



by; Ibezimako Wogu & Favour Oporum

Introduction

A photograph is rarely just a photograph.

A photograph or video recording may begin as a record of a moment, but it does not always remain one. In an age where brands seek authenticity through the images of people, personal images have acquired significance beyond their documentary function. They have become valuable marketing assets, capable of attracting attention, conveying trust and shaping consumer behaviour. For businesses, such use may form part of a broader promotional strategy. For the individuals depicted, it may raise questions about consent, control and the commercial use of personal identity.

The legal significance of an image frequently lies not in its capture, but in its subsequent use. At what point does the use of a person's image move beyond mere documentation and become a form of commercial appropriation? When does participation become endorsement? More importantly, who controls the commercial value embodied in a person's likeness?

The decision of the High Court of Lagos State in **Larry Nwabueze v Nigerian Breweries Plc** provides a useful lens through which these questions may be examined. Although the case arose from a claim for the enforcement of privacy and data protection rights, the judgment offers important guidance on the use of personal images in a commercial context.

This article examines the decision and the principles that emerge from it. Beyond the immediate dispute between the parties, the judgment offers important guidance on the commercial use of personal images under Nigerian law.

The Legal Framework Privacy and Personal Autonomy

The foundation of the Applicant's claim was section 37 of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, which guarantees and protects the privacy of citizens. Although the provision makes no express reference to photographs, images or likenesses, Nigerian courts have consistently adopted a broad approach to its interpretation.

In **Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo**, the Supreme Court described privacy as extending to the protection of an individual's thoughts, conscience, beliefs and bodily autonomy. Similarly, in **Bi-Courtney Aviation Services Ltd v Kelani**, the Court of Appeal recognized that the constitutional guarantee extends beyond physical seclusion and encompasses significant aspects of the human person, including personal choices and decisions.

The consequence is that privacy under Nigerian law is not confined to protection against physical intrusion. It may also be engaged where a person's identity is appropriated or used in a manner that interferes with personal autonomy.

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Data Protection and Personal Images

The enactment of the *Nigeria Data Protection Act 2023* ('the Act') introduced an additional layer of protection. The Act defines personal data broadly as information relating to an identified or identifiable individual and defines processing to include the collection, use, disclosure and dissemination of such information.

Sections 25 and 26 of the Act establish the lawful bases for processing personal data and prescribe detailed requirements for consent. Notably:

- processing is lawful where the data subject has given consent for the specific purpose for which the data is processed;
- the data controller bears the burden of proving consent;
- silence or inactivity does not constitute consent; and
- consent must be affirmative.

The regulatory framework has since been supplemented by the *Nigeria Data Protection Act (General Application and Implementation Directive) 2025* (NDP Act-GAID 2025). Article 17 of the GAID provides further guidance on reliance on consent and specifically recognizes that while participation in a public event may, in certain circumstances, give rise to implied consent for the use of images for reporting purposes, such images should not be used for profit or commerce-oriented advertising without the express consent of the data subject.

An identifiable image is therefore capable of attracting protection not merely as content, but as personal data. The legal issues arising from the use of personal images are not confined to privacy and data protection law alone. Depending on the circumstances, they may also engage principles of passing off, contract and copyright.

Image Use Beyond Copyright

Although disputes involving photographs and other visual recordings are often assumed to be copyright disputes, Nigerian courts have recognized that the commercial use of a person's image may raise issues distinct from ownership of the underlying work.

This distinction is evident from the Supreme Court's decision in *Ubom v Globacom (Nig) Ltd*. In that case, the Supreme Court held that the appellant's complaint concerned the unauthorized commercial use of her image and likeness rather than ownership of copyright in the photograph itself. The Court consequently distinguished between a copyright claim and a claim arising from the commercial exploitation of an individual's image.

The significance of that distinction is that copyright may determine who owns a photograph or other visual work, but it does not necessarily answer the separate question of whether the person depicted has consented to the commercial use of his or her image.

Viewed in this light, the decision in *Ubom* provides an important backdrop to *Larry Nwabueze v Nigerian Breweries Plc*. While the cases arose in different contexts, both decisions draw attention to a common concern: the use of an individual's image may raise issues independent of ownership of the underlying content. In *Nwabueze*, the central dispute was not ownership of an image, but whether an identifiable individual's image could be deployed in commercial advertising without authorization.

