THE CONCEPT OF *LOCUS STANDI*: A DOGMATIC IMPEDIMENT TO JUSTICE OR A FLEXIBLE TOOL OF CONVENIENCE?

Abstract

This paper critically examined the concept of locus standi in the specific context of the dogmatic and liberal positions expressed by the apex court in Nigeria, the Supreme Court, regarding its application and implications for the realization or attainment of justice. In so doing, the cases of Senator Ibrahim Adesanya v President of the Federal Republic of Nigeria & Anor[1] and Thomas v Olufosoye[2] wherein the Supreme Court dogmatically applied the principle were examined. Also examined were the cases of Fawehinmi v IGP[3]and Center for Oil Pollution Watch v NNPC[4]wherein the Supreme Court liberally applied the principle. The paper made a case for the Courts to apply the principle liberally. The work compared the dogmatic application and the liberal application of the principle expressed by the Supreme Court, and proceeded to justify why liberal application of it should be given a pride of place over dogmatic application. It concluded by praying the Courts to apply the principle liberally for the purpose of meeting the ends of justice, which is the sole constitutional mandate of the Courts. More so, in other common law climes, the principle is liberally applied for purposes of attaining effective and efficient justice delivery.

Keywords: *Locus Standi*, Court's Jurisdiction, Interest of Justice, Impediment, Flexible Tool of Convenience

1. Introduction

It is a truism that *locus standi* which is a Latin expression literally meaning 'place of standing', is a threshold issue in litigations that affect access to justice amongst other civil wrongs in the field of constitutional law and administrative law.[5] The concept has always been viewed as a major impediment to the full realization or attainment of justice and constitutionalism. On its account, access to the courts has been restricted especially in public interest litigations. Even some courts have imposed fines on public interest litigants who were out to protect or enforce public interests in courts. Some of the courts insist that only those who have personal or sufficient interest in, or whose interests have been affected by a particular action have the *locus* or 'standing' to challenge the action in court. Although *locus standi* is a Common Law concept, as a principle in Nigerian Jurisprudence, it appears it was first applied in the decision of the Supreme Court in *Senator Ibrahim Adesanya v President of the Federal Republic of Nigeria & Anor* [6] where Bello, JSC (as he then was), in a seven-page judgment, interpreted the nebulous and vexed section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1979[7], which provides as follows:

> The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between government or authority and to 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.

There has been a plethora of conflicting opinions on whether strict or dogmatic application of the principle of *locus standi* by the courts is an impediment to justice or the liberal approach thereof will enhance effective and efficient dispensation of justice. For the purpose of understanding these two lines of opinion, this work shall x-ray four Supreme Court's decisions on the matter, with a view to deciphering the reasoning of the court on the application of the principle in the current dispensation.

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[1] (1981) 2 NCLR 358

[2] (1986) 2 NWLR (Pt 18) 669

[3] (2002) 7 NWLR (Pt 777) 606

[4] (2019) 5 NWLR (Pt 1666)

[5] O Oyewo, '*Locus Standi* and Administrative Law in Nigeria: Need for Clarity of Approach by the Court' *International Journal of Scientific Research and Innovative Technology* (2016) (3)(1) 1

[6] Supra n 1. It is largely believed the personal opinion expressed by Bello, JSC in the Adesanya's case triggered off the problem of restrictive application of the principle of locus standi in Nigeria. This is so because virtually all other decisions of the apex court followed Bello's opinion as being the decision of the Supreme Court on that issue and as such a binding precedent. It is relevant to state that the Supreme Court was not unanimous on this point and Bello's view or opinion did not represent the majority opinion of the Justices that decided the case. This is because of the following reasons: (i) Bello, JSC, was not the one who delivered the lead judgment in that case, and (ii) Assuming without conceding that all the seven Justices that decided the case were at one that Adesanya had no locus to sue, they advanced different reasons. Despite the foregoing, the case remains the *locus classicus* on the principle of *locus standi* in Nigeria.

