



LIBERALIZATION OF THE RULE ON LOCUS STANDI IN NIGERIA: CENTRE FOR OIL POLLUTION WATCH V NNPC**

Abstract

Nigerian courts, in clinging to the rigid locus standi rule, have restricted access to justice for many litigants seeking to ventilate grievances of a public interest nature. Notwithstanding the glimmers of hope over the years, it has largely been motion without movement. This was until the momentous decision in *Centre for Oil Pollution Watch v NNPC* where the Supreme Court of Nigeria held that the appellant, acting in public interest, can sue to defend the environment. However, as salutary as the decision is, the journey towards unshackling public interest litigation in Nigeria from the fetters of the rule on locus standi continues. Using doctrinal research method, this case-note reflects on the application of the rule on locus standi in public interest litigation in Nigeria, and examines the implication of the decision under review to the overall desideratum for improved access to justice in public interest litigation in Nigeria. The study justifies the grant of locus standi to public interest litigants, and encourages advocacy, and strategic litigation to advance this cause. The study recommends that the courts adopt purposeful legal interpretation for the good of society, away from the slavish application of the restrictive locus standi approach.

Keywords: Locus Standi, Access to Justice, Public Interest Litigation, Environmental Litigation

1. Introduction

Locus standi, a Latin term which literally translates as a ‘place to stand’, means the right to sue or the ability of a party to demonstrate sufficient connection to the subject matter of litigation.¹ The rule on *locus standi* is rooted in the common law, but transplanted into Nigerian law as part of Nigeria’s colonial heritage. At common law, a litigant was required to show sufficient, direct, and personal interest in the subject matter of litigation, or the sustenance of greater injury than other members of the society, and it was not enough to simply allege that the defendant had infringed third party rights or acted in contravention of the law.²

The requirement of *locus standi* is to protect the court from being used as a playground by meddlesome interlopers and busy bodies who have no genuine interest in the litigation, thereby enabling the court to focus on genuine issues.³ The rule shuts out persons who are concerned about matters that do not concern them. However, because it also precludes public-spirited persons from litigating public interest issues, the rule constitutes a clog to access to justice in Nigeria. This case note is a doctrinal study which employs the prism of the Supreme Court of Nigeria (SCN) decision in *Centre for Oil Pollution Watch v NNPC (Centre v NNPC)*⁴ to beam spotlight on the theory and practice of *locus standi* in Nigeria, and to advocate the relaxation of the rule in public interest litigation in Nigeria. To set the tone for the study, the next section clarifies the concept of *locus standi* and public interest litigation in Nigeria. Thereafter, section three examines the litigation in *Centre v NNPC*, while section four examines the implication of *Centre v NNPC* for public interest

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¹ BA Garner (ed.), *Black’s Law Dictionary* (9th edn, St. Paul 2009) 1026.

² O Oyewo, ‘Locus Standi and Administrative Law in Nigeria: Need for Clarity of Approach by the Courts’ *International Journal of Scientific Research and Innovative Technology* (2016) 3/1 80.

³ *Taiwo v Adegboro* [2011] 11 NWLR (Pt. 1259) 579 (Supreme Court of Nigeria (SCN)).

⁴ (2019) 5 NWLR (Pt. 1666) 518 (SCN).



litigation in Nigeria. The conclusion of the study appears in section 5, while recommendations are made in section six.

2. Locus Standi and Public Interest Litigation in Nigeria

Access to justice enables public-spirited persons to engage in strategic public interest litigation towards holding government accountable for its policies and programs, checking unlawful conducts by public authorities, and giving voice to issues of concern to the poor, vulnerable, or marginalized persons. The requirement of *locus standi* stymies such public interest actions. In *Olawoyin v Attorney-General Northern Region*,⁵ one of the first Nigerian cases on the subject, the applicant's suit challenging the constitutionality of the Children and Young Person's Law of Northern Nigeria 1958 was dismissed on grounds that his grievance was a general issue not peculiar to him. Similarly, in *Adesanya v President*,⁶ the leading Nigerian case on the subject, the applicant challenged the constitutionality of the appointment of the head of the national electoral body, but the court denied him standing on grounds that the issue he complained of was a public grievance not exclusive to him.

