LOCUS STANDI AND ADMINISTRATIVE LAW IN NIGERIA: NEED FOR CLARITY OF APPROACH BY THE COURTS

Oyelowo Oyewo

Professor of Law

Department of Public Law

Faculty of Law

University of Lagos

Akoka, Lagos

Nigeria

E-mail: oovewo@unilag.edu.ng

oyewooyelowo@yahoo.com

Tel: +234-(0)802-311-6766
ABSTRACT

The article examines the concept of locus standi, its application in Nigeria, the nuances of the court’s approach arising from the importation of justiciability, the application of the sufficient interest test, and the nature of locus standi that ought to apply in public interest litigation. The bearing of all these on jurisdiction is discussed before the conclusion and recommendation for clarity of approach by the Nigerian courts.

KEYWORD

Locus standi, justiciability, sufficient interest, public interest litigation, action popularis, jurisdiction

1.0. Introduction

Locus Standi is a threshold issue in litigations that affects access to justice, jurisdiction, judicial powers and remediation of civil wrongs in the field of constitutional and administrative law. The Supreme Court’s decision in Abraham Adesanya v President, Federal Republic of Nigeria stands as the watershed for the modern approach for the application of locus standi in Nigeria. Interestingly, the apex court’ subsequent decision in Gani Fawehinmi v Akilu that was supposed to have liberalized the restrictive approach of the court in the Adesanya case did not overrule it. Indeed, the approach of the apex court on the subject need clarity as there are discordant notes in its decisions and that of the Court of Appeal on the subject. The importation of section 6(6)(b) of the 1979 and 1999 Constitution, and justiciability into the subject of locus standi, blur the ‘sufficient interest’ test now applicable to administrative law cases.

The article examines the concept of locus standi, its application in Nigeria, the nuances of the court’s approach arising from the importation of justiciability, the application of the sufficient interest test, and the nature of locus standi that ought to apply in public interest litigation. The bearing of all these on jurisdiction is discussed before the conclusion and recommendation for clarity of approach by the Nigerian courts.

2.0. Concept

The term ‘locus standi’ denotes the legal capacity to institute proceedings in a court of law and is used interchangeably with terms like ‘standing’ or ‘title to sue’. It has been held in several cases to be the right or competence to initiate proceedings in a court of law for redress or assertion of a right enforceable at law.

The concept of locus standi, or standing, is particularly relevant to administrative law, although it also has importance in relation to constitutional law, and human rights and civil liberties law. Standing has long been a feature of English law, for example it was the subject of the 1858 case of Ware v Regent’s Canal Co, but it is
equally present in many other commonwealth jurisdictions, including Nigeria.\textsuperscript{5} *Locus standi* focuses on the question whether an applicant/claimant/plaintiff/petitioner or party instituting or originating an action for remedies or judicial review is entitled to invoke the jurisdiction of the court.

It is generally treated as a threshold issue that must be resolved in favour of the applicant/claimant/plaintiff/petitioner or party before the jurisdiction of the court can be invoked. The approach of the courts in resolving the question of *locus standi* varies from country to country and case to case. Essentially, *locus standi* is the way in which the courts determine who may be an applicant for judicial review or remedies. If a particular applicant is found to have standing then they will be permitted to have their request heard (though determining that an applicant has *locus standi* will not necessarily mean that they will be successful in their final application). On the other hand, if the applicant is not found to have standing to bring the action, the court will not hear their complaint.\textsuperscript{6}

*Locus standi* as applied in Nigeria has its root in common law as developed in England. The doctrine has been argued to have developed in the first place, under both English and Roman-Dutch law, to ensure that courts play their proper function of protecting the rule of law among others. Traditionally, under common-law, the *locus standi* requirements for judicial review differed according to the remedy sought. At common law, a person who approaches a court for relief is required to have an interest in the subject matter of the litigation in the sense of being personally adversely affected by the alleged wrong. The applicant/plaintiff must allege that his or her rights have been infringed. It is not enough for the applicant/plaintiff to allege that the defendant has infringed the rights of someone else, or that the defendant is acting contrary to the law and that it is in the public interest that the court grants relief.\textsuperscript{7} Thus, under the common law, a person could only approach a court of law if he or she has sufficient, direct and personal interest in the matter. A plaintiff must in general show that he or she has some special interest or has sustained some special damage greater than that sustained by an ordinary member of the public.

The rule relating to *locus standi* developed primarily to protect the courts from being used as a playground by professional litigants, meddlesome interlopers and busy bodies who really have no real stake or interest in the subject matter of the suit.\textsuperscript{8} The common law position on *locus standi* has, however, been criticized as rather restrictive.\textsuperscript{9}

Moreover, the *locus standi* threshold for the various administrative law remedies via the judicial review procedures varied from remedy to remedy. The threshold was low for a prohibiting order: an applicant had to show only that he was “adversely affected”. The threshold was also low for a quashing order - it was sufficient that there had been an abuse of power that inconvenienced someone. It was harder to show standing for a


\textsuperscript{6}Ibid. See also Justice C. K. Thakker (Takwani), *Lectures on Administrative Law*, 3rd edition (Eastern Book Company, Reprinted 2001) p. 294


\textsuperscript{8}Taiwo v Adegboro [2011] 11 NWLR (Pt. 1259) 562 at 579 per Rhodes-Vivour JSC (SC)

\textsuperscript{9}supra. See also *Ajao v Sonola* (1973) 5 SC 119; *Okoye v Lagos State Government* [1990] 3 NWLR (Pt. 136) 125; *Sken Consult (Nig) Ltd v Ukey* (1981) 1 SC 6; *Gambioba v Insesi* (1961) All NLR 584.
mandatory order, as the applicant had to have a “specific legal right”, have a “direct and substantial interest at stake”, or at the very least be “adversely affected”. Prohibiting, quashing, and mandatory orders are prerogative remedies. In contrast, a declaration is a non-prerogative remedy. The standing requirements for a declaration were stricter than those for the prerogative remedies. The applicant had to show that the declaration he sought related to a right that was personally vested in him and that he had a “real interest” at stake, and that test was affirmed by the House of Lords in Gouret v Union of Post Office Workers.

