

IN THE COURT OF APPEAL
IN THE CALABAR JUDICIAL DIVISION
HOLDEN AT CALABAR

ON FRIDAY, THE 3RD DAY OF JUNE 2022
BEFORE THEIR LORDSHIPS:

- CHIKWE RAPHAEL AGBO - JUSTICE, COURT OF APPEAL
- MUHAMMED L. SHUAIBU - JUSTICE, COURT OF APPEAL
- BALKISU BELLO ALIYU - JUSTICE, COURT OF APPEAL

APPEAL NO: CA/C/292^c/2020

BETWEEN:

MR. CHINONSO UGOCHUKWU ----- APPELLANT

AND

NIGERIAN COPYRIGHT COMMISSION ----- RESPONDENT

JUDGMENT

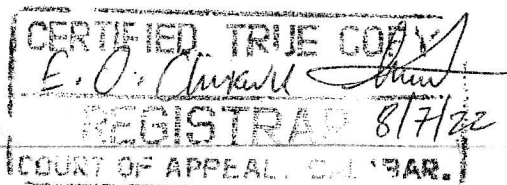
(DELIVERED BY BALKISU BELLO ALIYU, JCA)

This appeal is against the judgment of the Federal High Court sitting at Uyo, Akwa Ibom State, delivered on the 1st July 2020 in respect of Charge NO: FHC/UY/53C/2015, containing two counts that read as follows:

COUNT ONE

That you Mr. Chinonso Ugochukwu, male, trading under the name and style of DE-CHITEZ Bookshop, of NO. 17 Grace Bill Road, in Akwa Ibom State on or about the 13th day of August 2014, within the Uyo Judicial division of

CA/C/292C/2020 |

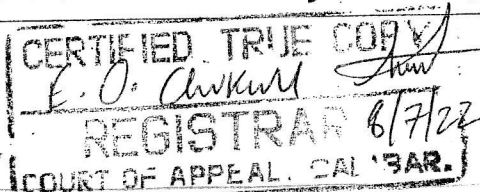


the Federal High Court of Nigeria did expose and offer for sale for the purpose of trade or business 578 (five hundred and seventy eight) infringing copies of various literary works which titles include but are not limited to Holy Bible (Revised Standard), Progressive mathematics book 1 (JSS), Technical Drawing for School certificate and GCE, Eze Goes to School, ICT Model Questions and Answers, A-Z of JAMB's Use of English, 21st Century Dictionary e.t.c. in which copyrights subsist in favour of various right owners without the consent and authorization of the copyright owners thereby committed an offence contrary to and punishable under Section 20 (2)(a) of the Copyright Act, Cap. C28, Laws of the Federation of Nigeria 2004.

COUNT TWO

That you Mr. Chinonso Ugochukwu, male, trading under the name and style of DE-CHITEZ Bookshop, of NO. 17 Grace Bill Road, in Akwa Ibom State on or about the 13th day of August 2014, within the Uyo Judicial division of the Federal High Court of Nigeria did have in your possession, other than for private or domestic use 578 (five hundred and seventy eight) infringing copies of various literary works which titles include but are not limited to Holy Bible (Revised Standard), Progressive mathematics book 1 (JSS), Technical Drawing for School certificate and GCE, Eze Goes to School, ICT Model Questions and Answers, A-Z of JAMB's Use of English, 21st Century Dictionary etc. in which copyrights subsist in favour of various right owners without the consent and authorization of the copyright owners thereby committed an offence contrary to and punishable under

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Section 20 (2)(c) of the Copyright Act, Cap. C28, Laws of the Federation of Nigeria 2004.

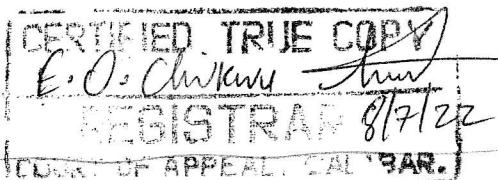
The Appellant pleaded not guilty to the charge and in proof of its case the prosecution called four witnesses and tendered the alleged pirated literary works. The Appellant also testified in his defence but did not call any other witness. At the end of the hearing of evidence parties summed up their cases in written addresses and the case was adjourned for judgment.

In the trial Court's judgment, the learned trial Judge found and held that the prosecution proved the charge against the Appellant beyond reasonable doubt and convicted him of the two counts charge. He was sentenced to one year imprisonment or an option of ₦30,000 fine for each of the two counts.