The court in *Owodunni v Registered Trustees of Celestial Church of Christ*⁷ observed that 'The *Adesanya* case... seems to lay it down that to invoke the judicial powers of the court, a litigant must show sufficient interest or threat of injury.' Thus, 'interest' or 'injury', rather than the importance of the issue in the claim, is the yardstick for determining *locus standi* in public law litigation in Nigeria. Applying this yardstick, the court in *Keyamo v Lagos State House of Assembly*⁸ held that 'The mere fact that an act of the executive or legislature is unconstitutional, without any allegation of infraction of, or its adverse effects on, one's civil rights and obligations, poses no question to be settled between the parties in court.' More pointedly, in *Shibkau v Attorney-General Zamfara State*⁹ where the appellants challenged the constitutionality of Sharia law by the respondent, the court dismissed the suit for lack of *locus standi*, thus:

Generally under public law, an ordinary individual or a citizen without more will not have *locus standi*... because such litigation involves public rights and duties which belong to and are owed to all members of the public... It is only where the individual has suffered special damage or injury which is far and above the one suffered generally by other members of the public that he can sue personally... general interest which is common to all... cannot be litigated upon by an individual.

Although some court decisions overtime tended to suggest a liberalization of the rule on *locus standi* in public law litigation in Nigeria, it is argued that the seeming liberalization is not real.¹⁰ One of the cases cited as evidence of the liberalization is *Fawehinmi v President*.¹¹ Here, the appellant challenged the Nigerian president's decision to pay certain public officials in foreign currency, and in excess of the amounts prescribed by law. The court held that the need to confine

⁵ (1961) 2 SCNLR 5 (SCN).

⁶ (1981) 2 NCLR 358 (SCN).

⁷ [2000]10 NWLR (Pt.675) 315 at 345 (SCN).

⁸ [2000] 12 NWLR (Pt. 680) 196 at 216 (SCN).

⁹ (2010) LPELR-4956(CA) 33-34 E-C (Court of Appeal of Nigeria (CA)).

¹⁰ Z Adangor 'Locus Standi in Constitutional Cases in Nigeria: Is the Shift from Conservatism to Liberalism Real?' *Journal of Jurisprudence, International Law and Contemporary Issues*, (2018) 12/1 91.

¹¹ [2007] 14 NWLR (Pt. 1054) 275 (CA).



the executive within its powers in public interest justifies it to grant standing to any citizen to litigate a public issue. Similarly, in *Governor of Ekiti State v Fakiyesi*,¹² the court, persuaded by the trends in other jurisdictions to liberalize the rule on *locus standi*, held that the plaintiff could challenge the constitutionality of a legislative act. Earlier, in *Fawehinmi v Akilu*,¹³ the plaintiff, a lawyer and human rights activist, sought to compel the director of public prosecutions to prosecute the alleged killers of one Dele Giwa, or to grant him fiat to prosecute. Among others, the court held that the plaintiff had *locus standi* because he was a personal friend and lawyer to the deceased. Again, in *Attorney-General Kaduna State v Hassan*,¹⁴ the respondent's son was killed in a communal clash, and certain persons were arrested and charged in connection with the killing. However, the solicitor-general discontinued the prosecution. The respondent challenged his powers to do so. The court held that the respondent had the *locus standi* to so challenge. It is discernible that the last two cases related to administration of criminal justice, and the applicants were able to prove that, on the facts, they occupied a higher pedestal than other members of the society.

Accordingly, the veritable indication of liberalization of the rule on *locus standi* in Nigeria is now provided in the Fundamental Rights (Enforcement Procedure) Rules 2009.¹⁵ Paragraph 3(e) of the Rules provides as follows:

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*. In particular, human rights activists, advocates, or groups, as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:

- (i) anyone acting in his own interest;
- (ii) anyone acting on behalf of another person;
- (iii) anyone acting as a member of, or in the interest of a group or class of persons;
- (iv) anyone acting in the public interest, and
- (v) association acting in the interest of its members or other individuals or groups.

