

# **PROTECTION OF IMAGE RIGHTS IN NIGERIA – A REVIEW OF THE DECISION OF THE COURT OF APPEAL IN BANIRE V. NTA-STAR TV NETWORK LIMITED**



In the case of *Banire v. NTA-Star TV Network Limited*<sup>[1]</sup>, the Court of Appeal, Per Honourable Baba Idris, JCA defined image rights or publicity rights as a person's right against misappropriation of his name, likeness, physical appearances, nicknames, pictures, personal slogans etc. Simply put, it is the right of a person to control the public's commercial exploitation of a person's identity.<sup>[2]</sup>

As can be seen from the definition, image right is not limited to one's image whether in physical or photographic form. It also extends to one's name, nicknames, personal slogans etc. image rights and just like other rights it can be violated when exploited commercially without authorization.

By way of illustration, violation of image rights can be said to have occurred where a beverage company uses the name and image of Fredrick (a well-known influencer across the country with millions of fans) on a billboard advert to promote its energy drink, without Fredrick's permission, consent or the existence of an endorsement deal between them. The public sees the advert and assumes that Fredrick endorsed the product or is connected to the beverage company in a manner that obligates him to boost the company's sales and reputation. Meanwhile, Fredrick does not earn anything from it and may not even support the consumption of energy drinks or that particular energy drink. On the converse, the beverage company may or would have generated more revenue as a result of the boost in patronage occasioned by the advert. In order to seek remedy for the misappropriation and exploitation of his image, Fredrick may file an action to seek damages for the violation of his image right generally and for commercial gains.

### **Position of Nigerian Law as it relates to image rights**

Before explaining the position of Nigerian law in relation to image rights, the court first examined the possible cause of action under which an action for the enforcement of image rights can be brought generally by looking at the English jurisprudence. The court considered the cases of *Irvine v Talksport Ltd* (2002) F.S.R 60 and *Robyn Rihanna Fenty v Aracadia Group Brands Ltd (T/A TOPSHOP) & Another* (2012) EWHC 2310 (CH), where the plaintiffs, , brought actions against the defendants under the tort of passing off for unauthorized use of their images. According to the Court, these cases establish the fact that actions for infringement of image rights can be brought under the tort of passing off.

Delving into Nigerian jurisprudence, the Court noted that there are no specific laws governing image rights in Nigeria, and the closest law that can be considered is enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria 1999, known as the Right of Privacy. In addition, sections 24 and 26 of the Nigeria Data Protection Act 2023 also safeguards a person's personal data and prevents the

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[1] (2021) LPELR-52824 (CA)

[2] JCA (Pp 32-34 Paras A-A)

manipulation of personal data, which includes images. The court further noted that image rights are also equivalent to property rights in most cases and are pursued by celebrities as they are typically persons that, can establish the elements needed to succeed in the tort of passing off as it relates to image rights. However, this does not preclude a normal person from suing for a violation of his image rights. [3]

### **Elements required to prove the infringement of image rights**

In the case under review, the court identified three elements that must be established or proven in order to succeed in an action for the infringement of image rights as follows:

- The individual must establish that his/her image has acquired sufficient goodwill, such as quantifiable goodwill which can be leveraged on in consideration for money.
- He or she must prove that the third party has misrepresented to the public by using the image.
- The misrepresentation caused or is capable of causing damages such as a reduction in the value attached to their goodwill.

In a nutshell, the position of the Court of Appeal in Banire's case shows that for an action seeking to enforce the infringement of image rights to succeed, the Claimant must establish goodwill or reputation, misrepresentation by the defendant to the public, and lastly, the Claimant must prove that he or she has suffered damage to the goodwill or is likely to suffer damage.

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[3] See the case of Banire V Nta-Star Tv Network Ltd (2021) LPELR-52824 (CA) Per Mohammed Baba Idris, JCA (Pp 32-34 Paras A-A).



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