
ENVIRONMENTAL PUBLIC INTEREST LITIGATION IN NIGERIA: A CASE COMMENT ON CENTRE FOR OIL POLLUTION WATCH V NIGERIAN NATIONAL PETROLEUM CORPORATION

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1. Introduction

The determinant of *locus standi*, in Nigeria, has been the sufficient interest or injury test. This has been an obstacle in Nigeria, in public interest litigation, in public nuisance, particularly in environmental matters. This retarded the development of the law and public interest litigation generally. In the *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*,¹ the Nigerian Supreme Court in a unanimous decision of 7-0 liberated the rule on *locus standi* from the shackles of its traditional determinant and established new principles for determining *locus standi* in public interest litigation in environmental matters.

This comment will argue that the decision considered new developments in the socio-political sphere, the changing landscape of public interest litigation especially as it concerns matters related to the environment, as well as the peace, justice, orderliness, social and economic justice the suit will bring to the affected community. The decision is therefore commendable.

2. Background

In an admiralty action *in personam*, arising from oil spillage which occurred from the Respondent's ruptured oil pipeline, the Appellant claimed against the Respondent - reinstatement, restoration and remediation of the contaminated environment in Acha Autonomous Community particularly the Ineh and Aku Streams; provision of potable water supply as a substitute to the soiled and contaminated Ineh/Aku Streams; and provision of medical facilities for evaluation and treatment of the victims.²

The Respondent by a motion on notice urged the trial court to dismiss the suit *in limine* on the ground that the Appellant lacked the necessary *locus standi* to institute and maintain the suit. The trial court held that the Appellant lacked the *locus standi* to maintain the suit and struck the suit out. The Nigerian Court of Appeal unanimously

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² *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation. supra* at 548 Paras B-D.

upheld the judgment, citing the Supreme Court case of *Nyame v FRN*³ which held that a ‘Plaintiff will have *locus standi* only if he has a special right or alternatively if he can show that he has sufficient or special interest in the performance of the duty sought to be enforced or where the interest is adversely affected.’ Still dissatisfied, the Appellant appealed to the Supreme Court of Nigeria.⁴

3. Legal Issue

The legal concept of *locus standi* is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the Applicant has no interest, or in which the applicant’s interest is remote or hypothetical.⁵ A party initiating a suit must have a right to bring the action – the aggregate of the enforceable rights in a cause or a cause of action must be vested in the party.

In the *Centre for Oil Pollution Watch* case the issue was whether the Appellant had the *locus standi* to institute and maintain the suit. The Appellant, through its counsel, contended that the law on *locus standi* with respect to environmental matters that are maintained purely for public interest, without private interest, has changed to the extent that pressure groups, non-governmental organizations (NGOs) and even public spirited tax payers are cloaked with the *locus standi* to maintain an action for public interest even though they may not have suffered any injury at all, let alone any injury above every other member of the society from the subject matter of the suit; a Plaintiff who does not seek to establish a private right but rather the maintenance of a law for the public interest will have *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.⁶ Likewise the merit of the challenge; substantial default or abuse; the importance of vindicating the rule of law; the importance of the issues raised; the nature of the breach or damage for which relief is sought; the role of the Plaintiff and its sincere concern for the environment will confer *locus standi* on it⁷ once its case discloses any of these.

Counsel then submitted that the Appellant’s action is purely for public interest without any private interest; the action is very important – there is substantial abuse or default (soiling the environment and failing to remediate same) by the Respondent; the Appellant has sincere concern for the environment, particularly, but not limited to the one in issue; there is likely absence of any other challenger; and 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

³ [2010] 7 NWLR (PT1193) 344 SC.

⁴ Ibid at 550 Paras B-C.

⁵ *Attorney General of Kaduna State v Hassan* [1985] 2 NWLR (Pt.8) 483 SC.

⁶ Ibid at 550 Paras F-H.

