

**IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY THE 14TH OF DECEMBER 2018
BEFORE THEIR LORDSHIPS**

**MARY UKAEGO PETER-ODILI
OLUKAYODE ARIWOOLA
KUDIRAT MOTONMORI OLATOKUNBO
KEKERE-EKUN
AMINA ADAMU AUGIE
SIDI DAUDA BAGE**

**JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT**

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SC. 425/2010

BETWEEN:

1. MUSICAL COPYRIGHT SOCIETY OF NIGERIA
(LTD/GTE)

} APPELLANTS

AND

1. COMPACT COPYRIGHT TECHNOLOGY LIMITED
2. NU METRO HOME ENTERTAINMENT
(WEST AFRICA) LIMITED
3. NU METRO RETAIL NIGERIA LIMITED

} RESPONDENTS

JUDGMENT

(Delivered by **MARY UKAEGO PETER-ODILI, JSC**)

ISSUE

Whether, by virtue of sections 16(1), 17, 19 and 39(1) and of the Copyright Act, Cap. C.28, Laws of the Federation of Nigeria 2004, the appellant can lawfully commence infringement proceedings against the respondents in respect of the musical works and related audio visual available and broadcast within the territory of the Federal Republic of Nigeria.

FACTS

The appellant, in its capacity as owner, assignee and exclusive licensee of the copyright in the musical works of certain named authors, publishers, composers and institutions within the territory of the Federal Republic of Nigeria, instituted an action against the respondents at the Federal High Court claiming a declaration that the acts of the respondents without authority or permission of the appellant of importing, recording, reproducing, distributing, offering for sale, communicating to the public or publicly performing or playing the musical works on audio and video devices such as tapes or video compact disc and/or similar devices at their stores was an infringement of the appellant's copyright as guaranteed by the Copyright Act, 1988 (as amended). The appellant also claimed, inter alia, an order of perpetual injunction restraining the respondents by themselves, assigns, agents and servants from the further importing, reproducing, distributing, offering for sale, publicly performing/playing and communicating to the public any of the works or any works for that matter from the appellant's repertoire without the appellant's authorisation or permission; and an order of perpetual injunction directing the respondents jointly or severally whether by themselves, assigns, agents and servants or howsoever from further infringing or continuing to infringe the copyright in the audio or audio visual musical works contained in the appellant's repertoire.

The appellant pleaded that the various authors, composers, arrangers and publishers (whose particulars were pleaded) had directly and through their affiliate sister organisations in other countries assigned and exclusively licensed the copyright in their works to the appellant and that pursuant to the various reciprocal assignments and agreements entered into, the appellant is the only person who can authorise or permit the exploitation in form of public performance, recording, production into, distribution and sale of any work

under the agreements within the territory of the Federal Republic of Nigeria. The appellant alleged that the respondents had infringed on the copyright by importing, recording, producing, distributing, and offering for sale to the public without its authority the musical works of its assignors.

The respondents entered a conditional appearance and filed their statement of defence and therein challenged the locus standi of the appellant. The respondents filed a motion on notice by way of preliminary objection seeking an order dismissing the suit on the ground that the respondent as an alleged owner, assignee and exclusive licensee lacked the locus standi, under sections 15(a) and 32 of the Copyright Act, 1999 (as amended) to commence and plead the reliefs sought in the suit. The respondents contended that the appellant lacked the locus standi to institute the action because it is a collecting society which has not been shown to have been granted a licence to operate by the Nigerian Copyright Commission in compliance with section 39 of the Copyright Act 1999(as amended). The appellant on its part contended that it had the requisite locus standi to institute the action by virtue of section 15(1) of the Copyright Act 1988 and that sections 15A and 32(b) of the Copyright Act 1999 (as amended) were not applicable.

The trial court in its ruling dismissed the objection and held that the appellant had the locus standi to institute the action as an owner, assignee, or an exclusive licensee of the copyright in compliance with the provisions of section 15(1) of the Copyright Act.

The respondents were dissatisfied with the ruling of the trial court, and they appealed to the Court of Appeal. The Court of Appeal in its judgment allowed the appeal, set aside the decision of the trial court, and struck out the suit. It held that the appellant's non-adherence to the condition precedent for bringing an action on copyright infringement under the Copyright Act deprived the appellant of the locus standi to institute and prosecute the suit.

The appellant was aggrieved, and it appealed to the Supreme Court.

In determining the appeal, the Supreme Court considered the provisions of section 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and sections 6(1), 8(1) and (2), 10(1), and (3), 11(1) and (3), 16(1), 17 and 39(1), and of the (2) Copyright Act (as amended) which respectively state as follows:

Section 44 of the Constitution of the Federal Republic of Nigeria, 1999(as amended):

“No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in such property shall be acquired compulsorily in any part of Nigeria except in the manner prescribed by a law...”

Sections 6(1), 8(1) and (2), 10(1), and (3), 11(1) and (3), 16(1), 17and 39(1), and of the Copyright Act (as amended):

“6(1) Subject to the exceptions specified in the Second Schedule to this Act, copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is –

(a)in the case of a literary or musical work, to do and authorise the doing of any of the following acts –

(i)reproduce the work in any material form.

(ii)publish a work.

(iii)perform in public.

(iv)produce, reproduce, perform, or publish any translation of the work.

(v)make any cinematograph film or a record in respect of the work.

(vi)distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan, or similar arrangement.

(vii)broadcast or communicate the work to the public by a loudspeaker or any similar device.

(viii) make adaptation of the work; (ix) do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in subparagraphs (i) to (vii) of this paragraph”.

“8(1) Subject to this section, copyright in a broadcast shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is –

(a)the recording and the re-broadcast of the whole or a substantial part of the broadcast.

(b)the communication to the public of a whole or substantive part of a television broadcast, either in its original form or in any form recognisably derived from the original.

and

(c)the distribution to the public, for commercial purposes, of copies of the work by way of rental, lease, hire, loan, or similar arrangement.

(2) The copyright in a television broadcast shall include the right to control the taking of still photographs from the broadcast.”

“10(1) Copyright conferred by sections 2 and 3 of the Act shall vest initially in the author.

(3)Where a literary, artistic or musical work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship as is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be first owner of copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical; or to the reproduction of the work for the purpose of its being so published; but in all other respects, the author shall be the first owner of copyright in the work.”

“11(1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of the law, as movable property.

(3) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing.”

“16(1) Subject to this Act, infringement of copyright shall be actionable at the suit of the owner, assignee, or an exclusive licensee of the copyright, as the case may be, in the Federal High Court exercising jurisdiction in the place where the infringement occurred; 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 is available in any corresponding proceedings in respect of infringement of other proprietary rights.”

“17. Notwithstanding the provisions of this Act or any other law, no action for infringement of copyright or any right under this Act shall be commenced or maintained by any person -

(a)carrying on the business of negotiating and granting of licence.