The Appellant was aggrieved with his conviction and sentence and he filed his notice of appeal on the 24th August 2020 relying on six grounds of appeal. The appeal was entered on the 27th August 2020 with the transmission of the record of proceedings to this Court, after which the Appellant's brief of argument settled by C. I. ODO ESQ. was filed on the 8th February 2021 deemed properly filed on the 31st January 2022. The learned counsel proposed a lone issue for the determination of the appeal thus:

Whether the Prosecution proved each or any of the two-counts charge against the Accused person

CA/C/292C/2020 |



beyond reasonable doubt to warrant the conviction of the Appellant by the trial Court.

In opposing the appeal, the Respondent filed its brief of argument settled by its Director, Legal Department, EMEKA OGBONNA ESQ. on the 19th July 2021 but deemed properly filed on the 31st January 2022. The learned counsel proposed two issues for determination, as follows:

1. Whether the Respondent proved each of the two counts against the Appellant beyond reasonable doubt to warrant his being found guilty.
2. Whether Section 25 of the Copyright Act, 2004 is a pre-condition to the enforcement powers of the Respondent under Section 38 of the Copyright Act, 2004.

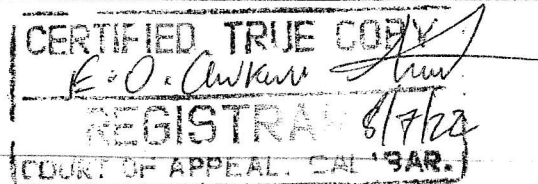
A reply brief was filed by the Appellant on the 8th November 2022, but deemed properly filed on the 31st January 2022. The appeal came up for hearing on the 17th March 2022 and counsel adopted the parties' respective briefs of argument. It is observed that the lone issue formulated by the Appellant is the same with issue one proposed by the Respondent, and Respondent's issue two can also be determined within that issue. I therefore adopt the Appellant's lone issue as my guide to the determination of this appeal.

PARTIES' SUBMISSIONS:

In arguing the Appellant's sole issue, his learned counsel stated the six ingredients of the offences charged that the Respondent was required by law to prove beyond reasonable doubt in order to sustain the conviction of the Appellant. He argued that there was no credible evidence led on record before the trial Court that established that there were 578 copies of literary works which are protected, which enjoyed copyright protection with their serial numbers, that the Appellant offered or exposed for sale or found in his possession as charged. He pointed out to the evidence of the prosecution's PW1 and PW2 who testified that they carried out raids on a few shops in Eket including the Appellant's shop, and according to PW2, they seized both original and pirated copies of the literary works from the Appellant's shop. They stated that it was the copyrights owners of those literary works that told them how to identify the pirated works from the original ones, but none of the said copyrights owners was called to identify the pirated works. Also the prosecution failed to tender any petition from the copyrights owners except the petition of the Bible Society of Nigeria, which never mentioned the Appellant or his shop as possessing the infringed copies of its literary works.

It was further submitted that the 578 pirated literary works contained in eight (8) sacks (exhibits 6a-h and 5) were dumped by the prosecution at the trial Court because none of the

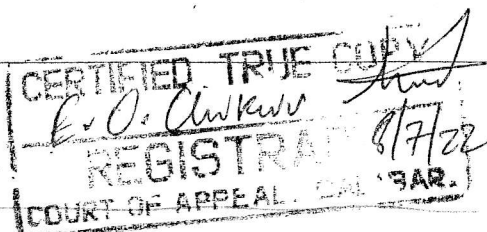
CA/C/292C/2020 |



witnesses spoke to them to demonstrate on how they identified these books as pirated or infringed copyright works. That it was the trial Court which went on a voyage of search and investigation of the contents of the 8 sacks of works (exhibit 6a-h and tying them to the inventory (exhibit 5) to make a finding that the items listed in counts one and two are the same as in these exhibits and subsequently relied on them to convict the Appellant. Learned counsel relied on the cases of AYODELE ESEZOBOR VS. SAID (2018) LPELR-46653 (CA) and LADOJA VS. AJUMOBI (2016) LPELR-40658 (SC) to the effect that a document tendered without tying them to the evidence of a witness amounts to dumping that document on the court.