[7] Section (6)(6)(b) of the 1979 Constitution is worded in the *ipsissima verba* of Section (6)(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

2. Meaning of *Locus Standi*

The concept of *locus standi* has been defined in various ways. A few of these definitions shall be considered. The term *locus standi* denotes the legal capacity to institute proceeding 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.[8] Okeke[9]views *locus standi* as a right to be heard by a court of competent jurisdiction. This right arises where a party to a case shows that he has interest sufficient enough to link him with a court case and without showing such an interest, the court would not entertain his claims.[10] It, therefore, acts as a sieve tube used to sift the chaffs from grains in legal matters.[11] The chaffs referred to are frivolous petitions or litigations, while the grains refer to the litigations in which the litigant maintains a substantial interest to an extent that refusing to hear him would be defeating the cause of justice.[12] Ilofulunwa[13] considers *locus standi* as the existence of a right of an individual or group of individuals to bring an action before a court of law for adjudication. The Supreme Court held that a person has *locus standi* if he or she can show sufficient interest in the action and that his civil rights and obligations have been, or are in danger of being, infringed.[14] The foregoing definitions of the concept of *locus standi* have, no doubt, underscored the relevance of having the 'standing' or 'title' to institute an action in court. It goes without saying that a person who has no interest, but yet institutes an action in court, cannot be said to have properly initiated the action for the purpose of igniting the Court's jurisdiction to entertain the matter. Indeed, *locus standi* remains one of the fundamental principles of the adversarial litigation system.

3. Development of *Locus Standi* in Nigeria

The concept of *locus standi*, as applied in Nigeria today has its root in the Common Law as developed in England. This is to say that the concept is part of the English Common Law that Nigeria inherited. Oyewo[15] states that the doctrine has been argued to have developed in the first place, under both English and Roman-Dutch laws, to ensure that courts play their proper function of protecting the rule of law among others.[16] Traditionally, under the Common Law, the *locus standi* requirements for judicial review differed according to the specie of remedy sought.[17] 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 or adversely affected by the alleged wrong.[18] The applicant or plaintiff must allege that his or her rights have been infringed upon. Therefore, it is not enough for the applicant or plaintiff to allege that the defendant has infringed the rights of someone else, or that the defendant is acting in contravention to the law and it is in the public interest that the court grants the relief.[19] It is, therefore, germane to state that, at 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 has a bounden duty to 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 courts have held, in a coterie of judicial authorities, that the doctrine of *locus standi* developed primarily to protect them from being used as a playground by professional litigants or meddlesome interlopers and busy bodies who really have no real stake or interest in the subject matter of the suit.[20] The position of the Common Law regarding *locus standi* has come under severe vituperation for being too technical, narrow and restrictive.[21] In Nigeria, there exists a plenitude of literature[22] that has chronicled the development of *locus standi* and the different approaches employed by the courts in the determination of *locus standi* of an applicant or a plaintiff. The approach of the courts followed the Common Law until the coming into force of the Constitution of the Federal Republic of Nigeria, 1979, especially section 6(6),

[8]*Owodunmi v Registered Trustees of CCC* (2000) 2 WRN 29; *Ladejobi v Oguntayo* (2004) 7 SC (Pt 10, 159 at 170); *Sunday v INEC* (2008) 33 WRN 141 at 164.

[9]GN Okeke, 'Re-examining the Role of *Locus Standi* in the Nigerian Legal Jurisprudence' *Journal of Politics and Law* (2013)(6)(3) 1.

[10]Ibi

[11]Ibid

[12]Ibid

[13]O Ilofulunwa, 'Locus Standi in Nigeria: An Impediment to Justice' available at <https://www.lexprimus.com> accessed 18th June, 2022.

[14]*Olagunju v Yahaya* (1998) 3NWLR (Pt 542) 501; *Ogbuehi v Governor, Imo State* (1995) 9 NWLR (Pt 417) 53 and *Okafor v Asoh* (1999) 14 NWLR (Pt 1054) 275.

[15]TA Elijah, 'Enforcement of Fundamental Rights and the Standing Rules Under the Nigerian Constitution: A Need for More Liberal Provision' *AHRLJ* (2009) (9)(2)546-575, cited in Oyewo (n 5) 80.

[16]Ibid.

[17]Ibid.

[18]Ibid.