Similar issues have also been considered in other jurisdictions. In the United States, these interests are commonly protected through the right of publicity, which safeguards against the unauthorized commercial exploitation of a person's name, image and likeness. By contrast, South African law has developed protection through the broader framework of personality rights, particularly the right to identity. In *Kumalo v Cycle Lab (Pty) Ltd*, the South Gauteng High Court held that the unauthorized use of a person's image for advertising purposes, where it creates the false impression of endorsement or support, constitutes an infringement of that person's right to identity. The Court further recognized that consent to the taking of a photograph does not necessarily extend to its subsequent use in advertising.



The dispute arose following a *Goldberg-sponsored El Clásico watch party* held at Johnny Rockets, Lagos, in October 2024. The Applicant contended that he attended the venue with his wife, had made a private reservation and had expressly declined attempts to record him. He subsequently discovered that his image had appeared in Goldberg promotional advertisements aired on SuperSport and circulated on social media platforms.

The Applicant argued that he neither authorized nor consented to the commercial use of his image and that the advertisements created the impression that he was associated with or endorsed the brand. Relying on section 37 of the Constitution and sections 25, 26 and 30 of the NDPA, he sought declarations, injunctive relief and damages.

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The Respondent relied on a Crowd Release Notice displayed at the venue and argued that the Applicant voluntarily attended a public event where photography and videography were anticipated. It further relied on implied consent, legitimate interest and Article 17(8) (a) of the NDP ACT-GAID, contending that the footage formed part of event documentation and brand promotion.

Although the Court ultimately held that the Directive was inapplicable because it came into force after the events in dispute, it nevertheless observed that Article 17(8)(a) corroborates the requirement for express consent where images are used for profit or commerce-oriented advertising.

The Court ultimately found in favour of the Applicant. It held that the Respondent's commercial use of the Applicant's image without authorization violated both his constitutional privacy rights and the consent requirements under the NDPA. The Court awarded ₦10 million in damages, granted injunctive relief and ordered the removal of the relevant materials.

From Documentation to Commercialization The Court's Distinction

The most significant aspect of the judgment lies not in the reliefs granted, but in the distinction drawn by the Court. The Respondent argued that the Applicant could not reasonably expect privacy given that he attended a public event. The Court accepted, at least in part, that attendance at such an event reduced the Applicant's expectation of privacy. Yet it declined to end the analysis there.

Instead, the Court observed that "Though an individual may have less privacy in public, the use of his identifiable image for commercial advertisement without explicit consent raises a different issue."

The Court went further, noting that the deployment of the Applicant's image in Goldberg promotional advertisements "transcends ordinary event documentation."

This distinction is arguably the most important contribution of the decision. The judgment does not suggest that individuals may not be photographed or recorded at public events. Rather, it suggests that a different legal analysis arises when those images migrate from documenting an event to promoting a product. The issue, therefore, is not simply that an image was captured. The issue is how that image was subsequently used.

Consent and the Limits of Legitimate Interest

The Court's analysis was anchored in the consent framework established under the Act. Relying on section 25(1)(a), the Court reiterated that personal data may only be processed where the data subject has given consent for the specific purpose for which the data is to be processed.

It further emphasized the safeguards under section 26, including the requirement that consent must be affirmative, that silence or inactivity does not constitute consent, and that the burden of proving consent rests on the data controller.

Against that statutory framework, the Court concluded that the alleged Crowd Release Notice did not satisfy the requirement for express consent to the commercial exploitation of the Applicant's image.

Equally significant was the Court's treatment of legitimate interest. While section 25 of the NDPA recognizes legitimate interest as a lawful basis for processing personal data, section 25(2) makes clear that such interest cannot prevail where it overrides the rights, freedoms and interests of the data subject.

Applying that principle, the Court held that: "Legitimate interest under the Nigeria Data Protection Act, 2023 cannot override the fundamental freedom and proprietary control a data subject has over his image where commercial advertising is involved and consent was unreasonably obtainable."

The significance of the Court's reasoning lies in its treatment of commercial advertising as distinct from ordinary event documentation. In the Court's view, where an identifiable individual's image is deployed for commercial advertising purposes and consent can reasonably be obtained, reliance on legitimate interest becomes considerably more difficult to sustain. This is particularly so where the use of the image creates the impression of endorsement, affiliation or sponsorship by an individual who has not provided clear authorization.

