

Re-Assessing the Recognition and Protection of Image Rights in Nigeria: The Court of Appeal's Decision in *Banire v N.T.A Star TV Networks Ltd. (2021) LCN/150/15036(CA)* in Focus

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Abstract

*This article focuses on a unique aspect of the “property rights”, intellectual property rights and its relevance to contemporary Nigeria. In doing this, special attention is given to the emerging concept of image rights as a genre of property rights, quite distinct from the well-established intellectual property rights of copyrights, patents and designs and trademarks. However, this is done against the background of the recent decision by the Court of Appeal in *Banire v N.T.A Star Networks Ltd*, which seems to have addressed this developing genre of property rights, albeit unsatisfactorily.*

Keywords: Entertainment, intellectual property, copyrights, image rights, privacy, publicity

INTRODUCTION

It is settled law that property rights are in three folds, namely: Real Property, Personal Property and Intellectual Property. Although, more emphasis and prominence is often attached to the other two, intellectual property rights have over the years gained some measure of ascendancy and acceptability [1]. This is against the background of the increasing awareness that in terms of financial rewards and economic potentials, IP rights can generate even more than the other two. In an increasing world of technology and lately cyber-technology, authors and owners of IP are getting more rewards for their intellectual as well as entrepreneurial investment in IP works. If there is any doubt, ask Mark Zuckerberg, the owner of Facebook and its allied products his net worth or ask Bill Gates his investment in Microsoft and its allied computer apps [2].

With these increasing potentials for IP comes with the challenge of evolving an effective legal and institutional framework for the protection of the rights and owners of works of IP in any legal system. Admittedly, there is a remarkable improvement in the legal framework for the protection of IP rights. The impact of international frameworks for the recognition and protection of IP rights can be appreciated from the broad range focus of TRIPS and other related international instruments [3]. However, it appears that these municipal and international regimes focus on the traditional categories of IP like copyrights, patents, trademarks and industrial designs. Therefore, it would appear that other categories of property rights like “image rights” may have to be considered outside the framework of existing laws on IP. The challenge now is determining whether there is in principle a right to image or imagery as now captioned as “image rights” and more importantly, what legal platform or basis can “Image Rights” be appropriately and effectively protected?

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CONCEPTUALIZING IMAGE RIGHTS

“Image Rights” are rights that inure to a person by virtue of his photograph, picture or any physical attributes of the person, including but not limited to his name, signature, brands or slogans [4]. Accordingly, “image rights” are tied inextricably to the personality of an individual and thus dovetails into his private right. If image right is property right, then it must first be understood from that perspective if it could be appropriately and effectively protected. Thus, giving this multi-faceted nature of ‘image rights’, it is necessary to reappraise the nature and scope of ‘image rights’ in order to properly protect it.

It has often been reasoned those celebrities and successful person are more prone to the exploitation of their images and associated brands. Thus, sports men and women, musicians, actors and actresses, broadcasters amongst others have had issues at one point or the other on the violation of their image rights [5]. A persons’ image conveys a lot of all message, both positive and negative. For celebrities, their popularity and mass appeal to the public is a useful tool for product branding and advertisement. People are wont to associate a good product or services rendered to their popular or favourite celebrity. An image or signature of a celebrity on such a product is tantamount to his/her endorsement of such a product or service. Thus, it is perfectly a good business stratagem for producers and marketers to use the image of these celebrities in the advertisement and marketing of their goods and services. When this is done on the basis of a consensual relationship, there is no problem. However, problems emerge when such producers and marketers of such goods and services or third-party agents like advertisement companies “stealthily” use the image of these celebrities for such advertisement and marketing purposes without their consent.