Apart from the restrictive approach of the common law courts to locus standi, it was confusing for each remedy to prescribe its own standing requirements. Hence in 1978, England reformed its procedural rules. The prerogative remedies and declaration could be obtained under a single procedure with a unified standing requirement: the applicant had to show a “sufficient interest”. Accordingly, in the subsequent case of R v I.R.C. ex parte National Federation of Self-Employed and Small Businesses, the House of Lords broadly favoured a unified test for standing. The IRC case was the first important decision after the adoption of the sufficiency of interest test in Ord. 53 r.3(7) that was incorporated in what was previously the Supreme Court Act 1981, but renamed the Senior Courts Act 1981, s.31(3) of which states that:

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

The English reform on locus standi was not immediately followed in Nigeria, however, the courts in Nigeria have substantially moved away from the strict legal injury or legal interest tests towards a more liberal test of sufficient interest in the subject matter, especially in cases for judicial review, as was articulated by the Supreme Court in Gani Fawehinmi v Akilu. The general approach is that the applicant/claimant must have something to show, prima facie, that the action of the defendant has adversely affected his own right or interest, in the subject matter of the claim. Thus like the English courts, Nigerian courts apply a test akin to the sufficient interest rule. However, since Nigeria has a written constitution, the application of the


11 [1978] AC 435 Later followed by the Singapore Court of Appeal in Karaha Bodas Co LLC v Pertamina Energy Trading Ltd [2006] 1 SLR(R) 112

12 [1982] AC 617

13 (Emphasis mine) According to Paul Craig, the “general thrust of the House of Lords interpretation of these provisions in the IRC Case (supra) was that standing should be developed to meet new problems, and that there should not be an endless discussion of previous authorities. This furthered the tendency towards a unified conception of standing based upon sufficiency of interest, notwithstanding the ambiguity in the judgment.” – Administrative Law, 7th edition (Sweet & Maxwell Thomson Reuters, 2012) 777-786, at 779


constitutional provision, especially section 6(6)(b), pertaining to jurisdiction and justiciability has meant that certain interpretative peculiarities were initially imported into the *locus standi* test in Nigeria.\(^{16}\) Be that as it may, the sufficient interest test of the English Senior Courts Act 1981 s. 31(3), has been adapted by way of reform in the various High Court (Civil Procedure) Rules of the States of the Federation,\(^{17}\) as exemplified by Order 40 r. 3(4) of the High Court of Lagos State (Civil Procedure) Rules 2012, that provides that the “Judge shall not grant leave unless he considers that the Applicant has a sufficient interest in the matter to which the application relates” in an application for judicial review.

### 3.0. *Locus Standi in Nigeria*

A lot of scholarly writings and expositions have been done on the subject of *locus standi* in Nigeria,\(^{18}\) that have chronicled the development of the different approaches employed by the courts in the determination of the *locus standi* of applicants/plaintiffs in cases before them. Essentially the courts’ approach followed the common law until the coming into force of the 1979 Constitution and its provisions, especially sections 6(6), 33 and 42(1) (now sections 6(6) 36 and 46(1) of the 1999 Constitution). According to the decisions of the Nigerian courts *locus standi* is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest. *Locus standi* has been held to be the legal right of a party to an action to be heard in litigation before a court of law, thus the term as earlier observed entails the legal capacity of instituting, initiating or commencing an action in a competent court of law.\(^{19}\) For a person to have *locus standi*, he must have sufficient interest and be able to show that his civil rights and obligations have been or are in danger of being infringed. In effect, the person instituting an action before the court must have legal capacity otherwise the court is robbed of the necessary jurisdiction to entertain the matter.\(^{20}\)

In *Thomas v. Olufosoye*\(^{21}\), the Supreme Court discussed whether or not the requirement of *locus standi* is a product of judicial expedience and public policy, and referred to its earlier decision in *Adesanya's case*, where Fatayi-Williams, CJN, quoting from Thio, at page 1 of her book titled "Locus Standi And Judicial Review", observed pertinently that:

\[^{16}\] Senator Adesanya v President of the Federal Republic of Nigeria (1981) 2 NCLR 358
\[^{19}\] ASUU v BPE [2013] 14 NWLR (Pt. 1374) 398 T 423
There requirement of locus standi is mandatory in some jurisdictions where the judicial power is constitutionally limited to the determination of a "case" or controversy or a "matter" which is defined by reference to criteria which include the legal capacity of the parties to the litigation." I pause to observe that this is the position under our law. Continuing, the learned author said: "In other jurisdictions, the requirement is a product of judicial expediency and public policy." I find nothing under our law to indicate that there requirement of locus standi is a product of judicial expediency and public policy. I think I have cause to repeat here what I said in Adesanya's case. It is at page 174 of there port. It reads: "Locus standi or standing to sue is an aspect of justice ability and as such the problem of locus standi is surrounded by the same complexities and vagaries inherent in justice ability. The fund a mental aspect of locus standi is that it focuses on the party seeking to get his complaint before the court flat on the issues he wishes to have adjudicated.

It must be noted that the Supreme Court’s earliest post-independence approach on locus standi was no more than an adaptation of the common law restrictive approach especially on applications or claims for declaratory relief. Thus in Olawoyin v A-G., Northern Region of Nigeria where the Plaintiff was asking for a declaration that Part VIII of the Children and Young persons Law, 1958, had been rendered void and unenforceable by the provisions of sections 7, 8, and 9 of the Sixth Schedule of the 1960 Constitution; and he asked that direction be given under section 245(1) of the 1960 Constitution that Part VIII of the Law should no longer be enforced. Brown C.J. on the material point of the locus standi of the plaintiff raised a question, ‘Can proceedings of this nature be brought in vacuo when nobody’s right has been alleged to have been infringed?’ Then assuming the plaintiff’s counsel’s assertion of evidence that the plaintiff has children whom he wishes to educate politically was unchallenged was there a danger of plaintiff’s rights being infringed. After noting that for the first time the courts in Nigeria were being called upon to determine question of policy, his Lordship examined the practice in India and USA where it is only a person whose rights has been affected by legislation can challenge its constitutional validity.

His Lordship then held that courts of law exist to determine, and where necessary to protect, the rights of persons, and it will be contrary to principle to make the declaration asked for in vacuo in the case. The plaintiff appealed to the Supreme Court that also refused to grant the declaration and dismissed the action, for reasons eloquently espoused by Unsworth F.J. thus:

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

Also in Onyia v Governor in Council the plaintiff instituted a declaratory action to declare that the Governor acted contrary to law in amending the instrument establishing Asaba Urban District Council. The defendant’s preliminary objection on point of law that the plaintiff had no particular or special interest in the matter or that

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22 (1961) 2 SCNLR 5 at 10
23 ibid.
24 (1961) 2 All NLR 174; (1962) WNLR 86
the act of defendant complained of is one that entitled him to sue… in a private capacity, to enforce a public right, were accepted by the court, and consequently, the action was dismissed.

The Supreme Court’s approach during this era was that the plaintiff’s legal right or interest must be shown to be in danger of being infringed. This approach was reiterated in *Gamioba v Esezi* where the Supreme Court referred with approval to its earlier decision in *Olawoyin v A-G., Northern Region.* In this case the plaintiffs brought an action against the defendants in the High Court of the Western Region, claiming a declaration that a certain Trust Instrument was either invalid or void and an injunction restraining the defendants from implementing the Instrument. The writ of summons submitted four grounds for holding the Instrument invalid or void, stating them in the alternative. Two of the four alleged that the Instrument were made in the exercise or purported exercise of powers ultra vires the Nigeria (Constitution) Order in Council or inconsistent with it; the other two were that the Instrument was invalid as an improperly constituted trust or was void for uncertainty. Brett F.J. delivering the judgment held that the plaintiff’s locus standi in the present case has not yet been disclosed, and if he has none, his claim must be dismissed on that ground, and it will be unnecessary to decide the question involved in the declaration he claims. For this reason also it is not yet clear that the question set out in counsel’s application arises.

