the works in question. Put differently, the opinion of DW2 does not speak to the ordinary similarities or what can be termed a simple interpretation that a reasonable man will give to the wordings used in the musical works. Thus, the question is; **in adjudging whether the words in the songs under consideration are the same or not, should the metric for determining the similarity be based on an advanced understanding of the syntax (arrangement of the words) or simple understanding of the words in English language?** The Plaintiff's case is not about the grammatical structure but about the substantial similarity in the creative expression of the musical works as a whole. It is therefore clear that DW2's opinion was working to an answer as opposed to being an objective work based on simple logic or common sense.

More importantly, the distinction made by DW2 is based on the English translated version of the songs, and not based on the original transcription of the works which is in Igbo language. DW2 failed to provide a basis for his conclusion using a comparative analysis of the transcribed versions of the musical works which are originally in Igbo language. A conclusion that the lyrics are not the same based on

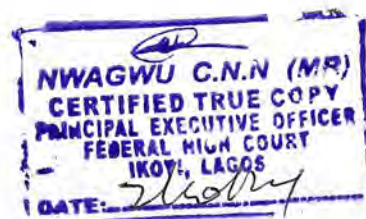


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translated versions of the work is an invalid conclusion because it is based on a wrong or false premise(s). Stating that the English translated lyrics of the songs are synthetically, toxically and morphologically different only goes to an advanced understanding of grammar and does not in any way show any basic difference in both lyrics. More so, DW2 has not presented any evidence before the Court to show that there are syntactical or morphological differences in the Igbo language lyrics of the song, being the language in which the musical works were expressed and infringed. The essence of copyright protection is the protection of the creative expression as a whole and not just isolated grammatical elements. Therefore, it is submitted that DW2's evidence failed to address the relevant point in issue and as such, would not qualify as an expert opinion on a point of science or art under the Evidence Act.

The Defendants in their Final Written Address dwelt a lot on the qualifications of DW1 and DW2. But, assuming but not conceding that the evidence of DW1 and DW2 does qualify as expert opinions, it must be noted that the Plaintiff who testified as PW1 is also an expert in Music. The Plaintiff has released thousands of songs, compositions and lyrics. The qualifications and some of the achievements of the Plaintiff were enumerated in paragraphs 3, 4, 5 and 6 of his Written Submission on Oath. In addition, the expertise and qualifications of the Plaintiff was also confirmed during his cross examination when he stated that he started writing songs 41 years ago and that he holds a doctorate



degree in music. It is therefore established without question that the Plaintiff (PW1) is also an expert witness. The implication is that PW1 is also qualified to give evidence in the field of Music, and is more than qualified to testify as an expert in the field. In light of this, he submits that the Court is also bound to rely on his opinion. It is further submitted that the opinion of DW2 has not shown any basic dissimilarity in substance between the musical works and the infringing musical works. By emphasizing syntactical differences, DW2 inadvertently confirmed that the infringing musical works retains a substantial similarity with the relevant portions of the Plaintiff's creative work, and this still qualify as an infringement by adaptation. The simple comparison of Exhibits B3 and D4 above clearly betrays the conclusion of DW2 that they are not essentially the same. Furthermore, for proper analysis of the evidence of the DW2, it is necessary to examine the document he tendered and compare same with the work of the Plaintiff. Music is not rocket science. It is something that can be easily evaluated by a man of ordinary prudence. Solfa notes is a global system of reading music which is represented by eight English alphabets. Those alphabets are "d r m f s l t d" and they are collectively referred to as musical notes. Every other thing in music revolves around these alphabets. Let's extricate the solfa notes (alphabets) in the scored copy of the Plaintiff's song and compare same with that of the Defendant which was tendered by the DW1, particularly the chorus. It reads as follows:

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Exhibit P1

d m r d

t l r d

t m r d

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Exhibit D1

d m r d

t l r d

t m r d

It is abundantly clear from the above that the notes are one and the same thing and that the DW1 intentionally lied on oath in order to mislead the Court.

He submits further that where the opinion of an expert is contrary to simple logic, reason and clear wordings, then such opinion is not to be relied upon by the court. In fact, the court would be right to reject the evidence of an expert witness and rely on the evidence of a non-expert witness in deserving circumstances. On this trite principle of law, he commended to the Court the case of **EGBUJAO V. STATE [2016] LPELR - 40938 (CA)**. In that case, the Court of Appeal held inter alia that:

"The existence of other relevant and credible evidence before the court showing that the evidence of the expert is not and cannot be true will constitute a good reason for rejecting it. A trial Judge would be right to prefer credible evidence of a non-expert witness on an issue to the evidence of an expert on the same issue where the former is an independent witness whilst that of the latter prepared his evidence specifically for the case on hand on the direction of the party calling him."

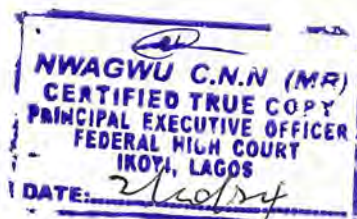
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In **OBIKE VS NKEMAKA** supra, the Court held as follows:

"Generally, if on the proven facts, a Judge can form his own opinion, then the Court can dispense with an opinion proffered by an expert."

Finally, on this point, a witness who has been paid to come before the court to tell lies in order to deceive ought not to be believed for the reason that he is an expert, especially where his opinion is contrary to logic and simple reasoning. With particular reference to the evidence of DW2 who claims to be an expert in Linguistics, he submits that there is no ambiguity in the English translations he carried out in Exhibits D3, D4, D5, D6 and D7. The meanings of the words are clear and unambiguous. He urges you're the Court to so hold.

