THE EXCLUSIONARY PRINCIPLE OF LOCUS STANDI: AN OBSTACLE TO JUSTICE IN PUBLIC INTEREST ENVIRONMENTAL LITIGATION IN NIGERIA*

Abstract
Over the years, many prospective litigants who had suffered infringement of their environmental rights from the government, organisations and individuals have had set-backs in the process of enforcing their rights. Such set-backs occurred as a result of procedural and technical requirement inherent in the court procedure rules, principal of which is locus standi. This paper examined the pressing issue of locus standi in Nigeria environmental law litigation process and questioned the rationale of such a requirement in the face of the obstacles it presents to the right of litigants to seek justice without hindrance. In doing so, this paper adopted the doctrinal methodology approach. It looked into the position of the law in some common law countries vis-à-vis the situation in Nigeria. The paper relied on primary and secondary sources of data, to wit, international legal documents, case law, and local statutes. The secondary sources comprised of books, journal articles, internet materials, periodicals and academic dissertations/ thesis. It was found, inter alia, that the strict application of the procedural requirement of locus standi has stalled the cause of justice for many and also denied many access to justice in rights enforcement in Nigeria. It recommended a more liberal interpretation of locus-standi requirement as applicable in the South African courts for a hitch-free environmental litigation and its adoption to obviate a resort to extra-legal/self-help methods sometimes adopted by frustrated litigants.

Keywords: Nigeria, Environmental Justice Litigation, Locus Standi, Public Interest Litigation

1. Introduction

Many prospective litigants who had suffered infringement of their environmental rights from government, corporations and individuals have had set-backs in the process of enforcing these rights. Such set-backs occurred as a result of procedural and technical provisions or requirement inherent in the court procedure rules. One such rule is the *locus standi* requirement which has caused many to lose interest and hope of enforcing their environmental rights in the judicial system while others regard the rule as a weapon ranged against them and meant to protect the "tyrannical activities" of the government. [1]

Environmental litigation/action is a prelude to enforcement of environmental laws and policies without which "environmental law would be nothing but empty platitudes and hollow admonitions that have no place in a state under a rule of law."[2] Environmental litigation [3] is therefore necessary for the creation of a dynamic environmental regime. In this context, victims of environmental injury should ordinarily be able to take any necessary environmental action to litigate the violation under the law without hindrance.[4] The legal phenomenon of *locus standi* has however proved to be a perennial obstacle instead of an aid to environmental justice litigation in Nigeria and some other countries of sub-Sahara Africa thereby having serious impacts on environmental

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[1] RK Salman and FJ Oniekoro, 'Death of *Locus Standi* and the Rebirth of Public Interest Litigation in the Enforcement of Human Rights in Nigeria: Fundamental Rights (Enforcement Procedure) Rules 2009 in Focus.' (2015) 23 (2015) 23 *IIUMLJ* 107

[2] *Daily Times Newspaper D*ecember 9, 1976, reported in "The Great Debate" Nigerian view point on the 1976/77 Draft Constitution, (1977) p. 44

[3] B Sang 2013 (57/1) *J.A.L.* 31. The word litigation refers to the process of initiating or defending a contested legal claim with a view of seeking a remedy.

.[4] Science Direct 'Environmental Justice'<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/environmental-justice>. accessed 25 October 2020)

protection. While developed nations have made steady progress in litigating environmental injustice, Nigeria still lags behind despite increased global environmental awareness.

Stemming from the archaic courts' interpretation of the traditional notion of *locus standi*, in Nigeria's common law legal system, there is now a growing impetus for a more liberal interpretation of this doctrine in environmental litigation because of the danger of unlawful decisions and acts of government not being challenged in the conventional way either because no-one is entitled to sue or because those who have the necessary *locus standi* choose not to sue. The aim of this paper is to discuss the vexing issue of the *locus standi* requirement in environmental justice litigation in order to provide a valuable insight into the frustrations faced by litigants in their bid to enforce their environmental rights when infringed; how the *locus standi* requirement has become an obstacle instead to judicial process that may lead litigants resorting to extra-judicial self-help methods in the bid to get justice.

Locus standi implies that a prospective litigant must have sufficient interest to apply to the court for the enforcement of a right; to challenge government action or that of any of its agency; have a court to declare a law unconstitutional or litigate in the public interest failing which the application will fail. Traditionally, in most jurisdictions, if a plaintiff has a legal right which has been breached and has suffered damage to that right as a consequence, it has the necessary *locus standi* to sue.[5] The doctrine of *locus standi* has developed and evolved to ensure that courts played their rightful role in a democracy by serving the rule of law and the doctrine of separation of powers. Secondly, the purpose was to prevent the floodgates of litigation from opening, where every "busybody" could bring any case before the court regardless of their interest in the matter.[6] Hence, the doctrine serves a gate keeping function to restrict access to judicial remedies.[7] Thirdly, it stemmed from the litigation focus on the protection of private rights, leading to highly individualised systems of justice.[8]

1. Conceptual Clarifications

Environmental Justice

USEPA [9] defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

Locus standi

Locus Standi is a Latin maxim consisting of two words namely *locus* which means place and *standi* which means the right to bring an action. So, collectively, it means the right to appear or the right to bring an action before the court. With the maxim, a person needs to show his legal capacity before approaching the court meaning that such person can only approach the court when his personal interest has suffered or an injury is inflicted upon him. This maxim is one of the fundamental principles of the adversarial litigation system. [10] In legal parlance generally, the doctrine of *Locus Standi* otherwise known as "standing" refers to the capacity of a litigant to institute proceedings in a court of law when his right has been infringed. It determines the "competence of a plaintiff to assert

[5] F Benzoni, 'Environmental Standing: Who Determines the Value of Other Life?' *Duke Envtl. L. & Pol'y F.* (2008) (18) 352.
[6] Murombo (2010) (6/2) *LEAD* 167-168.
[7] T Bailey, 'Judicial Discretion in *Locus standi*: Inconsistency Ahead?" 2010 (4) *Galway Student L.Rev.* 1.
[8] Murombo, (n.14) p.168.
[9] United States Environmental Agency (USEPA) is an independent executive agency of the United States federal government tasked with environmental protection matters founded in 1970.
[10] Yash Thakur, '*Locus Standi*: Meaning and Essential ingredients of *Locus Standi*' (2021) < https://legalstudymaterial.com/locus-standi-meaning-and-essential-ingredients-of-locus-standi/> (accessed, 29 May, 2022).