Accordingly, in searching for a basis to protect “image rights”, there has been some measure of ossification between different streams of law, straddling between public law and private law. In the realm of public law, the focus has often being on the constitutional and human rights perspective to the protection of right to the freedom of expression of the persons who apparently violate the “image rights” of others [6]. this school of thought leans in favour of persons who engage in the publication of images or related information of third parties, ostensibly on the basis of their right to access to such information and the right to disseminate or broadcast such pictorial information to the public. The usual “suspects” in this category are journalists especially photo-journalists amongst others [7]. Conversely, it is the same public law perspective that is touted as the basis for the need to protect the right to privacy of the persons especially artistes or celebrities who in most cases “victims” of the exploitation of their “image rights” [8] whereas, this right straddles between public law and private law, the public law angle is based on the fact that the right to the dignity of the person is equally a constitutional right that is deserving of protection under the law [9]. This is because an unwarranted and unauthorized publication of the image or personae of a person could indeed be a traumatic and emotionally frustrating for the victim [10]. In the context of the Nigerian legal system, section 34 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), protects the right to the dignity of the person. On the other hand, section 37 protects the right to the privacy of the citizens. However, as shall be demonstrated later, this section can rarely be extended to cover image rights due to the specific issues addressed by the said provision. However, in other jurisdictions, there appears to be a tilt towards a private law perspective to the right to the privacy of the citizen in respect of ‘image rights’.

IMAGE RIGHTS IN OTHER JURISDICTIONS

The recognition and protection of image rights has been approached from a multi-faceted platform in some jurisdictions. Whilst some jurisdictions favour intellectual property nay copyright as a permissible platform, some others focus more on the tort of passing off as a veritable platform.

In the United Kingdom (UK), there appears to be no separate recognition of a right to privacy as a basis for the protection of “image rights”, rather, the focus has been on the use of the tort of passing off as an acceptable platform [11]. This is more particularly so it was assumed that only popular persons or

celebrities had an “image” worth protecting. Accordingly, common law precepts like confidentiality and passing off were deployed mainly to protect the image of public figures and celebrities. The concept of “confidentiality” was a convenient tool used to discourage the unauthorized publication or republication of a person’s image without his consent. For example, it was reasoned that it was a breach of “confidentiality” for photographer to display or publish the photograph of even his client without his/her consent [12]. In a more pragmatic sense, the breach of confidentiality analogy was more rationale in circumstances where the picture or image of the person ought to have been discreetly protected or the picture or image of the person affected was used in less unsavory circumstance. Thus, associating a person’s picture or image with negativity was actionable not only as a breach of confidence but constructive defamation. The litmus test for this proposition came in *Campbell v Mirror Group Newspapers* [13]. Here, the celebrity model successfully pursued a claim against the defendant who had published an unauthorized picture of her coming out of drug rehabilitation center, then put mildly as her “leaving narcotics anonymous. However, in spite of this veiled effort, the Court held that since her drug rehabilitation was supposed to be a private and confidential issue, the publication was in breach of confidential information and the invasion of her privacy. Lord Nicole reasoned that ‘the law imposes ‘a duty of confidence’ whenever a person receives information he knows or ought to know is fairly and reasonably to be regarded as confidential’ [14]. Similarly, in *Douglas v Hello* [15], the House of Lords applied this principle of “breach of confidence” even in circumstances that were more in synch with commercial undertaking. Here, the actor Michael Douglas and his spouse successfully maintained an action against a celebrity magazine for the unauthorized publication of their wedding pictures. Their grouse was that they had already assigned the right to the publication and reproduction of the pictures to another magazine. Thus, the unauthorized publication of these photographs by a rival magazine exposed them to litigation for a breach of the contract. Whilst, the contractual angle to this case is unmistakably clear, it was a case of the unauthorized invasion of the privacy of the couple and more importantly a breach of their confidential information. In summing up the basis for their decision, Lord Hoffman observed as follows:

There is in my opinion no question of creating an “image right” or any other unorthodox form of intellectual property. The information in this case was capable of being protected, not because it concerned Douglasses’ image any more than because it concerned their private life, but simply because it was information of commercial value which the Douglasses had sufficient control to enable them to impose an obligation of confidence.

