

**IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT LAGOS**

SUIT NO: FHC/L/CS/303/2018

BETWEEN

1. AKOJI AGENI - YUSUF
2. EAGLE EYE PRODUCTION LIMITED

} PLAINTIFFS

AND

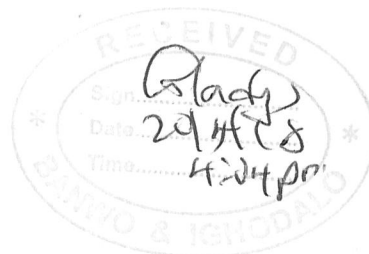
1. SAMSUNG ELECTRONICS WEST AFRICA LIMITED ... 1st DEFENDANT
2. RINGIER NIGERIA LIMITED ... 2nd DEFENDANT

STATEMENT OF DEFENCE OF 2ND DEFENDANT

SAVE AND EXCEPT as is hereinafter expressly admitted, the 2ND Defendant denies each material allegation of facts contained in the Plaintiffs Statement of Claim as if same were specially set out and traversed seriatim.

1. The 2nd Defendant avers that it is not in a position to admit or deny paragraphs 1 and 2 of the Plaintiffs Statement of Claim and puts the Plaintiffs' to the strictest proof of the stated alleged facts.
2. The 2nd Defendant vehemently denies paragraph 3 of the Plaintiffs Statement of Claim and puts the Plaintiffs to the strictest proof of same. In specific response the 2nd Defendant avers that the Plaintiffs are not proprietors of the Lekki-Ikoyi bridge and do not have the requisite authority or right of filming the bridge.
3. That the video of "**Lekki Ikoyi Link Bridge**" have been uploaded by various individuals other than the Plaintiffs, including the 2nd Defendant on the YouTube Platform.
4. The 2nd Defendant denies paragraph 4 to 24 of the Plaintiffs' Statement of Claim and puts the Plaintiffs to the strictest proof of the alleged facts.

PUNUKA ATTORNEYS & SOLICITORS



5. With particular reference to paragraphs 5 and 6 of the Plaintiffs' Statement of Claim the 2nd Defendant avers that contrary to the Plaintiffs' statement and originating processes, the 2nd Defendant is an unknown legal person and the processes were wrongly served on company registered as **Ringier Media Nigeria Limited (Ringier Media)** under the relevant Laws of the Federal Republic of Nigeria with its principal place of business at 3, Stella Ogunleye, Lekki Peninsula Estate Scheme 1, Lekki, Lagos, Nigeria.
6. The 2nd Defendant further avers that it does not exist but the company referred to in paragraph 5 above created the promotional videos -**Nightlife in Lagos with Galaxy Note 8 as an independent contractor** and further agreed to indemnify the 1st Defendant against any liability flowing from the video as stated in the contract of engagement. **The 2nd Defendant hereby pleads and shall rely on the contract of engagement dated 27th September 2017, during trial.**
7. With particular reference to paragraphs 5, 6, and 7 of the Plaintiffs Statement of Claim, the 2nd Defendant repeats paragraph 5 above and further avers that the 1st Defendant was not in a position to determine the skill, resources, and extent of the effort utilized in the production of the videos – **Nightlife in Lagos with Galaxy Note 8.**

The Lekki Ikoyi Link Bridge and the Production of Nightlife in Lagos with Galaxy Note 8

8. With further reference to paragraph 8, 9, 10 and 11 of the Plaintiffs' Statement of Claim the 2nd Defendant repeats paragraph 5 above and in denial avers that in order to successfully depict the impeccable camera quality of the Galaxy Note 8 and the ambience of the Lagos community even at night, it created various cinematograph films/videos tagged **Nightlife in Lagos with Galaxy Note 8 ('the videos')**. **The 2nd Defendant hereby plead and shall rely on the screenshots and flash drive containing the cinematograph films of the videos- Nightlife in Lagos with Galaxy Note 8 during trial.**
9. The 2nd Defendant also avers that contrary to the Plaintiffs' statement, there are multiple online and offline videos, images and graphic presentation of the Lekki Ikoyi Link Bridge at Night (**'the bridge'**) by various individuals, including the 2nd Defendant's which are generally available to the public. **The 2nd Defendant**

hereby plead and shall at trial rely on the screenshots and flash drive containing various cinematograph film of the Lekki Ikoyi Link Bridge.