⁷ *Center for Oil Pollution Watch v Nigerian National Petroleum Corporation*. *Supra* at pages 550-551 paras F-A.

any person to put the judicial machinery in motion in Nigeria whereby any citizen (including a registered NGO) could bring an action in respect of a public derelict as the Appellant has done in this case. He maintained that the Appellant's action is laudable and will bring peace, justice, orderliness as well as social and economic justice.⁸

The Appellant further contended that the court would extend, curtail or depart from a *ratio decidendi* or principle of law if it is restrictive (narrow) or too wide, in appropriate cases like in the instant case; the court could introduce a qualification (exception) into the meaning of *locus standi* or extend same to the extent that a Plaintiff who maintains an action - environmental action- for public interest, or to vindicate the rule of law, has the *locus standi* to maintain the suit even though he did not suffer any injury from the subject matter of the suit. He, consequently, urged the court to extend the meaning of *locus standi* in the present case giving the peculiar facts and circumstances of the instant case.⁹

The Respondent, on the other hand, contended that the Nigerian law on *locus standi* remains as it has always been and that as the law stands there is no room for adoption of the modern views on *locus standi* as in England and Australia. The Respondent further argued that the concept of *locus standi* is universal and the essence of the requirement is to keep away interlopers while encouraging those who have suffered to seek judicial redress in court.¹⁰

The Supreme Court of Nigeria invited five *amici curiae* which included the Attorney General of the Federation and the President of the Nigerian Bar Association. The *amici curiae* were divided in their contention – the conservatives and the progressives. While the conservatives argued that the law has been that in the absence of harm, injury, benefit or obligation to the person bringing an action, such a person would be likened to a busy – body who lacks *locus standi* to initiate the action; and that there was no need for any expansion of the doctrine of *locus standi*,¹¹ the progressives argued that the averments in the amended statement of claim were anchored on public interest litigation in the interest of the general public and urged the court not to stick to the rigid adherence to the strict doctrine of *locus standi*; to relax the rule of *locus standi* because the suit seeks to expose illegality and bring immeasurable environmental benefits, which would have gone unaddressed.¹²

⁸ Ibid Pages 551-552 paras H-B

⁹ Ibid Page 554 paras B-C

¹⁰ Ibid page 555 paras C-H.

¹¹ Ibid pages 556-558.

¹² Ibid pages 558 - 560

4. Legal History

The jurisprudence in Nigeria has been that under public law, an ordinary individual or a citizen or a tax payer will generally not have *locus standi* as a Plaintiff because such litigation concerns public rights and duties, which belong to, and are owed all members of the public including the Plaintiff. It is only where the individual has suffered special damage over and above the one suffered by the public generally that they can sue personally. In an action to assert or protect public right or to enforce the performance of a public duty, it is only the Attorney General of the Federation, or the State as the case may be that has the requisite locus to sue. A private individual can only bring such an action if they are granted a fiat by the Attorney General to bring the action in their name.¹³ To this extent, in Nigeria, a general interest common to all members of the public is not a litigable interest and cannot accord standing to a particular member.¹⁴

Thus, in denying the Appellant *locus standi* in *Olawoyin v A.G Northern Nigeria*,¹⁵ a case in the realm of public law, the Supreme Court held that ‘there was no suggestion that the Appellant was in imminent danger of coming into conflict with the law that there had been real or direct interference with his normal business or other activities; to hold that there was an interest would amount to saying that a private individual obtains an interest by the mere enactment of a law with which he may in the future come in conflict’; the Appellant failed to show that he had a sufficient interest to sustain a claim.¹⁶ And in *Gamioba v Ezezi II*,¹⁷ in which the Plaintiff challenged the validity of a certain trust instrument for being *ultra vires* the Constitution, the Supreme Court held that since the validity of a law is a matter of concern to the public at large the court has a duty to form its own judgment as to the Plaintiff’s *locus standi*, and should not assume it merely because the Defendant admits it or does not dispute it; and relying on *Olawoyin v A.G Northern Region of Nigeria*,¹⁸ held that the Plaintiff’s *locus standi* in the suit was not disclosed.¹⁹

Similarly, in *Adesanya v The President of the Federal Republic of Nigeria*,²⁰ the Appellant challenged the constitutionality of the appointment of a serving judge as the chairman of the Federal Electoral Commission by the president of Federal Republic of Nigeria. In dismissing the appeal for lack of *locus standi*, the Supreme Court held that a general interest common to all members of the public is not a litigable interest to accord standing; only the Attorney General can sue on behalf of the public for the purpose of

¹³ *Fawehinmi v President Federal Republic of Nigeria* [2007] 14 NWLR (Pt.1054) 275 at 333.

