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**BIG BROTHER NAIJA PEPPER DEM – WHEN THE PEPPER BECOMES TOO HOT: CAN THE HOUSEMATES SUE THE PRODUCERS OF BIG BROTHER NAIJA FOR PSYCHOLOGICAL/ PSYCHIATRIC INJURY SUFFERED IN THE COURSE OF THE SHOW?**

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## **Introduction**

The rise in the popularity of reality TV shows like the Jeremy Kyle Show, Keeping up with the Kardashians, and Love Island has captivated the minds and hearts of viewers all over the world. Nigeria is not left out from the obsession with reality TV shows which has grown in popularity over the last decade.

One of the shows which has caught the hearts of Nigerians is Big Brother Naija. Indeed, the drama and controversy surrounding the show, particularly the recently concluded season, has been second to none.

This article briefly reviews the recent landmark ruling of the New South Wales Workers Compensation Commission in Australia<sup>1</sup> (“the Commission”) which in essence, redefined the relationship between a reality show network and its contestant. In the ruling, the Commission ordered the payment of compensation to the contestant for psychological/ psychiatric injury suffered in the course of the engagement. The article further considers the likely impact of the ruling on, arguably, the most popular reality TV show in Nigeria.

## **Summary of the facts and decisions reached in the Australian landmark ruling**

Nicole Prince (“the Applicant”) had applied as a contestant for the Seven Network (Operations) Limited’s (“the Respondent”) television program known as “House Rules” - a home renovation reality TV show which pitches pairs of contestants against others in order to win a prize at the end of the show. Teams are regularly voted off the show as the competition progresses.

According to the Applicant, she and her teammate were harassed and bullied by other contestants during the filming and the harassment and bullying was aggravated and encouraged by the Respondent. She further alleged that when the footage aired, it was selectively edited, and she and her teammate were portrayed as “bullies” in the episode. The Applicant thus claimed she was subjected to online abuse on social media including receiving threats of serious physical assault.

**“...the extent of the control and supervisory powers which the Respondent had over the Applicant including the obligation of the Applicant to abide by all the reasonable directions of the Respondent was indicative of an employer/ employee relationship.”**

She further claimed that since the program aired, she has not been able to get a job and had been informed this was due to the perception of her as a bully. In addition, she claimed she had considered killing herself and started drinking more alcohol in an attempt to self-medicate her injury.

The Applicant subsequently filed a worker's compensation claim, on the grounds of "injury caused by employers [sic] systematic isolation of myself and encouragement of bullying by co-competitors resulting in the following injuries: adjustment disorder, anxiety disorder, depression and PTSD."

The Commission held, *inter alia* that:

- a. The Applicant was a worker employed by the Respondent within the meaning of section 4 of the Workers Compensation Act 1987;
- b. The Applicant suffered a psychological/ psychiatric injury in the course of her employment with the Respondent; and
- c. The Respondent is to pay the Applicant’s reasonably necessary medical and treatment expenses.

In proving that the Applicant was an employee of the Respondent, the Applicant’s counsel submitted, *inter alia*, that the extent of the control and supervisory powers which the Respondent had over the Applicant including the obligation of the Applicant to abide by all the reasonable directions of the Respondent was indicative of an employer/ employee relationship.

In reaching the finding that the Applicant was a worker employed by the Respondent, the Commission noted, amongst other things, that:

- the rate of remuneration was set by the Respondent;
- the Applicant was an integral part of the show and essential to the very product and business in which the respondent was engaged;
- the Respondent had exclusive use of the Applicant for every hour of every day during which the show was being filmed;
- the Respondent had the power to veto the Applicant wearing certain clothes, and she was unable to wear any items which displayed business or brand names;
- the rules of the show provided the Applicant was a public face of the Respondent’s business;
- the activity being carried out by the Applicant was done for the benefit of the Respondent’s business, rather than any enterprise of her own. Any goodwill arising from that activity vested in the Respondent’s enterprise, rather than in the Applicant;
- the Applicant commenced and completed tasks when directed by the Respondent; and
- the Respondent provided tools and materials for the use of the Applicant.