(b)collecting and distributing royalties in respect of copyright works or representing more than fifty owners of copyright in any category or works protected by this Act unless it is approved under section 39 of this Act to operate as a collecting society or is otherwise issued with a certificate of exemption by the Commission.”

“39(1) A collecting society (in this section referred to as ‘a Society’) may be formed in respect of any one or more rights of copyright owners for the benefit of such owners and the Society may apply to the Commission for approval to operate as a collecting society for the purpose of this Act.

(2) The Commission may approve a Society if it is satisfied that -

(a)it is incorporated as a company limited by guarantee.

(b)its objects are to carry out the general duty of negotiating and granting copyright licences and collecting royalties on behalf of copyright owners and distributing same to them.

(c)it represents the substantial numbers of owners of copyright in any category of works protected by this Act; in this paragraph of this subsection, ‘owners of copyright’ includes owners of performers rights.

(d)it complies with the terms and conditions prescribed by regulations made by the Commission under this section”.

For the purposes of this section, ‘collecting society ‘means an association of copyright owners which has as its principal objectives the negotiating and

granting of licences, collecting and distributing of royalties in respect of copyright works.”

Held (Unanimously allowing the appeal):

1.On compulsory acquisition of property

By virtue of section 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in such property shall be acquired compulsorily in any part of Nigeria except in the manner prescribed by a law.

2.On nature of copyright in literary or musical work

By virtue of section 6(1) of the Copyright Act (as amended), subject to the exceptions specified in the Second Schedule to the Act, copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is, in the case of a literary or musical work, to do and authorise the doing of any of the following acts -

(i)reproduce the work in any material form.

(ii)publish a work.

(iii)perform in public.

(iv)produce, reproduce, perform, or publish any translation of the work.

(v)make any cinematograph film or a record in respect of the work.

(vi)distribute to the public for commercial purposes, copies of the work, by way of rental, lease, hire, loan, or similar arrangement.

(vii)broadcast or communicate the work to the public by a loudspeaker or any similar device.

(viii)make adaptation of the work; (ix) do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in subparagraphs (i) to (vii) of this paragraph.

3. On nature of copyright in broadcast

By virtue of section 8(1) and of the Copyright Act (as amended), subject to the section, copyright in a broadcast shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is -

(a) the recording and re-broadcasting of the whole or a substantial part of a television broadcast.

(b) the communication to the public of a whole or substantive part of a television broadcast either in its original form or in any form recognisably derived from the original; and

(c) the distribution to the public, for commercial purposes, of copies of the work by way of rental, lease, hire, loan, or similar arrangement.

(d) The copyright in a television broadcast shall include the right to control the taking of still photographs from the broadcast.

4. On in whom vested first ownership of copyright

By virtue of section 10(1), and of the Copyright Act (as amended), the copyright conferred by sections 2 and 3 of the Act shall vest initially in the author.

(2) Notwithstanding subsection (6) of section 11 of this Act where a work-

(a) is commissioned by a person who is not the author's employer under a contract of service or apprenticeship; or

(b) not having been so commissioned, is made in the course of the author's employment, the copyright shall belong in the first instance to the author, unless otherwise stipulated in writing under the contract.

(3) Where a literary, artistic or musical work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship as is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical or to

the reproduction of the work for the purpose of its being so published. But in all other respects, the author shall be the first owner of copyright in the work.

5. On transmission of copyright

By virtue of section 11(1) and of the Copyright Act (as amended), subject to the provisions of the section, copyright shall be transmissible by assignment, by testamentary disposition or by operation of the law, as movable property.

(3) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing.

6. On effect of assignment of copyright

A legal assignment of copyright or any part of it vests the rights assigned in the assignee so that he becomes the owner and may take proceedings against persons who infringe or who have infringed it.

7. On formation of collecting society and when Nigerian Copyright Commission can approve

By virtue of section 39(1) and of the Copyright Act (as amended), a collecting society may be formed in respect of anyone or more rights of copyright owners for the benefit of such owners and the society may apply to the Nigerian Copyright Commission for approval to operate as a collecting society for the purpose of the Act. The Commission may approve of a society if it is satisfied that: -

(a) it is incorporated as a company limited by guarantee.

(b) its objects are to carry out the general duty of negotiating and granting copyright licences and collecting royalties on behalf of copyright owners and distributing same to them;

(c) it represents the substantial numbers of owners of copyright in any category of works protected by the Act, and "owners of copyright" includes owners of performer's rights;

d) it complies with the terms and conditions prescribed by regulations made by the Commission under the section.

8. On what is “collecting society”.

By virtue of section 39(8) of the Copyright Act (as amended), a collecting society is an association of copyright owners which has as its principal objectives the negotiating and granting of licences, collecting, and distributing of royalties in respect of copyright works.

9. On meaning of exclusive licence in copyright and rights of exclusive licensee

An exclusive licence means a licence in writing signed by or on behalf of a copyright owner, authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner. The licensee under an exclusive licence has the same rights against a successor-in-title who is bound by the licence as he has against the person granting the licence. An exclusive licensee may bring proceedings for infringement in the same way as an assignee.

10. On nature of ownership rights of copyright owner

The Copyright Act (as amended) in section 6 in describing the exclusivity of right conferred states that copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the specified acts. Ownership rights are the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable. Copyright owner is one who holds an exclusive right or rights to copyrighted material.

11. On who can institute action for infringement of copyright

By virtue of sections 16(1) and 17 of the Copyright Act (as amended), “subject to the Act, infringement of copyright shall be actionable at the suit of the owner, assignee, or an exclusive licensee of the copyright, as the case may be, in

the Federal High Court exercising jurisdiction in the place where the infringement occurred. In any action for such infringement, all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights”.

“Notwithstanding the provisions of the Act or any other law, no action for infringement of copyright or any right under the Act shall be commenced or maintained by any person,

(a) carrying on the business of negotiating and granting of licence ,

(b) collecting and distributing royalties in respect of copyright works or representing more than fifty owners of copyright in any category of works protected by this Act unless it is approved under section 39 of this Act to operate as a collecting society or is otherwise issued a certificate of exemption by the Commission.

12. On categories of persons who can institute action for infringement of copyright

A community interpretation of sections 10, 11, 16, 17 and 39 of the Copyright Act (as amended) acknowledges five categories of persons who can institute or commence an action relating to infringement of copyright either personally or in a representative capacity. The persons so recognised are an owner, assignee and exclusive licensee of copyright in a work by virtue of section 16 of the Act; a person carrying on the business of negotiating, granting of licences, collection and distribution of royalties for not more than fifty owners of copyright in any category of works protected by the Act by virtue of section 17 of the Act; and an association of copyright owners (collecting society) which may be formed upon the satisfaction of the conditions provided in section 39 of the Act. The right to sue is exercisable either jointly or severally by any one or more of the categories of persons so listed. In the same vein, the rights conferred under sections 16, 17 and 39 of the Copyright Act (as amended) created the capacity in which a person act and so an owner, assignee, and exclusive licensee acts in a personal capacity while a person under sections 17 and 39 acts in a representative capacity. The implication is that in order to have the rights exercised, the latter capacity requires a licence or exemption while it is not so required for the former.