¹⁴ *Bewaji v Obasanjo* [2009]9NWLR (Pt.1093)540 at 576 – 577.

¹⁵ [1961]2 SCNLR5; [1961] 2 NSCC 165.

¹⁶ *Olawoyin v A.G Northern Nigeria. Supra* at 169. [Emphasis added]

¹⁷ [1961] 1 N.S.C.C 238.

¹⁸ *Supra*

¹⁹ *Gamioba v Ezezi Supra*, at 241.

²⁰ [1981] 5 SC (Reprint) 69; [1981]2 NCLR 358.

preventing public wrong. The jurisdiction of the court to declare public rights can only be invoked at the suit of the Attorney General, *ex Officio* or *ex relatione*, i.e, where the Attorney General permits a relator to sue in the name of the Attorney General.²¹

Environmental matters are a specie of public nuisance and as such the position is not different. Consequently, in environmental matters, courts have shut the doors on litigants either on grounds of lack of sufficient interest or having not suffered any injury above the public generally; and if an environmental action is instituted in a representative capacity, on ground of lack of common interest or non-equal loss or damage. In *Amos & Ors v Shell – BP Petroleum Development Company of Nig Ltd & Anor*,²² for example, the Supreme Court, held that ‘the waterway was clearly a public waterway, so its obstruction is a public nuisance; without proof of damage over and above that suffered by the general public, the Plaintiff cannot succeed in any claim for damages.’²³

Also, in *Shell Petroleum Development Company Nig Ltd v Otoko*,²⁴ the cause of action was Oil Spillage which polluted Andoni River and creeks with resultant damage to the Plaintiffs’ properties and the Court of Appeal dismissed the appeal on ground of lack of common interest between the person(s) being represented and the person(s) representing them.²⁵ Again, in *Daodu v Nigerian National Petroleum Corporation*,²⁶ in which the cause of action was founded on obstruction of a public high way, the Supreme Court held that ‘an obstruction of a public highway or hindering the free passage of the public along the highway is a public nuisance and a private individual has a right of action if he can prove that he has sustained a particular damage other than and beyond the general inconvenience and injury suffered by the public and that the particular damage which he sustained was direct and substantial.’²⁷

5. Judgment

The Supreme Court in a unanimous decision of 7- 0 (full panel) held that the Appellant has the *locus standi* to institute and maintain the suit as constituted on the grounds that

²¹ *Adesanya v President Federal Republic of Nig* [1981] (Reprint) 69.

²² [1977] LPELR – 24892 (SC).

²³ *Amos v Shell B-P Petroleum Company Nig Ltd* [1977]LPELR – 74892 (SC) pages 7-8 para E-B.

²⁴ [1990] 6 NWLR (Pt.159)693.

²⁵ *Amos v Shell B-P Petroleum Company Nig Ltd* [1977] LPELR – 74892 (SC) pages 7-8 para E-B.

²⁶ [1998] LPELR – 927 (SC).

²⁷ *Daodu v Nigerian, National Petroleum Corporation & 2 Ors* [1998] LPELR – 927 (SC) pages 10 Paras D-F per Ogwneghor, JSC.

