CENTRE FOR OIL POLLUTION WATCH

V.

NIGERIAN NATIONAL PETROLEUM CORPORATION

SUPREME COURT OF NIGERIA

SC. 319/2013

WALTER SAMUEL NKANU ONNOGHEN, C.J.N. (Presided)

MUSA DATTIJO MUHAMMAD, J.S.C.

KUMAI BAYANG AKA'AHS, J.S.C.

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C.

JOHN INYANG OKORO, J.S.C.

CHIMA CENTUS NWEZE, J.S.C. (Read the Leading Judgment)

EJEMBI EKO, J.S.C.

FRIDAY, 20TH JULY 2018

ACTION - Locus standi - Attorney-General - Performance of public duty – Whether only proper person who has standing to sue to enforce.

ACTION - Locus standi - Meaning of.

ACTION - Locus standi - Non-governmental organisation – Locus standi of inrespect of issues of public nuisance injurious to human lives, public healthand environment.

ACTION - Locus standi - Requirement of - Section 6(6)(b), 1979 Constitution – Whether prescribed.

ACTION - Locus standi - Requirement of - Whether Supreme Court in Adesanyav. President, F.R.N. (1981) 2 NCLR 358 decided section 6(6)(b), 1979Constitution prescribed.

ACTION - Locus standi - Rule of - Application of - Need for Supreme Court torelax in respect of public interest litigation on environmental issues.

ACTION - Locus standi - Rule of - Application of - Recent attitude of courtsthereto.

ACTION - Locus standi - Rule of - Application of - Whether statutory - Whereplaintiff lacks locus standi - Effect on jurisdiction of court.

ACTION - Locus standi - Rule of - Liberalisation of by English courts and othercommon law jurisdictions.

ACTION - Locus standi - Rule of - Need for liberalisation of.

ACTION - Locus standi - Rule of - Origin of - What it postulates.

ACTION - Locus standi - Rule of - Purpose of.

ACTION - Locus standi - Rule of - Rule in respect of public interest litigation bypublic spirited individuals and non-governmental organisations.

ACTION - Locus standi of plaintiff - Determination of - Relevant considerations- What court considers.

ACTION - Locus standi of plaintiff - Public nuisance - Ground for accordingplaintiff locus standi in other common law jurisdiction in case of.

ACTION - Locus standi of plaintiff - What plaintiff must show to have locusstandi - Whether depends on merit of case.

ACTION - Public interest litigation - Nature of - When may arise - Who caninstitute.

ACTION - Right of action - Person offended or injured by breach of law bygovernment or public authority - Right of to seek redress in court.

ADMINISTRATIVE LAW - Attorney-General - Performance of public duty -Whether only proper person who has standing to sue to enforce.

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CASE LAW - Adesanya v. President, F.R.N. (1981) 2 NCLR 358 - WhetherSupreme Court therein decided section 6(6)(b) of 1979 Constitutionprescribes requirement of locus standi.

CONSTITUTIONAL LAW - Attorney-General - Performance of public duty -Whether only proper person who has standing to sue to enforce.

CONSTITUTIONAL LAW - Environment - Duty of court to protect - Need tofacilitate statutory protection - Sections 16(2), 17(2)(d) and (3), 1999Constitution and section 17(4), Oil Pipelines Act.

CONSTITUTIONAL LAW - Fundamental Objectives and Directive Principles ofState Policy - Chapter Two of 1979 Constitution - Non-justiciability of -Whether sacrosanct - Interpretation of - Proper approach thereto.

CONSTITUTIONAL LAW - Fundamental rights - African Charter on Peoples'and Human Rights - Human rights entrenched therein - Duty on court toprotect and enforce.

CONSTITUTIONAL LAW - Judicial power - What is - Limit of - Section 6(6)(b),1979 Constitution.

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CONSTITUTIONAL LAW - Right of action - Person offended or injured bybreach of law by government or public authority - Right of to seek redressin court.

CONSTITUTIONAL LAW - Right to clean and healthy environment - Fundamentalnature of - Section 17(4), Oil Pipelines Act and sections 20 and 33, 1999Constitution.

CONSTITUTIONAL LAW - Section 6(6)(b), 1979 Constitution - Scope of -Whether dealt with right of access to court.

COURT - African Charter on Peoples' and Human Rights - Human rightsentrenched therein - Duty on court to protect and enforce.

COURT - Environment - Duty of court to protect - Need to facilitate statutoryprotection - Sections 16(2), 17(2)(d) and (3), 1999 Constitution and section17(4), Oil Pipelines Act.

COURT - Judicial function - Purpose of.

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ENVIRONMENTAL LAW - Environment - Duty of state to protect - Duty of stateto prevent pollution - Need for natural resources to be strengthened forbenefit of present and future generations.

ENVIRONMENTAL LAW - Environmental degradation - Issues of - Statutesproviding and responsible therefor.

ENVIRONMENTAL LAW - Locus standi - Non-governmental organisation -Locus standi of in respect of issues of public nuisance injurious to humanlives, public health and environment.

ENVIRONMENTAL LAW - Locus standi - Rule of - Application of - Needfor Supreme Court to relax in respect of public interest litigation onenvironmental issues.

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ENVIRONMENTAL LAW - Oil pipeline - Owner or operator of - Duty of - Duty tomaintain and repair oil pipeline - Duty to ensure crude or hydrocarbon oildo not escape and cause havoc to human lives and environment - Statutoryand common law nature of.

ENVIRONMENTAL LAW - Oil pipeline licence - Holder of - Duty of - Dutyto prevent accidents - Duty to provide remedial action for protection ofenvironment and control of accidental discharge from pipeline.

ENVIRONMENTAL LAW - Public interest litigation - Nature of - When mayarise - Who can institute.

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WORDS AND PHRASES - “Person” - Meaning of.

Issue:

Whether the Court of Appeal was right in dismissing the appellant's appeal for want of *locus standi* to maintain the suit.

Facts:

The appellant sued the respondent at the Federal High Court, Lagos claiming reinstatement, restoration and remediation of the impaired and/orcontaminated environment in Acha autonomous community of Isukwuato Local Government Area of Abia State of Nigeria, particularly the Ineh and Aku streams which environment was contaminated by the oil spill caused by the respondent'snegligence; provision of potable water supply as a substitute to the soiled andcontaminated Ineh/Aku streams, which are the only and/or major source of watersupply to the community; and provision of medical facilities for evaluation andtreatment of the victims of the after negative health effect of the spillage and/orthe contaminated streams.

In the statement of claim, the appellant was described as a Non-Governmental Organization (NGO) registered in accordance with part C of the Companies and Allied Maters Act (CAMA) which carries on, inter alia, the function of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution/particularly the environment that belongs to no-one in particular, and this includes but not limited to Rivers/Sea Birds/Ecosystems and Aquatic lives. It ensures that the environments that belong to no one are kept clean and safe for human and aquatic lives/consumption and has over two thousand members drawn from across the whole State(s) of the FederalRepublic of Nigeria and outside Nigeria. Some of its members are indigenes of and/or live at Acha community and use the water from Ineh and Aku streams/rivers.

On the other hand, the respondent was described as a corporation established by an Act of Parliament and carries on business of prospecting, mining, producing, exploring and storing persistent hydrocarbon mineral oilsuch as crude hydrocarbon oil and so on. It has offices, oil installations, oilpipelines, oil rigs and so on in different parts of Nigeria.

The appellant pleaded that over twenty-five years before the institution ofthe suit, the respondent constructed and laid oil pipelines beneath, around andbeside Ineh and Aku streams/river in Acha autonomous community in Isukwuato Local Government Area of Abia State. However, the pipelines had outlived their usefulness

partly due to use and partly due to the salinity of the sea water under which they were laid. On 13th May 2003, the appellant noticed a strange oily substance (crude hydrocarbon oil) circulating and drifting on top of the streams and within a few days, the substance increased to the point where it overflowed from the streams and surged into the adjoining lands, estuaries, creeks and mangroves.

The appellant sent a delegate to investigate. It was discovered that therespondent's oil pipeline, which had corroded due to lack of maintenance, hadruptured, fractured and spewed its entire contents of persistent hydrocarbon mineral oil into the surrounding streams and river of Ineh and Aku. Although the respondent contained the spillage and provided relief materials to the affected communities, it failed to clean up or reinstate the Ineh/Aku streams. The appellant alleged that although contained on the surface, there still existed excessive crude hydrocarbon oil in the bottom sediments of the Ine h/Akun streams/river.

The appellant averred that the respondent was negligent in both the causation and containment of the spillage; that the spillage had harmful effecton living resources, marine life, human health and other usages of the streams; that two pre-action notices were served on the respondent; and that up till thetime of filing the suit, no steps had been taken to remedy, reinstate or restore the damaged environment in the Acha community.

In its statement of defence, the respondent denied the allegation of negligence and pleaded that any damage to the pipelines and the spillage and subsequent contamination of the streams/rivers were caused by acts of sabotageor interference by unscrupulous persons within the affected community.

The respondent filed an application requesting the trial court to set downfor hearing the point of law raised in its statement of defence, which challenged the *locus standi* of the appellant to institute the action. The respondent soughtan order striking out the suit in limine.

After hearing the application, the trial court in its ruling determined thepoint of law in the respondent's favour by holding that the appellant lacked the *locus standi* to sue and it struck out the suit.

The appellant was dissatisfied with the ruling and it appealed to the Courtof Appeal. The Court of Appeal dismissed the appeal and affirmed the ruling ofthe trial court.

Still dissatisfied, the appellant appealed to the Supreme Court.

In determining the appeal, the Supreme Court invited five amici curiaeto address it on "Extending the scope of locus standi in relation to issues on environmental degradation: the case of NGOs". The Supreme Court considered the provisions of Article 24 African Charter on Peoples and Human Rights
(Ratification and Enforcement) Act and sections 20 and 33(1) of the Constitution, section 17(4) of the Oil Pipelines Act which provide as follows:

Article 24 African Charter on Peoples and Human Rights (Ratification and Enforcement) Act:

"24. All peoples shall have the right to general satisfactory environment favorable to their development."

Sections 20 and 33(1) of the Constitution:

"20. The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of thecountry."

"33(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence ofa court in respect of a criminal offence of which he has been found guilty in Nigeria."

Section 17(4) of the Oil Pipelines Act:

"17(4) Every licence shall be subject to the provisions contained in thisAct as in force at the date of its grant and to such regulations concerning public safety, the avoidance of interference withworks of public utility in, over and under the land included inthe licence and the prevention of pollution of such land or anywaters as may from time to time be in force."

Held ***(****Unanimously allowing the appeal****):***

1. *On Origin of rule of locus standi -*

The Latin expression "*locus standi****", used interchangeably for"a place to stand" or standing to sue, is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. Like mostof English law of the time, the rules as to standing could notbe found in any statute for they were made by Judges of theRealm.** (P. 561, paras.. B-C)

2. *On What rule of locus standi postulates -*

A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. The person aggrieved must be a manwho has been refused something which he had a right todemand. Therefore, in simple terms, the narrow and rigidconception of *locus standi* **means that it is only a personwho has suffered a specific legal injury by reason of actual or threatened violation of his legal right or legally-protected interest who can bring an action for judicial redress. In effect, the rule with regard to** locus standi **postulates a right-dutypattern which is commonly found in private law litigation.Subsequent English decisions clung to the pattern. Nigerian courts, as legatees of the English common law heritage, embraced the English concept of** locus standi**. In doing so, however, they would appear to have merged the narrow and restrictive concept of private law (cause of action test) with the requirements of public law. [***Olawoyin v. A.-G., NorthernNigeria* **(1961) 1 SCNLR 5;** *Owodunmi v. Reg. Trustees, C.C.C.***(2000) 10 NWLR (Pt. 675) 315;** *Gamioba v. Esezi* **(1961) 2SCNLR 237;** *A.-G., Eastern Nigeria v. A.-G., Federation* **(1964)All NLR 224;** *Odeneye v. Efunnuga* **(1990) 7 NWLR (Pt. 164)618;** *Thomas v. Olufosoye* **(1986) 1 NWLR (Pt. 18) 669;** Momahv. Olotu **(1970) 1 All NLR 117;** *Maradesa v. Mil. Gov., Oyo State* **(1986) 3 NWLR (Pt. 27) 125;** *Olawoyin v. A.-G., Northern Nigeria* **(1961) 2 SCNLR 5;** *Adesanya v. President, F.R.N.* **(1981)2 NCLR 358;** *Oloriode v. Oyebi* **(1984) 1 SCNLR 390 referredto.]** (Pp. 561-562, paras. D-B)

3. *On Application of rule of locus standi -*

The concept of *locus standi* **is a development of case law. Essentially, it has been held to mean "standing to sue". Itis the legal capacity to institute or commence an action in a competent court of law or tribunal without let or hindrance from any person or body whatsoever. He must show sufficient interest in the subject matter of the suit, which interest would be affected by the action or the damage or injury hewould suffer as a result of the**

action. In the past, the courts adopted a restrictive approach to the issue of locus standi**. However, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case. [***Inakoju v. Adeleke* **(2007) 4 NWLR(Pt. 1025) 423;** Thomas v. Olufosoye **(1986) 1 NWLR (Pt. 18)669;** *Adesanya v. President, F.R.N.* **(1981) 2 NCLR 358;** *Iteogu v.L.P.D.C.* **(2009) 17 NWLR (Pt. 1171) 614 referred to.]** (P. 584,paras. A-D)

4. *On Application of rule of locus standi -*

There is no jurisdiction within the common law countries where a general licence or a blank cheque, without any stringor restriction, is given to private individual to question the validity of legislative or executive action in a court of law. Itis a common ground in all the jurisdictions of the common law countries that the claimant must have some justiciablei nterest, which may be affected by the action or that he willsuffer injury or damage as a result of the action. In most cases, the area of dispute, and sometime, of conflicting decisions has been whether or not on particular facts and situation the claimant has sufficient interest or injury to accord him a hearing. In the final analysis, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case. [*Owodunni v. Reg. Trustees,C.C.C.* **(2000) 10 NWLR (Pt. 675) 315 referred to.]** (P. 563,paras. D-G)

5. *On Application of rule of locus standi -*

The doctrine of locus standi **is a legacy of the common law. The doctrine does not have any statutory backing. In evolving the principle, the Supreme Court in its very many decisions, whether in the realm of private law as featured in** *Oloriode v. Oyebi* **(1984) SCNLR 390 or in the sphere of public law as occurred in** *Olawoyin v. Attorney-General of Northern Nigeria* **(1961) 2 SCNLR 5, has insisted that for a plaintiff to havethe** *locus standi* **to maintain an action, it must, by its claim, demonstrate the injury it suffers from the conduct of the defendant against whom the action is instituted. In the instant case at hand, the appellant did not squarely satisfy the criteria.**

However, in the peculiar circumstance of the appellant, the Supreme Court liberalised the criteria against the respondent that appeared to have degraded the environment in aseeming breach of specified constitutional and other statutoryprovisions.(Pp. 576-577, paras. F-A)

6. *On Application of rule of locus standi -*

A party prosecuting an action would have *locus standi* **where the reliefs claimed would confer some benefit on such a party.In private law, the question of** *locus standi* **is merged in the cause of action. Thus, for instance, a plaintiff who has no privity of contract with the defendant will fails to establish a cause of action for breach of the contract as he will simply not have a** *locus standi* **to sue the defendant on the contract. In chieftaincy cases, all a plaintiff is required to do is show inhis statement of claim his interest and his entitlement to the chieftaincy title. The same principle applies to similar cases.A party making any claim or bringing any application before the court must have** *locus standi.* **If the plaintiff has no** locusstandi**, the court has no jurisdiction in the matter and it mustbe struck out. .[***Owodunni v. Reg. Trustees, C.C.C.* **(2000) 10NWLR (Pt. 675) 315;** *Oloriode v. Oyebi* **(1984) 1 SCNLR 390;** *Thomas v. Olufosoye* **(1986) 1 NWLR (Pt. 18) 669;** *Fawehinmi v. Akilu* **(1987) 4 NWLR (Pt. 67) 797 referred to.]** (Pp. 562, paras.B-F; 594, paras. D-G)

7. *On Purpose of rule of locus standi -*

No statute, except Rules of the High Court on judicial review, has made any definitive provision prescribing who hasthe right generally to sue. *Locus standi* **was evolved by thecommon law courts to protect the courts from being used as a play ground by professional interlopers, busy bodies who really have no stake or interest in the subject matter of litigation.In administrative law, particularly in the area of judicial review, the rules of trial courts prescribe that an applicantfor judicial review shall have sufficient interest in the matter to which the application relates. [***Taiwo v. Adegbero* **(2011) 11NWLR (Pt. 1259) 562;** *Fawehinmi v. Akilu* **(1987) 4 NWLR (Pt.67) 797 referred to.]** (P. 594, paras. B-C)

8. *On Whether Supreme Court in Adesanya v. President, F.R.N.(1981) 2 SCNLR 358 decided section 6(6)(b) of 1979 Constitution prescribed requirement of locus standi -*

It is not correct to say that the Supreme Court decided in the *Adesanya v. President, F.R.N.* **(1981) 2 NCLR 358 that section 6 (6)(b) of the 1979 Constitution re-enacted in section 6(6)(b) of the 1999 Constitution prescribed the** *locus standi* **of a person wanting to invoke the judicial powers of the court. However, the Justices all seemed to agree that the sub-section prescribed the extent of the judicial powers of the courts. In other words, the Supreme Court in** *Adesanya v. President, F.R.N.* **did not decide that section 6(6)(b) of the 1979 Constitution contained a requirement of standing. [***Owodunni v. Reg. Trustees, C.C.C.***(2000) 10 NWLR (Pt. 675) 315 referred to.]** (P. 567, paras.E-F)

9. *On Whether section 6(6)(b) of 1979 Constitution prescribedrequirement of locus standi -*

Section 6(6)(b) of the 1979 Constitution prescribed the judicial power of the court in the separation of powers schemeof the Constitution. The provision by itself did not create the need to disclose the *locus standi* **or standing of the plaintiff in any action before the court and imposed no restriction onaccess to the courts. It was the cause of action that one had to examine to ascertain whether there was disclosed** *locus standi* **or standing to sue. [***Owodunni v. Reg. Trustees, C.C.C.* **(2000) 10NWLR (Pt. 675) 315 referred to.]** (P. 565, paras. C-E)

10. *On Scope of section 6(6)(b) of 1979 Constitution -*

In most written constitutions, there is a delimitation of thepower of the three independent organs of government, namely the executive, the legislature and the judiciary. Section 6 of the Constitution, which vests judicial powers of the Federationand the States in the courts and defines the nature and extent of such judicial powers does not directly deal with the rightof access of the individual to the court. The main objective of section 6 is to leave no doubt as to the definition and delimitation of the

boundaries of the separation of powers between the judiciary on the one hand and the other organsof government on the other, in order to obviate any claim of the other organs of government or even attempt by them to share judicial powers with the courts. Section 6(6)(b) of the 1979 Constitution was primarily and basically designed to describe the nature and extent of judicial powers vested in the courts. It was not intended to be a catch-all, all-purpose provision to be pressedinto service for determination of questions ranging from *locus standi* **to the most uncontroversial questions of jurisdiction.[***Owodunni v. Reg. Trustees, C.C.C.* **(2000) 10 NWLR (Pt. 675)315 referred to.]** (P. 567, paras. A-D)

11. *On What is judicial power -*

The expression 'judicial power' in section 6(6)(b) of the1979 Constitution re-enacted in section 6(6)(b) of the 1999 Constitution is the power of the court to decide and pronouncea judgment and carry it into effect between persons or parties who bring a case before it for decision. Judicialpower is therefore invested in the court for the purpose of determining cases and controversies before it. However, thecases or controversies must be justiciable. The type of case orcontroversy which would justify the exercise by the court ofits judicial power must be justiciable and based on *bona fide* **assertion of right by the litigants (or one of them) before it.[***Owodunni v. Reg. Trustees, C.C.C.* **(2000) 10 NWLR (Pt. 675)315 referred to.]** (P. 564, paras. D-G)

12. *On Limit of judicial power -*

Section 6(6)(b) of the 1979 Constitution expressed the scope and content of the judicial powers vested by the Constitutionin the courts within the purview of the subsection. Although the powers appeared to be wide, they were limited in scopeand content to only matters, actions and proceedings forthe determination of any question as to the civil rights and obligations of a person. It was only when the civil rights and obligations of the person, who invoked the jurisdiction of thecourt, were in issue for determination that the judicial powersof the courts may be invoked. In other words,

standing wasonly accorded to a plaintiff who showed that his civil rightsand obligations had been or were in danger of being violatedor adversely affected by the act complained of. [*Owodunni v.Reg. Trustees, C.C.C.* **(2000) 10 NWLR (Pt. 675) 315 referredto.]** (P. 564, paras. A-C)

13. *On Whether non-justiciability of Chapter Two of 1999 Constitutionsacrosanct -*

Section 6 of the Constitution vests judicial powers on thecourts, which are enumerated in section 6(5). By section 6(6)(c), judicial powers shall not, except as otherwise provided bythe Constitution, extend to any issue or question as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter Two of the Constitution. The non-justiciability of section 6(6)(c) of the Constitution is neither total nor sacrosanct as the subsection provides a leeway bythe use of the words 'except as otherwise provided by this Constitution'. This means that if the Constitution otherwise provides in another section, which makes a section or sectionsof Chapter Two justiciable, it will be so interpreted by the courts. Thus, although section 6(6)(c) of the Constitution, read narrowly, would appear to render the entire Chapter Two ofthe Constitution non-justiciable, however, this need not be so.[*A.-G., Lagos State v. A.-G., Federation* **(2003) 12 NWLR (Pt.833) 1; *F.R.N. v. Anache* (2004) 14 WRN 1 referred to.]** (Pp.568-569, paras. H-D)

14. *On Proper approach to interpretation of Chapter Two of 1999Constitution -*

The proper approach to the interpretation of Chapter Two of the Constitution should be by the mutual conflation ofother provisions of the Constitution with the provisions ofthe Chapter. This is so because if the Constitution provides otherwise in another section, which makes a section orsections of Chapter Two justiciable, it will be so interpreted by the courts. [*F.R.N. v. Anache* **(2004) 14 WRN 1 referred to.]**(P. 569, paras. D-E)

15. *On Purpose of judicial function -*

In understanding the true purpose of judicial function, there is the need to consider whether judicial function is primarily aimed at preserving legal

order by confining the legislative and executive organs of government within their powers inthe interest of the public (jurisdiction *de droit objectif***) or whether it is mainly directed towards the protection of private individuals by preventing illegal encroachments on theirindividual rights (jurisdiction** *de droit subjectif)***. The first contention rests on the theory that courts are the final arbitersof what is legal and illegal. Therefore, the requirements of** *locus standi* **are unnecessary in this case since they merely impede the purpose of the function as conceived. On the otherhand, where the prime aim of the judicial process is to protect individual rights, its concern with the regularity of law and administration is limited to the extent that individual rightsare infringed.** (P. 570, paras. C-E)

