

## **LOCUS STANDI IN NIGERIA: AN IMPEDIMENT TO JUSTICE**

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### **Introduction**

Locus Standi can be defined as the existence of a right of an individual or group of individuals to bring an action before a court of law for adjudication. It is used interchangeably with terms like “Standing to Sue” or “Title to Sue”.

The concept of Locus Standi in Nigeria has been misunderstood and misapplied by Nigerian courts that it now works injustice in the Nigerian Legal System This article will in the main, attempt to x-ray the origin of the problem, how courts in other jurisdictions especially in England, have applied the law on locus standi and then offer a way out.

### **The origin of the problem**

The origin of the confused state of locus standi in Nigeria is no doubt traceable to the decision of the Supreme Court of Nigeria in the case of SENATOR ABRAHAM ADE ADESANYA V. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & ANOR. (1981) 2 NCLR 358 (hereinafter referred to as “Adesanya’s case”) . Of particular importance in this regard is the judgment of MOHAMMED BELLO JSC (as he then was) who in a seven page judgment, read the innocuous section 6(6)(b) of 1979 Constitution of Nigeria into the law of locus standi.

Section 6(6)(b) of the Constitution of Nigeria 1979 (this section is *in pari materia* with Section 6(6)(b) of 1999 Constitution of Nigeria) provides as follows:

***“The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.”***

Bello JSC in Adesanya’s case held at pages 385-386 that:

***“it seems to me that upon the construction of the subsection, it is only when the civil rights and obligations of the person who invokes the jurisdiction of the court, are in issue for determination that the judicial powers of the court may be invoked. In other words, standing will only be accorded to a Plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of.”***

This personal opinion of Bello JSC in Adesanya’s case has triggered off the problem bedeviling locus standi in Nigeria. This is because virtually all the decisions of courts coming after Adesanya’s case took Bello’s opinion as being the decision of the Supreme Court on that issue and as such a binding precedent. It will be shown that the Supreme Court was not unanimous on this point and that Bello’s view did not even represent the majority opinion of the Justices of the Supreme Court that decided Adesanya’s case.

The first point to note is that Mohammed Bello JSC did not deliver the lead judgment in that case. Granted that all the seven Justices of the Supreme Court that decided that case were in agreement that Abraham Adesanya did not have the locus standi to bring that action, but they have different reasons for that.

TUNDE OGOWEWO in his article “The problem with Standing to Sue in Nigeria” (1995) Journal of African Law Vol. 39 No. 1 at Pg. 9 posited that:

***“A close study of the case will reveal that the Adesanya court was in fact divided on this issue with no discernable majority. It will be apparent by now that there were two aspects to the C.J.N.’s construction of section 6(6)(b): first he saw the provision as creating an actio popularis in non-Chapter IV constitutional litigation; secondly, he did not see the provision as laying down a standing requirement.”***

A close reading of Adesanya’s case will reveal that the court was not unanimous in holding that section 6(6)(b) of the Constitution of Nigeria laid a test for locus standi in Nigeria. The reasoning of Fatayi Williams CJN (as he then was) and Justice Bello each commanded equal support on this point. While Justices Nnamani and Idigbe agreed with Justice Bello that section 6(6)(b) of the Constitution laid a test for locus standi, Justices Sowemimo and Obaseki were on the side of Fatayi Williams CJN. Justice Uwais who could have resolved this deadlock took the view that the interpretation to be given to section 6(6)(b) will depend on the facts and circumstances of each case and that no hard and fast rule should be set-up.

It is submitted with respect that subsequent decisions of the court including those of the Supreme Court which treated Adesanya’s case as deciding that section 6(6)(b) of the Constitution laid down the test for locus standi in Nigeria exhibit a misunderstanding of that decision.

Oputa JSC (as he then was) in AG KADUNA STATE V. HASSAN (1985) 2 NWLR (Pt 8) 483 admitted this lack of consensus in Adesanya’s case when he said at page 521 that:

***“It is on the issue of locus standing that I cannot pretend that I have not had some serious headache and considerable hesitation in views on locus standi between the majority and minority judgments – between Justice of equal authority who were almost equally divided.”***

Interestingly, most of the later decisions of the courts did not put this assertion into considerations. In most of the cases, the courts proceeded from the premise that for a Plaintiff to have locus, he must show that his civil rights and obligations have been or are likely to be affected by the action as held in the Adesanya’s case.