²⁷ *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation. Supra*, at 561, 568, 576-571.

the action was for public interest; maintenance of the environment; to vindicate the rule of law; and that the Appellant has shown that public nuisance endangers life. Thus, Justice Nweze, JSC, in his lead Judgment held:

...[W]hat is obvious, from the Appellant's pleading is that the Respondent, a public authority, has by these acts complained of acted in violation of its constitutional obligation [section 20 thereof] and its statutory obligations. These have occasioned injury to the public interest or public injury. In that instance, the answer to the question as who has the standing to complain against the above violation by the Respondent can be found in the understanding of the true purpose of judicial function. The judicial function (is) primarily aimed at preserving the legal order by confining the legislature and the executive organs of government within their powers in the interest of the public ... Requirements of *locus standi* are therefore unnecessary in this case since they merely impede the purpose of the function as conceived here... it would be a grave lacuna in our system of public law if a pressure group or even a public spirited taxpayer were prevented by out-dated 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. In effect, there is considerable force in the view that it is by liberalizing the rule of *locus standi* that it is possible to effectively police the corridors of powers and prevent violations of law ... In all, then,... in environmental matters such as the instant one NGOs, such as the Plaintiff in this case, have the requisite *locus standi* to sue

On his part, the then Chief Justice of Nigeria, Onnoghen CJN – as he then - was, held that:

...[F]rom the facts pleaded in the amended statement of claim ... and the law the lower courts are in error in holding that the Appellant has no *locus standi* in instituting the present action which is aimed at saving the environment and lives of people ... This is a public interest litigation in which the chambers of the Honourable Attorney - General of the Federation traditionally holds sway but the law on *locus standi* in that regard has grown beyond that and now encompassed public spirited individuals and NGOs.²⁸

The issue of environmental protection against degradation has become a contemporary issue. In the Judgment, the Supreme Court rightly observed that the Appellant being in

²⁸ Ibid 575 para c, per Onnoghen C.J.N.

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; the communities affected by the spillage leading to the environmental degradation may not muster 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.²⁹ Accordingly, the Supreme Court, per Kekere – Ekun J.S.C held that:

the issue that arises is what is the remedy of persons affected or likely to be affected by the effect of the environmental degradation where the statutory agencies fail to carry out their responsibilities or where the land belongs to no one in particular, as in this case, but the effect of the pollution extends far beyond the immediate environment? ... Where a government agency fails to carry out its statutory function in circumstances such as this, it is highly unlikely that the government, Federal or State, would institute an action against its own agency. The public would be left without a remedy. The Appellant, by its pleadings has shown that some of its members and the general public are affected by the destruction of marine life, water, flora and fauna of the Ineh and Aku streams/rivers occasioned by the alleged negligence of the Defendant. It has shown that by the suit, it seeks the enforcement of the Defendant's obligations under the relevant legislation on behalf of the affected communities, including some of its members. I am satisfied that it has shown sufficient interest in the subject matter of the suit to clothe it with the necessary standing to sue.³⁰

Another captivating part of the decision was the Supreme Court's characterization of environmental right as a human right. In this wise, according to the Supreme Court, per Lord Justice Eko, JSC, in order to broadly determine *locus standi*, under environmental rights as human rights, Article 24 of the African Charter on Peoples and Human Rights should be read together with sections 33(1) and 20 of the "Constitution on the role of the State in preserving the environment for the health and by extension (lives) of Nigerians", and that "it is apparent that the right to a healthy environment is a human right in Nigeria". For as long as Nigeria remains signatory to the African Charter on People and Human Rights, and other international treaties on environment and other global issues for so long also would the Nigerian courts protect and vindicate human rights entrenched therein.³¹

²⁹ Ibid 580 – 581 paras H-A per Aka'ahs JSC.

³⁰ *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*. Supra at 587 paras B – H per Kereke - Ekun J.S.C.

³¹ Ibid 597 – 598 paras H-C per Eko JSC.