Clearly, the courts’ approach on locus standi focused on the plaintiff’s legal rights or interest that are in imminent danger of being infringed. The coming into force of the 1979 Constitution, and subsequently the 1999 Constitution, impacted the courts’ approach, which will now be examined and clarified under the following sub-headings.

### 4.0. Locus Standi and Justiciability

The *Abraham Adesanya v President, Federal Republic of Nigeria* decision of the Supreme Court is the locus classic on the modern approach of the courts on locus standi. In that case, Abraham Adesanya, then a serving Senator in the National Assembly, instituted an action against the President of the Federal Republic of Nigeria challenging the appointment of Justice Ovie-Whiskey as the Chairperson of the Federal Electoral Commission (FEDECO). The appointment had passed through the process of confirmation by the National Assembly. In the confirmation process, Senator Adesanya objected to the appointment, claiming that it violated certain provisions of the 1979 Constitution, but he was not successful as the Senate confirmed the appointment. He thereafter approached a Lagos High Court seeking a declaration and injunction. In its judgment, the court declared the appointment unconstitutional and held that Justice Ovie-Whiskey was not competent under the Constitution to be appointed a member and Chairperson of FEDECO at the time the appointment was made.

There was an appeal against this decision to the Court of Appeal. At the hearing of the appeal, the President of the Court of Appeal raised the question of whether or not Senator Adesanya had standing to have instituted the action, and therefore invited counsels to address the Court on the issue. In its ruling, the Court of Appeal held that Senator Adesanya had no locus standi to have challenged the appointment. Aggrieved by this decision, he appealed to the Supreme Court. The apex court dismissed the appeal and affirmed the judgment of the Court.

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25 (1961) All NLR 584 per Brett F.J
26 (1961) All NLR 269
27 supra
28 (1981) 5 SC 112
of Appeal on *locus standi*. The Court held further that Senator Adesanya, having participated in the deliberations of the Senate in connection with the subject matter over which his views in Senate were not accepted by majority of his fellow Senators before instituting the suit, had no *locus standi* to challenge the constitutionality of the appointment in the court.

Fatayi-Williams CJN read the leading judgment that explained the approach applicable in determining *locus standi* in Nigeria thus:

Admittedly, in cases where a plaintiff seeks to establish a "private right" or "special damage", either under the common law or administrative law, in non-constitutional litigation, by way of an application for certiorari, prohibition, or mandamus or for a declaratory and injunctive relief, the law is now well settled that the plaintiff will have *locus standi* in the matter only if he has a special legal right or alternatively, if he has **sufficient or special interest** in the performance of the duty sought to be enforced, or where his interest is adversely affected. What constitutes a legal right, **sufficient or special interest**, or interest adversely affected, will, of course, depend on the facts of each case. Whether an interest is worthy of protection is a matter of judicial discretion which may vary according to the remedy asked for.  

His Lordship made a distinction between administrative law or non-constitutional litigation *locus standi* test, that requires the plaintiff to establish ‘sufficient or special interest, which in his opinion is the same as that under common law. The *locus standi* test for constitutional litigation was then stated in liberal terms thus:

Finally, in the Nigerian context and having regard to the detailed provisions of our 1979 Constitution, the point which, I think, needs to be stressed is that there are explicit provisions therein which dealt with the *locus standi* which is required in order to sustain a claim that there has been an infringement of particular provisions of the Constitution. Consequently, other infractions of the provisions of the said Constitution, to which no restrictions are attached, should not be fettered by the common law or the administrative law concepts of *locus standi*. …

As a person, the plaintiff/appellant is, in my view, one of those persons who not only have the right but are also under an obligation, under section 6 (6) (b) of the Constitution to go to court to complain about any infraction of the Constitution. But he is also more than that. He is a special person. He is a Senator, a member of that august body known as the Senate established under section 43 of the 1979 Constitution.  

However, it was Bello JSC whose judgment injected a liberal dose of justiciability requirement of section 6(6)(b) of the Constitution into *locus standi* when he stated as follows, (quoting him extensively):

It is a common ground in all the jurisdictions of the common law countries that the claimant must have some justifiable interest which may be affected by the action or that he will suffer injury or damage as a result of the action. In most cases the area of dispute, and some time, 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:

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29 ibid at 128-129 (emphasis mine)
30 ibid
The section material to the issue is section 6 (6) (b), which reads:

"6 (6) The judicial powers vested in accordance with the foregoing provisions of this section (b) shall extend to all matters between person, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;"

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 the civil 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 or are in danger of being violated or adversely affected by the act complained of. The Appellant has not alleged that the appointment of the 2nd Respondent has in any way affected or is likely to affect his civil rights and obligations.31

The importation of the requirement of justiciability via section 6(6)(b) of the Constitution, has been adopted as the law in several cases, although, this approach has been criticized. Tunde Ogowewo argued that:

“A close study of the case will reveal that the Adesanya court was in fact divided on this issue with no discernable majority. It will be apparent by now that there were two aspects to the (Fatayi-Williams) C.J.N’s construction of section 6(6)(b): first he saw the provision as creating an actio popularis in non-Chapter IV constitutional litigation; secondly, he did not see the provision as laying down a standing requirement.”

It has also been pointed out that close reading of Adesanya’s case will reveal that the court was not unanimous in holding that section 6(6)(b) of the Constitution of Nigeria laid a test for locus standi in Nigeria. The reasoning of Fatayi Williams CJN (as he then was) and Justice Bello each commanded equal support on this point. While Justices Nnamani and Idigbe agreed with Justice Bello that section 6(6)(b) of the Constitution laid a test for locus standi, Justices Sowemimo and Obaseki were on the side of Fatayi Williams CJN. Justice Uwais who could have resolved this deadlock took the view that the interpretation to be given to section 6(6)(b) will depend on the facts and circumstances of each case and that no hard and fast rule should be set-up.

It is submitted with respect that subsequent decisions of the court including those of the Supreme Court which treated Adesanya’s case as deciding that section 6(6)(b) of the Constitution laid down the test for locus standi in Nigeria exhibit a misunderstanding of that decision.33

31 ibid at 161-162 (emphasis mine)
Moreover, Oputa JSC (as he then was) in *A-G., Kaduna State v. Hassan* admitted this lack of consensus in Adesanya’s case when he said that:

“It is on the issue of locus standing that I cannot pretend that I have not had some serious headache and considerable hesitation in views on locus standi between the majority and minority judgments – between Justice of equal authority who were almost equally divided.”

Interestingly, most of the later decisions of the courts did not put this assertion into considerations. In most of the cases, the courts proceeded from the premise that for a plaintiff to have locus, he must show that his civil rights and obligations have been or are likely to be affected by the action as held in the Adesanya’s case.

