

# AVOIDING COSTLY IP PITFALLS

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**What Telecom Companies Must Learn  
from The Mbanefo v Airtel Decision**

# Introduction

The decision of the Federal High Court in *FHC/L/CS/1822/2022: Veno Marioghae Mbanefo v Airtel Network Limited* has been widely welcomed by various players in the music industry, such as music industry executives, sponsors, investors, lawyers and other relevant stakeholders. The unending campaign against the unauthorised exploitation of intellectual property (IP) rights and the moral protection of creators received a boost as a telecommunications giant was held liable for up to NGN210,000,000 for infringing musical copyright.

This insight analyses the Court's decision and suggests steps to protect IP rights in the creative industry as well as avoid infringement liability.

## NGN 210,000,000

Awarded in damages for musical copyright infringement, setting a robust precedent for intellectual property rights and the moral protection of creators.

# Summary of the Case

Musical artist, Veno Marioghae Mbanefo (the **"Plaintiff"**) instituted an action against Airtel Network Limited (the **"Defendant"**) at the Federal High Court, Lagos (the "Court") for infringement of the copyright in the song titled *"Nigeria Go Survive"*. The Plaintiff alleged that the Defendant had used the Plaintiff's song for advertising, promoting and telemarketing their business products and services, including their mobile app and annual musical TV show, without seeking the necessary legal license. The Plaintiff further sought declaratory and injunctive reliefs, and the total sum of NGN350,000,000 in damages

The Defendant challenged the suit, claiming the Plaintiff's case was based on hearsay and that witnesses failed to credibly prove that the outbound lines used to communicate the said advertisements belonged to the Defendant. The Defendant further argued that the Plaintiff can't claim the song's originality without tendering primary evidence, such as blueprints, records, or witnesses of her creation. They urged the Court to dismiss the suit with costs, as the Plaintiff's evidence was insufficient.

## NGN 350,000,000

Total sum sought by the Plaintiff in damages, alongside declaratory and injunctive reliefs for the unauthorised commercial exploitation of the copyrighted song.

# Decision of the Court

The Court found the Plaintiff proved originality and ownership of the song through pleadings, testimony, exhibits, including the album sleeve and recordings, and that the Defendant had failed to challenge those in its defence. This stance of the Court nullified the Defendant's quest for evidence, such as manuscripts and the like, to prove originality and ownership. It also found that the Defendant used much of the Plaintiff's work in its caller prelude for millions of subscribers and criticised the Defendant's claimed ignorance.

Finally, the Court found the Defendant liable for copyright infringement, restrained them from further infringement, and ordered the payment of **NGN200,000,000** in damages and NGN10,000,000 in costs to the Plaintiff.



## NGN 200,000,000

Ordered to be paid in general damages to the Plaintiff.



## NGN 10,000,000

Awarded in costs for the litigation.

# Key Takeaways From Decision

Recent developments in Nigeria's IP space include the Collective Management Regulations, 2025, and the National Intellectual Property Policy and Strategy, which jointly clarify policy direction within the creative sector, especially in the music industry. These initiatives support the national IP strategy's goal to foster a thriving IP ecosystem that drives socio-cultural and economic growth.<sup>1</sup> The 40-page decision, which has strengthened these frameworks, is notable for several reasons:

## Proof of Ownership

The Court rightly held that originality of a work cannot be presumed and the plaintiff bore a responsibility to establish the work's originality, *"which in the context of Section 1 (2)<sup>2</sup> requires proof of expended sufficient effort and skill of the Plaintiff on the musical work that gave it an original character, by giving evidence to show the labour and skill that have gone into the work."* We note that the Defendant did not necessarily contradict the facts stated by the Claimant regarding the creation and release of the song, nor did the Defendant adduce contrary evidence. Hence, the Court was easily satisfied that originality and ownership had been proved. It is worth noting that if the Defendant had strongly contradicted these facts, their call for "primary evidence of authorship or ownership, blueprint, contemporaneous record, or any witness present at the time of creation" might have raised the standard for the Plaintiff to prove ownership.

However, it is prudent for creators to leave traces of their creative process and adequately document it to indisputably prove ownership of their work in the event of disputes. Also, creators should take advantage of the formality procedures provided under the Copyright Act, 2022, and register their works with the Nigerian Copyright Commission, which offers advantages such as prima facie proof of ownership.

## Damages in IP Actions

The Court noted that it had broad discretion to estimate the amount of damages based on common sense, fairness and evidence presented. The Court held that:

...in calculating the amount of the general damages, this court will look at the basis of a reasonable royalty for a license that would have been payable under the license with the Plaintiff ...as well as the defendant's revenue growth boosts in the country based on its contents as reflected in the report in exhibits P.10 and P.10A, and the Plaintiff's reputation and effort exerted in keeping the work for more than three decades now in such determination of the quantum of general damages deserving of the Plaintiff in the circumstance of this case.