[19]P Vranken and M Killander, 'Human Rights Litigation' in A Govendjee and P Vranken (eds) *Introduction to Human Rights Law* (2009) 251-257, cited in Oyewo (n 5) 80.

[20]*Taiwo v Adegbenro* (2011) 11 NWLR (Pt. 1259) 562 at 579.

[21]*Okoye v Lagos State Government* (1990) 3 NWLR (Pt 136) 125; *Sken Consult (Nig) Ltd v Ukey* (1981) 1SC.

[22]*Taiwo v Adegbenro* (2011) 11 NWLR (Pt 1259) 579

which is identically worded with section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

We shall divide the approaches to the application of the principle of *locus standi* in Nigeria into two essential periods – the Era of Dogmatic Application and the Era of Liberalized Application. The two are examined *seriatim.*

The Era of Dogmatism

The origin of the era of dogmatic approach to the application of the principle of *locus standi* is traceable to the case of *Adesanya v President of the Federal Republic of Nigeria*[23]where the Supreme Court interpreted section 6(6) of the Constitution of the Federal Republic of Nigeria, 1979 Constitution, which is identical with Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999, as amended. The facts of the case, in summary, are that the 1st respondent, who was the President of the Federal Republic of Nigeria, appointed the Hon. Justice Ovie-Whiskey, the 2nd respondent[24], as Chairman and member of the Federal Electoral Commission. The appointment was confirmed by the Senate.[25] The appellant, Senator Abraham Adensanya, who participated in the proceedings leading to the confirmation of the 2nd respondent initiated an action before the High Court of Lagos State, claiming, *inter alia*, that the appointment of the 2nd respondent by the 1st respondent is unconstitutional, null and void, on the ground that at the time of the appointment, the 2nd respondent was the Chief Judge of (then) Bendel State. In its judgment, the trial court declared the appointment unconstitutional, null and void. It held that Justice Ovie-Whiskey was not competent under the Constitution to be appointed as a member and Chairman of the Federal Electoral Commission at the time the appointment was made. The respondents appealed the judgment of the High Court of Lagos State to the Federal Court of Appeal. It was at the Federal Court of Appeal that the President of the Court, *suo motu*, raised the vexed question of whether the respondent (Adesanya) had the standing to have instituted the action. The court now invited parties for address on the issue. Thereafter, the Court ruled that the respondent has no *locus* or standing to institute the action. Aggrieved, the respondent appealed to the Supreme Court. Chief Gani Fawehinmi, for the appellant, submitted that by virtue of the oath of allegiance of the appellant as a senator, he has a fundamental obligation and civil right to preserve, protect and defend the Constitution. He further submitted that, in his capacity as a senator, the appellant had a duty to perform in the confirmation of the 2nd respondent.[26] In reaction to the submission of the learned counsel to the appellant, the respondents' Counsel, Chief Richard Akinjide, SAN, submitted, among others, that the power of confirmation is vested in the Senate as a body and that the oath of office and of allegiance does not enable the plaintiff/appellant to discharge functions that are outside the purview of those of a senator. He argued that the operative words in section (6)(6)(b) are 'civil rights and obligations'. He further argued that since the appellant's action is for a declaration of right, he must be a party to that right. His legal right must be affected or must be in jeopardy as a consequence of the decision which he seeks to attack in the action. He submitted that the position, with regard to *locus standi* in Nigeria and under the Common Law, is the same and that only the Attorney General alone can sue for the protection or enforcement of public interest. The Supreme Court held that the appellant had no *locus standi* to institute the action. Fatayi-Williams, CJN, reading the lead judgment of the court held:

> Admittedly, in cases where a plaintiff seeks to establish a 'private right' or 'special damage', either under 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.[27]

The apex court further held that the broader interpretation of Section (6)(6)(b) of the 1979 Constitution will not serve the interest of justice. It then advocated for the narrower interpretation, which in its opinion, would best carry

[23]*Supra n 1.*

[24] The President made the appointed pursuant to section 141(1) of the Constitution of the Federal Republic of Nigeria, 1979.

[25] The Senate is empowered, under the Constitution, to confirm the appointment of the Chairman of the Federal Electoral Commission. Even under the Constitution of the Federal Republic of Nigeria, 1999, as amended, the Senate is empowered to confirm the appointment of the Chairman of the Independent National Electoral Commission (INEC).