A clear perception and understanding in the blurred confusion on locus standi is the dissenting decision of Ayoola JCA (as he then was) in *F.A.T.B.v. Ezegbu* when he posited thus:

“I do not think section 6(6)(b) of the Constitution is relevant to the question of locus standi. If it is, we could as well remove any mention of locus standi from our law book. Section 6(6)(b) deals with judicial powers and not with individual rights. Locus standi deals with the rights of a party to sue. It must be noted that standing to sue is relative to a cause of action.”

However, Ayoola JCA (as he then was) seemed to be on his own with his position as most other cases that came after that did not give this line of thought a consideration.

Interestingly, four years after, in a judgment that attracted the concurring opinion of the other Justices that heard the case, Ayoola further pursued his perspective on section 6(6)(b) of the Constitution of Nigeria when he held in *NNPC v. Fawehinmi* that:

In most written Constitutions, there is a delimitation of the power 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 Federation and the States in the courts and defines the nature and extent of such judicial powers does not directly deal with the right of 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 organs of 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 Constitution is primarily and basically designed 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.
This dictum has been submitted to properly capture the province and effect of section 6(6)(b) of the Constitution and nothing more. Section 6(6)(b) is not intended to be a yardstick for determining *locus standi*.  

Coincidentally, it will appear that the Supreme Court in the case of *Owodunni v. Registered Trustees of Celestial Church* accepted this position of Ayoola JCA on the exact effect of section 6(6)(b) of the Constitution. The Supreme Court in the *Owodunni case* held that the Supreme Court in Adesanya’s case did not after all by a majority decision subscribe to Bello’s view on section 6(b)(b) laying down a requirement of standing. Ogundare JSC who delivered the lead judgment with no dissenting judgment, after reviewing Adesanya’s case, stated thus:

A word or two on Adesanya v President of the Federal Republic of Nigeria (supra) It appears that the general belief is that this court laid down in that case that the law on locus standi is now derived from Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1979 (re-enacted in section 6(6)(b) of the 1999 Constitution)…..I am not sure that this general belief represents the correct position of the seven Justices that sat on that case only 2 (Bello and Nnamani JJ.SC) expressed view to that effect. …………From the extracts of their Lordship’s judgments I have quoted above one can clearly see that there was not majority of the court in favour of Bello JSC’s interpretation of Section 6 subsection (6)(b) of the Constitution. …………. In my respectful view, I think Ayoola JCA (as he then was) correctly set out the scope of section 6, subsection (6)(b) of the Constitution ...in NNPC V. Fawehinmi & Ors

Indeed, there are cases where the reasoning followed the path of Ayoola and Ogundare JJSC, such as *Fawehinmi v I.GP* per Ogundare JSC and, in *Dodo v E.F.C.C.* where Nwodo JCA stated point blank that:

S. 6(6)(b) of the 1999 Constitution which vest judicial powers in the court and provide forum litigation, does not confer *locus standi* on the plaintiff. It merely allows the court to determine any question as to his civil right and obligation if he shows that right in his pleadings.

Unfortunately, the Supreme Court has not since adopted the Ayoola and Ogundare JJSC position on section 6(6)(b) articulated in the preceding paragraphs, neither has the apex court reversed itself or overruled its approach in the *Adesanya case* in subsequent cases. Even in its celebrated decision in *Fawehinmi v Akilu* where it criticized the narrow approach of the *Adesanya case* and adopted a liberalized approach to *locus standi*, it failed to overrule and reverse the ratio on *locus standi* in the *Adesanya case*.

In the *Fawehinmi v Akilu case* the complaint arose as a result of the refusal of the Director of Public Prosecution to endorse the certificate on the information as required by section 342(a) of the Criminal

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39(2000) 10 NWLR (Pt. 675) 315  
41 (2002) 7 NWLR (Pt. 767) 606 at692-694 per Ogundare JSC (as he then was)  
42 [2013] 1 NWLR (Pt. 1336) 468 at 520 per Nwodo JCA (of blessed memory)  
43 (1987) NSCC 1266 at 1267; (1987) 4 NWLR (Pt. 67) 797
Procedure Law, and upon appeal to the Supreme Court held that, the narrow confines which section 6(6)(b) of the Constitution restricts the class of person entitled to *locus standi* in civil matters have been broadened by the Criminal Code and Criminal Procedure Law and the Constitution. Obaseki JSC who delivered the leading judgment clearly affirmed the court’s decision in the Adesanya case as the applicable legal approach on *locus standi*.

His Lordship then criticized the narrow approach of the Adesanya case expressed a more liberalize approach to *locus standi* vis-à-vis section 6(6)(b). Eso JSC in concurring with Obaseki JSC characteristically eloquently delivered *obiter dicta*, on the liberalization of *locus standi* under the Constitution thus:

> My Lords, the issue of *locus standi* has always been held as one of the utmost importance, by the court for in effect, it is one that delimits the jurisdiction of the court, for in the interpretation of the Constitution, it is to be hoped that the courts would not possess acquisitive instinct and gather more jurisdiction than has been ascribed to it by the organic law of the land. It is this I think that has inhibited your lordships, and rightly too, in being careful, as your lordships should be, in threading carefully on the soil of *locus standi* … In this instant appeal before this court, I think, with respect, that the lead judgment of my learned brother Obaseki JSC is an advancement on the position hitherto held in this court on ‘locus standi’. I think, again with respect, that it is a departure from the former narrow attitude of this court in the Abraham Adesanya case and subsequent decisions. My humbler view, and this court should accept it as such, is that the present decision of my learned brother, Obaseki JSC, in this appeal has gone beyond the *Abraham Adesanya* case. I am in complete agreement with the new trend, and with respect my agreement with the judgment is my belief that it has gone beyond the *Abraham Adesanya* case.

As I have said, I accept our present decision as a happy development and advancement on what, with utmost respect to your Lordships, I have always considered a narrow path being trodden hitherto by this court on *locus standi*. The Supreme Court’s approach in liberalizing *locus standi* in constitutional law cases for the enforcement of public rights, including institution of criminal proceeding under the Criminal Code and Criminal Procedure Law has been lauded. Albeit, this liberalized approach failed to displace the Supreme Court’s earlier approach in the Adesanya case, and has been deconstructed in subsequent cases like *Fawehinmi v IGP*. The approach and test of the *Adesanya case* has not only won out but has become the mantra for the determination of *locus standi* of applicant/plaintiff in a legion of cases decided by the Supreme Court, followed by the Court of Appeal and the lower courts, especially in matters on administrative law. In the recent case of *Taiwo v Adegbooro* the test for determining whether a person has *locus standi* was reduced to a formula:

> (a) the action must be justiciable; and

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45 ibid
46 ibid
48 supra
(b) there must be a dispute between the parties.