6. Analysis and Impact on Environmental Public Litigation

The decision is a departure from precedent. It is a land mark decision in Nigeria, not only because it extended the determinant of *locus standi* but because it makes environmental right a human right. In extending the scope of *locus standi* the Supreme Court laid the framework for and a milestone to the development of the environment and public interest litigation in Nigeria. There, are several aspects of this decision which warrant comment, viz:

6.1. Extended the Scope of Locus Standi

Nigerian Courts are obliged to follow previous decisions of the Appellate Courts, particularly the Court of Appeal and the Supreme Court, if the material facts are the same. This, however, does not require that all the facts should be the same. It is sufficient if the legally material facts are similar or reoccur. Within this precept, Nigerian Supreme Court is bound by its own decisions although there are reorganized legal conditions under which the Supreme Court may depart from its previous decisions or overrule itself³². Therefore, prior to the Supreme Court's Judgment in the *Centre For Oil Pollution Watch* case, sufficient interest or injury above every member of the public has been the determinant of *locus standi* in both environmental matters and public interest litigation in Nigeria. It was never extended or liberalized in any case, even, in *Fawehinmi v Akilu*.³³ The Supreme Court gave credence to this in the *Centre for Oil Pollution Watch* case when his lordship, Nweze J.S.C, in his lead Judgment stated that 'almost all counsel, including the *amici curiae*, would seem to entertain the view that the decision in *Fawehinmi v Akilu*³⁴ expanded the scope of *locus standi*, with respect, this cannot be correct.'³⁵

In order to find a precedent to substantiate the decision to extend the determinant of *locus standi*, or *locus standi*, in public interest litigation, the Supreme Court looked to, *inter alia*, the decision of the House of Lords in *Reg v Inland Revenue Commissioners, Ex parte National Federal of Self – Employed and Small Business Ltd*.³⁶ In that case the House of Lords decided that an action aimed at vindication of the rule of law and to get an unlawful conduct stopped cannot be prevented by outdated technical rules of *locus standi*.

Undoubtedly, the decision is epochal and profound. Within the scope of public interest litigation it changed the Nigerian jurisprudence on the determinant of *locus standi* in public nuisance or in public interest litigation in environmental matters. In Nigeria, the

³² *Odi v Osafile* [1985] 1 NWLR (Pt.1) 17 at 46

³³ [1987] 4 NWLR (Pt.67) 97

³⁴ *Ibid*

³⁵ *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation. Supra* at 562 para H.

³⁶ [1982] AC 617 at 639 paragraphs H

Oil producing communities are constantly experiencing an array of environmental degradation, health and safety problems due to unsustainable procedures and outdated technical rules of *locus standi*. With the Supreme Court's decision in the *Centre for Oil Pollution Watch* case, the outdated technical rules of *locus standi* are no longer applicable in environmental matters. Under this dispensation a party will be cloaked with *locus standi* once its action is to vindicate the rule of law or to maintain the environment or public health and human lives. In this regard, the Supreme Court, per Eko JSC, held:

Every person, including NGOs, public-spirited individuals or associations, have sufficient interest in ensuring that public authorities or corporations submit to the rule of law and that no public authority has power to, arbitrarily or with impunity, break the law or general statute. The right of the citizen or lawful associations to see that the rule of law is enforced vests in him or the association sufficient standing to request the court to call to order a public authority allegedly violating the law. There is such aspiration in section 17(2)(a) of the extant Constitution, 1999 that provides that 'every citizen shall have equality of rights, obligations and opportunities before the law'... This suit, in essence, seeks the enforcement against the Defendant their obligations *qua* the right of the Acha Community to maintain the environment, including their rivers, air, land, forest free of pollutions. From the fact of this case the Appellant cannot be regarded as a mere busybody or troublemaker who is out merely to abuse the due process of the court by the suit they had filed to enforce against the Respondent the duty to remedy the nuisance caused to Ineh and Aku rivers and the Acha Community who depend on the clean water of the said rivers for their livelihood. A contaminated water and impaired environment by noxious toxicant material such as crude hydrocarbon oil not only destroys environment and the entire ecosystem, it is injurious to public health and human lives.³⁷

6.2. Environmental Rights as Human Rights

The case also established that right to a healthy environment is a variant of human right in Nigeria.³⁸ Section 17(4) of the Oil Pipelines Act provides that every licence shall be subject to the provisions contained in the Act as in force at the date of its grant and to such regulations concerning public safety, the avoidance of interference with works of public utility in, over and under the land and the prevention of pollution of such land or any waters as may from time to time be in force. Section 33 of the 1999 Constitution guarantees the right to life while section 20 of the Constitution provides that the state

³⁷ Ibid 597 paras E - F and 601 paras B – G per Eko JSC.