16. *On What plaintiff must show to have locus standi -*

The Nigerian courts have insisted that for a person to have *locus standi,* **the plaintiff must show sufficient interest in thesuit before the court. The criterion is whether the plaintiff seeking for the redress or remedy will suffer some injury or hardship arising from the litigation. [***Gamioba v. Esezi* **(1961) 2 SCNLR237;** *Olawoyin v. A.-G. Northern Nigeria* **(1961) 1 SCNLR 5;**Oloriode v. Oyebi **(1984) 1 SCNLR 390;** *Adesanya v. President,F.R.N. (***1981) 2 NCLR 358;** *Ajayi v. Adebiyi* **(2012) 11 NWLR(Pt. 1310) 137;** Thomas v. Olufosoye **(1986) 1 NWLR (Pt. 18)669;** *A.-G., Lagos State v. Eko Hotels Ltd*. **(2006) 18 NWLR (Pt.1011) 378 referred to.]** (P. 591, paras. A-C)

17. *On Whether locus standi of plaintiff depends on merit of case* **-**

An important factor when considering *locus standi* **is the factthat whether or not a party has the** *locus* **to institute an actionis not dependent on the merits of the case but on whether the plaintiff has sufficient interest in the subject matter of the dispute. It is a condition precedent a determination on themerits. At that stage, all that is being determined is whether the plaintiff has the** *locus standi* **to sue. Whether the suit will ultimately succeed is not for consideration at that stage. Whena party's standing to sue is in issue, the question is whether the person whose standing is in issue is the proper person to request an adjudication of a particular issue and not**

whether the issue is itself justiceable. [*Adesanya v. President, F.R.N.***(1981) 2 NCLR 358;** *Ojukwu v. Ojukwu* **(2008) 18 NWLR (Pt.1119) 439;** *Owodunni v. Regd. Trustees, C.C.C.* **(2000) 10 NWLR(Pt. 675) 315;** *Fawehinmi v. Akilu* **(1987) 4 NWLR (Pt. 67) 797referred to.]** (Pp. 568, paras. G-H; 590-591, paras. E-C)

18. *On Relevant considerations in determining locus standi of plaintiff -*

In the determination of the question whether a plaintiff has standing to request adjudication upon an issue, the court has identified two things or factors to bear in mind; that is -

(a) *locus standi* **should be broadly determined with dueregard to the corporate interest being sought to be protected bearing in mind who the plaintiff is or**(a)**plaintiffs are; and**

(b) **ready access to the court is one of the attributes of civilised legal system. It is dangerous to limit the opportunity for one to canvass his case by rigid adherence to the ubiquitous principle inherent in** *locus standi* **which is whether a person has the standin a case. The society is becoming highly dynamic and certain stands of yester years may no longer stand in**(b)**the present state of social and political development.**

[*Ladejobi v. Oguntayo* **(2004) 18 NWLR (Pt. 904) 149 referredto.]** *(Pp. 596-597, paras. G-A)*

19. *On What court considers in determining locus standi of plaintiff -*

In order to determine whether a party has the necessary *locus***, the court would consider only the originating processes filedby the plaintiff. It is the claim of the plaintiff that determines the jurisdiction of the court and to that extent whether he hasa right or standing to sue or he is just a busybody. [***Abia StateTransport Corp. v. Quorum Consortium Ltd.* **(2009) 9 NWLR(Pt. 1145) 1;** *Jev v. Iyortom* **(2014) 14 NWLR (Pt. 1428) 575referred to.]** (Pp. 578, para. E; 584, para. B; 590, para. C)

20. *On Meaning of locus standi -*

The term *locus standi* **denotes legal capacity to institute proceedings in a court of law. The principle focuses on the party seeking to get its complaint laid before the court** *vis-à-vis* **the claim he seeks from the court. [***Ojukwu v. Ojukwu* **(2008)18 NWLR (Pt. 1119) 439; *Global Transport Oceanic S. A. v.Free Enterprises (Nig.) Ltd.* (2001) 5 NWLR (Pt. 706) 426; *A.-G. Kaduna State v. Hassan* (1985) 2 NWLR (Pt. 8) 483 referredto.]** (P. 590, para. B)

21. *On Recent attitude of courts to application of rule of locus standi-*

The courts, in recent times, applied more liberal tests, and the trend is away from the restrictive and technical approachto questions of *locus standi.* **The approach these days is one finding out whether the plaintiff has a genuine grievance.** (P.601, paras. F-G)

22. *On Liberalisation of rule of locus standi by English courts andother common law jurisdictions -*

The rules as to standing could not be found in any statute for they were made by Judges of the Realm and by Judgesthey can be changed. So they have been over the years to meet the need to preserve the integrity of the rule of law. English courts have extended the meaning of *locus standi* **and the aforementioned determinant principle in appropriate cases where a non-governmental organisation has beenheld to have** *locus standi.* **The English courts are not aloneon this development. Other common law jurisdictions have followed that pattern. In India, the Supreme Court, without any statutory enactment, but rather for the overall need to do justice, generally liberalised the traditional rule on** *locus standi* **with respect to environmental degradation, since, in the court's view, maintaining a clean environment is the responsibility of all persons in the country. In England, asin other common law jurisdictions, there is liberalisation orextension of the meaning of** *locus standi* **based on the principle or view that any judicial statements on matters of public law made before 1950 are likely to be misleading guide to what the law is today. On the question of** *locus standi*, **the Supreme Court had occasion to refer to such jurisdictions like India, United States of America, Canada and Australia. In**

the final analysis, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case. *[**Adesanya v. President, F.R.N.****(****1981) 2 SCNLR 358 referred to.]*** (Pp. 567-568, paras. F-E;571-572, paras. G-C)

23. *On Liberalisation of rule of locus standi by English courts andother common law jurisdictions -*

The concept of *locus standi* **is a common law doctrine developed and created by the English courts and was developed in thecontext of private litigation, without regard to public interest litigation. However, with the greater public awareness of the effects of environmental degradation and the advent of non-governmental organisations or not for profit organisations,and other public-spirited individuals, seeking redress fordamage affecting the public at large, the English courts andthe courts in other commonwealth countries, which have similar legal systems as Nigeria, as well as the United Statesof America, have begun to adopt a more liberal approach tothe issue of** locus standi **in public interest litigation. Wherethere is a dearth of precedents in Nigerian jurisprudence ona particular issue, it is permissible to look to other climeswhere similar issues have arisen for guidance. The concept of** *locus standi* **is not static and continues to evolve as theneeds of society demands. The court, while considering the issue of sufficient interest in relation to** *locus standi,* **is to bear in mind the changing landscape of public interest litigation, especially as it concerns matters related to the environment. However, the mere fact that a non-governmental organization has interest in environmental protection will not be sufficient, without more, to confer** locus standi **on it. It must still satisfy the court as to the legitimacy of its interest in the subject matter of the litigation. In the instant case, it was shown that some of the members of the appellant were directly affected by the oil spillage and it was averred that the oil polluting the streams and rivers is very toxic and dangerous to human health in that it can cause skin diseases, lung damage, cancer, damage to reproductive system, etc., factors that can affect generation yet unborn. It was also evident from the reliefs sought that the appellant did not seek any personal benefit from the litigation. The**

reliefs merely sought the enforcement of existing legislation in the interest of all those affected and likely to be affected by the environmental degradation caused by the oil spillage from the respondent's pipelines. By thesuit, the appellant sought the enforcement of the respondent's obligations under the relevant legislation on behalf of the affected communities, including some of its members. Thus, the appellant showed sufficient interest in the subject matter of the suit to clothe it with the necessary standing to sue. (Pp.584-586, paras. D-H; 587, paras. F-H)

Per EKO, J.S.C. at page 601, paras. C-F:

> **"My Lords, as suggested by the appellant in their brief of argument, on the authority of** *R. v. Sommerset CountyCouncil & Anor., Ex parte Dixon* **(1998) Environmental L.R. 111, the court when considering the issue of standinghas to ensure that the plaintiff, in bringing his suit, isnot prompted by an ill motive. Once in his pleadings his genuine interest, as the present appellant has, it is disclosed that the defendant is transgressing the law oris about to transgress it by his objectionable conduct which injures or impairs human lives and/or endangers the environment the plaintiff, be he an individual or an NGO should be accorded the standing to enforce the law and thereby save lives and the environment.**
>
> **From the facts of this case, the appellant cannot be regarded as a mere busy body or trouble maker 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 andAku rivers and the Achu Community who depend on the clean water of the said rivers for their livelihood.A contaminated water and impaired environment bynoxious toxicant material such as crude hydrocarbon oilnot only destroys environment and the entire ecosystem,it is injurious to public health and human lives."**

24. *On Ground for according plaintiff locus standi in other common law jurisdictions in case of public nuisance -*

There are other grounds on which in other common law jurisdictions locus standi **of plaintiffs who request adjudication is readily affirmed. The major consideration isonce the plaintiff establishes that public nuisance endangers human lives, he is readily accorded the standing to request adjudication to enforce statutory duties imposed on the public authority to prevent and control nuisance. These grounds are echoes of Nigerian principle: every individual being his brother's keeper. In almost all the foreign cases, the relevant or material question is whether what is complained of as constituting nuisance was either expressly or impliedly prohibited by statute. [***Fawehinmi v. Akilu*** **(1987) 4 NWLR(Pt. 67) 797 referred to.]** (P. 600, paras. B-D)

25. *On Need for liberalisation of rule of locus standi -*

It would be a grave *lacuna* **in the system of public law if a pressure group or even a single public-spirited tax-payer were prevented by outdated technical rules of** *locus standi* **from bringinga matter to the attention of the court to vindicate the rule oflaw and get an unlawful conduct stopped. It is not a sufficient answer to say that judicial review of the actions of officers or departments of government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for whatthey do so far as regards efficiency and policy, and of that Parliament is the only judge. They are responsible to a courtof justice for the lawfulness of what they do, and of that the court is the only judge. In effect, there is considerable force inthe view that it is by liberalising the rule of** locus standi **thatit is possible to effectively police the corridors of powers andprevent violations of law. Thus, in environmental matters, such as the instant one, non-governmental organisations, such as the appellant in the instant case, have the requisite** *standi* **to sue.** (Pp. 571-572, paras. G-C)

26. *On Need for liberalisation of rule of locus standi -*

Rigid adherence to the common law rule that insists on *locus standi* **for prospective genuine claimants or applicants posesa hindrance to**

enforcement of the rule of law. The outdated technical rules of *locus standi* **should not be used to preventan individual or group of public-spirited individuals from bringing a matter of unlawful conduct that violates the ruleof law to the attention of the court. Every person, including non-governmental organisations, 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 thecitizen or lawful associations to see that the rule of law is enforced vests in him or the association sufficient standing torequest the court to call to order a public authority allegedly violating the law. There is such aspiration in section 17(2)(a)of the 1999 Constitution that provides that every citizen shallhave equality of rights, obligations and opportunities beforethe law. The ready access to court, being one of the attributes of civilised legal system, is part of the aspirational objects ofthe social order which in section 17(2)(e) of the Constitution includes the independence, impartiality and integrity of courtsof law, and easy accessibility thereto (that) shall be securedand maintained. [***Ladejobi v. Oguntayo***** (2004) 18 NWLR (Pt.904) 149 referred to.]** (Pp. 597-598, paras. B-A)

27. *On Whether Attorney-General only proper person who hasstanding to sue to enforce performance of public duty -*

. **In all cases against the government, the Attorney-General is the** *dominis litis* **and is always sued** *virtute officii,* **that is, by virtue of his office, as the representative of government. However, there is nothing in the Constitution that says, through arelator action, that the Attorney-General is the only proper person clothed with the standing to enforce the performance of a public duty. In the present dispensation, the government and/or its agencies enjoy no immunity for any wrong they committed. Section 36(1) of the Constitution is very clearthat in the determination of his civil rights and obligations by or against any government or authority, a party is entitled to fair hearing in the adjudication. Section 6(6)(b) of the Constitution, which defines the scope of the judicial powers vested in the**

court by the Constitution, says expressly thatthe judicial powers extend to all matters between persons or between persons and government or authority for the determination of any question as to the civil rights and obligations of the parties. [*Fawehinmi v. Akilu* **(1987) 4 NWLR(Pt. 67) 797; *Ransome-Kuti v. A.-G, Federation* (1985) 7 NWLR(Pt. 6) 211 referred to.]** (Pp. 595-596, paras. H-E)

28. *On Right of person offended or injured by breach of law by government department or public authority to seek redress incourt -*

It is a matter of high constitutional principle that if there is good ground for supposing that government department or public authority is transgressing the law, or is about to transgress it, in any way which offends or injures thousands of the citizens, then anyone or those offended or injured candraw it to the attention of the courts of law and seek to have the law enforced and the courts in their discretion can grant whatever remedy is appropriate. (Pp. 574, paras. F-G; 600-601, paras. H-A)

29. *On Rule of locus standi in respect of public interest litigation bypublic spirited individuals and non-governmental organisations -*

In a public interest litigation, the chambers of the Attorney-General of the Federation traditionally holds sway. However, the law on *locus standi* in that regard has grown beyond thatand now encompasses public spirited individuals and non-governmental organisations. (P. 575, para. C)

30. *On Nature of public interest litigation -*

Public interest is the general welfare of the public that warrants recognition and protection. It is something in which the public as whole has a stake, especially an interest that justifies government regulation. Public interest litigation is essentially an action brought for the benefit of a group orclass of persons who have suffered a general wrong or about to so suffer as a result of the activities of other persons, usually corporate institutions, governments, for political, religious oreconomic gains. One of the features of this type of litigationis that the victims are often groups of

persons who would not ordinarily be in a position to approach the court on their owndue to impecuniosity or lack of awareness of their rights. It may also arise where, as in the instant case, damage to the environment is alleged to have spread or to have the capabilityof spreading over a very wide expanse of water, covering several communities, where it would be impracticable for every member of the community to sue or would be impossible to identify every person affected. It is an antidote to the problem of direct victims of acts of environmental degradation or pollution being unable to take cases to court. In the instant case, from the appellant's pleadings, the suit before the trial court was a public interest litigation as against one of personal right or personal benefit to the appellant. (Pp.583-584, paras. C-A; 590, paras. D-E; 599, paras. A-B)

31. *On Nature of public interest litigation -*

Public interest litigation is instituted in the interest of the general public. An application to the court in this regard isinitiated by one or more persons on behalf of some victims who cannot apply to the court for redress for themselves dueto one reason or the other. It is intended to improve access to justice to the poor when their rights are infringed and for theprotection of the public affected. Again, such public interest litigation serves as medium for protecting, liberating and transforming the interest of marginalized groups. It raises issues against non-personal interest of the applicant. Public interest litigation is a catalyst for sustainable development.The above reasoning may have weighed on the minds of the courts of some commonwealth and other countries, which made them to depart from the rigid application of the concept of locus standi **particularly when litigation on public interest is concerned.** (P. 591, paras. C-E)

32. *On Need for Sup reme Court to relax application of rule of locus standi in respect of public interest litigation on environmental issues -*

The time has come for the Supreme Court to relax the application of the rule of locus standi **in cases founded on public interest litigation especially**

in environmental issues. No particular person owns the environment. It is the duty of government to protect the environment for the good of all and where government agencies desecrate such environments andother relevant government agencies fail, refuse and/or neglect to take necessary steps to enforce compliance, non-governmental organisations, which do not necessarily seek their personal interest, can bring an action in court to demand compliance and ensure the restoration, remediation and protection of the environment. It is in the interest of the public including the government in general. (Pp. 591-592,paras. G-A)

Per AKA'AHS, J.S.C. at pages 580-581, paras. G-B:

"There is no gain saying in the fact that there is increasing concern about climate change, depletion ofthe ozone layer, waste management, flooding, global warming, decline of wild life, air, land and water pollution. Both nationally and internationally, countriesand organisations are adopting stronger measures to protect and safe guard the environment for the benefit of the present and future generations.

The issue of environmental protection against degradation has become a contemporary issue. 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. 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 litigations, Nigeria should follow suit. 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.**

It is on account of this and the more detailed reasons advanced by my learned brother Nweze, JSC that I am of the firm view that this court being a court of policy should expand the locus standi **of the plaintiff to sue."**

33. *On Duty of State to protect environment -*

The responsibility of the state to protect environment is now a well-accepted notion in all countries. It is the notion in international law that gave rise to the principle of state responsibility to prevent pollution in its own 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 planningand management as appropriate. (Pp. 599-600, paras. G-A)

34. *On Duty of court to protect environment -*

Courts in Nigeria are by virtue of sections 16(2), 17(2)(d) and(3), and 20 of the 1999 Constitution, section 17(4) of the Oil Pipelines Act and the Oil and Gas Pipeline Regulations under duty to protect the environment and would fail in that duty if do not facilitate the protection the laws have put in place. (P.577, para. B)

35. *On Duty of oil pipeline licence holder -*

Section 20 of the Constitution provides that the state shallprotect and improve the environment and safeguard the water, air and land, forest and wild life of the country. On its part, section 17(4) of the Oil Pipelines Act forbids the compromiseof public safety by the holder and prevention of pollution of land and waters, as in the instant case. The subsection provides that every licence shall be subject to the provisions contained in the Act 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. It was pursuant tosection 17(4) of the Oil Pipelines Act that the Oil and Gas Pipeline Regulations were promulgated. A community reading of the above constitutive provision with regulation 9(a)(ii)and (b)(ii) and would reveal that they require the oil pipeline licence holder to institute mechanisms for preventionof accidents like crude oil spill and for remedial action forthe protection of the environment and control of accidental discharge from the pipeline. In the instant case, it was obviousfrom the appellant's pleadings

that the respondent, a public authority, by the acts complained of acted in violation bothof its constitutional obligation under section 20 thereof andits statutory obligations. These occasioned injury to public interest or public injury. From the pleadings, the appellant'sinterest was clear and unambiguous. Therefore, the suit wasnot prompted by ill motive or mischief. The appellant's casewas that the respondent's action(s) was/were in breach of the law and that the result of the objectionable deed(s) was injury to the health of the people and/or dangerous to the environment thereby making it necessary for the appellant to initiate the action to enforce the law and save lives and protector restore the environment. (Pp. 569, paras. E-H; 570, para. B;572, paras. C-F; 574, para. D)

36. *On Duty of owner or operator of oil pipeline -*

The Oil and Gas Pipelines 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 is not only statutory, it is alsoon the authority of Rylands v. Fletcher **(1868) LR 3 HR 330, a common law duty of care. In the instant case, the appellant,a non-governmental organization, sought the enforcement ofthe respondent's obligations under law** vis-à-vis **the rights of the affected communities to maintain a healthy environment which extends to their forest, rivers, air and land and the appellant should be heard. The trial court and the Courtof Appeal were in error in holding that appellant had no**locus standi **in instituting the present action which was aimedat saving the environment and lives of the people. The respondent, operators and owners of the oil pipelines, owed,** prima facie**, the community this obligation by virtue of the provisions of the Oil and Gas Pipeline Act and the regulations made thereunder. Their obligation included periodic maintenance of their pipelines for purpose of environmental impact assessment of their activities.** (Pp. 574-575, paras. H-C)

37. *On Fundamental nature of right to clean and healthy environment -*

Section 17(4) of the Oil Pipelines Act provides that everylicence shall be subject to the provisions contained in the Actas 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 andthe 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 shall protect and improve the environment and safeguard the water, air and land, forest and wild life of the country. Also, article 24 ofthe African Charter on Human and Peoples' Rights providesthat all people shall have the right to a general satisfactory environment favourable to their development. These provisions show that the Constitution, the legislature and the African Charter on Human and Peoples' Rights, to which Nigeria is a signatory, recognise the fundamental rights of the citizenry to a clean and healthy environment to sustain life.(Pp. 587, paras. D-F; 597, para. H)

Per EKO, J.S.C. at page 598, paras. D-E:

"The Acha Community and all people living around and beside Ineh and Aku streams, who depend on the tworivers as their source of drinking water, fishing and other economic activities, 'have a right to a general environment favourable to their development.' They, each, have the right to life guaranteed by the Constitution. The State, including the defendant, a Statutory Corporation, owes the communitya duty to protect them against noxious and toxicantpollutants and to improve and safeguard the water they drink, the air they breathe, the land and forest, including wildlife in and around the two rivers, they depend on for their existence, living and economic activities."

38. *On Duty on court to protect and enforce human rights entrenchedin African Charter on Peoples' and Human Rights -*

The African Charter on Peoples' and Human Rights, an international treaty, having been domesticated, forms part of Nigerian *corpus juris.* **For as long as Nigeria remains signatory to the Charter and other international treaties**

on environment and other global issues for so long also wouldthe Nigerian courts protect and vindicate human rights entrenched therein. [*Molokwu v. C.O.P.* **(1972) 2 ECSLR 979;** *Adewole v. Jakande* **(1981) 262 referred to.]** (P. 598, paras. B-C)

39. *On Statutes providing and agencies responsible for issues of environmental degradation -*

There are legislations and agencies specifically put in placeto address issues of environmental degradation such asthe National Environmental Standards and Regulation Enforcement Agency (Establishment) Act, 2007 which provides, *inter alia,* **for the enforcement of compliance withlaws, guidelines, policies and standards on environmental matters, the National Oil Spill Detection and Response Actand the National Oil Spill Detection and Response Agency created to detect and respond to oil spillage within the Nigerian territory. There are also state environmental laws and agencies. 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 but the effect of the pollution extends far beyond the immediate environment? Where agovernment agency fails to carry out its statutory function incircumstances such as in the instant case, it is highly unlikely that the government, Federal or State, would institute anaction against its own agency. The public would be left without a remedy.** (P. 587, paras. A-C)

40. *On Locus standi of non-governmental organisation in respect of issues of public nuisance injurious to human lives, public healthand environment -*

The Criminal Code and the Criminal Procedure Law, in sofar as prevention of crime and punishment of those committing crimes are concerned, have made all Nigerians his brother's keeper. Accordingly, every person, including non-governmental organisations, who *bona fide* **seek in thelaw court the due performance of statutory functions or enforcement of statutory provisions or public laws, especiallylaws designed to protect**

human lives, public health andenvironment, should be regarded as proper persons clothed with standing in law to request adjudication on such issues of public nuisance that are injurious to human lives, public health and environment. [*Fawehinmi v. Akilu* **(1987) 4 NWLR(Pt. 67) 797 referred to.]** (P. 595, paras. A-C)

41. *On Meaning of "person" -*

The Interpretation Act, Cap. 123 Laws of the Federation of Nigeria, 1990 defines "person" to include anybody or persons corporate or unincorporated. (P. 570, para. A)

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A.-G., Adamawa State v. A.-G., Fed. (2005) 18 NWLR (Pt. 958) 581

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Appeal:

This was an appeal against the decision of the Court of Appeal dismissing the appeal against the ruling of the Federal High Court which struck out theappellant's suit for lack of locus standi. The Supreme Court, in a unanimous decision, allowed the appeal.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Walter Samuel NkanuOnnoghen, C.J.N. (Presided); Musa Dattijo Muhammad, J.S.C.;Kumai Bayang Aka'ahs, J.S.C.; Kudirat Motonmori Olatokunbo Kekere-Ekun, J.S.C.; John Inyang Okoro, J.S.C.; Chima Centus Nweze, J.S.C. (Read the Leading Judgment); Ejembi.Eko, J.S.C.