10. Consequently, the 2nd Defendant shall contend at the trial that the **Lekki-Ikoyi link bridge** is a government property and a monument for the citizens of Nigeria, being the first cable-stayed bridge to be built in Nigeria. Yet, the Plaintiffs alleged video of Lekki Ikoyi Link Bridge at Night was created without obtaining adequate authority and permit from the authority. That the action of the plaintiffs in instituting this suit is overreaching and unconscionable as it would only motivate gold digging efforts with other individuals instituting various claims for the use of a public monument and infrastructure despite not having the authority for the use.
11. With further reference to paragraphs 12, 13, 14, 15 and 16 of the Plaintiffs Statement of Claim the 2nd Defendants repeats paragraph 5 above and in denial avers that in making the video, the producer utilized its resources in carrying out various research both physical and online and created a strategic wireframe to punctuate the effect of Galaxy Note 8 and Lagos.
12. With further reference to paragraph 12 of the Plaintiffs Statement of Claim the 2nd Defendant repeats paragraph 5 above and avers that Ringier Media is a full service digital media company and as part of its contractual services it created and managed a YouTube Channel known as **SAMSUNG Mobile NG** for the 1st Defendant to promote the Galaxy Note 8 and other Samsung product. The 2nd Defendant thereby created and uploaded various promotional videos of Samsung product to attain its marketing objectives. **The 2nd Defendant hereby pleads and shall rely on the screenshots and flash drive of uploaded promotional videos during trial.**
13. The 2nd Defendant repeats paragraph 5 above and avers that on the 16th of October 2017, Ringier Media uploaded some of its promotional videos tagged **Nightlife in Lagos with Galaxy Note 8** on the YouTube platform (Samsung Mobile NG). In addition, the **2nd Defendant further avers that the main promotional video also tagged Nightlife in Lagos with Galaxy Note 8, which is currently on the YouTube platform does not have a scene of the Lekki Ikoyi link bridge. The 2nd Defendant hereby pleads and shall rely on the screen shot and the flash drive containing cinematograph film of the uploaded main video during trial.**

14. With further reference to paragraph 13 of the Plaintiffs' Statement of Claim the 2nd Defendant repeats paragraph 5 above and avers that it is the strategic marketing concept and awareness of the 1st Defendant quality products that garnered over 24,000 views from the public on the same day it was published (16th October 2017).
15. With further reference to paragraph 14 of the Plaintiffs' Statement of Claim the 2nd Defendant repeats paragraph 5 above and avers that the registered subscribers on the YouTube channel (SAMSUNG GALAXY NOTE 8) are over 970, 000.
16. With further reference to paragraph 15 of the Plaintiffs' Statement of Claim the 2nd Defendant repeats paragraph 5 above and in denial avers that there was more than one promotional **video for the Galaxy Note 8**. That the Plaintiffs' has not properly identified the promotional video which has the same scene of the bridge with their alleged video titled "Lekki Ikoyi Link Bridge at Night".
17. The 2nd Defendant in further response reiterates paragraphs 2, 8 and 9 of this Statement of Defence and avers that Ringier Media video in dispute is different from that of the Plaintiffs.

PARTICULARS OF DIFFERENCE

- I. The Plaintiffs' alleged video intended to show the Lekki-Ikoyi Link Bridge at night which encompasses the features of the bridge namely the lanes, lights, toll gate, building, pedestrian walkway amongst others.
- II. The Ringier Media video which had 3 second clip of the bridge scene is 00:89 seconds, and the video contained scenes of various highlight of night life in Lagos and features of the Galaxy Note 8.
- III. The 2nd Defendant shall contend at trial that infringement of the Plaintiffs' alleged video of the bridge cannot materialize without the combination and lengthy capturing of the elements of the bridge by the 2nd Defendant.
- IV. That the Ringer Media video tagged Nightlife in Lagos with Galaxy Note 8 which the Plaintiffs' alleged infringed the Plaintiffs' video tagged Lekki Ikoyi Link Bridge at Night, was a new expression, meaning and message and an original work for which Ringier Media expended independent skill and labour on its own.

V. That the addition or removal of the 3 seconds bridge scene in the Ringier Media promotional video will not affect the purpose and character of the video, which is very distinguishable from the Plaintiffs' video.

18. With particular reference to paragraph 16 of the Plaintiffs' Statement of Claim the 2nd Defendant repeats paragraph 5 and avers that;

I. In promoting the Galaxy Note 8, it utilized its resources to create other various marketing copies and videos.

II. The advertisement video on the YouTube platform tagged Nightlife in Lagos with Galaxy Note 8 and other Galaxy Note 8 promotional videos did not contain scenes of the bridge and the one which allegedly contained scenes of the bridge has an entirely different message and cannot be passed as similar to the Lekki Ikoyi Link Bridge at Night video.

III. It was the creative marketing skills in producing unique videos with new and different message on Galaxy Note 8 employed by Ringier which garnered publicity for the Galaxy Note 8 and not the Plaintiffs' video.