the matter of their complaint before the court." [11] This phrase is often used interchangeably with the term "standing." It gives authority to a litigant to invoke the jurisdictional competence of courts in relation to any matter, criminal and civil litigations.[12] The concept has different aspects. It generally deals with the issue of whether a person who wants to approach the court is a proper party to prosecute the matter. [13] It determines the right to sue which requires that a plaintiff needs to have the necessary capacity to sue and a legally recognised interest in the relevant action to be able to seek remedy. [14] Preferably, the former is better referred to as capacity to sue while the latter is better known as *locus standi*. Factors such as legal capacity, mental capacity and age help to determine capacity to sue while *locus standi* on the other hand is about whether the claim is based on a legally enforceable right and whether the particular plaintiff is entitled to enforce that right. [15]

Public Interest

Public interest can be defined as the general welfare of the public that warrants recognition and protection or something in which the public as a whole has a stake; especially if it is an interest that justifies government regulation. There is no denying the fact that the goals of environmental justice can only be achieved when every citizen enjoys the same degree of protection from environmental and health hazards, and any citizen deprived of the right to a healthy environment can have equal access to courts to seek justice on this right. [16]

2. Locus standi under English Law

Under the English common law, a legal system after which Nigerian legal system is modelled, ordinarily a plaintiff claiming relief must have some private legal right or legal interest recognized by law which has been violated by the defendant. In other words, under the common law, a party who suffers some damage or injury from the act of a private individual or of the state or its organ can approach the court. In this process, it is essential that the prospective litigant shows that he has suffered some injury or his legal right has been violated. This means that there shall be a sufficient connection between the injury caused and the person approaching the court. The doctrine of *locus standi* ensures that only bonafide parties with genuine grievance came to the court. In public nuisance actions, a plaintiff will be allowed to bring an action where the plaintiff has suffered particular damage other than and beyond that suffered by the general public. Other circumstances where a private individual may be able to bring an action against another private individual for breach of statutory duty may, exceptionally, be in the environmental field. Currently, there is no discernible move in England for expanding representative or class action, to cover or to obtain protection against environmental pollution.[17] *Locus standi* depends on the existence of a right of action and an

[11] B Hough, 'A Re-Examination of the Case for a *Locus Standi* Rule in Public Law' (1997) <https://eprints. bournemouth.ac.uk> accessed 23 May, 2022)

[12] For instance, by virtue of section 251 (n) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the most notable environmental protection function assigned to the Federal High Court is to exercise exclusive jurisdictions over exploitation involving mines, and minerals (including oil fields, oil mining, geological surveys and natural gas). Aside the environmental issues relating to the mines, oil and gas sector of the Nigerian economy, it appears that the superior courts at both federal and state levels could exercise concurrent jurisdictions over environmental matters. The Environmental Court of each state of the federation could equally exercise such jurisdiction over some environmental and sanitation matters within the confines of the laws establishing them, except that such laws may not have in any way captured PIL processes.

[13] C Loots, 'Standing, Ripeness and Mootness' in *Constitutional Law of SA* (2008) 7-1

[14] Devenish 2005 (38) *De Jure* 28.

[15] Ibid.

[16] USEPA, 'Environmental Justice.' <.https://epa.gov.>environment>.accessed 20 July, 2022)

[17] TH Jacob 'Access to Justice in England' in M. Cappelletti and B Garth (eds) *Access to Justice - A World Survey* (1978) (I) (!), 417-471.

enforceable right. In private law actions, a plaintiff will not have *locus standi* unless he can prove that one of his or her recognised legal rights has been infringed or is being threatened.[18]

However, in recent times, the rule of *locus standi* has been relaxed and even allowed a public-spirited citizen to approach the court on behalf of poor and downtrodden people. To claim judicial review of administrative actions in the public interest in the field of environmental law, English courts have accepted, like the United States of America courts, a 'sufficient-interest' and even 'non-economic interests' criteria which is no greater than that of any other member of the public.[19] *Locus standi* was denied in the *Rose Theatre* case,[20] but the *Greenpeace* judgment recognised the applicant's standing to challenge ministerial decisions about the licensing of the THORP nuclear plant at Sellafield.[21] *Locus standi* is therefore, no more than a matter of judicial discretion depending on the circumstances, merit of the case, and the nature of the remedy sought. It is submitted that this development does not provide a secure footing for class action or citizen suit.[22] It should be noted that private prosecutions in terms of environmental statutes containing criminal provisions are becoming more common.[23]

Locus standi rules which precedes Order 53 of the Rules of the Supreme Court in England now governing the issue, shows a discernible diversity both within each particular judicial remedy and between them. Where an individual seeks mandamus, he has to show that his legal interest had been infringed but when a person is seeking certiorari or prohibition, the requirement is simpler. All he has to do is to show sufficient interest or be a person aggrieved. The rules which apply to the remedies of injunction and declaration required the plaintiff to show that the interference with the public right was also an interference with a private right. In the absence of that and if no private rights had been infringed, the plaintiff had to show special damage. On failure to fulfill either of these two requirements, he had to make a request to the Attorney General. Although there is no written Constitution nor a provision similar to Section 6(6) of the 1999 Constitution of Nigeria, the courts in England have tended to adopt a liberal attitude towards *locus standi* as is demonstrated by the statement of Lord Denning M.R. in *Attorney-General Ex Rel. McWhirter v Independent Broadcasting Authority*,[24] where he said;

> … I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way that offends or injures thousands of Her Majesty's subjects, then in the last resort any of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced…

The liberal attitude of the English courts towards *locus standi* is tempered by the discretionary nature of the remedies involved, and the judicial and judicious exercise of the discretion by the courts, which ensures that only those whose claims are undeserved are not successful. The issue of *locus*

[18] Tobias P Van Reenen 'Locus Standi In South African Environmental Law: A Reappraisal In International And Comparative Perspective' (1995) 2 *SAJELP*

[19] Lord Denning *The Discipline of Law* (1979) 143.

[20] *R* v *Secretary of State for the Environment, Ex parte Rose Theatre Trust Co* [1990] 1 QB 504; discussed by JDC Harte *Journal of Environmental Law* (1990) (2) 224.

