

APPLICATION OF TRUST LAW IN THE ADMINISTRATION OF INTELLECTUAL PROPERTY IN NIGERIA: AN OVERVIEW

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1.0 INTRODUCTION

The concept of property has changed significantly from the traditional to a new concept. Thus property is scientifically defined, as the jural relations between two or more persons in relation to a thing. It is not the thing itself but the right to use and enjoy the thing.

It included the right to exclude others from using the things. But to many laymen, when we talk of property what normally comes to their minds is the tangible property, such as a house, car, video, radio, table, tree e.t.c. People, particularly laymen, hardly think of other types of intangible property such as rights, privileges, immunities, duties, obligations e.t.c. In some cases, both lawyers and laymen rarely think of modern property such as trade marks, copyright, patent, shares, gratuities, pensions, labour and expectation. Others include things like computers, programmes chips, inventions, discoveries, rights in choices and right in action.¹ Intellectual property law is essentially concerned with the protection from theft of virtually all the intangible and tangible products of human intellect or creativity. It protects the exclusive rights of an inventor or creator in the product of his intellectual or inventive creativity, for example, copyright, sound recording, patent, trademark, e.t.c.

Thus intellectual property encompasses copyright, the right of the author of a written work of an artist, a musical composure, or the right of a producer of a film, broadcast or recording. It protects the right of performers in their performance. Copyright, Patents and trademarks are the three categories of intellectual property.

Intellectual property is intangibles property, like shares in a company. Like other kinds of property, intellectual property can be passed on to some one else, by gift, sale or by bequest. It may be transferred permanently or temporarily. Intellectual property rights are, unlike other rights in other

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¹ Aboki Y. Economic and Cultural Bases for copyright protection in Nigeria: The Journal of International and Comparative Law Vol. 5 No. 2 P. 82. published by the Department of Jurisprudence and International Law, Faculty of Law, University of Ilorin, (2001).

forms of property, (with a few exceptions) limited in time. For instance copyright in a written work lasts until 70 years after the death of the author, and patent rights last for 20 years.² When time for the exercise of the right lapse, the subject matter of the rights, such as books, inventions etc are said to be “in the public domain.” This means that anyone may now copy or reproduce them or otherwise exercise the rights which formerly were exclusive to the owner.³ In this paper, effort will be made to examine copyright, patent right, trade mark and customary intellectual property in relation to trust. In other words, the application of trust to these three important aspects of intellectual property shall be the thrust of this paper. Secondly, to further enlighten the general public that trust can be created over them for purpose of management.

1.1 TRUST AND COPYRIGHT

Copyright is the exclusive right (limited in time)⁴ vested in an author of literary, artistic, music, sound recordings, photographs, cinematograph, to publish, sell or transfer his creative works.⁵ It also encompasses the author’s moral right to have his work preserved substantially in its original form and to object to any distortion, mutilation or alteration.⁶

Trust exists where it is so created or by operation of law. Trust can be created in respect of copyright. copyright is among the intangible, incorporeal, invisible and abstract proprietary rights granted by law to the creator or originator of a tangible, corporeal, visible and real object. It is an abstract property incorporated in a physical property, although the ownership of the latter need not necessarily be vested in the holder of the

² Marett P. Intellectual Property Law London Sweet and Maxell 1996, P. 2.

³ Ibid.

⁴ See Section 1(3)(4), 2(3), the first second, third and fourth Schedules. See also Section 5(3) of the Copyright Act, Cap 68 Law of the Federal Republic of Nigeria, 1999 as amended.

⁵ See Ayo Oriola: “Anton Pillar Order As A remedy for Copyright Infringement: A Marital Law in Disguise”, Modern Practice Journal of Finance and Investment July 1999, Vol. 3, No. 3 p 507.

