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Participation in the Production of a
Song Does Not, Without More, Confer

Co-Authorship or Co-Ownership:

Lessons From Michael Oluwole
V. Osinachi Joseph Egbu (Sinach)

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Introduction

Collaboration is an integral feature of modern music production. A commercially successful song may involve songwriters, composers, producers, arrangers, sound engineers, session musicians and other contributors, each performing different functions in bringing a musical project to completion. The fact that several persons participate in the production of a recording, however, does not necessarily mean that they are all authors or owners of the underlying musical work. The distinction between the musical work itself and the sound recording embodying that work is therefore critical in determining the nature and extent of a contributor's copyright interest.

The Federal High Court's decision in **Michael Oluwole v. Osinachi Joseph Egbu (Sinach)**¹ offers useful guidance on this distinction. The case concerned a claim by Michael Oluwole, a music producer, to co-authorship and co-ownership of the musical work **"Way Maker."** Oluwole contended that his

contributions to the recording and production of the song entitled him to copyright interests in the underlying musical work. The Court rejected the claim, finding that he had failed to establish authorship or co-ownership. The evidence before the Court indicated that the song had already been created and performed by Sinach before Oluwole became involved in the project and that his engagement principally concerned the recording, mixing and mastering of the existing work.

The decision raises an important question for the contemporary music industry: when does a contribution to the creation or production of a song cross the line from technical or ancillary participation into copyright authorship of the underlying musical work? More importantly, what kind of evidence is necessary to establish co-authorship where several persons participate in the production of a musical recording? The decision provides a useful framework for examining these questions.

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What is a Musical Work?

A musical work is defined under the Copyright Act 2022 (The Act) as a musical composition, irrespective of musical quality.² In practical terms, it refers to the underlying musical expression embodied in a composition. Depending on the work, this may include elements such as melody, harmony, rhythm and musical arrangement. Lyrics, although commonly associated with a song, constitute a separate category of protected expression and may attract copyright protection as a literary work.

A sound recording, by contrast, concerns the fixation of a sequence of sounds capable of being perceived aurally or reproduced. It is distinct from the musical work that may be embodied in the recording.³ Thus, while the musical work constitutes the underlying composition, the sound recording is the particular recorded embodiment of that work, including the sounds captured in the recording of a performance or other production.

The Act recognises the musical work and the sound recording as distinct subject matters of copyright. Consequently, copyright may subsist separately in the underlying musical composition and in

the sound recording embodying that composition. The persons entitled to rights in each may, however, be different. A person who creates or owns the musical work does not necessarily own the copyright in a particular sound recording of that work, just as a person who owns rights in a sound recording does not, merely by virtue of that ownership, become the author or owner of the underlying musical composition.

This distinction is commercially significant in that the rights in the musical work and those in the sound recording may generate different forms of licensing, royalty and exploitation revenue. Accordingly, identifying the particular copyright subject matter in which a claimant asserts an interest is an essential first step in determining whether that claim is legally sustainable. For example, a song may begin with lyrics and a melody created by an artist or songwriter. A producer may subsequently add drums, bass, backing vocals, effects and other elements during the recording and production process. Whether those contributions give rise to an interest in the musical work depends on their nature and creative significance. Where the contribution consists solely of technical

² Section 108 Copyright Act 2022

³ Ibid

execution or production choices relating to the recorded version, it will not, without more, establish authorship of the underlying musical work. Where, however, the producer contributes original melodic, harmonic, lyrical or other protectable musical expression that forms part of the composition, the analysis may be different.

Hence the legal inquiry would therefore focus not merely on the contributor's title

or role, whether described as a “producer,” “engineer,” “arranger” or “session musician”, but on what the person actually contributed, whether that contribution is original, and whether it forms part of the protected musical work or merely the sound recording. A person may make a substantial contribution to the production of a recording without thereby acquiring an ownership interest in the underlying composition.



| Author or Contributor? Drawing the Legal Line

The legal line is drawn between original creative authorship and useful contribution. A songwriter or composer may create protectable expression in the musical work. A producer or engineer may contribute skill, judgment, and technical value to the recording without necessarily becoming an author of the composition. The relevant test is therefore not whether the contribution was important, but whether it created original musical expression incorporated into the work.