3. The Litigation in Centre v NNPC

The appellant, a non-governmental organization (NGO), in furtherance of its object of protecting the environment, sued the respondent for, in the main, the reinstatement, restoration, and remediation of streams and environment contaminated by oil spill caused by respondent's negligence. At the trial Federal High Court, the respondent successfully challenged the appellant's *locus standi*, and got the suit struck out. The appeal to the Court of Appeal failed, and the appellant further appealed to the SCN.¹⁶ Mindful that its decision was likely to be momentous, the SCN invited a cream of seasoned senior lawyers as *amici curiae* to submit briefs of argument. The SCN waded through the submissions of counsel to parties and of the *amici*, to arrive at a unanimous

¹² [2010] All FWLR (Pt. 501) 828 (CA).

¹³ (1987) 4 NWLR (Pt. 67) 797 (SC).

¹⁴ (1985) 2 NWLR (Pt. 28) 483 (SC).

¹⁵ Applicable to fundamental rights litigation only.

¹⁶ Established by section 230 of the Constitution of Nigeria, the SCN is the apex court in Nigeria's legal system. It hears appeals from the Court of Appeal of Nigeria. Below the Court of Appeal are other superior courts of coordinate jurisdiction, for which the Federal High Court of Nigeria, is one.



decision to overturn the concurrent decisions of the two lower courts, and to relax the rule on *locus standi* in environmental matters. This marked a turning of tide for access to justice in public interest litigation in Nigeria.

In support of the appellant, it was argued that a plaintiff who does not seek to establish a private right, but only the maintenance of a law in public interest, should have *locus standi*, without need to establish the sufferance of a peculiar injury. It was submitted that constitutional justice demands that anyone with genuine intention should be permitted to seek judicial redress and get the law enforced whenever there is a transgression of the law that has occasioned injury to the public. It was contended that the dominant objective of the rule of law is to ensure the observance of the law, and this can best be achieved by permitting any genuine person to adjudicate in respect of a public injury. The court's attention was drawn to developments in public interest litigation in the commonwealth, and the court was urged to follow the trend and abandon its rigid rule on *locus standi*.

In opposition, it was contended that the Nigerian law on *locus standi*, remained as it had always been, and there was no room for the adoption of the modern views. It was argued that Nigeria has sufficient environmental laws and agencies relating to appellant's complaint, and there was no need to liberalize the rule on *locus standi*. It was further submitted that environmental degradation being a species of public nuisance, it was the sole responsibility of the attorney-general to litigate.

Nweze JSC delivered the lead judgment. He considered the origin of the rule on *locus standi*, that it was made by common law judges in the era of private law before public law was born, yet, in inheriting the common law heritage, Nigerian courts embraced the rule in a sense that merged the restrictive concept of private law cause of action with the requirements of public law. He demonstrated that contrary to the general belief, *Adesanya v President* did not decide that the law on *locus standi* in Nigeria is derived from section 6 of the Constitution of Nigeria; the said section relates to the nature, extent, and vesting of judicial powers of the courts, but does not deal directly with the right of access to court. Nweze JSC debunked the assertion that there is no room for adopting the modern views on *locus standi*, citing *Adesanya v President* as instance where the SCN made reference to India, USA, Canada, and Australia, on the subject of *locus standi*. He agreed with Lord Diplock in *R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses (R v IRC NFSSB)*¹⁷ that the rules on *locus standi* were made by judges and they can be modified by judges so as to meet the need to preserve the integrity of the rule of law. Furthermore, he approvingly referred to some decisions in England and India where the courts liberalized the rule on *locus standi* in the interest of justice, and without any statutory enactment. Conclusively, Nweze JSC agreed that the appellant's suit will vindicate the rule of law in that it will ensure that the respondent complies with the law.

