

# The Role of the Judiciary in Interpreting the Doctrine of '*Locus Standi*' in Environmental Pollution in Nigeria

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## Abstract

*Locus Standi* being a vital aspect in law has gained controversies in recent times amongst legal authorities and the public generally. This is apparently because of the discrepancies in judicial pronouncements, confusion and complexities of the conceptual crises which had engulfed the doctrine and its application by Nigerian courts. The doctrine of *locus standi* had been misunderstood and misapplied by the courts in Nigeria, which had blindly followed Adesanya's case in the interpretation of the doctrine by including the provisions of section 6 (6) (b) of the 1999 *Constitution of the Federal Republic of Nigeria (as amended)*. Hence, this work examined the role of the judicial arm of government with respect to interpretation of the "*locus standi*" in environmental pollution in Nigeria and also incorporated the test to determine "*locus standi*". This paper equally hoped to contribute to both learning and also serves as a good source of example to the society at large, and also putting forward recommendations primarily for the adoption of as opposed to its strict and restrictive system in line with best practices. The paper was concluded by stating that this belief will advance the legal system thereby delimiting the restriction on access to court and the efficient dispensation of justice.

**Keywords:** the role, judiciary, interpreting, doctrine, '*Locus Standi*', environmental, pollution Nigeria

## 1. Introduction

'*Locus Standi*' is an indispensable issue which is the foundation upon which any litigation is brought before the court. It is a right to be heard by a court of competent jurisdiction without which the court would not entertain such matter. This doctrine can be likened to a 'sieve' used to sift frivolous or unmeritorious petitions from substantial petitions where the litigant has sufficient interest in the litigation and refusal to hear his petition will amount to a revolt in justice.

Litigants must therefore show that they have interest in the subject matter of the suit which forms an essential part of the litigation in order to limit frivolous litigation, abuse of court process and aid timely dispensation of justice. The Nigeria judiciary saddled with the responsibility of interpreting laws, in a plethora of cases adopted a rather restrictive or strict approach to the interpretation of '*locus standi*'.<sup>1</sup>

The mostly accept cases where the litigant shows that he has a personal interest in the subject matter of the litigation is where the violation complained of affects the party directly. This was the basis upon which section 6 (6) (b) of the 1999 constitution<sup>2</sup> was interpreted in *Adesanya v. The President*,<sup>3</sup> dismissing the suit on the sole

ground that the appellant lacked the requisite 'standing to bring that action, thereby being no rights to obligations, personal or peculiar to him which had been infringed upon or injured.

Interestingly, about four years later, the court of appeal in *Fawehinmi v Akilu*<sup>4</sup> criticized the narrow approach in the case of *Adesanya* thereby substantially moving liberal test of sufficient interest in the subject matter of the litigation. However, it failed to overrule and reverse the earlier 'ratio' in *Adesanya's* case which leaves the case of *Adesanya* as a '*Locus Classicus*' on the issue of '*locus standi*' until it is reserved by a court of competent jurisdiction. Thus, this article examines the concept of '*locus standi*' and the role the judiciary plays in interpreting the doctrine in such a way as not to hamper the interest of justice in environmental pollution in Nigeria.

## 2. Concept of '*Locus Standi*'

'*locus standi*' is the right to bring an action or to be heard in a given forum.<sup>5</sup> The term connotes the legal capacity of instituting or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from any person whatsoever.<sup>6</sup> The doctrine of '*locus standi*' determines the competence of a plaintiff to bring a complaint before a court of competent jurisdiction.