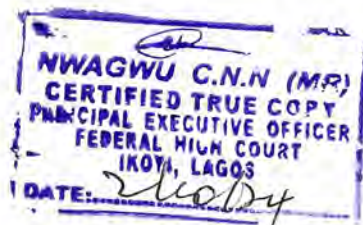
Other submissions in the Defendants address. In the Defendants' Final Written Address, counsel submitted that evidence on record has shown that the plaintiff is not the creator or originator or owner of any or all of the musical works. He also stated that the plaintiff admitted during cross examination that songs can be written from the Bible and from Liturgical Books where Otito diri Chineke was found or discovered by him, which implies that he did not create Otito Diri Chineke because he copied it from the Liturgical books. The Defendants' counsel is simply trying to misrepresent facts and deceive the Honourable Court. This is because, there is no place in the Plaintiff's evidence where he admitted that he copied Otito Diri Chineke. The Plaintiff stated that songs can be written from the Bible and Liturgical



books and that they are sources of musical composition. He further noted that "the Bible guides you while you are inspired". There is nowhere that PW1 admitted that he copied Otito Diri Chineke from Liturgical books. The law is settled that parties cannot speculate or assume the existence of any particular fact or issue. See **IKENTA BEST (NIGERIA) LIMITED V. AG RIVERS STATE SUPRA**. The Defendants have not produced the said Liturgical book where the Plaintiff allegedly copied the song 'Otito Diri Chineke' and as result, the Defendants contention must be discountenanced as the court is not allowed (with respect) to rely on documents not placed before it. In the case of **SULE & ORS v. M.R.S OIL (NIGERIA) PLC [2024] LPELR - 61826 (CA)** the Court of Appeal per **Hon. Justice Tunde Oyebanji Awotoye**, JCA held inter alia that:

"...Indeed, a Court cannot rely on a document not tendered before it. Such a document would be strange and alien to the proceedings. The Court can also not speculate on its contents. See also INEC VS. ADVANCED CONGRESS OF DEMOCRATS & ORS ELC (2022) 3599 SC page 1."

On the strength of the foregoing, he urges the Court to disregard the submissions of the Defendants' counsel that the Plaintiff copied the song titled 'Otito Diri Chineke' from Liturgical books as there is no evidence before the Honourable Court to sustain that assertion. It is a mere conjecture and should be discountenanced. Again, in the Defendants Final Written Address, Counsel stated that PW1 during his cross examination admitted that the phrase 'Otito Diri Chineke' and

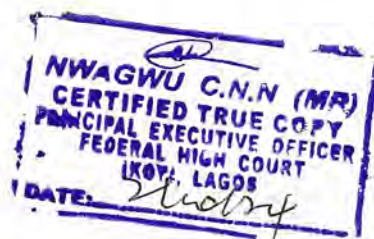


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'K'anyi Jee n'Ulo Chukwu are both Igbo language expressions found in the Bible. It is imperative to correct the grossly erroneous statement of counsel and to that extent, it is submitted that there is nowhere during PW1's cross examination where he stated that 'Otito Diri Chineke' and K' anyi Jee n'Ulo Chukwu are both Igbo language expressions found in the Bible. Rather, PW1 under cross examination stated thus:

"There are phrases in Igbo Language that cannot be found in the Bible".

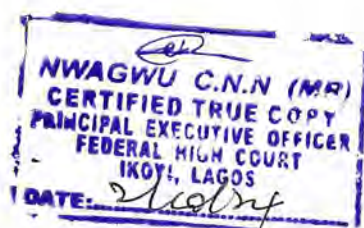
Further to the preceding paragraph, he submits that counsel is gravely misconstruing the evidence of PW1. Furthermore, it must be noted that Defendants' counsel's line of questioning of PW1 under cross examination on the use of the phrases 'Som Too Chukwu', 'Otito Diri Chineke' and K'anyi Jee N'ulo Chukwu' was mischievous and a ploy to misrepresent the grouse of the Plaintiff. This is further confirmed under paragraphs 5.7 and 5.8 of the Defendants' Final Written Address, where counsel seems to imply that the grouse of the Plaintiff is that he created or has exclusive ownership of the phrases Som Too Chukwu' 'Otito Diri Chineke' and K'anyi Jee N'ulo Chukwu'. Nothing could be further from the truth. These phrases are merely but titles of the Plaintiffs musical works which is a body of work/composition each of which comprises of verses and a chorus. Thus, the case of the Plaintiff is that the infringing works are a major copying and reproduction of the Plaintiffs musical works without consent. Hence, the response of the Plaintiff under cross examination that he has



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monopoly of the words Som Too Chukwu, K'anyi Jee N'ulo Chukwu and Otito Diri Chineke and lyrics as used in those his musical works. In view of the above, he submits that there is no controversy surrounding the meaning and/or interpretation of the words 'Som Too Chukwu' as counsel would lead the court to believe. All the arguments/submissions on the interpretation of the words 'Som Too Chukwu' are nothing but smokescreen to distract the Honourable Court from the real/substantive issues in this case. The Plaintiff has been consistent in his evidence that his songs were illegally replicated by the 3rd Defendant without his consent and the fact that the 3rd Defendant did not use the same titles (Som Too Chukwu, 'Otiti Diri Chineke' and K'anyi Jee NUlo Chukwu) used by the Plaintiff is immaterial because the lyrics, the solfa and staff notations are essentially the same. We urge the Honourable Court to so hold.

It is also submitted that the 3rd Defendant prevaricated a lot under cross examination when he was confronted with the question of whether he knew the Plaintiff's songs. DW3's evidence is equally fraught with contradictions and inconsistencies. Under cross examination, DW3 had initially lied that he did not know the musical works but when the audio recording was played to his hearing, he then admitted but stated that the plaintiff's musical works were hymns and not songs. DW3 under paragraph 24 of his WSO stated the songs have been in existence since time immemorial. DW3 also stated in paragraph 26 of his WSO that the Plaintiff is not the original creator



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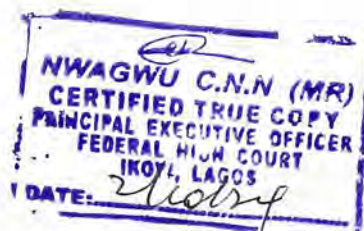
because the songs were copied from bible verses. However, under cross examination, DW3 admitted that without human inputs bible verses are not sufficient or would not qualify as a song.

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Thirdly, in paragraph 7 of DW3's WSO he stated that he never knew the Plaintiff from Adam and never heard any of the Plaintiffs musical works. However, under cross examination, and also in paragraph 24 of his WSO, DW3 stated that he had been listening to the Plaintiffs musical works from his childhood in the Catholic Church. Again, DW3 had stated in paragraph 27 of his WSO that he got his inspiration to make the infringing musical works from the bible. Under cross examination when DW3 was confronted with Exhibit D16 where he said in an interview that he got the inspiration for the said infringing songs from the "Ogene Boys", he then prevaricated that whereas the Bible inspired the lyrics, the "Ogene Boys" inspired the rhythm.