This distinction is important because creative industries often use collaborative language loosely. A person may say that a producer “made” a song because the producer shaped its sound. That may be true commercially or aesthetically, but the legal question is more specific. Copyright authorship in a musical work is concerned with the creation of original musical expression, not with every valuable contribution made on the journey from demo to final release.

| Co-Authorship/Co-Ownership Are Not Automatic

The fact that two or more persons collaborate in the making of a song does not, without more, establish joint authorship of the underlying musical work. Under the Act, a work of joint authorship is a work produced by the collaboration of two or more authors in which their respective contributions are merged into inseparable or interdependent parts of a whole.⁴ The statutory definition therefore focuses not merely on participation in a common project, but on the existence of contributions of an authorship character that form part of the same protected work.

Accordingly, studio involvement, production credit or participation in the recording process does not, by itself, establish joint authorship, as a person may play an important role in bringing a recording to completion without becoming a joint author of the underlying musical composition.

The distinction between authorship and ownership is equally important. Authorship concerns the person’s relationship with the creation of the work, whereas ownership concerns the legal entitlement to the copyright and the rights arising from it. Although the author and copyright owner may be the same person, they need not necessarily be so. Ownership may be affected by applicable statutory provisions, contractual arrangements, assignments or other legally recognised interests.

Co-ownership should therefore not be inferred merely from the fact that several persons participated in the production of a song. Where two or more persons jointly create a work of joint authorship, their respective interests may give rise to joint ownership of the copyright, subject to the applicable law and any agreement between them. Conversely, a production may contain separate copyright works or copyright interests, with different persons holding rights in the respective works. The existence

4 Ibid, Section 30(6)

and extent of any such ownership must be determined by reference to the particular copyright work, the nature of the contributions, the applicable statutory provisions and the parties' arrangements.

The practical lesson is that the existence of collaboration is only the starting point, not the conclusion. Evidence of the nature, timing, originality and purpose of each person's contribution remains critical. In **Michael Oluwole v. Osinachi Joseph Egbu**, the Federal High Court was required to determine whether Oluwole's involvement in the recording and production of Way Maker established authorship or co-ownership of the underlying musical work. The Court ultimately found that he had failed to establish the requisite authorship or co-ownership.



Case Study: **Michael Oluwole v. Osinachi Joseph Egbu (Sinach)**

| Summary of Facts

Michael Oluwole, the Plaintiff, commenced the action on 8 March 2024 by Writ of Summons, seeking a declaration that he was an author and co-owner of the musical work "Way Maker", which he claimed to have co-authored with Mrs. Osinachi Joseph Egbu, popularly known as Sinach. He also sought an equitable share of income from the work, disclosure and accounts of licences and assignments, damages of ₦5 billion, and an injunction restraining the Defendant from further exploiting the work without his authorisation.

The Plaintiff's case was that he contributed substantially to the creation and production of the renowned Christian musical work "Way Maker". He alleged that he authored, created and composed melodies and instrumental parts that accompanied the Defendant's vocals, and that he also acted as studio engineer by recording, mixing and mastering the work. On that basis, he contended that he was a co-author of the work, notwithstanding the absence of a prior written agreement between the parties.

The Defendant's case, on the other hand, was that "Way Maker" was her sole creative work and expression. She maintained that she had already written, composed and performed the song in South Africa before meeting the Plaintiff. According to her, the Plaintiff was later engaged only as a sound producer to develop the existing song into an album by providing production, mixing and mastering services, for which he was fully paid.

| Arguments of Parties

Learned counsel for the Plaintiff argued that Section 10(4) of the Copyright Act 2004, being the applicable law, required the Defendant, as author of the sound recording, to enter into written contracts with persons whose works were used in making the recording. Counsel submitted that the failure to comply with that statutory obligation breached the Plaintiff's rights and caused him loss. Counsel further contended that, despite the absence of a written agreement, the Plaintiff's role went beyond technical assistance and made him a co-author of the musical work. Relying on Sections 10 and 11 of the Copyright Act 2004, counsel argued that because authorship flows from the creation of the work, the Plaintiff's alleged creative contribution entitled him to be treated as both co-author and co-owner.

Counsel also relied on the provisions on co-ownership, arguing that both parties contributed to the work and that, since there was no written agreement transferring the Plaintiff's rights to the Defendant, they should be regarded as joint owners. He submitted that the Defendant's admission that the Plaintiff was contracted to co-produce the work supported this position, and that the Court could rely on oral evidence in determining the Plaintiff's intellectual property claim without necessarily hearing the original musical work.