The court then held that, in the instant case, the sale of property in dispute in the action raised a justiciable issue, and also a dispute between the appellant and the 1st respondent. Of course reliance was placed on the *locus classicus, Adesany case, inter alia.*

The approach of the courts in incorporating justiciability from section 6(6)(b) of the Constitution into locus standi has no doubt been accepted as being part of the ratio in the *Adesanya case.* Thus in *Sehindemi V. Governor of Lagos State*, it was observed that:

> justiciability is not a legal concept with a fixed content or susceptible of scientific verification. See Poe v. Ullman (1961) 367 US 497, 506 and Fast v. Cohen (1942) 392 US 83, 95 where Chief Justice of United States Warren said- "Justiciability is itself a concept of uncertain meaning and scope. Its reach is illustrated by the various grounds upon which questions sought to be adjudicated in Federal Courts have been held not to be justiciable. Thus, no justiciable controversy is presented when the parties seek adjudication of only a political question, when the parties are asking for an advisory opinion when the question sought to be adjudicated had been mooted by subsequent development and when there is no standing to maintain the action." (Italics mine)

However, in *K.T. & Ind. Plc v The Tug Boat “M/V Japaul B* it was observed that "justiciable interest was held to mean" a cause of complaint; the civil right or obligation fit for determination by a court of law, and a dispute in respect of which a court of law is entitled to invoke its judicial powers to determine under section 6(6)(b) of the 1999 Constitution. Thus in the instant case, the respondent had locus standi to apply for unconditional release of the 1st respondent’s vessel from arrest pursuant to order of court. Locus standi and justiciability of an application bother on competency of a claim or application, and they do not fall within the discretionary power of court.

The above stated test for determining locus standing will definitely apply in all constitutional litigation in Nigeria, but is the justiciability test applied in constitutional cases different from the sufficiency of interest test applied under common law and the Civil Procedure Rules of our High Courts, in administrative law litigation?

### 5.0. Sufficient interest Test

The test for resolving the issue of *locus standi* in non-constitutional law public law litigation, especially in the area of administrative law, has been held in a lot of cases to depend on whether the plaintiff has sufficient legal interest to file the action, and not whether the action was bound to fail in any event. In *Chijuka v Maduewesi* responding to the question on what determines *locus standi* to institute an action, the Court of Appeal stated per Muhktar JCA that:

> A plaintiff must show sufficient interest in the suit or matter in order to have locus standi to sue. One criterion of sufficient interest is whether the party could be joined as party in the suit. Another criterion

50(2006) 10 NWLR (Pt.987) pg.1 at Pp.57-58, Per Salami, J.C.A.,
51 [2011] 9 NWLR (Pt. 1251)133 at 155
52 Dododo v EFCC [2013] 1 NWLR (Pt. 1336) 468 at 516 9CA; (1981) 2 NCLR.358 at 393
53 Ogundipe v Odunuaye [2013] 15 WRN 130 at 141; Basindo Motors Ltd v Woerman Line (2009)
54 [2011] 16 NWLR (Pt.1272) 181 at 205 per Muhktar JCA (emphasis mine)
is whether the party seeking the redress or remedy will suffer some injury or hardship arising from the litigation. If the judge is satisfied that he will so suffer, then he must be heard as he is entitled to be heard. The appellant who had shown, prima facie, imminent dangers or threat to the morality and security of their family and property, certainly, had locus standi to commence the action. This element is interlocked with that of cause of action. The common denominator to both locus standi and cause of action lies in the plea of all those things necessary to entitle the appellants to a relief maintainable in law or in equity.

This line of reasoning has also been adopted by the Supreme Court in several recent cases, including *Adetona v Zenith Int’l Bank Plc* where it was held that for a person to have locus standi, he must show that his civil rights and obligations have been or are in danger of being infringed and that he has sufficient legal interest in seeking redress in a court of law. In the instant case, the respondent, a legal mortgagee, had a proprietary interest in the mortgaged property. Which could be adversely affected by the alleged acts of the appellants, as such he has sufficient interest, i.e. locus standi to commence the suit in the circumstance. The apex court then gave the meaning of “interest” in relation to locus standi thus:

A person has an interest in a thing when he has rights, advantages, duties, liabilities, losses or the like connected with the thing, whether present or future, ascertained or potential provided that the connection, and in the case of potential rights and duties, the possibility, is not too remote.

The ‘sufficient interest’ test has been applied in several cases, in recent times by the Court of Appeal. In *Centre for Oil Pollution Watch v NNPC* relying on the Supreme Court’s decision in *Pam v Mohammed* expositied on the requirement of sufficient interest as the law, in these words:

It is the law that to have locus standi to sue, the plaintiff must show sufficient interest in the suit or matter. One criterion of sufficient interest is whether the party could have been joined as a party in the suit. Another criterion is whether the party seeking redress or remedy will suffer some injury or hardship arising from the litigation. If the Judge is satisfied that he will so suffer, then he must be heard, as he is entitled to be heard. A party who is in imminent danger of any conduct of the adverse party has the locus standi to commence action.

Nigeria has thus like most Commonwealth systems adopted the test of ‘sufficient interest’ in interpreting locus standi, especially for non-constitutional law, litigation, and even in constitutional law cases,

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55 *Uwazuruonye v Gov., Imo State* [2013] 8 NWLR (Pt. 1355) 28 at 51-52 per Onnenghen JSC; *Pam v Mohammed* (2008) 16 NWLR (Pt. 1112) 1


57 Ibid at 648 per Chukwuma-Eneh, referring to *Imade v Mil. Admin., Edo State* (2001) 6 NWLR (Pt. 709) 478


59 [2013] 15 NWLR (Pt. 1378) 556 at 582 per Bage JCA.

60 (2008) 16 NWLR (Pt. 1112) 1

the applicant/plaintiff must plead sufficient constitutional interest to sustain and meet *locus standi* requirement.

Also in *Charles v Gov., Ondo State*\(^{62}\) the appellant as legal practitioners and human rights activists filed an action at the High Court of Ondo State, Akure, by originating summons challenging the increase in court fees in the State on the basis that the Governor has no constitutional powers to increase court fees of Ondo State judiciary. The respondents’ filed a counter-affidavit and the originating summons was struck out after hearing by the trial judge. On appeal to the Court of appeal, the decision of the trial court was affirmed as it was held that a party who seeks a declaratory relief in the Constitution must show that he has a constitutional interest to protect and that the interest is violated or breached to his detriment (the interest must be substantial, tangible and not vague, intangible, or caricature. The appellants failed to show sufficient interests nexus between them and the reliefs claimed to clothe them with *locus standi* to invoke the judicial powers for the proceedings. The appellants are challenging the alleged violation of section 274 of the Constitution by 1\(^{st}\) respondent. They must show not only what constitutional interest they seek to protect but also that such interest is substantial, tangible, and not vague or caricature.

The erudite Justice of the Court of Appeal, Kekere-Ekun JCA (as she then was), then found that the appellant failed to disclose the identities of the alleged indigent clients or statements from such clients that they lack the ability to pay the new fees, and that since the constitutional duty allegedly violated is that of the Hon. Chief Judge of the State, as such the Hon. Chief Judge is the proper person to complain. The appellants therefore failed to establish sufficient constitutional interest to pass the test of *locus standi*.