[21] On the basis of the nature of Greenpeace and the extent of its interest in the issues raised, the remedy Greenpeace sought to achieve and the nature of the relief sought. *R v Inspectorate of Pollution, Ex parte Greenpeace Ltd* [1994] 2 CMLR 548, [1994] 4 All ER 329, discussed by J Purdue (1994) 6 *Journal of Environmental Law* 297.

[22] G. Betlem, 'Standing for Ecosystems : Going Dutch' 1 *Cambridge University* (1995) (1) *(*54) 167-168.

[23] Tobias P. Van Reenen. (n. 18)

[24] (1973) (1973) 2 WLR 344 at 375

standi in England is now governed by Section 31(3) of the Supreme Court Act 1981, and Order 53, rule 3(5) of the Rules of the Supreme Court. Order 53, rule 3(5) provides that:

> No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with the rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

The House of Lord interpreted this provision in *R v Inland Revenue Commissioners, Ex. P. National Federation of Self-Employed and Small Businesses Ltd.*[25] a case in which casual labourers employed by Fleet Street newspapers were in the habit of adopting fictitious names to avoid paying income tax. The Inland Revenue Commission (IRC) concluded an agreement with relevant trade unions, labourers and employers, that, if tax returns for the previous two years were filed, payment of all taxes owed for the period prior to this would be waived. The National Federation challenged this agreement, maintaining that the IRC had acted *ultra vires* its authority in concluding such a bargain and sought a declaration to that effect and an order of mandamus compelling the IRC to collect taxes owed prior to the two-limit agreed by the IRC. The IRC challenged the National Federation, claiming that it lacked *locus standi* to bring the action. Their Lordships found that the National Federation lacked *locus standi,* while highlighting the distinction between the standing of a person to bring a case, and the merits of his case as well as demonstrated that these two factors could not always be assessed independently of each other. As Lord Wilberforce declared:

> There may be simple cases in which it can be seen at the earliest stage that the person applying for judicial review has no interest at all, or no sufficient interest to support the application; then it would be quite correct at the threshold to refuse him leave to apply… But in other cases, this will not be so. In these it will be necessary to consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers and duties, and the breach of those said to have been committed.

The National Federation's inability to prove any illegality in the amnesty granted by the IRC resulted in their failure to establish *locus standi.* Nevertheless, in the same case, Lord Diplock emphasised that:

> 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 taxpayer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped.

This judgment which raised the question of whether the issue of *locus standi* should be assessed as a preliminary issue is redundant now in view of the explicit provisions of Section 31(3) of the Supreme Court Act 1981 which requires that the issue of *locus standi* be resolved at the leave stage. However, it can be seen from the speeches delivered in the above cases that, a liberal attitude is adopted in the English courts towards *locus standi.* Such a departure from the view that individuals

[25] [1982] AC 617

should only be able to vindicate their private legal rights is not only commendable but also long overdue.

3. Locus standi in the Nigerian Legal System

Locus standi denotes the ability of a party to demonstrate to the court, sufficient connection to a harm based on a law or action challenged, to support the party's interest in the case. [26] It is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest. Under the Nigerian law, the claimant must have the legal capacity to invoke the judicial power entrenched in Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999. He must show that he has a stake in the subject matter, and must be able to establish that what he suffers or the injury to his person is the consequence of the defendant's act or conduct. [27]

Locus Standi is a threshold issue in litigations that affects access to justice, jurisdiction, judicial powers and remediation of civil wrongs in the field of constitutional and administrative law. To establish *locus standi*, the litigant must be able to show that he has sustained or is in immediate danger of sustaining some direct injuries as a result of the action of the defendant over and above every other person affected by such actions. In the case of *Adesanya v The President of Nigeria*. [28] Fatayi Williams JSC defines *locus standi*, as 'the legal capacity of a person to institute proceedings in a court of law or tribunal.'

The definition above implies that that there is a standing to question legality of an action and the party seeking relief must show that he is sufficiently affected by it to justify his invocation of judicial authority to question its validity and there is a stand to challenge the action on a particular ground, for example, that the action violates the right of the person who seeks to redress it. [29]

Issue of the standing of a plaintiff in environmental rights and public nuisance cases has generated an enormous amount of controversy in Nigerian courts largely due to the fact that judges have diverse opinion in their interpretation in spite of the effect of various international and national legal frameworks; the jurisprudence under Nigerian environmental laws is still unsettled. [30] The case of *SERAC v Nigeria* [31] opened up the controversial point on the potential of a human rights approach to such issues. The importance of resolving the right to sue in the light of the expanding role of the states in the protection of social and economic rights, and the need to protect public interest as against private rights cannot therefore be over-emphasised [32] This is because the lack of ability on the part of members of the community to invoke the jurisdiction of courts to hold governments and its agencies to account for damages for environmental degradation and other means of livelihood of people can lead to disinterest or disillusionment in the protection of the environment.[33]

Challenges confronting environmental degradation are not uncommon across the globe. Countries and courts across jurisdictions, common and civil, have however developed legal means of confronting such challenges aimed at removing the technical legal blocks and to guarantee that interests and rights of individual involved are not trampled upon with impunity. A major approach in some jurisdictions is the relaxation of the requirement of victims' to access the court of law to

[26] Obadina Ibrahim, 'Nigerian Supreme Court's Stealth Relaxation of *Locus Standi* in Environmental litigation: Redirecting Judicial Approach to Public Interest Litigation' *Journal of Private and Business Law* (2021) (2) (2) 200-218

[27] *Ibid.*

[28] (1981) 2 NCLR 358

[29] (n 26)

[30] Obadina Ibrahim, (n 26)

[31] (2001) AHLR 60 (ACHPR 2001).

[32] RS Gupta, 'Widdening the Rules of *Locus Standi*' *Journal of India Law Institute* (1984) (24) (26), 424-444 at 424

[33] *Soc. and Econ. Rights Action Ctr. v.Nig, Comm.* 155/96, 15th ACHPR AAR Annex V (2000-2001)

seek redress where their rights to life, property, environment and other fundamental rights have been violated or threatened. [34]

There is a lot of literature on the common law doctrine of *locus standi* and myriad of judicial pronouncements on the need for balance by adopting a liberal approach in other to protect citizens rights and that of preventing meddlesome interlopers i.e. to prevent litigants without genuine interests on the subject matter of litigation to avoid opening up a floodgate of litigation. [35] As Megarry J put it, 'the courts are not places for those who wish to meddle in things which are no concern of theirs, just for the pleasure of interfering or of proclaiming abroad some favourable doctrine of theirs, or of indulging a taste of forensic display' [36]

For far too long, the Nigerian judiciary has come out with a mixed bag of interpretations on the concept of *locus standi* thus compounding the problems of hapless litigants in seeking environmental justice.