Appeal No.: SC. 319/2013

Date of Judgment: Friday, 20th July 2018

Names of Counsel: Prof. Joseph N. Mbadugha (with him, Rita Nwaokenye, Esq. and C. K. James, Esq.) - for the Appellant

Victor Ogude (with him, Kehinde Wilkey, Esq. and Ezinne Emedom,Esq.) - for the Respondent

Amici Curiae:

Wole Olanipekun, SAN (with him, Akintola Makinde, Kolawole Aro and Bertilla Aro)

Chief Adegboyega Awomolo, SAN (with him, Akinyosoye Arosanyin, Ifeoma Ndukwe and Fumbi Akinmusuti)

A.B. Mahmoud, SAN, O.E.B. Offiong, SAN (with them, Boma Alabi, Barakah Ali and Anulika Osuigwe)

Lucius C. Nwosu SAN, R.A. Lawal-Rabana, SAN, K.C. Njemanze,SAN, Ade Okeaya-Inneh, Jnr, SAN (with them, Z.A. Nwosu)

Dayo Apata, Solicitor-General (Federation) (with him, M.L. Shiru,Acting Director Civil Litigation (Federation), T.A. Gazali, ChiefState Counsel (Federal Ministry of Justice), Oyin Koleosho, SeniorState Counsel (Federal Ministry of Justice), Ibukun Okoosi, State Counsel and Okoronkwo, State Counsel (Federal Ministry of Justice)

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought:Court of Appeal, Lagos

High Court:

Name of the High Court: Federal High Court, Lagos

Counsel:

Prof. Joseph N. Mbadugha (with him, Rita Nwaokenye, Esq. and C. K.James, Esq.) - *for the Appellant*

Victor Ogude (with him, Kehinde Wilkey, Esq. and Ezinne Emedom, Esq.)- *for the Respondent*

Amici Curiae:

Wole Olanipekun, SAN (with him, Akintola Makinde, Kolawole Aro andBertilla Aro)

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(Federal Ministry of Justice), Oyin Koleosho, Senior State Counsel (FederalMinistry of Justice), Ibukun Okoosi, State Counsel and Okoronkwo, State Counsel (Federal Ministry of Justice)

Nweze, J.S.C. (Delivering the Leading Judgment): At the Federal HighCourt, Lagos Judicial Division, (hereinafter, simply, called “the trial court”), the appellant in this appeal, (as plaintiff), in an admiralty in personal action, claimed against the respondent herein, (as defendant), the following reliefs:

(a) Reinstatement, restoration and remediation of the impaired and/or contaminated environment in Acha autonomous communityof Isukwuato Local Government Area of Abia State of Nigeria particularly the Ineh and Aku

Streams which environment was contaminated by the oil spill complaint (sic) of;

(b) Provisions of portable water supply as a substitute to the soiledand 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/orthe contaminated streams.

In the amended statement of claim filed on February 9, 2006, the plaintiff was described as a "Non-Governmental Organization incorporated in accordance with part C of the Companies and Allied Matters Act, 1990…"

Paragraphs 2, 3, 9, 11, 12, 13 are germane. They were couched thus:

"2. The plaintiff carries on inter alia, the function of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution particularly the un-owned environment or the environment that belongs to no one inparticular, and this include but not limited to rivers, sea, seabeds, ecosystems and aquatic lives. The plaintiff ensures that the environments that belong to no one are kept clean and safefor human and aquatic life/consumptions. She has over 2000 members drawn from across the whole state of the Federal Republic of Nigeria and outside of Nigeria. Some of her members are indigenes of and/or live at Acha Community and use the waterfrom Ineh and Aku Streams/Rivers.

3. The defendant is a corporation established by the Act of Parliament and carries on business of prospecting, mining, producing, exploring and storing of persistent hydro carbon mineral oil such as crude hydrocarbon oil and so on. She hasoffices, oil installations, oil exploring and storing of persistent hydrocarbon mineral oil such as crude hydrocarbon oil and so on.She has offices, oil installations, oil pipelines, oil rigs and so on indifferent parts of Nigeria with its principal place of business and/or its substantial part of business at No. 28 Ademola Road, OffAwolowo Road, Ikoyi, Lagos.

9. The plaintiff further avers that the defendant was negligent in both the causation and containment of the oil spillage in that:

a. The defendant ought to have carried out periodic inspection of its pipeline via x-rays to detect easy signs of corrosiona.and fracture.
b. The defendant ought to have maintained proper surveillancewith state of the art instrument panels that will promptly alert on a sudden loss in pressure along the pipeline, whichb.device would have served as an early warning of a leakage.
c. The defendant knows that crude hydrocarbon oil is dangerous to ecosystem, marine aquatic lives, fauna and flora and being aware of natural tidal transport and seawaves within the area would have anticipated that in the case of an oil spill from these pipes that the two streamsc.would be a natural point of entry.

11. The plaintiff averts that:
    a. The oil spill, its drifting and introduction by the defendant into the Ineh and Aku Streams, estuaries has deleteriouseffect as harm to living resources and marine life, hazards to human health, hinderance to maritine life and other legitimate use of the streams. It has impaired the quality for the use of the streams and resulted in reduction of amenities and economic activities of the people of Acha Communitya.and environs.
    b. The oil spillage left the Ineh/Aku streams impure, soiled, contaminated and they could no longer be put to their ordinary and natural use. They are no longer good forhuman consumption and aquatic lives, sea birds, fauna andb.flora no longer abound in them.
    c. The defendant only stopped the leakage/spillage but never cleaned-up and/or adequately cleaned up or remedied thec.Ineh/Aku Streams.
    d. The plaintiff will show that oil is more toxicant than thought and dangerous to human health. It causes skin diseases, cancer, damage to lungs and reproductive systems and sod.on.
    e. The plaintiff will rely on scientific report and opinion toshow that the devastating effect of oil spill on the ecosystem, marine life and the forest system persist for several decades except when properly and constantly cleaned for severalyears (minimum of 5 years) and; even after 10 years of the incident that oil still remains on the affected streams/livescausing skin

diseases, cancer, damaging the reproductive system and respiratory system of users of the affected streams. It also leads to major social and psychologicale impact like depression and post-traumatic stress disorder.

12. The plaintiff avers that to the naked eyes, it seemed that the defendant having contained the spillage that all is normal but beneath the surface there exist excessive crude hydrocarbon oil in bottom sediments in Ineh/Aku streams. This continues to contaminate the streams.

13. The plaintiff avers that the inhabitants of Acha Community, visitors and travelers thereto continue to use water from the Ineh/Aku streams (for all purposes that water is used) after the incidentas there is no alternative water supply to them."

Subsequently, the respondent, (as defendant), by motion on notice of July14, 2005, entreated the trial court to strike out the suit in limine on the ground thatthe plaintiff lacked the necessary locus standi to institute and maintain the actionon the alleged oil spillage in Acha Community of Isukwuato Local Government Area of Abia State. Persuaded by the defendant's arguments, the trial court struckout the suit "for want of *locus standi* on the part of the plaintiff".

The plaintiff's appeal to the Court of Appeal, Lagos Division, having been dismissed on the ground that it lacked merit, they (the plaintiff, now appellant) repaired to this court entreating it to determine the sole issue framed thus:

Whether the learned Justices of the Court of Appeal were rightin dismissing the appellant's appeal for want of *locus standi* to maintain the suit?

Arguments On The Sole Issue

Appellant's Submissions

At the hearing of the appeal on April 30, 2018, Joseph N. Mbadugha, learned counsel for the appellant; adopted the appellant's brief filed on August5, 2013. In the said brief, he argued the said sole issue under three sub-headings, namely:

(a) *Locus standi* on environmental matters;
(b) Civil rights and obligations; and
(c) Extending the scope of i

He first, dealt with locus standi on environmental matters. Learned counsel onthis first arm of the issue, contended that the law on locus standi with respect to environmental matters that are maintained purely for public interest, without any private interest, has changed to the extent that pressure groups, Non-Governmental Organisations, (NGOs) and even public-spirited tax payers, arecloaked with the locus standi to maintain an action for public interest eventhough they may not have suffered any injury at all let alone any injury aboveevery other member of the society from the subject matter of the suit, *Adesanya v. The President Federal Republic of Nigeria* (1981) 5 SC (Reprint) 69, 56 - 87; (1981) 2 NCLR 358.

He submitted that a plaintiff who does not seek to establish a private rightbut 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 orhas suffered any injury above every other member of the society in respect of the matter, *Adesanya v. The President Federal Republic of Nigeria (supra)* 85 - 86; (1981) 2 NCLR 358.

He contended that, in an environmental action, the existence of thefollowing confers *locus standi* on the plaintiff regardless of whether he has any sufficient interest in the subject matter or suffers any injury thereby. He listed them as: if he maintained the action in the public interest; merits of the challenge; substantial default or abuse; the importance of vindicating the rule of law; the importance of the issue raised; the nature of the breach or damage forwhich relief is sought; the role of the plaintiff and its sincere concern for the issue involved, *Shell Pet. Dev. v. Nwawka* (2001) 10 NWLR (Pt. 720) 64; *Fawehinmi v. President, FRN* (2007) 14 NWLR (Pt. 1054) 275 and other decisions.

He explained that the plaintiff's case is that it a registered Non-GovernmentalOrganization. It carries on inter alia the function of ensuring re-instatement, restoration and remediation of environments impaired by oil spillage/pollution, particularly, the un-owned environment or the environment that belongs to noone in particular. These include, but are not limited to rivers, seas, seas-beds, ecosystems and aquatic lives. It also ensures that the environments that belong to no one are kept clean and safe for human consumptions and aquatic live.The plaintiff has over 2000 members drawn from across the whole States ofthe Federal Republic of Nigeria and outside

Nigeria. Some of the members areindigenes of and/or live at Acha Community and use the water from Ineh and Aku streams/rivers, paragraphs 1 and 2 of the record.

Summation of the Appellant's Case

He summed up the plaintiff's/appellant's case thus. The Ineh and Akustreams/rivers are the only source of water supply to Acha Community, herenvirons, visitors and travelers. What is more, the oil spill, its drifting and introduction by the defendant into the Ineh and Aku streams, estuaries have deleterious effect as harm to living resources and marine life, hazards to human health, hindrance to marine life and other legitimate use of the stream.

These have impaired the quality for the use of the streams and resulted in the reduction of amenities and economic activities of the peoples of Acha community and environs.

The oil spillage left the Ineh/Aku Streams impure, soiled and contaminated and they could no longer be put to their ordinary and natural use. They are no longer good for human consumption and aquatic lives, sea beds, fauna and florano longer abound in them.

The defendant/respondent only stopped the leakage/spillage but never cleaned-up and/or adequately cleaned up or remedied the Ineh/Aku stream, paragraph 5, 34, paragraph 11 a-c of the record. The devastating effect of oil splitson the ecosystem, marine life and the forest system persist for several decades except when properly and constantly cleaned for several years (minimum of 5years) and even after ten years of the incident that oil still remains on theaffected streams/rivers causing skin diseases, cancer, damaging the reproductive system and respiratory system of users of the affected streams.

It also leads to major social and psychological impact like depression and post-traumatic stress disorder. The inhabitants of Acha Community, visitorsand travelers thereto continue to use water from the Ineh/Aku streams (for all purposes that water is used) after the incident as there is no alternative water supply to them, paragraphs E and 13 of the record.

He, then, submitted that the appellant's action is purely for public interestwithout any private interest; the action is very important - there is substantial abuse or

default (soiling the environment and failing to remedy same) by the respondent: the appellant has sincere concern for the environment, particularly, but not limited to the one in issue; and there is likely absence of anyother challenger.

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 (including a registered NGO) could bring an action in respect of a public derelict as the appellant has done in this case, *Fawehinmi v. President, FRN* (2007) 14NWLR (Pt. 1054) 275, 334-335, G-D; *Adesanya v. The President, F.R.N. (supra)*85- 86; 86 - 87; (1981) 2 NCLR 358. He maintained that the plaintiff's action is laudable and will bring peace, justice, orderliness as well as social and economic justice. In his view, theappellant has the *locus standi* to maintain the action.

Civil Rights and Obligation

Learned counsel canvassed the view that section 6 of the Constitution gives every Nigerian citizen the *locus standi* to commence an action in respect of any issue affecting his civil rights and obligation. He cited *Fawehinmi v.President, FRN (supra)* 275, 338, E- F as authority for the proposition that civilrights include the right of any citizen to see that the law is enforced in respect ofpublic matters, public law and, in some instances, private law; also, *Adesanya v.The President, FRN (supra)* 85.

Civil right, in his submission, is a right which all persons in the polity should generally share in the common discrimination, *Okechukwu v. Etukokwu(*1998) 5 NWLR (Pt. 562) 513, 526. He, thus, submitted that the civil rights of the appellant include seeing that the laws of the Federal Republic of Nigeria are enforced in matters of public law or for public interest.

He cited paragraphs 4, 6, 7, 8, 9, 10, 11, 12 and 13 of its pleadings, pages32-35 of the record. There, the appellant averred that, due to the negligence of the defendant/respondent, the oil pipelines it laid beneath, around and beside Ineh and Aku streams/rivers in Acha Community of Isukwuato Local Government Area of Abia State ruptured, fractured and completely spewed its entire capacity of persistent hydrocarbon mineral oil. This spillage and drifting of the respondent's crude

hydrocarbon oil into Ineh and Aku streams/rivers, which started on May 13, 2003 till June 21, 2003, left the Ineh and Aku streams/rivers soiled, contaminated and impure. They could no longer be put to their ordinaryand natural use and aquatic lives, sea beds, fauna and flora no longer abound in them. The respondent only stopped the leakage/spillage but never cleaned upand/or adequately cleaned up or remedied the Ineh/Aku streams/rivers.

Referring to the reliefs claimed, counsel maintained that the appellant' saction is on public law and for public interest given that the Ineh and Akustreams/rivers, which it wants the respondent to remediate, are the only sourcesof water supply to the Acha community, her environs, visitors and travelers. Theaction, he explained, is also for vindication of rule of law, that is, enforcementof the relevant provisions of the Federal Environmental Protection Agency Act (*supra*), being the law in force as at the time of accrual of the cause ofaction or the provision of the National Oil Spill Detection and Response Agency (Establishment) Act, 2006.

He further submitted that, from the provisions of section 6(6)(b) of the1999 Constitution, the only competent action contemplated therein are actions between persons or persons and government or between two State Governments or between State Governments and the Federal Government. In his view, no actioncan be sustained between the Federal Government and the Federal Governmentas well as between the Federal Government and its agencies.

He pointed out that the respondent is a statutory corporation; its Board Members are members of the Federal Executive and/or appointed by the Presidentof the Federal Republic of Nigeria. Its chairman is a Minister in the Governmentof the Federation, section 1 (1); 2 - (c); 3; section 2 and section 3 Ofthe Nigeria National Petroleum Corporation Act, Cap N123, LFN, 2004.

Counsel explained that, by sections 5, 26, 27 and 41 of the Federal Environmental Protection Agency Act, Cap F10, LFN, 2004, (the law inforce as at the time the cause of action arose), it is the Federal Environmental Agency that has the duty of protection and development of the environment aswell as punishment or prosecution of of fenders or polluters of the environmentin conjunction with the Nigerian Police. By section 1 of the FederalEnvironmental Protection Agency Act (supra), the said agency is an integral part of the Presidency.

He contended that, in the circumstance, it would be absurd and contrary tothe provisions of section 6 (supra) to suggest that FEPA or the National Oil Spill Detection and Response or the Attorney General of the Federation willsue a fellow Federal Government Agency or corporation/parastatal. To do thatwould amount to the Federal Government suing itself. Worse still, there is no provision in any law empowering the Government to sue itself.

Against this background, he took the view that, if the appellant is denied the *locus standi* to maintain this action, it is unlikely there would be any otherchallenger and the environment would be left soiled without any remediation. He canvassed the view that, by virtue of paragraphs 1-2 of the amended statement of claim, page 31 of the record, the appellant has shown that it has sufficient interest in ensuring reinstatement, restoration and remediation of environments impairedby oil spills/pollution particularly, the environment that belongs to no one inparticular, by reason it has sufficient interest in the subject matter of this suit.

Extending The Scope Of Locus Standi

On this last arm, learned counsel cited *Adesanya v. The President of theFederal Republic of Nigeria (supra)* 80 for the definition of locus standi. Heturned to the indicia for ascertaining whether a plaintiff has the *locus standi* in any matter which, in his submission, have been established in many cases, *Nyame v. F.R.N.* (2010) 7 NWLR (Pt. 1193) 344, 400, F-H; *Pam v. Mohammed (*2008) 16 NWLR (Pt. 1112) 1, 66, paragraphs F-G.

In his submission, the above decisions did not take into consideration thefollowing, whether:

A. An action is on public ground or purely public interest without any private interest to serve;
b. An action would vindicate the rule of law;
c. A suit as constituted disclosed an extreme case, which would justify an exceptional approach to the question of sufficientc interest, citing page 47 of the record;
d. A plaintiff has a genuine concern for the environment particularly the un-owned environment and maintained the suit for the interestd of the public.

He further submitted that the above cases did not take the above issues into consideration because they did not arise in those cases nor were they borne out from the facts unlike in the present case. He derided them as restrictive.

Learned counsel canvassed the view that the court would extend, curtailor depart from a ratio decidendi or principle of law if it is restrictive (narrow) or too wide, Glanville Williams, Learning the Law (13th Edition), (London; Sweetand Maxwell, 2006) 99, paragraphs 2-3. He cited *Oduola v. Nabhan* (1981) 5 SC(Reprint) 120, 137 as an instance where this court curtailed a ratio decidendi.

He, therefore, contended that, in appropriate cases, like in the instant case, this court could introduce a qualification (exception) into the meaning of locusstandi 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 fromthe subject matter of the suit.

Learned counsel contended that, the principle of having sufficient interest in a subject matter or having suffered any injury above every other member ofthe society, as a determinant of *locus standi* to maintain a suit, is a creature of the common law, which Nigeria inherited from the United Kingdom. He pointed out that English courts have extended the meaning of *locus standi* and the aforementioned determinant principle in appropriate cases, *Reg v. Inland Revenue Commissioners, Ex parte National Federation of Self-Employed and Small Business Ltd.* (1982) AC 617, 639; Paragraph H.

He explained that Nigerian courts seem to be moving away from the narrow and restrictive meaning of *locus standi*, *Bewaji v. Obasanjo* (2008) 9NWLR (Pt. 1093) 540, 581; C- H; *Fawehinmi v. Akilu and Anor* (1987) 12 SC109 (Reprint) 188; 152; (1987) 4 NWLR (Pt.67) 797.

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.He contended, in the alternative, that if too rigid adherence to precedent would lead to injustice in a particular case or unduly restricts the proper developmentof an area or field of law, this court would depart or curtail its previous decision,*Odi v. Osafile* (1985) 1 NWLR (Pt. 1) 17, 46; D-F; 49; H.

He highlighted that would impel the court to depart from its previousdecisions, *Odi v. Osafile (supra)* 51; *F; Rossek v. ACB Ltd* (1993) 8 NWLR(Pt. 312) 382, 431; F-G; 444-447; G-E; 479-481; G-D. he posed the questions: Whether the present case presents new facts which were not adverted to in the earlier proceedings; whether this court adhere to the decisions in *Nyame v. FRN(supra); Pam v. Mohammed (supra)* and thus perpetuate injustice in the presentcase?

In answer to the first question, he cited paragraphs 4, 25-4.28 and 4.38-4.39 of the brief. In his view, the appellant has, dearly, shown that the presentcase depicts new facts, which were not adverted to in the earlier cases. In hisview, the rigid adherence to the earlier decisions will lead to injustice in the instant case given that the contaminated environment-rivers-will no longer beremedied and the peace, justice, orderliness as well as social and economic justicethat the present suit will bring to the community if it succeeds will be eroded.

He, finally, submitted that there have been new developments in the law onlocus standi as it relates to environmental matters as provided by Section (*supra*). What is more, by reason of section 16(1) and (2); 17(1); andof the Constitution, there are new developments in socio-economic and politicalspheres. He urged the court to qualify or create an exception to or to extend the meaning of *locus standi* in the form of the present appellant. In the alternative, he invited the court to depart from *Nyame v. FRN (supra) and Pam v. Mohammed(supra).*

Respondent's Submission

On his part, Victor Ogude, learned counsel for the respondent, adopted brief filed on September 16, 2013, although, deemed properly filed and served on April 30, 2018. He dismissed all the cases cited by the appellant as inapplicable and commended *Chevron (Nig.) Ltd. v. Warri North LGC* (2003) 5 NWLR (Pt.812) 28, 42-45, F -C; *Araka v. Egbue* (2003) 17 NWLR (Pt. 848) 1, 22; *Adigun v.A.-G. Oyo State* (1987) 2 NWLR (Pt. 56) 197, 230, E - F, to the court.

He contended that the Nigerian Law on locus standi remains as it has,always been, *Busari v. Oseni* (1992) 4 NWLR (Pt. 237) 557; *SPDC (Nig.) Ltd.v. Otoko* (1990) 6 NWLR (Pt. 159) 693; *Owodunni v. Registered Trustees ofCelestial*

Church of Christ (2000) 10 NWLR (Pt. 675) 315; cases that were decided after *Adesanya v. President of the Federal Republic of Nigeria (supra),*

He cited *SPDC v. Nwawka* (2001) 10 NWLR (Pt. 720) 64; *Busari v. Oseni(supra); Fawehinmi v. Akilu and Anor,* In re Oduneye (1987) 4 NWLR (Pt. 67)(sic); *Thomas and Ors v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 all to the effect that as the law stands there is no room for the adoption of the modern views on *locus standi* in England and Australia.

Learned counsel placed reliance on *Owodunni v. Registered Trustees of Celestial Church of Christ (supra).* He, then, submitted what he regarded as the principles for determining locus standi, paragraph 4, 20 of the brief test, which, in his submission, the appellant did not satisfy, citing pages 31-36 of the record.

He contended that the appellant cannot invoke section 6(6)(b) (*supra*) as *Adesanya v. President of The Federal Republic of Nigeria; Fawehinmi v. ThePresident of the Federal Republic (supra)* drew a clear distinction between locus standi in constitutional litigation and locus standi relating to non-constitutional litigation.

In his view, *Adenuga v. Odumeru* (2003) 8 NWLR (Pt. 821) 163; *ACC Co.Ltd. v. Rao Investment and Properties Ltd.* (1992) 1 NWLR (Pt. 219) 583 are relevant in so far they define and lay down the tests or criteria for determining *locus standi.*

He took the view 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 remedies in court, *Daramola v. A.-G., Ondo State* (2000) 7 NWLR (Pt. 665) 440, 476. He further recommended *S.P.D.C. Co.Ltd. v. Otoko* (1990) 6 NWLR (Pt. 159) 693.