13. On whether Copyright (Amendment) Decree No. 42 of 1999 retrospective

The Copyright (Amendment) Decree No. 42 of 1999, which introduced section 15(a) now section 17, is not retrospective. The Decree specifically stated that its commencement date shall be 10th May 1999, which means that the lawmakers never intended it to have retrospective effect.

14. On principles guiding interpretation of statute

The principles which apply when determining the meaning and effect of a statute include the following:

- (a) the statute is presumed not to bind the Constitution.
- (b) statutes do not operate retrospectively in respect to substantive law, as opposed to procedural law.
- (c) they do not interfere with legal rights already vested;
- (d) they do not oust the jurisdiction of the courts; and
- (e) they do not detract from constitutional law or (e) international law.

In the instant case, the respondents could not show how the amendment of section 15 by the Copyright (Amendment) Decree No. 42 of 1999 had retrospective application.

15. On when statute is retrospective

A law is said to have retrospective effect when the commencement date is earlier in point of time than the date of commencement. A statute is retrospective which takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or consideration already past. [**Afolabi v. Gov., Oyo State (1985) 2 NWLR (Pt. 9) 734; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377 referred to**]

16. On presumption against retrospective statute

The presumption of retrospectivity is displaced by the provision of a commencement date which is a future date. It is a fundamental principle of Nigerian law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act. The courts lean against interpreting an Act or Law as to deprive a party of an accrued right. There is perhaps no rule of construction more firmly established than that a retrospective operation is not to be given to a statute as to impair an existing right or obligation. In the instant case, the commencement date of the Copyright (Amendment) Decree No. 42 of 1999 was clearly provided for to be 10th May 1999 which is not earlier than 1986 and 1990 when the exclusive rights in the copyright works were transferred to the appellant. **[Afolabi v. Gov., Oyo State (1985) 2 NWLR (Pt. 9) 734; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377; Adesanoye v. Adewole (2006) 14 NWLR (Pt. 1000) 242; Adeokin Records v. Musical Copyright Society of Nigeria (2018) 15 NWLR (Pt. 1643) 550 referred to.]**

17. On presumption against retrospective statute

In the interpretation of statutes, there is a presumption against retrospective application unless it is expressly so stated in the statute. There is the presumption against intending justice or absurdity. It is one of the guiding canons of construction and interpretation of statutes. Upon this presumption rests leaning against giving certain statutes retrospective operation. Generally, statutes are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of Nigerian law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act or Law or arises by necessary and distinct implication. **[Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377; Afolabi v. Gov., Oyo State (1985) 2 NWLR (Pt. 9) 734 referred to.]**

Per **KEKERE-EKUN, J.S.C.**

“Based on its pleadings, the appellant acquired its copyrights in the various musical works in issue, as far back as 1984. In other words, as at that time it had vested rights, which were capable of being protected. The acquisition of the rights preceded the enactment of the Copyright Act and the Establishment

of the Nigerian Copyright Commission. The respondents were unable to satisfy this court that the amendment of section 15 of the Copyright Act by the Copyright (Amendment) Decree No. 42 of 1999 which introduced section 15A (now section 17 of the Copyright Act, Cap. 28, LFN 2004, had retrospective application. This is particularly important, as the commencement date of the amendment is 10th May 1999. By virtue of its being an owner, assignee, and absolute licensee of the copyright in the works in issue, the appellant had vested rights, which included the right to institute an action for infringement of copyright, which could not be taken away by section 15A of the Act. The appellant therefore had the requisite locus standi to institute the suit before the trial court and there was no feature of the case that prevented it from assuming jurisdiction. Besides, this case is on all fours with the earlier decision of this court in: Appeal No. SC.336/2008: Adeokin Records & Anor. v. M.C.S.N. Ltd/GTE delivered on 13/7/18, (2018) 15 NWLR (Pt. 1643) 550 wherein the appeal of the respondents against the finding of the trial court that the appellant, as owner, assignee and exclusive licensee had the locus standi to institute the action, was dismissed. We are bound by our decision.”

18. On Law applicable to cause of action

It is the law existing at the time the cause of action arose and not the law at the time the suit was instituted that would govern a suit. [**Akibu v. Oduntan (2000) 13 NWLR (Pt. 685) 446; Adesanoye v. Adewole (2006) 14 NWLR (Pt. 1000) 242; Ogboru v. Uduaghan (2011) 17 NWLR (Pt. 1277) 538 referred to.**]

19. On fundamental nature of issue of standi

Locus standi or “standing to sue” denotes the legal capacity to institute proceedings in a court of law. It is a threshold issue which has a fundamental bearing on the entire adjudication. It goes to the root of the competence of the court to entertain the proceedings. Where a plaintiff lacks the locus standi to institute an action, the court would have no jurisdiction to entertain it. [**Daniel v. INEC (2015) 9 NWLR (Pt. 1463) 113; Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669; Adesanya v. President, F.R.N. (1981) 2 NCLR 358 referred to.**]

20. On what court considers in determining locus standi of plaintiff

In determining whether a party has locus standi, the court would have recourse to the plaintiff's pleadings only. Standing to sue does not depend on the success or merit of the claim but on the interest of the plaintiff in the subject matter of the suit. In the instant case, there is nowhere in the statement of claim where the appellant pleaded that it is a collecting society. The respondents could not go outside the appellant's pleadings to justify their assertion. [**Basinco Motors Ltd. v. Woermann-Lime (2009) 13 NWLR (Pt. 1157) 149; Fawehinmi v. Akilu (1987) 4NWLR (Pt. 67) 797; Adesanoye v. Adewole (2006) 14 NWLR (Pt. 1000) 242 referred to.**]

Nigerian Cases Referred to in the Judgment:

Adeokin Records v. Musical Copyright Society of Nigeria (2018) 15NWLR (Pt. 1643) 550

