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INTRODUCTION

Welcome to our Q4 newsletter! This quarter has seen a series of impactful decisions that solidify recent legislative changes and introduce new principles on nuanced legal issues.

This edition contains novel decisions on various areas including gaming, fiscal autonomy, privacy and intellectual property.



Appeal No. SC/01/2008 – Attorney General of Lagos State v. Attorney General of the Federation & Ors. (delivered on 22 November 2024) – Lottery and Gaming are matters which exclusively falls under the residual powers of states

Summary of Facts

The Lagos State Government instituted a suit at the Supreme Court in 2008 challenging the National Lottery Act, on the ground that lottery and gaming is a residual matter under the Constitution of the Federal Republic of Nigeria 1999 (as amended). Lagos State was later joined by other states and they jointly argued that lottery and gaming should be within the purview of states' lottery and gaming authorities and not regulated by the Nigerian Regulatory Commission.

Notable Issue for Determination

One of the issues considered for determination was whether, based on the express provisions of sections 4 (2), (3), and 4(7)(a) & (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the National Assembly lacks the power to make any law to regulate or control lottery operations in Nigeria as a whole.

Arguments

The Attorney-General of Lagos State argued that lottery is not one of the 68 items on the Exclusive Legislative List captured under Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended) over which the National Assembly has exclusive power to make laws for.

He further argued that by virtue of sections 4(4)(b), (7)(a) and 299(a) of the Constitution, the power of the National Assembly to make laws to regulate and control the operation of lottery is limited to only the Federal Capital Territory.

In conclusion, he urged the court to declare sections 17, 18, 19, 20 and 21 of the National Lottery Act 2005, made by the National Assembly, as being inconsistent with the provisions of the Constitution.

Responding to the action, the Attorney-General of the Federation argued that the subject of lottery could be classified as issues of trade and commerce between the States, which fall within item 62 of Exclusive Legislative List.

They contended that given the nature of lottery transactions which could be remotely undertaken within different states through electronic means, the issue of lottery ought to be classified as trade and commerce between states.

Decision of the court

In resolving this issue, the Court held that lottery is a residual matter and the National Assembly does not have the power to legislate on it.

The Supreme Court agreed with the position of the Lagos State Government and granted all the reliefs sought in the suit. The court ordered that the National Lottery Act 2005 is not to be applied in the thirty-six (36) states of the country and to only be applicable in the Federal Capital Territory.

Comments

The judgment delivered by the Supreme Court puts a positive end to the long-drawn battle between the Federal Government and State Governments over the regulation of lottery. It also puts an end to double licensing wherein gaming companies had to register with both the Nigerian Lottery Commission and the states gaming regulation authorities which caused a lot of confusion, uncertainty, and huge financial cost. The landmark judgment gives states the opportunity to provide more clarity and stability to companies operating in the lottery sector and an avenue to generate revenue.
However, this decision has created challenges to as bookmakers are now to deal separately with each of the states of the federation states. It is expected that these states will also have to make their own lottery laws and establish agencies for enforcement of the new laws.

While this could impose additional burdens on lottery operators, it is still the result of a proper application of the Constitution. Additionally, while the situation is still developing, we understand that some states are discussing toward establishing a single licensing system which will allow bookmakers to operate under a license issued through the system in states that have subscribed to the system.

Suit No: FHC/KD/CS/34/2024 – Frank Ijege (trading under the name and style of Springfield Law Practice) v. Nigeria Data Protection Commission (delivered on 27 November 2024) – It is compulsory for the Nigeria Data Protection Commission to state what entities or categories of entities are exempt from registration as data controllers/processors of major importance.

Summary of Facts

In February 2024, Nigeria Data Protection Commission (NDPC) issued a guidance notice NDPC/HQ/GN/Vol.2/2024 on the classification of data controllers and processors of major importance. In this notice, they stated the applicable fees for the registration of some data controllers and processors of major importance and outlined some sectors where operators will be regarded as data controllers and processors of major importance due to the sensitive nature of the data that they process.

Following this issuance, Frank Ijege, in his capacity as the data protection officer of his law firm, brought a fundamental right action by way of an originating motion at the Federal High Court, Kaduna on the basis that the guidance notice is not clear on data controllers and processors that are not of major importance. He claimed that this has led to an instance where he will be forced to register as a data controller of major importance which will negatively impact his privacy due to the fact that he will be required to provide certain personal information, which in the ordinary course should not be provided.