Obaseki JSC (as he then was) asserts that '*locus standi*' or standing to sue is an aspect of justiciability and as such, the problem of '*locus standi*' is surrounded by the same complexities and vagaries inherent in Justiciability.<sup>7</sup> Similarly, Susu perceives '*locus standi*' as the legal right to seek judicial intervention in a controversy and to invoke judicial determination of the rights and obligations of the parties' to the dispute.<sup>8</sup>

The principle of '*locus standi*' is an age old one which forms the basis of any action in court. It is a Latin phrase meaning, 'Place to stand' originated within the *English Common Law* system during the 19<sup>th</sup> century, to denote a recognized position, an acknowledged right or claim.<sup>9</sup> The doctrine has been argued to have developed in the first place, under both English and Roman-Dutch law. According to the English School, the concept evolved from the English parliamentary practice which required opponents of legislative proposals to demonstrate that the proposals directly affect their property or interest before they could be given a hearing by the proposals committee.<sup>10</sup>

The Roman-Dutch school on the other hand, traced the evolution to the developments in the political and justice machinery during the 19<sup>th</sup> and 20<sup>th</sup> centuries.<sup>11</sup> Before then, public rights, unlike private rights were the exclusive reserve of the king.

In Nigeria, '*locus standi*' has its roots in *Common Law* as developed in England. At *Common Law*, a person who approaches the 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 and therefore it is not enough for the applicant to allege that the defendant has infringed the rights of someone else or that the defendant is acting contrary to the law and it is in the public interest that the court grants relief.<sup>12</sup> Thus, under *Common Law*, a plaintiff must show that he has sufficient, direct and personal interest in the subject matter greater than that sustained by an ordinary member of the public.<sup>13</sup>

Apart from the restrictive approach of the *Common Law* court to '*locus standi*', it was confusing for each remedy to prescribe its own standing requirements.<sup>14</sup> Thus, in 1978, England reformed its procedural rules to the effect that prerogative remedies and declaration could be obtained under a single procedure with a unified standing requirement that the applicant has a sufficient interest. This was implemented in *R v. IRC Ex parte National Federation of Self-employed and small Businesses*,<sup>15</sup> which was the most significant decision after the adoption of the sufficiency test in *Order 53 Rule 3 paragraph 7* that was incorporated in the previous *Supreme Court Act, 1981* now the *Senior Courts Act 1981*. However, this English reform on '*Locus Standi*' was not immediately applied in Nigeria but the recent judicial decisions have shown that courts in Nigeria have substantially moved away from the strict legal injury or interest test towards a liberal test of sufficient interest in the subject matter.<sup>16</sup>

## 3. The Role of the Judiciary

The judiciary in any country is the custodian of the Constitution and protects the fundamental rights. It is the third arm of government vested with the power of interpretation and application of law. This institution is not only considered the most sanctimonious pillar of the state but also a foundation on which civilizations are built, therefore, all philosophies acknowledge the independence of the judiciary as a means to ensure social amity, political development, peace and progress in any society. The judiciary also has the awesome responsibility to ensure not only that order is maintained in our nation but also that the struggle citizens engage in with each other, whether over law, ideas, politics or social values are resolved peacefully, sensibly and fairly. As a system of court, it provides measure used for resolution of dispute and administration of justice.

The functions of the judiciary are performed through the instrumentality of the court. The court is a tribunal,

often as a government institution with the authority to adjudicate legal disputes between parties and carry out the administration of justice in civil, criminal and administrative matters in accordance with the rules of law.<sup>17</sup> Thus, the system of collectively known as the judiciary. The use of courts as a public forum for the airing of policy issues has traditionally been curtailed by judicial self-restraint, in the exercise of which the standing of prospective litigants have been examined as a threshold inquiry in the determination of the appropriateness of judicial intervention.<sup>18</sup> Lord Denning also observes that the court will not listen, of course, to a mere busy body who is interfering in things which did not concern him but, it will listen to anyone whose interests are affected by what has been done.<sup>19</sup> This means that people cannot challenge laws just on the principle of the matter or because they think that those laws might harm other people, but those individuals must also be able to show that when the case is filed, their interest is also affected by the law.<sup>20</sup>

There exist a number of arguments for denying standing to those plaintiffs who do not have a direct or special legal interest or injury in the proceedings. One of such argument is based on the contention that only a party whose legal position is affected by the court judgment can be relied upon to present a serious, thorough and complete argument.<sup>21</sup> Another argument for denying standing to a plaintiff concerns the '*res judicata*' effect of a judicial pronouncement the fear is that the court in entertaining proceedings outside context may prejudice a person who is not party to the litigation, whereas the effect of '*re judicata*' in disputes as between parties is to preclude only those parties from subsequent litigation of the same issues.<sup>22</sup> It is evident from the arguments in favour of the principle of '*locus standi*' that it prevents litigants whose interests are not infringed from instituting a legal action on the strength of a matter that is not connected to their interests.