Adesanoye v. Adewole (2006) 14 NWLR (Pt.1000) 242

Adesanya v. President, F.R.N. (1981) 2 NCLR 358

Afolabi v. Gov., Oyo State (1985) 2 NWLR (Pt. 9) 734

Agu v. Ikewibe (1991) 3 NWLR (Pt. 180) 385

Akibu v. Oduntan (2000) 13 NWLR (Pt. 685) 446

Amadi v. N.N.P.C (2000) 10 NWLR (Pt. 674) 76

Araka v. Ejeagwu (2000) 15 NWLR (Pt. 692) 684

B.M. Ltd. v. Woermann-Lime (2009) 13 NWLR (Pt.1157) 149

Daniel v. I.N.E.C. (2015) 9 NWLR (Pt. 1463) 113

Ejuetami v. Olaiya (2001) 18 NWLR (Pt. 746) 572

Fawehinmi v. Akilu (1987) 4 NWLR (Pt. 67) 797

H.D.P. v. Obi (2011) 18 NWLR (Pt. 1278) 464

Kosile v. Folarin (1989) 3 NWLR (Pt. 107) 1

M.C.S.N. v. Ade Okin Records (2007) 13 NWLR (Pt.1052) 616

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Magaji v. Matari (2000) 8 NWLR (Pt. 670) 722

Management Enterprises Ltd. v. Otusanya (1987) 2 NWLR (Pt.55) 179

Momodu v. Momoh (1991) 1 NWLR (Pt.169) 608

Ogboru v. Uduaghan (2011) 17 NWLR (Pt. 1277) 538

Ojokolobo v. Alamu (1987) 7 NWLR (Pt. 61) 377

Onifade v. Olayiwola (1990) 7 NWLR (Pt.161) 130

Thomas v. Olufosoye (1986) 1 NWLR (Pt.18) 669

Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517

Nigerian Statutes Referred to in the Judgment:

Copyright Act, 1988, S. 15(1)

Copyright Act (Amendment) Decree of No. 42 of 1999, Ss. 15(A) and 32

Copyright Act, Cap. C. 28, Laws of the Federation of Nigeria, 2004, Ss. 8(1)(i), (ii)(iii) & (2), 10(1)(2)(a)(b) & (3), 11(1)(3), 15(1), 16(1), 17(a) & and 39(1)(2)(a)(b)(c)(d), & 6(1)(i)(ii)(iii)(iv)(v)(vi)(vii)(viii)(ix)

Nigerian Rules of Court Referred to in the Judgment:

Supreme Court Rules, 2014 (as amended) O. 6 r 5(1)(b)(c) and O. 8 2(5)

Books Referred to in the Judgment:

Halsbury Laws of England 4th Edition 2006 page 122 paragraph 166 and 177

Black's Law Dictionary 9th Edition pages 388 and 1215

PETER-ODILI, J.S.C. (Delivering the Leading Judgment): This is an appeal stemming from the decision of the Court of Appeal or court below or lower court, Lagos Division, Coram: Ibrahim Mohammed Musa Saulawa, Paul Adamu Galumje and Regina Obiageli Nwodo, JICA which allowed the appeal of the respondents over the decision of the trial High Court per J. E. Shekarho, J.

which ruling was set aside by the court below hence the recourse to the Supreme Court in a notice of appeal set out in page 424-429 of the record of appeal.

The appellant was the plaintiff in the trial High Court in a suit initiated with a writ of summons dated the 2nd of August 2007 in an action against the now respondents as defendants in the court of trial. The reliefs of the plaintiff are set down hereunder and thus: -

(a) A declaration that the acts of the defendants without authority or permission of the plaintiff of importing, recording, reproducing, distributing, offering for sale, communicating to the public or publicly performing or playing the said musical works on audio and video devices such as tapes or video compact disc and/or similar devices at its stores in an infringement of the plaintiff's copyright as guaranteed by the Copyright Act 1988 (as amended).

(b) An order of perpetual injunction restraining the defendants by themselves, assigns, agents, and servants from the further importing, reproducing, distributing, offering for sale, publicly performing/playing, and communicating to the public any of the said works or any works for that matter from the plaintiff's repertoire without the plaintiff's authorization or permission.

(c) An order of perpetual injunction directing the defendants jointly or severally whether themselves assigns, agents and servants or howsoever from further infringing or continuing to infringe the copyright in the audio or audio-visual musical works contained in the plaintiff's repertoire.

(d) An order for delivery up to the plaintiff of all copies of said musical works on audio and video devices such as tapes, video compact disc and or similar devices of musical works listed in paragraphs 11, 12 and 15 of the statement of claim.

(e) Special damages in the sum of N250,000,000.00.

(f) General damages in the sum of N100,000,000.00.

The defendants/respondents filed their statement of defence dated the 29th of October 2007 (pages 261-276 of the records) challenging the locus standi of the plaintiff/appellant particularly in paragraph 6 which states: -

"the defendants would at or before the hearing of this suit move this honourable court to strike out this suit on the further ground that the objects under which the plaintiff is incorporated under the Nigerian law, which is the

basis of the claim in this suit, requires the plaintiff to have a valid and subsisting collecting society's license, to wit, the plaintiff does not possess the valid and subsisting collecting society's license at the time of the institution of this suit."

The respondents/defendants filed a motion on notice by way of preliminary objection dated the 6th of February 2008 (pages 281-287 of the records of appeal) seeking the following reliefs: -

(a) An order dismissing the suit on the ground that the plaintiff/respondent as an alleged owner, assignee and an exclusive licensee lacks the locus standi, under section 15 and section 32 of the Copyright Act (as amended) 1999 to commence and plead the relief sought in the suit.

(b) And for such further order or other order as this honourable court may deem fit to make in the circumstance of this matter.

The learned trial Judge dismissed the motion on notice and the respondents being dissatisfied with the decision of the trial court appealed to the Court of Appeal which in turn set aside the decision of the trial court and the appellant aggrieved has approached this court.

On the 2nd day of October 2018 date of hearing learned counsel for the appellant D. A. Awosika Esq. adopted the appellant's further amended brief of argument filed on 6/12/17 and deemed filed on 10/1/18 and a reply brief filed on 21/6/17. Learned counsel for the appellant further relied on a judgment of the Supreme Court of 13th July 2018 in SC/336/2008, Adeokin Records & Anor v. Musical Copyright Society of Nigeria (Ltd/GTE) (2018) 15 NWLR (Pt. 1643) 550. which certified copy was filed in as additional authority.

In the brief of argument of the appellant was identified a single issue, viz: -

Whether or not by virtue of the provisions of section 16 (1), 17, 19 and 39 & of the Copyright Act, Cap. C.28, Laws of the Federation of Nigeria 2004, the appellant can lawfully commence infringement proceedings against the respondents in respect of the musical works and related audio visual available and broadcast within the territory of the Federal Republic of Nigeria (as distilled from the grounds of appeal).

Learned counsel for the respondents had raised two issues for determination which are as follows: -

(1) Whether the appellant can for the first time, before this court, without the prior leave of this court, canvass any retrospective copyrights.

(2) Whether a copyright owner, assignee, and exclusive license, engaged in negotiating and granting copyright licences to third parties requires as a condition precedent, a collecting society's licence as statutorily required by the provisions of sections 17 and 39 of the Copyright Act, Chapter C.28, laws of the Federal Republic of Nigeria before originating a copyright infringement suit before a court of law.