Learned counsel, further took the view that Federal Environment Protection Act and the National Oil Spill Detection and Response Agency, 2006 which the appellant relied on were not even in force when the action arose. He urged the court to affirm the decision of the lower court.

Intervention Of Amici Curiae

The Solicitor-General of the Federation's Arguments

The Hon Attorney General of the Federation, (represented by Dayo Apata,Solicitor-General of the Federation), and four Senior Advocates of

Nigeria,invited by the distinguished Chief Justice of Nigeria, as amici curiae, took theirturns to address the court; first, the Solicitor-General of the Federation.

Dayo Apata, Solicitor-General of the Federation, representing the Hon.Attorney-General of the Federation adopted the amicus curiae brief filed onMarch 9, 2018. He explored the question from the angle of section 6(6)(*supra*). He cited *A.-G., Bendel Sate v. A.-G., Federation* (1981) 10 SC 1; (1982)3 NCLR 1 on the interpretation of the Constitution, pages 4.01 - 4.03, pages 3 - 6of the brief.

The learned Solicitor-General, equally, referred to *A.-G., Lagos Statev. Eko Hotels Ltd (sic); Efunwape Okulate v. Gbadamosi Awosanya* (2000) 2NWLR (Pt. 646) 530; *First Bank of Nigeria Ltd. and Anor v. Maiwada* (2012)51 NSCQR 155, 161; (2013) 5 NWLR (Pt. 1348) 444; *Basinco Motors Ltd. v.Woermann-Line* (2009) 39 NSCQR 284, 313, 334; (2009) 13 NWLR (Pt. 1157)149.

He cited the Abia State Basic Environmental Law, Laws of Abia State of Nigeria, Cap 5, 2005; Abia State Environmental Protection Agency Law, Cap 11,2005; National Oil Spill Detection and Response Act, sections 6 and 7 thereof; National Environmental Standards and Regulations Enforcement Agency (Establishment) Act; 2007, section 7 thereof.

In his submission, the law has taken care of the complaints of the appellant,citing O.G. Amokaye Environmental Law and Practice in Nigeria (2nd Edition)(sic) 890-891; *SPDC (Nig.) Ltd. v. Nwawka* (2003) FWLR (Pt. 144) 506, 532;(2001) 10 NWLR (Pt. 720) 64.He took the view that in view of section 6(*supra*); this court's decisions on the issue; the current state of law on Environmental Protection in Nigeria, the court should not extend *locus standi* to(6)private citizens and NGOs in matters of environmental degradation.

Intervention Of Wole Olanipekun, SAN

Wole Olanipekun, SAN, who was, also, invited as an amicus curiae, adopted his brief filed on March 5, 2018. He, first outlined the duties and functions of anamicus curiae, paragraphs 2.1-2.5; pages 1-3. He devoted paragraphs 6.0-7.3,pages 5-7 of the brief on origin and legal status of NGOs.

The learned Senior Advocate of Nigeria turned to the question of extending the scope of locus standi in relation to issues of environmental degradation. He cited *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341, 348; *Gamioba and Ors.v. Esezi*

II (1961) 1 ANLR 584, 588; (1961) 2 SCNLR 237; *Oloriode v. Oyebi*(1984) 5 SC 1; (1984) 1 SCNLR 390; *Olawoyin v. A.-G. Northern Region* (1961)All NLR 269; (1961) 2 SCNLR 5; *Adesanya v. President of the Federal Republicof Nigeria and Anor (supra)* at 187; *Ajayi v. Adebiyi* (2012) 11 NWLR (Pt. 1310)137, 180; *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669, 685.

He noted that it has been held in several cases that, in the absence of harm,injury, benefit or obligation to the person bringing the action, such a person would be likened to a busy-body who lacks the *locus standi* to initiate the action, *A.-G., Anambra State v. A.-G., Federation* (2007) All FWLR (Pt. 379)1218, 1285; (2007) 12 NWLR (Pt.1047) 4; *A.-G., Kaduna State v. Hassan* (1985)2 NWLR (Pt. 8) 483, 521; *A.-G. Lagos State v. Eko Hotels Ltd* (2006) 18 NWLR(Pt. 1011) 378, 450; *Olagunju v. Yahaya* (1998) 3 NWLR (Pt. 542) 501; *A.-G.,Adamawa State v. AGF* (2005) 18 NWLR (Pt. 958) 581, 624.

Although conceding that *Owodunni v. Regd Trustees of CCC* (2000) 10NWLR (Pt. 675) 315, 354-357 and *Fawehinmi v. President, F.R.N.* (2007) 14NWLR (Pt. 1054) 275 would appear to have liberalized the issue of *locus standi,*these decisions were grounded on their peculiar facts

Locus Standi on Environmental Degradation

The learned Senior Advocate of Nigeria submitted that the dominant role of *locus standi* might be difficult to be extended beyond acceptable limits in relation to environmental degradation, considering the case of NGOs, without reference to the pleadings/ the special interests of the NGOs in the matter being litigated etc the nexus between the NGOs to the reliefs sought, the aftermath of the reliefs sought, if granted particularly, enforcement of the judgment, since acourt of law, like nature, does not act in vain, *S.P.D.C.N. Ltd. v. Amadi* (2011) 14NWLR (Pt. 1266) 157, 191, A -E, citing paragraph 2 of the amended statement of claim, page 31 of the record.

He contended that there is no nexus between the reliefs being sought andthe appellant; its membership is abstract, inchoate and opaque. He noted that thecourt should not engage in speculation, A.I.C. Ltd. v. NNPC (2005) 11 NWLR (Pt.937) 563. He referred to A.-G., Lagos State v. Eko Hotels Ltd (supra); *Adesanya v. President the Federal Republic of Nigeria (supra).* He maintained that the claims in

paragraph 16 of the amended statement of claim appear nebulous; unspecific and difficult to enforce.

Statutory Remedies Already Made Available On Environmental Degradation

He drew the court's attention to the following statutes, National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007, (NESREA Act) and the National Oil Spill Detection and Response Agency (NOSDRA) Act. He explained that the NESREA Act is the principal environmental regulation responsible for the protection of the general environment. On the other hand, the NOSDRA Act is more specific and direct asit regulates the detection of waste from oil production and exploration. The Act creates an agency known as National Oil Spill Detection and Response Agency (NOSDRA), citing sections 6 and 19 of the Act.

He further explained that the Oil Spill Recovery, Clean Up, RemediationAnd Damage Assessment Regulations (OSDAR) Regulations were enacted infurtherance of the agency's obligation. He cited Regulation 25 of the OSDAR Regulations.

Environmental Degradation As A Specie Of Public Nuisance

He opined that environmental degradation is a species of public nuisance.In common law, the responsibility for bringing proceedings against public nuisance, generally, rests with the Attorney General of the Federation or anysimilar public official, who acts as parens patriae to ventilate public rights vested in the State. Learned senior counsel maintained that, with the establishment of the above statutory bodies, there is no need expanding the scope of locus standi in environmental degradation matters in favour of any particular cadre or family ofNGO, Bewaji v. Obasanjo (2008) 9 NWLR (Pt. 1093) 540, 569; *Ajayi v. Adebiyi(supra);* also, *Bewaji v. Obasanjo (supra)* 576-577.

In conclusion, he noted that there was no need for any expansion of the doctrine of *locus standi.* Above all, the particular in the instant appeal canbe classified under public nuisance, which can only be litigated upon by the Attorney General of the Federation or of the State, G. Kodilinye, The NigerianLaw of Torts, (London: Sweet and Maxwell, 1982) 90-91; *Amos v. Shell-BP(Nig) Ltd* (1974) 4 ECSLR 486, 488; *Oyidiobu v. Okechukwu* (1972) 5 SC 191,198; *Hickey v. Electric Reduction Co.*

of Canada Ltd (1970) 21 DLR (3d) 368[NTLD SC); *Hunter v. Canary Wharf Ltd* (1997) AC 655.

Adegboyega Awomolo, SAN's Submissions

Asiwaju Adegboyega Awomolo, SAN, who was, equally, invited as anamicus curiae, adopted his brief filed on March 6, 2018, In the said brief, he set out paragraphs 4; 5, 6, 7, 8, 16 of the amended statement of claim and submitted that the averments are anchored on public interest litigation in the interest of the general public, section 14(2)(b) of the 1999 Constitution; *Umudje and Anor v. Shell Petroleum Development* (1975) 9-11 SC 155.

He addressed areas such as the role on Non-Governmental Organisationsand Civil Society Groups in the environmental sphere, *R v. Inspectorate of Pollution exp Greenpeace Ltd.* (No.2) (1994) 4 All ER 329; legal regime/agencies where in he cited the Department of Petroleum Resources (DPR); Ministry of Petroleum Resources (MPR); National Oil Spill Detection and Response AgencyAct, 2006, (NOSDRA) and National Environmental Standard and RegulatoryEnforcement Agency (Establishment) Act, 2009 (NESDRA)

He cited *R v. Secretary of State for Foreign and Commonwealth Affairsex parte World Development Movement Ltd.* (1995) 1 All ER 611, 620 where anNGO was held to have *locus standi* to make an application. He pointed out thatin the face of so many agencies with diverse approaches to the plight of victims of oil spillages, granting access to NGOs to secure remediation, restoration and reinstatement of impaired and contaminated environment through public interestlitigation has become inevitable, citing O. Fagbohun The Law of Oil Pollution and Environmental Restoration - A Comparative Review (Ibadan: OdadePublishers, 2010) 301 - 309, 355. He referred to the averment that some of the appellant's members are indigenes of and/or live in Acha Community and use thewater from Inet and Akis streams/rivers. In his submission, that was a sufficient link to a territorial actor and upon which public interest litigation and broad interpretation of legal standing can rest.

Learned Senior Advocate of Nigeria devoted the submissions on paragraphs6.0 - 6.05, pages 14 - 21 to the Fundamental Rights (Enforcement Procedure) Rules. He cited Metropolitan Manila Development Authority v. ConcernedResidents of Manila

Bay Nos 171947 - 48, 574 SCRA 665 of December 18,2008, a decision of the Supreme Court of the Republic of Philippines in regardto the clean up, rehabilitation and protection of' Manila Bay. Paragraphs 7.0 - 7.02, pages 21-24 of the brief to the criminalization of environmental abuses or misuse.

On the last segment of the brief dealing with justiciability of appellant's claim," he urged the court to expand the frontier and relax the concept of *locus standi* as applicable to environmental litigation, citing *Flast et al v. Cohen,Secretary of Health Education and Welfare* (1968) 392 US 83, approvingly, adopted in *A.-G. Anambra State v. Eboh* (1992) 1 NWLR (Pt. 218) 491.

He submitted that it is a matter of grave constitutional principle of justice that if a private oil prospecting company for profit transgressed the law in away which affects, offends and injures several thousands of Nigerians, any ofthose injured or any person with genuine and public-spirited intention shouldbe permitted to approach the court for restitution, restoration with a view to getting the law enforced. The court, in his submission, should relax the rule of *locus standi* because the suit seeks to expose illegality and bring immeasurable environmental benefits, which would have gone unredressed.

Submissions of A. B. Mahmoud, SAN

Abubakar B. Mahmoud, SAN, who was, equally, invited as amicuscuriae, adopted his brief filed on April 30, 2018, He segmented his submission under sub headings starting with what he called the "court's duty to protect the environment," citing sections 20 of the Constitution; 16 (2); 17 and 17thereof. He observed that the African Charter on Human and Peoples' Rights hasbeen domesticated in Nigeria under the African Charter on Human and Peoples'Rights (Ratification and Enforcement) Act, Cap A9, LFN, 2004, Abacha v.Fawehinmi (2000) 6 NWLR (Pt. 660) 228.

Turning to the subsection titled "A case for Non-Governmental Organizations (NGOs) in Environmental Protection," he contended that, in making a finding that NGOs can sue to seek redress for environmental degradationin Nigeria, the court will ultimately be guided by a community reading of several portions of the Constitution. Guidance, he submitted, may be sought in section13 thereof.

He cited *Okogie and Ors v. A.-G. Lagos State* (1981) 2 NCLR 337; *A.-G. Ondo State v. A.-G. F.R.N.* (2002) 9 SC 1; (2002) 9 NWLR (Pt. 772) 222; F.R.N. v. Anache (2004) 14 WRN 1; *Olafisoye v. FRN* (2004) 4 NWLR (Pt. 864)580 which seem to move in the direction that certain provisions of chapter two of the Constitution could, in certain circumstance, be justiciable, particularly,where other provisions of the Constitution or other statutes provide for matters contemplated therein.

He drew attention to section 17(4) of the Oil Pipelines Act (OPA), Cap 07,LFN (made pursuant to sections 13 and 20 of the Constitution). He explained that, pursuant to the above provision, the Oil and Gas Pipeline Regulations was promulgated. In his submission, Regulation 9 (ii); and (iii), read together requires the oil 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 pipeline.

He pointed out that section 14 OPA prohibits depositing materials in water that diminish its domestic use. In sections 11 (5); 19 - 22, the OPA makes copious provisions for compensation for those who have suffered injury as a result of the pipeline holder's activities, He canvassed the view that the legislature has more than satisfied its obligation to protect the environment, pursuant to sections13 and 20 of the Constitution, leaving the judiciary to determine the rest. He, therefore, urged the court to effectuate sections 13 and 20 of the Constitution andprotect the environment by applying the OPA.

He devoted paragraphs 4.17 - 4.21, pages 13-14 of the brief to the subject of environmental rights as human rights. He drew attention to paragraph 2 ofthe amended statement of claim, page 31 of the record as determinant of theappellant's locus standi. He contended that, read together with paragraph 1 ofthe said amended statement of claim, the reliefs sought, the court should makea finding to determine *locus standi* on the basis of the corporate interests ofsome of the appellant's 2000 members said to be affected by the pollution of the water courses.

Having dealt with public interest litigation in paragraphs 4.23 - 4.27, pages15-17, he explored the developments in other common law jurisdictions from paragraph 5.1-5.16, pages 17 - 23 of the brief. He urged the court not to stick tothe rigid adherence to the strict doctrine of *locus standi*.

The intervention of Lucius E. Nwosu, SAN

Lucius E. Nwosu, SAN, who was, also, invited as amicus curiae, adopted his brief filed on April 4, 2018. In the said brief, he took the view, disagreeing with this court in *Owodunni v. Regd Trustees, CCC (supra),* that any interest what soever shown to enure in favour of the plaintiff on the subject matter, nomatter howsoever trivial, is sufficient to support his *locus standi* in other words,whether he has shown any interest deserving of protection in the subject matter of litigation, *Adesokan v. Adegborolu* (1997) 3 SCNJ 16; (1997) 3 NWLR (Pt.493)261. He then referred to *Adediran v. Interland Transport Ltd.* (1991) 9 NWLR(Pt. 214) 155 as representing the new thinking on the subject.

He cited the Oil Pipelines Act, section 11, Cap 07 LFN which, in his submission, has created some mandatory statutory obligations on the holder of oil pipelines licence, citing section 11 (a)-(c) relating to damages arising from breakage of the pipeline. He, equally, cited sections 19 and 20 relating to adjudication by the courts and basis of the compensation; also, section 17and 17 which forbids the compromise of public safety by the holder and prevention of pollution of land and waters as in the case under consideration.He referred to *Adediran v. Interland Transport (supra)* at page 180; D - E; *A.-G.Abia v. A.-G. Federation* (2006) 16 NWLR (Pt. 1005) 265, 381, C-E. He, finally, referred to the Interpretation Act, Cap 123 Vol 7 LFN for the definition of personto include anybody or persons corporate or unincorporated.

Appellant's Reply

The appellant's counsel further cited *Inland Revenue Commissioner v. National Federation of Self-Employed and Small Business Ltd* (1981) 2 All ER93, 107. He submitted that maintaining a clean environment is the responsibility of all persons in the country. He cited the Indian Supreme, Court case of *MaharajSingh v. State of U.P. AIR* (1976) SC 2607; *Municipal Council, Ratlam v.Vardhichard AIR* 1980 SC 1622; *S. P. Gupta v. President of India, AIR* (1982)

SC 149,189 as decisions where the Indian Supreme Court, without any statutory enactment, but rather the need to do justice, liberalized, generally andwith respect to environmental degradation, the traditional rule on *locus standi.*

Victor Ogude, for the respondent submitted a written address in response to the court's directive on the issue of extending the scope of *locus standi,* paragraphs 1.01 - 3.00 and a response to A.B. Mahmoud SAN's brief paragraphs1.0 - 8.21.

Resolution Of The Issue

My Lords, the expression *"locus standi"* Latin expression used, interchangeably, for "a place to stand," or standing to sue "is a rule of ancient vintage and it arose during an era when private law dominated the legal sceneand public law had not yet been born," per *Bhagawati, J in Gupta v. President of India and Ors,* 1982 2 SCR 365 (italics supplied for emphasis).

Like most of English law, of the time, the rules as to standing could not befound in any statute for they were made by Judges of the realm, per *Lord Diplockin Re v. I.R.C., Exp. Fed. of Self-Employed* (1982) A. C. (H. L. (E.)) 617, 641.Indeed, the said locus standi rules would appear to have been more, popularly,enunciated in *Ex parte Sidebotham* (1880) 14 Ch. D 458.

According to James, L.J. a "person aggrieved" must be a man "who hassuffered a legal grievance, a man against whom a decision has been pronouncedwhich has wrongfully deprived him of something or wrongfully refused himsomething or wrongfully affected his title to something," *Ex parte Sidebotham (supra).*

This Jamesonian definition was approvingly, adopted in In Re Reed Bowenand Co (1887) 19 QBD 174. The learned Master of the Rolls, Lord Esher, emphasized that "when James, L. J. said that a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him of something, he obviously meant that the person aggrieved must be a man whohas been refused something which he had a right to demand," per *Bhagawati, Jin Gupta v. President of India and Ors, (supra).*

In simple terms, therefore, this narrow and rigid conception of locus standimeans that it is only a person who has suffered a specific legal injury by reasonof actual or threatened violation of his legal right or leally-protected interest whocan bring an action for judicial redress, In effect, this rule with regard to *locus standi* "thus postulates a right-duty pattern which is commonly to be found inprivate law litigation," *Gupta v. President of India and Ors, (supra).* Subsequent English decisions clung to this "right-duty pattern" a common feature of private law.

Nigeria's Inheritance Of The Common Law Determinant Of Locus Standi

Nigerian courts, as legatees of the English common law heritage, embraced this concept of *locus standi*. In doing so, however, they would appear to have merged the narrow and restrictive concept of private law (cause of action test) with the requirements of public law. Thus, although *Olawoyin v. A.-G. Northern Region* (1961) 2 SCNLR 5, which would appear to be the first Nigerian caseon the point, was "a case in the realm of public law," (*Owodunni v. RegisteredTrustees, CCC (supra)* 340), yet the court invoked the "interest" and "injury"test.

Subsequent decisions towed that line, *Gamioba and Ors v. Esezi II* (1961) ANLR 584, 613; (1961) 2 SCNLR 237; *A.-G. Eastern Nigeria v. A.-G.,Federation* (1964) 1 ANLR 224; *Odeneye v. Efunuga* (1990) 7 NWLR (Pt. 164)618; *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669; *Amusa Momoh v. JimohOlotu* (1970) 1 All NLR 117; (1970) ANLR 121; *Maradesa v. The MilitaryGovernor of Oyo State and Ors* (1986) 3 NWLR (Pt.27) 125; *Olawoyin v. A.-G.of Northern Nigeria* (1961) 2SCNLR 5; (1961) 2 NSCC 165; *Senator Adesanya v. President of the Fed. Republic of Nigeria and Anor* (1981) 12 NSCC 146;(1981) ANLR 1; (1981) SC 1112; (1981) 2 NCLR 358 and so on.

Did Adesanya v. President, F.R.N. (supra) extend locus standi?

In *Owodunni v. Registered Trustees, CCC* (2000) 10 NWLR (Pt. 675) 315,331; para. D, Ogundare, JSC, introduced the leading judgment as follows this

> "... appeal raises once again the vexed question of *locus standi* which, in spite of a plethora of decided cases on it, still remainsa Gordian Knot. A number of judicial pronouncements have been made and academic papers written. Rather than the problem being solved, it has become more intractable as the case now on hand demonstrates."

His Lordship continued in *"Oloriode v. Oyebi* (1984) 1 SCNLR 390, 400, Irikefe JSC.. (as he then was) declared that 'a party prosecuting an action would have *locus standi* where the reliefs claimed would confer some benefit on such a party'.

According to His Lordship at page 339, paras. A-H:

> "This is clearly the position in private law....

> The position appears to be that in private law, the question of *locus standi* is merged in the issue of cause of action. For instance, a plaintiff who has no privity of contract with thedefendant will fail to establish a cause of action for breach of the contract as he will simply not have a *locus standi* to sue the defendant on the contract … Our laws reports arereplete with authorities that show that in chieftaincy cases,all a plaintiff is required to do is to show in his statement of claim his interest and his entitlement to the chieftaincy title.I may add that the same principle applies to similar cases such as the one presently on hand."

The erudite jurist maintained that *"Thomas v. Olufosoye (supra)* falls into this category as well. *Olawoyin v. A.-G. of Nigeria (supra)* is a case in realm of public law.. The court applied the 'interest' 'injury' test in denying (Olawoyin) of *locus standi* in the case. The same test was applied by the court in *Gamioba and Ors. v. Esezi II and Ors.* (1961) ANLR 608,613".

Almost all counsel, including the amici curiae, would seem to entertainthe view that the decision in *Fawehinmi v. Akilu* (1987) 4 NWLR (Pt. 67) 797 expanded the scope of *locus standi.* With respect, this cannot be correct, see, T.E. Ogowewo, Wrecking the Law: How Article 111 of the Constitution of the United States led to the discovery of a Law of Standing to Sue in Nigeria, 26Brook. J, Int'l L. (2017) 528, where the erudite scholar debunked such views.

Is section 6 the provenance of *locus standi?*

In *Owodunni v. Registered Trustees, CCC* (supra), Ogundare, JSC, answered this question at pages 341-343, paras. F-E thus:

> "It appears that the general belief is that this court laid it down in that case (that is, *Adesanya v. President FRN)* that the law on *locus standi* is now derived from section 6(6) of the Constitution of the Federal Republic of Nigeria, 1979 (re-enacted in section 6(6)(b)of the 1999 Constitution) which provided:

6(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 any personin Nigeria, and to all actions and proceedings relating

thereto, for the determination of any question as to the civil rights and obligations of(b)that person."