³⁸ Ibid 595 para C, 597 – 598 paras H – C, 600 para C.

shall protect and improve the environment and safeguard the water, air and land, forest and wild life of the country. Also, article 24 of the African Charter on Human and People's Rights provides that all people shall have the right to a general satisfactory environment favourable to their development. According to the Supreme Court these provisions show that the Constitution, the legislature and the African Charter on Human and People's Rights, to which Nigeria is a signatory, recognize the fundamental rights of the citizenry to a clean and healthy environment to sustain life.³⁹

Elevating environmental matters, particularly environmental impairment, to human right is a welcome development. By this, the question of sufficient interest or injury test being inapplicable in environmental matters or public interest litigation in environmental matters is beyond dispute. Under the Fundamental Human Right Rules 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*; proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented.⁴⁰ Also, by raising maintaining a healthy environment to the status of a human right, the Supreme Court has ensured that everybody will have access to the court in environmental matters affecting life provided the action is framed as a Fundamental Right and as the main claim.⁴¹ In human rights litigation, the Applicant may include anyone acting in his own interest, on behalf of another, as a group or class of persons, in public interest, and association acting in the interest of its members or other individual or groups; and a human right action may be instituted by human rights activists, advocates or groups as well as any non-governmental organization on behalf of any potential applicant.⁴²

6.3. Motive for Bringing the Suit

However, the decision is not a *carte blanche* for *locus standi* in environmental matter. The Supreme Court established a hurdle which must be crossed by a party in order to be cloaked with *locus standi* when it stated that maintaining an action in public interest or for environmental protection *per se* is not sufficient to confer *locus standi*; the court must ensure that the suit is not prompted by ill motive. According to the Supreme Court 'as suggested by the Appellant in their brief of argument, on the authority of *R. v Somerset*

³⁹ *Center For Oil Pollution Watch v Nigerian National Petroleum Corporation. Supra* at 587 para D - F.

⁴⁰ Fundamental Right (Enforcement Procedure) Rules, 2009, under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, Preamble 3 (e).

⁴¹ In *Abubakar Tatari Ali Polytechnic v Maina* [2005] All FWLR (Pt.284) 250 it was held that if a claim or a cause of action disclosed that a breach of Fundamental Human Right is the main relief, then such action is well founded as a Fundamental Right Action. See also *Abdulhamid v Akar* [2006] All FWLR (Pt.321) 1191. where it was held that if the alleged breach of Fundamental Right is ancillary or incidental to the substantive claim of ordinary civil or common law nature it will be incompetent under the Fundamental Right Procedure.

⁴² *Ibid* (n.39) Preamble 3 (e) (i)-(v).

County Council & Anor. Ex parte Dixon [1998] Environmental L.R. 111, the court when considering the issue of standing has to ensure that the Plaintiff, in bringing his suit, is not prompted by an ill motive.⁴³ A party's suit will be held not to be prompted by ill motive or mischief if its pleadings disclose that the Defendant is transgressing the law or is about to transgress it by his objectionable conduct which injures or impairs human lives and/or endangers the environment.⁴⁴

No doubt, the purpose of this requirement is to ascertain the legitimacy of a party's – Plaintiff's – interest in the subject matter of the litigation. It is however arguable whether this will be applicable if an environmental action is maintained as a human right action. Given that by the preamble to the Fundamental Rights (Enforcement Procedure) Rules,⁴⁵ no human rights case may be dismissed or struck out for want of *locus standi*; the court may hear any person or body who desires to be heard in respect of any Human Rights Application whether or not the party has any interest in the matter.⁴⁶