Notable Issue for Determination

One of the issues considered for determination was whether or not the guidance notice on Registration of Data Controllers and Data Processors of Major importance NDPC/H-Q/GN/VOL.2/24 interferes and is likely to further interfere with the Mr Ijege's right to privacy guaranteed by section 37 of the Constitution of the Federal Republic of Nigeria 1999.

Arguments

Mr Ijege argued that with reference to the provision of Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the fundamental right enforcement procedure rules, he had the right to institute the suit as the Guidance Notice affected his right to privacy.

The Counsel to NDPC argued that the suit is speculative as Mr Ijege did not state or demonstrate any injury or damage, he may suffer by the enforcement of the guidance notice.

In response, Mr Ijege argued that the guidance notice has a deadline and threatens sanctions for failure to comply, whereas the guidance notice does not provide for exemptions on entities that are to register as data controllers/processors of major importance. He concluded by stating that that the guidance notice is an unlawful attempt to force everyone to register with NDPC, and that the attempt will negatively impact privacy.

Decision of the court

In resolving this issue, the Federal High Court held that the term "exemption" as defined under Section 44(6) of the Nigeria Data Protection Act 2023 necessitates explicit clarification and is not the same or similar to "exclusion".

It further stated that the responsibility to resolve any confusion lies with the relevant authority, namely the NDPC. Accordingly, the court ordered NDPC to release a Guidance Notice stating which entities or categories of entities are exempt from registration as data controllers/processors of major importance.

Comments

The Federal High Court's decision clarifies that the term "exemption" under Section 44(6) of the NDPA requires explicit interpretation and should not be conflated with "exclusion." The decision places the responsibility on the Nigeria Data Protection Commission (NDPC) to eliminate any ambiguity by issuing an updated Guidance Notice. This ensures that entities understand whether they fall within the exempt category concerning registration as data controllers or processors of major importance.

Suit No: SC/343/2024 – Attorney General of the Federation v. Attorney General of Abia State & 35 Ors. (delivered on 11 July 2024) – Revenue allocations are to be paid directly into Local Governments accounts

Summary of Facts

Since the inception of the Constitution of the Federal Republic of Nigeria 1999 (as amended), funds intended for the local government councils were deposited into a joint account which was administered by the respective state governments and local governments. This was said to have led to hardship in the administration of local governments as state governments politicised the disbursement of these funds by occasionally withholding the payment of the funds or disbursing only a portion of the revenue allocation.

In light of this, the Attorney General of the Federation instituted a suit at the Supreme Court against the 36 states of the federation, urging the court to determine the autonomy of the local governments.

Notable Issue for Determination

One of the issues considered for determination was whether local governments are entitled to direct payments from the Federation Account given the persistent failure of State Governments to disburse these funds.

Arguments

The Attorney General of the Federation argued that it was unconstitutional for state governors to withhold funds allocated to local governments from the Federation Account and urged the court to determine whether local governments are entitled to direct payments from the Federation Account.

In response, the Attorneys-General of the States argued that Section 162(5) of the Constitution mandates that funds from the Federation Account be paid to states for the benefit of local governments, thus it will be contrary to the provisions of the Constitution to pay the revenue allocation directly to the local governments' accounts.

Decision of the court

The Supreme Court in delivering the judgment held that section 7(1) of the Constitution provides that local governments are to be recognized as the third tier of government and the leadership of local governments must be independent and democratically elected.

The Supreme Court further held that the retention and use of funds allocated to local governments from the federation account by state governments is both unconstitutional and illegal and contravenes the principles intended to ensure that these funds benefit the Local Governments directly.

In conclusion, the Court stated that the Federal Government of Nigeria has the authority to make direct payments of allocations to local governments from the Federation Account, but these payments can also be made through state governments, provided that the funds are fully and promptly transferred to the local governments.

Comments

The court's judgment provides a significant framework for ensuring the efficient allocation of funds to local governments. By facilitating direct access to these funds, the decision has the potential to enhance local government development and strengthen grassroots governance. However, effective oversight and transparency measures will be essential to ensure that the funds are utilised appropriately and in accordance with their intended purpose.