I am not sure that this general belief represents the correct position.Of the seven Justices that sat on that case (that is, *Adesanya v.President FRN)* only 2 (Bello and Nnamani, JJSC) expressed views to that effect. Bello JSC, (as he then was), put the law on *locus standi* or standing in the realm of public law in these words:

> "Finally, I would like to make the following observations: A careful perusal of the problem would reveal that thereis no jurisdiction within the common law countries where a general licence or a blank cheque - if I may use that expression without any string or restriction, is given to private individual to question the validity of legislative or executive action in a court of law. It is a common ground in all the jurisdictions of the common law countries that the claimant must have some justiciable interest, which may be affected by the action or that he will suffer injury or damageas a result of the action. In most cases the area of dispute, and sometime, of conflicting decisions has been whether or not on particular facts and situation the claimant has sufficient interest or injury to accord him a hearing. In thefinal analysis, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case, Bengal ImmunityCo. v. State of Bihar (1955) 2 S.C.R. 602; Forthinghamv. Mellon (1925) 262 U.S. 447; for India and America respectively. Even in the Canadian case of *Thorson v. A.-Gof Canada* (1974) 1 N.R. 225, and the Australian case of *Mckinlay v. Commonwealth* (1975) 15 CL.R. 1 ... in whichliberal views on standing were expressed, the issue ofsufficiency of interest was the foundation upon which thedecisions in both cases were reached."

I think this passage correctly sums up the law and is in accordwith *Olawoyin v. A.-G. of Northern Nigeria (supra).* Bello, JSC did not, however, stop there. He went on to consider the provisionof our Constitution and after quoting section 6(6)(b) of the Constitution (1979 Constitution) went on to observe:

> "It may be observed that this sub-section expresses the scope and content of the judicial powers vested by the Constitution in the courts within the purview of the sub-section. Although the powers appear to be wide, they are limited in

scope and content to only matters, actions and proceedings for the determination of any question as to thecivil rights and obligations of that person. It seems to me that upon the construction of the sub-section, it is only when the civil rights and obligations of the person, who invokes the jurisdiction of the court, are in issue for determination that the judicial powers of the courts may be invoked. In other words, standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been orare in danger of being violated or adversely affected by theact complained of.

Idigbe, JSC, also quoted section 6(6) of the Constitution and went on to say:

"The expression 'judicial power' in the above quotation is the power of the court to decide and pronounce a judgment and carry it into effect between persons or parties whobring a case before it for decision (see Justice Miller: The Constitution (p.314). Judicial power is therefore invested in the court for the purpose of determining cases and controversies before it; the cases or controversies, however, must be 'justiciable'. That being so, it is necessary to know in what circumstances a court can, in the exercise of its judicial power pronounce on the constitutional validity ofan 'Act' (i.e. legislation) of the legislature or an 'act' (i.e.action) of the National Assembly. In attempting to answer this question, I would gratefully adopt the views of Marshal C.J in *Marbury v. Madison* (1803) 1 Cranch 137, which, in a summary, are that the right of the court to declare unconstitutional an act of congress can only be exercisedby it when a proper case between opposing parties has been submitted to it for judicial determination."

On what is a "proper case" that would justify the invocation of the judicial power of the court, the learned Justice of the Supreme Court observed:

"The type of case or controversy which will justify the exercise by the court of its judicial power must be justiciable and based on bona fide assertion of right by thelitigants (or one of them) before it….. I take the view that the circumstances in which the judicial power under section6(6) of the 1979 Constitution can be exercised by the court for the purpose of pronouncing on the constitutional validity of an act for the National Assembly or, more particularly any legislation must be limited to those occasions in which it has become necessary for it (i.e.the court) in the determination of a justiciable

controversyor case based on bona fide assertion of rights by the adverselitigants (or anyone of them) before it to make such a pronouncement. The court does not, in my view possess a general veto power over legislation by, or acts of, the National Assembly; its powers properly construed, are supervisory, and the supervisory power in my view can only be properly exercised in circumstances to which I have referred above."

According to Ogundare, JSC at 343-345, paras. E-F:

"It will be observed that Idigbe, JSC did not say that it was section 6(6) that gave *locus standi* but rather thatit was this sub-section that prescribed the judicial powerof the court in the separation of powers scheme of the Constitution. Obaseki, JSC was emphatic in his rejectionof the notion that section 6(6) is concerned with *locus standi.* The learned Justice of the Supreme Court after quoting the sub-section, said:--

'This provision by itself, in my opinion and respectful view, does not create the need to disclose the locusstandi or standing of the plaintiff in any action before the court and imposes no restriction on access to the courts. It is the cause or action that one has to examine to ascertain whether there is disclosed *locus standi* or standing to sue.'

Nnamani, JSC, appeared to share Bello, JSC's a view when he said:

"Section 6 (6)(b), to my mind, encompasses the full extent of the judicial powers vested in the courts by the Constitution. Under it, the courts have power to adjudicateon a justiciable issue touching on the rights and obligations of the person who brings complaint to court. The litigantmust show that the act of which he complains affects rightsand obligations peculiar or personal to him. He must showthat his private rights have been infringed or injured or that there is a threat of such infringement or injury. It seems to me that the court must operate within the parameter ofthe judicial power vested in them by section 6 of the Constitution and that they can only take cognizance of justiciable actions properly brought before them in which there is dispute, controversy, and above all, in which the parties have sufficient interest. The courts cannot widen the

extent of this power, which has been so expressly defined by the Constitution.

Uwais, JSC also agreed with Bello, JSC but only to some extent. For he said:

"It is for the foregoing reasons and those given by mylearned brother, Bello, JSC (which I had the privilege of reading in draft) that I feel that the interpretation to be givento section 6 subsection (6)(b) of the Constitution will depend on the facts or special circumstance of each case, So that nohard and fast rule can really be set-up. But the watchword should always be the 'civil rights and obligations' of the plaintiff concerned."

I have highlighted above the views expressed by five of their Lordships thatdetermined the Senator Adesanya's case. I am only left with two. Sowemimo, JSC, (as he then was), declined to express a view on section 6 subsection of the Constitution. He said: 'On interpretation placed on section 6 (6)(b). I prefer to reserve my comments until a direct issue really arises for a determination.

Fatayi-Williams, CJN, who expressed his preference for what the Romanscalled actio popularis when he said:

"To my mind, it should be possible for any person who is convinced that there is an infraction of the provisions of sections 1 and 4 ofthe Constitution, which I have enumerated above to be able to go to court and ask for the appropriate declaration and consequential relief, if relief is required. In my view, any person, whether he is a citizen of Nigeria or not, who is resident in Nigeria or who is subject to the laws in force in Nigeria, has an obligation to seeto it that he is governed by a law which is consistent with the provisions of the Nigerian Constitution. Indeed, it is his civil right to see that this is so. This is because any law that is inconsistent with the provisions of that Constitution is, to the extent of that inconsistency, null and void by virtue of the provisions of section1 and 4 to which I have referred earlier."

Still found against the Senator on the ground that the latter:

"By coming to court to ask for a declaration, the plaintiff/appellant, in these circumstances, has completely misconceived his role as a Senator. In short, Senator Adesanya has no locus standi in this particular case. He

participated in the debate leading to the confirmation of the appointment of the second defendant/respondent and lost. For him, that should have been the end of the matter. The position would probably have been otherwise if he was nota Senator."

From the extracts for their Lordships' judgments I have quoted above, one can clearly see that there was not majority of the courtin favour of Bello JSC's interpretation of section 6 subsection of the Constitution. It will therefore, not be correct to say that this court decided in the Adesanya case that the subsection prescribes the *locus standi* of a person wanting to invoke the (6) 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 ....

In my respective view, I think Ayoola JCA, (as he then was), correctly setout the scope of section 6 subsection (6)(b) of the Constitution when in N.N.P.Cv. Fawehinmi and Ors. (1998) 7 NWLR (Pt. 559) 598, 612 he said:

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

[pages 338 et seq; italics supplied for emphasis]

My Lords, I have, deliberately, embarked on this tour d'horizon to demonstrate how this court, in *Owodunmi v. Registered Trustees, CCC (supra),* gallantly,

endeavoured to state the correct position that"... it is obvious thatthe Supreme Court in Adesanya did not decide that section 6 contains arequirement of standing... ," (T. I. Ogowewo, Wrecking the Law; How Article 111of the Constitution of the United States Led to the Discovery of a Law of Standing to Sue in Nigeria, 26 Brook. J. Int'l L. (2017) 528, 559.)

English Courts: Expanding The Frontiers Of Locus Standi

As indicated earlier, learned counsel for the respondent, Victor Ogude, contended that, as the law stands, there is no room for the adoption of the modern views on locus standi in England and Australia.

With respect, this submission overlooks the approach, which this court had, always, adopted in circumstances such as the present one. Only one or two instances will be cited here to debunk the submissions of counsel. Indeed, on this question of *locus standi,* this court had occasion to refer to such jurisdictionslike India; USA; Canada and Australia. Thus, in Adesanya (*supra*), Bello, JSC,opined thus at page 383:

> "In the final analysis, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case, *Bengal Immunity Co. v. State of Blhar* (1955) 2 SCR 602, *Forthingham v. Mellon* (1925) 262 U.S.447; for India and America, respectively. Even in the Canadian case of *Thorson v. A.-G. Canada* (1974) 1 N.R. 225, and the Australian case of Mckinlay v. Commonwealth (1975) 135 C.L.R in which liberal views on standing were expressed, the issue of sufficiency of interest was the foundation upon which the decisions in bothcases were reached.

The truth of the matter, as Diplock, U, held in *Rev v. I.R.C. Ex p. Fed. Of Self-Employed* (1982) A. C. (H. L. (E.)) 640 -641 is that the rules as to standing could not be found in any statute for they were made by Judges of the Realm;"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 .. "

True to that Diplockian prediction, English courts have extended the meaning of locus standi and the aforementioned determinant principle inappropriate

cases, *Reg v. Inland Revenue Commissioners, Ex Parte National Federation of Self-Employed and Small Business Ltd* (1982) AC 617 639;paragraph H; *Reg v. Foreign Secretary of State for Foreign and Common Wealth Affairs, Ex parte World Development Movement Ltd* (1995) 1 WLR 386; *R v.Inspectorate of Pollution and Anor, Ex Parte Greenpeace Ltd.* (No. 2) (1994) All ER 329; *R v. Somerset County Council and ARC Southern Ltd, Ex Parte Dixon* (1998) Environment LR 111; *R v. Secretary of State for Foreign and Commonwealth Affairs, ex parte World Development Movement Ltd* (1995) 1 AllE.L.R. 611, 620 where an NGO was held to have locus standi.

The English courts are not alone on this development. Other common law jurisdictions have followed that pattern. In India, the Supreme Court, without any statutory enactment, but rather for the overall need to do justice, generally, liberalized the traditional rule on *locus standi* with respect to environmental degradation, since, in the court's view, maintaining a clean environment is the responsibility of all persons in the country, *Maharaj Signh v. State U. P. AIR1976 SC 2607*; *Raflam Municipal Council v. Vardhichard, AIR 1980 SC 1622; S.P. Gupta v. Union of India, AIR 1982 SC 149, 189.*

Locus Standi of Non-Governmental Organizations (NGOs) in Environmental Protection: Perspectives From The Constitution

Mahmoud, SAN, one of the amici curiae, had submitted that the plaintiff' saction will vindicate the rule of law, that is, it will ensure that the respondent complies with the relevant provisions of the Federal Environmental Protection Agency Act (FEPA) Cap F10 LFN, 2004, particularly, section 22 of the Act and or with section 6 and of the National Oil Spill Detection and Response Agency (Establishment) Act, 2006.

He, equally, submitted that section 14 OPA prohibits depositing materialsin water that diminish its domestic use. He canvassed the view that the legislature had more than satisfied its obligation to protection the environment, pursuant to sections 13 and 20 of the Constitution, leaving the judiciary to determine the rest.

My Lords, there is considerable merit in the above submission. Although, section 6 of the Constitution, read narrowly, would appear to render the entire chap. 11 of the Constitution non-justiciable. However, this need not beso, *A.-G. Lagos State v. A.-G. Federation and Ors* (2003) 35 WRN 1; (2003) 12NWLR (Pt. 833) 1; *Federal*

Republic of Nigeria v. Anache: In Re Chief Olafisoye (2004) 14 WRN 1, 63; reported as *Olafisoye v. F.R.N.* (2004) 4 NWLR (Pt.864) 580, 659.

In the latter case, Tobi, JSC, explained at page 659, paras. D-G of the NWLR that:

> "Section 6 vests judicial powers on the courts, which aree numerated in subsection 5.By subsection 6 of the section, judicial powers shall not, except as otherwise provided by the Constitution, extend to any issue or question as to whether anyact or omission by any authority or person as to whether any lawor any judicial decision is in conformity with the fundamental objectives and directive principles of State Policy set out in Chapter II of the Constitution.
>
> In my humble view, the non-justiciability of section 6 of the Constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words 'except as otherwise provided by this Constitution'. This means that if the Constitution otherwise provides in another section, which makes a section orsections of Chapter II justiciable, it will be so interpreted by thecourts.

Federal Republic of Nigeria v. Anache: In Re Chief Olafisoye (supra) 659; italics supplied.

The implication of this authoritative pronouncement is that the proper approach to the interpretation of the said chapter should be by the mutual conflation of other provisions of the Constitution with the provisions of chapter11.This is so because "if the Constitution provides otherwise in another section, which makes a section or sections of Chapter II justiciable, it will be interpreted by the courts*." Federal Republic of Nigeria v. Anache*: *In Re Chief Olafisoye (supra) 659.*

Now, section 20 of the Constitution provides that the "State shall protectand improve the environment and safeguard the water, air and land, forest and wild life of the country." On its part, section 17 of the Oil Pipelines Act (*supra*) forbids the compromise of public safety by the holder and prevention ofpollution of land and waters as in the case under consideration in these trenchant words:

> "Every licence shall be subject to the provisions contained in this Act... 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 ..."

[Italics supplied for emphasis]

It is obvious that it was pursuant to section 17 of the Oil Pipelines Act (*supra*) that the Oil and Gas Pipeline Regulations were promulgated. A community reading of the above constitutive provision with Regulation 9(ii); and would reveal that they require the oil 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 pipeline.

Now, since the Interpretation Act, Cap 123 Vol 7 LFN, defines "person"to include "anybody" or "persons corporate" or incorporated," I take the viewthat, paragraph 2 of the amended statement of claim, page 31 of the record, read together with paragraph 1 of the said amended statement of claim, as determinant of the appellant's locus standi, the reliefs sought, I am on safe grounds by makinga finding in favour of the appellants' *locus standi,* Beyond this fact, what is obvious, from the appellants' pleadings is that the respondent, a public authority, has by these acts complained of, acted in violation both of its 'constitutional obligation [section 20 thereof] and its statutory obligations.

These have occasioned injury to public interest or public injury. In this instance, the answer to the question as who has the standing to complain againstthe above violations of the respondents can be found in the understanding of the, true purpose of the judicial function.

Dr Thio, in his book, *Locus Standi* and *Judicial Review,* cited in Gupta v.President of India and Ors (*supra*) at page 22, per Bhagwati, I, provides an incise answer to this poser:

> "Is the judicial function primarily aimed at preserving legal orderby confining the legislative and executive organs of government within their powers in the interest of the public (jurisdiction dedroit objectif) or is it mainly directed towards the protection of private individuals by preventing illegal encroachments on their individual rights (jurisdiction de droit subjectif)?
>
> The first contention rests on the theory that courts are the finalarbiters of what is legal and illegal… Requirements of *locus standi* are therefore unnecessary in this case since they merely impede the purpose of the

function as conceived here. On the other hand, where the prime aim of the judicial process is to protect individual rights, its concern with the regularity of law and administration is limited to the extent that individual rights are infringed.

[Italics supplied for emphasis]

This provided the judicial background to Lord Diplock's prescription 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 tax-payer, were prevented by outdated technical rules of *locus standi* from bringing he matter to the attention ofthe court to vindicate the rule of law and get the unlawful conduct stopped… it is not, in my view, a sufficient answer to say thatjudicial review of the actions of officers or departments of central government is unnecessary because they are accountable to parliament for the way in which they carry out their functions.The are accountable to Parliament for what they do so far asregards efficiency and policy, and of that Parliament is the only Judge, they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only Judge.

Rex v. Inland Revenue Commissioners (1981) 2 WLR 722, 740. 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, see per *Bhagwati, J. in Gupta v. President of India and Ors (supra)* at page 24, citing *B. Schwartz and H.W. Wade, Legal Control of Government: Administrative Law in Britain and the United States (Oxford: Oxford University Press, 1972) 354.*

In all, then, I take 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. After all, as Dr Thio (*supra*) opined, and I agree with the erudite author, the "judicial function (is) primarily aimed at preserving legal order by confining the legislative and executive organs of government within their powers in the interest of the public *(jurisdiction de droit objectif)*,"

Against this background, I hold that the lower courts erred in law. I, therefore, enter an order allowing this appeal. This matter shall, forthwith, be remitted to the Chief Judge of the Federal High Court for re-assignment to another Judge of that court for expeditious hearing and determination. Appeal allowed.

My Lords, before signing off this judgment, permit me to record this court's appreciation to the learned Senior Advocates of Nigeria, whom the distinguished Chief Justice of Nigeria had invited as amici curiae. The court, greatly benefitted from their vast learning!

ONNOGHEN, C.J.N.: I have had the benefit of reading in draft the lead judgment of my learned brother, Nweze, JSC just delivered. I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

The facts relevant for the determination of the appeal have been stated in detail in the lead judgment making it unnecessary for me to repeat them hereinexcept to emphasis the points under consideration suffice it, however, to state that this appeal arose from the decision of the lower courts challenging the *locus standi* of the plaintiff now appellant before this court, to institute the action for the reliefs to be stated later in this judgment. The trial court held that plaintifflacks the locus standi and consequently struck out the suit. An appeal to the lower court was dismissed resulting in the instant further appeal, the issue for the determination of which is:

> "Whether the learned Justices of the Court of Appeal were rightin dismissing the appellant's appeal for want of *locus standi* to maintain the suit?"

Arguments have been canvassed on both sides of the divide in support oftheir contending positions including those of the *amici curiae,* which have been summarized in detail in the lead judgment of my learned brother. I therefore have no intention to repeat them herein.

In England, as in other common law jurisdictions there is liberalization or extension of the meaning of *locus standi* based on the principle or view as expressed by Lord Diplock in *Rev. v. I.R.C. Ex parte Federation of self-Employed* (1982) AC 640-641, inter alia, that:

> " ..... Any judicial statements on matters of public law made before1950 are likely to be misleading guide to what the law is today".

The cases in which the English Courts have extended the meaning of *locus standi* to cloth even NGOs with standing include *Reg. v. Inland Revenue Commissioners, Ex Parte National Federation of Self-Employed and Small Business Ltd* (1982) A.C. 617 639; *Reg v. Foreign Secretary of State for Foreignand Commonwealth Affairs, Ex*

Parte World Development Movement Ltd (1995)1 WLR 386; R v. Sommerset County Counsel ARC Southern Ltd, Ex Parte Dixon(1998) *Environment L R 111; Secretary of State for Foreign and Commonwealth Affairs Ex Parte World Development Movement Ltd. (1995) 1 All ELR 611 at620.*

In India, the following cases are a pointer to the current development: *Maharaj Signh.v. State U.P. AIR (1976) S.C2607; Gupta v. Union of India, AIR(1982) S.C. 149 at 189*, etc where the court relying on the need to do substantial justice liberated the rule on *locus standi* from the shackles of tradition as it relates to environmental degradation - as is the case in the instant appeal.

Section 20 of the Constitution of the Federal Republic of Nigeria, 1999, as amended provides, *inter alia,* that the "State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of the country".

Secondly, section 17(4) of the Oil Pipelines Act outlaws the compromise of public safety and pollution of land and water by a holder of licence in the following words inter alia:-

> "Every licence shall be subject to the provisions contained in this Act ... and to such regulations concerning public safety, theavoidance of interference with works of public utility in, over and under the land ... and the prevention of pollution of each land orany waters ..."

The facts of this case as pleaded shows the existence of oil spill in the only source of drinking and other domestic and commercial, uses rivers flowing through many communities which has adversely affected the quality of life and economic activities of the people.

In the amended statement of claim, the plaintiff, now appellant before this court, is described as a Non-Governmental Organization incorporated in accordance with Part C or the Companies and Allied Matters Act, 1990. Thefacts from which the *locus standi* of the plaintiff or its absence can be gleaned are as pleaded in paragraphs 2, 3, 9, 11,12 and 13 of the amended statement ofclaim as follows:-

> "2. The plaintiff carries on inter alia the function of ensuring reinstatement restoration and remediation of environments impaired by oil spillage/pollution particularly the unowned environment or the environment that belongs to no one inparticular, and this include but

not limited to rivers, sea, seabeds ecosystems and aquatic lives. The plaintiff ensures that the environments that belong to no one are kept clean and safefor human and aquatic live/consumptions. She has over 2000 members drawn from across the whole state of the Federal Republic of Nigeria and outside of Nigeria. Some of her members are indigenes of and/or live at Acha Community and use the water fromIneh and Aku streams/rivers.

3. The defendant is a corporation established by the Act of Parliament and carries on business of protecting, mining, producing, exploring and starting of persistent hydrocarbon-mineral oil such as crude hydrocarbon oil and so on She has offices oil installations, oil exploring and storing of persistent hydrocarbon mineral oil such as crude hydrocarbon oil and so on.She has offices, oil installations; oil pipelines, oil rigs and son onin different parts of Nigeria with its principal place of business and/or its substantial part of business at No. 28 demola Road, Off Awolowo Road, Ikoyi, lagos

9. The plaintiff further avers that the defendant was negligent inboth the causation and containment of the oil spillage in that:

The defendant ought to have carried out periodic inspection of its pipelines via x-rays to detect easy signs of corrosion and fracture.

a. The defendant ought to have maintained proper surveillance with state of the art instrument panels that will promptlyalert on a sudden loss in pressure along the pipeline which
b. Device would have served as an early warning of a leakage.

   The defendant knows that crude hydrocarbon oil is dangerous to ecosystem, marine aquatic lives, fauna and flora and being aware of natural tidal transport and sea waves within the area would have anticipated that in the case of an oil spill from these pipes that the two streams
c. Would be a natural point of entry.

11. The plaintiff avers that:
    a. The oil spill, its drifting and introduction by the defendant into the Ineh and Aku streams, estuaries has deleterious effect as harm to living resources and

marine life, hazards to human health, hinderance to Marine life and other legitimate use of the streams. It has impaired the quality for the use of the streams and resulted in reduction of amenities and economic activities of the people of Acha Community and environs.

b. The oil spillage left the Ineh/Aku streams impure, soiled contaminated and they could no longer be put to their ordinary and natural use. They are no longer good for human consumption and aquatic lives, sea birds, fauna and flora no longer abound in them.

c. The defendant only stopped the leakage/spillage but never cleaned-up and/or adequately cleaned up or remedied the Ineh/Aku streams.

d. The plaintiff will show that oil is more toxicant than thought and dangerous to human health. It causes skin diseases, cancer, damage to lungs and reproductive systems and sod.on.

e. The plaintiff will rely on scientific report and opinion to show that the devastating effect of oil spill on the ecosystem, marine life and the forest system persist for several decades except when properly and constantly cleaned for several years (minimum of 5 years) and; even after 10 years of the incident that oil still remains on the affected streams/lives causing skin diseases, cancer, damaging the reproductive system and respiratory system of users of the affected streams. It also leads to major social and psychologicale impact like depression and post traumatic stress disorder.