[26] Chief Fawehinmi relied on Sections 48(1), 141(1), 236(1), 277(1) and 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999, to drive home his argument.

[27](n1) 29

out its object and purpose. The narrower interpretation, according to the court, is consistent with reason and common sense.[28] Bello, JSC, held:

> It seems to me that upon the construction of the subsection, 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 court 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.[29]

The above position taken by the Supreme became the litmus test for *locus standi* in Nigeria at that time, as same was followed in the case of *Thomas v Olufosoye*.[30]A brief summary of the facts are that the plaintiffs, who are communicants of the Anglican Communion within the Diocese of Lagos challenged the appointment of Reverend Joseph Abiodun Adetiloye as the new Bishop of Lagos and asked the court to declare it null and void.[31] In their Statement of Claims, the plaintiff did not say that they have an interest in the office of the Bishop of the Diocese. They also did not say how their interest (if any) had been adversely affected by the appointment of Reverend Joseph Abiodun Adetiloye.[32] They in fact conceded that they were not interested in a particular candidate but stated that the process of appointment of Reverend J.A. Adetiloye contravened some provisions of the Constitution of the Church of Nigeria (Anglican Communion).[33] The defence by motion on notice argued, inter alia, that the plaintiffs had no *locus* to institute the action and that the Statement of Claims disclosed no reasonable cause of action. In its ruling on the motion on notice filed by the defence, the trial court dismissed the suit for want of *locus standi* and non-disclosure of reasonable cause of action.[34] The plaintiff/respondents appealed to the Court of Appeal. The Court of Appeal dismissed the appeal summarily.[35] When the respondents appealed to the Supreme Court, the Court upheld its earlier decision in the Adesanya's case. It again held that failure to disclose *locus standi* is fatal to the case of the respondents and it went ahead to dismiss the respondents. The Supreme Court held:

> In the instant appeal, looking at the statement of claim, what is the averment in paragraph 1? The plaintiffs say that they are all communicants of the Anglican Communion within the Diocese of Lagos. The question that naturally comes to my mind is, is it enough for the plaintiffs/appellants to state that they are all communicants of the Anglican Communion? Have they not got to say that they have an interest in the office of the Bishop? We know that not every communicant of the Anglican Communion has interest in the office of the Bishop. The plaintiffs/appellants, in my view, have to go further to state how their interest arose and how their interest has been adversely affected by the translation of the Rt. Revd. Joseph Abiodun Adetiloye to the seat of Lagos Diocese. I cannot say the plaintiffs/appellants have on the pleadings disclosed any 'locus standi'.

The foregoing two decisions of the Supreme Court represent the position of the court during the era of dogmatic application of the principle of *locus standi*. Suffice is to say, the constitutional mandate of the court is to not only do justice, but also to ensure that justice is manifestly seen to have been done. This in essence means that the court is saddled with the responsibility of ensuring that justice is attained or achieved in every case. It is in this light that the over the years, the Supreme Court seems to have adopted a liberalized approach to the application of the principle of *locus standi*. This naturally brings to fore the flexible or liberal approach to the application of the doctrine of *locus standi*.

The Liberal or Flexible Approach to the Application of *Locus Standi*

To preface discussion on the foregoing approach, it is pertinent to state that the cases of *Gani Fawehinmi v IGP*[36] and *Center for Oil Pollution Watch v NNPC*[37] would form the basis of discussion of the liberal or flexible approach to the application of the principle of *locus standi* in this subsection of the work. It is worthy to note that these cases have gone beyond the restrictive approach as found in Adesanya's case. The facts of the case of *Fawehinmi*