6.4. Duty on State, Institutions and Operators of Oil Pipelines to Protect the Environment

The decision demonstrates that it is the responsibility of the state to protect the environment. This notion is now well accepted in all countries. It is this notion, in international law, that gave rise to the principle of "state responsibility" to prevent pollution in its territory. The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be strengthened for the benefit of the present and future generations through careful planning and management as appropriate.⁴⁷ Thus, in the words of the Supreme Court 'there is no gain - saying the fact that there is increasing concern about climate change, depletion of the ozone layer, waste management, flooding, global warming, declining of wildlife, air, land and water pollution. Both nationally and internationally, countries and organizations are adopting stronger measures to protect and safeguard the environment for the benefit of the present and future generations'.⁴⁸

In this case the Supreme Court established as well that courts in Nigeria are by virtue of sections 16(2), 17(2)(d)(3), and 20 of the 1999 Constitution, section 17(4) of the Oil Pipelines Act⁴⁹ and the Oil and Gas Regulations under a duty to protect the environment

⁴³ at 601 para D per Eko J.S.C.

⁴⁴ Ibid 574 para D per Onnoghen CJN.

⁴⁵ Ibid 601 Para E

⁴⁶ 2009

⁴⁷ Fundamental Rights (Enforcement Procedure) Rules, 2009, Order XVII (I)

⁴⁸ at 599 – 600 paras G-B per Eko JSC

⁴⁹ Ibid 580 paras G per Aka'ahs JSC

in appropriate cases, and would fail in that duty if they do not facilitate the protection these laws have put in place.”⁵⁰

The Supreme Court interpreted, in this case, section 20 of the 1999 Constitution, section 17(4) of the Oil Pipelines Act and Regulation 9(a) (ii) and (b)(ii) and (iii) of the Oil and Gas Pipeline Regulations which was promulgated pursuant to section 17(4) of Oil Pipelines Act and held that these laws require the pipeline licence holder to institute mechanisms for prevention of accidents like crude oil spill and for remedial action for the protection of the environment and control of accidental discharge from the pipeline⁵¹; the act imposes a duty on the owners or operators of oil pipelines to maintain and repair their oil pipelines and ensure that the crude oil or hydrocarbon oil being transported through the pipelines, a dangerous substance, do not escape and cause havoc to human lives and the environment. This duty of care, according to the Supreme Court, is not only statutory it is also on the authority of *Rylands v Fletcher* [1868] LR 3HR 300, a common law duty of care.⁵²

Both the State and the Court are important organs in maintaining not only law and order, but in developing every society. By this decision, the Supreme Court has demonstrated that a clean environment as well as maintaining the environment is a fundamental objective which the state and its organs should be in the vanguard of actualizing for both the present and future generations. The Supreme Court rightly interpreted S.17 (4) of the Oil Pipelines Act and thus reaffirms the doctrine of polluters pay and established beyond argument that the duty of pipeline licence holders and operators of oil pipelines in maintaining the environment is at all times. The Supreme Court gives credence to the public policy that maintaining the environment is the civil right and obligation of every citizen of Nigeria including institutions operating in Nigeria and visitors alike.

6.5. Locus Standi not Derived from Section 6(6) (B) of the Constitution

Since the decision of the Supreme Court in *Adesanya v President of the Federal Republic of Nigeria*⁵³ it appears that the general belief is that the Supreme Court established in that case that section 6(6)(b) of the 1979 Constitution prescribed the *locus standi* of the person who wants to invoke the judicial powers of the court or that such person's *locus standi* is derived from the section. The Supreme Court clarifies in the *Centre for Oil Pollution Watch* case that *Adesanya v Federal Republic of Nigeria* did not establish that but rather the case held that the section prescribed the extent of the judicial powers of the court. In the words of the Supreme Court in *Centre for Oil Pollution Watch* case:

⁵⁰ Cap of, Laws of the Federation of Nigeria

⁵¹ Ibid 577 paras B per M.D. Muhammad J.S.C.

⁵² Ibid 569 paras E – H per Nweze J.S.C (Lead Judgment).