12. The plaintiff avers that to the naked eyes, it seemed that the defendant having contained the spillage that all is normal but beneath the surface there exists excessive crude hydrocarbon oil in bottom sediments in ineh/Aku streams. This continues to contaminate the streams.

13. The plaintiff avers that the inhabitants of Acha Community; visitors and travelers thereto continue to use water from the Ineh/Aku streams (for all purposes that water is used) after the incidentas there is no alternative water supply to them".

From the above pleadings, the interest of the plaintiff is clear and unambiguous. The suit is therefore not prompted by ill motive or mischief. It isthe case of the plaintiff

that the defendant's action(s) is/are in breach of the law and that the result of the objectionable deed(s) is injury to the health of the people and/or dangerous to the environment thereby making it necessary for the plaintiff to initiate the action to enforce the law and save lives and protect or restore the environment.

In the English case of *Rev. v. Greater London Council, Ex Parte Blackburn* (1976) 1 W.LR. 550 Mr and Mrs Blackburn residing in London where they paid their rates, averred that they had children likely to be harmed by exhibition of pornographic films by the defendant. The court found/held that they had sufficient interest to initiate proceedings to restrain the defendant, a public authority fromacting in excess of their statutory powers. On appeal to the Court of Appeal, Lord Dening, MR. relied on his earlier statement of the law in the McWhirter's case (1973) QB 629 at 649 thus:

> "I regard it a matter of high constitutional principles that if thereis good ground for supposing that Government Department or Public Authority is transgressing the law, or is about to transgressit, in any way which offends or injures thousands of Her Majesty's subjects, then anyone or those offended or injured can draw it tothe attention of the courts of and seek to have the law enforced and the courts in their discretion can grant whatever remedy is appropriate".

The Oil and Gas Pipelines Act, as earlier stated in this judgment imposesa duty of care on the owners or operators of oil pipelines, like the defendants, to maintain and effect repair of their oil pipelines to ensure that crude oil/hydrocarbon oil being transported through these pipes do not escape and cause damage to human lives and the environment as they are very dangerous in nature.

So in the instant case where the plaintiff, an NGO, seeks the enforcement of the defendant's obligations under law vis-à-vis the rights of the affected communities to maintain a healthy environment which extends to their forest, rivers, air and land, they should be heard.

Apart from the statutory obligations of the defendant under the Oil and GasPipelines Act and the regulations made thereunder, the common law principles inthe law of nuisance as enunciated in the case of *Rylands v. Fletcher* (1868) L.R.3 H.L. 330 imposes a duty of care on the defendant.

It is therefore my considered opinion that from the facts pleaded in theamended statement of claim earlier reproduced in this judgment and the law, the lower courts are in error in holding that appellant has no locus standi in instituting the present action which is aimed at saving the environment andlives of the people. The plaintiff cannot, in anyway, be described as a busy bodyor interloper. 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 encompasses public spirited individuals and NGOs.

The issue in this case, from the facts disclosed in the pleadings is not whether the coast of *locus standi* should be broadened or expanded but whether appellant can be said to have disclosed sufficient interest in the subject matter to be accorded a standing to initiate the proceedings to remedy the wrongs causedby the action/inaction of the defendant.

It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother, NWEZE, JSC that I too, hold that the appeal has merit and should be allowed. The judgments of the lower courts are hereby set aside and the suit restored in the cause list to be dealt with approximately.

I take this opportunity to express gratitude of the court to the *amici curiae*, A.-G. Federation, Abubakar Malami, SAN; Chief Wole Olanipekun, SAN;Asiwaju A.S. Awomolo, SAN; A.B. Mahmoud, SAN and L.C. Nwosu, SAN for accepting our invitation to present briefs in the matter which they did. I state unequivocally that your efforts have done a lot in helping the court arrive at the decision just tendered.

I abide by the consequential orders made in the lead judgment including the order as to costs.

Appeal allowed.

M.D. MUHAMMAD, J.S.C.: Having had a preview of the lead judgment of my learned brother, Chima Centus Nweze, JSC just delivered and on agreeing with the reasoning and conclusion therein do hereby firmly state that the appeal succeeds. By way of emphasis, I hereinafter say so in my own words.

The issue the appeal raises is whether in the light of developments in similar jurisdictions elsewhere, courts in this country need to liberalize its approach onthe principle of *locus standi.*

A Non-Governmental corporate entity, the appellant by its amended statement of claim seeks the restoration of particularly the Ineh and Aku Streams, the only source of water supply to the Acha Autonomous Community of Isukwuato Local Government Area of Abia State contaminated by the oil spillage occasioned by the negligence of the respondent. The appellant further claims the provision of medical facilities and treatment of victims of theoil spillage by the respondent. The respondent, it is further averred; is negligentin the causation and containment of the oil spillage which it fully knows to be dangerous to ecosystem, marine aquatic lives, fauna and flora and should have anticipated the devastating effect the oil spillage would have on the people of the community from their use and consumption of the contaminated water in the two streams.

Respondent's objection to the competence of appellant's suit commenced without the necessary *locus standi* was upheld by the trial court. The dismissal of its appeal by the lower court informs its further appeal to this court.

Learned appellant's counsel as well as learned senior counsel who appearas *amici curiae* insist, and rightly too, that the peculiar facts of the instant suit distinguishes it from the previous cases pronounced upon by this court. Rigidadherence to the earlier decisions of the court; they argue, will leave unchecked all the negative consequences of the oil spillage on the community which the instant action would otherwise remedy. The new facts necessitate a more liberal approach on the principle of locus standi. Counsel submit that the leeway section6(6) vis-à-vis sections 16(1) and and 17(1) and and of the 1999 Constitution (as amended) provide be explored to either extend the frontiersof *locus standi* in the present matter or serve as a basis for departing from all the previous decisions of this court on same with a view to averting injustice. Reliance have been placed *inter-alia* on *Bewaji v. Obasanjo* (2008) 9 NWLR(Pt.1093) 540; *Fawehinmi v. Akilu & Anor* (1987) 12 SC 109; (1987) 4 NWLR(Pt. 67) 797; *Odi v. Osafile* (1985) 1 NWLR (Pt 1) 17; *Rossek v. ACB Ltd* (1993)8 NWLR (Pt. 312) 382 as basis for urging the court to depart from its decisionsin *Adesanya v. The President of the Federal Republic of Nigeria* (1981) 5 SC 69at 86-87; (1982) 2 NCLR 358; *Nyame v. F.R.N.* (2010) 7 NWLR (Pt. 1193) 344 and *Pam v. Mohammed* (2008) 16 NWLR (Pt. 1112) 1 at 66.

Learned respondent's counsel Mr. Victor Ojude vehemently opposes the liberalization of the scope of *locus standi* from where it presently is Chief Wole

Olanipekun SAN and the learned Solicitor General, representing the FederalAttorney General, identify with him. Both are also amici curiae at the instance of the Honourable the Chief Justice.

My Lords, the doctrine of *locus standi* is unarguably a legacy of the common law. The doctrine does not have any statutory backing. In evolving the principle, this court in its very many decisions, whether in the realm of private law as featured in *Oloriode v. Oyebi* (1984) SCNLR 390 at 400 or in the sphereof public law as occurred in *Olawoyin v. Attorney-General of Northern Nigeria (supra),* has insisted that for a plaintiff to have the *locus standi* to maintain an action, it must, by its claim, demonstrate the injury it suffers from the conduct of the defendant against whom the action is instituted.

In the case at hand, it would appear that the appellant does not squarely satisfy the criteria. The issue at hand, therefore, is whether in the peculiar circumstance of the appellant this court should liberalize the criteria it holds aplaintiff must satisfy to acquire the necessary locus standi to maintain an action against the respondent herein that appears to have degraded the environment in a seeming breach of specified constitutional and other statutory provision. In my firm and considered view, the court should.

Further to those made by learned respondent's counsel, I find the submissions of learned senior counsel Adegboyega Awomolo, L.E. Nwosu and A.B. Mahmoud SAN particularly helpful in this regard. Courts in this country, the lot have correctly argued, are by virtue of sections 16(2), 17(2)(d) (3), and 20of the 1999 Constitution, section 17(4) of the Oil Pipelines Act CAP 07 LFN and the Oil and Gas Pipeline Regulations under duty to protect the environment andwould fail in that duty if in the instant case they do not facilitate the protectionthese laws have put in place. Their reliance on *R v. Secretary of State for Foreignand Commonwealth Affairs, Ex Parte World Development Movement Ltd* (1995)1 ALL ELR 611, 620, *Reg v. Inland Revenue Commissions, Ex parte NationalFederation of self-Employed and Small Business Ltd* (1982) AC 617, 639 as instances of liberalization of the scope of *locus standi* by courts in similar jurisdictions and in the absence of any statutory empowerment is apposite.

Appellant's claim clearly suggests the degradation of environment occasioned by the respondent's seeming breach of relevant constitutional and statutory provisions.

In insisting that the appellant herein satisfies the injury testin order to maintain an action, is to sustain injustice that would otherwise be obviated by the instant suit. In holding that this is a proper case to liberalize the frontiers of *locus standi,* I gratefully adopt the opinion of Bello JSC (as he then was and of blessed memory) in *Adesanya's case (supra)* thus:-

> "In the final analysis, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case, *Bengal Immunity Co. v. Stateof Bihar* (1955) 2 S.C.R. 602; *Forthingham v. Mellon* (1925)262 U.S. 447; for India and America respectively. Even in the Canadian case of Torson v. A.-G. of Canada (1974) 1 N.R. 2254,and the Australia case of Mckinlay v. Commonwealth (1975) 135C.L.R ... in which liberal view on standing were expressed, the issue of sufficiency of interest was the foundation upon which the decisions in both cases were reached." (Italics supplied for emphasis).

As was allowed by courts elsewhere, in the interest of justice, I find the appellant herein, a Non-Governmental Organization incorporated for the specific purpose of protecting the environment from being degraded, to have sufficient interest to maintain the instant action.

It is for the foregoing and more so the fuller reasons adumbrated in the lead judgment that I allow the appeal and abide by the consequential orders made therein.

AKA'AHS, J.S.C: I was availed with the leading judgment of my learned brother, Nweze JSC on the vexed issue whether the appellant had *locus standi* to institute the action or is merely a busybody who is perambulating allover Nigeriain order to sue and prosecute all cases of environmental degradation caused by oil pollution.

The facts have been well set out in the leading judgment of my learned brother Nweze JSC and therefore do not require any repetition. What is at stakein this appeal is whether the gradual approach should be adopted as decided in *Senator Abraham Ade Adesanya v. President Federal Republic of Nigeria & Anor* (1981) Vol. 1 ANLR 1; (1981) 2 NCLR 358 or the liberal approach, whichwas adopted in *Chief Gani Fawehinmi v. Akilu & Anor* (1987) 4 NWLR (Pt. 67)797.

Learned counsel for the appellant has argued in favour of expanding hescope of the law on *locus standi* with respect to environmental matters that are maintained purely 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, The amici curiae who are sympathetic to this stance were Asiwaju Adegboyega Awomolo SAN; Abubakar Mahmoud SAN, President of the Nigeria Bar Association and Lucius E. Nwosu SAN.

The respondent who was represented by Victor Ogude Esq was of the view that the concept of *locus standi* is universal and the essence of the requirement is to keep away interlopers while encouraging those who suffered injury toseek judicial remedies in court. In this camp were the submissions of the Hon.Attorney-General of the Federation (represented by Dayo Apata, Solicitor-General of the Federation) and Chief Wole Olanipekun SAN. Learned senior counsel submitted in his brief that the dominant role of *locus standi* might be difficult to shift, liberalize beyond jurisprudential acceptable limits in relation to environmental degradation, considering the case of NGOs, without reference tothe peculiarities of the situation, including but not limited to the pleadings, the special interest(s) of the NGOs in the matter being litigated, cause of action, the reliefs sought, the nexus between the NGOs to the reliefs sought, the aftermath of the reliefs sought if granted particularly enforcement of the judgment, sincea court of law, like nature does not act in vain. He placed reliance on *SPDC v.Amadi* (2011) 14 NWLR (Pt. 1266) 157 at 161.

There is no doubt that it is the claim of the plaintiff that determines the jurisdiction of the court and the right or standing to sue. In paragraphs 2 and 16 of the amended statement of claim the plaintiff averred as follows:

> "2 The plaintiff carries on inter alia, the function of ensuring reinstatement restoration and remediation of environments impaired by oil spillage/pollution particularly the un-owned environment that belongs to no one particular and aquatic live/consumptions. She has over 2000 members drawn from across the whole of the Federal Republic of Nigeria and outside of Nigeria. Some of her members are indigenes of and/or live at Acha Community and use the water from Ineh and Aku streams/rivers.
>
> 16. Whereof the plaintiff claims against the defendants as per the writ of summons thus:-

a. Reinstatement, restoration and remediation of the impairedand/or contaminated environment in Acha autonomous community of Isukwuato Local Government Area of Abia State of Nigeria particularly the Ineh and Aku streams which environment was contaminated by the oil spill complained of
b. Provision of portable water supply as a substitute to the soiled 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 the contaminated streams".

While noting the progressive changes that have taken place in other jurisdictions such as England, India and Australia, the court below per Amina Augie JCA (as he then was) held on to the restrictive interpretation of *locus standi* when he said at pages 179-180 of the records:-

> "The position of the law may have changed to cloak "pressure groups, NGOs and public-sprinted tax payers" with *locus standi* to maintain an action for public interest as argued by the appellant, but that is in other countries, not Nigeria. The truth of the matteris that there is a remarkable divergence in the jurisprudence of *locus standi* jurisdictions like England; India; Australia etc and the Nigeria approach to same, which had not evolved up to the stage where litigants like the appellant can ventilate the sort of grievance couched in its amended statement of claim..... In this case, apart from its averment that "some of her members are indigenes of and/or live at Acha Community and use water-from Ineh and Aku streams/rivers".
>
> There is nothing in its pleadings to show what the appellant or any of its unspecified members suffered as a result of thealleged oil spill. Besides, the members of the community itself are better placed positioned and armed with the standing to suethe respondent for any damage caused. The decision of the lower court that it had no *locus standi* cannot be faulted".

Chief Olanipekun SAN has argued that the functions of the plaintiff/appellant vis-à-vis the subject matter of environmental degradation is fluid, onmnibus and unascertainable. In like manner, the interest of the plaintiff/appellant in the subject

matter of litigation is difficult to decipher as there is nonexus between the reliefs being sought and the plaintiff/appellant. He said thatthe membership of the plaintiff is abstract, inchoate and opaque and 1t is notthe duty of the court to speculate as to who the members are or to ponder on thequestion who would be responsible for the enforcement of the court judgment if given in favour of the plaintiff/appellant and concluded that a court of law should not engage in speculation.

Learned amici curiae, Asiwaju Adegboyega Awomolo SAN, Lucius Nwosu SAN and A. B. Mahmoud SAN approached the case from the stand point of public interest litigation, which is instituted in the interest of the general public. Awomolo SAN argued that an application to the court in this regard is initiated by one or more persons on behalf of some victims who are handicapped either financially or otherwise to apply to the court for redress for themselves. Itis intended to improve access to justice to the poor when their rights are infringed upon and for the protection of the public affected and it serves marginalized groups, which is a catalyst for sustainable development.

On his part, Mr. Nwosu SAN asserted that it is essentially an action brought for the benefit of a group or class of persons who have suffered a general wrong or about to so suffer as a result of the activities of other persons, usually corporate institutions, governments for political religious or economic gains.

A. B. Mahmoud SAN added his voice in support of giving legal standing to NGOs to sue. He equated environmental rights with human rights and argued that while he was aware that the provisions of Chapter II of the Constitution are ordinarily non-justiciable but pointed out that there seems to be a shift in the thinking of the courts which make the provisions of Chapter II of the Constitution in certain circumstances justiciable particularly where other provisions of the Constitution or other statutes provide for matters contemplated therein. He pointedout that the present action is an oil pipeline that burst, allegedly spilling crude into water ways, polluting drinking sources and destroying aquatic life, plant andfauna and also endangering the health and lives of the people of the community. In this regard, section 33 of the Constitution provides for the right to life and anyact or omission, which threatens the health of the people of the community also threatens their lives and is in breach of the guarantee to right to life provided by the Constitution. He then referred to sections 13 and 20 of the Constitution, which empower the National Assembly to

enact laws and in exercise of that mandate promulgated the Oil Pipeline Act, Cap. 07 Laws of the Federation of Nigeria 2004 and stipulated in section 17(4) that every licence shall be subject to … Regulations concerning public safety … and the prevention of pollution of such land or any waters as may from time to time be in force. He maintained that the Oil and Gas Pipeline Regulation 9(a)(ii)(b)(ii)(iii) read together requires theoil pipeline licence holder to institute mechanisms for prevention of accidents (like crude oil spill) and for remedial action for the protection of the environmentand control of accidental discharge from the pipeline. He then referred to the National Policy on the Environment (revised 2016) and in particular paragraphs8.1 and 8.2 which recognize the role of NGOs in protecting the environment and places them at the fulcrum of its policy statement for sustaining the environment. On this basis learned senior counsel is of the view that there is enough to invite his court to hold that the National Assembly having promulgated the Oil Pipelines Act with its environmental protection provisions with regard to oil pipelineshave made sections 13 and 20 of the Constitution justiciable and consequently require the courts to give vent to the said sections 13 and 20 of the Constitution and protect the environment by applying the Oil Pipelines Act.

There is no gain saying in the fact that there is increasing concern about climate change, depletion of the ozone layer, waste management, flooding, global warming, decline of wildlife, air, land and water pollution. Both nationally and internationally, countries and organizations are adopting stronger measures to protect and safe guard the environment for the benefit of the present and future generations.

The issue of environmental protection against degradation has become a contemporary issue. 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. 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 litigations, Nigeria should followsuit. The communities affected by the spillage leading to the environmental degradation may not muster the financial muscle to sue and if good spirited organizations such as the plaintiff is denied access to sue, it is the affected communities that stand to lose.

It is on account of this and the more detailed reasons advanced by my learned brother Nweze, JSC that I am of the firm view that this court being acourt of policy should expand the *locus standi* of the plaintiff to sue.

KEKERE-EKUN, J.S.C.: The appellant, a Non-Governmental Organization(NGO) registered in accordance with part C of the Companies and Allied MatersAct (CAMA), caries on, *inter alia* (per paragraph 2 of its amended statement ofclaim),

> "The function of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution/particularly the environment that belongs to no-one in particular, and this includes but not limited to Rivers/Sea Birds/Ecosystemsand Aquatic lives. The plaintiff ensures that the environments thatbelong to no one are kept clean and safe for human and aquaticlives/consumption. She has over 2000 members drawn from across the whole State(s) of the Federal Republic of Nigeria and outside Nigeria; Some of her members are indigenes of and/orlive at Acha Community and use the water from Ineh and Aku Streams/Rivers".

The facts that gave rise to the suit, as pleaded in paragraphs 4, 5, 6, 8and 9 of the amended statement of claim filed on 17/3/2006 are briefly as follows: Over 25 years before the institution of the suit before the Federal High Court Lagos, the defendant constructed and laid oil pipelines beneath, around and beside Ineh and Aku streams/river in Acha Autonomous Community inIsukwuato Local Government Area, Abia State. Partly due to use and partlydue to the salinity of the sea water under which it was laid, the pipelines had outlived their usefulness. On 13th May 2003, the appellant noticed a strange oily substance (crude hydrocarbon oil) circulating and drifting on top of the streamsand within a few days, the substance increased to the point where it overflowed from the streams and surged into the adjoining lands, estuaries, creeks and mangroves. The appellant sent a delegate to investigate. It was discovered thatthe oil pipeline, which had corroded due to lack of maintenance, had ruptured,fractured and spewed its entire contents of persistent hydrocarbon mineral oilinto the surrounding streams and river of Ineh and Aku. Although the respondent contained the spillage and provided relief materials to the affected communities, it failed to clean up or reinstate the Ineh/Aku streams. Though

contained onthe surface, it is alleged that there still exists excessive crude hydrocarbon oilin the bottom sediments of the Ineh/Akun streams/river. It was therefore the appellant's contention that the respondent was negligent in both the causation and containment of the spillage.

Details of the effect of the spillage on marine life, water, human health andother usages of the streams are set out in paragraph 11.In paragraph 14, it was averred that two pre-action notices were served on the respondent. up till thetime of filing the suit, no steps had been taken to remedy, reinstate or restore the damaged environment in the Acha Community. In paragraph 16 of its statement of claim, it sought the following reliefs:

a. Reinstatement restoration and remediation of the impaired and/or contaminated environment in Acha Autonomous Community of Isukwuato Local Government Area of Abia State of Nigeria particularly the Ineh and Aku streams which environment was contaminated by the oil spill complained of.
b. Provision of potable water supply as a substitute to the soiled and contaminated Ineh/Aku streams, which are the only and/or majorb.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 the contaminated streams.

In its statement of defence, the respondent denied the allegation of negligence and pleaded that any damage to the pipelines and the spillage and subsequent contamination of the streams/rivers was caused by acts of sabotage or interference by unscrupulous persons within the affected community.

The respondent filed an application requesting the court to set down forhearing the point of law raised in its statement of defence, which challengedthe locus standi of the appellant to institute the action. On 31/10/2006, the trial court determined the point of law in the respondent's favour by holding thatthe appellant lacked the *locus standi* to sue. The Court of Appeal affirmed the decision. It reasoned thus, at pages 179 - 180 of the record:

> "The position of the law may have changed to cloak "pressure groups, NGOs and public-spirited tax payers" with *locus standi* to maintain an action for

public interest, as argued by the appellant, but that is in other countries, not Nigeria.

The truth of the matter is that there is a remarkable divergence between the jurisprudence of *locus standi* in jurisdictions like England, India, Australia, etc., where litigants like, the appellantcan ventilate the sort of grievance couched in the amended statement of claim. As it is, the position of the law on the subjectis that the plaintiff must show sufficient interest in the suit.

In this case, apart from its averment that "some of her members are indigenes and/or live at Acha community and use the water fromIneh and Aku stresms/rivers", there is nothing in its pleadings to show what the appellant or any of its unspecified members suffered as a result of the alleged oil spill. Besides, the membersof the community itself are better placed, positioned and armed with standing to sue the respondent for any damage caused. The decision of the lower court that it had no *locus standi* cannot be faulted."

The sole issue for determination in this appeal is whether the learned Justices of the Court of Appeal were right in dismissing the appellants appeal for want of *locus standi* to maintain the suit".

Apart from the exchange of briefs between the appellant and the respondent, this court invited five amici curiae to address it on "Extending the scope of *locus standi* in relation to issues on environmental degradation: the case of NGOs".