⁶ See Section 11(1)(b) of the Copyright Act, Cap 68 Law of the Federal Republic of Nigeria, 1999 as amended. See also Archbold V. Sweet 172 ER 949 and Frisby V. British Broadcasting Corporation (1967) 2 All ER 106. See also Article 6 of the Berne Convention 1886.

former.⁷ As a property, the copyright owner, is vested with a legal right upon the creation of a literary, dramatic, musical or artistic work. Copyright in Nigeria is a statutorily granted right exercisable by certain group of persons,⁸ over some designated works of arts⁹ and upon specified terms and conditions¹⁰ as provided by law. It is these rights that exist in copyright that trust can be created over. Thus a person who has been granted this right by virtue of his creation or invention can through the machinery of law create a trust for the purpose of administering such property right. Whoever is so appointed to administer the trust property becomes a trustee. This happens where a copyright holder e.g., an author or an actor who has chosen to create a trust in respect of a book or a film appoints a trustee to administer such property for the benefit of an object, for instance, the motherless children from the proceeds of the property. Thus where "A" who is a famous actor and who had just released a new film that is in high demand creates a trust over the copy right vested in him in respect of his new film, the trustee can sell this right to a film producer and use the proceed of the sale for the benefit of the motherless children. When a trust is created, the trustee is expected to discharge his duties in accordance with the ethic of his profession as a trustee. Furthermore, where the copyright holder creates a trust, any one, who wants to use this copyright material, for example, an educational body requiring permission to photocopy, a theatre or broadcaster wanting to put on a copyright play, a restaurant wanting to have piped music for the pleasure of its customers, will apply for a licence to the trustee. The trustee charges a fee and will use the proceeds in accordance with the trust instrument for the administration of the property, hence the relevance of trust law in the administration of copy right.

The Nigerian Copyright Act¹¹ in its section 10 (1) has indirectly created room for this kind of arrangement. The section provides:

"subject to the provisions of this section, copyright shall be transmissible by assignment, by testament,

⁷ P.A. Ocheme P.A. The Law and Practice of Copyright in Nigeria A.B.U Press Limited 2000

⁸ S.S. 210 & 12 of Cap. 68 Laws of the Federation of Nigeria 1990.

⁹ Ibid S.1.

¹⁰ Ibid S.S. 14 & 15.

¹¹ Cap. 68, Laws of the Federation of Nigeria, 1990

any dispositions or by operation of law as movable property."

In other words, ownership of Intellectual property, like ownership of any other property, can be transferred from one person to another *inter vivos* by way of assignment, at death by way of testamentary disposition (that is through a will) or by way of operation of law such as when the owner of intellectual property dies interstate (that is without a will) in which case the ownership of the intellectual property devolves on his heirs according to his personal law.¹²

1.2 TRUST AND PATENT RIGHT

The Patents Act is silent as to what is meant by the term "Patents", but Encyclopaedia Britannia¹³ defined it as a grant of certain rights for the protection of inventions. It is an instrument proceeding from the government, and conveying a right, authority, or grant to make and sell a new invention. It is a grant of some privilege, property rights or authority made by the government or sovereign of a country to one or more individuals.¹⁴ A patent is a legal protection accorded an article that is new or essentially better in some way than what was made before or a better of making it. It is a bundle of monopoly rights granted to an inventor of his assignees for a stated duration permitting him to prevent other persons from exploiting his invention without his consent.¹⁵

1.2.1 QUALIFICATION FOR PATENTABILITY

The Act has prescribed certain qualifications an invention must attain to make it patentable. Accordingly an invention is patentable if it is new, results from inventive activity and is capable of industrial application or if it constitutes an improvement upon a patent invention and capable of industrial applications.¹⁶

Newness or novelty is the first requirement for and therefore a sine quanon of patentability. An invention is new if it does not form part of the state of

¹² See also section 20(1) and 62(1) of Bankruptcy Act.

¹³ 15th ed, Vol. 13, P. 1071.

¹⁴ Black, H.C. Black's Law Dictionary 6th ed St. Paul, Minn West Publishing Co, 1990, p. 1231.

¹⁵ Olueze, I.M. Nigerian Copyright Law, Apapa Maglink International Ltd., 1998 86.