Furthermore, the Commission accepted the evidence of the Applicant that there was editing of the footage from the program in such a selective manner as to portray her in a certain negative light. In addition, the Commission held that her employment with the Respondent was not only a substantial contributing factor to her injury, but was the main contributing factor to its development and there is no suggestion of any relevant history of pre-existing psychological or psychiatric injury or illness on the part of the Applicant.

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<sup>1</sup> [https://www.wcc.nsw.gov.au/\\_data/assets/pdf\\_file/0008/563048/2558-19-Prince-COD-SOR.pdf](https://www.wcc.nsw.gov.au/_data/assets/pdf_file/0008/563048/2558-19-Prince-COD-SOR.pdf)

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### **Our Comments**

In determining whether the relationship between the producers of the Big Brother Naija show and the Housemates can be classified as an Employer/Employee relationship, recourse must be had to Nigerian case laws on the subject. The Nigerian courts have, in a plethora of cases, distinguished between a contract of service (i.e. contract between an employer and employee) and a contract for service (i.e. contract with an independent contractor). In answering the question arising as to whether a relationship is an employment relationship or otherwise, the courts have held that reference must be made to the facts and circumstances of each case. The factors which have guided the courts in reaching this determination include:

- the test of control i.e. the level and degree of control exercised by the principal over the subordinate;
- how integrated the subordinate is in the principal's enterprise; and
- who bears the financial risk etc.

Furthermore, the International Labour Organization (ILO) in the Report titled, The Scope of the Employment Relationship (ILO Office: Geneva), 2003 provides that according to certain criteria, an employment relationship exists where a person works or provides services in a situation of subordination to or dependency on the employer. It further provides as follows:

*“The determination of the existence of an employment relationship should be guided by the facts of what was actually agreed and performed by the parties, and not by the name they have given the contract. That is why the existence of an employment relationship depends on certain objective conditions being met (the form in which the worker and the employer have established their respective positions, rights and obligations, and the actual services to be provided), and not on how either or both of the parties, describe the relationship”.*

The modus operandi of the Big Brother Naija show as perceived by the viewers suggests that the producers of Big Brother Naija exercise, to a large extent, direct supervision and control over the housemates. Whilst it is unlikely that the producers of Big Brother Naija would have entered into, or described the nature of their relationship with each of the contestants as an employer/employee relationship, the risk of re-characterizing same as such is imminent if the determining factors as outlined by the Nigerian courts supports an employer/ employee relationship.

**“If it can be successfully argued that tension is encouraged in the Big Brother Naija House or that hostility and negativity are promoted amongst, the Housemates, the producers of the show may be found culpable, in light of the landmark ruling in Australia.”**

Also, it may not be farfetched that the housemates may be able to institute a claim against the Big Brother Naija producers for psychological/ psychiatric injury suffered in the course of the show, in light of the controversies which trailed the actions of some of the housemates of the recently concluded season.

However, the success of their claim would depend largely on the merits of the case of the housemate concerned and the medical evidence led to support same. If it can be successfully argued that tension is encouraged in the Big Brother Naija House or that hostility and negativity are promoted amongst, the Housemates, the producers of the show may be found culpable, in light of the landmark ruling in Australia.

### **Conclusion**

In view of the advent of social media, there is undoubtedly inherent pressure on the producers of Reality TV shows to produce intriguing content that matches the appetite of their viewers. Caution must however be exercised by such producers to balance the welfare and general well-being of contestants viz a viz their desire to maximize profit.

Therefore, it will be advisable that both the organisers and contestants on the show, seek legal advice on the nature of each party's rights and obligations. These must be carefully considered and adequately documented to minimize the risk of re-characterizing the relationship between the contestants and the producers, to ensure it is not at variance with the objectives of the parties.

As the Australian ruling, which has a persuasive effect<sup>2</sup> in Nigeria portends, a new era of reality TV may well be emerging.

<sup>2</sup> Being a foreign decision of the courts of a Commonwealth country with a common law system, our judges may be influenced by the ruling of the Australian Workers Compensation Commission when deciding a similar case before it, even though they are not bound by the ruling.

For any comments and additional information on the issues discussed, please contact:

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