The foregoing statements of the 3rd Defendant are clearly inconsistent and a clear indication that the 3rd Defendant is not a truthful witness. In **DAUDA & ORS V. MASUMI (2021) LPELR-55075(CA)**, the Court of Appeal held that an inconsistent or contradictory statement is an affirmation of the contrary of what was earlier stated or spoken. Thus, in **PDP V. INNOCENT & ORS (2019) LPELR-47849 (CA)** the Court held as follows:

"The law is settled that where a witness offered two inconsistent evidence in respect of a material fact in issue, such a witness is not worthy of any credibility.



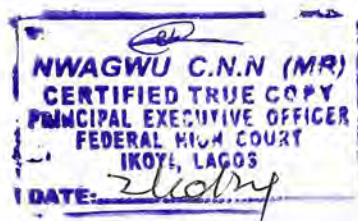
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The two inconsistent evidence will be ignored or rejected by the Court as the Court is not in a position to choose which of two versions of a story to believe." Per MISITURA OMODERE BOLAJI-YUSUFF, JCA (Pp 27 - 27 Paras A – B)"

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On a final analysis, he submits that the defence presented by the Defendants do not hold water and is baseless. He further submits that the Defendants have not relied on any of the exceptions contained in Part II of the Copyrights Act which bother on exceptions to copyright. There is no statutory basis for the defence relied on by the Defendants. He respectfully submits and urges the Court, based on the above highlighted inconsistent statements to hold that the evidence of DW3 is unreliable. He further urges the Court to see through DW3's tactics to dribble his way out of saying the truth and avoiding the responsibility of his infringement. He finally submits that the defence put up by the Defendants cannot avail them in this case.

On Issue 4, it was submitted that the copyright in the Plaintiff's musical works is fundamental and important to him for many reasons as provided in the Copyrights Act. First is the financial protection otherwise known as economic rights: this gives the Plaintiff the exclusive right to control the use of his musical works including the right to commercialize and make money from them. Second is control over the use of his music otherwise known as moral rights. Copyright gives the Plaintiff the right to control how his music is used and this includes the right to approve or reject the use of his musical works in recordings,



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live performances and any other context whether commercial or otherwise. Thirdly, it gives the Plaintiff the right to receive recognition and credit for his work. The fourth is the actionable right against persons like the Defendants who have not only reproduced the Plaintiff's sheet music, but also used the Plaintiffs lyrics and sampled the Plaintiff's musical works without permission. See section 16 of the Copyright Act.

He also submits that by virtue of section 2(3) of the Copyright Act once copyright inures in a work, the purpose of the work becomes immaterial. Therefore, the fact that the Plaintiff's musical works are used in churches for the worship of God does not absolve the Defendants in any manner whatsoever and as such constitutes no defence for them. The copyright includes a right to control the use of the Plaintiffs work and also the right to make financial gain from it. It is a clear fact that the Defendants without the permission of the Plaintiff copied his musical works and fully exploited the infringing works for massive commercial gains.

Learned Counsel submits further that the law is settled that general damages are losses which flow naturally from a defendant's conduct. They are always made as a claim at large and its quantum need not be pleaded or proved as it is generally presumed by law. We submit that in addition to the award of general damages, the Court is also empowered to award exemplary or punitive damages. Exemplary or



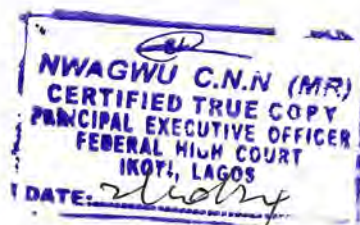
punitive damages are not only intended to compensate a plaintiff but to also punish the defendant and to deter him from similar behaviour in the future. In the case of **MASTERPIECE INVESTMENTS LIMITED & ANOR V. WORLDWIDE BUSINESS MEDIA LIMITED & ORS [1997] FHCLR 496 at PAGE 511**, the Court per **ODUNOWO J.** held inter alia that:

"On a claim for exemplary or punitive damages the trend of both judicial and juristic opinion is that the court may award additional damages for such matters as the author's reputation or feeling, the vulgarization of the work, economic loss, unjust enrichment by the defendant as a result of the act of infringement, the conduct of the defendant and the means of the parties..."

Furthermore, it is pertinent to refer here to **section 16 (4) of the Copyright Act** which provides:

"Where in an action under this section, an infringement of copyright is proved or admitted and the court in which the action is brought having regard (apart from all the material considerations) to - The flagrancy of the infringement and any benefit shown to have accrued to the defendant by reason of the infringement is satisfied that effective relief would not otherwise be available to the plaintiff, the court in assessing damages for the infringement shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances"

In the instant case, we submit that having established that the Defendants infringed on the Plaintiff's copyright to the musical works, the natural legal consequence is that the Plaintiff is entitled to the



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reliefs sought. Furthermore, the claim of ₦500, 000, 000 (Five Hundred Million Naira) as general damages is justified for two major reasons. The first is the flagrancy of the infringement and the second is the financial benefits derived from the infringement.

Flagrancy of infringement: The flagrancy of the Defendants' infringement is demonstrated by a number of factors. First, it is on record that despite being served with an order of this Honourable Court coram Hassan J. made on April 1, 2021 (Exhibit P12A); mandating the Defendants to maintain status quo, the 3rd Defendant continued to commercialise and perform the infringing musical works. Secondly, even while the trial of this matter had commenced, he continued to perform the infringing musical works. By DW3's own admission he recently performed the infringing musical works at the wedding of popular artiste David Adeleke (a.k.a. Davido) in May 2024.

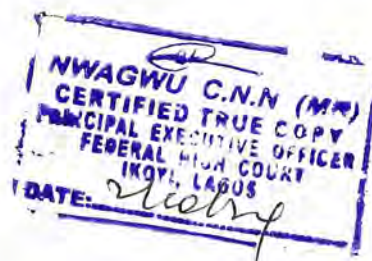
It is trite law that once a matter is submitted to the court for adjudication, it becomes sub-judice. Parties are obliged by law and ought properly not to take any action(s) or step(s) calculated to prejudice the course of justice. The actions of the Defendants in this suit are a direct insult to the court. It is tantamount to resisting the powers of the court or the person of the Judge. Such steps or actions should be appropriately punished with the judicial sledgehammer. Thirdly, the Defendants have even deliberately refused to acknowledge the Plaintiff for the musical works let alone give him



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credit for it. The actions of the Defendants can be likened to that of a broad day robbery. It is one thing to steal from Plaintiffs intellectual property but to also then challenge the rights of the Plaintiff to the entire work is another level of remorselessness and shamelessness.