Finally, counsel submitted that, as a co-author and co-owner, the Plaintiff was entitled to an equitable share of income and performers' rights generated from the globally

recognised song, and that the Defendant should be restrained from further exploiting his alleged contribution without authorisation.

In response, learned Senior Counsel for the Defendant argued that the Plaintiff did not make any creative contribution capable of making him an author or co-owner of “Way Maker”. The Defendant had already created and performed the song before engaging the Plaintiff, who was merely contracted to develop the song and other songs for the Defendant’s album. The Defendant further argued that the Plaintiff failed to tender the original work he claimed to have co-authored.

It was further submitted that the Plaintiff admitted under cross-examination that the Defendant had performed the song in South Africa before his involvement. His engagement, although not reduced into a written agreement, was said to be limited to developing an already existing song, and he was adequately paid for those services. The Defendant therefore maintained that the Plaintiff’s work on recording, mixing, mastering or production did not automatically make him a co-author.

| The Court’s Decision:

The Federal High Court dismissed Oluwole’s claims in their entirety. The Court held that not every person involved in creating a musical recording is an author. A producer, engineer, session musician or sound technician may contribute materially to the finished product without becoming an author, unless they created the original expressive content. Authorship therefore turns on who is the original creative mind behind the musical work.

The Court explained that the author of a musical work is the natural person who creates the intellectual property embodied in the melody, harmony, lyrics or arrangement. Copyright vests in the author from the moment of creation, without the need for registration or formal notice. The author consequently enjoys the exclusive rights to reproduce, distribute, perform and license the work, subject to any subsequent assignment, licence or bequest.

The Court further recognised that where two or more persons collaborate in creating a musical work, they may hold joint ownership unless they have agreed otherwise. It also affirmed that a composer who creates a musical work through his ingenuity acquires an intellectual property interest in that work, which ranks *pari passu* with other proprietary rights.

Original Creative Expression Is the Test

From the Court's decision, it is not enough to show that a contributor handled the recording session, suggested performance choices or improved the final mix. The Plaintiff must connect the alleged contribution which must be an original expression to the composition itself. Where the evidence shows only technical, production or post-production work, the claim to authorship of the musical work is likely to fail.

A producer may make valuable decisions about instrumentation, sound, performance and presentation. An engineer may determine how the recording is captured, mixed and

mastered. Those contributions may be commercially significant, but they do not automatically confer ownership of the underlying composition.

The distinction also affects licensing. A person seeking to use a song commercially may need permission for both the musical work and the sound recording. If the same party owns both rights, licensing may be straightforward. If different persons own them, separate permissions may be required. This is why accurate identification of authorship and ownership at the beginning of a project reduces later disputes.

Why Written Agreements Matter

The absence of a written agreement did not, by itself, make Oluwole a co-author. However, the case demonstrates why the Copyright Act mandates that music collaborations should be documented clearly before release. Written agreements help parties identify, from the outset, whether a contribution is being made to the musical work, the sound recording, or both, and whether the contributor is acting as an author, producer, engineer, performer, arranger, session musician or paid service provider.

This is especially important because musical works and sound recordings attract separate rights. A producer may have a role in the recording without owning the composition, while a songwriter or composer may own the underlying musical work without owning the recorded version. A properly drafted agreement can therefore specify who owns each copyright, whether any rights are assigned or licensed, how credits will appear, and how royalties, fees and other income will be shared.

The practical lesson is that collaboration should not be left to assumptions. If a producer, instrumentalist or engineer is intended to share ownership in the composition, that intention should be expressly stated. If the engagement is limited to production, mixing, mastering or other paid services, that should also be recorded. Clear documentation reduces disputes by aligning commercial expectations with the legal position, particularly where a song later becomes commercially successful.



Conclusion

The decision in *Michael Oluwole v. Osinachi Joseph Egbu* confirms that copyright authorship is concerned with original creative expression, not merely involvement in the creative or production process.

The case therefore provides a practical reminder that copyright disputes in music often arise not because contributors are unimportant, but because the law allocates rights according to the particular work created. A person may be indispensable to the sound of a recording and still not be an author of the composition. Conversely, a person who contributes original melody, lyrics, harmony or arrangement may have a stronger claim to authorship even if the contribution appears small in commercial terms.

The central lesson for artists, producers, engineers and record labels is that collaboration should not obscure ownership. Musical works and sound recordings should be treated as distinct rights, and the parties' roles, credits, compensation and ownership interests should be clearly agreed at the outset.

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