

Copyright Infringement Cases in Nigeria: Signal Piracy and Illegal Distribution of Pay-TV Programs

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(Court Cases on Signal Piracy and Illegal Distribution of Pay-TV Programs)

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Content:

1. Nigerian Copyright Commission v. Godwin Kadiri
2. Ubi Bassey v. Nigerian Copyright Commission
3. Nigerian Copyright Commission v. Emordi Henry Chukwuma
4. Nigerian Copyright Commission v. Joseph Daomi

In Nigeria, Pay-TV providers such as Multichoice, have had to contend with a few consumers who have purchased their decoders and smart cards for the purpose of illegal rebroadcasting. In order to combat this trend the Nigerian Copyright Commission (NCC), through the court system, has taken action against persons accused of broadcast piracy or illegal distribution or rebroadcasting of Pay-TV programs. Below are a few of such cases:

1. Nigerian Copyright Commission v. Godwin Kadiri

Charge No. FHC/B/43C/2010

Date: Delivered on December 17, 2012

Judge: Justice A. A. Okeke

Court: Federal High Court Abuja

Citation: 53 NIPJD (FHC. 2012) B/43C/2010

Charge: Broadcast Piracy – Piracy of Broadcast Rights of Entertainment Highway Limited (HiTV)

The accused, Mr. Kadiri, was charged for selling and distributing to about 100 subscribers the whole or substantial parts of HiTV broadcast/channels in which copyright subsists, without the consent or authorisation of the copyright owner in breach of Section 20(2)(a) and (b) of the Nigerian Copyright Act, Cap C28 Laws of the Federation of Nigeria, 2004. The accused was also charged for having in his possession equipment and contrivances including decoders, smart cards and splitters for the purpose of illegal rebroadcasting of HiTV channels, contrary to Section 20(1)(c) of the Copyright Act.

Section 20:

(1). Any person who-

(c) makes, causes to be made, or has in his possession, any plate, master tape, machine, equipment

or contrivance for the purposes of making any infringing copy of any such work; shall, 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, or that such plate, master tape, machine, equipment or contrivance was not for the purpose of making infringing copies of any such work, be guilty of an offence this Act and shall be liable on conviction to a fine of an amount not exceeding N1,000 for every copy dealt with in contravention of this section or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.

(2). 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) distributes for the purposes of trade or business any infringing copy of any such work; or

(c) has in his possession, other than for his private or domestic use, any infringing copy of any such work; or

is guilty of an offence under this Act, and liable upon conviction to a fine of N100 for every copy dealt with or imprisonment for six months or to both such fine and imprisonment.

Count one of the charge on which the accused was convicted and sentenced, read:

“That you Godwin Kadiri of No. 12 Akenzua Street, off Stadium Road, Benin City, Edo State on or about the 16th day of April 2010, at No. 92, 2nd West, off Textile Mill Road, Benin City within the Benin Judicial Division of the Federal High Court, did sell, expressed or offered for sale for the purposes of trade or business, copies of the whole or substantial part of Entertainment Highway Limited (HiTV) broadcast/channels – Barclays English Premiership League matches, UEFA Champions League Matches, Carling Cup Matches and all other cinematograph film such as Hi-Nolly Channel etc in which copyright subsists, without the consent or authorisation of the copyright owner and 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”.

On count two of the charge, the accused was convicted and sentenced under Section 20(2)(b) of the Copyright Act for distributing to about 100 subscribers the broadcast rights of HiTV without the authorisation of the copyright owner.

On count three of the charge, the accused was convicted and sentenced under Section 20(1)(c) of the Copyright Act for having in his possession equipment and contrivances, such as three Strong decoders, one HiTV decoder, smart cards, splitters for the purpose of illegal rebroadcast of the whole or part of HiTV channels, without the authorisation of the copyright owner.

On count four of the charge, the accused was convicted and sentenced under Section 20(3) of the Copyright Act for distributing in public for commercial purposes copies of the broadcast/channels of HiTV without the consent of the copyright owner.

Hon. Justice A. A. Okeke of the Federal High Court, Benin, delivering judgement on December 17, 2012, convicted Mr. Kadiri and sentenced him to two years imprisonment each on the 1st, 2nd, and 3rd counts and to six months on the 4th count of the criminal charge. The Judge, however, held that the sentences would run concurrently without the option of a fine.

2. Ubi Bassey v. Nigerian Copyright Commission

Charge No. CA/C/46/2007

Date: Delivered on April 23, 2009

Court: Court of Appeal, Calabar

Citation: 52 NIPJD [CA. 2009] 46/2007

Charge: Broadcast Piracy – Piracy of Broadcast Rights of Multichoice Nigeria

The Appellant, who was one of the accused persons at the Federal High Court, was charged for being in possession of Multichoice Satellite decoders and smart cards for the purposes of illegally rebroadcasting/transmission of the of Programs (channels) in which copyright subsist in favour of Multichoice Nigeria without the consent or authorization of the copyright owners contrary to and punishable under section 18(1)(c) of the Copyright Act (Cap 68) Laws of the Federation of Nigeria 1990 (as amended). The Appellant was also charged at the Federal High Court on three other counts.

“Count One:

That you (1) Ubi Bassey Eno “M”, (2) Ota Bassey Eno “M” and (3) Digital Communication Network (Nig.) Ltd. all of No. 28, Akim Close, State Housing Estate, Calabar, Cross River State on or about the 8th day of September, 2003 within the Calabar Judicial Division of the Federal High Court did have in your possession two (2) Nos. Multichoice Satellite decoders and two (2) Nos. Multichoice smart cards being equipment/contrivances for the purposes of illegally rebroadcasting/transmission of the whole or substantial parts of Multichoice Programs (channels) in which Copyright subsist in favour of Multichoice Nigeria without the consent or authorization of the copyright owners and thereby committed an offence contrary to and punishable under section 18(1)(c) of the Copyright Act (Cap 68) Laws of the Federation of Nigeria 1990 (as amended).