THE ALLEGATION AND DISCOVERIES

19. The 2nd Defendant denies paragraph 17, 18, 19, 20, 21, 22, 23 and 24 of the Plaintiffs Statement of Claim and puts the Plaintiffs to the strictest proof of same.

20. The 2nd Defendant repeats paragraphs 5 and 19 above and avers that there had been no prior interaction between Ringier Media and the Plaintiffs, before Ringier Media received a letter dated 31st of October, 2017 from the Plaintiffs' Counsel through the 1st Defendant about an alleged infringement of the Plaintiffs copyright. **The 2nd Defendant hereby pleads and shall rely on the copy of Plaintiffs' Counsel letter dated, 31st October, 2017 during trial.**

21. Further to the above, the Ringier Media's Counsel through a letter dated 2nd November 2017 informed the Plaintiffs of its intention to conduct an investigation

on the purported claim of infringement by the Plaintiffs. The Plaintiffs are hereby given respective **Notice to Produce the original copy of the Ringier Media letter dated 2nd November, 2017 and the 2nd Defendant thereby plead and shall rely on the copy of the said letter during trial.**

22. From its internal investigations Ringier Media found as follows:

- I. Ringier Media had removed the disputed portion of its video from the YouTube platform.
- II. The addition or removal of the 3 seconds clip of the bridge in one of Ringier Media's promotional videos – (Nightlife in Lagos with Galaxy Note 8) did not affect the purpose and character of the video, which is very distinguishable from the Plaintiffs' video.
- III. There were several videos of the Lekki Ikoyi Link Bridge on YouTube which are available to the public.
- IV. Ringier Media through their lawyers received a letter from the Lekki Concession Company stating that the Plaintiffs did not have the authority to film the bridge for exclusive commercial purpose. The 2nd Defendant hereby plead and shall rely on the letter dated 19th January 2018 during trial.
- V. The Plaintiffs claims and action is unconscionable as they did not obtain any authority for filming the Lekki-Ikoyi Link Bridge as the bridge is a government monument and infrastructure for the enjoyment of the general public and tax payers.
- VI. Ringier Media promotional video did not affect the message of the Plaintiffs' alleged video or its credibility, neither does it affect the purpose, serenity and aesthetic value of the public view of the bridge.
- VII. That the Plaintiffs alleged video has also enjoyed increased "likes" and "views" after Ringier Media uploaded the promotional videos. The increased traffic of the Plaintiff show that no damage was suffered by the Plaintiffs.

23. With particular reference to paragraphs 21 and 22 of the Plaintiffs Statement of Claim the 2nd Defendant repeats paragraph 5 above and avers that the Plaintiffs'

blunt refusal to directly deal with Ringier Media in the letter dated 6th November 2017 was in a bid to extort money from the 1st Defendant due to the misconceived opinion that they would garner more monies from the 1st Defendant. **The 2nd Defendant hereby plead and shall rely on the Plaintiffs letter dated 6th November 2017 during trial.**

24. With particular reference to paragraph 24 of the Plaintiffs Statement of Claim the 2nd Defendant repeats paragraph 5 above and avers that it was surprised at the Plaintiffs claim despite the 1st Defendant being intimated by the 2nd Defendant Counsel by letter dated 2nd November, 2017 that the 1st Defendant was not aware of the video making process. **The aforementioned letter is hereby pleaded by the 2nd Defendant.**

25. The 2nd Defendant further avers and shall contend at trial that joint culpability avails, only where the authorizing party knowingly authorizes the production of an infringing work.

26. The 2nd Defendant avers and shall contend at trial that the video "Lekki- Ikoyi Link Bridge at Night" is a work showing a completely constructed bridge which can be viewed by the public and there can be no infringement for the use of the said bridge.

27. The 2nd Defendant further contends that the Plaintiffs alleged video of Lekki Ikoyi Link Bridge at Night was created without obtaining adequate authority and permit from the authority. That the action of the Plaintiffs in instituting this suit is overreaching and unconscionable as it would only motivate gold digging efforts with other individuals instituting various claims for the use of a public monument and infrastructure in order to obtain monetary benefits due to taxpaying citizens as no creative effort was put into the alleged work by the Plaintiffs.

28. The 2nd Defendant avers that the Plaintiffs' are not entitled to any of the reliefs sought against it in its paragraph 24 of its Statement of Claim as the claims against it are frivolous, gold digging and ought to be dismissed.

29. **WHEREFORE** the 2nd Defendant avers that the entirety of the plaintiffs' action is frivolous and extortionist in nature and same ought to be dismissed in its entirety

with substantial costs.

DATED THIS 18th..... DAY OF APRIL, 2018



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