Financial benefits made from the infringing musical works: The second and very tangential reason for the 500 million damages sought is owing to the financial windfall that has attended the 3rd Defendant's career following the success of the infringing musical works. Paragraphs 54, 57, 70, 71, 72, 73, 74 and 75 of PW1's WSO and Exhibits P5A, P5B, P6, P9A and P9B are relevant evidence showing the extent to which the Defendants exploited and made income from the infringing works. It shows the several shows where DW3 performed both in Nigeria and abroad, the number of streaming platform and aggregate views per \$1 earnings made on those platforms and other cash earnings. Streaming is a form of digital distribution of songs and music Artistes are paid based on the number of streams their works gather. Paragraphs 28, 29, 30, 31, 32 and 33 of the additional witness statements are testaments of the financial benefit made by the Defendants. The streaming figures from some streaming sites which form part of Exhibit P13, show that the works have garnered over 100, 000, 000 (one hundred million) streams across different platforms. On YouTube alone, both songs have earned over 11,000,000 streams, 11,141,618 on Spotify, 4,000,000 on Boomplay, 75,670,747 on



Audiomack, 2, 691,000 on Facebook and 4,000,000 on Apple Music as at January 2024.

Based on the preceding paragraph and verifiable data which also forms part of Exhibit P13, the 3rd Defendant have made about a total sum of ₦459,846, 400 (Four Hundred and Fifty Million, Eight Hundred and Forty –Six Thousand, Four Hundred Naira) from streaming platforms alone. We respectfully refer your Lordship to paragraph 30 of the Additional Witness Statement on Oath dated the 14th of February 2024 for the clinical analysis of the calculation. It must be noted that these analysis of the income from streaming was as at January 2024. The streaming volume of the infringing musical works continues to increase, and this translates to more income for the Defendants. It is also important to note that the streaming income is separate from other incomes such as music publishing rights made by the Defendants as well as earnings from countless performances of the musical works. The 3rd Defendant was confronted with a statement credited to him wherein he acknowledged that what he has made from gospel music is more than all the income he has made in his entire career as a secular artiste, and he agreed that he has actually made money from the infringing musical works. He also admitted that he has won both local and international awards based on the infringing musical works. Flowing from the above reasons which are supported by the evidence before the Court, he submits that the


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Plaintiff is also entitled to exemplary and/or punitive damages and he urges the Court to so hold.

Cost of this action: Ordinarily the law is now settled that it is unethical to pass the cost of litigation to the Defendant in any case. The above trite principle of law would ordinarily apply where there is no evidence to justify the claim for cost of litigation which is not the same in this case. This is because, first off, the Plaintiff as one of his claims sought for payment of ₦5,000,000 (Five Million Naira) as cost of this action. Secondly, the Plaintiff furnished the Honourable Court with sufficient evidence (vide Exhibit P10C) in proof of the cost of the litigation. We must point out that PW1 was vigorously cross examined on the sum of ₦5,000,000 (Five Million Naira) he paid to his counsel to prosecute this case on his behalf and his evidence of the sum was not impeached during the said cross examination. He submits that the claim for cost of litigation is in the realm of special damages which would require any party claiming same to lead evidence specifically in proof thereof. We submit that there is strict proof of special damages where there is a production of receipt as evidence of payment (even) without oral evidence of the maker. We commend to your Lordship the case of **UTB NIGERIA V. OZOEMENA [2007] 1 SC (Pt. II) 211 at 260**. In light of the foregoing, he urges the Honourable Court to hold that by virtue of the evidence in paragraph 50 of PW1's WSO and Exhibit P10C, the Plaintiff has specifically established his entitlement to award



of ₦5,000,000.00 (Five Million Naira) claimed as cost of litigation against the Defendants in this case. He urges the Court to so hold.

In conclusion, he urges the Honourable Court (on the strength of the judicial authorities and our legal submissions herein) to resolve all the issues for determination herein in favour of the Plaintiff and grant him all the reliefs sought in this case in the interest of justice.

The Defendants' Reply is dated 22nd September, 2024 and filed on 23rd September, 2024. The defendants' Counsel posited that in response to the Defendants' Final Written Address dated and filed on the **5th of August, 2024**, the Plaintiff filed his Final Written Address on the **10th of September, 2024** clearly out of time. Apart from the fact that the Plaintiff relied heavily on sentiments and speculations which are clearly not part of adjudication, please see **STATE VS. AIBANGBEE (1988) 3 NWLR (Pt. 84) 584 at 587**, the Claimant also attempted to modify the evidence before the Court and raised some issues of law, which from all indications constitutes a misconception of law.

For ease of reference and for clarity of presentation, we shall, with respect, identify the issues of law raised in the Plaintiff's Written Address under the following points, and thereafter, we shall proceed to address them under the appropriate distinct heads.



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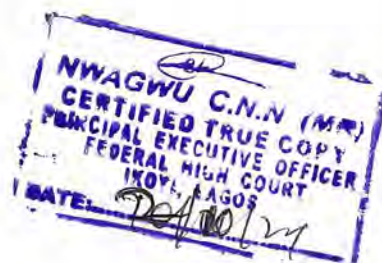
SPECIFIC ISSUES OF LAW

He submits that the specific issues of law raised in the Plaintiff's Written Address which require a reply in compliance with the Rules of this Honourable. Court are: -

- i. That there is technically no defence to the Plaintiff's claim. See paragraph 1.5 found on page 4 of the Plaintiff's Written Address.
- ii. Reliance on section 2(3) of the Copyright Act to argue that a musical work shall be entitled to copyright notwithstanding the quality of the work or the purpose for which the work was created. See paragraph 4.3 of the Plaintiff's Written Address.
- iii. Reliance on **Baba vs. Nigerian Civil Aviation Training Centre & Anor. (1991) LPELR-692(SC)**, to argue that the onus of prove has shifted to the Defendants to prove that the musical works are not the original creation of the Plaintiff. See paragraphs 4.6, 4.7 through to 4.17 of the Plaintiff's Written Address.
- iv. Heavy reliance on the foreign case of **DESIGNER GUILD VS. RUSSELL WILLIAMS (2000) 1 WLR 2416, (2001) FSR 11 P. 113** and **Mitchell vs. BBC (2011) EWPC 42**, to argue that the Defendants' Cultural Praise Vols. 1 and 4 constitute an adaptation of the Plaintiff's purported musical works. See paragraph 4.24, 4.25, 4.26 through to 4.32 running through pages 18 to 22 of the Plaintiff's Written Address.