For ease of reference and convenience, I shall utilise the issue as crafted by the appellant in the determination of this appeal.

SOLE ISSUE:

Whether or not by virtue of the provisions of sections 16(1), 17, 19 and 39 & of the Copyright Act, Cap.C.28, Laws of the Federation of Nigeria 2004 the appellant can lawfully commence infringement proceedings against the respondents in respect of the musical works and related audio visual available and broadcast within the territory of the Federal Republic of Nigeria.

It was contended by the appellant that it is without contest that copyright is a property right exercisable over certain types of intangible/memorable property and so a person having a legal right over such property is entitled to enforce his right in accordance with the laid down principles of law contained in the Copyright Act, Cap. C.28, Laws of the Federation of Nigeria 2004 and so secured under section 44 of the 1999 Constitution of the Federal Republic of Nigeria.

That what is required in tackling the issue on ground is the in-depth interpretation of sections 6 (1), 8 & (2), 10, 11, 16, 17 and 39 of the Copyright Act.

Learned counsel for the appellant submitted that the Act recognises five categories of persons who can institute an action for copyright infringement either in a personal or representative capacity. He cited *M.C.S.N. v. Adeokin Records* (2007) 13 NWLR (Pt.1052) 616, 630-631. That persons recognised are, an owner, assignee and exclusive licensee of copyright in a work by virtue of section 16 of the Act, as person carrying on the business of negotiating, granting of licenses, collection and distribution of royalties for not more than

50 owners of copyright in any category of works protected by the Act by virtue of section 17 of the Act and as association of copyright owners (collecting society) which may be formed upon the satisfaction of the conditions provided in section 39 of the Act.

He stated on for the appellant that it can be said that the right to sue is exercisable either jointly or severally by anyone or more of the categories of persons so listed. That the rights conferred under sections 16, 17 and 39 of the Copyright Act automatically create the capacity a person acts and as such an owner, assignee, and exclusive licensee acts in a personal capacity while a person under sections 17 and 39 acts in a representative capacity. That being the case, whilst the latter capacity requires a licence or exemption, the former is not so required in order to exercise its rights.

Further canvassed for the appellant is that the appellant is not a collecting society but an owner, exclusive licensee, and an assignee of copyright in works sought to be protected. That this court has been shown by the exhibits and correspondences exchanged between the appellant and the respondents in the record of appeal that the appellant exercised the statutory preliminary step required before it can fully invoke the rights conferred upon it under sections 6 and 16 of the Copyright Act 2010 to seek remedy for the infringement of copyright in the musical works contained in the appellant's repertoire as owner, assignee and exclusive licensee, hence it neither acts as a person envisaged under section 39 of the Act because it is neither a business entity nor acting in a representative capacity for the benefit of copyright owners.

Learned counsel, Mr. Awosika contended that the Copyright (Amendment) Decree No.42 of 1999 which introduced section 15A (now 17) is not retrospective which specifically stated its commencement date to be 10th of May 1999. He referred to **Afolabi v. Governor of Oyo State (1985) 16 NSCC (Pt.2) Vol.16, page 11512, (1985) 2 NWLR (Pt.9) 734; Ojokolobo & Ors v. Alamu & Ors (1987) 2 NSCC 991, (1987) 7NWLR (Pt. 61) 377; Adesanoye v. Adewole (2006) 14 NWLR (Pt.1000)242; Afolabi v. Governor of Oyo State (1985) 2 NWLR (Pt.9) 734 at 769,783.**

In response, learned counsel for the respondents, Ehijeagbon Oserogho Esq. submitted that the appellant's arguments canvassed about the retrospective rights of the appellant before sections 17 and 39 of the Copyright Act came into effect were not raised by the appellant at the Federal High Court or the

court below or in the notice of appeal before this court and so cannot be raised in the appellant's brief for the first time without prior leave of court. He relied on Order 6 rule 5(1) and Order 8 rule 2 of the Supreme Court Rules (as amended in 2014); **Kosile v. Folarin (1989) 4 SC (Pt.1) 150 at 165, (1989) 3 NWLR (Pt. 107) 1; Agu v. Ikewibe (1991) 4 SC 1 at 10-11, (1991) 3 NWLR (Pt.(c)180) 385.**

For the respondents it was submitted that it is the statement of claim filed by a plaintiff or claimant that determines whether or not a court of law has the jurisdiction or authority to hear action in a lawsuit. Also, that parties to a suit are bound by the pleadings filed at the lower courts. Again, to be said is that it is the statute in force at the time the cause of action arose that applies in the determination of the suit filed. He cited **Tukur v. Government of Gongola State (1989) 9 SC 1 at 37, (1989) 4 NWLR (Pt. 117) 517; Magaji v. Matari (2000) 5 SC 46 at 57, (2000) 8 NWLR (Pt. 670) 722; Agu v. Ikewibe (1991) 4 SC 1 at 21, (1991) 3 NWLR (Pt. 180) 385; Madukolu v. Nkemdilim (1962) All NLR 587, (1962) 2 SCNLR 341.**

For the respondents, it was contended that the claim of the appellant at the Federal High Court was filed on 2nd August 2007 while the alleged infringement complained of occurred in 2006 and so the Copyright Act applicable is that of 2006 and 2007. He cited **H.D.P. v. Obi & 5 Ors (2011) 12 SC (Pt.11) 162 at 182 & 183, (2011) 18 NWLR (Pt. 1278) 464.**

That from the appellant's pleadings, the appellant is a registered association, limited by guarantee with the principal objective of negotiating and granting licences and distributing royalties to its members, who are the actual owners of the copyrights to their original works and so appellant is a collecting society by the provisions of section 39 of the Copyright Act. He relied on **Amadi v. NNPC (2000) 6 SC (Pt.1) 66 at 92 and 100, (2000) 10 NWLR (Pt. 674) 76.**

Learned counsel for the respondent concluded by urging the court to uphold the decision of the Court of Appeal and dismiss the appeal.

On reply on points of law, learned counsel for the appellant stated that the arguments of the respondent raising an objection not based on grounds of appeal go to no issue. He cited **Management Enterprises Ltd. v. Otusanya (1987) 2 NWLR (Pt.55) 179; Onifade v. Olayiwola (1990) 7NWLR (Pt.161) 130; Momodu v. Momoh (1991) 1 NWLR (Pt.169) 608.** That leave of court is not required to raise a substantial point of law in support of the appellant's

submission that the Copyright Act 2004 was not made to have retroactive effect and that in respect of vested right in its repertoire sections 17 and 39 do not apply to the appellant being owner, assignee, or exclusive licensee of the vested right before the amendment in question. He cited **W. T. Ejuetami v. Mrs. Benedicta Olaiya (2001) LPELR-1072, (2001) 18 NWLR (Pt. 746) 572; Emmanuel Oseloka Araka v. Ambrose Nwankwo Ejeagwu (2000) LPELR-533; (2000)12 SC (Pt.1) 99, (2000) 15 NWLR (Pt. 692) 684.**

The summary of the bone of contention between the parties is that the appellant as plaintiff claimed an infringement of its copyright while the respondents as defendants entered a conditional appearance and a statement of defence with counter claim contending that the appellant had not fulfilled a mandatory condition precedent before instituting the subject lawsuit. That that for the appellant to initiate the cause of action at that time, it must possess a valid and subsisting collecting Society's Licence issued by the Nigerian Copyright Commission (NCC).