[28]*Rabiu v The Sate* (1980) 1 LRLR, Vol. 1 at P. 128, where the question is whether the Constitution has used an expression in the wider or narrower sense, the court should always lean where the justice of the case so demands to the broader interpretation unless there is something in the content or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose. The court held that the mere fact that Abraham Adesanya took and subscribed to the oath did not give him the standing to challenge the validity of the appointment.
[29] (n1) 42
[30](1986) 5 NWLR (Pt 18) 669.
[31]Ibid
[32]Ibid
[33]Ibid
[34]Ibid
[35]Ibid
[36](2002) 7 NWLR (Pt 777) 606.
[37](2019) 5 NWLR (Pt 1666) 518

v IGP are simple and straightforward. The appellant, Gani Fawehinmi, took out a writ of summons against the respondents, claiming amongst others, an order of mandamus compelling the Police to investigate the applicant's complaint of false statement on oath and false declaration made under oath by Mr. Bola Ahmed Tinubu, who became the governor of Lagos State. [38]In reaction to the originating summons, the respondents filed a preliminary objection, predicated on two fundamental grounds, which are that:

a. The applicant had no *locus standi* to sue for the reliefs, as no civil rights and obligations of the applicant under section 6(6) of the 1999 Constitution are in issue to warrant involving in the jurisdiction of this Honourable Court.
b. By virtue of Section 308(1)(a)(b)(c) and 3 of the 1999 Constitution of the Federal Republic of Nigeria which relates to the constitutional immunity of the Governor, the reliefs sought by the applicant, if granted, will contravene the above constitutional provision.[39]

The appellant filed a counter affidavit thereto. After hearing of the objection, the court held that the appellant has the *locus standi* to institute the action. Thus, the 1st Respondents could not be compelled by mandamus to investigate Mr. Tinubu, as he was the Governor of Lagos State and was protected by Section 308 of the 1999 Constitution.[40] Dissatisfied, the appellant appealed to the Court of appeal on several grounds. The respondents filed a notice of cross-appeal. The Court of Appeal, in a well-considered judgment, held among others, as follows:

a. That although the respondents have a discretion in matters of crime investigation, they were not precluded by section 308 of the 1999 Constitution from investigating allegations of crime committed by persons occupying the offices named therein;
b. That in the circumstances, no order of mandamus compelling the respondents to investigate the allegations made against Mr. Bola Ahmed Tinubu would be made;
c. That the appellant had the locus standi to institute the action; and
d. That Exhibits 'GF1', 'GF2' and 'GF3' which were admitted by the trial court were not admissible being uncertified public documents, they were not necessary materials for determination of the questions raised in the action.[41]

On the whole, the Court of Appeal allowed the appeal in part, and dismissed the cross-appeal. Dissatisfied, the appellant further appealed to the apex court. The Supreme Court, in a well-considered judgment, inter alia, held:

> The authorities are to the effect that a person who seeks an order of mandamus must, among other things, show that he has a legal right to ensure the performance of a duty. Admittedly, the issue of locus standi of an applicant is not without difficulties. It would appear that such locus standi may depend on two alternative factors:

a. Either that the applicant must have a specific legal right to enforce, or a specific legal right to the enforcement of, the duty.[42]
b. Or, that the applicant has a sufficient legal interest or an interest more substantial than the general interests of other members of the community or interest group to which he belongs, or that is specially aggrieved by the non-performance of the duty more than other members of the public generally.[43]

Although the Supreme resolved issue 4 formulated on *locus standi* against the appellant for failure to establish that he has a specific legal right to enforce or to the enforcement of police duty, this case is, nevertheless, regarded as a case that has expanded the scope of judicial review beyond the earlier holding in Adesanya's case. This is because of the new dimensions introduced by the Supreme Court as exemplified in the foregoing holding above. Quite recently, in 2019, the Supreme Court in *Centre for Oil Pollution Watch v NNPC*[44] deprecated strict adherence to the principle of locus standi, especially in circumstances where the alleged committer of the public nuisance is the government itself or a statutory corporation.[45] In such instances, can the Attorney General, who in all cases against the government is the *dominus litis* (master of lawsuit) and is always sued *virtute officii* (by virtue of his office) as a representative of the government, proceed against the government or the statutory corporation of the government? A brief sum of the facts of this case is relevant for the determination of this question. In this