I must state at this stage that I have had a preview of the judgment ofmy learned brother, Chima Centus Nweze, JSC, just delivered, His Lordshiph as exhaustively considered and analyzed the submissions of the parties in this appeal and the legal opinions of the learned amici curiae. I am in full agreement with his sound reasoning and conclusions. The views expressed below are in support of the judgment.

It is clear from the appellant's pleadings that the suit before the trial courtis a public interest litigation. Public interest is defined in Black's Law Dictionary, 8th edition as:

"The general welfare of the public that warrants recognition andprotection something in which the public as whole has a stake, esp. an interest that justifies government regulation".

What is public interest litigation? Learned *amicus curiae*, Lucious Nwosu,SAN, suggests that it is “essentially an action brought for the benefit of a groupor class of persons who have suffered a general wrong or about to so sufferas a result of the activities of other persons, usually corporate institutions,governments, for political, religious or economic gains. “In my considered view, this is a fairly accurate definition. One of the features of this type of litigationis that the victims are often groups of persons who would not ordinarily be in a position to approach the court on their own due to impecuniosity or lack of awareness of their rights. It may also arise where, as in this case, damage to the environment is alleged to have spread or to have the capability of spreading overa very wide expanse of water, covering several communities, where it would be impracticable for every member of the community to sue or would be impossible to identify every person affected.

It is also clear to me that from whatever side of the divide one considers the issue, the paramount consideration is the interest of the plaintiff in the subject matter of litigation. Learned counsel for the appellant, and the *amicicuriae*, Asiwaju Adegboyega Awomolo, SAN, Lucious Nwosu, SAN and A.B. Mahmoud, SAN, who are of the view that the appellant has the requisite *locus standi,* have striven to show that it has demonstrated the required interest toentitle it to sue. Learned counsel for the respondent, Victor Ogude Esq., and the *amici curiae* in the persons of Chief Wole Olanipekun, SAN and Abubakar Malami. SAN, the Honourable Attorney General and Minister of Justice of theFederation, sought to persuade this court that the appellant is a mere busybody usurping the rights of the affected citizens to complain.

They are also of the view that extending the scope of locus standi to anNGO in respect of environmental degradation would have the effect of usurping the powers conferred on agencies established by various State and Federal Laws to protect the environment on behalf of the people; that the complaint can be classified under public nuisance, which can only be litigated upon by the Honourable Attorney General of the Federation or of the State where the cause of action arose; and that it would open the floodgates to frivolous litigation and overwhelm the already overburdened court dockets.

The concept of *locus standi* has not been statutorily defined. It is a development of case law. Essentially, it has been held to mean “standing to sue”. It is the legal

capacity to institute or commence an action in a competent courtof law or tribunal without let or hindrance from any person or body whatsoever. In order to determine whether a party has the necessary *locus*, the court would consider only the originating processes filed by the plaintiff. He must show sufficient interest in the subject matter of the suit, which interest would be affected by the action or the damage or injury he would suffer as a result of theaction.

In the past, as evidenced by cases such as: *Inakoju v. Adeleke* (2007) 4NWLR (Pt. 1025) 423 @ 601-602 H-B; *Thomas v. Olufosoye* (1986) 1 NWLR(Pt. 18) 669; *Senator Abraham Adesanya v. President of the Federal Republic of Nigeria & Anor* (1981) 5 SC 112; (1981) 2 NCLR 358; *Iteogu v. L.P.D.C.* (2009)17 NWLR (Pt.1171) 614, the courts adopted a restrictive approach to the issue of *locus standi.* It is however, interesting to note that even in Adesanya's case (*supra*). it was held that whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case.

As rightly observed by learned counsel for the appellant, the concept oflocus standi referred to above is a common law doctrine developed and created by the English courts and was developed in the context of private litigation, without regard to public interest litigation. However, with the greater public awareness of the effects of environmental degradation and the advent of Non-Governmental Organisations (NGOs) or not for profit organizations, and otherpublic spirited individuals, seeking redress for damage affecting the public at large, the English courts and the courts in other commonwealth countries, which have similar legal systems as Nigeria, as well as the United States of America, have begun to adopt a more liberal approach to the issue of *locus standi* in public interest litigation. Where there is a dearth of precedents in our jurisprudence ona particular issue, it is permissible to look to other climes where similar issues have arisen for guidance.

In the English case of *R. v. Inspectorate of Pollution & Anor., Ex parte Greenpeace Ltd.* (No.2) (1994) 4 All ER 329; BNFL, a company whichre processed spent nuclear fuel, was authorized by the respondent government departments to discharge liquid and gaseous radioactive waste from its premises under certain authorizations granted pursuant to the Radioactive Substances Act 1960. In 1992, the company applied for new authorizations to include the proposed operation of its new thermal oxide reprocessing plant. Pending thegrant of the new authorizations,

the company also applied for and obtained avariation of the existing authorizations to enable it test the new plant before it became fully operational.

Greenpeace Ltd., an environmental protection organization of international repute, was concerned about the levels of radioactive discharged from the company's premises and applied for judicial review by way of an order of *certiorari* to quash the respondent's decision to vary the existing authorizations and an injunction to stay the implementation of the varied authorizations, which would halt the proposed testing of the new plant pending the decision on BNFL's main application. The applicant had 2,500 supporters inthe area where the plant was situated. BNFL participated-in-the proceedings asan interested party. It contended that Greenpeace Ltd. failed to show sufficientinterest in the matter to which the application related and therefore had no *locus standi* to make the application for judicial review. In determining the issue, the court held that in determining whether an applicant for judicial review had sufficient interest in the matter to which the application related, the following factors should be taken into consideration: the nature of the applicant; the extent of his interest in the issues raised; the remedy which he sought to achieve; and the nature of the relief sought.

The court held, per Otton, J. at page 350 of the report, as follows:

> "It seems to me that if I were to deny standing to Greenpeace, those it represents might not have an effective way to bring the issue before the court. There would have to be an application by an employee of BNFL or a near neighbour. In this case, it is unlikelythat either would be able to command the expertise, which is atthe disposal of Greenpeece. Consequently, a less well-informed challenge might be mounted, which would stretch unnecessarily the court's resources and which would not afford the court theassistance it requires in order to do justice between the parties, Further, if the unsuccessful applicant had the benefit of legal aid itmight leave the respondent and BNFL without an effective remedy in costs, Alternatively, the individual (or Greenpeace) might seekto persuade Her Majesty's Attorney General to commence arelator action which (as a matter of policy or practice) he may bereluctant to undertake against a government department. ...
>
> Neither of these courses of action would have the advantage of an application by Greenpeace who, with its particular experience in environmental matters,

its access to experts in the relevant realmsof science and technology (not to mention the law), is able to mount a carefully selected, focused, relevant and well-argued challenge".

As far back as 1982, the house of lords appreciated the fact that the concept of *locus standi* was not static and continued to evolve as the needs of society demanded. In *R v. I.R.C. ex parte Federation of Self-Employed (1982) A.C.* 617@ 640-641, Lord Diplock opined thus:

> "The rules as to "standing" for the purpose of applying for prerogative orders, like most of English public law, are not tobe found in any statute. They were made by Judges, 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, despite changes in the social structure, methods of government and the extent to which the activities of private citizens are controlled by governmental authorities, that have been taking place continuously. Sometimes slow, sometimes swiftly, since therules were originally propounded. Those changes have been particularly rapid since World War II. Any judicial statement on matters of public law, if made before 1950, are likely to be a mis leading guide to what the law is today".

See also: *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay* Nos. 171947-48, 574 SCRA 665 (18 December, 2008); *Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General* (No. l0(2007-2008) SCGLR 611. My view is that these cases and several others cited by the amici curiae (extensively dealt with in the lead judgment) encourage the court, while considering the issue of sufficient interest in relation to *locus standi,* to bear in mind the changing landscape of public interest litigation, especially as it concerns matters related to the environment. However, the mere fact thatan NGO has interest in environmental protection will not be sufficient, without more, to confer *locus standi* on it. It must still satisfy the court as to the legitimacy of its interest in the subject matter of the litigation.

In the instant case the objects of the appellant were specifically set outin paragraph 2 of the amended statement of claim, reproduced earlier. It is further

averred in the said paragraph that the appellant has over 2000 members drawn from across all the states of the Federation and that some of its members are indigenes of and/or live within Acha Community and use the water from Ineh and Aku streams/rivers. Thus, it has shown that some of its members are directly affected by the oil spillage. In paragraph 110 of the amended statement of defence, it is averred that the oil polluting the streams and, rivers is very toxic and dangerous to human health in that it can cause skin diseases, lung damage,cancer damage to reproductive systems, to name a few. These are factors tha tcould affect generations yet unborn.

It is also evident from the reliefs sought that the appellant does not seek any personal benefit from the litigation. The reliefs merely seek the enforcement of existing legislation in the interest of all those affected and likely to be affected by-the environmental degradation caused by the oil spillage.

Chief Wole Olanipekun, SAN, *amicus curiae,* has argued that there is no nexus between the appellant and the reliefs it seeks, that the reliefs are nebulous and difficult to enforce, that its membership is abstract, inchoate and opaque and that there are statutory remedies already available to deal with environmental degradation. As regards existing legislation, learned counsel for the respondent and *amicus curiae,* the Hon. Attorney General of the Federation, are of similarviews.

An important factor when considering *locus standi* is the fact that whether or not a party has the locus institute an action is not dependent the merits of the case but whether the plaintiff has sufficient interest in the subject matter of the dispute. It is a condition precedent a determination on the merits. See: *Adesanya v. President of The Federal Republic of Nigeria & Anor. (supra); Ojukwu v.Ojukwu & Anor (2008)* 18 NWLR (Pt.1119) 439; *Owodunni v. Regd. Trusteesof C.C.C. & Ors.* (2000) 10 NWLR (Pt.675) 315. At this stage, all that is being determined is whether the appellant has the *locus standi* to sue. Whether the suitwill ultimately succeed is not for consideration at this stage.

It cannot be denied that there are legislations and agencies specifically put in place to address issues of environmental degradation such, as the National Environmental Standards and Regulation Enforcement Agency (Establishment) Act, 2007 (NESREA Act), which provides, inter alia, for the enforcement of compliance with laws, guidelines, policies and standards on environmentalmatters, the National

Oil Spill Detection and Response Act and the National Oil Spill Detection and Response Agency (NOSDRA) created to detect and respond to oil spillage within the National Territory. There are also State environmental laws and agencies. The issue that arises is what is the remedy of persons affected or likely to be affected by the effect of the environmental degradation wherethe 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 he pollution extends far beyond the immediate environment?

As observed in the case of *R v. Inspectorate of Pollution & Anor., ex parteGreenpeace Ltd.* (No.2) (*supra*), 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.

Section 17(4) of the Oil Pipelines Act Cap. 07 Laws of the Federation of Nigeria 2004 provides:

> "17(4) Every licence shall be subject to the provisions of this Act as inforce 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 included in the licence 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 shall protect and improve the environment and safeguard the water, air and land, forest and wild life of the country".

See also: Article 24 of the African Charter on Human and Peoples'Rights, which provides "All people shall have the right to a general satisfactory environment favourable to their development".

These provisions show that the Constitution, the legislature and the African Charter on Human and Peoples Rights, to which Nigeria is a signatory, recognizethe fundamental rights of the citizenry to a clean and healthy environment to sustain life.

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.

It is for these and the more elaborate reasons ably advanced in the lead judgment that I would allow this appeal. I abide by the consequential orders made in the lead judgment.

I also wish to express my appreciation to the learned amici curiae whose in-depth research and erudite submissions assisted in no small measure in resolving the issue in this appeal.

Appeal allowed.

OKORO, J.S.C.: My learned brother, Chima Centus Nweze, JSC availed me indraft a copy of the lead judgment just delivered which I read before now. I am intotal agreement with his ought to be allowed. His Lordship has meticulously and quite efficiently resolved the sole issue submitted for the determination of this appeal and I propose to make a few comments in support of the judgment only. A brief facts giving birth to this appeal will suffice.

Facts available in the record shows that morn than 25 years before the commencement of this suit, the respondent; a Corporation established by Act of Parliament, constructed and laid oil pipelines beneath, around and beside Ineh and Aku streams/rivers in Acha autonomous community in Isukwuato Local Government Area of Abia State of Nigeria. The record also indicate that Inehand Aku streams are the only sources of water to Acha community, her environs,visitors, travelers and the stream belongs to no one in particular. That the pipelines had out lived its usefulness due partly to use and partly to the salinity of the seawater under which it was laid.

On 23rd May, 2003, strange oily substance (crude hydrocarbon oil) was noticed circulating and drifting on top of the streams and within some days therefrom, the magnitude of the strange oily substance increased to an unbearable proportion, overflowing from the streams and surged into the adjourning lands, estuaries, creeks and mangroves.

Upon being aware of the incident, the respondent sent its delegates to the scene. These delegates found that their oil pipeline laid at the sea bed and/or

beneath, beside and around Ineh/Aku streams which had been corroding unattended was ruptured, fractured and completely spewed its entire capacity of persistent hydrocarbon mineral oil. The respondent provided relief materials, which included but not limited to bottle/sachet water to the community but didnot clean up or reinstate the Ineh/Aku stream. The spillage and drifting of the crude hydrocarbon oil from the aforesaid ruptured pipeline of the respondent continued till 21st June, 2003.

The oil spillage left the Ineh/Aku Stream impure, soiled and contaminated and they could no longer be put to their ordinary and natural use. They became unfit for human consumption and aquatic lives, sea birds, fauna and flora no longer abound in them.

In August, 2003 and March, 2004 respectively, the appellant sent pre-action notice to the respondent and therein requested the respondent to inter aliare store and/or remedy the impaired and/or contaminated Ineh/Aku stream, which request the respondent ignores, neglected and/or refused.

On 23rd April, 2004, the appellant filed this suit claiming the following reliefs:

a. Reinstatement, restoration and remediation of the impaired or contaminated environment in Acha Autonotnous Community of Isukwuato Local Government Area of Abia State of Nigeria particularly the Ineh and Aku streams which environments were contaminated by the spill complained of.
b. Provision of portable water supply as a substitute to the soiled 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 evacuation and treatment of thevictims of the after negative health effects of the spillage and/or the contaminated streams.

As for the statutory functions of both the appellant and respondent the appellant herein pleaded in paragraphs 2 and 3 of the amended statement of claim as follows:-

2. The plaintiff carries on inter alia the function of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution particularly the un-owned environment or the environment that belongs to no one in particular; and this include but not limited to rivers, sea birds, ecosystems and aquatic lives. The plaintiff ensures that the environments that belong to no one are kept clean and safe for human and aquatic

live/consumptions. She has over 2000 members drawn from across the whole states of the Federation ofthe Federal Republic of Nigeria and outside of Nigeria. Some ofher members are indigenes of and/or live at Acha Community and use the water from Ineh and Aku Streams/Rivers.

3. The defendant is a corporation established by the Act of Parliament and carries on business of protecting, mining, producing, exploring and starting of persistent hydrocarbon mineral oil such as crude hydrocarbon oil and so on. She has offices, oil installations, oilpipeline, oil rigs and so on in different parts of Nigeria with its principal place of business and/or its substantial part of business at No 28 Ademola Road, off Awolowo Road, Ikoyi, Lagos".

The respondent filed a motion on notice pursuant to Order 25, rule 2(2) and of the Federal High Court (Civil Procedure) Rules 2000 praying for an order directing that the point of law it raised in its statement of defence i.e. absence of *locus standi* to institute this suit be set down for hearing as that may dispose of the action. This was accepted by the learned trial Judge and after the hearing of (3) the motion, he held as follows:-

> "On the whole, the inevitable conclusion which I arrive at is that, the plaintiff lacks the necessary *locus standi* to institute and maintain this action on the alleged oil spillage in Acha Community of Isukwuato Local Government Area of Abia State".
>
> (See page 76 of the record).

The appellant who was dissatisfied with the above ruling, appealed to the Court of Appeal, which dismissed its appeal and affirmed the ruling of the trial court. The appellant has further appealed to this court. Only one issue is distilled for hearing as follows:-

> "Whether the learned Justices of the Court of Appeal were rightin dismissing the appellant's appeal for want of *locus standi* tomaintain the suit".

The argument of both the appellant and respondent has been well captured in the lead judgment of my learned brother, Nweze, JSC. Also reflected in the said judgment is the opinion of the amici curiae invited to address the court on the issue. I

need not repeat the exercise. Now, going by settled judicial authorities of this court and elsewhere, the term locus standi denotes legal capacity to institute proceedings in a court of law. This principle focuses on the party seeking to get its complaint laid before the court vis-à-vis the claim he seeks from the court. See *Ojukwu v. Ojukwu* (2008) 18 NWLR (Pt. 1119) 439; *Global Transport Oceanico S. A. & Anor v. Free Enterprises Nig. Ltd* (2001) 5 NWLR (Pt. 706) 426; *A.-G.,Kaduna State v. Hassan* (1985) 2 NWLR (Pt. 8) 483.

The law is settled that it is the claim of the plaintiff that determines the jurisdiction of the court and to that extent whether he has a right or standing to sue or he is just a busybody. See *Abia State Transport Corporation & Ors v. Quorum Consortium Ltd* (2009) 9 NWLR (Pt. 1145) P.1, Jev v. Iyortom & Ors(2014) 14 NWLR (Pt. 1428) 575.

From the totality of the pleadings in the statement of claim, what really is the claim of the appellant at the trial court? The answer as can be seen in the statement of claim, is the reinstatement, restoration and remediation of the impaired and/or contaminated environment in Acha autonomous community, provision of portable water supply as a substitute to the soiled and contaminated Ineh/Aku streams and the provision of medical facilities for evaluation and treatment of the victims of the after negative health effect of the spillage and/or contaminated streams. This is clearly a public interest litigation as against personal right or personal benefit to the plaintiff/appellant.

The seemingly rigidity which Nigerian courts had held onto the interpretation of the issue of *locus standi* led Amina Augie, JCA (as she then was) to express in her lead judgment at the court below as contained on pages179-180 of the record of appeal as follows:-

> "The position of the law may have changed to cloak "pressure groups, NGOs and public sprinted tax payers" with locus standi to maintain an action for public interest as argued by the appellant, but that is in other countries, not Nigeria. The truth of the matteris that there is a remarkable divergence in the jurisprudence of *locus standi* in jurisdictions like England, India, Australia etc and the Nigeria approach to same, which has nor evolved up to the stage where litigants like the appellant can ventilate the sort ofgrievance couched in its amended statement of claim…. In this case, apart from its averment that

"some of her members areindigenes of and/or live at Acha Community and use the water from Ineh and Aku streams/rivers: there is nothing in its pleadings to show what the appellant or any of its unspecified members suffered as a result of the alleged oil spill. Besides, the members of the community itself are better placed, positioned and armed with the standing to sue the respondent for any damage caused.

The decision of the lower court that it had no *locus standi* cannot be faulted".

As I said earlier, the above had largely been the practice. See *Gamioba &Ors v. Esezi II* (1961) 1 ANLR 584 at 588, (1961) 2 SCNLR 237; *Olawoyin v.A.-G. Northern Region of Nigeria* (1961) All NLR 269, *Buraimoh Oloriode v.Simeon Oyebi* (1984) 5 SC page 1, *Adesanya v. President of the Federal Republicof Nigeria & Anor* (1981) 5 SC 112; (1981) 2 NCLR 358; *Ajayi v. Adebiyi* (2012)11 NWLR (Pt. 1310) 137; *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669; *A.-G. Lagos State v. Eko Hotels Ltd* (2006) 18 NWLR (Pt. 1011) 378.

In all these cases, the courts in this country insisted that for a person to have *locus standi,* the plaintiff must show sufficient interest in the suit before thecourt. The criterion is whether the plaintiff seeking for the redress or remedy will suffer some injury or hardship arising from the litigation.

However, in public interest litigation, it is instituted in the interest of the general public. As was rightly submitted by one of the amici curiae, Asiwaju Adegboyega Awomolo, SAN, an application to the court in this regard, is initiated by one or more persons on behalf of some victims who cannot apply to the court for redress for themselves due to one reason or the other. It is intended to improve access to justice to the poor when their rights are infringed and for the protection of the public affected. Again, such public interest litigation serves as medium for protecting, liberating and transforming the interest of marginalized groups. It raises issues against non personal interest of the applicant and I agree that public interest litigation is a catalyst for sustainable development.

The above reasoning may have undoubtedly weighed on the minds of some commonwealth and other country's courts, which made them to depart fromthe rigid application of the concept of locus standi particularly when litigation on public interest is concerned. As was rightly observed by the court below, countries like England,

India, Australia etc have expanded their jurisprudence of *locus standi* to take care of situations such as we have at hand in this appeal. See *R v. Inspectorate of Pollution & Anor, ex parte Green Peace Ltd* (1994) AllER 329, *Reg v. Greater London Council, Ex parte Blackburn* (1976) 1 WLR 550.

Now, coming home, one may ask: In the situation which the poverty striken people of Acha Autonomous community have found themselves, who would sue among them for the remediation and/or restoration of their ravaged streams andenvironment if the appellant, a non-governmental organization (NGO) is refused access to court on their behalf? Are they to be sentenced to perpetual life of servitude in an environment where the observance of law amongst government institutions is observed more in the breach than in observance?

I think the time has come for this court to relax the application of the rule of *locus standi* in cases founded on public interest litigation especially in environmental issues. No particular person owns the environment. It is the duty of Government to protect the environment for the good of all and where government agencies desecrate such environments and other relevant government agencies fail, refuse and/or neglect to take necessary steps to enforce compliance, non-governmental organizations, which do not necessarily seek their personal interest, can, in my opinion bring an action in court to demand compliance and ensure the restoration, remediation and protection of the environment, It isin the interest of the public including the government in general.

In conclusion, I wish to state that I am in total agreement with both thereasoning and conclusion in the lead judgment of my learned brother, Nweze, J.S.C. This appeal is meritorious and is hereby allowed. The appellant has sufficient locus standi to ventilate at the Federal High Court the issues, which ithas placed before the said court. I adopt the said lead judgment as mine. I abideby all consequential orders made in the lead judgment, that relating to costs, inclusive.

Appeal allowed.

EKO, J.S.C.: The appellant was the plaintiff at the Federal High Court, Laogs.It is “a Non-Governmental Organization incorporated in accordance with the Companies and Allied Matters Act, 1990” with the objects inter alia, as averred in the amended statement of claim, including carrying on-

The function of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution particularly the un-owned environment or the environment that belongs to no one in particular, and this includes but not limited to rivers, sea, sea birds, ecosystems and aquatic lives. The plaintiff ensures that the environment that belongs to no one are kept clean and safe for human and aquatic live/consumptions.