⁵³ Ibid 574-575 Paras H-B per Onnoghen CJN; at 601 Paras A-C per Eko JSC.

From the extracts from their lordships' judgments I have quoted above, one can clearly see that there was not majority of the court in favour of Bello JSC's interpretation of section 6 subsection(6) (b) of the Constitution. It will therefore, not be correct to say that this court decided in the *Adesanya's* case that the subsection prescribes the *locus standi* of a person wanting to invoke the judicial powers of the court. They all seem to agree, however, that the sub-section prescribes the extent of the judicial powers of the courts.⁵⁴

7. Conclusion

A country whose administration of justice did not afford redress in a case of present description would not be in a state of civilization or afford its environment the opportunity of civilization or development. Before now, many environmental matters in Nigeria, were struck out for want of *locus standi* applying the sufficient interest or injury test. As a result many legal issues were not tested. This denied our law and the environment the opportunity of development and remediation. *Locus standi*, as it is, focuses on the party who commenced an action in court rather than on the issue the party presented for adjudication and to this extent it constitutes a bar to access justice and adjudication of the issue presented, particularly if the party is held to lack *locus standi* to institute the action.

In order to meet with the changing landscape of public interest litigation, especially as it concerns matters relating to the environment, the Supreme Court of Nigeria in the *Center for Oil Pollution Watch* case liberated the rule on *locus standi* from the shackles of tradition or from its traditional determinants by extending the meaning or determinant to the extent that a Plaintiff – whether an individual or an NGO – who maintains an action – environmental action – for public interest or to vindicate the rule of law or due performance of statutory function, has the *locus standi* to maintain the suit even though it did not suffer any injury, let alone an injury above every member of the public from the subject matter; provided the action is not prompted by ill motive or mischief.⁵⁵

The criterion of judgment must adjust and adapt itself to the changing circumstance of life. Environmental degradation or contamination arising from oil pollution and the alike have been a known major source of restiveness in the oil producing areas of Nigeria. The knowledge that any action in court for remediation and compensation would be thrown out in the altar of technical rules of *locus standi* aggravated the situation. Again, since the earlier decision in 1960 in the *Olawoyin*⁵⁶ case there have been new development in

⁵⁴ [1981]5 SC (reprint)69.

⁵⁵ Center For Oil Pollution Watch v Nigerian National Petroleum Corporation [2019] 5 NWLR (Pt.1666) 518 at 566 PARA H.

⁵⁶ Ibid 574 para D per Onnoghen CJN; at 586 para C per Kekere – Ekun JSC; at 601 paras D – E per Eko JSC.

the socio-economic or political stance of Nigeria⁵⁷ yet the Supreme Court continued to use the sufficient interest or injury test as a determinant of locus standi in public interest litigation. These new developments by reason of sections 16(1) and (2), 17 (1), (2) (a) and (d) of the 1999 Constitution of the Federal Republic of Nigeria encapsulate the social and Economic Fundamental objectives of the State policy.

However, with the *Centre for Oil Pollution Watch* case, the Supreme Court lived true to its function as a policy court and to the criterion of judgment adjusting and adapting to the changing circumstance of life. The decision is laudable and will bring peace, justice, orderliness as well as social and economic justice to the oil producing communities and Nigeria in general as it has opened the doors for courts, in appropriate circumstance, to order polluters to remediate contaminated environment and when applicable to pay as well. By the decision, also, the Supreme Court has obviated the injustice that rigid adherence to precedent may lead to and avoid restricting proper development of the law – environmental law and justice in particular.

It is, therefore, presumed that all the courts in Nigeria shall, by the doctrine of *stare decisis*, follow the Supreme Court's decision in the *Centre for Oil Pollution Watch* case and perform their duties of protecting the environment, in appropriate cases, by facilitating the protection the laws have put in place. Further, although this case is on environmental matter, it is recommended that the Supreme Court and even the lower court in Nigeria adopt and apply the principles established by the Supreme Court in this case to other public interest cases though not environmental action.

⁵⁷ *Olawoyin v A.G Northern Nigeria. Supra*