The principle of '*Locus Standi*' has generated a lot of problem in various jurisdiction to both litigants and the court and Nigeria seems to be most controversial. Deciding who has standing to sue sometimes proves to be very difficult although, Nigerian courts usually take the stand that a litigant cannot sue unless he can prove that he has a sufficient interest in the subject matter.<sup>23</sup> This position has caused many courts to deny access when an individual, group or community applies to the court for a redress of any wrong done to them. Therefore, the '*Locus Standi*' of an applicant does not depend on the success or merit of the case but on whether he has sufficient interest in the subject matter of the dispute.<sup>24</sup>

#### 4. Test to Determine '*Locus Standi*'

In recent times, the test for determining '*locus standi*' 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 legal interest is bound to fail in any event.<sup>25</sup>

A person has the requisite standing to sue if he is able to show that his civil rights and obligations have been or are in danger of being infringed. Thus, in *Jukok International ltd v. Diamond Bank Plc*<sup>26</sup>, the court stated that the test to determine locus standi are that the action must be justiciable and there must be a dispute between the parties. Similarly, in *A.G Federation v A.G Lagos state*<sup>27</sup>, the supreme court held that when a party's '*locus standi*' is in issue, the question is whether the person whose standing is in issue is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable.

Therefore, to have '*Locus Standi*', the statement of claim must disclose the plaintiff's sufficient legal interest and show how such interest arose in the subject matter of the action. The court in *Mohammed v A.G. Plateau State & Anor*<sup>28</sup>, defined sufficient interest as an interest which peculiar to the public. Furthermore, in *Chijuka v Maduewesi*<sup>29</sup>, responding to the question on what determines '*Locus Standi*' to institute on action, the court of appeal per Muhktar JCA (as be then was) stated 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 a party to the suit. Another criterion is whether the party seeking the redress or remedy will suffer some injury or hardship arising from the litigation.

This interpretation has also been adopted in *Adetona v. Zenith Bank Plc*<sup>30</sup>, where the court held that for a person to have '*Locus Standi*', he must show that his civil rights and obligation have been or are in danger of being infringed and he has sufficient legal interest in seeking redress in court. By the present state of law in Nigeria, the determine of '*locus standi*' zeros in two major words; 'interest' and sufficient interest as they both constitute the concept of sufficient interest. The apex court gave the meaning of interest in relation to '*locus standi*' thus;

A person has an interest in a thing which he has rights, advantages, duties, liabilities, loses 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.<sup>31</sup>

Thus, the law is settled that a plaintiff will have '*locus standi*' in a matter only if he has a special right or alternatively of the duty sought to be enforced or where his interest is adversely affected.

However, what constitutes a legal right, sufficient or special interest or interest adversely affected is one of mixed law and fact<sup>32</sup>. That is to say, it is only but both. Conversely, the requirement of justiciability has been imported by virtue of section 6(6) (b) of the Constitution.<sup>33</sup> In several decided cases by the courts. Justiciability refers to the capacity to claim a right before a tribunal.<sup>34</sup>

In *KT & industries Plc v the Tug Boat "M/v Japaul B"*<sup>35</sup>, justiciable interest was held to mean a cause of complaint, the civil right or obligation fit for the 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 constitution. Therefore, '*locus standi*' and justiciability of an applicant both on competency of a claim or application and they do not fall within the discretionary powers of the court.<sup>36</sup> '*Locus Standi*' is an aspect of justiciability and as such, the problem of '*locus standi*' is surrounded by the same complexities and vagaries inherent in justiciability.<sup>37</sup> Hence, it is trite that a person is said to have '*Locus Standi*' if he has shown sufficient interest in the action and that his civil rights and obligations have been, or are in danger of being infringed and therefore the onus of proofing is on the party who has initiated the proceeding.<sup>38</sup> This follows that '*locus standi*' will only be accorded to a plaintiff who show that his civil right and obligation have been or are in danger of being violated or adversely affected. There is therefore, *locus standi*, wherever there is a justiciable dispute<sup>39</sup>.