In some cases, standing to sue is given only if a person has a legal right of his own or if his legal right is adversely affected, or if he suffers or is in imminent danger of suffering an injury, damage or detriment personal to himself. This narrow interpretation informed the court's decision in the case of *Olawoyin v AG of the Northern Region* [37] where the trial judge dismissed the action on the ground that no right of the plaintiff has been infringed upon, and that it is contrary to the principle to make the declaration sought for in vacuum. On appeal to the Supreme Court, Unsworth FJ ruled that, that the appellant has not in his claim alleged any interest. [38] This narrow approach was jettisoned by the Supreme Court in *Ariori v Elemo*, [39] where Kayode Eso JSC preferred a liberal interpretation to the restrictive approach. Thus, in *AG of Kaduna State v Hassan*, [40] the lower courts struck out the case for lack of standing following the precedent of a higher court. However, the Supreme Court held that the respondent has *locus standi*. Oputa (JSC) observed that:

> …There is perhaps no question more fundamental in the whole process of adjudication than that of access to justice, access to the courts. He who cannot even reach the court cannot talk of justice from these courts. It is in this context and for the fundamental reason that many legal systems are now relaxing the erstwhile severity of their rules governing *locus standi.*

Subsequently, in *Badejo v Federal Minister of Education*, [41] a case involving the enforcement of the non-justiciable right to education, the Supreme Court granted standing to the plaintiff in a public injury on the basis that she can sue for herself only, and not for herself and on behalf of other victims.

The Supreme Court of Nigeria laid down the constitutional basis of *locus standi* in the case of *Abraham Adesanya v The President of Nigeria & anor* [42] regarded as the *locus classicus* on *locus standi* in Nigeria. While Nnamani and Idigbe JJCS agreed with Bello JSC that section 6 (6) of the

[34] See Emeka Polycarp Amechi, 'Millennium Development Goals (MDGs) and Policy Reform: Realising the Right to Environment in Africa' (Verlag Dr. Müller (VDM): *Saarbrucken*, (2010) 180-181

[35] Emeka Amechi 'Environmental Pollution and Human Rights in Nigeria: Some Reflections On The Linkages and The Need For Effective Enforcement Of Environmental Regulations' *The Nigerian Journal of Contemporary Law* (2012/1) 18 (1) 93-129.

[36] *Re Argentum Reductions* (UK) Limited 1975 1 WLR 186, p. 190

[37] (1967) 1 All NLR, 269.

[38] (1971) ANLR 608 at P. 613. See also the following cases: *Mohammed v. A. G. of Kaduna State and Anor* (1980) 1 PLR, 701, *A G Eastern Nigeria v AG Federation* (1964) ANLR, 224; Obadina Ibrahim (n 30)

[39] (1983) 1 SCNLR, 15

[40] (1985) 2 NWLR (pt. 8) 522.

[41] (1987) 1 NWLR (pt. 51) 554

[42] (n 28)

1979 Constitution has laid to rest the issue of *locus standi*, Sowemimo and Obaseki JJSC reasoned with Fatayi Williams CJN. Uwais JSC who could have resolved the deadlock, took the view that the interpretation to be given to section 6 (6) (b) depended on the facts and circumstances of each case, and that no hard and fast rule should be applied. In the end, the Supreme Court held that Senator Adesanya had no *locus standi* in the case, since he had participated earlier in the deliberation of the Senate on the same matter. [43] This case was a missed opportunity for the Supreme Court to lay to rest the confused state of affairs on this matter. Instead, the Court compounded it.

In the case of *Bello v AG Oyo State* **[44]** the deceased was charged with and convicted of armed robbery. He appealed against the judgment, but before his appeal could be heard, he had been executed. His relatives brought an action, claiming compensation on the ground of breach of the fundamental right of the deceased to life under section 30 of the 1979 Constitution. The Supreme Court held that the applicants had *locus standi* to bring the action, and awards them the reliefs sought. This liberal approach of the Supreme Court has been extended to criminal matters as in the case of *Fawehinmi v Akilu & Ors* [45] which dealt with the right of a person to enforce the right of another, thus opening up a new vista as *locus standi* has hitherto been mostly invoked in civil proceedings. [46] Obaseki JSC therein said:

> ...it is only on rare occasions that the courts have cause to consider the question of *locus standi* in criminal proceedings. It frequently arises for consideration in civil proceedings... Criminal law is addressed to everyone as the rule they are bound to obey on pains of punishment, to ensure order in the society and maintain the peaceful existence of the society. The peace of the society is the responsibility of everyone and as far as protection against crime is concerned, everyone is the others' keeper. [47]

This liberal approach has been followed in such cases as in *PKC Isagba v Benson Alegbe*.[48] Furthermore, in the case of *Adewole & Ors v Jakande*, [49] the applicants challenged the proposal of the Lagos State Government to take over private schools compulsorily. It was argued that the appellants had no *locus standi* by the learned counsel to the defendants. The court held that the appellant has *locus standi* to sue. The learned judge, quoting Lord Denning, said, 'These courts are open to every citizen who comes and complains that the law is being broken… He is not to be turned away on some technical objection of *locus standi*.'

4. Locus standi in Environmental Litigation in Nigeria

The increase in environmental consciousness and the need for the law to be responsive to societal needs must have motivated the inclusion of environmental protection in the 1999 Constitution as a fundamental objective and directive principle of state policy. [50] This means that environmental protection has become a matter deserving of serious attention in Nigeria. [51]The Constitution has vested the courts with the powers to determine any question as to civil rights and obligations between

[43] Ibid.
[44] (1986) 5 NWLR 820
[45] (1987) 4 NWLR (pt 67) 797.
[46] (n 26)
[47] (n 45) p. 832
[48] (1981) 1 NCLR 218 at 290
[49] (1981) 1 NCLR 290.
[50] Section 20, Cap C23 LFN. 2004.
[51] (n 26)

government or authority and any person in Nigeria. The policy objective in section 6(6) (b) is the removal of the obstacles erected by common law requirement against individuals bringing actions before the court against government and its institutions. [52] This it was hoped would provide leverage in the application of the doctrine which expectation has been dashed as can be seen in *Owodunmi v Registered Trustees of Celestial Church & Ors*., [53] where the Supreme Court held that section 6 (6) (b) of the Constitution does not prescribe the *locus standi* of a person wanting to invoke the jurisdiction and powers of the court but prescribes the extent of the judicial powers of the courts.