However, a more expansive approach to the protection of “image rights” in the UK came with the use of the tort of passing off as a platform. Although, the traditional concept of passing off would have been inapplicable to image rights, the courts somehow found a way to expand the frontiers of passing off to cover image rights. For example, whereas, passing off would have been more appropriate for product or service branding, it was extended to a person’s image. Similarly, whereas traditional passing off focused the protection of a “trade” or “business”, modern conception of passing off regarded the image or personae of a celebrity as a “trade” or one imbued with a commercial value [16]. Furthermore, whereas, traditional tort of passing off concerned more with the act of the misrepresentation by a defendant as to his business identity, an expanded tort of passing off focused more on the misappropriation of a person’s identity albeit for commercial purposes. Interestingly, the emphasis on the protection of “image rights” on this basis was so strong that even the images of deceased celebrities and even fictional characters were covered. The test case for this was *Edmund Irvine & Tindell Ltd v Talksport Ltd.* [17]. In this case, Talksport Radio sent out some promotional materials bearing the photograph of a famous F1 driver-Eddie Irvine, without his consent. The photograph used was deliberately manipulated to remove the phone Irvine was using and same was replaced by a radio set , with the words “talk radio” inserted thereon.

The Court held that the defendant’s conduct amounted to passing off and false product endorsement. This decision was strengthened by the evidence on record that potential buyers of the “talk radio”

reasonably believed that the Plaintiff (Irvine) had endorsed the product. Incidentally, this decision marked a remarkable departure from the earlier decision in *McCulloch v Lewis (Production Distributors) Ltd* [18], where on similar facts, the unauthorized use of the plaintiff's (a famous children programs presenter) nick name "Uncle Mac" in the advertisement of children's cereal product, was dismissed as a claim for passing off. The Court had reasoned then that there was no connection between the plaintiff's business (presenting radio programmes) and that of the defendant's business (selling cereals).

Accordingly, in this ground breaking decision in *Irvine v Taslksport Ltd*. [19] the Court laid out the pre-conditions for a successful claim in the modern tort of passing off anchored on "false endorsement" the claimant was required to show that:

- a. At the time of the acts complained about, he had a significant reputation or goodwill
- b. That the act (s) of the defendant gave rise to a false message which would be understood by a not insignificant section of his market that his goods have been endorsed, recommended or approved by the Claimant.

Where as, Irvines case, laid down this foundation for an expansive tort of passing off in the guise of "product endorsement", the Rihanas case further cemented this trend in the U.K. [20]. In this case, Rihana successfully stopped a famous clothing line, Topshop from using her photograph on their t-shirts it advertised and sold to the public. This was because the clothing company had acquired the photograph from the photographer, who had copyright therein, but used same in a manner not authorized by the artiste. The clothing line had stuck to the age long defence that Rihana had no right to control the public use of her image as a celebrity and image rights was not permissible in the U.K. However, the Court in following up its decision in the Irvines case, held that a substantial number of consumers were likely to be deceived into buying the t-shirt because of a false belief that it had been authorized by Rihana. This was palpable "false merchandising", accordingly her claims succeeded.

This concept of "false merchandising" remains a veritable basis for the protection of the image rights of celebrities almost to the exclusion of non-celebrities. However, whilst, the Courts may have been willing to recognize the photographs and images of these celebrities as protectable, their names were rarely accepted as registrable marks acceptable as re Thus, in *Elvis Presley Trade Marks* [21], (Elvis Presley Enterprises Ltd applied to register three trademarks in respect of three toiletries and anti-per spirants under the U.K Trademarks Act of 1938. An objection to this application on the grounds that the name "Elvis Presley" was not distinctive in nature and thus not-registrable. However, in dismissing the objection, the Court held as follows:

Even if Elvis Presley was still alive he would not be entitled to stop a fan from naming his son, his dog of goldfish, his car or his house "Elvis Presley" simply by reason of the fact that it was a name given to him at birth by his parents. To stop the use in whole or part of his name by another, he would need to show that as a result of such use, the other person is invading some legally recognized right. This is so reflected in the law of passing off

Similarly in *Diana Princess of Wales Trademarks* [22], the trustees of Late Princess Diana's Estate applied to register her name as a trademark in respect of some goods and services. However, this application was refused on the ground that the name "Princess Diana" was not distinctive in nature as to satisfy the requirement of section 3 of the Trademarks Act. This decision was without prejudice to the publicity rights that would have inured to the princess if she were alive. The argument that was canvassed on her behalf by the trustees suggested that the focal point of the application was the use of her goodwill in the marketing of the goods in question and the supply of the services for the purpose of financial gains which were ultimately for charitable purposes.