In the amended statement of claim the appellant, as the plaintiff, furtheravers that she has -

> Over 2000 members drawn from across the whole States of the Federal Republic of Nigeria and outside of Nigeria. Some of her members are indigenes of and/or live at Acha Community and usethe water from Ineh and Aku streams/river

While the respondent, as the defendant, denied the objects ascribed to it asa public corporation by the plaintiff, it however admitted its status as a "statutory corporation established by the Act of Parliament." It is alleged in the statement of claim that the defendant carries on -

> The business of prospecting, mining, producing, exploring and storing of (Petroleum) hydrocarbon mineral oil such as crude hydrocarbon oil and so on;

And that

> Over 25 years ago the defendant constructed and laid oil pipelines beneath, around and outside Ineh and Aku Streams/Rivers in Acha autonomous community in Isikwuato Local Government Area, Abia State of Nigeria and; that the defendant's use of landvis-à-vis the oil pipeline is special and non-natural.

The pipelines, said to have outlived their "usefulness due partly to use and partly to the salinity of the sea water under which" they were laid, allegedly busted and spilled crude hydrocarbon oil from beneath the earth borels into Inehand Aku steams/rivers and their environs. The plaintiff started noticing strange oily substance drifting on the waters of the two streams from 13th May, 2003.

Soon thereafter the oily substance afloat started circulating rapidly assisted by tidal flow and soon it spread to the swamps and mangrove forest and thereby overwhelming the recesses and swamp holes of the aquatic animals.

The defendant, upon becoming aware of the oil spill, allegedly -

Sent its delegate to the scene of the incident, this delegate found that their oil pipeline laid at the sea bed and/or beneath, beside and around Ineh/Aku streams which had been corroding unattended was ruptured, fractured and completely spurred its entire capacityof persistent hydrocarbon mineral oil.

The defendant, allegedly, provided relief materials, including bottled/sachet pure drinking water to the community. They however "did not clean upor reinstate the Ineh/Aku streams." The defendant, allegedly, "only stopped the leakage/spillage but never cleaned up and/or adequately cleaned up or remediedthe Ineh/Aku streams."

The plaintiff further avers in the statement of claim that the "oil spillage left Ineh/Aku streams impure, soiled; contaminated and could no longer be put to their ordinary and natural use. They are no longer good for human consumption and; aquatic lives, sea birds, fauna and flora no longer abound in them" It is further averred that crude hydrocarbon oil is toxicant and dangerous to human health, and that it causes skin diseases, cancer, damage to lungs and reproductive systems, etc; in addition to other adverse effects on the ecosystem, marine/aquatic lives and the forest. The defendant's doing nothing to remedy the damage, inspiteof the plaintiff's pre-action notice was what prompted this action wherein the plaintiff claims against the defendant.

a. Reinstatement, restoration and remediation of the impaired and/or contaminated environment in Acha Autonomous Community of Isikwuato Local Government Area of Abia State of Nigeria particularly the Ineh and Aku Streams which environment was contaminated by the oil spill complained of.
b. Provision of portable water supply as a substitute to the soiled 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 spillage and/or the contaminated streams.

The defendant denied all the averments of the plaintiff. It filed a statement of defence wherein it gave notice that it "shall at the trial (plead) that the plaintifflacks the requisite locus standi to institute and/or maintain this action as presently constituted." On 14th July, 2005 the defendant filed its motion notice on notice

wherein it sought to be determined that the absence of locus standi on the part ofthe plaintiff to institute and/or maintain this suit".

The motion was heard. Both the trial court and the Court of Appeal (the lower court) were of the opinion that "the plaintiff lacks the necessary *locus standi* to institute and maintain this action on the alleged oil spillage at Acha Community of Isikwuato Local Government Area of Abia State." The suit was accordingly struck out; hence, this further appeal. The lower Court emphasized the common law position/rule on locus standi in private law of tort as regardspublic nuisance, stating in its judgment that -

> There is nothing in (the plaintiff's) pleading to show that-theappellant or any of its unspecified members suffered as a resultof the alleged oil spill. Besides, the members of the community tself are better placed, positioned and armed with the statutory right to sue the respondent for any damage caused.

I wish, at this juncture, to point out that no statute that I know of (except Rules of the High Court on judicial review) has made any definitive provision prescribing who has the right generally to sue. Locus Standi was evolved by the common law courts to protect the courts" from being used as a playground by professional litigants, or, and meddlesome interlopers, busy bodies who reallyhave no stake or interest in the subject matter of litigation" - per Rhodes-Vivour, JSC in *Sunday Adegbite Taiwo v. Sarah Adegboro & Anor.* (2011) 11 NWLR (Pt.1259) 562 at 579 paras. F-G.

In administrative law, particularly in the area of judicial review, the rulesof trial courts prescribe that an applicant for judicial review shall have "sufficient interest in the matter to which the application relates." See for instance, Order 34, rule 3(4) of the Federal High Court (Civil Procedure) Rules, 2007.

The decision in *Chief Gani Fawehinmi v. Col. Halilu Akilu & Anor.* (In Re:Oduneye, D.P.P.) (1987) 12 SC. 136; (1987) 4 NWLR (Pt. 67) 797 was in respectof an application for order of mandamus. Obaseki, JSC, in his judgment at page 830, paras. C-F stated:

> It is fundamental that an applicant for leave to apply for an order of mandamus must have *locus standi* to make the application before leave can be granted by the court. Indeed, the party making any claim bringing an application before the court must have *locus standi.* See Adesanya v. The

President of Nigeria (supra); *IreneThomas v. Olufosoye (supra); Amusa Momoh & Anor. v. JimohOlotu* (1990) 1 Al NLR. 117. If the plaintiff has no *locus standi,* the court has no jurisdiction the matter and it must be struckout. See *Oloriode & Ors. v. Oyedi & Ors.* (1984) 5 SC 1 at 28;(1984) SCNLR. When a party's standing to sue (i.e. *locus standi*) is in issue, the question is whether the person whose standingis in issue is the proper person to request an adjudication of a particular issue and not whether the issue itself is justiceable. *Oloriode & Ors. v. Oyebi & Ors. per Obaseki, JSC.* Thus, one hasto look at the cause of action and the facts of the case to ascertain whether there is disclosed a *locus standi* or standing to sue. *Adesanya v. The President of Nigeria* (1981) 2 NCLR. 358 at 392.The cause of action, if any, will disclose facts from which it couldbe ascertained whether there is an infringement of or violation of the civil rights and obligations of the party, which, if established before the court, will entitle him to the relief or remedy.

Chief Gani Fawehinmi, a lawyer and a human rights activist, was in the case held to be possess *locus standi* or standing to sue and seek order osmandamus compelling the Director of public prosecution of Lagos State to initiate proceedings for the prosecution of the alleged killers because among other facts, he was a personal friend and the lawyer of the victim, Dele Giwa, who was murdered in a parcel bomb attack, and also for the fact he had demonstrated his interest in prevention of crime and the punishment of those who committed crimes. The action, obviously, was therefore neither ill motivated noran abuse of court's process. It is on this basis that Obaseki, JSC further stated in *Fawehinmi v. Akilu & Anor (supra)* at page 834, paras. A-B.

> "The Criminal Code and the Criminal Procedure law of Lagos State, in so far as prevention of crime and punishment of those committing crimes are concerned, have made everyone of us, nay, all Nigerians our brother's keeper."

Accordingly, every person, including NGO's, who *bona fide* seek in the law court the due performance of statutory functions or enforcement of statutory provisions or public laws, especially laws designed to protect human lives, public health and environment, should be regarded as proper persons clothed with standing in law to

request adjudication on such issues of public nuisance that are injurious to human lives, public health and environment.

Fawehinmi v. Babangida (2003) 3 NWLR (Pt. 808) 604; (2003) 12 WRN 1S.C, was a suit filed by a citizen wherein the issue raised was whether the National Assembly, pursuant to the legislative powers vested in it by section 4(2), &and the exclusive and concurrent legislative lists contained in the second schedule to the Constitution, can enact for the Federation a general statute, asthe Tribunals of Inquiry Act Cap. 447 1990 LFN? The suit that challenged the constitutionality of the said Tribunal of Inquiry Act, was apparently brought to enforce section 13 of Constitution that charged all the authorities and persons, exercising legislative, exclusive and judicial powers to conform to, observe and apply the provisions of the Constitution. The plaintiff in Fawehinmi v. Babangida(*supra*) had invoked his right, as a citizen, to be governed constitutionally and by-laws duly and properly enacted in accordance with the Constitution. There wasno ill motive on the part of the plaintiff in seeking to ensure that Nigerians are governed by laws lawfully and constitutionally enacted and forming part of the(4)corpus juris.

What precisely is this standing in law to seek adjudication on an issue.The word standing has not been authoritatively defined. I find in Black's Law Dictionary 9th ed., at page 1536, what the author - Joseph Vining: Legal Identity55 (1978), says of standing to sue. The learned author is quoted as saying:

> The word standing is rather recent in basic judicial vocabulary and does not appear to have been commonly used until the middle of our own century. No authority have I found introduces theterm with proper explanations and apologies and announces that henceforth standing should be used to describe who may be heardby a Judge. Nor was there any sudden adoption by tacit consent.The word appears here and there spreading very gradually with no discernible pattern. Judges and lawyers found themselvesusing the term and did not ask why they did so and where it camefrom. (*Italics supplied*)

The courts in Nigeria have used various tests to find the standing to sue in various cases. In *Fawehinmi v. President FRN* (2007) 14 NWLR (Pt. 1054) 275 at 333-

334, paras. G-A, the Court of Appeal seemingly confusing locus standi in private law with *locus standi* in public law says -

> "Under public law, an ordinary individual will generally not have *locus standi* as a plaintiff. This is because such litigations concern public rights and duties, which belong to; or are owedall members of the public, including the plaintiff. It is only where the individual has suffered special damage over and above theone suffered by the public generally that he 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 A.-G. of the Federation that has the requisite *locus standi* to sue. A private individual can only bring such an action if he is granted fiat by the A.-G. to do soin his name. This is referred to as a "relator action".

Let me ask: what if, as in this case, the defendant alleged to be the committer of the public nuisance is the government itself or a statutory corporation? In all cases against government, the Attorney-General is the dominis litis and is always sued "virtute officii" (by virtue of his office) as the representative of government. What if, for political exigencies and as a party interested, the Attorney-General refuses or is lethargic to enforcing the performance of his public duty? This was the situation in *Fawehinmi v. Akilu & Anor (supra).* I do not think that there is anything in the Constitution that says, through a relator action, thatthe Attorney-General is the only proper person clothed with the standing to enforce the performance of a public duty. This court, in *Ransome-Kuti v. A.-G.,Federation* (1985) 7 NWLR (Pt. 6) 211 seems to have declared petitions of tight unconstitutional, or to have said that petitions of right, on which is predicated the concept that the government can commit no tort, has become anachronisticwith the 1979 Constitution. In the present dispensation, the government and/or its agencies enjoy no immunity for any wrong they committed. Section 36(1) ofthe extant Constitution is very clear in the determination of his civil rights and obligations by or against any government or authority, the parties are entitled tofair hearing in the adjudication.

Section 6(6)(b) of the Constitution, which defines the scope of the judicial powers vested in the court by the Constitution, says expressly that the judicial powers extend to all matters between persons or between persons and government or authority for

the determination of any question as to the civil rights and obligations of the parties. In the determination of the question: whether the plaintiff has standing to request adjudication upon an issue; this court, in *Ladejobi v. Oguntayo* (2004) 18 NWLR (Pt. 904) 149, identifies two things or factors to bear in mind; that is -

i. Locus Standi should be broadly determined with due regard to the corporate interest being sought to be protected bearing in mind who the plaintiff is or plaintiffs are per Uwaifo, JSC at pages 170,i.para. F and

ii. It is important to bear in mind that ready access to the court is oneof the attributes of civilized legal system . . . (It) is dangerous to limit the opportunity for one to canvass his case by rigid adherence to the ubiquitous principle inherent in *locus standi* which is whether a person has the stand in a case. The society is becoming highly dynamic and certain stands of yester years (may no longer stand in our present state of our social and political development". Per Pats - Acholonu, JSC at page 177, paras. D-F *(Italics Supplied)* .

It is obvious, from the dictum of Lord Diplock in *Inland Revenue Commissioners v. National Federation of Self-Employed & Small Scale Businesses Ltd* (1982) A.C. 617 that rigid adherence to the common law rule that insists on *locus standi* for prospective genuine claimants or applicants is posinga hindrance to enforcement of the rule of law. Hear the law Lord advocate liberal attitude to locus standi:

> "the outdated technical rules of *locus standi* should not be used to prevent an individual or group of public spirited individuals from bringing a matter of unlawful conduct that violates the rule of lawto draw the attention of the court"

This is the case where the plaintiff, a federation of self-employed and small scale businesses, brought an action to prevent the Inland Revenue Commissioners (IRC) from waiving payment of tax payable to the public treasury by granting amnesty to some tax payers. Section 13 of Taxes Management Act, 1970 expressly charged IRC to "collect and cause to be collected every part of Inland Revenue." The provision is mandatory. It was held that the plaintiff had a standing to request the adjudication on whether a public authority can condone illegality by abdicating or shirking its statutory responsibility. 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 thatno public authority has power to, arbitrarily or with impunity, break the law orgeneral statute. The right of the citizen or lawful associations to see that the ruleof law is enforced vests in him or the association sufficient standing to request thecourt 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 beforethe law."

The views expressed in the *Ladejobi v. Oguntayo (supra)* by this court clearly have dealt fatal blows on the rather rigid and unacceptable posture ofthe Court of Appeal in Fawehinmi v. President (supra). "The ready access to court (being) one of the attributes of civilized legal system" that Pats-Acholonu,JSC, alluded to above, is in fact part of the aspirational objects of the socialorder which in section 17 of the Constitution includes "the independence, impartiality and integrity of courts of law, and easy accessibility thereto (that) shall be secured and maintained".

Mr. Mahmoud, SAN, amicus curiae submits, and I agree, that 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 readtogether 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". The above referred provisions are herein below reproduced: Article 24 African Charter on Peoples And Human Rights (Ratification AndEnforcement) Act, provides:

> 24. All peoples shall have the right to general satisfactory environment favorable to their development.

Section 33(1) of the Constitution states, inter alia, that "Every person has a right to life"; while section 20 of the same Constitution provides -

> 20. The State *shall, protect and improve the environment and safeguard the water, air and land, forest and wildlife of the country. (Italics supplied)*

The African Charter on Peoples and Human Rights, an international treaty, having been domesticated, forms part of our corpus juris. For as long as

Nigeriaremains signatory to the African Charter on Peoples 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, if 'may borrow from Agbakoba, J., his *words in Molokwu v. C.O.P* (1972) 2 ECSLR 979 at 801, which words are resonated in *Adewole v. Jakande* (1981) 1 NCLR 262.

The Acha Community and all people living around and beside Ineh and Aku streams, who depend on the two rivers as their source of drinking water, fishing and other economic activities, "have a right to a general environment favourable to their development." They, each, have the right to life guaranteed by the Constitution. The State, including the defendant, a Statutory Corporation, owes the community a duty to protect thorn against noxious and toxicant pollutants and to improve and safeguard the water they drink, the air they breathe, the landand forest, including wildlife in and around the two rivers, they depend on for their existence, living and economic activities.

The issue in this suit is whether the plaintiff NGO is a proper person (clothed with *locus standi*) to request adjudication over this matter of the nuisance of the crude oil spill, allegedly caused by the defendant that had massively polluted the two rivers of Ineh and Aku in Acha Community? Both Chief Awomolo, SANand L. E. Nwosu, SAN, both amici curiae, maintain that the Acha community comprised mostly "natives (who) are uneducated peasant farmers who have no means, capacity or courage to access the court" to seek redress for the environmental injustice. We have dearth of authorities in our jurisdiction on this issue of public interest litigation by NGOs or other persons with public interest.The High Court of Ghana, in *Public Interest Law & Anor v. Tema Oil Refinery* -unreported suit No. E. 12/91/07, "had recourse to other common law jurisdictionsto see what pertains there". The persuading decision was about the oil spillage into the Chemu Lagoon caused by the Tema oil Refinery. The 1st plaintiff wasa non-profit NGO like the instant plaintiff herein; while the 2nd plaintiff was anindigene of Tema resident in Tema Manhean in the Tema Municipality. The two plaintiffs sought declarations that the defendant was negligent in spilling oil into the Chemu lagoon, and that the oil spillage violated the rights of the inhabitants of Chemu settling along the banks of the lagoon to clean and healthy environment guaranteed by the Constitution and international law. They, consequently, sought mandatory order enjoining the defendant, a public corporation,

to clean up the Chemu lagoon under the supervision of EPA; and also an injunction perpetually restraining the defendant from further polluting the said Chemulagoon through oil spillage or by other means. The High Court had recourse the English case of *R. v. Inspectorate of Pollution & Anor, ex parte Green Peace Ltd* (1994) 4 All E.R. 329, in dismissing the objection of the defendants on the ground that the plaintiffs, particularly 1st plaintiff, lacked the standing to maintain the suit. In dismissing the objection the High Court stated, among other things that -

> "Public interest litigation seems a new concept in our jurisprudence; and it ought, in my considered opinion, to been couraged. I believe it is an antidote to the problem of direct victims of acts of environmental degradation or pollution being unable to take cases to court." *(Italics Supplied)*

In *R. v. Inspectorate of Pollution, Ex P. Greenpeace Ltd. (supra),* Otton, J,.n affirming that Green peace Ltd had sufficient interest and standing to bring there view proceedings stated:

> If I were to deny standing to Greenpeace, those it represents might net have an effective way to bring the issue before the court. There would have to be an application either by an individual employee of BNIFL or a near neighbour. In this case, it is unlikely that either would be able to command the expertise, which is at the disposalof Greenpeace. Consequently, a less well-informed challenge might be mounted which could not afford the court assistance it requires in order to do justice between the parties. Further, if the unsuccessful applicant had the benefit of legal aid it might leave the respondents and BNIFL without an effective remedyin costs. Alternatively, the individual (or Greenpeace) mightseek to persuade her majesty's Attorney-General to commence a relator action which (as a matter of policy or practice) he maybe reluctant to undertake against a government department. Neither of these courses of action would have the advantage of an application by Greenpeace who, with its particular expertise in environmental matters, its access to experts in relevant realmsof science and technology (not to mention law), is able to mounta carefully selected, focused, relevant and well argued challenge.(*Italics supplied*)

Acting on the principle that their country's commitment to international law and treaty obligations to protect their environment, the Indian Supreme Court has been consistent in holding that the responsibility of the State to protect environment is now a well accepted notion in all countries. And that it is this notion, in international law, that gave rise to the principle of "state responsibility" to prevent pollution in its own territory. Thus, when called upon by an NGO specializing on environment to restrain the government from alienating ancient/historical tanks, which serve as percolation sources that help to preserve level or underground water table and also providing drinking water, as well as irrigation etc, to the community the Indian courts readily affirmed the *locus standi* of the NGO to bring and maintain the action in Intellectual Forum, *Tirupathi v. State of A.P & Ors* - app eal No. 1251 of 2006. The action was brought to halt/stop the desire of the planning authorities to dismantle the ancient tanks. The Supreme Court, while deciding the case, also considered the United Nation Conference on Human Environment, Stockholm 1972 (the Stockholm Convention), which India was signatory to and stated:

> 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.

My Lords, let us see the other grounds on which, in other common law jurisdictions, *locus standi* of plaintiffs who request adjudication is readily affirmed. The major consideration is, once the plaintiff establishes that the public nuisance endangers human lives, he is readily accorded the standing to request adjudication to enforce statutory duties imposed on the public authority to prevent and control nuisance. That was the situation in the Ghana case – the pollution of Chemu lagoon earlier referred to. In the Indian case: *Metha v. Unionof India* (1987) SCR 819 the action was taken to get the authorities to abate the nuisance of waste dumping, including the dumping of human and animal corpses and other noxious materials, into river ganges that endanger lives ofthose using the water of the River. These are echoes of our own principle: every individual being his brother's keeper: *Fawehinmi v. Akilu (supra).* In almost all these cases, the relevant or material question is whether what is complained of as constituting nuisance was either expressly or

impliedly prohibited by statute. In the English case- Pride of *Derby & Derbyshire Angling Association Ltd & Anor v. British Celanese Ltd & Ors* (1953) 1 All E.R 179 (C.A), injunction was granted restraining the defendants from discharging sewage matter, insufficiently treated and neutralized, into the river by defendants. The 1st plaintiff owned a fishery beside the river. The 2nd plaintiff, a riparian, operated his occupation on both banks of the river. The plaintiffs depended on the fresh clean water of the river for their businesses. Section 109(1) of the Derby Corporation Act 1901,which authorized the corporation to construct and maintain their sewage works, contained express prohibition, which was of general application, against the corporation operating works so as to cause nuisance.

In *Reg. v. Greater London Council, ex parte Blackburn* (1976) 1 W.L.R 550,Mr. Blackburn and his wife, both citizens of London and rate payers, who averred that they had children who may be harmed by exhibition of pornographic films by the defendants were held to have sufficient interest to request adjudication torestrain the defendant, a public authority or statutory corporation, from acting in excess of the powers granted it by statute. At the Court of Appeal, Lord Denning, MR. repeated his earlier statement in McWhirter's case (1973) QB 6249, to wit -

> I regard it as a matter of high constitutional principle that if there isgood ground for supposing the government department or public authority is transgressing the law, or is about to transgress it,in any way, which offends or injures thousands of Her Majesty's subjects, then anyone of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced, and the courts in their discretion can grant whatever remedy is appropriate. *(Italics Supplied)*

The Oil and Gas Pipelines Act impose a duty on the owners/operators ofoil pipelines to maintain and repair their oil pipelines, and ensure that the crude hydrocarbon oil they transport through the pipelines, a dangerous substance, donot escape and cause havoc to human lives and the environment. This duty ofcare is not only statutory; it is also on the authority of Rylands v. Fletcher (1868)L.R. 3 H.R. 330, a common law duty of care. This suit, in essence, seeks theenforcement against the defendant their obligations qua the rights of the Acha Community to maintain the environment, including their rivers, air, land, forestfree of pollutants. The defendant, operators and owners of the oil pipelines owe, prima facie, the community this

obligation by virtue of the provisions of the Oil and Gas Pipeline Act, and the regulations made thereunder. Their obligation includes periodic maintenance of their pipelines for purpose of environmental impact assessment of their activities.

My Lords, as suggested by the appellant in their brief of argument, onthe authority of R. v. Somerset 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. Once in his pleadings his genuine interest, as the present Appellant has, it is disclosed 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 the plaintiff, be he an individual or an NGO should be accorded the standing to enforce the law and the thereby save lives and the environment.

From the facts 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 Achu Community who depend onthe 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.

I have, from the foregoing, shown that the courts, in recent times, applied more liberal tests, and the trend is away from the restrictive and technical approach to questions of locus standi. The approach these days is one finding out whether the plaintiff has a genuine grievance.

The sum total of my foregoing stance is that I am in agreement with my Lord, Hon. Chima Centus Nweze, JSC that the appellant herein has *locus standi* to seek adjudication of the issue they had brought before the trial Federal HighCourt. Accordingly, I adopt the lead judgment, including the orders made therein Appeal allowed.

Appeal allowed.