¹⁶ Section 1(1)(a) and (b) of the Act.

the art.¹⁷ The phrase “State of the art” means everything concerning that art or field of knowledge, which has been made available to the public anywhere and at anytime whatever (by means of a written or oral description, by use or in any other way) before the date of the filing of the patent application relating to the invention or the foreign priority date validly claimed in respect thereof.

On the second requirement for patentability an invention is said to result from inventive activity if it does not obviously follow from the state of the art, either as to the method, the application, the combination of methods or the product which it concerns, or as to the industrial result it produces.¹⁸

1.2.2 THE RIGHTS OF A PATENTEE

A patent confers upon the patentee the right to preclude any other person from doing (a) where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale, or use;¹⁹ and (b) where the patent has been granted in respect of a process, the act of applying the process or doing, in respect of a product obtained directly by means of the process, and act mentioned under (a) above.²⁰

1.2.3 CREATION OF PATENT TRUST

Patent right, being classified as property, is subject to trust. In other words the long arms of the law of trust can be extended over patent right. Thus, an inventor who is vested with patent right by operation of law can create a trust for it and appoint a trustee to administer it. Patent is a right granted by the government or a sovereign to an inventor or his assignee for a term of monopoly over the use and application of an invention.²¹ The property rights driven from a patent, fall into two categories. First, there are things which he can stop anyone else from doing. A patent or patent application may be assigned to someone else for an agreed term or

¹⁷ Section 1(2)(a), Ibid.

¹⁸ See Section 1(2)(b), Ibid. see also *Merrel Docu V. Norton* (1996) RPC. 76 where it was held that there was no anticipation through use, but found anticipation by disclosure to the public and thereby making the invention obviously resulting from the state of the art and therefore unpatentable. See also *Hallen Vs. Brabantia* (1991) RPC. 195.

¹⁹ Section 6(1)(a), Ibid.

²⁰ Section 6(1)(b), Ibid.

²¹ Cap. 68, Laws of the Federation of Nigeria, 1990.

it may be mortgaged.²² The owner can leave it in his will or, in any case it will be dealt with after the owner's death in the same way as any other piece of the deceased's personal property. The owner can also grant a licence to someone else to work the invention. Most importantly, for the purpose of this article, the owner can equally create a trust in respect of this right and appoint trustees to manage it in accordance with the trust instrument. Inventor, of cell phone, can for instance create a trust and vest his patent right in the trustee for the purpose of administration. He can stipulate in the trust instrument the way and manner he wants the trustee to administer the property on his behalf. For example, he can direct that his right be assigned or mortgaged to a company by the trust instrument and the proceeds be used to finance further discovery in the cell phone technology. As assignment differs from a licence in that a licensee may do only those things permitted by the licence, whilst an assignee takes over all rights of ownership. Assignee steps into the shoes of the owner. The owner as mortgagor can grant a mortgage to another person (mortgagee). This means that the owner puts the patent as security for his fulfillment of an obligation to the mortgage (just as the mortgagor-owner of a house puts up his house as security for repayment of his debt to the mortgagee, usually a building society). An alternative to a mortgage is an assignment of the patent right as security with a clause allowing the assignor (the owner) the right to continue to work the invention during the term of the assignment, and with a provision for the patent rights to revert to the assignor when the security is no longer needed.²³

1.3 TRUST LAW AND TRADE MARK

A trade mark has been defined as a symbol which is applied or attached to goods offered for sale in the market, so as to distinguish them from similar goods, and to identify them with a particular business, as being made, worked upon, imported, selected, certified, or sold by him or them, or which has been registered under the Act as the trade mark of a particular trade.²⁴ It is a mark used by a trader in the course of trade to distinguish the goods on which it is applied from other goods of the same description.²⁵

²² Maret P. Intellectual Property Law, London, Sweet and Maxell, (1996) P. 85

²³ Ibid

²⁴ White, J.A.B. and Jacob, R. Kerly's Law of Trade Marks and Trade Names, 10th ed, London: Sweets & Maxwell, 1972, P. 15.