The Federal High Court ruled dismissing the defendants' objection holding that the plaintiff/now appellant has the locus standi to institute the action as an owner, assignee, or an exclusive licensee of the copyright in compliance with the provisions of section 15 of the Copyright Act.

Aggrieved the defendants/now respondents approached the Court of Appeal which set aside the decision of the trial court, holding that the appellant's non-adherence to the condition precedent for bringing a copyright infringement law should under the Copyright Act temporarily deprive the appellant of the locus standi to institute and prosecute, this suit, the decision that propelled the present appeal to the Supreme Court.

In determining which of the two courts below was on the right track, a reference to the relevant constitutional and statutory provisions would be helpful to bring to light what really should be the proper position.

Section 44 of the 1999 Constitution of the Federal Republic of Nigeria stipulates thus: -

Section 44:

"No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in such property shall

be acquired compulsorily in any part of Nigeria except in the manner prescribed by law”.

Section 6 and 8 & of the Copyright Act provides as follows: -

6 (1):

“Subject to the exceptions specified in the second schedule to this Act, copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is:

(a) in the case of a literary or artist work, to do and authorize the doing of any of the following acts -

i. reproduce the work in any material form;

ii. publish a work;

iii. Perform the work in public;

iv. Produce, re-produce, perform or publish any translation of the work;

v. Make any cinematograph film or a record in respect of the work;

vi. Distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;

vii. Broadcast or communicate the work to the public by a loudspeaker or any similar device;

viii. Make adaptation of the work; (ix) do in relation to any translation or an adaptation of the work, any of the acts specified in relation to the work in subparagraphs (i) to (vii) of this paragraph”.

Section 8 and of the Copyright Act further provides that: -

“(1) Subject to this section, copyright in a broadcast shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is -

(a) the recording and re-broadcasting of the whole or a substantial part of a television broadcast;

(b) the communication to the public of a whole or substantive part of a television broadcast either in its original form or in any form recognizably derived from the original; and

(c) the distribution to the public, for commercial purposes, of copies of the work by way of rental, lease, hire, loan or similar arrangement;

(2) the copyright in a television broadcast shall include the right to control the taking of still photographs from the broadcast”.

However, in respect of first ownership of copyright, section 10(1), and of the Copyright Act provides as follows: -

“(1) Copyright conferred by sections 2 and 3 of the Act shall vest initially in the author.

(2) Notwithstanding subsection (6) of section 11 of this Act where a work -

(a) Is commissioned by a person who is not the author’s employee under a contract of service or apprenticeship; or

(b) Not having been so commissioned, is made in the course of the author’s employment, the copyright shall belong in the first instance to the author, unless otherwise stipulated in writing under the contract.

(3) Where a literary, artistic or musical work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship as is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall in absence of any agreement to the contrary, be first owner of copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects, the author shall be the first owner of copyright in the work”.

In relation to assignment and license of copyright, section 11 and of the Copyright Act also provides that:

“(1) Subject to the provisions of this Act, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of the law, as movable property.

(3) No assignment of copyright and no exclusive license to do an act, the doing of which is controlled by copyright, shall have effect unless it is in writing”.

On the question of who can institute an action for infringement of Copyright, section 16 of the Act provides to the effect that:

“Subject to this Act, infringement of copyright shall be actionable at the suit of the owner, assignee or an exclusive licensee as the case may be in the Federal High Court exercising jurisdiction in the place where the infringement occurred, 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”.

On the issue of limitation as to the right of action for Copyright infringement, section 17 of the Act provides that:

“Notwithstanding the provisions of this Act or any other law, no action for infringement of copyright or any right under this Act shall be commenced or maintained by any person -

(a) Carrying on the business of negotiating and granting of licence.

(b) Collecting and distribution royalties in respect of copyright works or representing more than fifty owners of copyright in any category or works protected by this Act; Unless it is approved under section 39 of this Act to operate as a collecting society or is otherwise issued a certificate of exemption by the Commission”.

In relation to the status of a Collecting Society, section 39 of the Act provides that:

“(1) A Collecting Society may be formed in respect of any one or more rights of copyright owners for the benefit of such owners and the society may apply to the Commission for approval to operate as a Collecting Society for the purpose of this Act.

(2) The Commission may approve of a society if it is satisfied that;

a) it is incorporated as a company limited by guarantee;

b) its objects are to carry out the general duty of negotiating and granting copyright licence and collecting royalties on behalf of copyright owners and distributing same to them;

c) it represents the substantial numbers of owners of copyright in any category of works protected by this Act, in this paragraph of this subsection, 'owners of copyright' includes owners of performer's rights;

d) it complies with the terms and conditions prescribed by regulations made by the commission under this section".

In defining a Collecting Society, section 39 of the Act defines same as:

"An association of copyright owners which has as its principal objectives the negotiating and granting of licences, collecting and distributing of royalties in respect of copyright works".

A community interpretation of sections 10, 11, 16, 17 and 39 of the Copyright Act acknowledges five categories of persons who can institute or commence an action relating to infringement of copyright either personally or in a representative capacity.

The persons so recognised are an owner, assignee and exclusive licensee of copyright in a work by virtue of section 16 of the Act, also person carrying on the business of negotiating, granting of licences, collection and distribution of royalties for not more than fifty owners of copyright in any category of works protected by the Act by virtue of section 17 of the Act and an association of copyright owners (collecting Society) which may be formed upon the satisfaction of the conditions provided in section 39 of the Act. It follows that an appropriate construction of the provisions so shown above, it is right to say that the right to sue is exercisable either jointly or severally by any one or more of the categories of persons so listed. In the same vein the rights conferred under sections 16, 17 and 39 of the Copyright Act for such created the capacity a person act and so an owner, assignee, and exclusive licensee acts in a personal capacity while a person undersections 17 and 39 acts in a representative capacity. The implication is that the latter capacity requires a licence or exemption, the former is not so required in order to have the rights exercised.

The definition of assignment of copyright and exclusive licence is well stated in Halsbury's Laws of England, 4th Edition, 2006 re-issue Lexis/Nexis Butterworth on page 122, paragraph 166 thus: -

"A legal assignment of copyright or any part of it, vests the rights assigned in the assignee so that he becomes the owner and may take proceedings against persons who infringe or who have infringed it".