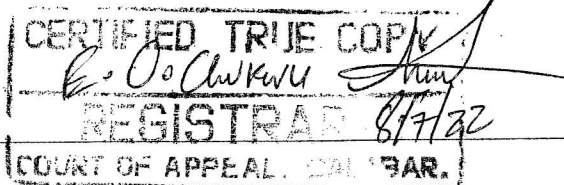
It was also argued by the Appellant that whether a copyright enjoys protection and same has been infringed are questions of facts that must be established by evidence. That there was not such evidence led by the prosecution to establish these facts because none of its PW1 to PW3 demonstrated in court which of the contents of exhibits 6a-h was pirated and how to distinguish them from the original literary works, which is necessary to the proof of the criminal charge against the Appellant. That PW4 that the Respondent called was a lone copyright owner in its case built around 578 purported infringed copyrights literary works. Further that his evidence under cross examination in court contradicted his earlier statement (exhibit 9) on whether or not

CA/C/292C/2020 |



he participated in the raid of the Appellant's shop. Relying on the case of CHUKWU VS. STATE (2007) NWLR (PT. 1052) 430 (CA), the learned Appellant's counsel submitted that PW4's evidence ought to have been disregarded by the lower court.

The Appellant also relied on Section 25(1) of the Copyright Act to submit that the manner of breaking in the Appellant's shop to recover the literary works without a court order, especially since the shop owner was not available, as admitted by PW1, was illegal, and enough to void the actions of the Respondent that gave rise to the charge. That the position taken by the trial Court to the effect that the provisions of Section 38 of the same Act overrides the provisions of Section 25 is erroneous. It is the contention of the Appellant that Section 38 of the Act does not detract from the mandatory provisions of Section 25(1) requiring an order of the court before entry into the house or premises on reasonable suspicion. That obtaining an order of court ex-parte before breaking in and raiding shops of accused persons is a pre-condition required by Section 25(1) of the Act, failure to observe that condition nullifies the action of the Respondent. The Appellant relied on the cases of GTB PLC VS. ADEDAMOLA (2019) 5 NWLR (PT. 1664) 30 and IGBENEDION VS. C.S.B.I.R. (2017) 13 NWLR (PT. 1583) 503 at 521 in support of the argument.

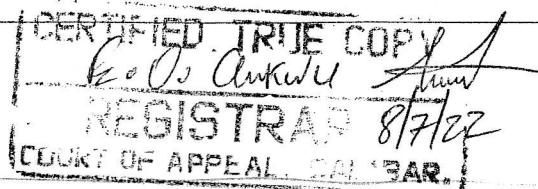


Finally, the Appellant submitted that the entire evidence led by the Respondent at the lower court in proof of the charge was porous, speculative and cannot support the conviction of the Appellant. He commended to us the case of MOHAMMED VS. STATE (2016) LPELR-41328 (CA), on the quality of the evidence required to sustain a criminal charge, which he said is absent in this case. He therefore urged us to allow this appeal and set aside the judgment of the trial court, and discharge and acquit him and to refund the ₦60,000 fine he paid in lieu of one year imprisonment for each count.

On its part, the Respondent while arguing its proposed issue one conceded that the onus of proving the offences charged beyond reasonable doubt is placed on it. The learned counsel referred to the evidence given by PW2 through whom the petition written to the Respondent by the Bible Society of Nigeria (exhibit 1) was admitted, which was what triggered the surveillance and investigation in this case. He submitted that by the provisions of Section 38 of the Copyright Act, a copyright inspector is empowered to, *suo motu*, carry out copyright enforcement actions, even without receiving any complaint.

On the argument of the Appellant that there was no proof that copyright subsists in the 578 copies of literary works with their serial numbers, the Respondent submitted that these are literary works within the interpretation given in Section 1 of the

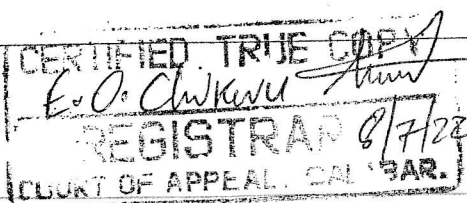
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Copyright Act. Further, Section 2 of the Act confers copyright on every work eligible for protection so far as the author is a citizen of Nigeria, domiciled in Nigeria or a corporate body registered in Nigeria. It was submitted that literary work that satisfies the conditions of originality, fixation, and connected to Nigeria is automatically protected without more. There is no additional requirement of identification or serial number as suggested by the Appellant.