²⁵ Okany, M.C; Nigerian Law of Property. Enugu: Fourth Dimension Publishers, 1986, P. 333.

Recently, the Supreme Court had the cause to make a pronouncement on the meaning of a trade mark thus:²⁶
...as a mark used or proposed to be used in relation to goods for the purpose of indicating or so as indicate a connection in the course of trade between the goods and some person having the right either as a proprietor or registered user to use the mark.

“Trade Mark” according to the Trade Marks Act²⁷

“means except in relation to a certification, trade mark is a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate, a connection in the course of trade between the goods and some person having the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indication of the identity of that person, and means, in relation to a certification trade mark, a mark registered or deemed to have been registered under section of this act.”

1.3.1 REQUIREMENTS FOR REGISTRATION

Section 10(1) of the Trade Marks Act²⁸ provides for some of the requirements for registration. For a trade mark to be registered it must be capable in relation to the goods in respect of which it is registered or proposed to be registered of distinguishing goods with the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no connection subsists.

The protection given to owner or user of a registered trade mark is the conferment on him the right to the use of the trade mark in relation to those goods concerned.²⁹ The owner or user of a registered trade mark is therefore empowered to institute legal proceedings to prevent or to recover damages for the infringement of his trade mark.

With regard to an unregistered trade mark, the remedy of the owner lies in the common law of passing off his goods and not infringement of his trade

²⁶ Ferodo Ltd v. Ibeto Ind. Ltd (2004)5 NWLR (Pt. 866) P. 317 at 325, per Musdapher. JSC.

²⁷ Section 15 Cap Laws Federation of Nigeria, 2004.

²⁸ Cap 133 LFN, 2004

²⁹ Section 5 and 6 of the Act.

marks. Infringement exclusively relates to registered trade mark, while passing off is generally (not exclusively) related to unregistered trade mark.

1.3.2 BENEFITS OF REGISTRATION

When a trademark is registered, it gives the proprietor the exclusive right to use the trade mark in marketing or selling his goods. Consequently, the proprietor can initiate an action for infringement of a registered trade mark or passing of a registered trade mark or both against any person who uses a registered trade mark, or an identical mark, or any mark so nearly resembling the registered trade mark as to be likely to deceive or cause confusion between his own goods and the proprietor's goods.³⁰

1.3.3 CREATION OF TRUST OVER TRADE MARK

Any property, which is capable of being transferred, may be the subject matter of trust. Trademark being a limb of intellectual property is subject matter of trust.

A proprietor of trade mark, can create trust over his right for a beneficiary. For instance, the proprietor of P.D.P Logo can lease it out to a manufacturer to market her goods and the money accruing from the lease, can be given to a trust fund, to be managed by a trustee for a specified beneficiary. When this is done trust is said to exist over the trademark. The usual duties expected of trustees will also be expected from the trustees so appointed to manage this type of property.

1.4. ASSIGNMENT OF TRADE MARK

The Trade Marks Acts,³¹ in section 26 talks about assignability of trade marks. The Act allows a person that has the trademark to assign it to another person. For example, Mr.A is allowed by the Act to assign his copy right to Mr.B. A trademark may be bequeathed by will or transferred by operation of law, just like any other personal property, such as books, table, cars etc, but any assignment must be in writing and signed by the assignor.³²

1.5 ASSIGNEE AS A TRUSTEE

Where an assignment of trademark is done, the assignee can be a trustee of the trademarks. He holds the trademark right in trust for the assignor and

³⁰ Op. cit.

³¹ Ibid

³² Marett P. Intellectual Property Law London Sweet and Maxell 1996 P. 169.

whatever that may come his way in terms of money, will be managed by the trustee either for the benefit of the assignor or for a particular purpose, e.g., an individual, institution or group of persons.

1.6 POWERS OF ASSIGNEE AS TRUSTEE

Where a trustee is appointed as discussed above, he has the same powers and discharges the same duties as any other trustees. For, he has power to deal with the trust property, and owes the beneficiary duty of account, inter alia.