## 5. The Concept of Pollution

Pollution is the physical and biological component of the earth's or atmospheric system in which environmental processes are usually affected negatively by their surroundings.<sup>i</sup>

In a similar vein, "Pollution" is introduction of substances or energy by humans into the environment, including air, water or land, that causes adverse change in the physical, chemical and biological features or properties of the environment and vital resources, health and human activity and other living organisms face danger.<sup>ii</sup>

The royal commission on environmental pollution in U.K. in its third report gave the meaning of pollution as follows:

The introduction by man into the environment of substances or energy liable to cause hazards to human health, harm to living resources and ecological system, damages to structure or amenity or interference with legitimate use of the environment of substances or energy liable to cause hazards to human health, harm to living resources and ecological system, damages to structure or amenity or interference with legitimate use of the environment.

"Pollution" in use of the in line with the U.K. Environmental protection Act<sup>iii</sup> refers to:

The release (into any environment medium) from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment.<sup>iv</sup>

In the wisdom of A. Mitra<sup>v</sup>, "pollution" is viewed as:

An unfavourable alteration in the physical, chemical or biological characteristics of air, water and land that may or will adversely affect human life, industrial life, industrial progress, living conditions and cultural assets. This is a sort of negative stress exerted on the positive health of the ecosystem.

In line with the views of espoused in the Indian Protection Act (1982)<sup>vi</sup>, "Pollution" is any solid, liquid or a gaseous substance present in such concentration as may be or tend to be injurious to the environment.

Also, "Pollution may be seen as addition of undesirable material into the environment as a result of human activities."<sup>vii</sup>

## 6. Locus Standi and Environmental Justice in Nigeria

<sup>i</sup> P. Saremi, (2020, May-June). "Environmental Pollution and Ways to Reduce Contamination with the use of Environmental Engineering Techniques in Metropolises of Developing Countries." *www.document*, available at <https://ijeab.com> accessed on 15/8/2023 at p. 3. Also, available at P. Saremi, (2020, May, June). "Environmental Pollution and way to reduce Contamination with the use of Environmental Engineering Technologies in Metropolis of Development Countries." *International Journal of Environment Agriculture and Biotechnology*, 5(3), p. 3. Available at <https://dx.doi.org/10.22161/veab.53.9>.

<sup>ii</sup> *Ibid*

<sup>iii</sup> R. R. Appannagari, (2017, August). "Environmental Pollution Causes and Consequences: A Study." *North Asia International Research Journal of Social Science and Humanities*, 3(8), Available at [www.Nairgc.com](http://www.Nairgc.com).

<sup>iv</sup> *Ibid*, see equally section 1 (93) of the U.K Environmental protection Act, 1990.

<sup>v</sup> A. Mitra, (2021, September). Environmental pollution and its control. *Environmental Pollution and control*, 8, p. 1, *www. Document*, available at <https://www.research gate.net/publication/327779390>, accessed on 19/7/2023.

<sup>vi</sup> *Ibid*

<sup>vii</sup> Module-4 contemporary environmental issues notes, "Environmental pollution, available at <https://wpsinvite.page.link/FK9b8>, accessed on 15/15/2023, p. 165.