In concurring, Onnoghen CJN observed that in England, as in other common law jurisdictions, there is a liberalization of the rule on *locus standi* based on the views expressed by Lord Diplock in *R v IRC NFSSB*. The Chief Justice of Nigeria, while noting that public interest issues are traditionally left for the attorney-general to litigate, pronounced that the law on *locus standi* has now grown to encompass public-spirited persons. Similarly, Muhammad JSC opined that the peculiar circumstance of the case justifies a liberalization of the rule on *locus standi*. He observed that as the appellant alleges environmental degradation occasioned by breach of respondent's statutory obligations, insisting that the appellant satisfies the injury yardstick is to sustain an injustice that would otherwise be obviated by the suit. Aka'ahs JSC's opinion is that the

¹⁷ [1982] AC 617 (House of Lords of the United Kingdom (HL))



issue of environmental protection is a contemporary issue of global concern, and the appellant being in the vanguard of protecting the environment should be encouraged to sue.

For Kekere-Ekun JSC, the developments in other commonwealth jurisdictions delineate the changing landscape of public interest litigation, and a genuine person should be granted standing. Similarly, Okoro JSC posited that since no particular person owns the environment, where government authorities are derelict in protecting the environment, genuine persons should be allowed to sue to protect the environment. Eko JSC's position is that every person, who genuinely sue to ensure the performance of statutory obligations and the enforcement of laws so as to protect human lives, public health, and environment, should be accorded with *locus standi*. He considered that there was nothing in the Constitution of Nigeria that says it is only the attorney-general, through a relator action, that has the standing to enforce the performance of a public duty. He concluded that since from the facts of the case, the appellant cannot be regarded as a mere busy body out to abuse the court's process, then rigid adherence to the common law rule of *locus standi* poses a hindrance to enforcement of the rule of law.

4. Implication of *Centre v NNPC* for Public Interest Litigation in Nigeria

While the SCN has now expanded the rule on *locus standi* in environment related public interest litigation in Nigeria, the challenge remains the further extension of the liberal approach to other public law matters. This would be in accord with justice and the judicial function. The idea of the judicial function as primarily aimed at preserving legal order by confining the legislative and executive organs within their powers in the interest of the public, as put forward by Dr. Thio in his book *Locus Standi and Judicial Review*, informed the decision in *Centre v NNPC*. Nigerian courts can implement this idea of the judicial function by liberalizing the rule on *locus standi*, and assuring access to justice for public interest litigants. As was held in *Trans Bridge v Survey Management Ltd*,¹⁸ 'It would be tragic to reduce judges to a sterile role and make an automation of them. It is the function of judges to keep the law alive, in motion, and to make it progressive for the purpose of arriving at the ends of justice.'

In embarking on the journey to liberalize the rule on *locus standi* in public interest litigation, Nigerian courts are not left without guide. They can take cues from the comparable jurisdictions of India and England. In India, starting from the 1980s, the courts have, in several cases, imbibed judicial activism for the purpose of doing justice, and have liberalized the rule on *locus standi* to grant standing to *bona-fide* public interest litigants.¹⁹ One prominent case is *Gupta v Union of India*²⁰ where court held that any member of the public or social action group, acting *bona-fide*, can invoke the writ of jurisdiction to seek redress against violation of constitutional or statutory rights in public interest, or to seek the enforcement of public duties where the conduct of the executive branch results in public injury. The court also relaxed complex court procedures to enable easier access to justice for public interest litigants, thus:

It is true that there are rules made by this court prescribing the procedure for moving this court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice

¹⁸ (1986) NWLR (Pt. 37) 576 at 596 (SCN)

¹⁹ AC Ekeke 'Liberalization of the Rule on *Locus Standi* before Nigerian Courts: Lessons from India' (2022) 66/2 *Journal of African Law* 349-352.

²⁰ AIR 1982, SC 149 at 189 (Supreme Court of India (SCI)).



and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The court would therefore unhesitatingly and without the slightest qualms of conscience, cast aside the technical rules of procedure in the exercise of its dispensing power, and treat the letter of the public minded individual as a writ for petition and act upon it.