1.7 THE DUTIES OF TRUSTEE OF COPYRIGHT, PATENT RIGHT, AND TRADE MARK.

The duties of a trustee of copyright is to protect the exclusive right belonging to the creators or authors of certain works for a limited numbers of years to reproduce, communicate to the public or, broadcast, adapt or translate the whole or a substantial part of the work either in its original form or in any other form recognizably from the original, except for certain limited purposes.

Where a trust is created over copyright, patent right and trade mark, the trustee owes the beneficiaries certain duties such as:

1.8.1 DUTY TO PROVIDE ACCOUNT AND INFORMATION

Trustees in respect of these trusts, are obliged, as fiduciaries to account for their dealings with trust property and to furnish information to the beneficiaries as to the state of things in respect thereof. In other words, trustee must keep a record of their dealings and account of the transactions should be made available to the beneficiaries for inspection.³³ In this regard, the trustee has obligation to keep account of the trust and to provide information as to how he manages the trust whenever he is called upon to do so. For example, where any of the right holders creates trust and appoints trustee and gives instruction in the trust instrument as to how the trust should be administered. Whenever the trustee is called upon to give an account and information as to how he is administering the fund for the purpose of the trust, he must give such account and the information.

³³ *Pearse V. Green* (1819) 37 E.R. 327. Thus a Trustee Keep Account and be Constantly Ready to Produce them for the Beneficiaries

1.8.2 DUTY TO MAINTAIN EQUALITY BETWEEN BENEFICIARIES

A trustee owes the beneficiaries of a trust the duty of impartiality.³⁴ A trustee must maintain equality between the beneficiaries. Therefore he should not favour one beneficiary at the expense of another. He must treat them equally. Where a trustee is to apply fund to two different beneficiaries, the trustee owes the two beneficiaries as a matter of duty to apply the fund equally unless it is otherwise directed by the trust instrument. For example, where the trust instrument specified that A who is a beneficiary be given three houses, and B who is also a beneficiary be given two houses. The trustee must as a matter of duty complied with the directive to make sure he maintains equality between the beneficiary

1.8.3 DUTY NOT TO DEVIATE FROM THE TERM OF THE TRUST

Trustees are obliged to carry into effect the wishes of the settlor or testator as expressed in the trust instrument. The trustees are therefore duty bound to obey the lawful directives of the settlors. They are not to interchange their own wishes for that of the trust. For example, where a trustee of a patent design is instructed to lease out a patent right to a designer or company for 5 years and use the proceed of the lease to fund the education of homeless children, rather the trustee leased out the right for a longer period and apply the proceed for feeding of the aged people, this will amount to a deviation from the terms of the trust and therefore, a breach of trust.

1.8.3.1 EXCEPTION TO THE RULE IN DUTY NOT TO DEVIATE FROM THE TERM OF THE TRUST

However there are few exceptions to this rule. First, the court could exercise its inherent jurisdiction to authorize trustees to do an act not expressed by the trust instrument, if it is considered necessary to salvage the trust from ruins.³⁵ This is known as the salvage principle.

For the above principle to be applicable, however, it must be shown that the proposed act is the only sensible way of salvaging the trust property and it is not enough that the scheme is merely beneficial to the beneficiary.³⁶ In *Conwey v. Fenton*,³⁷ the salvage principle was employed to effect a proposal for the maintenance of trust property where an infant was the remainder man.

³⁴ *King V. Mullion* (1852) 1 Few, 308 at P. 311 *Kindersley, V.C*

³⁵ *Re Jackson* (182) 7 Chi. D. 786

³⁶ *Re. Montago* (1897) 2 Ch. 8

³⁷ (1888) 40 Chi. D. 512

Secondly the court has an inherent emergency jurisdiction to permit trustees to deviate from the terms of the trust or to carry out acts not authorized by the trust instrument. The circumstances necessitating the emergency jurisdiction may not have been contemplated by the settlor or the beneficiaries are not all sui juris to consent to the necessary changes. Thus, in *West England Bank V. Murch.*,³⁸ the court permitted trustees to exchange a share and a partnership for shares in a limited liability company, with a cash payment included and extinguishments of various debts owned. The court could also permit acts not expressly authorized by the trust instrument on grounds of expediency in exercise of a statutory power.³⁹ For instance section 40 of Trustee Law of defunct Western Nigeria empowered the court to permit the trustee to carry out such acts where in the management or administration of the trust property are in the opinion of the court expedient.