ARGUMENTS/REPLY ON POINTS OF LAW

A. COMPETENCE OF THE DEFENDANTS' STATEMENT OF DEFENCE



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At paragraph 1.5 found on page 4 of the Plaintiff's Written Address, he argued that the Defendants' Statement of Defence was filed out of time and was not regularized. For this reason, in his ipsi dixit, the Plaintiff contended that there is technically no defence before Your Lordship. It is imperative to note that no statutory or judicial authority was relied upon by the Plaintiff when he made this submission, nevertheless, we submit that the said submission has a legal consequence which warrants a reply. This is because the conduct of the Plaintiff throughout the proceedings is a clear indication that he has waived his right to object to the competence of the Defendants' Statement of Defence irrespective of when it was filed.

In law, the conduct of the Plaintiff is deemed to constitute a waiver because his objection to the Defendants' Statement of Defence was not raised timeously. To make matters worse for the Plaintiff, he filed a Reply to the Statement of Defence dated the 14th of February 2024 and proceeded to give evidence in the matter which the Defendants strongly controverted. Thus, by his conduct, the Plaintiff is deemed to have waived his right to object to the competence of the Defendants' defence. In fact, in **ARIORI VS. ELEMO (1983) ALL NLR 1 at 12**, the Supreme Court, per **Eso, JSC** adequately addressed the issue of waiver and how it operates in adjudication when he held that:

"A beneficiary under a statute should have full competence to waive those rights once the rights are solely for his benefit. The only exception I can think of is where the statute itself forbids waiver of the statutory provisions"

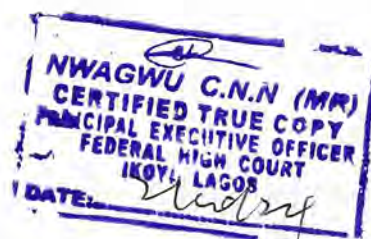


Similarly, in **MENAKAYA VS. MENAKAYA (1996) 9 NWLR (PT. 472) 256 at 299, Tobi JCA** (thereafter JSC) made his input when he held that:

"A party can waive a statutory or procedural right which he does not share with the public. In other words, a party can waive a right which is personal to him."

Clearly, these dicta best apply to this case because this is a personal action in which all the reliefs being claimed are reliefs the Plaintiff does not share with any member of the public. Therefore, any accruing statutory or procedural rights are rights he does not share with any member of the public. For this reason, having failed to raise any objection to the competence of the Defendants' defence at the earliest opportunity, the Plaintiff is legally and morally estopped from launching a challenge to the competence of the Defendants' Statement of Defence at this stage of the proceeding. In the circumstance, he urges the Court to discountenance the Plaintiff's submissions in this regard.

In any event, he submits further that the Defendants' Statement of Defence was not filed out of time. This is because at a point, the Defendants filed an application challenging the jurisdiction of the Court on ground of non-service of the originating processes on all the parties vide an application dated the 16th of June, 2022 which was later withdrawn when the Plaintiff withdrew his objection to the application, thereby conceding that indeed, the Defendants were not served with any of the originating processes and orders granted



in this matter. Finally, he submits that the Court cannot under any circumstances turn a blind eye to a Statement of Defence filed out of time. Please see **MANA VS. PDP & ORS. (2011) LPELR-19754** and **UBA VS. NWORAH (1978) 11 TO 12 SC 1.**

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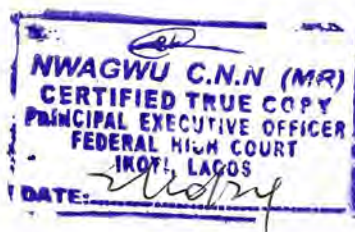
B. WHETHER SECTION 2(3) OF THE COPYRIGHT ACT SUPPORTS THE PLAINTIFF'S CASE

At paragraph 4.3 of the Plaintiff's Written Address, he relied on Section 2(3) of the Copyright Act, to argue that a musical work shall be entitled to copyright notwithstanding the quality of the work or the purpose for which the work was created. In relying on this section, the Plaintiff did not take cognizance of the fact that section 2(3) of the Act cannot operate in isolation. In fact, it is inextricably tied to its precursor section 2(1) of the Act which provides that:

"Subject to this Act, the following works shall be eligible for copyright

- (a) literary works;**
- (b) musical works;**
- (c) artistic works;**
- (d) audiovisual works;**
- (e) sound recordings; and**
- (f) broadcasts."**

Essentially, this section has only outlined the kind of works that are eligible for copyright and the conditions for the eligibility of the musical or artistic works et al, are not based on the fact that a mere musical or artistic work not created by a party is eligible for copyright protection. The Copyright Act is not meant to protect alleged owners



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of musical or artistic works who are not the original creators of those works by copying such works from other sources. In fact, the whole essence of copyright is to reward creativity and originality. Thus, the evidence on record has shown that the Plaintiff is not the creator of the musical works under consideration and more importantly, the Defendants' Cultural Praise Vols. 1 and 4 are not the imitation of any of his musical works. In this connection, we submit that Section 2 (3) and other allied sections of the Act has been cited out of context by the Plaintiffs and for this reason, his submissions should be discountenanced.

