

MISCARRIAGE OF JUSTICE IN THE RESTRICTIVE APPLICATION OF LOCUS STANDI UNDER NIGERIAN LAW

Kingsley O. Mrabure, Ph.D*

Abstract

Under the narrow application of locus standi, a person who does not have interest or sufficient interest, nor has suffered nor likely to suffer specific or personal injury in respect of a matter has no locus standi to sue nor obtain remedy in Court. The reason for the above is that public rights and duties which are owned by all members of the public are not litigable by one member of the society in Courts. They are only litigable where an individual has suffered special damages over and above the one suffered by other members of the public. Therefore, labelling every intervener in the public interest as a busy body will work hardship and will inevitably make justiciable wrongs non justiciable. Developed legal systems such as Britain, United States, Australia and India have laws which encourage individual citizens to participate actively in the enforcement of law towards liberalising the rules of standing. Nigeria should take a cue from this.

Introduction

Locus standi originated from Roman Law that formed bulk of the common law English legal system. It is also trite that part of Nigerian law and legal system is based on the received English law and statutes of general application. It is a Latin phrase meaning “place to stand.”¹ Bello JSC (as he then was) in *Senator Adesanya v President of Nigeria*² defined *locus standi* as the right of a party to appear and be heard on the question before the Court or tribunal.

Obaseki JSC (as he then was) thinks that *locus standi* or standing to sue is an aspect of justiciability and as such the problem of *locus standi* is surrounded by the same complexities and vagaries

* Lecturer, Faculty of Law (Oleh Campus), Delta State University. E-mail: kingomote@yahoo.com; GSM No: 07035420479.

¹ Bryan, G. *Black's Law Dictionary* (West Group, Minn, 1999) p. 952.

² [1981] 2 NCLR 358. Though *Adesanya's* case was not the first case on locus standi to be decided by the Supreme Court, this case has become a *cause celebre* in our judicial system.

inherent in justiciability. He went on to assert that the fundamental aspect of *locus standi* is that it focuses on the attention of the capacity, interest and competence of the party seeking to get a complaint before the High court.

In the same vein, Susu³ perceives *locus standi* as the legal right to seek judicial intervention in a controversy and to invoke judicial determination of the rights and obligations of the parties to the dispute.

Capacity to Sue

In Nigeria, when and who is clothed with *locus standi* to sue is not in doubt as the Nigerian Constitution has defined same. Section 46(1)⁴ of the Constitution of the Federal Republic of Nigeria provides thus:

Any person who alleges that any of the provisions of this chapter has been, is being, or likely to be contravened in any State in relation to him may apply to a high court in that State for redress

It is unarguably clear that the fundamental rights chapter of the Nigeria Constitution covers all the personal and proprietary rights which are capable of enforcement by a human being.

Where however, the Constitution does not specifically state the measure of *locus standi* required in relation to a particular matter, then according to the Courts, the provisions of section 6 (6)(b)⁵ 1999 Constitution as amended will apply. The section runs thus:

The Judicial powers vested in accordance with the foregoing provisions of this section, shall extend to all

³ Susu, B. *Locus standi*, "The Constitution (1979) Confusion in the Court", Vol. 2 1983 *Nigeria Bar Journal*, 81 at 82.

⁴ This section deals partly with chapter 4 of 1999 Constitution which deals with Fundamental rights.

⁵ *Ibid.* Judicial power includes all the inherent powers of a Court. This involves the power to regulate its proceedings, punish for contempt and regulate the exercise of its discretion.

matters between persons, 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 the that person.

The above section deals with the scope and content of the judicial powers vested by the Constitution in the Courts which provides the basis for judicial intervention in such matters. It does not confer *locus standi* independently as other factors such as sufficient interest are also considered. Sufficient interest lacks a precise meaning and an exact definition. The Courts still adopts a narrow interpretation to this term in constitutional matters.

Sufficient Interest Test

Nigeria has adopted the sufficient interest requirement in the determination of the standing of a plaintiff. The Court in the case of *Busari v Oseni*⁶ provided the yardstick for determining the *locus standi* of a plaintiff thus:

Summarily, the determination of locus standi involves a very difficult task of the Judge vindicating of the rights of plaintiff or claimant to rights of the defendant not to be brought into unnecessary litigation by a professional litigant or busy body.

Further on this same issue, the court in the case of *Bewaji v Obasanjo*⁷ asserted that:

A plaintiff must have been conferred with exceptional and tangible interests, which are justifiable before he can be accorded with locus standi in a claim. This interest of a claimant must be capable of being affected by the complaint sought to be litigated by him. The likelihood of sufferance of injury or damage by the plaintiff must be apparent. The determination of these ingredients

⁶ [1992] 4 NWLR (Pt 257)589.