1.8.4 DUTY NOT TO DELEGATE

Trustees who take on themselves the management of trust property for the benefit of others have no right to shift their duty on to other persons. In a situation where they employ an agent, they remain subject to the responsibility towards the cestius que trust, for whom they have under taken the duty.⁴⁰ The trustee as a general rule is roped in the maxim *delegatus non potest delegate*, i.e., a delegate cannot delegate. They can however, delegate when there is an express authority by the right owner to that effect.⁴¹ They must however, ensure proper supervision of whoever they delegate their duties to, otherwise they will be held liable for any breach committed by the delegate.⁴²

1.9 CUSTOMARY INTELLECTUAL PROPERTY AND TRUST LAW

This specie of intellectual property has deep historical roots. It has been argued that intellectual property rights existed in primitive societies with regard magic rituals.⁴³ Through a gradual process, from the Greek and Roman onwards, property rights, particularly copyright, were specifically

³⁸ (1883) 23 Chi. D. 138

³⁹ See the provisions of Sec 40 of the Trustee Law.

⁴⁰ *Turner V. Corney* (1871) 5 Beav Sis at P. 517: 49 E.R. 677

⁴¹ *Pilkington V. IRC* (1946) AC612 Per Lord Redcliffe

⁴² *Fry V. Tapson* (1884) 28 Ch. 268.

⁴³ Sdumhman M.C. "Invention and Ritual: Notes on Interrelation of Magic and Intellectual Property in Preliterate Societies." *Columbus Law Review* Vol. 89 1999 P. 1264.

founded first on social conventions and religious doctrines, and later on laws.⁴⁴ It is therefore, evident that intellectual property system was not a foreign concept to earlier civilizations. As it will be revealed shortly, it is also true of Nigeria.

There is no doubt that modern intellectual property system was introduced to Nigeria by foreigners, but before then, there were already established rights nurturing creativity. It is in respect of these rights that trusts are customarily created. These rights are usually vested exclusively in groups such as families, clans, or individuals such as chiefs or kings.⁴⁵ Music and folklore (folk songs and tales) were some of the creativity of the local people. The importance of music and folklore in Nigerian culture cannot be over emphasized. They performed the multiple functions of means of entertainment, method of teaching, a means of recording history and medium of participation in rituals and festivities.⁴⁶ The folk tales described in folklore here passed over to generation after generation as a joint communal responsibility.⁴⁷ The same applies to dance or painting and so on.⁴⁸ These forms of creativity would prima-facie qualify as literal and musical works, and therefore subject matters of copyright. It is in this subject matter that trust is being created over. For example, a great musician who inherit a particular style of music from his grand parent can pass it to his children who become a trustee and a custodian of the music which he inherited.

In the area of patent, it is evident that substantial technology existed in customary way. Thus gold, bronze, copper and other minerals were being mined before the coming of the Europeans. The mining industry continues to thrive even after the arrival of the colonial masters which compelled the colonial administration to introduce the patent system in West Africa.⁴⁹ The local communities manufactured and still manufacturing and used fire arms. Even if the technology was copied from more developed cultures else where, the local communities would not have been able to successfully

⁴⁴ Streibich, H.C. "The Moral Right of Ownership to Intellectual Property: Part from the Beginning to the Age of Printing," *Memphis St. University Law Review*, Vol. 6, 1975.

⁴⁵ Adema, E.A. "Qualities of African Folklore," *Nigeria Magazine*. 15.

⁴⁶ Beier U.: Yoruba Operas, *Journal of Intellectual Library of African Music*.1(1954)12 discussing the use of folk operas to teach and deal with virtues.