The right to a safe and healthy environment is as controversial as other debates concerning new or emerging rights such as right to development and indigenous right in Nigeria. This controversy arose out of absence of clear provisions in chapter four of the constitution<sup>40</sup> proclaiming individual's right to clean environment. However, in the fundamental objectives and directive principles of state policy enshrined in chapter two and section 20 of the same constitution<sup>41</sup>, the states is directed to "protect and improve the environment and safeguard the water, air, and land, forest and wildlife in Nigeria."<sup>42</sup> The issue is whether the scope of section 20 can be invoked by Nigeria citizens to vindicate environmental wrongs in cases of state's inactive or to compel the federal state and local governments to initiate laws and measures to protect Nigerian environment. In the absence of a well defined constitutional right to a clean environment, a private lawsuit to bring about a number of complaint in compliance with public environmental law is confronted with and constrained by a number of difficulties.<sup>43</sup>

Firstly, the law has clearly defined designated environment authorities or agencies with the sole power to enforce environmental laws and standards. The appropriate authorities in this case are the environmental protection agency, relevant ministries and departments of government involved in environmental matters. 'Secondly, the power of private litigants to vindicate environmental interests and to ensure judicial review of government's action in the implementation of domestic environmental law is constrained by the ancient rule of *locus standi*<sup>44</sup>. The traditional courts, untrained in individuals or non-governmental organizations for want of "personal injury".

In line with the eruditions above, it is our view to say that any form of harmful product or concentration in any environment is a pollution to such environment.

In *Oronto Douglas v Shell Petroleum Ltd*<sup>45</sup>, the plaintiffs action challenging the defendants failure to comply with the environmental impact assessment decree of 1992, was dismissed for lack of *locus standi* as plaintiff failed to prove that his personal right was affected or any direct injury caused to him or that he suffered any injury more than the generality of the public by the defendants failure to comply with the environmental law.

Also, in *N.N.P.C. v Sele*<sup>46</sup>, the plaintiffs sued for massive spillage of crude oil from the defendants pipeline, which polluted and ravaged economic trees and crops, fishing ponds, fishing contrivances, local gin distilleries and fresh water wells over a very wide area. They claimed N20,000,000 as fair and adequate compensation for their losses. At the conclusion of the trial, the trial court entered judgment for the respondents and awarded N15,329,350 as special damages and N3,000,00 as general damages.

One of the points taken on appeal was that the trial court was wrong to grant leave to the respondents to sue in representative capacity. In his lead judgment, Munkata-Coomassie JCA referred to the following dictum of Olatawura JSC, in *Adediran v Interland Transport Limited*<sup>47</sup> as follows:

While in the case it has been shown that they have common interest,  
the grievance of individuals is separated and distinct consequently  
a representative action taken as in this case must fail.

The appeal failed because on the particular issue, it was held that the respondent did not disclose common grounds or interest in the suit and there were no individual claim. This would reduce court time devoted to proving all the material issues over in each individual active. Justice C.V. Nwokerie of the federal high court Benin city of Nigeria in *Jonah Gbemre v. Shell PDC Limited and Ors*<sup>48</sup>, granted leave to the applicant to institute these proceedings in a representative capacity for himself and for each and every member of the Iweherekan community of Delta state of Nigeria, and to apply for an order enforcing or securing the enforcement of their fundamental rights to life and human dignity as provided in section 33 (1) and 34 (1) of the 1999 constitution of Nigeria<sup>49</sup> and reinforced by articles 4, 6, and 24 of the *African Charter on Human and Peoples Right*, 1986<sup>50</sup>.

The court held that these constitutionally guaranteed rights inevitably include the right to clean pollution free healthy environment. The judge further declared that the action of the respondent (Shell PDC and NNPC) in continuing to flare gas in the course of their oil exploration and production activities in the applicants community are a violation of their rights, that is their fundamental rights. Furthermore, the judge ruled that the failure of the companies to carry out an Environmental Impact Assessment in the said community and has contributed to a further violation of the said environmental rights.

The judge's order restrained to take immediate steps to stop the further flaring of gas in the community. The judge advised the attorney-general should ensure that the speedy amendment, after due consultation with the federal executive council, the associated gas re-injection Act, 2004 to be in line with chapter 4 of the constitution on fundamental rights. But the judge made no award of damages, costs or compensation whatsoever.

This is a landmark judgment in the sense that of application of fundamental right to an environmental case for

<sup>i</sup> The constitution of the federal Republic of Nigeria, 1999 (as amended).

the first time in Nigeria, consistent with the trend in other jurisdictions like India and South Africa<sup>51</sup>. A famous decision made by the Indian court when they were face with a lot of evidence of increase in levels of hazardous emission because of the use of diesel as full by commercial vehicles in *M. C. Melita v. Union of India*<sup>52</sup>.