In both cases of *Centre for Oil Pollution Watch v NNPC*\(^{63}\) and *Charles v Gov., Ondo State*\(^{64}\) the applicants brought representative actions and failed establish sufficient interest to meet the requisite *locus standi* to sustain the action.\(^{65}\)

### 6.0. *Locus Standi* and Public Interest Litigation/ *Actio Popularis*

Bello JSC (as he then was) stated in *Adesanya v. The President of the Federal Republic of Nigeria*\(^{66}\) that "A general interest shared with all members of the public is not litigable interest to accord standing." His Lordship’s expressed position will appear to weigh heavily against liberalization of *locus standi* to allow for public interest litigation or citizen action or *actio popularis*. Public interest litigation has been described as litigation in which ‘a High Court allows volunteers like lawyers, activists, NGOs or citizen petitioners to bring

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\(^{62}\) [2013] 2 NWLR (Pt. 1338) 294.

\(^{63}\) [2013] 15 NWLR (Pt. 1378) 556 at 582 per Bage JCA.

\(^{64}\) [2013] 2 NWLR (Pt. 1338) 294.

\(^{65}\) Jacob Ovenseri v. Ojo Osagiede (1998) LPELR-2834(SC) at 17 and 19 per Iguh JSC; Durbar Hotel PLC V. Mr. Abella Ityough (2010) LPELR-4064(CA) Per Okoro, J.C.A.(P.13, paras. D-G) – "The courts have over time laid down the essential requirements which a party who desires to sue in a representative capacity must fulfil. The principles were laid down in Olatunju V. The Registrar Co-operative Society (Supra) as follows:(1). There must be numerous persons interested in the case or the side to be represented; All those interested must have the same interest in the suit, i.e their interest must be joint and several. (2). All of them must have the same grievance; (3). The proposed representative must be one of them; and (4). The relief or reliefs sought must be in its nature beneficial to all the persons being represented. See also Ofia V. Ejem (Supra) Busari V. Oseni (Supra), Atanda & Anor V. Akunyun & Ors (Supra)."

\(^{66}\)(1981) NSCC 146, 165
a case on behalf of some victimized group without sufficient means or access to legal services." Similarly, a citizen action or action popularis is based on the premise that the main aim or objective of public law is to keep public bodies within their power, based on the assumption that citizens generally should be enabled to vindicate the public interest, without showing individual harm over and above that of the general community.

The Supreme Court’s decision in Fawehinmi v Akilu liberalizing the narrow test of locus Standi espoused in the Adesanya v President of the Federal Republic of Nigeria case was viewed to have favoured public interest litigation/action popularis. This position was articulated by Agube JCA in Alhaji Salihu Wukari Sambo v. Capt. Yahaya Douglas Ndatse (rtd) when he stated categorically that the “Supreme Court and even this court have taken revolutionary and bold departures from the ubiquitous old concept of locus standi.”

Agube JCA’s advocacy for a liberalized test of locus standi is the most supportive of public interest litigation/action popularis, and he borrowed a leaf from the Indian jurisprudence, as clearly articulated in his symposium organized by Access to Justice on 7th August, 2009.

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68 Paul Craig, Administrative Law, supra, at 793

69 (1987) NSCC 1266 at 1267; (1987) 4 NWLR (Pt. 67) 797


71(2013) LPELR-20857 (CA): See for instance, per Obaseki J.S.C. and his commendation by Eso J.S.C. where in Fawehinmi v. Akilu & Anor. (1987) 4 N.W.L.R. (pt 66) 797 at 832 and 847 - 848; the former’s departure from the hitherto narrow attitude of the apex court in Adesanya’s case; Odeneye v. Efunuga (1990) 7 N.W.L.R. (pt 164) 618 at 631; Elendu v. Ekwoaba (1995) 3 NWLR (pt. 380) 70 at 74, per Onalaja; A.G. Kaduna State v. Hassan (1985) 2 N.W.L.R. (pt. 8) 483 Ogunmokun v. Milad Ogun State (1999) 3 N.W.L.R. (pt. 594) 261 at 285; and the recent cases of Yusuf v. Obasanjo (2003) 16 N.W.L.R. (pt. 164) 618 at 638 paras. E - H; Alamieyeseigha v. Igoniwari No. 2 (2007) 7 N.W.L.R. (pt 847) 554, Per Galadima J.C.A. and Fawehinmi v. President of the Federal Republic of Nigeria (2007) 14 N.W.L.R. (pt. 1054) 75 at 336 paras. H - E. In the latter case Aboki J.C.A. restated what Fatayi-William C.J.N. said in the Adesanya v. President F.R.N. most admirably inter alia: "In this Country which establishes a Constitutional structure involving a tripartite allocation of power to the Judiciary, Executive and Legislature as the co-ordinate organs of Government, judicial function most primarily aims at preserving legal order by confining the Legislative and Executive within their powers in the interest of the public and since the dominant objective of the rule of Law is to ensure the observance of the rule of Law, it can best be achieved by permitting any person to put the judicial machinery in motion in Nigeria where by any citizen could bring an action in respect of a public derelict. Thus the requirement of locus standi becomes unnecessary in constitutional issues as it will merely impede judicial functions." Even in the most conservative of common wealth or Common Law jurisdictions like Britain, or in liberal jurisdictions like the United States of America from where we derived our judicial system and our present Constitution, nay India and Bangladesh the concept of locus standi has been broadened and the courts have departed from the undue reliance on sufficiency of interest as the primary consideration for the conferment of locus standi in administrative and Constitutional Law, as exemplified in R v. Secretary Of State, Exparte World Development Movement Ltd. (2000) 21 W.R.N. 177."
words thus: “….. it is also necessary to refer to the position of the Law in India which we ought to borrow a leaf from their Public Interest Litigation system where locus standi can be given to any person who writes a letter of complaint in the name of the People's Union for Democratic Rights to the Chief Justice, justifying the rationale of the complaint. Although public interest litigation is still at infancy in this country, recent decisions of the Supreme Court have tended to jettison the old concept of sufficiency of interest as the bases for conferment of locus standi in constitutional matters.”72

His Lordship, Agube JCA, further expressed his views on the factors that are to be taken into consideration in constitutional matters that may involve public interest litigation in Governor of Ekiti State v. Hon. Kola Fakiyesi73 thus:

Thus the factors which should be taken into consideration in the determination of locus standi generally and especially in constitutional matters are:- 1. Whether the Applicant can show some sincere concern for constitutional issues and that there has been substantial default or abuse as in this case where the Respondents complained of the violation of Section 105(1) of the 1999 Constitution and not whether his personal rights or interests are involved. 2. The importance of vindicating the rule of law which is one of the cardinal agenda of the present administration, as in this case. 3. The importance of the issue raised in the claim of the Respondents - in this case the constitutional issue of the exercise of the legislative powers of the Ekiti State House of Assembly which tenure had allegedly expired. 4. The likely absence of any other challenger of the act complained of - in this case the fact that the 1st and 2nd Plaintiffs/Respondents were/are an ex-Legislator and party chieftain respectively in Ekiti State who have challenged the act of the defunct Assembly in the absence of other challengers. 5. The nature of the breach of duty against which relief is sought - in this case the alleged breach of section 105 of the 1999 Constitution by the defunct Ekiti State House of Assembly; and 6. The prominent role the Respondents as members of a political party with thirteen legislators in the Ekiti State House of Assembly ought to play in the screening of the 5th - 16th Appellants and the unnamed twelve Special Advisers appointed by the 1st Appellant. Even then, the submission by the Appellants that the 1st Respondent did not sue in representative capacity of the Action Congress, is ridiculous to the extremes since he has shown from his affidavits that he is a member of that political party and an ex-legislator who is now a senior citizen of Ekiti State and can bring an action of that nature to defend the Constitution and the rule of law.74