⁷ [2009] 9 NWLR (Pt 1093)987.

depends on the particular facts and circumstances of each case.

In the case of *B.M. Limited v Woemann Line*,⁸ it was held that *locus standi* is unequivocally a threshold matter. It is not dependent on the showing of the plaintiff's case in the statement of claim. In other words, the question whether a plaintiff has locus standi to sue is determinable from the totality of averment in the statement of claim. If there is no locus standi to sue, it is not necessary to consider whether there is a genuine case on the merit.

The law is now settled that a plaintiff will have *locus standi* in a matter only if he has a special legal right or alternatively, if he has sufficient or special interest in the performance of the duty sought to be enforced or where his interest is adversely affected. What constitutes a legal right, sufficient or special interest or interest (adversely affected) will depend on the facts of each case. Whether an interest is worthy of protection is a matter for judicial determination having regard to the claim.

Succinctly, for a better understanding of locus standi and sufficient interest. Judicial authorities particularly averments in the statement of claim and depositions in the plaintiff's affidavit will be looked at to determine whether a plaintiff has shown enough capacity to institute the action.

By the present state of the law in Nigeria, the determination of *locus standi* zeros in two major and telling words which are "interest." and "sufficient interest". They both constitute the sufficient interest concept. The term sufficient interest is broad and generic. It is also vague and nebulous. It lacks a precise and legal meaning. It could only be determined in the light of the facts and circumstances of the particular case. The question of what constitutes sufficient interest is one of mixed law and fact⁹. That is to say ,it is not a question of law only or a question of facts only but both.

In arriving at a decision one way or the other, the Court will be guided by the overall interest of the parties in the litigation

⁸ [2009] 11 NWLR (Pt 1157)879.

⁹ See *Onwuta v A.G. Anambra* [2006] NWLR (Pt 333) 1777.

process in the absence of a specific statute. This involves two apparently conflicting duties of the court to vindicate the rights of the plaintiff to set the litigation process in motion and the corresponding right of the defendant not to be dragged into unnecessary litigation by a person who has no standing in the matter or a mere busy body parading the corridors of the Courts.

Before a person could be said have locus standi in a matter, he must show that he has sufficient interest which is enforceable in law and not one that he shares in common with other members of the society.

What then is sufficient interest? The Court answered this question in the case of *Mohammed v Attorney General, Plateau State and Anor*¹⁰, when it declared that sufficient interest means: “an interest which is peculiar to the plaintiff and not an interest which he shares in common with the general members of the public”.

In *Maradesa v Governor of Oyo State*,¹¹ the plaintiff brought an application challenging the appointment, selection and nomination of a particular chief. The Court stated inter alia that the question of what constitutes sufficient interest is one of mixed fact and law, that is, a question of fact and the degree of relationship between the applicant and the matter to which the application relates. The term interest should not be given a narrow construction, but should be regarded as including any connection, association or inter-relation between applicant and the matter to which the applicant relates. The plaintiff/applicant here failed to show that he belonged to the Ruling house entitled to present a candidate to fill any vacancy, or that he was a member of the Orile Owu Community, or kingmaker. He therefore had no standing to challenge the defendant’s action.

Case Law

¹⁰ [1980] 1 PLR 701 at 717. See *Ogele v Omoleye* [2006] All FWLR (Pt 296)813. The claim of the plaintiff as contained in his pleadings must therefore disclose a legal interest.

¹¹ [1983] 3 NCLR 184.

Locus standi cuts across all fields of legal jurisprudence. In the constitutional setting, it is found in the *locus classicus* of *Adesanya v President of Federal Republic of Nigeria*¹² and a plethora of cases¹³ wherein the Supreme Court adopted the restrictive interpretation of *locus standi*.

In Nigeria, the Courts have tended to adopt a narrow interpretation towards *locus standi* on constitutional matters. The authority of *Adesanya v President, Federal Republic of Nigeria and Ors*¹⁴ and the recent case of *Centre for Pollution Watch v N.N.P.C*¹⁵ are apt on this. In the former case, the plaintiff appellant (Adesanya) who was a Senator at the material time of the case participated in the process leading to the confirmation of the appointment of Justice Ovie Whisky as the chairman of Federal Electoral Commission. The appellant brought this suit against the President of Nigeria for a declaration that the appointment of the 2nd defendant respondent by name Justice Ovie Whisky as chairman of the Federal Electoral Commission (FEDECO) was unconstitutional as he was at the time of appointment the substantive Chief Judge of Bendel State and was therefore disqualified from being a member of FEDECO and an injunction restraining the President from swearing in the 2nd defendant from acting or purporting to act as a member or as chairman of FEDECO. On appeal to the Supreme Court on the determination of the civil rights and obligations of the plaintiff, it unanimously denied him the *locus standi* to sue. The gravamen for the judgment, though not plausible were as follows: a person who seeks a remedy in a court of law in Nigeria against an unconstitutional act must show that he is directly affected by the act

¹² *Supra* n. 2.