Here, the supreme court of India decided to make a crucial intervention in the matter and directed that government can buses should shift to the use of compressed natural gas (C.N.G), which is an environmental friendly field.

Conversely, where numerous individuals are harmed, as it is often the case with environmental damage, many jurisdiction allow class actions to be filled by one or more members of the group or class of persons who have suffered a similar injury or have a similar came of action. The class is essentially a procedural device to quickly and efficiently dispose of themselves and others of their class, representing the others and subsequently others are asked to join them. Yobe maintainable, class actions usually must be permitted under the procedural rule of that country, as in the limited states and India. Class actions may also be enforced the right of an undermined number of people. This, it is advisable in order to avoid denial of justice to victims to environmental hazards for lack of standing to institute such action.

## 7. The Judiciary

The judiciary which more often than not is seen as the third arm of the government and equally the most curial arm because of the beautiful part it plays with respect to ensuring that there is sanctity and justice in the land had been given ample number of definition by many writers as follows.

In the views of H.C. Black<sup>53</sup> judiciary is defined as:

The branch of government invested with the judicial power, the system of courts in a country; the body of judges; the bench of government which is intended to interpret, construe and apply the law.

Also the views of *B. O. Igweny*<sup>54</sup>, the word judiciary was of the views that:

Hence when we talk of the “judiciary” it covers the personnel and institutions through which the laws of the country are interpreted in the determination of rights and obligations of the citizens as well as that of the government. It is said to be the last hope for the common man in whatever system of government that is in place.

Continuing with the conceptual analysis of judiciary it went further to state that:

In common law jurisdictions, courts interpret laws; this include constitution, statutes and regulations. They also make law (but in a limited sense, upon prior

case law in areas where the legislature has not made law for instance, the fort of negligence is not derived from statute law in most common law jurisdictions.

The term common law refers to this kind of law. Common law decisions set. Precedent for all courts to follow. This is sometimes called stare decisis.<sup>55</sup>

In the erudition of Nnamani JSC<sup>56</sup> as he then was, judiciary is described in the following acknowledged that judiciary is described in the following expressions thus:

It has been generally acknowledge that judiciary is the guardian of our constitution, the protector of our cherished governance under the rule of law.

The enforcer of all laws without which the stability of society can be threatened, the maintainer of public order and public security, the guarantee against arbitrariness and generally the only insurance for a just and happy society.

In line with all the views espoused above on the meaning of judiciary, it is our views that the judicial arm of government is the third arm of government<sup>57</sup> after the legislative and he executive arm which is decorated and also accorded with the constitutional powers to interpret the constitution, the laws made by the legislative and executive arms of government. It is also its function to deliver judgments based on the interpretation of these laws.

## 8. Recommendation

As a threshold that has been bearing on the right of access for the court, the approach to the application of *locus standi* by the apex court needs to shift from that as enunciated in *Adesanya v. the President of Federal Republic of Nigeria*,<sup>58</sup> approach that has been widely acknowledged to the apex court in *Fawehinmc v. Akilu*<sup>59</sup>. They have actively given a liberal interpretation of the doctrine of *Locus Standi*. The Nigerian judges should note that out of the seven justices that decided on *Adesanya's* case, it was the opinion of Mohammed Bello JSC which Nnamani JSC and Idigbe JSC adopted that construes section 6 (6) (b) of the constitution to be the test for *locus standi*; the decision of other justices of the Supreme Court does not support Mohammed Bello JSC's position as soon as this is noted and acted upon by the judges, the court will be open for the courts to apply a better approach to the rule

of *locus standi* similar to other jurisdictions.

Thus, we call upon the Supreme Court to clarify its approach by either reconciling its decision in these two cases or adopting the liberalized approach in the latter case, thereby overruling the former. In the same vein, the apex court must disentangle section 6 (6) from *locus standi* and expunge justiciability out of *locus standi* in order to promote access to courts and efficient administration of justice in Nigeria.