Learned counsel referred particularly to the evidence of PW4, representing the Bible Society of Nigeria through whom the certificate of incorporation of the Society was admitted in evidence showing that it is a legal personality. PW4 testified as the copyright owner of the Revised Standard Version of the Bible and tendered the original of it as well, and demonstrated the physical features of distinction between the original and the pirated copies. He submitted that contrary to the assertion of the Appellant there was no contradiction in the testimony of PW4 with his extrajudicial statement, admitted as exhibit 9. Further, notwithstanding the testimony of PW4 in respect of the Revised Standard Version of Bible, there is a rebuttable presumption of law of subsisting copyright in a work which is the subject of infringement. He relied on the case of ISMAIL VS. STATE (2011) LPELR-9352 (SC) and Section 43 of the Copyright Act to submit that the Appellant did not lead any evidence in rebuttal of this

CA/C/292C/2020 |



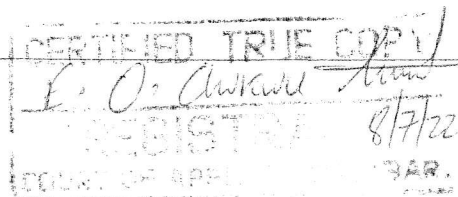
presumption that copyright subsists in any of the 578 infringing works contained in exhibits 5 and 6a-h. Learned counsel argued that in the absence of any rebuttal of the presumption of law, the learned trial Judge was right to presume the subsistence of the copyrights in exhibits 6a-h.

In response to the Appellant's contention that exhibits 6a-h were merely dumped on the trial court, Respondent's learned Counsel pointed out that exhibit 5, the inventory of the works listed their titles and quantity, as contained in exhibit 6. Also, PW4 made extensive use of the pirated Bible with the original to distinguish them and concluded the Bibles in exhibit 6 were pirated. Further, learned counsel referred to pages 72-73 of the record showing that while PW3 tendered exhibits 6a-h, the Appellant's counsel objected on the ground that he did not know the contents of the sacks. The trial Court ordered PW3 to show and explain the contents to the Appellant and counsel, which the witness proceeded to do. However, the Appellant's counsel having realized that exhibit 5 (inventory of the seized works) identified the titles and quantity of exhibit 6a-h, withdrew his objection stating that the exercise would amount to a waste of the court's time. Therefore, the Appellant's assertion in this appeal that the exhibits were dumped on the trial Court amounted to approbating and reprobating at the same time.

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On whether or not the Appellant sold, or exposed for sale for the purpose of trade the infringed copies of protected works and being in possession of same, the Respondent relied on Section 38(1), (2) and (5) of the Copyright Act and the testimonies of PW1 to PW3 who were copyright inspectors empowered by the said section to enforce copyrights. The Appellant also in his extrajudicial statement (exhibit 4) and in his oral evidence before the trial court admitted that all the books found and removed from his shops were meant for sale, and the invoice (exhibit 7) was also taken from his shops. Therefore, his evidence in defence of the charge was contradictory and was rightly rejected by the trial court.

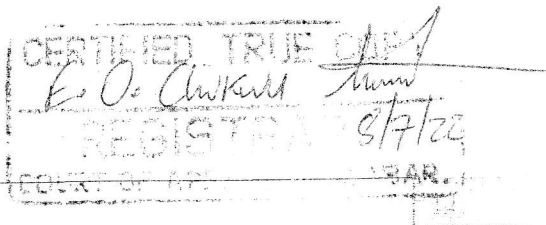
In arguing the Respondent's issue two, the learned counsel referred to Sections 38(1), (2) and (5) and 25 of the Copyright Act to submit that the rationale of these two provisions is that while Section 38 provides for the conduct of criminal copyright actions by the Respondent, section 25 provides the procedure to be adopted by the applicants for the conduct of civil actions. That Section 25 of the Act provides an alternative procedure to be adopted by a copyright owner whose work is infringed upon to seek civil remedy independent of criminal prosecution of the infringers that was reserved for the Respondent under section 38 of the Act. He submitted that that trial Court was therefore right to be guided by Section 38 of the Act and to hold that PW1 to PW3



being copyright inspectors and who enjoyed the powers and privileges of police officers - pertaining to investigation and prosecution of offences under the Act needed not to apply for an ex-parte order before entering the Appellant's shops. He urged the Court to dismiss this appeal.

By way on reply on points of law, the Appellant's learned counsel insisted that the evidence of PW4, the only owner of the works said to be infringed by the Appellant was contradictory to his earlier statement admitted as exhibit 9. That the contradiction is not minor that can be ignored, but goes to the root of his evidence. In response to the argument that failure of the Appellant to lead evidence to rebut the presumption of the law that copyright subsists in the 578 works is deceptive because none of those works tendered was identified by any copyright owner at the trial court for it to be satisfied that such rights existed. That the presumption cannot exist in the imaginary thinking of the Respondent/prosecution, since there was no proof of the owner of the copy right of those 578 literary works and the Appellant denied that the Bibles were taken from his shops.

The Appellant also insisted that Section 38 of the Act cannot override the clear provisions of Section 25 of the Act, since it provides for due process to be followed in a situation where the right of a citizen is to be deprived.