¹³ See *Olawoyi v A.G Northern Region* [1961] 1 All NLR 1., *Attorney-General, Eastern Nigeria v Attorney General, Federation of Nigeria* [1964] 1 All NLR 224, *Gamioba v Ezezi II* [1961] All NLR 584, *Falana v NASS* Unreported Federal High Court decision FHC/ABJ/CS/640/10, *Ovie Whiskey v Olawoyi* [1985] 6 NLR 156, *Fawehinmi v Mrs. Maryam Babangida* Unreported Suit No.LO/532/90 and a host of other cases.

¹⁴ Decisions of the Court in *Bewaji v Obasanjo* [2009] 9 NWLR (Pt 1093) 987, *Owodunni v Reg Trustees* (Pt 675)319 and *Keyamo v House of Assembly, Lagos State and ors* [2000] 12 NWLR (Pt 680) 201 fall into this.

¹⁵ [2013] All FWLR (Pt 696) 563.

before he can be heard; a general interest common to all members of the public is not a litigable interest to accord standing in law; there must be an assertion of a right by such person peculiar or personal to him, and that right must have been infringed, or there must be a threat of such infringement.

It is therefore pertinent and germane to look at the dictum of Fatai-Williams CJN in *Adesanya v President of Federal Republic of Nigeria and ors*¹⁶ where he said:

Nigeria is a developing country a multi-ethnic society and a written federal constitution, where rumours mongering is the past time of market places and construction sites. To deny any member of such a society ... access to court of law to air his grievance on the flimsy excuse of lack of sufficient interest is to provide a ready recipe for the organized disenchantment with the judicial process.

Ironically, it should be noted that in spite of all the high flowering judicial encomium showered by Fatai-Williams CJN in his dictum as to the need to allow unfettered access by Nigerians to Court and be heard than to be refused access to Courts because of the ubiquitous concept of *locus standi*. His Lordship in the end still denied *locus standi* to the appellant in this case. His Lordship cannot jettison or overturn the existing case law. He expressed a personal opinion.

The Supreme Court's decision in *Adesanya v President Federal Republic of Nigeria*¹⁷ was restrictive. The Supreme Court held further in the case that in respect to the determination of the civil rights and obligation, the plaintiff/appellant was denied *locus standi* to challenge the constitutional act of the Government.

A decade before the decision of *Adesanya v The President of Federal Republic of Nigeria*¹⁸, the Court in *Olawonyi v A.G*

¹⁶ *Supra* n. 2.

¹⁷ See Okany O *Nigeria Administrative Law*, (Nigeria, First Publishers, 2007) Pps325-339.

¹⁸ See Mowoe K *Constitutional Law in Nigeria* (Lagos, Malthouse, 2008) p. 37.

*Northern Region*¹⁹ also enunciated the principles pertaining to locus standi. The facts of the case were that the plaintiff sought a declaration that Part VIII of the Children and Young Person's Law, 1958 had been rendered void by the provisions of sections 7-9 of the sixth schedule to the Nigeria Constitution (Order) Council. The above law in question prevented participation of Juveniles in political activities. Appellant challenged the validity of the above law as it was in breach of his fundamental right as to freedom of conscience and expression under the Nigeria Constitution (Order in Council) 1954. The appellant had children he wanted to train politically and because of that there was a danger of his rights being infringed. The Court denied him the locus standi to bring this action. The Supreme Court held in respect to *locus standi* thus:

The appellant did not in his claim allege any interest but his counsel said that the evidence would be that the appellant had children whom he wished to educate politically. There was no suggestion that the appellant was in imminent danger of coming into conflict with the law or that there had been any real or direct interference with his normal business or other activities. In my view the appellant failed to show that he had a sufficient interest to sustain a claim. It seems to me to hold that there was an interest here would amount to saying that a private individual obtains an interest by mere enactment of a law with which he may in the future come in conflict and I would not support such a proposition.²⁰

The cases referred to above give a clear insight on the background on judicial approach to the issue of *locus standi*, a fortiori. The restrictive judicial approach of the concept of *locus standi* is not to deny access to the courts nor to impede access to justice. It is not a negative approach by a positive one having the effect of distinguishing between general and personal right. The Claimant in the former situation has no locus standi while the latter

¹⁹ [1961] 1 All NLR p. 1.

²⁰ *Id* at 345.

has. The stream of justice should not be blocked by spurious claims of general interest.