In the same vein my Lords, its paragraph 176 states in relation to an Exclusive Licensee that:

"An Exclusive Licence means a licence in writing signed by or on behalf of the Copyright owner, authorizing the license to the exclusion of all other persons including the person granting the license to exercise a right which would otherwise be exercisable exclusively by the copyright owner. The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence. An Exclusive licensee may bring proceedings for infringement in the same way as an assignee".

The Copyright Act in section 6 in describing the exclusivity of right conferred states that:

".... copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts...."

Black's Law Dictionary 9th Edition Bryan A Garner page 1215 defines ownership rights thus: -

".... the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable".

At page 388 of the same Black's Law Dictionary copyright owner is defined to be thus: -

"One who holds an exclusive right or rights to copyrighted material".

I agree with the submission of learned counsel for the appellant, that Copyright (Amendment) Decree No. 42 of 1999 which introduced section 15A (now 17) is not retrospective. In fact, the Decree specifically stated its commencement date to be 10th of May 1999. Based on the above, I am of the humble opinion that since the law makers have specifically stated that

commencement date for the decree to be 10th May, 1999, it is clear that the law maker never intended the decree to have a retrospective effect. We rely on and adopt the statement of the law in the case of **Afolabi v. Governor of Oyo State (1985) 16 NSCC (Pt2) Vol.16, page 11512, (1985) 2 NWLR (Pt. 9) 734** as follows: -

“A law is said to have retrospective effect when the commencement date is earlier “in point of time than the date of commencement, for example, Tribunal of Inquiry (Validation etc) Decree No.18 of 1977 which was considered by this court in the case of **Uwaifo v. AG. Bendel State & Ors (1982) 13 NSCC 221 at 232, was dated the 18th day of March 1977** but therein stated specifically that it shall be “deemed to have come into effect on 29th July 1975”.

Indeed, the commencement of the Copyright (Amendment) Decree No. 42 of 1999 was clearly provided for to be 10th May 1999 which is not earlier than 1986 and 1990 when the exclusive rights in the copyright works were transferred to the appellant. The issue therefore raised on retrospectivity of the Act can be said to have been settled by this court as seen in the case of **Ojokolobo & Ors v. Alamu & Ors (1987) 2 NSCC 991, (1987) 3 NWLR (Pt. 61) 377 at page, 416, para. A** wherein it was held per **Karibi-Whyte, JSC** thus:

“... the presumption of retrospective is displaced by the provisions of a commencement date which is a future date”.

A reiteration of the situation is further captured in **Adesanoye v. Adewole (2006) 14 NWLR (Pt.1000) page 242 and Afolabi v. Governor of Oyo State (1985) 2 NWLR (Pt.9) page 734** where **Eso JSC** at page 769 paragraph D-E held thus: -

“It is a fundamental principle of English Law (I make bold to say – also of our law) that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act ... Even where it appears as in Decree No.2 of 1984 - the society for whose welfare law is made criticizes it as the law of the tyrant”.

Oputa, JSC in the same case at page 783, paras. D-E held thus:

“Coming to the policy of the court, the consensus of judicial opinion is that the courts lean against so interpreting an Act or law as to deprive a party of

an accrued right. Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute as to impair an existing right or obligation”.

In fact, the learned counsel for the appellant has referred this court to the earlier recent case before this court in Adeokin Records & Anor v. Musical Copyright Society of Nigeria (Ltd/GTE) delivered on the 13th July 2018, (2018) 15 NWLR (Pt. 1643) 550 which lead judgment was delivered by Ejembi Eko, JSC, which settled the questions right before this court now. That decision impels this court to hold that the exclusive licence of the copyright musical works which forms the basis of the suit at the trial court was transferred to the appellant since 1986 and 1990 respectively while the provisions of the Copyright Act, 2004 came into force on the 10th day of May, 1999 and so the same cannot be said to affect the rights already transferred long before its commencement date.

Therefore, just as this court held in Adeokin Records & Anor v. Musical Copyright Society of Nigeria (supra) on 13/7/18 the matter is properly before the trial Federal High Court and since the Court of Appeal went outside the clear situation, this court is best suited to intervene and hold that the position taken by the court below is not the proper stand as supported by the facts on ground in context with the necessary statutory provisions. The conclusion is that the appeal is allowed, and decision of the Court of Appeal set aside with the restoration of the decision of the trial High Court. It follows that the matter is remitted to the Chief Judge of the Federal High Court for assignment to a Judge to have the matter determined on its merits expeditiously.

Appeal allowed. Parties to bear own costs.

ARIWOOLA, J.S.C.: I had the privilege of reading in draft the lead judgment of my learned brother, Mary Peter-Odili, JSC just delivered. I agree entirely with the reasoning and conclusion that the appeal is meritorious and should be allowed. I too will allow it.

Appeal allowed.

I agree with the consequential order on costs.

KEKERE-EKUN, J.S.C.: I have had the benefit of reading in draft the judgment of my learned brother, Mary Peter-Odili, JSC just delivered. I agree with the reasoning and conclusion that the appeal is meritorious and should be allowed.

The appellant herein instituted the suit at the trial court in its capacity as owner, assignee, and exclusive licensee of the copyright in the musical works of certain named authors, publishers, composers, and institutions within the territory of the Federal Republic of Nigeria. (See paragraph 1 of the statement of claim at page 5 of the record). It pleaded that the various authors, composers, arrangers, and publishers (whose particulars were pleaded) had directly and through their affiliates sister organizations in other countries assigned and exclusively licensed the copyright in their work to the appellant (paragraph 6 of the statement of claim).

Pursuant to the various reciprocal assignments and agreements entered into, the appellant is the only person who can authorise or permit the exploitation “in form of public performance, recording, production into, distribution and sale of any work under the agreements within the territory of the Federal Republic of Nigeria.” (Paragraph 9 of the statement of claim).

The appellant alleged that the respondents had infringed on the said copyright by importing, recording, producing, distributing, and offering for sale to the public without its authority the musical works of its assignors. It therefore sought various declaratory and injunctive reliefs against them.

It is the respondents’ contention that the appellant lacked the locus standi to institute the action because it is a collecting society which has not been shown to have been granted a license to operate by the Nigerian Copyright Commission in Compliance with section 39 of the Copyright Act 1999, (as amended). They relied on sections 15A, 32(B) (2), (4), and of the Copyright Act, (as amended).

The appellant’s position is that it has the requisite locus standi to institute the action by virtue of section 15(1) of the Copyright Act 1988 and that section 15A and 32 of the Copyright Act, as amended in 1999, are not applicable.

At the trial court, the respondents’ motion to dismiss the suit for lack of locus standi was unsuccessful. The motion was dismissed on 5/8/2008. The respondents were aggrieved and filed an appeal at the lower court. The appeal was allowed and the appellant’s suit at the trial court was struck out. The appellant is dissatisfied and has further appealed to this court.