Although, "false merchandising" remains a sellable point, it has its drawback as it is anchored on the proof of "misrepresentation" or "deceit" on the part of the defendant. This requirement may not be easy

to establish in a lot of cases. Accordingly, there is also the push for the reliance on the simple act of the unauthorized “misappropriation” of a person’s goodwill, image or personality for whatever purpose. In the words of the learned author Harvey-Smith [23]:

Liability arises where the defendant ‘appropriates’ the commercial value of a person’s identity by using without consent, the person’s name, likeness or other indicia or identity for the purposes of trade. Liability is based on misappropriation rather than misrepresentation. Thus, proof of deception or consumer confusion is not required. The interest protected is the intangible value of the person’s identity rather than trading or promotional goodwill’

Admittedly, this is a veritable platform for the protection of the image rights of persons other than celebrities. The requirement of the proof of “deceit” or “misrepresentation” would have been difficult to prove in some cases; hence the concept of “misappropriation” is preferable in the circumstance.

Image Rights in Nigeria: Banire v N.T.A Networks Ltd (supra) in Focus

Whereas, the existing legal framework for the protection of image rights appears firmly settled in the United Kingdom, United States of America (USA) and parts of the Europe, the position is not the same in some parts of Africa, especially Nigeria. Whereas, the U.S.A appears to have settled on the right to publicity as a basis for protecting image rights, U.K appears to base their protection more on the tort of passing off. The question that follows naturally is, Is image rights cognizable under Nigerian Law? If the answer is in the affirmative, what is the basis of the protection?

Presently, there is no specific statutory framework for the protection of image rights in Nigeria. Although, some writers have argued that the provisions of section 37 of the Constitution can be played in aid of claims for image rights [24], it must be asserted that this would not be apt in the circumstance. This is because the provisions as regards the right to privacy are too generic and common place to address the specific issue of the image rights of citizens especially celebrities. This is more particularly so because in some cases of image rights violation, the “injury” is not the invasion of a person’s privacy but rather the unauthorized economic exploitation of a person’s image. As a matter of fact, the aggrieved party may have consented to being photographed or recorded, but may not have consented to the commercial exploitation of his photograph or video. Furthermore, if the argument is based on the right to privacy, potential defendants like journalists, bloggers etc that often trend on the use of the pictures or videos of others may equally bandy their right to the freedom of expression as a defence to claims of image rights violation [25].

Additionally, some authors have argued that existing data protection laws in the Country can be stretched to cover image rights [26]. They cite in reliance the Nigeria Data Protection Regulation as developed by the National Information Development Agency (NITDA) of 2019. Often, reliance is placed on Paragraph 1.3 of Part 1 of the said Regulation which defines personal data to include

means any information relating to an identified or identifiable natural person (Data Subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. It can be anything from name, address, photo, an email address, bank details, posts on social networking websites, medical information, and other unique identifier.....

Once more, as it was with the case of the Constitutional guarantee of the right to privacy, a claim for data theft or violation would lie in the limited cases where the image of the is taken without his or her prior consent/authority. Where, as shall be seen shortly, the person had given an initial consent for the capturing and storage of his/her data e.g. photograph, but same is used for other purposes especially

commercial purposes, without his/her consent, would a claim for data theft be appropriate in the circumstance? What is more, are the compensatory/restitutionary provisions in the Data Regulations adequate to address these cases of image violation, especially, where it involves a celebrity?

Clearly, the recourse to the constitution and data protection regulations are not well suited to address issues of image rights in the Country, this is where recourse to the common law tort of passing off is preferable. Nigeria is a common law country and our laws are anchored on the precepts of common law and equity. Specifically, the Courts in Nigeria are enjoined to administer common law and equity and this is usually backed up the various High Courts Laws in the Country [27]. Furthermore, section 251(f) of the Constitution, specifically gives the Federal High Court the jurisdiction to entertain claims pertaining to passing off [28]. Thus, implicitly, persons who feel aggrieved by the violation of their image rights can proceed to the Federal High Court for a claim for image rights based on the common law tort of passing off. However, that would only be feasible if the Courts are in tune with the modern realities of the expanded nature of the tort of passing off beyond its traditional limitation to marketing and supply of goods and services. If the Courts are still fixated on the perception that passing off is limited to goods and services and not photographs and videos of individuals, then there are bound to be problems. Clearly, this was the problem in *Banire v N.T.A Star TV Networks Ltd*.