Such advocacy in favour of public interest litigation and action popularis has gained ground in much of the commonwealth. In the English locus classicus, IRC Case,75 Lord Diplock succinctly stated the arguments in

73(2009) LPELR-8353(CA)
favour of such an approach:

It would, in my view, be a grave *lacuna* in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful action stopped.\(^{76}\)

Of course there are practical and conceptual objections to the liberalization of locus standi from its tradition requirement of legal or sufficient interest in the applicant, to allow for public interest litigation or *action popularis*. An often repeated argument, even by judges, is that it would open the courthouses doors to vexatious litigations and busybodies (who has no personal interest and will not be the most effective advocate).\(^{77}\) Another practical objection is that such cases will take up a lot of governmental time, resources, and unnecessarily overload the courts. A conceptual objection that has engaged a lot of scholarly writings is how to formulate an acceptable test for resolving the locus standi in public interest litigations and action popularis, where a large number of people are equally affected.\(^{78}\) In practice the Court will want to know why a non-governmental organization - and not the individual affected - is bringing the case. The Court would need to be satisfied that the non-governmental organization had a genuine and good faith interest in the matter.\(^{79}\)

Moreover, the Attorney General is legally considered to be the defender of public interest,\(^{80}\) and the Nigerian Constitution made provision for an Attorney General who is the Chief Law Officer and a Minister of Justice of the Federation and empowers him to start or stop prosecutions in the public interest.\(^{81}\) However, it is doubtful whether the Attorney-General can truly represent the public interest giving the fact that he is a member of the government, especially where the public interest conflicts with government’s interest. On this issue Aboki JSC observed in *Fawehinmi v President* thus:

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\(^{76}\) See *CPAG* [1990] 2 Q.B. 540 at 546-547 per Woolf L.J.

\(^{77}\) Paul Craig, *Administrative Law*, (supra) at 79-797


\(^{81}\) The office of Attorney General and Commissioner for Justice is also created for each state of the federation. Section 174(3) provides,’in exercising his powers, the Attorney-General of the Federation shall regard to the public interest, the interest of justice and the need to prevent abuse of legal process.’

In our present reality, the Attorney General of the Federation is also the Minister of Justice and a member of the Executive cabinet. He may not be disposed to instituting an action against the Government in which he is part of, it may tantamount to the Federal Government suing itself. Definitely he will not perform such duty...

He further asked 'who will approach the Court to challenge the Government where it violates or fails to enforce any provisions of the Constitution or the laws where the Attorney-General will not.' There are therefore compelling reasoning to liberalize locus standi in public interest litigation or action popularis in constitutional and administrative law cases. In Inspector General of Police v All Nigerian Peoples Party the plaintiffs sought a declaration that the provisions of the Public Order Act (Cap 382) Laws of the Federation of Nigeria 1990 which require police permit or any other authority for the holding of: rallies or processions in any part of Nigeria is illegal and unconstitutional as they contravene section 40 of the 1999 Constitution and article 7 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act (Cap 10) LFN 1990. The High Court held, inter alia, that the Public Order Act does not only impose limitation on the right to assemble freely and associate with others, which right is guaranteed under section 40 of the 1999 constitution, it leaves unfettered the discretion on the whims of certain officials, including the police. The Public Order Act so far as it affects the right of citizens to assemble freely and associate with others, the sum of which is the right to hold rallies or processions or demonstration is an aberration to a democratic society, it is inconsistent with the provisions of the 1999 Constitution. The result is that it is void to the extent of its inconsistency with the provisions of the 1999 Constitution. In particular section 1(2),(3)(4)(5) and (6), 2, 3 and 4 are inconsistent with the fundamental rights provisions in the 1999 Constitution and to the extent of their inconsistency they are void - I hereby so declare. The Appeal Court, as per Mohammad Aboki JSC also upheld the judgment of the lower court and ruled in favour of the respondents.

Be that as it may the challenge of finding the appropriate test of locus standi to apply to public interest litigation and action popularis still remains, as the courts have not abolished the application of the test of justiciability and sufficient interest even in such cases, as public interest litigation or action popularis does not mean that any person must always be accorded standing in such cases. Unfortunately, due to the application of the restrictive approach in several public interest litigation cases jurisdiction has been declined and the action struck out for lack of locus standi. The case of Keyamo v House of Assembly, Lagos State, is an example of the hurdle of locus standi that any person who wants to institute a public interest litigation to challenge the action of the government in Nigeria must cross before he can institute and or maintain an action. In that case Keyamo filed a suit challenging the constitutionality of the setting up of a panel by the Lagos House of Assembly, to investigate the Governor over allegations concerning the crime of forgery. The Court of Appeal upheld the ruling of the Lagos High Court that the plaintiff lacked the locus standi to institute the action. The Court, per Galadima JCA, held as follows:

I have carefully perused and considered the entire originating process issued by the appellant in the lower

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83(2007) AHRLR 179
84(2000) 12 N.W.C.R. 196
Court. Not only has he woefully failed to disclose his legal authority to demand for the declarations sought but also failed to show what injury or injuries he will or would suffer...of all the reliefs being claimed by the appellant, none of them relate to him personally or his faceless clients whose future political interest he now seeks to protect. This approach is speculative and untenable in law. It is a mere academic exercise. Merely being a registered voter (even without proof of same) is not sufficient to sustain the prayers of the appellant. The appellants have not disclosed his interest in this suit.

Also in *Malachy Ugwummadu v President, Federal Republic of Nigeria*\(^{85}\) the applicant approached the Federal High Court for an order of mandamus compelling the respondents to fully implement the entire content and provisions of the Appropriation Act 2009 that was an Act of the National Assembly. The applicant claimed that, the Government of the Federation for some time had not fully implemented the annual budget of the country that partly accounted for the economic woes and under development of the nation. The matter was thrown out on the ground that the applicant lacked the locus standi to institute the action.

