

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

**ON FRIDAY, THE 3<sup>RD</sup> DAY OF JUNE, 2022**

**BEFORE THEIR LORDSHIPS:**

**CHIKWE RAPHEAL AGBO**

**JUSTICE COURT OF APPEAL**

**MUHAMMED L. SHUAIBU**

**JUSTICE COURT OF APPEAL**

**BALKISU BELLO ALIYU**

**JUSTICE COURT OF APPEAL**

**APPEAL NO:CA/C/292C/2020**

**BETWEEN:**

**MR CHINONSO UGOCHUKWU**

**APPELLANT**

**AND**

**NIGERIAN COPYRIGHT COMMISSION**

**RESPONDENT**

**SUMMARY OF JUDGMENT**

**ISSUES:**

1. Whether the Prosecution proved each or any of the two-count charge against the appellant beyond reasonable doubt to warrant his conviction by the trial court.

**FACTS:**

The respondent received a petition from Bible Society of Nigeria alleging copyright infringement of its literary works which included Revised Standard Bibles in Uyo and its environs. Based on the petition, the respondent carried out surveillance in the shops of the appellant and confirmed that the appellant was dealing on pirated works. It planned and executed an enforcement action. The respondent broke into the shop of the appellant which was locked in his absence and confiscated suspected pirated books, sales register and invoice.

The appellant went to the office of the respondent where inventory of the seized books was taken but he refused to sign it. He denied ownership of the pirated books and challenged the manner in which the respondent gained access to his shop in his absence. He also claimed that he had travelled to his village to attend a burial ceremony of his relation.

At the conclusion of investigation, the respondent instituted a two-count charge against the appellant at Federal High Court, Uyo for criminal copyright infringement. The charge was brought under section 20(2)(a) and section 20 (2)(c) of the Copyright Act, Cap. C28, Laws of the Federation of Nigeria, 2004 for exposing and offering for sale for purpose of trade and business 578 infringing copies of literary works in which copyright subsists and for being in

possession of 578 infringing copies of literary works in which copyright subsist, other than for private or domestic use.

At the conclusion of trial, the court held that the respondent proved its case beyond reasonable doubt and convicted the appellant on the two counts. He was sentenced to one year imprisonment or an option of N30,000 fine for each of the two counts.

The appellant was dissatisfied with his conviction and sentence and appealed to the Court of Appeal.

**Held:** (Unanimously dismissed the appeal):

1. On the duty on the prosecution-

**“There is no doubt that the respondent who asserted before the trial court that the appellant committed the offences under sections 20(2)(a) and (c) of the Copyright Act reproduced supra, has the burden duty to prove that assertion beyond reasonable doubt as required by section 135(1) and (2) of the Evidence Act, 2011.” Per Balkisu Bello Aliyu, JCA.**

2. On whether the prosecution proved its case beyond reasonable doubt-

**“Therefore, in view of the evidence on record, I agree with the findings of the learned trial judge that the respondent proved beyond reasonable doubt that the appellant was found in possession of the pirated literary works exhibit 6a-h which he exposed for sale as shown in the invoices and receipts booklets admitted as exhibits 7.” Per Balkisu Bello Aliyu, JCA.**

3. On contradictory evidence-

**“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 infringing copies of books including the Bibles produced by PW4’s Bible Society of Nigeria, and I so hold”. Per Balkisu Bello Aliyu, JCA.**

4. On criminal copyright action- the powers of a Copyright Inspector under section 38 of the Copyright Act, vis a vis section 25 of the Copyright Act-

**“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 Anton 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 suspects. These are two entirely different scenerios; 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 on 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.” The underlining is mine. Per Balkisu Bello Aliyu, JCA.

5. On admissibility of evidence:

“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”. Per Muhammed L.Shuaibu, JCA.

6. On dumping of documents in court:

“It is also important to state that the record shows that before the 8 sacks 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 the quantities of the seized items, the inventory is copied in page 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 5 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”. Per Balkisu Bello Aliyu, JCA.

Further in its judgment, it stated thus;

“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 trial judge engaged in a voyage of search and investigation of the contents of exhibit 6a-h is incorrect and unfair accusation. This is because pw3 testified on how they seized the pirated works from the shop 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 “wonder 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 withdraw my objection.” Per Balkisu Bello Aliyu, JCA.

7. On duty on the appellant when prosecution proves its case beyond reasonable doubt-

**“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 Bibles 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.”**  
Per Balkisu Bello Aliyu, JCA.

#### **Nigerian Cases Referred to in the Judgment.**

Ayodele Esezobor V. Said (2018) LPELR-46653 (CA)

Ladoja V. Ajumobi (2016) LPELR-40658 (SC)

Chukwu V. State (2007) NWLR (PT. 1052) 430 (CA)

GTB Plc. V. Adedamola (2019) 5 NWLR (PT. 1664) 30

Igbinedion V. C.S.B.I.R (2017) 13 NWLR (PT. 1583) 503 at 521

Mohammed V. State (2016) LPELR-41328 (CA)

Ismail V. State (2011) LPELR-9352 (SC)

#### **Nigerian Statutes referred to in the Judgment.**

Copyright Act, Ss. 20 (2)(a)(c), 25, 25(1), 38, 38(1)(2)(5), 43

Evidence Act, S. 135(1)(2)

#### **Appearances**

C.I. Odo Esq. for the Appellant

Emeka Ogbonna Esq. for the Respondent