In *AG Ondo State v AG Federation*, [54] the Supreme Court held, *inter alia*, that "courts cannot enforce any of the provisions of Chapter II of the Constitution except [sic] the National Assembly has enacted specific laws for their enforcement." [55] According to the Supreme Court, Chapter II of the Nigerian Constitution (which provides guidance as to the constitutional policy of governance) continues to be a mere expression, 'which cannot be enforced by legal process but would be seen as a failure of duty and responsibility of state organs if they acted in clear disregard of them [56] The court also held that the contents of Chapter II could be made justiciable by legislation. This, however, means that public interest litigation against illegal government actions or unconstitutional laws may not be sustained in the Nigerian courts, because the applicant will lack the *locus standi* to do so, since one of the tests set by the courts for *locus standi* is that the subject matter must be justiciable.

However, Kabiri-Whyte, JSC in *Adediran v Interland Transport Ltd*, [57] held that the distinction between public nuisance and private nuisance at common law on the right of action in public nuisance is inconsistent with the provisions of section 6 (6) (b) of the 1979 Constitution. [58] This means therefore that this provision gives a litigant, especially in environmental matters, the necessary standing to institute an action against environmental violators even if he has not been affected personally. [59] In addition, section 36 of the Constitution provides for right of fair hearing. Under subsection (1), "… a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunals established by law.…" Also, in section 36 (4) a citizen is guaranteed a right of fair hearing in civil and criminal matters, denial of which constitutes denial of access to justice. [60] Again, in section 46 (1) of the Constitution, a person's human right is guaranteed under Chapter IV of the 1999 Constitution to the extent that if his right has been, is being or is likely to be infringed on in any state, he has the right to apply to a High Court of that State for redress. [61] Section 1 (3) of the 1999 Constitution renders void any law that is inconsistent with the provisions of Constitution. Following from these, the principle of *locus standi*, which is a common law doctrine, being inconsistent with the provisions of the Constitution is void to the extent of its inconsistency. Regrettably, the liberal approach to the interpretation of *locus standi* adopted by the Supreme Court and applied by some lower courts have not been consistently applied in environmental litigation. [62] Nigeria is endowed with minerals and natural resources coupled with a robust regulatory framework

[52] *NNPC v Fawehinmi & ors*, (1998) 7 NWLR (pt 559) 602.
[53] (2000) 10 NWLR (Pt 675) 315
[54] (2002) 9 NWLR (pt 772) at 222
[55] P.N.Bhagwati, 'Judicial Activism and Public Interest Litigation' *Columbia Journal of Transnational Law* (1985) 23 556; Google Scholar at 569–70.
[57] (1986) 2 NWLR (Pt 20) 40.
[58] In *pari material* with s.6 (6) (b) 1999 Constitution of the Federal Republic of Nigeria.
[59] (n 26)
[60] Ibid.
[61] *Busari v Oseni* (1992) 4 NWLR (Pt 237) 557.
[62] (.n 26)

but sadly, has minimal enforcement of environmental laws and regulations due to the issue of *locus standi*. [63]

Oputa JSC [64] has in this connection said 'the legal concept of standing or *locus standi* is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest.' Where a litigant therefore fails to show peculiar and sufficient interest over and above others, his suit could fail. [65] This goes to show that the interpretation given to the *locus standi* requirement was so strict such that in the absence of *locus standi*, the claim could fail. [66]

Locus standi therefore constitutes a stumbling block to public-interest litigation and oil companies have taken full advantage of this restriction to employ unhealthy practices in exploration and mining of Nigeria's natural resources [67] as happened in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*, [68] where the Appellant (Centre for Oil Pollution Watch; a non-governmental organisation had commenced an action at the Federal High Court of Nigeria against the Nigerian National Petroleum Corporation (NNPC); a state-owned oil company over the oil spillage in Acha Community of Isukwuato Local Government Area of Abia State, The respondent / defendant (NNPC) had been carrying out oil exploration activities for over 25 years and constructed oil pipelines beneath and around Ineh and Aku Streams in Isikwuato Local Government Area of Abia State, Nigeria. The pipelines allegedly burst and spilled crude oil from beneath the earth into the two rivers and its environs which the respondents refused to clean up.
The plaintiff sought:

(a) The reinstatement, restoration and remediation of the impaired and/contaminated environment in Acha autonomous community of Isukwuato Local Government Area of Abia State of Nigeria particularly the Ineh and Aku streams contaminated by the oil spill.
(b) Provisions of portable water supply as a substitute to the polluted and contaminated Ineh/Aku streams, which are the only and / or major source of water supply to the community,
(c) Provision of medical facilities for evaluation and treatment of the victims of the after negative health effect of the spillage and / or contaminated streams

The Appellant asserted that the oil spillage negatively affected the lives of the inhabitants of the Community and made life unbearable. On its part, the defendant / respondent NNPC filed a defence in which it raises a preliminary objection, challenging the *locus standi* of the Plaintiff/ a Non-Governmental Organisation (NGO) to commence the action for lack of sufficient interest. The respondent/defendant claims that the Plaintiff is not a member of the affected community and has not showed that it suffered any peculiar damage and therefore prayed the trial court to strike out the suit.

The Plaintiff/Appellant in response urged the trial Court to relax the concept of *locus standi* as it relates to environmental litigation especially in view of the fact that the Plaintiff / Appellant is a Non-Governmental Organization set up to advance public interest litigation, and had instituted the case in the interest of the public. The trial court however accepted the position of the defendant / respondent and struck out the case for want of sufficient interest and *locus standi* to bring the action.