In a more recent case of *Femi Falana v National Assembly*,\(^{86}\) the Nigerian courts again stopped the applicant from challenging the actions of the government through the strict and outdated interpretation on locus standi. In that case, Falana challenged the powers of Federal lawmakers to grant huge and scandalous salaries and allowances to themselves. Falana sought from the Federal High Court for a declaration that the members of the National Assembly are not permitted to receive the salaries and allowances they allotted to themselves outside the salaries and allowances determined and fixed for them by the Revenue Mobilisation and Fiscal Allocation Commission whose function it is to determine the remuneration suitable to political office holders, including the President, Vice-President, Governors, Deputy Governors, Ministers, Commissioners, Special Advisers, Legislators etc., pursuant to Section 70 of the Constitution. The National Assembly, through their counsel Kenneth Ikonne challenged the locus standi of the applicant Mr. Falana to question the salaries of the lawmakers and described him as a busy body that does not have interest in the action of the National Assembly. The presiding judge, Justice Ibrahim Auta of the Federal High Court ruled in favor of the respondents and held that Falana does not have the locus standi to make the application, as he did not prove that he had suffered any greater injury than other Nigerian citizens caused by the action of the lawmakers.\(^{87}\)

However, in another recent case decided in 2013, *Bamidele Aturu v Minister of Petroleum Resources*,\(^{88}\) the Court took a decision in the favor of the public interest, showing that some Courts are now willing to extend the sphere of locus standi for public good. In that case, the plaintiff sought a declaration that the plan of the defendants to deregulate the downstream of the petroleum industry by not fixing the prices at which the product may be sold in Nigeria is unlawful, null, void and of no effect whatsoever being flagrant violation of

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mandatory provision of section 6 of the Petroleum Act, Cap P10, Laws of the Federation of Nigeria, 2004 and 

On the whole our courts must be prepared to liberalize the traditional locus standi requirement in public 
interest or action popularis litigation, by adopting an approach that involves their acceptance, particularly in 
those areas where a large number of people are equally affected by governmental irregularity, flagrant abuse 
of power, or callous indifference to the plight of the generality of the citizenry, but where no particular person 
is singled out or no single person can meet the burden of injury or interest required under the traditional locus 
standi requirement. Especially, where the subject matter is otherwise appropriate for judicial resolution, and 
the application is timely, for in such instances, to deny standing would be to render important areas of 
governmental activity immune from censure or judicial oversight/review for no better reason than that they 
affect a large number of people, and the Attorney-General is vested with the constitutional duty of instituting 
actions to protect public interest (as it is a well known fact to Nigerians, including judges, that the Attorney-
General, Federal or State, will never institute a public interest litigation against the government that it serves!). 
A citizen or a non-governmental organization should therefore be entitled at a liberalized discretion of the 
court to bring an action alleging invalid governmental action or public activity, except is can be shown from a 
consideration of the statutory framework that the range of persons with standing was intended to be narrower 
than this. The Court of Appeal’s approach in Governor of Ekiti State v. Hon. Kola Fakiyesi, per Agube 
JCA, earlier discussed above offers a liberalized pragmatic construction of the requirement of locus standi in 
public interest litigation or actio popularis that we believe will better serve the interest of justice, rule of law 
and accountability in Nigeria.

7.0. Locus Standi in relation to Jurisdiction

The relationship between locus standi and jurisdiction was discussed by the Supreme Court in Ajay v Adebiyi where it was observed that locus standi and jurisdiction are interwoven in the sense that locus standi goes to 
affect the jurisdiction of the court before which an action is brought. Thus where there is no locu standi to file 
an action, the court cannot properly assume jurisdiction to entertain the action, it is a condition precedent to 
the determination of a case on the merit. Thus locus satandi being an issue of jurisdiction can be raised at any 
stage or level of the proceedings in a suit even on appeal at the Court of Appeal or Supreme Court by any 
party without leave of court or by the court itself suo motu. It is now well settled that where a plaintiff has no 
locus standi, the court has no jurisdiction to entertain the action and such suit must be struck out, as such the issue of locus standi is a fundamental one which affects

89 Paul Craig, Administrative Law, supra, 798 – 801. The courts are enjoined to be favourably disposed towards allowing 
collective, associational, and group standing in public interest litigation and actio popularis.
80(2009) LPELR-8353(CA)pp. 31 -55
81[2012] 11 NWLR (Pt. 1310) 137 at 176 per Adekeye JSC
82Owodunni c Registered Trustees of CCC (2000) 6 SC (Pt. III) 60; (2000) 10 NWLR (Pt. 675) 315; Klifco Ltd v Philips Holzmann 
A.G. (1996) 3 NWLR (Pt. 435) 276
83See Emmanuel C. Nwankwo VS. Cecilia I. Nwankwo (1992) 4 NWLR (Pt. 238) 693 at 707; Austine O. Erebor vs. Major & 
Company (Nig) Ltd & Anor (2001) 5 NWLR (Pt. 706) 300 at 308; James Chibueze Unoka v. Mrs. Victoria Kanwulia Ofili Agili 
(2007) LPELR-8554(CA) at 35 per Aji, JCA

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the jurisdiction of the court to adjudicate between the parties to settle the issues in controversy. Where the question of the *locus standi* of a party to initiate civil claims is raised it should be settled first and decisively and not shelved.94 Where a party lacks *locus standi*, the court lacks jurisdiction to hear or determine the party’s suit, no matter the public importance of the issues raised in the suit.95

8.0. Conclusion and Recommendations

As a threshold issue that has direct bearing on the right of access to the court, the approach to the application of *locus standi* by the apex court need to shift from that in the *Adesanya v President, Federal Republic of Nigeria*96 approach that has been avowedly acknowledged to be restrictive by the Justices of the apex in *Fawehinmi v Akilu*.97 We call upon the Supreme Court to clarify its approach by either reconciling its decisions in the two cases or adopting the liberalized approach in the latter case and overrule the former. In the same vein, the apex court must disentangle section 6(6)(b) from *locus standi* and expunge justiciability out of *locus standi*.

The sufficient interest test need to be upgraded to meet the demands of constitutional and administrative law, especially in public interest litigation if *locus standi* is not to become an instrument of keeping governmental maladministration and corruption out of public scrutiny and oversight.

On the whole the following recommendations are proffered to enhance the clarity of the courts approach in the application of *locus standi* in Nigeria:

1. The Supreme Court must resolve the seeming conflicting approach adopted by it in the two cases of *Adesanya v President, Federal Republic of Nigeria* and *Fawehinmi v Akilu*, and if need be overrule its approach in the former;
2. The Supreme Court need to clarify the underlying principle of *locus standi* in relation to section 6(6)(b) and justiciability;
3. Clearly there is the urgent need to clarify and liberalize the *locus standi* in public litigation/actio popularis matters to achieve the ends of administrative law to achieve rule of law, accountability and development;
4. The sufficient interest test need to be upgraded to meet the demands of constitutional and administrative law.

94 *Prince James Adeleke Osayomi v The Executive Governor of Ekiti State* (2007) LPELR-8705(CA) at 46 per Ogunwumiju JCA
95 *Uwazuruonye v Gov., Imo State* [2013] 8 NWLR (Pt. 1355) 28 at 52 per Onnoghen JSC; ASUU v BPE [2013] 14 NWLR (Pt. 1374) 398 at 416, 422 (CA)
96 (1981) 5 SC 112
97 (1987) NSCC 1266 at 1267; (1987) 4 NWLR (Pt. 67) 797 per Obaseki and Eso JJSC