RESOLUTION:

Whether the Prosecution proved each or any of the two counts charge against the Appellant beyond reasonable doubt to warrant his conviction by the trial Court.

The Appellant was charged with a criminal offence under Section 20 (2)(a) and (c) of the Copyright Act which provides that:

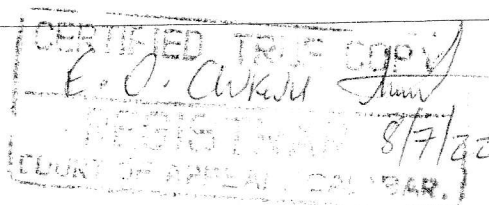
Any person who-

- a. Sells or lets for hire or for the purposes of trade or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists; or
- b. -----
- c. has in his possession, other than for his private or domestic use, any infringing copy of any such work

is, unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy of any such work, guilty of an offence under this Act and liable on conviction to a fine of ₦100 for every copy dealt with in contravention of this section, or to a term of imprisonment not exceeding two years, or in the case of an individual, to both such fine and imprisonment.

The Appellant's main grouse in this appeal is that the Respondent on which shoulders lies the proof of the offences it charged the Appellant failed to prove the elements of these offences against him to justify his conviction and sentence. He posited that there was no identification of any of the 578 literary works by any copyright owner or the copyright inspectors as infringed copies

CA/C/292C/2020 |



and no evidence was given distinguishing them from the original literary works. That there was no serial or identification numbers shown on the literary works. He also attacked PW4's evidence, asserting that it is unreliable because his oral evidence contradicted his earlier extrajudicial statement made in the course of investigation of this case.

There is no doubt that the Respondent who asserted before the trial Court that the Appellant committed the offences under Section 20(2)a) and (c) of the Copyright Act reproduced supra, has the bounden duty to prove that assertion beyond reasonable doubt as required by Section 135 (1) and (2) of the Evidence Act, 2011. In an effort to prove the offences against the Appellant, the Respondent relied on the evidence of four witnesses that testified as PW1 to PW4 respectively through whom it tendered the 578 literary works it alleged were the infringing works the Appellant possessed, exposed and offered for sale.

I examined the evidence of these prosecution witnesses led before the trial Court. PW1 Kufre Martins Umoh Udo's testimony is contained in pages 53-59 of the record of appeal. He testified that he is a copyright inspector and his office received several complaints of infringement of copyrights in literary works by the owners. This led to surveillance on some bookshops including that of the Appellant. Subsequently they organized a raid to the shops, but found the Appellant's shops locked. Upon breaking into

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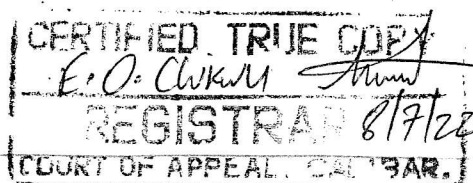
his shops, discovered and seized 578 infringed copies of various literary works. They left a message for the appellant to meet them in their office which he did and the inventory of the works seized from his bookshops were taken and recorded in his presence.

PW2 was Temitope Asuquo Nkereuwem and his evidence is contained in pages 59-60 of the record, and he corroborated the evidence of PW1. In particular, PW2 stated under cross examination in page 65 of the record how he knew or identified that the primary and secondary schools textbooks recovered from the Appellant's shops were infringed copies:

The publishers have shown us particular features which differentiate between the original and pirated copies. The most important feature we make use of during surveillance is to open the front page of the text book. The first page of the original is pure white, while that of the pirated copy is off white. I don't need to open all the books to check the pages. I took 2 or 3 samples and once I observe the difference, we carry the books. I can remember I opened lantern and one other one I couldn't remember....

PW2 also stated under cross examination that the Respondent received complaints both oral and written from the copyrights owners that infringed copies of their works are being sold at bookshops which instigated the surveillance and investigation.

PW3, Mr. Yama Samuel Usowo was the investigation officer and also a copyright inspector. His testimony is contained in pages 69-

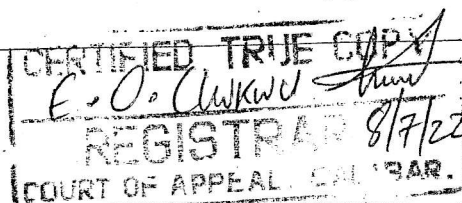


74 and continued at pages 75-77 of the record of proceedings. It was PW3 who tendered the 578 literary works that were seized from the shop of the Appellant (exhibit 6a-h,) along with sale booklets, invoices and receipts and the inventory of the 578 literary works seized. The inventory was admitted as exhibit 5, and the invoices, receipts recovered from the shops of the Appellant were admitted as exhibits 7.