Therefore, *Adesanya's* case still holds sway in constitutional matters pertaining to the determination of the civil rights and obligations of a plaintiff.

A similar decision was handed down in the case of *Alhaji Barisu Dutse v Governor of Kano State and ors.*²¹ There, the plaintiff sought a declaration, inter alia that the purported dissolution of the Kano State Local Government Councils and the appointment of Committees of Management was unconstitutional. In other words, the plaintiff was seeking the annulment of an order made by the Governor dissolving all the twenty local government councils of Kano State. It was clear that the plaintiff was suing in his personal capacity and not on behalf of the local government councils or even on behalf of his own council. It was held, by Musdapher, C.J. that the plaintiff being a mere "busy-body" had no *locus standi* to bring the action solely by himself to enforce a public right.

For the Attorney-General of the Federation to have *locus standi*, the federation as the plaintiff has to show that it has an interest which is affected or is likely to be affected by the action complained of. In *Attorney-General of the Federation v Attorney-General of Imo State and 2 Others*,²² the Attorney-General of the Federation filed an action in the Supreme Court against the Attorney-General of Imo, Ondo and Lagos States jointly and severally as defendants as representatives of the Executive and Judicial branches of their respective governments. He claimed a number of declarations and also sought orders of prohibition and injunction.

This action was in connection with three suits pending in the High Court of Imo, Ondo and Lagos States respectively. The case in Imo State High Court was between Attorney-General of the State (not as the representative of Imo State) and Federal Electoral Commission while the dispute in Ondo State and Lagos State High

²¹ Suit No. K/134/80 (unreported).

²² [1983] 4 NCLR 178. SC 88/1982. Friday 17th December, 1982. See Eka B U *Judicial Control of Administrative Process in Nigeria*, (Ile Ife, Obafemi Awolowo University Press Limited, 2001) p. 45.

Courts were between private persons and Federal Electoral Commission. No legal right of the Federation nor that of any State was involved in any of the suits. The defendants raised a preliminary objection at the trial that the Supreme Court has no original jurisdiction to hear the matter as it does not fall under section 212(1) of the 1979 Constitution. The court held that the Attorney-General of the Federation had no *locus standi* if the Federation as the plaintiff had not shown that it had an interest which is affected or likely to be affected by the action complained of. The Court further held that it must be the legal right of the State invoking the original jurisdiction of the Court. The dispute had to involve either a constitutional right vested in the State or affect its existence or prospective legal right or interest.

The case of *Ogunsanya v Ishaya Adu*²³ is also in tandem with the former cases on the narrow application of *locus standi*. The plaintiff, the Chairman of the defunct Nigerian People's Party sued the defendant who resigned his membership of the party and at the same time resigned his ministerial appointment. The President refused to accept his resignation. He later withdrew his resignation on the President's advice. The plaintiff filed an action against the Minister seeking a declaration that the defendant had ceased to be a Minister by his letter of resignation. His *locus standi* was challenged. The Court held that the plaintiff had no *locus standi* in the relationship between the defendant and the President. The Nigerian People's Party (NPP) had sealed an alliance of co-operation with the ruling National Party of Nigeria (NPN). It was on the platform of this new alliance that the defendant, a member of the minority NPP was made a Minister. Why then could the plaintiff, who the chairman of the said NPP challenged the defendant's decision to continue to participate in the NPN Government after the alliance broke up? This was a mute point.

²³ [1982] 3 NCLR 529. See Oyudo G. O. *Locus Standi and Declaratory Actions* (Owerri, The Government Printer, 1987) pp. 1-2.

In *Akure v NPN Benue State and 2 Others*²⁴, wherein the plaintiff brought this action seeking a declaration among other things that the nomination or the re-nomination of Mr Aper Aku on the platform of the National Party of Nigeria to contest the then forthcoming nomination exercise for the office of the Governor of Benue State of Nigeria, would adversely affect the right and interest of the plaintiff as a tax payer in Benue State of Nigeria. The learned counsel for the defendant brought a motion on notice supported by an affidavit asking the court to strike out the entire suit on grounds inter alia that it was speculative, frivolous, vexatious, an abuse of court process and disclosed no cause of action. Furthermore, that the suit was scandalous and intended to embarrass and defame Aper Aku, who was the target of the suit. He was not made a party thereto and that the plaintiff had no *locus standi* to sue the defendant on the issue of nomination of a gubernatorial candidate. The Court held inter alia that there was no locus standi where the relief sought by the plaintiff would confer no tangible benefit on him.

It was stated further that the Courts must operate within the perimeter of the judicial powers vested in it by section 6(6)(b) of the Constitution and could only take cognisance of justiciable actions properly brought before them in which there is dispute, controversy, and above all, in which the parties have sufficient interest.