The Court's ruling indicates that key factors in awarding damages include the plausible license cost the Defendant would have paid, the Defendant's revenue growth, and the Plaintiff's reputation. In addition, it is not necessary to prove actual or economic damage in copyright claims to be entitled to relief. The Court, relying on foreign and local decisions,<sup>3</sup> held that once infringement is proven, economic loss doesn't need to be shown to claim compensation.

## Ignorance as a Defence

The Defendant claimed that it was not aware of the song and could not have infringed on any copyright. On this, the Court relied on Section 16(3) of the Copyright Act Cap C28 LFN 2004,<sup>4</sup> and *Skin Beauty Ltd v. Okoro*<sup>5</sup> in holding that ignorance is no excuse, and that a mere assertion that the infringement was inadvertent or that the Defendant did not know the work was copyright-protected would not satisfy the requirements of the Act. Accordingly, if it is found that the defendant derived its work from the plaintiff's work, ignorance of the source is no defence.

## Account of Profits Remedy

Remedy of account of profit: The Court denied the Plaintiff her alternative relief of account of profit in spite of admitting the expert valuation report tendered through the expert witness called by the plaintiff during the trial. The Court denied the claim, citing the Court of Appeal's decision in *Asikpo v Access Bank*<sup>6</sup>, which held that an audit report made without proper input from the affected party should not be given weight. The valuation report was expunged because the defendant's input was not considered, thereby causing the remedy of an account of profits to fail.

# Preventing Copyright Liability

As consumer attention becomes harder to capture, organisations often deploy innovative strategies to engage audiences. Music, being a powerful emotional tool, is often used in marketing. This commercial use increases legal responsibilities, and businesses must therefore understand and navigate IP licensing requirements.

To prevent and reduce the risk of liability, as in the case of the Defendant in this suit, the following measures may be adopted:

## Implement licensing verification systems

In this suit, the Defendant noted its jingles are created internally but it sometimes uses music from contemporary artists. All songs used commercially must be legally cleared to avoid legal issues like this case. Clearance in this sense involves drafting contracts, registering interests, and obtaining all relevant licenses to use any piece of music. Organisations producing ads and support materials such as visuals and music should also include strong IP clauses in employee contracts to ensure ownership of songs, jingles, playlists, and similar IP assets, allowing free use with minimal infringement risk.

## Ensure Clarity in Collaborations

When working with contractors, freelancers, or partners, it is crucial that they understand and follow IP laws. Furthermore, clauses requiring such people to use original content, as well as accountability clauses for infringements and indemnification clauses to protect against legal issues and disputes, should be included.<sup>7</sup>

## Engagement with Collective Management Organisations (CMOs)

This simplifies licensing for organisations using music in promotions, ads, jingles, caller tunes, and TV shows, with the CMO providing efficient, cost-effective one-stop licensing solutions. They provide blanket licenses to rights users, enabling authorised use of their entire repertoire, both domestic and foreign, for specified purposes and a defined period. This reduces the hassle of licensing music from individual rights holders for use in a song catalogue.

## Regular IP Audits

An IP audit is a structured process of identifying, categorising, and evaluating all IP owned, used, or acquired by an organisation. IP audits can be general or event-driven. Before launching new projects or marketing materials, businesses should include an IP audit in their checklists. This helps identify the nature, status, and use of IP and check for potential IP infringement risks.

# Conclusion

Corporations across various industries have at times been found to leverage musical works for branding, engagement, and revenue without proper licenses. This decision affirms the moral and economic rights of creators and strongly supports efforts to curb unauthorised use. It clearly shows that courts will hold defendants accountable for such infringements, which can incur both civil and criminal liability. This decision is a confident, well-reasoned contribution to that framework and a clear signal that creative rights are valuable assets worthy of legal protection.

“*This decision is a confident, well-reasoned contribution... and a clear signal that creative rights are valuable assets worthy of legal protection.*”

1. National Intellectual Property Policy and Strategy, p.1
2. Copyright Act, 2022, s. 2(2)
3. Exchange Telegraph Co. v Gregory & Co. [1896] 1 Q.B and Peter Obe v Grapevine Communication Ltd [2003-2007] 5 IPLR 354.
4. Copyright Act 2022, s. 37(4).
5. [2017] LPELR-46285(CA) Pp. 28 paras. A.
6. [2015] LPELR-25845(CA) Pp. 31 paras. C.
7. Off The Mark, 'Implementing a Plan to Avoid Copyright Infringement in Your Business', (2024),  
<<https://offthemarkipsolutions.com/2024/05/09/implementing-a-plan-to-avoid-copyright-infringement-in-your-business/>>, accessed February 20, 2026.

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12



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