On the whole, the following recommendations are proffered to enhance the clarity of court's approach to the application of justice in Nigeria:

- 1) The Supreme Court must resolve the seeming conflicting approach adopted by it in the two cases of *Adesanya v. the President*<sup>60</sup> and *Fawehinmi v. Akilu*,<sup>61</sup> and if need be overruling its approach in the former.
- 2) The Supreme Court needs to clarify the underlying principle of *locus standi* in relation to section 6(6) (b) of the constitution on justiciability.
- 3) There is an urgent need to clarify and liberalize the *locus standi* in public litigation matters to achieve the ends of rule of law, accountability and development.
- 4) It is important to have an express provision for the liberalization of *locus standi* rule in the Nigerian constitution in order to ensure clarity on the requirements for *locus standi*.

## 9. Conclusion

The present state of the law on the issue of *locus standi* as laid down by the Supreme Court is that a lot of restrictions are imposed on access to the courts for public litigation. Public interest litigation is an important constituent in administrative justice and rights enforcement. However, rules of *locus standi* have placed restraints upon the use of public interest litigation in Nigeria; the development of *locus standi* in Nigeria has been in a weak position by years of military rule and wrong conception of *Adesanya's* case.

There have been numerous criticisms against public interest litigation, one of which is that it takes away the constitutional principle of separation of powers by allowing the courts to subjectively get in the way with policy-choices made by the legislature and pass instructions that may be difficult for the administrative agencies to put into practice. It is opined from the stand point of the judges, that quite often there are no checks against decision or orders that amount to judicial overreach or judicial popularism. The traditional *locus standi* principle was developed long before civil rights and environmental movement and therefore is not in line with modern legal thinking that is supported by the principle of access to justice, rule of law and sustainable development. Most jurisdictions have shifted from the traditional interpretation of *locus standi*.

Hence it is obvious that the application of *locus standi* principle in the Nigerian courts is not necessarily attached to the text of the Nigerian constitution, there, there are opportunities for the courts to use interpretation tools to move away from an approach that is archaic and inhibited public interest litigation and constrained access to justice for a long time.

It is perhaps time for relocation on the principle that it is only the attorney general who can see on behalf of the public. However, the operation of this principle does not stop the attorney general of a state from taking up a legal action in a situation where doing so would protect the interest of the comity. Every citizen should have *locus standi* to apply to the court to avert some abuse of power or wrongful act by the government and its agencies. It is clear, therefore that *locus standi* acts as a bar to those whose interest are not injured over a particular act from instituting a legal action on the strength of a matter unconnected with their interests.

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<sup>2</sup> 1999 Constitution of the Federal Republic of Nigeria (As Amended).

<sup>3</sup> (1981) 2 NCLR 358 at 380.

<sup>4</sup> (1987) 1 NWLR (pt. 67) p. 797.

<sup>5</sup> B. Garne, (1999). *Black's Law Dictionary*, 7<sup>th</sup> Edn. USA: St. Paul Min, p. 952.

<sup>6</sup> B.B Apugo & Sons Ltd Orthepeid Hospital Management Board (2016) LPELR-40598(SC.).

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<sup>22</sup> *Ibid.*

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<sup>24</sup> A. Adedeji, (2002). 'X-ray of Public Interest Litigation in Nigeria. Available at [www.punching.com/feature/the-law-you/X-ray-of-pbulic-interest-litigation-in-Nigerias](http://www.punching.com/feature/the-law-you/X-ray-of-pbulic-interest-litigation-in-Nigerias). Accessed on 8<sup>th</sup> October, 2018 at 8.00 pm.

<sup>25</sup> *Dododov. EFCC* (2013) INWLR (Pt. 1136) p. 468 at 516.

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<sup>28</sup> (1980) 1 plr 701 at 717.

<sup>29</sup> (2011) 16 NWLR (Pt. 1273) p. 181.

<sup>30</sup> (2011) NWLR (Pt. 1279) 627at 654.



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