What looked like an oasis in the desert of the confusion on locus standi is the dissenting decision of Ayoola JCA (as he then was) in F.A.T.B.V. EZEGBU (1994) 9 NWLR 149, 236 when he stated thus:

***“I do not think section 6(6)(b) of the Constitution is relevant to the question of locus standi. If it is, we could as well remove any mention of locus standi from***

***our law book. Section 6(6)(b) deals with judicial powers and not with individual rights. Locus standi deals with the rights of a party to sue. It must be noted that standing to sue is relative to a cause of action.”***

Ayoola JCA (as he then was) seemed to be on his own with this his new found position as most other cases that came after that did not give this line of thought a consideration.

However, four years after, in a judgment that attracted the concurring opinion of the other Justices that heard the case, Ayoola properly put in perspective section 6(6)(b) of the Constitution of Nigeria when he held in NNPC V. FAWEHINMI (1998) 7 NWLR (pt. 559) 598 at 612 that:

***“In most written Constitutions, there is a delimitation of the power of the three independent organs of government namely: the Executive, the Legislature, and the Judiciary. Section 6 of the Constitution which vests judicial powers of the Federation and the States in the courts and defines the nature and extent of such judicial powers does not directly deal with the right of access of the individual to the court. The main objective of section 6 is to leave no doubt as to the definition and delimitation of the boundaries of the separation of powers between the judiciary on the one hand and the other organs of government on the other, in order to obviate any claim of the other organs of government, or even attempt by them, to share judicial powers with the courts. Section 6(6)(b) of the Constitution is primarily and basically designed to describe the nature and extent of judicial powers vested in the courts. It is not intended to be a catch-all, all-purpose provision to be pressed into service for determination questions ranging from locus standi to the most uncontroversial questions of jurisdiction.”***

This dictum I submit properly captures the province and effect of section 6(6)(b) of the Constitution and nothing more. Section 6(6)(b) is not intended to be a yardstick for determining locus standi.

Interestingly, the Nigerian Supreme Court in the case of OWODUNMI V. REGISTERED TRUSTEES OF CELESTIAL CHURCH & ORS. (2000) 10 NWLR (Pt. 675) 315 has accepted this position of Ayoola JCA on the exact effect of section 6(6)(b) of the Constitution. The Supreme in Owodunmi’s case held that the Supreme Court in Adesanya’s case did not after all by a majority decision subscribe to Bello’s view on section 6(b)(b) laying down a requirement of standing. Ogundare JSC who delivered the lead judgment with no dissenting judgment, after reviewing Adesanya’s case said at page 341 f-h:

***“A word or two on Adesanya v. President of the Federal Republic of Nigeria(supra). It appears that the general belief is that this court laid down in that case that the law on locus standi is now derived from Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1979 (re-enacted in section 6(6)(b) of the 1999 Constitution).....I am not sure that this general belief represents the correct position of the seven Justices that sat on that case only 2 (Bello and Nnamani JJ.SC) expressed view to that effect.”***

Ogundare JSC stated further in the judgment that:

*“From the extracts of their Lordship’s judgments I have quoted above one can clearly see that there was not majority of the court in favour of Bello JSC’s interpretation of Section 6 subsection (6)(b) of the Constitution.”*

On the interpretation of Section 6 (6)(b) of the Constitution, Ogundare JSC stated that:

*“In any respectful view, I think Ayoola JCA (as he then was) correctly set out the scope of section 6 subsection (6)(b) of the Constitution ...in NNPC V. Fawehinmi & Ors.”*

### **THE ATTITUDE of courts in other jurisdictions**

In most other jurisdictions, there is a distinction between the test of locus standi in private law cases and public law cases. In private law cases, the court looks at the course of action to see if the Plaintiff has locus standi, while in public law cases, the test is the existence of sufficient interest. Sufficient interest is normally given a liberal interpretation.

In England, following the liberal interpretation of sufficient interest, in the case of R.V. FELIXSTOWE J.J., EXPARTE LEIGH QB 583 (1987), a journalist sought a declaration that the policy adopted by the chair of the Justices of not revealing the names of sitting Magistrates for security reasons was unlawful.

In the case of R.V. INSPECTORATE OF POLLUTION EXPARTE GREENPEACE (No. 2) 1994 4 ALL ER 328. The court allowed Greenpeace (an organization) to challenge British Nuclear Fuel’s decision to test its new Thernal Oxide reprocessing plant at Sellafield, Cumbria. In doing so, the court placed particular reliance on the fact that Greenpeace was a highly respected and responsible environmental organization which could mount a more focused challenge than an individual.