PW4, Oluwafemi Akindele's evidence is contained in pages 77 to 80 and 83 to 85 of the record of appeal. He is the deputy manager of the Bible Society of Nigeria, a registered corporate body which owns the copyright of the Revised Standard Bible that it produces and distributes for sales. Upon discovering that the sale of their products was going down, they found the reason was because there were works that was not theirs but presented as theirs in the markets. The Society then wrote a petition to the Respondent, stating all their literary works that were pirated in the markets and sought its help to stop the piracy. This witness tendered the original Bible produced by his Society (exhibit 8) and he identified the pirated ones from exhibits 6a-h, and explained extensively, at page 79-80 the distinctive features between the original Bible and the pirated ones among exhibits 6a-h.

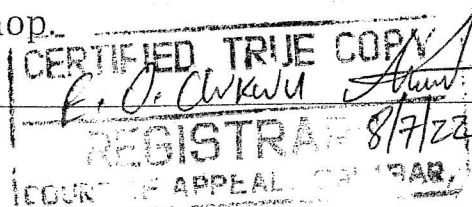
I note that none of the prosecution witnesses was discredited under cross examination. In view of the evidence of PW3 and PW4 in particular, the assertion of the Appellant that the learned

CA/C/292C/2020 |



trial Judge engaged in a voyage of search and investigation of the contents of exhibit 6a-h is incorrect and an unfair accusation. This is because PW3 testified on how they seized the pirated works from the shops of the Appellant and left message for him to meet them in their office. At the point of tendering the seized books contained in eight bags, the defence counsel was recorded as saying at page 72 of the record that he **"wonders what they intend to tender. Is it the bags."** The learned trial Judge then directed PW3 to open the bags and show contents to the defence, but defence counsel stated; **"let me not waste the time of the court I withdrew (sic) my objection."**

It is also important to state that the record shows that that before the 8 sacs containing the pirated works were tendered, there was already before the trial court the inventory of the contents admitted as exhibit 5, stating the titles and quantities of the seized items. The inventory is copied on pages 6 to 30 of the record of appeal, page 6 contained the analysis of the books seized by the Respondent's officers. It showed the pirated copies and the original of the works seized. The Bible society has 40 copies pirated and only five are original. Other literary works were also listed both pirated and original works, supporting the oral evidence of the prosecution witnesses. The evidence also disclosed that the books were recovered in the bookshops of the Appellant, De Chitex Bookshop.

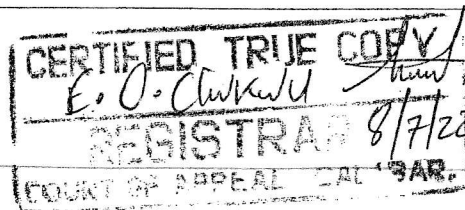


Also contrary to the assertion of the Appellant, I find no material contradiction between the extrajudicial statement of PW4 with his oral evidence in court regarding whether or not he participated in the raid of the Appellant's shop. His presence or not during the raid of the shops of the Appellant had no bearing with the fact in issue, which is the possession and offering for sale infringed copies of books including the Bibles produced by PW4's Bible Society of Nigeria, and I so hold.

Therefore, in view of the evidence on record, I agree with the finding of the learned trial Judge that the Respondent proved beyond reasonable doubt that the Appellant was found in possession of the pirated literary works exhibits 6a-h which he exposed for sale as shown in the invoices and receipts booklets admitted as exhibits 7.

By the wordings of Section 20(1) (b) - (c) of the Copyright Act reproduced supra, having proved the facts that the Appellant was in possession of the pirated copies of the seized literary works, which he exposed for sale for the purpose of trade, the burden of satisfying the court by proving; **"that he did not know and had no reason to believe that any such copy was an infringing copy of any such work...."** shifted to the Appellant.

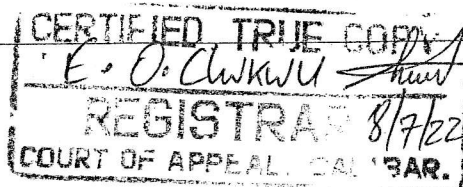
Appellant testified in defence of the charge as DW1 and his testimony is contained in pages 88 to 94 of the record of appeal. He testified that on the 13/8/2014, the Respondent's officers



broke into and raided his shops which were under lock and key in his absence and, in his words; "packed the whole books in my shops leaving just a few and also my invoice and sale books and used their own key to lock the shops." He said he travelled to his village on that 13/8/2014 and returned two days later on the 15/8/2014 and went to the offices of the Respondent where he was shown the books that he said were "packed from his shops", but he refused to sign the inventory of books. The Respondent's officers subsequently gave him the keys to open his shops and he took his own inventory which he tendered and was admitted as exhibit 11. He then served the Respondent a pre-action notice a copy of which was admitted in evidence as exhibit 12.