In *Fawehinmi v Mrs Maryam Babangida*²⁵, the defendant was the First Lady of Nigeria between 1985 and 1993. As First Lady, her office initiated a project known as the Better Life Programme, on which a sizeable portion of public funds was expended. The plaintiff brought this action to challenge the unauthorized and extra-budgetary expenditure of public funds on the programme. Ope-Agbe J in the High Court of Lagos State in line with the narrow interpretation of locus standi which presently prevails in Nigerian law held that a tax paying citizen of Nigeria lacked locus standi to challenge the expenditure of public funds by the office of the First Lady on the programme.

²⁴[1984] 5 NCLR 449. MD/61/82 Thursday, 14th October 1982. See Badaiki D, and Agbaje F 'Landmark in Legal Development', Agbaje et al (ed.) by *Precedent and Locus Standi in Nigeria*, (Lagos, Noble Press Ltd, 2008) at p. 339.

²⁵ Unreported Suit No: LO/532/90.

Worth mentioning is the case of *Keyamo v House Of Assembly, Lagos State and others*.²⁶ By an originating summons pursuant to Order 3, rule 2(2) and Order 46 rule 2 of the High Court of Lagos State (Civil Procedure) Rules 1994, the appellant sued the respondents that while 1st respondent was contesting for the position of Governor of Lagos State in 1998, a certain Nigerian, Bola Ahmed Tinubu, presented to the plaintiff as a prospective voter and to all voters, and indeed to the Independent National Electoral Commission (INEC) some dubious certificates. Upon being served, the respondents filed an application for an order striking out the appellant's suit on the grounds that the appellant has no *locus standi* to institute the suit. The Court thus granted the respondents' motion and struck out the suit. The appellant was dissatisfied with the ruling of the High Court and he appealed to the Court of Appeal. The provisions of sections 4(6) and (7), 6(6)(b) and 188 of the 1999 Constitution was considered by the court. Unanimously dismissing the appeal, the court held that the appellant can only take benefit of the provisions of section 6(6) (b) of the 1999 Constitution if and only if his civil rights and obligations are violated or threatened. The appellant had not established that his civil rights are being threatened. He had not shown sufficient interest over and above the generality of persons. A justiciable issue must be of a legal nature. The mere fact that an act of the executive or legislature is unconstitutional without any allegation of infraction of or its adverse effect on one's civil rights and obligations poses no question to be settled between parties in court.

In that case, the appellant failed to disclose his legal authority to demand for the declarations sought and what injury or injuries he will or would suffer. He therefore lacked *locus standi* to institute the suit.

The juristic basis underlying the issue of *locus standi* is not always absence of interest but sufficiency of that interest in a particular suit.

²⁶ [2000] 12 NWLR (Pt 680) 197 at 201.

Of paramount interest is the case of *Owodunni v. Reg. Trustees of CCC*.²⁷ *The Celestial Church of Christ*, a religious organisation founded in 1942 and duly registered in Nigeria as a corporate body in 195. Upon the demise of its Founder and Pastor, Reverend Pastor Joseph Oshoffa in September, 1985, the 1st respondents chose the 2nd respondent as his successor. The choice of the 2nd respondent was based on a message allegedly transmitted through a non-member of the Church to the 1st respondent from the late founder to the effect that he had named the 2nd respondent as the next Pastor of the Church. When the appellant also a registered trustee of the Church, who was not present at the meeting of the 1st respondents heard what took place at the meeting, he opposed the choice of the 2nd respondent on the ground that the procedure adopted did not conform with the provision of Section 111 of the Constitution of the Church. The Section provides that the successor would be revealed to the Founder by God at a time chosen by God and that the Founder would name and proclaim such successor. Despite the opposition of the appellant to the choice of the 2nd respondent, the 1st respondents nevertheless proclaimed the 2nd respondent as the successor to the office of Pastor of the Church in December 1985 before a congregation of the Church at Imeko, Ogun State. Aggrieved, the appellant, who had a parish of the Church at Ijeshatedo under his control instituted an action against the respondents at the High Court. In the Court of Appeal, the respondents raised and challenged the *locus standi* of the appellant to institute the action (this was not raised in the court below). Although the Court of Appeal found that the appellant had clearly pleaded his interest in the office of Pastor of the Church, it nevertheless by a split decision concluded that he had no *locus standi*.

In *Bewaji v Obasanjo*²⁸, the case of the appellant at the Federal High Court sitting at Abuja was that being a citizen of Nigeria and a tax payer, his civil rights and obligations under the provisions of section 6(6)(b) of the Constitution of the Federal

²⁷ [2000] 10 NWLR (Pt 675) 319. See Malemi E *Administrative Law*, 3rd (Lagos, Princeton Publishing Co, 2006), pp. 358-375.