THE FACTS AND DECISION IN BANIRE V N.T.A STAR TV NETWORKS LTD

This case provided the Court of Appeal the unique opportunity of entrenching a regime for the protection of image rights in Nigeria. Here, the appellant Miss Banire commenced an action against a broadcasting medium-N.T.A TV Networks Ltd (Respondent) for the unauthorized use of her photographs on advertisement billboards in Abeokuta and Akure cities in western part of the Country. She claimed that this unauthorized use of her photograph in the manner aforesaid amounted to a violation of her image rights and intellectual property. She accordingly claimed the sum of N50Million as damages.

At the trial, evidence on record, revealed that she was at a time a staff of a media outfit-Virtual Media Network Ltd and that her photograph was taken by the company (her employer) as part of her documentation as an employee. However, it turned out that her employer released the said photograph to the respondent on record-NTA TV Networks. Whilst her claims were specifically for the breach of her image rights and intellectual property in the photograph, much of the Courts attention at the trial stage was on her claim of copyright in the photograph. Apparently, this was why the respondent in its defence at trial raised the issue of privity of contract, on the basis that it had no dealing with the appellant, having not taken her photograph. Accordingly, the respondent made an issue of the appellant's failure/neglect to join her former employer-Virtual Media Networks Ltd as a defendant in the suit.

Clearly, these factors weighed heavily on the mind of the trial Court in its dismissal of the appellant's suit on the grounds that by virtue of section 10(1) (2) and (3) of the Copyright Act, the ownership of copyright in the photograph belonged to Virtual Media Network Ltd who took the photograph and not the appellant. Furthermore, the trial Court held that since the appellant sued the wrong party i.e NTA TV Star Network, her claims were not enforceable against them on the basis of contractual privity.

Interestingly, these were the same issues that were ventilated at the Court of Appeal by the Appellant who did not agree with the reasoning and decision of the trial Court. However, in dismissing the appeal and affirming the decision of the trial Court, the Court of Appeal per M.B Idris JCA held as follows:

Now in order to prove the tort of passing off, 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. Secondly, he/she must prove that the third party has misrepresented to the public by using the image and lastly it must be proved that this misrepresentation caused or is capable of causing damage such as reduction

in the value attached to their goodwill. Essentially, the ingredients needed to prove the tort of passing off are goodwill, reputation and misrepresentation by the defendant to the public and damages suffered or likely to be suffered...

Having restarted this general pre-conditions for a successful claim for passing off, the learned Justice affirmed the trial court's finding and decision that the appellant did not successfully prove the pre-conditions for success in a claim for image rights. This was essentially because according to the Court, she was not a "celebrity" and therefore she was not "entitled" to a claim for image rights. In his words:

The appellant must prove that she is entitled to goodwill, the acts of misrepresentation by the respondent and the damage to her goodwill suffered or likely to be suffered. The question then to ask, even if the appellant's claim is under the tort of passing off and not copyright, has she established the three elements of the tort of passing off as it relates to image rights? The answer is a resounding NO

In conclusion, the Court reasoned thus:

As I have started above, image rights and the tort of passing off are new rights that have been established through case laws even in the United Kingdom where the tort has successfully advanced. In Nigeria however our law does not make provisions for image rights neither are there many cases on the tort of passing off as it relates image rights. Intellectual property as it relates to photographs is protected by the Copyright Act, aside, from the evidence and pleadings of this case show that the case is one under copyright. The alternative would have been for the trial judge to say that the claim did not disclose a cause of action

THE CRITIQUE OF THE JUDGMENT

As observed earlier, this decision would have been an epoch making one, if the Court, especially the Court of Appeal had adopted a bit of judicial activism to expound the law on image rights in the Country. Whereas, the Court assumed that it was called upon in the appeal to institutionalize claims for image rights in the Country, that was far from the position. In the real sense, once the Court of Appeal conceded that image rights were based on the tort of passing off, it followed that as long as the Country adopted and practiced common law as part of the legal system, image rights had been with us even before the cutoff date of 1900 [29].