Suit No: SC/343/2024 – Attorney General of the Federation v. Attorney General of Abia State & 35 Ors. (delivered on 11 July 2024) – Revenue allocations are to be paid directly into Local Governments accounts

Summary of Facts

Sir Ifeanyi Ekwueme retained the services of Charles Ezeagu Esq. as a legal practitioner to manage three of his properties from 2006 to 2015.

Sir Ekwueme alleged that Mr Ezeagu refused to account for the income from the properties entrusted to his care and had misappropriated the rent monies amounting to NGN16 million.

Ekwueme filed a report with the Nigerian Police which led to the arrest and subsequent prosecution of Mr Ezeagu on a three-count complaint before the Legal Practitioners Disciplinary Committee (LPDC).

Notable Issue for Determination

One of the issues raised for determination was whether Mr Ezeagu acted in an unprofessional manner by acting as the solicitor and property manager to the complainant simultaneously.

Arguments

Sir Ekwueme argued that Mr Ezeagu in his capacity as a legal practitioner managed his property for which he collected 10% of the rental income as his fees.

Mr Ezeagu responded that he did not act for Sir Ekwueme in a professional capacity but rather stated that he was assisting him as a brother and not in his professional capacity as a legal practitioner.

Decision of the court

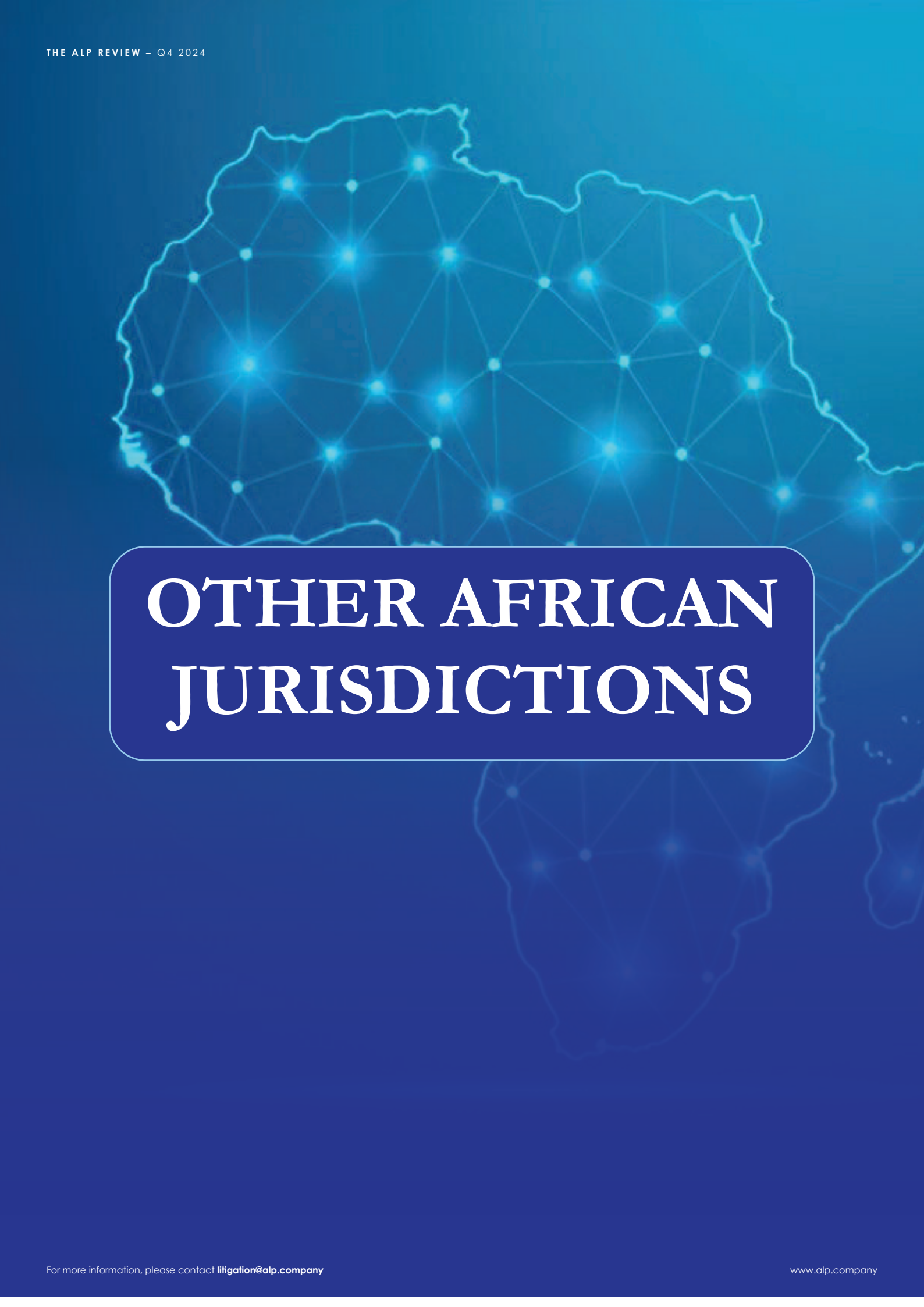
In resolving the issue, the Legal Practitioners Disciplinary Committee (LPDC) held that the service provided by Mr Ezeagu cannot be legitimately provided by a lawyer in the normal course of business.