Before India, England, the custodian of the common law, had liberalized the rule on *locus standi* to grant standing to public interest litigants. In justifying the liberal approach, Lord Diplock held in *R v IRC NFSSB*²¹ that it would be a grave lacuna in our system of public law if a pressure group or even a single spirited tax-payer, were prevented by outdated technical rules of *locus standi* from suing to vindicate the rule of law and getting an unlawful conduct stopped. Lord Diplock was influenced by the statement of Lord Denning MR in *R v Greater London Council, ex parte Blackburn*,²² where the master of rolls recasted his own earlier statement in *McWhirter's case*²³ that it was a matter of high constitutional principle that if any public authority transgresses the law, in any way, which injures thousands of citizens, then anyone of those injured can sue to have the law enforced, and the courts can grant appropriate remedy. In the instant case, Lord Denning MR granted standing to plaintiff who sued to prevent the Greater London Council from allowing the exhibition of pornographic films in cinemas in London, and stated thus:

It was suggested that Mr. Blackburn has no sufficient interest to bring these proceedings... on this point, I would like to ask: who then can bring proceedings when a public authority is guilty of a misuse of power? Mr. Blackburn is a citizen of London. His wife is a rate-payer. He has children who may be harmed by the exhibition of pornographic film. If he has no sufficient interest, no other citizen has.

Another case which illustrates the liberal approach to *locus standi* in England is *R v Inspectorate of Pollution, ex parte Greenpeace*.²⁴ Here, Greenpeace, an environmental NGO, sued for an order quashing the Inspectorate of Pollution's decision to allow British Nuclear Fuels continue discharging radioactive waste. In granting standing to Greenpeace, Otton J held thus:

It seems to me that if I were to deny standing to Greenpeace, those it represented might not have an effective way to bring the issue before the court... an application by Greenpeace who, with its particular experience in environmental matters, its access to experts in the relevant realms of science and technology (not to mention the law), is able to mount a carefully selected, focused, relevant and well-argued challenge.'

Similarly, in *R v Foreign Secretary, ex parte World Development Movement*²⁵ the applicant, a campaigner for more and better aid, challenged the decision of the foreign secretary to provide aid to support the building of a hydroelectric dam in Malaysia. The court, having regard to the

²¹ [1982] AC 617 (HL).

²² [1976] 3 All ER 184.

²³ [1973] 1 All ER 696.

²⁴ (1994) 4 All ER 329.

²⁵ [1995] 1 WLR 386.



applicant's work, its prominence in the field of foreign aid, the absence of alternative challenger, and the significance of the issue, granted standing to the applicant.

Taking lessons from these developments in England and India, Nigerian courts are urged to show more willingness to accord standing to genuine public interest litigants. The courts should treat each public interest action in its particular context- where the claim discloses that the applicant is prompted by a genuine interest to maintain the law, especially where the defendant's objectionable conduct portends grave danger to the lives, health, security, environment, or welfare of the citizens, the applicant should be allowed to maintain the action in public interest. Previously, the SCN in *Ladejobi v Oguntayo*²⁶ had pronounced that ready access to the court is an attribute of civilized legal systems, that it is dangerous to limit the opportunity for one to canvass a case by rigid adherence to the ubiquitous principle of *locus standi*, and that *locus standi* should be broadly determined with due regard to the corporate interest sought to be protected. We submit that Nigerian courts should be guided by this authoritative pronouncement.

According to Pats-Acholonu JSC in *Ladejobi v Oguntayo*, 'The society is becoming highly dynamic and certain stands of yesteryears may no longer stand in our present state of social and political development.'²⁷ This statement can be cumulated with those of Bhagawati J in *Gupta v Union of India* that *locus standi* 'is a rule of ancient vintage (that) arose during an era when private law dominated the legal scene and public law had not yet been born,' and of Lord Diplock in *R v IRC NFSSB* that 'the rules as to standing... were made by judges and by judges they can be changed; and so they have been over the years, to meet the need to preserve the integrity of the rule of law... Any judicial statements on matters of public law if made before 1950 are likely to be misleading guide to what the law is today.' The aggregate effect of these statements is that in view of the dynamism of law, Nigerian courts must break free from needless conservatism, and empower the law to take a more central role in societal engineering. For as Lord Denning argued elsewhere, it is purposeless to stick with a dysfunctional process merely because of a disinclination for change:

What is the argument on the other side? Only this: that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both.²⁸

The thing is that for Nigeria, law must be viewed as transcending its traditional role of ensuring security and order in society, towards the higher objective of human development.²⁹ The dire human development challenges³⁰ afflicting Nigeria implicates the need for the law to be more attuned to the country's development needs. The courts should allow public-spirited persons to sue

²⁶ (2004) LPELR-1734 (SC).