As revealed in the earlier segment of this paper, the tort of passing off in the U.K and other jurisdictions where common law is practiced has been expanded upon to accommodate claims for image rights. The tort of passing off is no longer limited to the marketing of goods and services; it has been extended to personality and image rights. This was duly acknowledged by the Court whilst alluding to the landmark decisions in *Irvine v Talksport (supra)* and *Rihanna Fenty v Arcadia Group Brads Ltd (supra)*. However, (in our view), where the Court missed the point was when it narrowed down the claims for image rights to the traditional pre-conditions for passing off in respect of goods and services. Thus, the requirements of goodwill, misrepresentation and damages should not at all times be the mandatory pre-conditions for the grant of claims for image rights as the Court seemed to have suggested in this case. Specifically, it was the undue emphasis on the pre-condition of "established goodwill" as it were that made the Court to assume that only "celebrities" that could prove the requirement of "goodwill" and therefore entitled to success in the claim for image rights. The Court of Appeal seemed to have glossed over the fact that in most other jurisdictions including the U.K, the core of image rights are no longer limited to misrepresentation or the proof of an established goodwill, but now includes the very act of an unauthorized expropriation of a person's image, no matter how "worthless" that persons image/personality may be [30].

Accordingly, modern interpretation and imputation of image rights is broad enough to accommodate all persons irrespective of their social or celebrity status. This is where the Court ought to have borrowed

a leaf from the perspective in the U.S where image rights are anchored more on the twin pillars of the right to privacy and publicity rights [31]. It is not in doubt that the appellant in this case though not a celebrity had a right to the protection of her privacy. The evidence on record revealed that the photograph in question was taken as part of her data profile with her employers-Virtual Media Networks. Thus, there was never a time it was agreed or contemplated that her photographs would be splashed on billboards across the nooks and crannies of Ondo and Ogun States. What is more the photograph in question was used for advertisement purposes, thus fitting adequately into the category of “commercial expropriation” of her image. Thus, on the basis of this unauthorized “expropriation” the commercial value of her photograph, she ought to have succeeded in her claims for the protection of her image rights [32].

Therefore, as rightly observed by previous commentators, the Courts recourse to the issue of the ownership of copyright in the photograph within the context of sections 10 and 11 of the Copyright Act was clearly unnecessary. This is because as the preceding literature revealed claims for copyrights are clearly distinct from that of image rights. An attempt to situate image rights in the context of copyright will fail because as the early cases revealed it is the photographers that were first successfully sued for image rights violation by the persons whose images were adorned in their pictures [33]. Thus, whilst the photographers could conveniently lay claim to the copyright in the “photograph”, the persons whose picture or image is captured therein had an ‘image right’ in the said photograph. Thus, an unauthorized and flagrant abuse of the said photograph especially for commercial purposes even by the said “photograph” was actionable. At best, his authorship of the copyright in the photograph could be a defence to a claim for image right violation, but certainly not an absolute bar to such claims.

Accordingly, if the Courts in the Banire’s Case had been able to navigate within these fine lines, they would have discovered that the ownership of the copyright in the picture by the appellant’s employer-Virtual Media Networks was not enough to obliterate her claim for image right violation by the respondent. Furthermore, an appreciation of the core issues at stake would have also obviated the error both Courts fell into in their finding and decision that the appellant’s employer-Virtual Media Networks was a necessary party to the suit and that its non-joinder was fatal to her case. Clearly, the appellant could not be bothered about the circumstances in which the respondent got hold of her photograph and used it. What was material was that it was the respondent-NTA Star TV Network Ltd that splashed her photographs on bill boards in Ondo and Ogun states. It was the respondent that used her photograph in the manner explained earlier without her consent/authority, it was therefore liable for her claim for image rights violation. At best, as argued by the appellant, the respondent could have sought to add the appellant’s employer aforesaid through third party proceedings, in order to reduce/share its liability with it. As rightly argued by the appellant, both of them were jointly and severally liable for the violation of the appellant’s image rights, thus suing only one of them i.e respondent ought not to have been an exculpatory defence in the circumstance.