The LPDC further held that lawyers are not estate agents/property managers neither can they act as commission agents as it is a service incompatible with the legal profession. The stated that this is prohibited and any lawyer engaging in incompatible and prohibited activity in the name of legal services is certainly guilty of infamous conduct and deserving of sanction for bringing the profession into disrepute.

As such, the committee ordered that Mr Ezeagu be suspended from the Roll of Legal Practitioners for 2 years in accordance with Rule 22(b) of the LPDC Rules 2020.

Comments

The Rules of Professional Conduct frown upon a legal practitioner being involved in a business that is incompatible with the legal profession. It is worthy of note that a legal practitioner can still act as a property manager, however he must not act in his official capacity as a legal practitioner at the same time.



OTHER AFRICAN JURISDICTIONS



Civil Appeal No. E014 of 2024 – Credit Watch Investment Limited v. Peter Mbugua & 2 Ors. – The act of contacting persons on a loan defaulter's contact list is a violation of privacy rights

Summary of Facts

Peter Mbugua, Timothy Ngome and Aggrey Timothy (the Respondents) brought a complaint before the Office of the Data Protection Commissioner (ODPC) in September 2023. The Respondents alleged that Credit Watch Limited (CWL) had listed them as guarantors or emergency contacts of loan applicants without their respective consents. When the loan applicants defaulted, CWL's agents sent several text messages and made several calls to the Respondents, asking them to ensure that the loan defaulters repaid the defaulted loans and notified them of impending unspecified consequences if the same was not done.

CWL argued that the customers were required to provide emergency contacts during the loan application process, and it was the responsibility of the loan applicants to ensure that those contacted consented. The ODPC had ruled in favor of the Respondents, ruling that CWL violated their privacy rights by using their personal data without consent and failing to fulfill its obligations under the Data Protection Act. The ODPC also awarded compensation of Kshs. 300,000 to each Respondent and issued an Enforcement Notice against the Appellant. Aggrieved by the decision, the Appellant appealed to the High Court of Nairobi (Milimani Law Courts).

Notable Issue for Determination

An issue that was distilled for determination was whether CWL met its obligations under the Data Protection Act, 2019 and whether the Respondents' rights to be informed of the use of their personal data under Section 26(a) of the Data Protection Act were violated by CWL.

Arguments

Counsel for CWL argued that as part of the conditions before the loan facilities would be advanced, the borrowers were required to provide the emergency contacts. They further argued that the obligation to obtain the consent of the emergency contacts lies with the loan applicants and that the sole purpose of the emergency contacts was to ascertain the whereabouts of the borrowers if they were unable to reach them.

Counsel to the Respondents argued that CWL messages to them was a breach of their personal data as they did not consent to be guarantors to the loan defaulters. They posited that CWL ought to seek their consent before sending messages to them.

Decision of the Court

In resolving this issue, the Court held that CWL did not directly obtain consent from the Respondents for the use of their personal data. Its reliance on the borrowers to obtain consent was deemed insufficient. By virtue of Section 26 of the Data Protection Act, data subjects are required to be informed about the purpose for which their data is being used, a requirement that CWL failed to meet. Additionally, Section 28 mandates that personal data should be collected directly from the data subject, which Credit Watch Limited did not do.