²⁸ [2009] 9 NWLR (Pt 1093) 987.

Republic of Nigeria, 1999 had been adversely affected and violated by the imposition and/ or introduction of Petroleum taxation by the respondents. Consequently, the appellant instituted an action by way of originating summons seeking the determination of certain issues.

On being served with the originating processes, the respondent filed a notice of preliminary objection challenging the action on the ground that the appellant had no *locus standi* to institute the action and that the action was frivolous, vexatious and an abuse of judicial process. At the end of arguments on the preliminary objection, the Federal High Court in its ruling delivered on 20th January 2006 upheld the preliminary objection and ruled that the appellant lacked the *locus standi* to institute the suit. The appellant's suit was consequently struck out. The appellant was dissatisfied with the decision and appealed to the Court of Appeal. Unanimously dismissing the Appeal, the Court held that it is erroneous to think that there is a general latitude or licence without some strings of watchword under the 1999 Constitution giving a private individual a leeway to question the validity of Legislative or Executive actions in a Court of law. For any such unbridled latitude or licence would be contrary to the very spirit of the object, intent and purpose of the same Constitution and lead to anarchy, chaos and undesirable state of affairs. The Court stated that it was perfectly in tune with the reasoning of Bello, JSC (of blessed memory) in the case of *Adesanya v. President of Nigeria*. Therein, His lordship stated further that if all the oath-takers were to be the archivists of the Constitution, in whose shrine would it be preserved? If all the oath-takers were unregimented sentries and soldiers armed to the teeth competing to protect and defend the Constitution, would there be no harmony but anarchy and chaos. Such a situation would be contrary to the very spirit of the object and purpose of the Constitution as firmly and solemnly resolved in the preamble therein by the people of Nigeria, which "inter alia", is to live in unity and harmony as one indivisible and indissoluble sovereign Nation under God.

Continuing His Lordship stated forthrightly as follows:

To my mind, the appellant in the instant appeal cannot play the role of an archivist and build a shrine to preserve the sacred provisions of the Constitution. He is not a sentry or watchman to ward off all those he suspects to be real or potential offenders and transgressors of the Constitution. He has not been enlisted in the "State Armed Forces or Police" by any statute to take up arms against all those he considers to be aggressors of the Constitution.

Recently, the same restrictive application of *locus standi* was applied by the Court in *Centre for Oil Pollution v Nigeria National Petroleum Corporation*²⁹. The facts of the case is that the appellant a non-governmental organization that involves itself in the reinstatement, restoration and remediation of the environment. It commenced an action as a plaintiff against the defendant as respondent, claiming that the oil spillage from respondent's pipelines destroyed the Ineh and the Aku streams which were the only source of water supply to Acha Community. It also destroyed the aquatic life as they only stopped the leakage but failed to do a clean-up. The respondent denied liability and filed an objection challenging the *locus standi* of the appellant to institute the action. The trial Court upheld the objection and struck out the action. Not satisfied, the appellant filed this appeal. The Court of Appeal while dismissing the appeal stated that the appellant was unable to establish how his civil rights and obligations were affected by the respondent as he failed to show sufficient interest in the suit.

This is an anachronistic decision as in other common law jurisdictions such as Britain, India, Australia, pressure groups, non-governmental organization and public spirited taxpayers are cloaked with the *locus standi* to maintain an action for public interest, even though they may not have suffered any injury at all let alone any injury above every member of the society.

Generally, under public law, an ordinary individual or a citizen or a tax payer without more will generally not have locus

²⁹ [2013] All FWLR (Pt 696) at pp. 561-569.

standi as a plaintiff. This is because such litigations concern public rights and duties, which belong to and are owed all members of the public including the plaintiff. It is only where the individual has suffered special damage over and above the one suffered by the other members of the public generally that he can sue personally.

Judicial powers being derivable from the Constitution are limited to the extent and scope of such powers. Consequently, the judicial power which has been expressly defined by the Constitution cannot be expanded by anyone, not even the courts themselves. Therefore, Courts must operate strictly within the confines, compartments and perimeter of the powers conferred on them by the Constitution.