CONCLUSION

We have in the course of this paper brought into focus the need for the Courts in the Country to acknowledge and enforce the rights of persons with respect to their image rights. We have discovered from the case under review that the Courts in Nigeria are oblivious to the fact that image rights are part and parcel of our received English law especially common law. That image rights is embedded in the tort of passing off just like other tortious wrongs like nuisance, defamation etc. Therefore, the search/demand for a law on image rights protection as the Court of Appeal suggested in the case reviewed in this paper is unnecessary. As observed in the body of this paper, the tort of passing off is part and parcel of our laws. Furthermore, section 251 (F) of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) enjoins the Federal High Courts to assume jurisdiction over claims based on passing off, therefore, a claim for image rights can be properly accommodated under the broad subject matter of passing off and conveniently prosecuted at the Federal High Court.

We have also revealed that in most jurisdictions claims for image rights have been broadened to the extent that fundamental rights like the right to privacy and the right to data protection have been used as veritable platforms. In the United States the concept of the “right to publicity” has been used effectively to expound on the scope of image rights in most states in the Country. Even in the UK where emphasis is placed on passing off, the concept has equally been broadened to navigate away from the traditional pre-conditions for a successful claim, especially with regards to the requirement of the proof of an “established goodwill”. The concept of an “unauthorized expropriation” of a person’s image is now more appealing and accommodating of all without necessarily limiting it to the right of ‘celebrities’.

We must therefore acknowledge that the incidences of the violation of image rights are now rampant in Nigeria and the courts must rise up to the occasion. We believe that if the Court of Appeal had adverted its mind to these salient principles that regulate image rights globally, it would have decided the *Banire’s Case* differently and it would have used the opportunity to institutionalize claims for image rights violation in the Country.

We however hope and wish that this case gets to the Supreme Court and that the apex Court will use the opportunity to invite scholars in the field of intellectual properties as amicus curie to address it on the matter. This will avail the apex Court the totality of the existing literature in the field and with far reaching effect on the quality of the decision it would eventually arrive at in the case. However, whichever way, what is important is that the apex Court must seize that opportunity when it comes to institutionalize claims for image rights in Nigeria.

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26. See Oluwafemi Ojosu Esq & Mustapha Olawoyin Esq “Image Rights vs Ownership of Copyright in Photograph under the Copyright Act: The Case of Banire v NTA Star TV (CA/A/345/2017) available at www.tundeadisa.com accessed on 28/02/2022. See also Chijioke Okorie “Authorship of Photographs and Ownership of Image Rights in Nigeria: Banire v NTA –Star Network Ltd” available at www.ipkitten.com.2021 accessed on 28/02/2022
27. For example, see section 10 of the High Court Law of Lagos State, 2018
28. See Ayman Enterprises Ltd v Akuma Industries Ltd (2003) 12 NWLR(Pt.836) 22, See also, Omnia Nigeria Ltd v Dyktrade Limited (2007) 15 NWLR (PT.1058) 576
29. Received English Law in Nigeria dates back to as far as 1863; See A.N Elliot, *The Common Law of Nigeria* available at https://heinonline.org/get_get_pdf accessed on the 17th of March 2022
30. See generally H. Carty “Character Merchandising and the Limits of Passing Off” *Journal of Legal Studies* (1993) 13 (3):289, G. Scalan: ‘Personality Endorsement and Everything: The Modern Law of Passing Off and the Myth of Personality Right’ *Entertainment Law & Practice Review* (2003) 1:563
31. See F.Hoffman. “The Right to Publicity in German & English Law” 325.
32. See, H. Beverley, *The Commercial Appropriation of Personality* (Cambridge, Cambridge University Press, 2002): 181–183
33. See Douglas v Hello (supra)