⁴⁷ Adewa E.A. "Qualities of African Folklore:Nigerian Magazine 15(1938)210

⁴⁸ Biobaku S.(ed):*The Living Culture of Nigeria*, Thomas Nelson,1976.

⁴⁹ Yankee. G.S: *Internal Patents and the Transfer of Technology to less Developed Countries: The case of Ghana and Nigeria*, Aveibury: Aidershot, 1987, p. 106.

copy the technology in the absence of any for any form of local technology.⁵⁰ Looms used for weaving textiles varied in shape from one part of the country to another with some compounds or families in old city of Egbado having as many as ten looms.⁵¹ Musical instruments were so novel and peculiar to the local communities that they could easily have been patented.⁵²

Distinguishing marks were used extensively to identify the sources of agricultural implements and local industrial products such as woven cloths of particular manufacturers in certain parts of the country which were distinguishable by the indicia woven into them. Besides the distinguishing indicia, the origin or other qualities of a product were often signified by the design of such product.⁵³

Distinguishing marks were not confined to products or goods alone, they were also extended to human beings. Tribal marks were applied on human beings to signify or indicate their ethnic origin or area. For examples, Yorubas, Igalas, Nupes, Egburas, all have their particular pattern of tribal marks. Tattoos were very much in use either as design perse, or to indicate the status of origin of the persons wearing them.

A lot of art works in brass, bronze, gold or wood had unique characteristic which signified the part of the country where they were made.⁵⁴ For instance, statues from the Nok region often had two holes made in the head; those from Ife had two or more heads at the top of the mark. In the south eastern part of Nigeria, stone carving of antiquities have been found with the characteristics of being carved in low relief human features and protuberant navel.⁵⁵

⁵⁰ Richards, W.A. "The importation of Firearms into West Africa in the Eighteenth Century" *Journal of African History* XXI, 1980. p. 43.

⁵¹ Isichei, E: *A History of Nigeria*, London. Longman. 1983, p. 58.

⁵² Lo-Bajoko, J.N. @Classification of Igbo Musical Instruments" *Journal of International Liberty of African Music* 6, 1987, p. 58.

⁵³ Kayode, O: "Trademark Law in Nigeria", *Managing Intellectual Property Trademark Year Book*, 1993, p.83

⁵⁴ Asien J.; " Consumer literacy and confusing similarity fictional Trademark in Nigeria ; *Trademark Report*,84,1994, P. 64 at 67

⁵⁵ Picton s. "The visual art in Nigeria " in Olaniyan, f {ed} *Nigerian History and culture*, Londo Longman, 1985 P.254.

Some products or paintings bore insignia of cults, signifying that the owners or wearers belonged to a particular cult. For example, the left fist with a thumb conceded over the right fist for the Oghori the sixteen birds in a circle ground a central bird for the Osanyin; the double headed axe and guard rattle of Sango,⁵⁶ etc.

These are property, hence are subject matters of trust. Therefore, trust can be created over them for management.

Traditional doctors based their practices primarily on herbs shrouded in secrecy. The secret of the practices of the traditional doctors might qualify as trade secret in respect of which trust can be created over. Where, for example, a particular compound is known for treating particular kind of sickness, for instance, fracture of the bones, the secret of such treatment can be passed over to another person in the same compound as trust to be managed for the benefit of that family. Any other person or an outsider, who goes and apply the same treatment, will not work because the secret of the invention was not revealed to him.

1.10. CONCLUSION

Trust law is dynamic in nature that is, it can be applied to many areas of human endaviour ranging from personal to real property. In fact our daily activities are built on trust.

From the foregoing, it is clearly seen that application of trust law can be very useful to manage intellectual property especially, where the author, the designer e.t.c. does not want to be involved in the management of his property.

In another way round, it is a way of fulfilling one's wishes after a peaceful departure from this simple world. This is because, after the death of the testator, his will or intendment would still reign and guide the activities of his administrator. This fulfil the aspirations of the testator while alive and after his demise.

⁵⁶ Ibid, at pp. 257, 259 and 262.