C. THAT THE MUSICAL WORKS ARE NOT THE ORIGINAL CREATION OF THE PLAINTIFF

At paragraphs 4.6, 4.7 through to 4.17 of the Plaintiff's Written Address, he relied on **BABA VS. NIGERIAN CIVIL AVIATION TRAINING CENTRE & ANOR. (1991) LPELR-692(SC)**, to argue that the onus of prove has shifted to the Defendants to prove that the musical works are not the original creation of the Plaintiff. Please see paragraphs 4.6, 4.7 through to 4.17 of the Plaintiff's Written Address. With respect, this decision of the Supreme Court has been misconceived and misapplied. In fact, the Supreme Court has in a plethora of cases warned litigants to desist from citing cases and making them apply to other cases with different factual background. Please see **ADEGOKE MOTORS VS. ADESANYA (2001) 9 NWLR (Pt. 717) 132 at 155** where the Supreme Court, per **Oputa JSC** noted that:

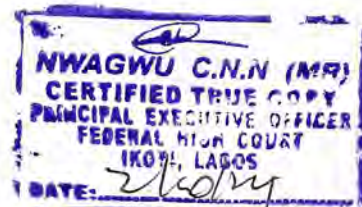


"It is wrong to consider pronouncements made by justices of the Supreme Court in isolation from the facts and surrounding circumstances of those particular cases in which those pronouncements were made."

Turning to **BABA VS. NIGERIAN CIVIL AVIATION TRAINING CENTRE & ANOR. (1991) LPELR-692 (SC)**, one of the issues the Supreme Court considered has to do with instances when the evidence of a party in a litigation is not challenged or contested. This decision is not applicable in this case, because apart from the fact that the Plaintiff contradicted himself by giving evidence under the fire of cross examination which shows that he is not the creator of the musical works in question, other evidence also proved that the lyrics and soundtracks in the Defendants' **Cultural Praise Vols. 1 and 4** are not similar with any of the Plaintiff's alleged musical works. In the circumstances, the dictum of the Supreme Court in **BABA VS. NIGERIAN CIVIL AVIATION TRAINING CENTRE & ANOR. (SUPRA)** does not apply with full force to this case, therefore, the Plaintiff's submission on this point is liable to be discountenanced.

D. WHETHER THE DEFENDANTS' CULTURAL PRAISE CONSTITUTE AN ADAPTATION OF THE PLAINTIFF'S PURPORTED WORKS

At paragraphs 4.24, 4.25, 4.26 through to 4.32 of the Plaintiff's Written Address, he relied on the cases of **DESIGNER GUILD VS. RUSSELL WILLIAMS (2000) 1 WLR 2416, (2001) FSR 11 P. 113** and **MITCHELL VS. BBC (2011) EWPC 42**, to argue that the Defendants' Cultural Praise Vols. 1 and 4 constitute an adaptation of the Plaintiff's purported



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musical works. With respect, these cases are all foreign cases which are not even verifiable by the Court by reason of the fact that no certified true copies of the said foreign judgments in these cases were served on the Defendants and on the Court to enable us to verify their authenticity. In any event, these cases are only of persuasive relevance and are in fact unhelpful to the Plaintiff's case. Essentially, the facts of these foreign cases are not like the facts of the instant action. For example, Designer Guild's case (*supra*) is a dispute arising from trade mark design and not any lexical expression as it is in this case, therefore, it cannot even be the basis for any "persuasive authority" in this matter.

The attitude of our courts to foreign judicial authorities was best presented in the case of **INAKOJU VS. ADELEKE (2007) 4 NWLR (Pt. 1025) 423 AT 593**, where the Supreme Court, per **Tobi JSC** held as follows:

"What is relevant however is whether this court should make use of the cases cited by learned Senior Advocate of Nigeria? It is the law that decisions of foreign courts, however learned they are or may be, are of persuasive authority and not binding on this court. The courts have held that decisions of English Courts are of persuasive authority as they lack binding effect in our principles of stare decisis."

To make them apply, the Plaintiff tabulated the purported contents of **Exhibit P3** in Igbo language, which is not the language of the Court, and proceeded to transliterate his purported musical work "**Som too**



Chukwu" and the Defendants' Cultural Praise Vol. 1 and made them appear similar. **See pages 19 and 20** of the Plaintiff's Written Address. In conclusion, in view of the arguments and reasons canvassed in this Address, this Honourable Court is urged to discountenance all the submissions contained in the Plaintiff's Written and dismiss the instant action with substantial cost.

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SUMMARY OF RELEVANT FACTS

By a Writ of Summons and an Amended Statement of Claim dated the 2nd of August 2021 and filed on the 4th of August 2021, the Plaintiff approached this Honourable Court to grant him some reliefs, including the sum of ₦500,000,000 (Five Hundred Million Naira) general damages and ₦5,000,000 (Five Million Naira) Solicitor's fees for the alleged breach of his copyright by the Defendants. According to the Plaintiff, he is the copyright owner of the songs titled, 'Som too Chukwu' which the 3rd Defendant included in his music album titled, Cultural Praise Volume 1 without permission. That he is also the copyright holder of the musical work titled, 'Otito Diri Chineke' and 'K'anyi jee n' Ulo Chukwu' included in the 3rd Defendant's music album known as Cultural Praise Volume 4 without his consent.

To contest the Plaintiff's claim, the Defendants filed a Joint Statement of Defence dated and filed on the 4th of August 2022. In their defence, the Defendants averred that the 3rd Defendant did not have any song titled, 'Som too Chukwu', 'Otito Diri Chineke' and 'K'anyi jee



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n' Ulu Chukwu'. What the 3rd Defendant has are singles, known as Cultural Praise Vols. 1 and 4 which were produced in 2020 and 2021 respectively. Essentially, the Defendants maintained that the Plaintiff is not the creator or original composer of any song titled 'Som too Chukwu', 'Otito Diri Chineke' and 'K'anyi jee n' Ulu Chukwu'.

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Several documents were tendered by the Plaintiff and the Defendants which were admitted by the Court as Exhibits.

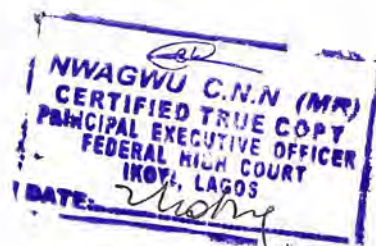
ISSUE FOR DETERMINATION

I have carefully considered the cases of both the Plaintiff and the Defendants, the Exhibits tendered and their Final Written Addresses and the Reply which were duly adopted before the Court and I hereby adopt the sole issue for determination formulated by the Defendants' Counsel in his Final Written Address dated 5th August, 2024 and filed on 7th August, 2024 as the issue for determination in this case. The issue is:

Considering the facts and evidence presented before this Honourable Court, whether the Plaintiff is entitled to judgment?