²⁷ Ibid 27 B.

²⁸ *Parker v Parker* (1954) All ER 22.

²⁹ DP Saredau, 'Law and Nigeria's Development: How to Strengthen the Efficacy of Law for Development in Nigeria' *African Journal of International and Comparative Law*, (2021) 29/4 552.

³⁰ Nigeria's human development index (HDI) value of 0.535 ranks it at 163 out of 191 countries, with life expectancy at birth of 52.7 years. Adjusted for inequality (IHDI), the value drops to 0.341. Further, with multi-dimensional poverty index (MPI) value of 0.254, Nigeria has 46.4% of its population as multi-dimensionally poor, 54.8% living in intense deprivation, and 46% living below the national poverty line. See United Nations Development Programme. Human Development Report 2021-2022 Retrieved May 10, 2023 from <https://hdr.undp.org/content/human-development-report-2021-22>



in public interest, so as to hold government accountable for the security and welfare of citizens, to fight corruption and bad governance, to voice out the concerns of the poor, marginalized, and vulnerable members of the society, and generally, to ensure that the rule of law and the tenets of democracy are abided with by political leaders and public officeholders.

The significance of *Centre v NNPC* is that because it is a SCN decision, it ranks highest in the Nigerian legal system, and all courts in the country are bound by it. Previously, the Court of Appeal in *Fawehinmi v President* has stated that the requirement of *locus standi* becomes unnecessary in constitutional matters as it will merely impede judicial functions, and that the need to preserve the legal order by confining the legislature and executive within their powers in public interest justifies the court to permit any citizen to litigate in respect of any public derelict. It is submitted that when given another opportunity, the SCN should decide in line with the liberal spirit exhibited in *Centre v NNPC*, and advocated in *Fawehinmi v President* to the end that courts should not allow the rule on *locus standi* to impede them from their judicial function when an issue of a transgression of the law is brought to their attention by a genuine public interest litigant.

5. Conclusion

The ‘injury’ or ‘interest’ yardstick for *locus standi* stymies the effectiveness of public interest litigation in Nigeria, as it denies access to justice for many public-spirited persons, who otherwise possess the clout, resources, and expertise to litigate issues of public concern. The SCN decision in *Centre v NNPC* represents a turning of the tide, as it relaxed the requirement of *locus standi* to the effect that any person acting genuinely in public interest can maintain an environment related litigation without disclosing a personal ‘injury’ or ‘interest’. Generally, however, and largely as a relic of the common law system, Nigerian courts still rigidly apply the doctrine of *locus standi*, thereby denying access to justice to many public interest litigants. This paper underlined the point that there is more logic and philosophy justifying the grant of *locus standi* to public interest litigants than in denial thereof.

6. Recommendations

To facilitate access to justice for public interest litigants in Nigeria, the liberal approach to *locus standi* as exemplified in *Centre v NNPC* should be extended beyond environmental matters to all public interest litigation. Public-spirited persons can then employ strategic public interest litigation to police the corridors of power, prevent violation of the law, and seek judicial intervention for governance and human development issues. A rights-based approach, especially a right to development perspective, can prove effective in this regard.

Since the rule on *locus standi* is made by judges and can be amended by judges, Nigerian courts, alive to the judicial function of preserving the legal order, should break free from needless conservatism, empower the law to take a more central role in societal engineering, and accord *locus standi* to any public-spirited person with a genuine interest in a public law issue and whose desire is to maintain the law for public interest. The courts, through judicial activism and purposeful legal interpretation should unshackle itself from the fetters of restrictive *locus standi* approach and adjudicate in ways and manners that advance the good of the society. Civil society organizations, the Nigerian Bar Association as a body and also through its Section on Public Interest Litigation (SPIDEL), and all public-spirited individuals should not tire, but persevere, in their efforts at realizing freer access to justice in public interest issues through tools such as advocacy and strategic litigation.