[63] RA Mmadu, 'Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel' *Afe Babalola University Journal of Sustainable Development Law and Policy* (2013) 1 (2) 149-170.
[64] *Kaduna State v Hassan* (1985) 2 N.W.L.R. (Pt. 8) 483 at 524 G.
[65] *Badejo v Minister of Education* [1996] 8 NWLR, pt. 464, p.15
[66] (n 53)
[67] (n 26)
[68] [2019] 5 NWLR (Pt. 1666) 518

The Appellant NGO appealed the decision of the Federal High Court to the Court of Appeal which dismissed the appeal. On further appeal to the Supreme Court where the issue for determination was; 'whether the learned Justices of the Court of Appeal were right in dismissing the Appellant's appeal for want of *locus standi* to maintain the suit?' The respondent contended that the Attorney General is the only proper person imbued with the standing to sue in the circumstances of the suit, and that extending the scope of *locus standi* would amount to opening the floodgate of litigation.

The appellant in response argued that the sole issue for determination gave rise to three considerations, which should be interpreted in the interest of the public to wit: *(a) locus standi* on environmental matters; (b) civil rights and obligations; and (c) Extending the scope of *locus standi.*

The appellant submitted that a plaintiff who does not seek to establish a private right but rather the maintenance of a law for the public interest has *locus standi* in the matter irrespective of whether he has any sufficient interest in the matter or has suffered any injury above every other member of the society in respect of the matter. He urged the court to expand the concept of *locus standi* for public spirited litigation as was urged in *Fawehimi v Akilu.* [69]

He contended that since the dominant objective of the rule of law is to ensure the observance of the law, it can best be achieved by permitting any person to put the judicial machinery in motion in Nigeria whereby any citizen can bring an action in respect of a public derelict as has been guaranteed in Section 6 (6) (b) of the 1999 Constitution of Nigeria, [70] which gives every citizen the right to commence an action where his rights and obligations are threatened.

The section provides;

> (6)… The judicial powers vested in accordance with the foregoing provisions of this section - (b) shall extend, to all matters between persons, or between government or authority and to any persons 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;

Allowing the appellant's action therefore strengthens the rule of law, social and economic justice. He contended that an environmental rights action maintained in the public interest deserves merit and should be heard because the environment belongs to no one but all and must be kept clean and safe for both humans and other living things. In the circumstances of the case, the affected streams (Ineh and Aku Streams) are the only source of water supply to the community and the oil pollution is deleterious to both the lives of the indigenes and the marine life.

Counsel for the Appellant therefore emphasised the need for a clean-up and reinstatement of the affected community which has lasted over ten years, with devastating effects and the Appellant is only a public spirited entity with no ulterior interest to serve. On the other hand, the respondent is a statutory corporation and its Board Members appointed by the Federal Executive. It will therefore be absurd to expect the Government to sue itself. Counsel for the appellant therefore concluded that if the appellant is denied the *locus standi* to maintain the action, it is unlikely that there will be any other challenger thereby leaving the environment without protection or remediation.

The respondent/NNPC urged that the Appellant is a busybody without peculiar interest relying on judicial precedents in *Keyamo v House of Assembly, Lagos State* [71] and *Abraham Adesanya v President Federal Republic of Nigeria*, [72] where the courts are of the opinion that *locus standi* restrictions are in place to keep interlopers away and restrict court access to only those that

[69] (1982) 18 N.S.C.C. (Pt. 11) 1265 at 1301

[70] Section 6(6)(b) 1999 Constitution of the Federal Republic of Nigeria

[71] (2000) 12 N.W.L.R. (Pt. 680) 196)

[72] (1981) 2 N.C.L.R. 385

have actually suffered a peculiar injury or harm. Therefore, there was no need for the expansion of the doctrine of *locus standi*. The appellant relied on the decisions and approach from Indian Jurisdiction such as in *Maharaj Singh v State,* [73] and *Gupta v Union of India,* [74] where the Indian Supreme Court held that it is in the interest of justice to liberalise the traditional rule on *locus standi*. Incidentally, the Supreme Court of Nigeria in the present case also referred *to Metha v Union of India,* [75] where a successful action was taken against the government to abate the nuisance of waste dumping and misuse of the River Ganges.

In reaching the decision, the lead Justice of the Supreme Court pointed out that since the Interpretation Act [76] defines "person" to include "anybody" or "persons corporate" or "unincorporated", it can be regarded that the Appellant is a person and by virtue of his arguments it is proper to find in favour of the appellants' *locus standi.* The court therefore took 'the humble view that in environmental matters such as the instant one, NGOs such as the plaintiff in this case have the requisite *standi* to sue*.'* The court noted further that the respondent being a public authority has acted in violation of its constitutional and statutory obligations to ensure a safe and healthy environment and that the defaults have amounted to public injury. The learned Justice noted that the true purpose of the judicial function is to preserve order. Further, that there is nothing in the Constitution that restricts power to enforce public duties to only Attorney General to the exclusion of any other person. The Supreme Court therefore held that since the interest of the Appellant is clear and not motivated by mischief, it is in the interest of justice to not shut the Appellant out. Aka'ahs, JSC [77] agreed with the above position and noted the increasing concern about climate change, depletion of the ozone layer, waste management, flooding, global warming, decline of wildlife, air, land and water pollution. He holds that the issue of environmental protection against degradation has become a contemporary issue. He therefore agreed that persons such as the Plaintiff/Appellant being in the vanguard of protecting the environment should be encouraged to ensure that actions or omissions by government agencies or multi-national oil companies that tend to pollute the environment are checked. He specifically noted that; 'Since other commonwealth countries such as England, Australia and India have relaxed their rigidity in the application of the concept of *locus standi* in public interest litigation, Nigeria should follow suit.' He expressed concerns at the constraints faced by communities affected by the spillage who may not have the financial muscle to sue and if good spirited organisations such as the Plaintiff is denied access to sue, it is the affected communities that stand to lose. Ejembi Eko JSC while concurring with the lead judgment restates the position that Courts, in recent times are inclined to apply more liberal tests on access to court, and that the trend is moving away from the restrictive and technical approach to the question of *locus standi*. While concurring that the appellant has *locus standi*, he specifically notes that; 'The approach these days is one finding out whether the plaintiff has a genuine grievance to seek the adjudication of the issue.' Onnoghen JSC (while also concurring with the lead judgment), puts the issue of *locus standi* in more direct terms by holding that where an NGO seeks the enforcement of an obligation under law *vis-à-vis* rights of the affected communities to maintain a healthy environment which extends to their forests, rivers, air and land, they should be heard, noting that;

> The plaintiff cannot, in anyway be described as a busy body or interloper. This is a public interest litigation in which the Chambers of the Honourable Attorney General of the Federation traditionally holds sway by the law on

[73] U. P AIR (1976) SC 2607
[74]47 AIR (1980) SC 1622
[75] (1989) LRC 885 41
[76] Cap 123 Vol 7 LFN. 2004
[77] (n 65) p. 580-581, paras. G-B

> *(sic) locus standi* has grown beyond that and now encompasses public spirited individuals and NGOs.