Locus standi or “Standing to sue” denotes the legal capacity to institute proceedings in a court of law. It has been held to be a threshold issue which has a fundamental bearing on the entire adjudication. It goes to the root of the competence of the court to entertain the proceedings. It is settled law that where a plaintiff lacks the locus standi to institute an action, the court would have no jurisdiction to entertain it. See: Daniel v. INEC (2015) LPELR -24566 (SC) @ 47 A-D, (2015) 9 NWLR (Pt. 1463) 113; Thomas and Ors v. Olufosoye (1986) 1 NWLR (Pt.18) 669; Adesanya v. President of F.R.N. and Anor. (1981) 5 SC 112, (1981) 2 NCLR358.

It is also settled law that in determining whether a party has locus standi, the court would have recourse to the plaintiff’s pleadings only. Standing to sue does not depend on the success or merit of the claim but on the interest of the plaintiff in the subject matter of the suit See: Basinco Motors Ltd. v. Woermann-Lime and Anor (2009) 13 NWLR(Pt.1157) 149; Fawehinmi v. Akilu (1987) 12 SC 136, (1987) 4 NWLR (Pt. 67) 797; Adesanoye v. Adewole (2006) 14 NWLR (Pt.1000) 242.

As rightly asserted by learned counsel for the appellant, a cursory look at the statement of claim would show that there is nowhere therein where it pleaded that it is a collecting society. The respondents cannot go outside the appellant’s pleadings to justify their assertion.

The second and more crucial issue is whether the provisions of section 15(A) of the Copyright Act, as amended is applicable to this case.

It is settled that it is the law existing at the time the cause of action arose and not the law at the time the suit was instituted that would govern the suit. See: Akibu v. Oduntan (2000) 7 SC (Pt. 11) 106, (2000) 13 NWLR (Pt. 685) 446; Adesanoye v. Adewole (supra); Ogboru v. Uduaghan (2011) LPELR - 8236 (SC) @ 28-29, G-A, (2011) 17 NWLR (Pt. 1277) 538.

Another relevant principle is that in the interpretation of statutes, there is a presumption against retrospective application unless it is expressly so stated in the statute. See: Ojokolobo v. Alamu (1987) 3NWLR (Pt.61) 377 @ 402, F-H, where this court held, inter alia:

“There is the presumption against intending justice or absurdity. It is one of the guiding canons of construction and interpretation of statutes. Upon this presumption rests the leaning against giving certain statutes retrospective operation. Generally, statutes are construed as operating only in cases or on

facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of Nigerian Law (received from the English Law) that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act or law; or arises by necessary and distinct implication."

It was further held at page 402, para. H that:

"A statute is retrospective which takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches anew disability in respect to transactions or consideration already past."

Based on its pleadings, the appellant acquired its copyrights in the various musical works in issue, as far back as 1984. In other words, as at that time it had vested rights, which were capable of being protected. The acquisition of the rights preceded the enactment of the Copyright Act and the Establishment of the Nigerian Copyright Commission.

The respondents were unable to satisfy this court that the amendment of section 15 of the Copyright Act by the Copyright (Amendment) Decree No. 42 of 1999 which introduced section 15A (now section 17 of the Copyright Act, Cap. 28, LFN 2004, had retrospective application. This is particularly important, as the commencement date of the amendment is 10th May 1999.

By virtue of its being an owner, assignee, and absolute licensee of the copyright in the works in issue, the appellant had vested rights, which included the right to institute an action for infringement of copyright, which could not be taken away by section 15A of the Act. The appellant therefore had the requisite locus standi to institute the suit before the trial court and there was no feature of the case that prevented it from assuming jurisdiction.

Besides, this case is on all fours with the earlier decision of this court in: Appeal No. SC.336/2008: Adeokin Records & Anor. v. M.C.S.N. Ltd/GTE delivered on 13/7/18, (2018) 6 NLWR (Pt. 1643) 550 wherein the appeal of the respondents against the finding of the trial court that the appellant, as owner, assignee and exclusive licensee had the locus standi to institute the action, was dismissed. We are bound by our decision.

It is for these, and the more detailed reasons adduced in the lead judgment that I also find merit in this appeal. I allow it and abide by the consequential orders made.

AUGIE, J.S.C: I had a preview of the lead judgment just delivered by my learned brother, Peter-Odili, JSC, and I agree completely with his reasoning and conclusion.

On the issue of locus standi, the Federal High Court [the trial Court] held that appellant had locus standi to institute the action against the respondents, being an owner, assignee, or an exclusive licensee in compliance with the said provisions of the Copyright Act. The Court of Appeal held to the contrary that the appellants were deprived of locus standi to institute and prosecute the suit.

As it is, the question of which court is right has been settled by this court in appeal No. **SC.336/2008: Adeokin Records & Anor v.M.S.C.N. Ltd./GTE reported as M.S.C.N. Ltd/GTE v. Adeokin Records (2007)13 NWLR (Pt. 1052) 616**. In its judgment delivered on 13/7/2008, this court held that the position of the Court of Appeal on the subject is wrong, and we are bound by that decision.

As to whether the Copyright (Amendment) Decree No. 42 of 1999, which introduced section 15A (now 17) is retrospective or not, it is clear that it is not. The Decree specifically stated that its commencement date shall be 10/5/1999, which means that the lawmakers never intended it to have retrospective effect.

At any rate, a number of rules and principles have been held to apply when determining the meaning of a statute, and these principles include that:

- 1.The statute is presumed not to bind the Constitution;
- 2.Statutes do not operate retrospectively in respect to substantive law (as opposed to procedural law);
- 3.They do not interfere with legal rights already vested;
- 4.They do not oust the jurisdiction of the courts; and
- 5.They do not detract from constitutional law or international law.

See also **Afolabi v. Governor of Oyo State (1985) 2 NWLR (Pt. 9) 734 SC at page 769, para. C**, wherein **Eso, JSC**, categorically said that ***“no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act”***. In his own judgment, **Oputa, JSC**, at page 783, paras. C-D observed as follows:

“Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not given to a statute as to impair an existing right or obligation”.

In this case, the respondents have not shown this court how the amendment of section 15 by the said Decree No. 42 of 1999 had retrospective application.

Thus, I also allow the appeal and I abide by the consequential orders in the lead judgment including that the parties are to bear their own costs.

BAGE, J.S.C.: I have had the benefit of reading in draft the lead judgment of my learned brother, **Mary U. Peter-Odili, JSC**, just delivered. I agree entirely with the reasoning and conclusion reached. I do not have anything useful to add. I found merit in this appeal, and it is accordingly allowed. The judgment of the lower court is hereby set aside.

I abide by all the orders contained in the lead judgment.

Appeal allowed.

Counsel:

D. A. Awosika, Esq. (with him, N. F. John [Miss]) - for the Appellant

Respondent unrepresented.