In the case of R.V. FOREIGN SECRETARY, EXPARTE WORLD MOVEMENT LIMITED, 1WLR 386 (1995), a pressure group challenged the decision of the Secretary of State for Foreign and Commonwealth Affairs to grant overseas aid for the purpose of constructing a hydro electric power station in Malaysia. Also in R.V. SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS EXPARTE REES- MOGG QB. 552 (1994) a citizen because of his sincere concern for constitutional issues challenged the ratification of a treaty.

All these cases came to court by way of Application for Judicial Review.

In summary, the implication of all the foreign cases is that anybody including an NGO that is able to establish a sufficient interest should be allowed to challenge the validity of an act.

Under The Gambian Legal System, any citizen of The Gambia has locus standi to go to court to challenge an unconstitutional act. That was the decision of the Supreme Court of The Gambian in the recent case of UNITED DEMOCRATIC PARTY

(UDP) & ORS VS. THE ATTORNEY GENERAL OF THE GAMBIAN (Unreported) SUIT NO S.C.C.S. NO: 3/2000 a judgment delivered on February 14, 2001.

Also in Ghana, any citizen of Ghana can bring an action for a declaration of an act unconstitutional. That was the decision of the court in TUFFUOR V. ATTORNEY GENERAL (1980) G.L.R. 637.

One does not have to show how the act affects him personally, once it involves violation of a constitutional provision, any person or organization can challenge the act.

The above two decisions in the Gambia and Ghana are in line with the opinion of Fatayi Williams CJN( as he then was) in Adesanya's case. The learned CJN opined that any Nigerian citizen has a duty to see that he is governed in accordance with the Constitution. That means that such a person can go to court to challenge an unconstitutional act.

HURILAWS, an NGO in Nigeria with a bias for Human Rights litigation has challenged the constitutionality of some acts of the government. But most of such cases were lost on grounds of lack of locus standi. The reason is always because it cannot establish that its civil rights and obligations have been affected by the act complained about.

HURILAWS has challenged the constitutionality of the Sharia Penal Code Law of Zamfara State of Nigeria in Suit No ZMS/GS/17/2000. But the High Court of Zamfara State held that it had no locus standi to do that. Also in HURILAWS V. NIGERIAN COMMUNICATIONS COMMISSION & ORS.(Unreported) Suit NO FHC/L/CS/39/2000 where HURILAWS challenged the action of the government in setting up an inter-ministerial Committee to oversee the licensing of GSM operators contrary to the provisions of Nigerian Communications Commission Act 1992. The court held that HURILAWS had no locus standi to do that.

The writer attended a conference in The Gambia recently where the problem of locus standi in administrative justice and human rights enforcement was discussed. It was the consensus opinion of the participants that Locus Standi as it is applied in some African Countries (Nigeria inclusive) impedes access to court which in turn affects access to justice. The communiqué issued at the end of the conference called on courts in the affected countries to give liberal interpretation to who should have locus standi to bring an action in court especially in Public Interest Litigation (PIL).

Lord Diplock had in INLAND REVENUE COMMISSIONERS V. NATIONAL FEDERATION OF SELF EMPLOYED AND SMALL BUSINESS LTD. (1981) 2 WLR 723 at Page 740 said:

***“ it would in my view be a grave lacuna in our system of public law if a pressure group like the Federation or even a single public spirited tax payer were prevented by outdated technical rules of locus from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped”***

Lord Diplock who I will describe as an exponent of Abolitionist school advocates for a complete abolition of the test of locus standi especially in public interest litigation. He views that the court should concern itself with the merit of the matter and not the threshold issue of locus standi.

The argument being brandished by the opponents of this view is that striking down the law of locus will open up the floodgate of litigation. But I am of the opinion that the interest should really be on rule of law and justice and not whether the floodgate will be opened or not.

### **The way out**

Having identified the genesis of the confused state of law on locus standi in Nigeria, I will now suggest a way out.

Our courts should first of all appreciate that the Supreme Court did not in fact by majority in Adesanya's case decide that section 6(6)(b) of the Constitution of Nigeria should be the test for locus standi. At best, it was the opinion of Mohammed Bello JSC with Nnamani JSC and Idigbe concurring. Other Justices of the Supreme Court that sat in that panel never subscribed to that view. This position has found support in the decision of the Supreme Court in Owodunmi's case (supra).

Once this point is well noted, the road will be clear for the courts to be free to follow the better approach to the issue of locus standi as done in other jurisdictions. This is by adopting the cause of action test in private law actions and sufficient interest test in public law actions with sufficient interest given a liberal interpretation. In other word, one does not necessarily have to show that his civil rights and obligations are affected by the act complained about especially in public interest litigation.

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