The Supreme Court in this case was therefore of the view that the lower courts were in error to hold that the appellant has no *locus standi* to institute the action which is aimed at saving the environment and lives of the people. In resolving the issues, the Supreme Court made reference to the Indian case of *Maharaj Singh v State59* [78] where the court advocated for the need to do substantial justice in liberating the rule on *locus standi*. Quoting, Bhagwat J in *Gupta v President of India and Ors* [79] wherein it was held that *'*…the rule of *locus standi* is of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born.'

The case of *Abraham Adesanya v the Federal Repblic of Nigeria & Anor* [80] can be regarded rightly as having introduced confusion on *locus standi* into the Nigerian judicial system. However the Supreme Court of Nigeria in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* [81] gave a decision that has the potential to transform the doctrine in Nigeria especially with respect to environmental rights and arguably on all socio-economic rights when the court laid the foundation for the protection of environmental rights by allowing for the enforcement of environmental rights by a Non-Governmental Organisation. But the stealth with which the Court gave access to court for the protection of the environment still gives room for doubts over the ability of the decision to be a precedent considering the diverging opinions of the lower courts and the Appeal Court on the case. [82] However in the light of the ambivalent approach of Nigerian courts to environmental, social and economic rights generally, the unsettled approach to the requirement of standing for plaintiffs in such a matter and the possible effect of the decisions on the ability of NGOs to bring actions on behalf of litigants within the extant legal frameworks in the Nigerian Legal System, the decision gives great hope and holds great prospects. The Justices of the Supreme Court touched upon the fact that in India, the courts without any statutory enactment see the need to do justice for the public with respect to environmental degradation, since maintaining a clean environment is the responsibility of all persons in the country as held in *Maharaj Singh v State UP* [83] This emerging trend was evident in the Indian case of *SP Gupta v President of India*,[84] where the Indian Supreme Court prescribed the modern rule on *standing* thus:

> …Where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically in disadvantaged position, unable to approach the court for relief, any member

[78] U.P. AIR (1976) S. C2607.
[79] 1982 2 SCR 265.
[80] [2019] 5 NWLR (PT 1666) 518
[81] (n 65)
[82] (n 30)
[83].AIR 1976 SC 2607 .
[84] AIR 1982 SC 149

> of the public can maintain an application for an appropriate direction, order or writ, in the High Court…[85]

The effect of this decision is that it is has become settled law in India that the procedural burden imposed by the doctrine of *locus standi* has virtually been obliterated in the Indian judicial system, courtesy of the activist stance of the Supreme Court of India. In India, the principle of *locus standi* has been significantly employed for the enforcement of fundamental rights through petitions filed in the Supreme Court and other court of sub-ordinate jurisdiction. In the Indian landmark case of *Husanara Khatoon v State of Bihar*,[86] where a petition filed by an advocate was entertained by the court on grounds of public interest, the court departed from the strict demand that petitions be filed only by persons whose fundamental right has been violated to petitions filed by even third persons for the enforcement of rights of another person. Such liberal approach is commendable because it covers situations where financial constraint or even lack of awareness could debar people whose rights have been violated from seeking redress in courts. This augurs well for environmental litigation in Nigeria if the Nigerian courts would follow this positive example and consolidate on its own achievement so far in that regard.

In the English case of *Rex v IRC Ex p. Fed of Self – Employed*, [87] Lord Diplock expressed the common law rule and position that the rules as to standing cannot be found in any statute but were made by judges. The implication is that courts are at liberty to determine when to relax the rules taking into consideration public requirements.

Alex C Ekeke, [88] in his study looks at the context of the interpretation of the principle of *locus standi* by Nigerian courts and its effect on access to justice and public interest litigation by Non-Governmental Organisations (NGOs) and individuals. He examines the impact of the provision for *locus standi* on the Fundamental Right (Enforcement Procedure) Rules 2009. He compares the interpretation of this concept in the common law jurisdictions such as Kenya, India, the United Kingdom and South Africa which once interpreted the concept strictly but have now moved away from such interpretation to a more liberal one. His comparison shows that Nigerian courts are now isolated in their position and advocates a need for Nigerian courts to conform to international best practice.

Furthermore. the liberal interpretation for relaxation of the *locus standi* rule has been strengthened by the Preamble 3 (e) to the Fundamental Rights Enforcement Procedure Rules 2009 which provides that: 'The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*.'
As Order 1 Rule 2 Fundamental Rights Enforcement Procedure Rules 2009 defines an "Applicant" to include a party who files an application or on whose behalf an application is filed, the courts should look beyond the technicalities of *locus standi*. The proper term to fit this decision can be found in the *dictum* of Danjuma JCA in *Momoh v Adedoyin* [89] where he points out thus:

> ...where rights exists, they must not be scuttled on technical grounds. The image of justice lying prostrate and the law standing erect in triumph is no

[85] This case is in contrast with the US case of *Inuit Circumpolar Conference v. Bush Administration, Case c-583*/curia/euro, available online at <www.ciel.org/publications/copco_Handout_Ejciel> accessed May 26 2019. The Inuit case highlights how climate change could be addressed in international jurisdiction.
[86] (1980 1. SCC 81).
[87] (1982) A.C [H. L. E] 640 – 641
[88] Alex Cyril Ekeke, 'Access to Justice and *Locus Standi* before Nigerian Courts' (2014) A dissertation submitted in fulfilment of the requirement of the degree LLM, Faculty of Law University of Pretoria. https://repository.up.ac.za> (accessed 2 June, 2022)
[89] (2018) 12 NWLR (Pt 1633) 34 CA. at Page 378, Paras. C – E.

> longer the dominant hymn. The altar of technicality and their worshippers have been decapitated, such that the pillars and safeguards of the law meant for.[90]

This decision therefore is an advancement of the law in Nigeria and constitutes a veritable tool in the hands of public-spirited NGOs and persons.