RESOLUTION OF THE ISSUES

To resolve this issue, I will consider the relevant law in relation to the facts presented in this case. **Section 2(1)** of the Copyright Act 2022 explicitly enumerates the categories of works eligible for copyright protection as follows:



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"Subject to this Act, the following works shall be eligible for copyright

- (a) literary works;**
- (b) musical works;**
- (c) artistic works;**
- (d) audiovisual works;**
- (e) sound recordings; and**
- (f) broadcasts.**

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Section 2(2) further provides as follows:

"(2) Notwithstanding the provision of subsection

(1), literary, musical or artistic work shall not be eligible for copyright unless —

- (a) Some effort has been expended on making the work, to give it an original character; and**
- (b) The work has been fixed in any medium of expression known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.**

Section 2(3) provides that

"(3) Any work that meets the requirements set out in subsection (2) shall be eligible for copyright, notwithstanding the quality of the work or the purpose for which the work was created."

The Plaintiff's case is centered on intellectual property in which the Plaintiff, Sir Jude Nnam gave evidence as the sole witness claiming to have a copyright or the exclusive use of the songs, titled 'Som too



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Chukwu', 'Otito Diri Chineke' and 'K' anyi jee n' Ulo Chukwu' which he claimed he composed in 2001, 1990 and 1995 respectively. The 3rd Defendant through his personal testimony before the Court and the evidence of the DW1 and DW2 stated that the tracts contained in his Cultural Praise Vols. 1 and 4 are not the same with the songs alleged to be owned by the Plaintiff. The strength of every copyright action is the claim that the copyright owner must be the creator or originator or author of an original work of authorship presented in a tangible medium of expression and thus, the burden of proof lies on the Plaintiff because it is he who will fail if no evidence at all were given in this case. See section 132 of the Evidence Act.

In compliance with this statutory requirement, The Defendants' Counsel, in his Final Written Address has submitted that the Plaintiff has not discharged his obligations under the law. In fact, throughout the gamut of his evidence, there was no scintilla of convincing evidence capable of crystallizing or accentuating his claim, or, to prove that he is entitled to the reliefs sought. The Plaintiff's Counsel in his Final Written Address has submitted that the Plaintiff has proved his property of the songs and the onus has shifted to the Defendants to prove that the songs were not adapted nor copied from the Plaintiff.

In view of the two extreme positions, it will be of help to ascertain the true meaning of the words, "creator" and "originator" in resolving this copyright issue. In English lexicon, "creator" means:



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"a person or thing that brings something in existence." See google the free online Dictionary. According to the Cambridge, Advanced Learner's Dictionary, Third Edition at page 328, the word, "creator" means: "someone who has invented something." By "originator" it means: "a person who creates or initiates something." See again google the free online Dictionary. The Black's Law Dictionary which is a reliable source of judicial reference did not define the noun "creator" directly. What it did was to define its lexical variant "created" in the following words: "In copyright law, a work is 'created' when it is fixed in a copy or phonorecord, for the first time." See page 366 of the Black's Law Dictionary, Sixth Edition, Centennial Edition (1891-1991).

The same Dictionary did not also define 'originator' directly; however, it defines its lexical variant 'original' as follows: "First in order, nearing its own authority, and not deriving authority from an outside source ...In copyright law, means that the work owes its creation or origin to the author and this in turn means that the work must not consist in actual copying." See again page 1099 of the Black's Law Dictionary, Sixth Edition, Centennial Edition (1891-1991).

A careful examination of the definitions of "creator" and "originator" presented above have shown that both words are essentially synonyms. In the context of their distinction, what emerges is that the two words means virtually the same thing. They are used in reference to an individual who is the first person to produce any work of art



presented in a tangible medium of expression for the first time. In fact, his work must not consist in actual copying of the same work from another source. The implication of this proposition is that only a creator or an originator can claim to be the owner of a copyright. By virtue of sections 16, 17 and 39 of the Copyright Act, Law, 2022, infringement of copyright shall be actionable at the suit of the owner, assignee, or an exclusive licensee as the case may be, and in any action for such infringement, all such relief by way of damages, injunction, accounts, or otherwise shall be available to the Plaintiff as it is available in any corresponding proceedings in respect of infringement of other proprietary rights. See **MULTICHOICE (NIG.) LTD. VS. M.C.S.N, LTD/GTE (2020) 13 NWLR (Pt. 1742) 415 at 522.**

In the instant case, the Plaintiff's claim is that he is the owner and vested with the litigable right to sue for the alleged breach of his purported musical works, titled, 'Som too Chukwu', 'Otito Diri Chineke' and 'k' anyi jee n' Ulo Chukwu'. The evidence before the Court have shown that the songs put together by him are direct words from the Bible to show that he is not the creator or originator or owner of any or all of the above musical works. He admitted under cross-examination that songs can be written from the words of the Bible or Liturgical Books. The implication of this is that PW1 did not create the words of the songs, he might have copied the songs from the Bible or Liturgical books. Clearly, these are books not originally written by him. Therefore the PW1 is not the creator of all the songs as he claimed. By



definition, a liturgical book, or service book, is a book published by the authority of a church body that contains the text and directions for the liturgy of its official religious services, while the Bible is the manual for all adherents of the Christian faith.

On the songs 'Som too Chukwu', 'K'anyi jee Ulo Chukwu' and 'Otito Diri Chineke' the PW1, DW1, DW2 and DW3 stated in their various testimonies that the phrase, 'Otito diri Chineke', 'K' anyi jee ulo Chukwu' and "Som too Chukwu" are Igbo language expressions which can be found in or outside the Bible. The PW1 stated that the phrase, 'Som too Chukwu' is not a phrase in the Bible. He was asked by the Defendants' Counsel to interpret the phrase, 'Som too Chukwu' and his reply was, it "is an invitation to my friends to join me in praising God for what He has done for me." That was the expression conveyed in Psalm 34 verse 3 of the English Bible which variously interprets the phrase, 'Som too Chukwu' as "O magnify the Lord with me. And let us magnify his name together." The PW1 maintained that his own translation is a personal expression of join me to praise God for what he has done for me."