Comments

This case underscores the importance of direct consent when it comes to collecting and using personal data under the Data Protection Act, 2019. It also reinforces the purpose limitation principle which requires that personal data should only be collected for specified, legitimate purposes and should not be used in ways that are not disclosed to the data subject.



Civil Suit No. 206 of 2021 – Knight Frank Uganda Limited v. Broll Uganda Limited and Broll Valuation & Advisory Services (Pty) Limited (delivered on 21 November 2024) UGCommC 339 – An author who creates a piece of work on a commission basis, retains only the moral rights and not the copyright of that piece of work

Summary of Facts

Knight Frank Uganda Limited (Knight Frank) is a company engaged in the business of property management and valuation in Uganda. In December 2019, one of its clients Lexington Properties Limited (Lexington) retained the services of Broll Valuation & Advisory Services (Pty) Limited (Broll) to conduct the valuation of Acacia Mall which is one of its properties. Broll submitted the valuation report to Lexington which was deemed unsatisfactory upon review, and Lexington requested that Knight Frank review and correct the inaccuracies in the report.

Upon review of the report, Knight Frank discovered that Broll had without its knowledge or consent, copied and pasted a significant portion of its Retail Market Study showing the existing and upcoming commercial retail projects in and around Kampala City at the time. As at the time the Retail Market Study Report was made, it was only Knight Frank that had knowledge of the upcoming projects because of its expansive outreach and resources.

Knight Frank claimed that although it was paid for the Retail Market Study Report, the copyright remained with it. In a bid to get to the root of the issue, it notified the Group CEO of Broll Property Group who is the parent company of Broll (Defendants) about the issue and they were told that an investigation will be done. The Defendants responded that the outcome of their investigation was that their valuation reports contained the Map Extract from the Retail Market Study Report, but it does not qualify for copyright protection in law. As such, Knight Frank cannot establish copyright in that information as it was in the public domain.

Following this, Knight Frank instituted the suit against the Broll and its parent company on the basis that its copyright and trade secrets in the Retail Market Study Report were infringed.

Notable Issue for Determination

An issue raised for determination was whether in the instance that Knight Frank has copyright in the Retail Market Study Report, Broll and its parent company can be said to have infringed on its copyright.

Arguments

The Counsel to Knight Frank argued that one its former employees who worked on the Map Extract had worked with Broll when the valuation report was created and is believed to have leaked the map to Broll. It was also argued that Knight Frank was paid to create the map and the infringement of its work has led to huge loss for its business as some of its clients have cancelled current and potential contracts on the premise that their data and personal information is not safe.

Counsel for Broll and its parent company argued that the map was in public records and could thus have not infringed Knight Frank's copyright. He also argued that Broll is a reputable property valuer in the country that could have had the requisite knowledge to create the map in question.

Decision of the Court

In resolving the issue, the Court held that by collective reading of Sections 8, 9 & 10 of the Copyright and Neighbouring Rights Act,

(CNRA), for all commissioned works, the commissioner of the works is entitled to economic rights while the creator is entitled to moral rights. It further stated that the name or pseudonym of the creator must be mentioned and or acknowledged each time the work is copied, reproduced, distributed, broadcast, performed or transcribed.

In application of these provisions to the case at hand, the court held that it was quite clear that the Retail Market Study Report was a commissioned work within the meaning of Section 8 of the CNRA which means that its several versions as tweaked by Knight Frank from time to time, still attribute moral rights of the copyright to Knight Frank.

In conclusion, the court held that Broll and its parent company were jointly and severally liable for breach of Knight Frank's moral rights to the copyright in the Retail Market Study Report.

Comments

This case showcases the importance of respecting the moral rights of a creator in a commissioned work that is a service or work rendered in return for payment. This means that the permission of the creator of a copyright should be sought before making use of it in any form as unlicensed use leads to the exposure of the creator to exposing the creator's business to risks and revealing of its trade secrets. In this case a former employee of the creator who worked on the infringed work happened to also work with the 1st Defendant and was suspected of being the person who revealed the creator's trade secret. This highlights the importance of non-disclosure agreements which not only take effect during his employment with the creator but also after he leaves the employments and goes on to work at another company.

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