He asserted that he was targeted by the Respondent because he refused to pay to one Samuel Udowell the sum of ₦200,000, officer of the Respondent who requested the payment of the sums as operational fees. That this officer sent him his Diamond bank's account number and requested the Appellant to send ₦20,000 to him, but he only sent ₦5000, and he tendered the teller admitted as exhibit 13. With regards to the pirated books "packed from his shops", he said he does not sell pirated books since the Respondent organized seminars for the book sellers including himself, in which they were advised to avoid such works, and to always buy from publishers. He said he always buys his books

CA/C/292C/2020 |



from the publishers and tendered exhibits 14 and 15 as evidence of such purchase directly from the publishers. Upon being shown exhibits 6a-h that were "packed from his shops", the Appellant said he does not sell Bibles. But when shown sale receipt (exhibit 7) showing that he sold Bible on the 12/8/2014 and 13/8/2014 the day of the raid, he answered that it was his sale receipts but not in his hand writing and that the signatures on the receipts are forged.

Under cross examination the Appellant as DW1 said in pages 92-93 that:

The books taken away from my shop were for sale. From exhibit 7 (invoice) one can easily determine when my shop was open, sale I made on that date. (Exhibit 7 shown to the witness). To look at invoice 2554, the date is 12/8/2014. On the 1st item, it is Revised Standard Bible- what is written here is 10 (copies) and the price is N500 which is not my handwriting; the next invoice 2555-the date is 13/8/2014- based on the invoice, the shop was not open because I was not around. I came back from 15/8/2014. Exhibit 4 shown to witness (statement), I cannot read because it was not written by me. It was one of the staff that wrote this. I came back on 15th August and not 14th as written in the statement; it was Samuel and Martin (staff of complainant) that wrote the statements. Exhibit 7 is not complete. The number is not in serial as it should be. The invoice No is 2514 serial

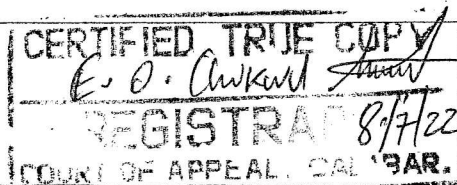
No, after that there should be 2515, but is not here. Because of time I can only mention this if I go on, I will see others....

I think rather than provide a defence or an explanation on how he came to be in possession of the pirated books, the Appellant's evidence in fact succeeded in strengthening the prosecution's case. His claims that he does not sell Bibles is contradicted by his invoice showing that he sold 10 copies of the pirated Bible as recently as the day before the seizure of the books. His evidence that the Respondent packed all the books in his shops also supported the prosecution's case that all the books packed from his shops (exhibit 6) were for sale and they were pirated as indicated in the inventory and the evidence of PW2 and PW4.

Finally, the Appellant's learned counsel argued that the failure of the Respondent's officers to obtain ex-parte order before breaking into the shops of the Appellant and seizing the infringed literary works was illegal and nullified all their actions given rise to this charge. He relied on the cases of GT BANK VS. ADEDAMOLA (supra) to support this argument. Section 25(1) of the Copyright Act provides:

In any action for infringement of any right under this Act, where an ex-parte application is made to the court supported by affidavit, that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any plate, film or contrivance used or

CA/C/292C/2020 |



intended to be used for making infringing copies or capable of being used for the purposes of making copies or any other article, book or document by means of or in relation to which any infringement under this Act has been committed, the court may issue an order upon such terms as it deems just, authorizing the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer not below the rank of an Assistant Superintendent of Police, and-

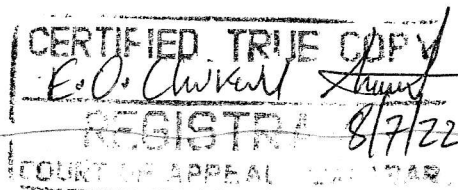
- a. Seize, detain and preserve any such infringing copy or contrivance and;
- b. Inspect all or any documents in the custody or under the control of the defendant relating to the action.

(Underlining provided.)