The more traditional concern of the environmentalists is the protection of the environment within the purview of statutory enactments and subject to sanctions and public remedies. Courts in some jurisdictions have in line with international human rights instruments and judicial pronouncement especially on social and economic rights, adopted public interest litigation as a tool to address social, cultural and economic issues aimed at delivering public goods to its citizens. If the courts don't wish to be burdened with trivial or theoretical damages, they have an in-built mechanism to address such issues.

The *locus standi* rule continues to be the greatest hurdle facing a private plaintiff who brings a public action for damages because plaintiffs who are permitted to sue generally prevail if their injury is connected to the defendant's actions. The concern that liberal standing results in a multiplicity of actions is accommodated when public nuisance suits are brought as a class action. Instead of barring these tort claims or denying a right to stand because of potential multiplicity of the claimants, courts have established procedures to handle the claims fairly and expeditiously, especially through the Fundamental Rights Enforcement Procedure Rules (FREPR) which liberalises the process of enforcing human right actions including the environment. Indeed, there is no reason to assume that public nuisance actions are not generally less burdensome on the courts than are complex toxic torts. Moreover, by deterring pollution problems, public nuisance claims could reduce the number of toxic tort actions the courts must handle.

The issue of standing to sue is critical to the development of legal jurisprudence and social and economic right in legal systems. However, in Nigeria, no issue has impeded the success of environmental justice like the issue of *locus standi* which is brought up where a concerned person wishes to bring up an environmental rights suit against any respondent especially multinational oil companies who wreck havoc on the environment in their operations with impunity. There is the need to make the protection of the environment the responsibility of both private citizens as well as the government. [91]

5. Conclusion

Even though in line with cases from India, the court have embraced the principles of public interest litigation especially for NGOs, the lower court and the Court of Appeal in some cases have still failed to align with the requirement of liberalisation agenda under the FREP Rules for NGOs to be able to enforce public rights. The unwillingness of the lower courts in Nigeria to make decisions about public interest preferring to leave such decisions to the Attorney General even in the light of the liberalisation of the right to enforce human rights by the FREPR is a cause for concern as it establishes the lack of understanding of the basis for the establishment of the public policy rule and the floodgate argument. The problem with this is that it increases the potential for a conflict of interests in complex political and social situations. Requiring the permission of the AG to bring an action against the State or Institution, where the AG is its employee or an appointee and provides legal advice, is also contrary to the principles of *nemo judex in causa sua.* Therefore, the courts must reject the old policy rationale to accommodate modern policy values including environmental

[90] *See Aliyu Bello v AG Oyo State* (1986) 5 NWLR (Pt 45) 826 at 886 p 22.

[91] Oludayo G Amokaye, 'Human Rights and Environmental Protection: The Necessary Connection' *UNILAG Journal of Human Rights Law* (2007) (1) (1) 89, 96-99;

degradation for the protection of health. Public nuisance can be addressed by the various environmental statutes and regulations enacted across the federal and state houses of assemblies. The existence of these statutes has rendered the continued application of the principles of public nuisance redundant. [92]

Public interest litigation will provide citizens acting as private attorneys general with an opportunity to transform the public interest litigation into a powerful and influential tool that could fill regulatory gaps left by environmental statutes.

Until there is unfettered environmental action, denial of justice for victims of environmental degradation may continue.[93] The emerging philosophy is that an individual has a role to play in public law. Also, even though the relaxation of the *locus standi* rule has helped in advancing justice for human rights, it should come with a caveat. The objective of such a relaxation must not be lost because of its potential for misuse. The potential for misuse was noted by the Indian Apex court in *Dattaraj Nathuj Thaware v State of Maharashtram AIR* [94] where the court noted that;

> the weapon of public interest should be used with due care and caution and must not be misused. This is because the tool of public interest was devised for the protection of the interests/rights of the poor and the weak, it cannot now be used be used to create nuisance or obstruction of the administration of justice.[95]

The traditional concept of *locus standi* is losing acceptance and an individual should be able to vindicate the rights which he is entitled to have protected under public law, [96] thereby bringing Nigeria nearer to the achievement of *actio popularis* (citizen action). The "demystification" of the *locus standi* is also important in public law in order to hold public authorities to account for their unlawful acts. It will fundamentally increase the opportunities for public interest litigation generally and environmental litigation specifically since parties often do not bring public law issues before the court for personal gain. This will significantly reinforce the fundamental right of everyone to access a court, and it can be fairly certain that the floodgates of litigation will not be opened nor will "busy bodies" crash their way into the courts since the courts have discretion not to entertain frivolous suits.[97] As Krishna Iyer J pointed out in the Indian case *Fertilizer Corporation Kamgar Union (Regd) v Union of India* [98] 'it is essential that the rule of law must wean the people away from the lawless street for the court of law'

6. Recommendations

A more liberal interpretation of standing where public-interest action has evolved through the application of a 'sufficient interest' test by the courts to include non-economic interests such as "aesthetic interest" is advocated.[99]

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[92] (26)

[93] Rufus Akpofure Mmadu "Judicial Attitude to Environmental Litigation and Access to Environmental Justice in Nigeria: Lessons from Kiobel*" Journal of Sustainable Development Law and Policy (*2013)(1) (2); 149-170

[94] (2005 SC 540)

[95] See the case of *Common Cause (A Registered Society) v Union of India & others*. (2018) Supreme Court of India.

[96] See however the case of *Adeyinka Abosede Badejo* (Suing by her next friend *Dr Babafemi Badejo) v. Minister of Education*, [1996] 8 NWLR, (Pt. 464) p.15, where the Supreme Court appears to have resurrected the strict and outdated view on *locus standi*.

[97] Plasket , *Ann. Am. Acad. Polit. Soc. Sci.* 296

[98] 1981 (1) SCC 568 at 584.

[99] See A Homburger 'Private suits in the public interest in the United States of America'*Buffalo LR* (1973/4) (23) 343; 400-401; AL Brown Environmental justice: New civil rights frontier' (1993) 29 *Trial* 48-53.

It is recommended that in litigation concerning serious environmental issues, courts should desists from characterising human rights and public nuisance claims. The paper advocates that courts should be consistent in its interpretation of the rule and take the final step to reject the restrictive application of *locus standi* rule in environmental and public interest cases outright. Private plaintiffs and communities must not be barred from litigating their claim by an outdated special rule if public interest litigation claims can fill gaps in the law, and help establish standards of reasonable conduct for multinational companies. This will not only help in protecting the environment but will also obviate the need to resort to self-help by aggrieved and frustrated litigants which does the society no good.