The Boundaries of the Decision

Although the High Court's judgment in *Nwabueze* may not represent the final judicial position on the issues it addresses, it nevertheless provides important guidance on the commercial use of personal images under Nigerian law. At the same time, the judgment leaves room for further consideration of how some of the principles articulated by the Court may operate in future cases.

Most notably, the Court concluded that the use of the Applicant's image in Goldberg promotional advertisements "transcends ordinary event documentation", yet it did not set out a legal test for determining when event documentation becomes commercial advertising.

That omission is particularly noteworthy because neither the Act nor Article 17 of the Act's GAID provides detailed criteria for drawing that distinction. While Article 17(8)(a) permits implied consent for the use of images in reporting a public event and requires express consent for profit or commerce-oriented advertising, it does not explain how one is to distinguish between the two in practice.

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The significance of this gap becomes more apparent in circumstances that are less clear than those before the Court in *Nwabueze*. A sponsor's recap video posted on its own social media platforms may simultaneously document an event and promote a brand. Similarly, footage from a sponsored event may serve both informational and commercial purposes. Neither the judgment nor the applicable regulatory framework presently identifies the factors that should determine when such content ceases to be event documentation and becomes commercial advertising.

Future disputes may therefore require courts to consider:

- when event footage becomes commercial advertising;
- whether the prominence of an individual within the content matters;
- whether the use of a crowd shot should be treated differently from the use of a clearly identifiable participant; and
- the extent to which consent mechanisms must differ between event documentation and promotional campaigns.

These issues are likely to assume increasing practical importance as businesses continue to rely on event-based content, experiential marketing and user-generated media.

Practical Implications

The judgment serves as a reminder that the lawful capture of an image or recording does not necessarily determine the lawfulness of its subsequent commercial use. It reinforces the point that consent obtained for one purpose may be insufficient for another. Attendance at an event does not automatically translate into consent to become part of a commercial advertising campaign. Businesses that intend to use event footage, audience imagery or similar content for promotional purposes should therefore ensure that the scope of any consent obtained aligns with the intended use of the material.

The decision also highlights the limits of relying on broad notices and legitimate interest where identifiable individuals are subsequently featured in commercial content. Where the contemplated use is promotional in nature and consent can reasonably be obtained, organizations may need to assess carefully whether their existing practices adequately satisfy the requirements of the Act.

Conclusion

Nwabueze was decided within the familiar frameworks of privacy and data protection law. Yet the language of the judgment suggests a growing judicial recognition of interests extending beyond those concepts alone. By emphasizing control over the commercial use of an individual's image, referring to control over likeness, and rejecting attempts to justify such use without appropriate consent, the Court's reasoning reflects interests commonly associated with image or personality rights, even without expressly identifying them as such.

Viewed alongside *Ubom v Globacom (Nig.) Ltd*, *Nwabueze* suggests that questions concerning the commercial use of personal identity are assuming increasing prominence in Nigerian jurisprudence. The decisions demonstrate a growing judicial engagement with the legal implications of the unauthorized commercial use of an individual's image, likeness and identity through existing privacy, data protection and related legal principles.

As businesses continue to incorporate event footage and audience imagery into promotional campaigns, the decision serves as a timely reminder that the transition from documentation to commercialization is a legally significant step. Where that step is taken without clear authorization, liability may follow.

References

- *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, s. 37.
- *Nigeria Data Protection Act 2023*.
- *Nigeria Data Protection Commission, Nigeria Data Protection Act (General Application and Implementation Directive) 2025 (NDP Act-GAID 2025)*.
- *Larry Nwabueze v Nigerian Breweries Plc*, Suit No. ID/19573MFHR/2025 (High Court of Lagos State, Ikeja Judicial Division, 26 May 2026).
- *Ubom v Globacom (Nig.) Ltd* (2025) 6 NWLR (Pt. 1985) 157.
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Contact Us

 **Hermon Legal Practitioners** **Hermon Legal Practitioners** **@Hermonlaw** **hermon@hermonlaw.com** **hermonlaw.com** **Penthouse Suite, Theodolite House, 306
Ikoro Road, Anthony, Lagos** **+234-818-8210-444**

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