The above provisions are not ambiguous because they clearly are applicable where there is a suit commenced by a copyright owner as the claimant/plaintiff and he applies for an Antom Pillar order in order to quickly recover infringing items before the defendant has the chance to hide or destroy them in order to be used as evidence to support his claims. That is why the police have to be involved because it is a private or civil suit for enforcement of the copyright.

But where the copyright Inspector, who the Act gives the powers of police officers vide Section 38 of the Act, suspects the presence of such infringing materials in a house or building or a shop, he is empowered to legally and *suo motu* enter the building to make arrest and recover the evidence to be used to prosecute the

CA/C/292C/2020 |

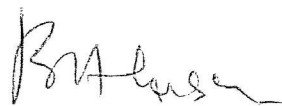


suspects. These are two entirely different scenarios; one criminal prosecution by virtue of Section 20 of the Act, the other civil claims by copyright owner who must have instituted a suit before a court of competent jurisdiction to enforce his copyright. There is no immunity to criminal investigation and prosecution against anyone who is reasonably suspected to have committed an offence under any law.

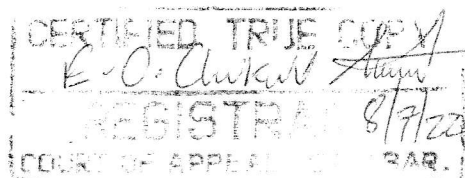
The facts of the case of GT BANK VS. ADEDAMOLA (supra) the Appellant relied upon are completely at variance with the facts of this case, and therefore not applicable to the interpretation of section 25(1) of the Copyright Act. The entry of the officers of the Respondent into the shops of the Appellant where they recovered exhibits 6a-h and 7 was lawful and justified, being in accordance with the powers conferred on them by Section 38 of the Copyright Act.

In the final analysis, I answer the issue in the affirmative and resolve it against the Appellant. Consequently, the appeal is devoid of any merit and it is hereby dismissed in its entirety. The judgment of the Federal High Court, holden at Uyo delivered on the 1st July 2020 in respect of Charge NO: FHC/UY/53C/2020 is hereby affirmed by me.




BALKISU BELLO ALIYU
JUSTICE, COURT OF APPEAL.

CA/C/292C/2020 |



APPEARANCES:

C. I. ODO ESQ. FOR THE APPELLANT

EMEKA OGBONNA ESQ. FOR THE RESPONDENT.

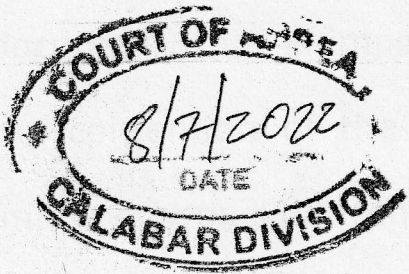
CERTIFIED TRUE COPY
E. O. Odo
REGISTRAR 8/7/22
COURT OF APPEAL, CALIFORNIA

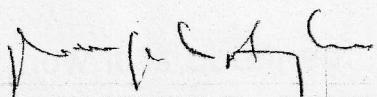
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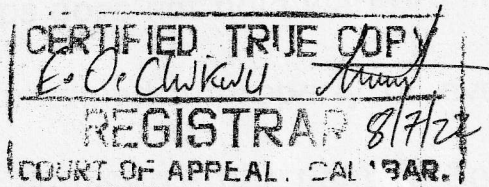
RAPHAEL CHIKWE AGBO, JCA

I was privileged to read in advance the lead judgment of **Aliyu, JCA** and I agree with him that there is want of merit in the appeal. I too dismiss the appeal.

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




HON. JUSTICE R. C. AGBO
JUSTICE, COURT OF APPEAL



APPEAL NO CA/C/292^c/2020
MUHAMMED L. SHUAIBU

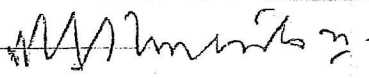
I read in draft the leading judgment of my learned brother, ~~Balkisu B. Aliyu, JCA~~ just delivered. I am in agreement with the reasoning and conclusion therein.

It is firmly settled that in determining the admissibility of evidence, it is the relevance of the evidence such as a document, that is important and not how it is obtained. Thus, the contention of the appellant that the pirated books were improperly packed from his shops does not hold waters.

This is because evidence obtained improperly or even in contravention of a law shall be admissible pursuant to Section 14 of the Evidence Act, 2011, unless the court is of the opinion that the desirability of admitting the evidence is outweighed by the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.

I too dismiss the appeal for lacking in merit.




MUHAMMED L. SHUAIBU
JUSTICE, COURT OF APPEAL