However, an interesting case also on the liberal interpretation of *locus standi* is *Fawehinmi v President, Federal Republic of Nigeria*³⁰ and others. The plaintiff by originating summons brought an action against the defendants seeking certain reliefs as a citizen of Nigeria and also as a taxpayer the contravention of certain Political, Public and Judicial Office Holders (Salaries and Allowances Law) by two Ministers of the Country who were being paid in Dollars currency other than Naira currency. The Defendants filed a notice of preliminary objection in which they sought to dismiss or strike out the action in its entirety on the grounds of *locus standi*. This was upheld by the trial Court. On appeal by the plaintiff appellant, the Court of Appeal unanimously allowed the appeal and held that:

It will definitely be a source of concern to any taxpayer, who watches the funds he contributed or he is contributing towards the running of the affairs of the State being wasted when such funds could have been channelled into providing jobs, creating wealth and providing security to the citizens. Such an individual has sufficient interest in coming to Court to enforce the law and to ensure that his tax money is utilized prudently. In our present reality, the Attorney General of the Federation is also the Minister of Justice and a member

³⁰ [2007] 4 NWLR (Pt 1054) 275.

of the Executive Cabinet. He may not be disposed to instituting an action against the Government in which he is part of, it may tantamount to the Federal Government suing itself. Definitely, he will not perform such a duty

A commendable Court of Appeal decision which focused on taxpayer's standing. *Adesanya's* case though restrictive still holds sway in the constitutional setting as it was a Supreme Court decision which is yet to be overturned.

In same vein, the Courts have also adopted a liberal application of *locus standi* in *Gani Fawehinmi v Akilu*³¹. The facts of the case is that on October 19th, 1986, Mr Dele Giwa, a Journalist and Editor-in-Chief of Newswatch Magazine was killed in Lagos by a parcel bomb. He was a friend of Chief Fawehinmi. In consequence of this, Chief Fawehinmi submitted to the Director of Public Prosecution (DPP), Lagos State, a 30-page document containing all details of the investigation he conducted whereby a complicity was made against two Army Officers. He therefore appealed to the DPP to exercise his discretion whether or not he would prosecute the two Army Officers for the murder of Mr Giwa. After a meeting with the DPP, it became obvious that he would not prosecute them. Chief Fawehinmi filed an application in the High Court for an order of mandamus compelling the DPP to decide whether or not to prosecute the two military officers for the murder of Dele Giwa. The trial Court and the Court of Appeal refused to grant the application as it was dismissed on the ground of *locus standi*. On further appeal to the Supreme Court, it was allowed. The Supreme Court in applying the liberal approach to the doctrine of *locus standi* held that the appellant had *locus standi* to institute the matter and in compliance with the provision of section 6(6)(b) of the 1999 Constitution. The Court went further and stated that this is in keeping with the broadened application of the concept of *locus standi* and "your brother's keeper" principle. The Supreme Court held further that as a person, a Nigerian, a friend and legal adviser to Dele Giwa (the deceased), the appellant had a right under the

³¹ [1987] 4 NWLR (Pt 67)797. See Atsegbua L. A. *Administrative Law, An Introductory Text* 4th (Fifers Lane, 2012) pp. 167-169.

Criminal Procedure Law to see that a crime is not committed and if committed to lay charge for the offence against anyone committing the offence.

A laudable decision but we submit that this decision bordering on crime prevention which liberalise the rules on standing should also be applied by the Courts in constitutional matters.

Other Jurisdictions

United States

In *Kennedy v Sampson*³², the far reaching lesson of this decision is that a Legislator undoubtedly has a substantial and abiding interest in giving effect to his vote in the House. The US Supreme Court dismissed the traditional rule of Standing in *Association of Data Processing Service Organizations v. William B. Camp*.³³ The court observed that a plaintiff may be granted standing whenever he or she suffers an "injury in fact" ,economic or otherwise.

In environment cases, the US Supreme Court has diluted the stance and allowed organizations dedicated to protection of environment to fight cases even though such societies are not directly armed by the action.

In *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*³⁴ the Court allowed a group of students to challenge the action of the railroad which would have led to environmental loss. Paul J. in *Trafficante v. Metropolitan Life Insurance Company*³⁵ stated that a landlord's racially discriminatory practices towards non-whites inflicted an injury in fact upon the plaintiffs, two tenants of an apartment complex, by depriving them of the "social benefits of living in an integrated community."

³² 304 Supp.1075.

³³ [1970] 397 U.S. 150.

³⁴ [1973] 412 US 669.

³⁵ [1972] 409 U.S. 205.

In *Thomas E. Singleton v. George J. L. Wulff*,³⁶ the Court granted standing to two physicians challenging the constitutionality of a State statute limiting abortions.

Britain

Locus standi no longer represents an insurmountable challenge in public interest litigations by virtue of order 53 of the rules of Supreme Court and Part 54 of the Civil Procedure Rules. Denning M.R. attempted to widen the meaning of sufficient interest by stating in *Attorney-General Gambia v. N'Jie*³⁷ that the words "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include of course a mere busybody who is interfering in things which do not concern him but they do include a person who has a genuine grievance because an order has been made which prejudicially affected his interests.