From the foregoing, it is crystal clear that PW1 is not the creator of the phrase, 'Som too Chukwu' and could not have been said to possess any copyright in that regard because what he did is actual copying of the phrase from the Holy Bible. From the Cultural Praise Vol. 1 played in the open court, the first song is 'Som too Chukwu'. The the beats and



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sounds are not the same as that of the Plaintiff 'Som too Chukwu' and that the tunes and the notes are not the same because they do not flow at the same rhythm. The same observation goes for the two other songs, 'K' anyi jee Ulo Chukwu and Otito diri Chineke in Cultural Praise Vol. 4 played before the court. The beats and the sounds are not the same as that of the Plaintiff. The Plaintiff maintained that they are distorted. It is worthy of note that the Plaintiff's testimony while giving his evidence in chief were mere allegations contained in his witness statements which he could not substantiate by any credible evidence.

At this point, the Court is of the view that the ownership rights in copyright matters are rights to possess the copyrighted material, regardless of any actual or constructive control. Ownership rights are general, permanent and heritable and the copyright owner is one who holds an exclusive right or rights to copyrighted material. See **M.C.S. (NIG). LID/GIE VS. C.D.T. LTD. (2019) 4 NWLR (Pt. 1661) 1 at 24** and **AFRICAN SONGS LTD. VS. ADEGEYE (2019) 2NWLR (Pt. 1656) 335 at 386**. Clearly, from the evidence adduced so far, the Plaintiff is not the owner of the copyright to the musical works, 'Som too Chukwu, Otito diri Chineke and K'anyi jee Ulo Chukwu'. The testimony of the DW2, Dr. Osita Nwagbo, whose evidence is clear and conclusive, debunked the Plaintiff's claim since he proved that the lyrics contained in his musical works are not the same with the ones contained in the 3rd Defendant's musical works. In fact, at a point during his cross

NWAGWU C.N.N (MR)
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 FEDERAL HIGH COURT
 IKOYA, LAGOS
 DATE: 2/12/2019

examination, Exhibits D4 and D6 were given to DW2 to read and the readings show that they are not the same. In his conclusion, he maintained that the two songs are not the same syntactically. The songs are saying the same thing save for the synthetic difference. That nobody has the monopoly of a particular sentence in a language. He stated further that the Plaintiff used prepositional phrases while the 3rd Defendant did not use prepositional phrases. The songs of the Plaintiff and that of the 3rd Defendant are not essentially the same. Synthetically, toxically, morphologically, the songs are not the same.

The Plaintiff's claimed general damages in the sum of ₦500,000.00 (Five Hundred Million Naira) and ₦5,000,000.00 (Five Million Naira) as cost of the action. He also entreated this Honourable Court to compel the Defendants to render accounts of the profits and benefits purportedly made from the alleged adaptation of the Plaintiff's musical works. In **DAWUDA VS. LBI & CO. LTD. (2011) 5 NWLR (Pt. 1241) 411 at 429**, it was held that:

"General damages are those damages which the law implies in every breach and every violation of legal rights. It is the loss which flows naturally from the Defendant's act, and its quantum need not be pleaded or proved as it is generally presumed by law. The manner in which general damages is qualified is by relying on what could be the opinion and judgment of a reasonable person in the circumstances of the case."



What this dictum entails is that general damages can only be granted in favour of a party who is able to establish that his legal rights have been violated. Whereas the facts and evidence presented by the Plaintiff in this case has not supported that his legal rights have been violated.

Furthermore, the claim for the sum of ₦5,000,000.00 (Five Million Naira) was made by the Plaintiff to claim solicitor's fee from the Defendants. In **GUINNESS NIG. PLC VS. NWOKE (2000) 15 NWLR (Pt. 689) 135 at 150**, it was held that it

"...is unethical and an affront to public policy for a litigant to pass on the burden of his solicitor's fee to his opponent in a suit."

Flowing from the above, I hold that the Plaintiff is not entitled to any of the reliefs being sought in this case. See **U.F.P. (NIG.) LTD. VS. OPOBIYI (2012) 6 NWLR (Pt. 1297) 429 at 455**, where **Agube JCA** held that:

"The point must be rammed home that facts are the fountain heads and forerunners of the law. It is fact that determines the fate of any proceedings. Facts can convert the fortune of a matter into doom or vice versa. By law, cases are invariably decided and grounded on their peculiar facts and circumstances."

Also, in **UTB (NIG). V. OZOEMENA (2007) 3 NWLR (Pt. 1022) 448 AT 487**, the Supreme Court, per **Ogbuagu JSC** held that:

"A court is not entitled to assume or speculate anything. It is dangerous and unfair to do so. Often times,



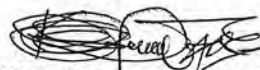
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it leads to a miscarriage of justice as appears in the instant case."

What this dictum crystallizes is that cases should be presented based on cogent and verifiable evidence and not on speculation. To use the words of the Supreme Court, it is "dangerous and unfair to do so." Clearly, this is what the Plaintiff has done by making relevant evidence very scarce to this Honourable Court in this case and based on the dearth of evidence adduced by the Plaintiff in this matter, this Honourable Court hereby resolves the sole issue formulated herein in favour of the Defendants.

Consequently, the Plaintiff's case fails in its entirety and same it is hereby dismissed.

Cost of ₦1 Million is awarded jointly in favour of the Defendants.



HON. JUSTICE K. O. OGUNDARE
JUDGE

30/9/2024

Judgment read and delivered in open Court.

APPEARANCE:

Parties absent

M.C. Amakeze, Esq., with **D. O. Leshi, Esq.**,
O. E. Aigboje Esq., and **P. C. Awoegbe, Esq.**, Learned
Counsel for the Plaintiff



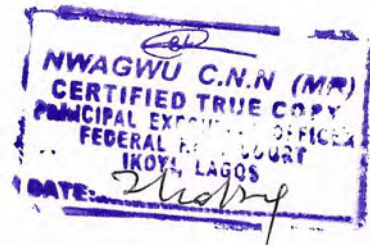
Abdulhakeem Adio, Esq, with Esther Ifeoma Enyinnaya, Esq.,
Michael Enyinnaya, Esq, and Egbo Adaora Treasure,
Learned Counsel for the Defendants

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