Count Two:

That you (1) Ubi Bassey Eno “M”, (2) Ota Bassey Eno “M” and (3) Digital Communication (Nig.) Ltd., all of No. 28, Akim Close, State Housing Estate, Calabar, Cross River State on or about the 8th day of September, 2003 within the Calabar Judicial Division of the Federal High Court by way of rebroadcasting and/or transmission through Digital Communication Network (Nig.) Ltd. did sell or let or hire or for the purposes of trade or business, exposed or offered for sale or hire the whole or substantial parts of Multichoice Nigeria Programs (Channels) in which Copyright in Broadcasts subsist in favour of Multi-choice Nigeria, without the consent or authorization of the Copyright Owners and thereby committed an offence contrary to and punishable under section 18(2)(a) of the Copyright Act (Cap 68) Laws of the Federation of Nigeria 1990 (as amended).

Count Three:

That you (1) Ubi Bassey Eno “M”, (2) Ota Bassey Eno “M” and (3) Digital Communications (Nig.) Ltd. all of No. 2B, Akim Close, State Housing Estate, Calabar, Cross River State on or about the 8th day of September, 2003 within the Calabar Judicial Division of the Federal High Court did have in your possession other than for your private or domestic use two (2) Nos. Multichoice Satellite decoders and two (2) Nos. Multichoice Smart card properties of Multichoice Nigeria and thereby committed an offence contrary to and punishable under section 18(2)(c) of the Copyright Act (Cap 68) Laws of the Federation of Nigeria 1990 (as amended).

Count Four:

That you Ubi Bassey Eno “M”, Ota Bassey Eno “M” and Digital Communications (Nig.) Ltd, all of No, 2B, Akim Close, State Housing Estate, Calabar, Cross River State on or about the 8th day of September, 2003 within the Calabar Judicial Division of the Federal High Court without the consent of Multichoice Africa and Multichoice Nigeria, did distribute in public for commercial purposes by way of re-broadcasting and for transmission Multichoice Programs (channels) through Digital Entertainment Television (DET) to wit: Movie Magic, Channel O, M-Net, Super-Sports and Discovery Channels, etc, in which copyright in broadcast subsists by way of rental, lease, hire, loan or similar arrangement and thereby committed an offence contrary to and punishable under section 18(3) of the Copyright Act (Cap 68) Laws of the Federation of Nigeria 1990 (as amended).”

At the Federal High Court, the Appellant who was the 1st accused person was convicted and sentenced to 12 months imprisonment with hard labour on Count 1; three months imprisonment with hard labour on Count 2 and three months imprisonment with hard labour on Count 3. The Appellant filed an appeal at the Court of Appeal in Calabar. The Court of Appeal dismissed the appeal and upheld the conviction by the Federal High Court.

3. Nigerian Copyright Commission v. Emordi Henry Chukwuma

Charge No. FHC/ABJ/CR/90/2013

Date: Delivered on June 19, 2013

Judge: Justice A. R. Mohammed

Court: Federal High Court Abuja

Citation: 56 NIPJD (FHC. 2013) ABJ/CR/90/2013

Charge: Broadcast Piracy – Illegal Distribution of DSTV Programs

The accused stood trial on a single count for broadcast piracy. The prosecution presented evidence in support of the charge including the accused’s book of subscribers and an inventory of the items seized from the accused’s shop.

The accused pleaded guilty to the charge and on June 19, 2013, Honourable Justice A.R. Mohammed of the Federal High Court in Abuja convicted the accused and sentenced him to pay a fine of N10,000 in lieu of imprisonment.

In sentencing the accused, the court took into consideration the fact the accused was a first time offender and other mitigating factors including the fact that he did not know that his activities were criminal in the eyes of the law; he was a pensioner with a family and was last paid his pension entitlement three years prior to charge; he pled guilty, asked for forgiveness and promised not to commit the crime for which he was charged and convicted.

4. Nigerian Copyright Commission v. Joseph Daomi

Charge No. FHC/CR/38/2011

Date: Delivered on February 27, 2012

Judge: Justice Abimbola Obaseki-Adejumo

Court: Federal High Court Abuja

Citation: 55 NIPJD (FHC. 2012) FHC/CR/38/2011

Charge: Broadcast Piracy – Piracy of Broadcast Rights of HiTV and Multichoice

The accused was arrested during an anti-piracy raid conducted by the NCC and was charged for distributing to the public, copies of broadcast belonging to Multichoice Nigeria Limited and HiTV for commercial purposes in breach of Section 20(2)(a) of the Nigerian Copyright Act, Cap C28 Laws of the Federation of Nigeria, 2004. The accused pleaded guilty to count three of the three-count charge.

Count three of the charge read: “on or about the 28th day of July 2011 within the Makurdi Judicial Division of the Federal High Court, without the consent of Multichoice Nigeria Limited and Entertainment Highway Limited did distribute to the public, copies of broadcast belonging to Multichoice Nigeria Limited and Entertainment Highway Limited for commercial purposes by way of rental or similar arrangement, in which copyright subsists and thereby committing an offence contrary to and punishable under Section 20(2) of the Copyright Act, Cap C28, Laws of the Federation of Nigeria, 2004.”

On February 27, 2012, the Federal High Court, Makurdi convicted the accused and sentenced him to 14 days imprisonment or an option of N20,000.

This article is intended to provide general information about the subject matter. Professional legal advice should be sought about specific circumstances.

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