An amendment to the Rules of the Supreme Court in 1978 through Order 53 overcame the English judiciary's hesitation in applying a broadened rule of standing to relator claims. Order 53 applied the broadened rule of standing to both actions seeking remedy through prerogative writs and actions seeking remedy through relator claims. Rule 3(5) of Order 53 stipulates that the Court shall not grant leave for judicial review "unless it considers that the applicant has a sufficient interest in the matter to which the applicant relates."

The procedure and rules of an application for judicial review under new Order 53 of the Rules of the Supreme Court (UK) have recently been amended in the UK in 1998. Order 53 of the Rules of Supreme Court has been abolished and replaced by the new Part 54 of the Civil Procedure Rules 1998 (CPR). The new rules have brought judicial review of administrative actions fully within the framework of the CPR. The new rules in Part 54 of CPR have made some changes with respect to the permission stage (leave stage) and third party intervention. However, the locus standi rule has not been changed. It still requires "sufficient interest" to the subject matter to have locus standi.

³⁶ 422 U.S. 490.

³⁷ [1961] A.C. 617.

India

The development of standing rules has been extremely significant development in the history of the Indian jurisprudence. The decisions of the Supreme Court in the 1970's loosened the strict locus standi requirements to permit filing of petitions on behalf of marginalized and deprived sections of the society by public spirited individuals, institutions and bodies.

The higher Courts exercised wide powers given to them under Articles 32 and 226 of the Constitution. The sort of remedies sought from the Courts in broadened rules of standing went beyond award of remedies to the affected individuals and groups. In suitable cases, the Courts have also given guidelines and directions. The Courts have monitored implementation of legislation and even formulated guidelines in absence of legislation. If the cases of the decades of 70s and 80s are analyzed, most of the public interest litigation cases which were entertained by the Courts are pertaining to enforcement of fundamental rights of marginalized and deprived sections of the society.

The rule of locus standi was diluted by the Court and the traditional meaning of "aggrieved person" was broadened to provide access to justice to a very large section of the society which was otherwise not getting any benefit from the judicial system.

In *Bandhua Mukti Morcha v. Union of India & Others*³⁸, the Court entertained a petition even of unregistered Association espousing the cause of over down-trodden or its members observing that the cause of "little Indians" can be espoused by any person having no interest in the matter. In the said case, this Court further held that where a public interest litigation alleging that certain workmen are living in bondage and under inhuman conditions is initiated it is not expected of the Government that it should raise preliminary objection that no fundamental rights of the petitioners or the workmen on whose behalf the petition has been filed, have been infringed.

Broadening standing rules is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government

³⁸ [1984] SC 802.

and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the Community and to assure them that social and economic justice which is the signature tune of our Constitution.

Australia

The case of *North Coast Environment Council Inc. v Minister of Resources*³⁹ was the first standing case on which Justice Sackville stamped his views on administrative law in respect of locus standi. Sackville J postulated five concepts which pointed to NCEC having sufficient standing. Those five concepts have been embraced in other cases and seem to be regarded as factors pointing almost definitively in favour of the existence of standing. These were :NCEC was the peak environmental organisation in the north coast region of New South Wales with 44 environmental groups as members, Since 1977 NCEC was recognised by the Commonwealth as a significant and responsible environmental organization, NCEC had been recognised by the NSW state government as a body that should represent environmental concerns on advisory committees, NCEC had received significant Commonwealth funding for coordinating projects and conferences on environmental matters and NCEC had made submissions on forestry management issues and funded a study of old growth forests.

Sackville J held that NCEC demonstrated more than mere “intellectual or emotional concern” and that it had a particular interest in the decision in issue in the case.

Conclusion

³⁹ [1994] FCA 1556. This case concerned a request by North Coast Environmental Council (“NCEC”) for a written statement setting out the findings, evidence and reasons for the decision to grant a license to a sawmilling entity to export woodchips from South West New South Wales. The Minister challenged the request saying NCEC had no standing because NCEC was not a “person aggrieved” under section 13 of the ADJR. It was held by Sackville J that NCEC did in fact have standing.

Nigeria should liberalize its rules on standing as prevalent in other jurisdictions examined. Therefore, actions on locus standi should be decided on the merits of the application before the Court. This can only be achieved through a constitutional amendment by giving the Courts wide powers. Undue reliance will no longer be placed on technicality and the Courts will endeavour to do substantial justice in every case.

The term “sufficient interest” should be given a broader meaning to accommodate more classes of persons that can sue on constitutional and public interest issues. A legislative intervention through a constitutional amendment is needed. The effect of this is that an individual who has a genuine grievance concerning a Constitutional and public interest matter will have a right to be heard even if he has a shared general or common interest in contradistinction to his personal interest.