[38](n 36) 628
[39] Ibid 629
[40] Ibid 630
[41] Ibid 636
[42]*R v The Guardian of Lewisham Union* (1897) 1QB 498; *R v Leicester Guardians* (1899) 2QB 632; *R v Customs and Exercise Commissioners ex parte Cook* (1970) 1 WLR 450 at 455.
[43]*R v The Assessment Committee of the City of London Union* (1907) 2 KB 764.
[44](2019) 5 NWLR (Pt 1666) 518.
[45] Ibid

case, the appellant sued the respondent at the Federal High Court, Lagos, claiming, amongst others, reinstatement, restoration and remediation of the impaired or contaminated environment in Acha autonomous community of Isukwuato Local Government Area of Abia State, particularly the Ineh and Aku streams which environment was contaminated by the oil spill caused by the respondent's negligence.[46]

On the one hand, in the Statement of Claim, the appellant was described as a Non-Governmental Organization (NGO) registered in accordance with part C of the Companies and Allied Matters Act (CAMA) which, amongst others, is saddled with the responsibility of ensuring reinstatement, restoration and remediation of environments impaired by oil spillage/pollution, particularly environments that belong to no-one.[47] On the other hand, the respondent was described as a corporation established by an Act of Parliament and carries on business of prospecting, mining, producing, exploring, and storing persistent hydrocarbon mineral oil such as crude hydrocarbon oil and so on. It has offices, oil installations, oil pipelines, oil rigs and so on in different parts of Nigeria.[48] The appellant pleaded that, twenty-five years ago, the respondent constructed and laid oil pipelines in the affected communities for oil mining and production, which have now outlived their usefulness. As a result of the sea water and other factors, they started emitting strange oily substances (hydrocarbon) and other toxic substances that are not only harmful to the people of the affected areas, but also causing serious environmental pollution.[49] The respondent denied the allegation in its Statement of Defence and also filed an application requesting that trial be set down for hearing the point of law raised in its defence which challenged the *locus standi* of the appellant to institute the action. The respondent sought an order striking out the suit in limine. After hearing the application, the trial court, in its ruling, determined the point of law in the respondent's favour and held that the appellant lacked the *locus standi* to sue and struck out the suit. Dissatisfied with the ruling of the trial court, the appellant appealed to the Court of Appeal. The Court of Appeal upheld the judgment of the trial Court and also dismissed the appeal on ground of lack of *locus standi*.

The appellant, still dissatisfied, appealed to the Supreme Court. In determining the appeal, the Supreme Court invited five *amici curiae* to address it on 'Extending the Scope of Locus Standi in relation to Issues on Environmental Degradation: the case of NGOs'. The Supreme Court considered relevant provisions of the African Charter on Peoples and Human Rights (Ratification and Enforcement) Act[50], the Constitution of the Federal Republic of Nigeria, 1999,[51] as amended, and Section 17(4) of the Oil Pipelines Act.[52] In the final analysis, the Supreme Court reasoned that it was absolutely necessary to further expand and extend the scope of application of the principle of *locus standi*.[53] On the need to liberalize the application of the principle of *locus standi*, the Supreme Court held:

> The Courts are not alone on this development. Other common law jurisdictions have followed that pattern. In India, the Supreme Court without any statutory enactment, but rather for the overall need to do justice, generally, liberalized the traditional rule on *locus standi* with respect to environmental degradation, since, in the court's view, maintaining a clean environment is the responsibility of all persons in the country.[54]

[46] Ibid
[47] Ibid
[48] Ibid
[49] Ibid
[50]Article 24 of the African Charter on Peoples and Human Rights (Ratification and Enforcement) Act provides: 'people shall have the right to general satisfactory environment favourable to their development'.
[51]Sections 20 and 33(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended provide: 'The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of the country; Every person shall have the right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria'.
[52]Section 17(4) of the Oil Pipelines Act provides: 'Every licence shall be subject to the provisions contained in this Act as in force at the date of its grant and to such regulations concerning public safety, the avoidance of interference with works of public utility in, over and under the land included in the licence and the prevention of pollution of such land or any waters as may from time to time be in force'.
[53]The Supreme Court held: True to Diplockian prediction, English Courts have extended the meaning of locus standi and the aforementioned determinant principle in appropriate cases, *Reg. v Inland Revenue Commissioners, Ex Parte National Federation of Self-Employed and Small Business Ltd* (1982) AC 617 639;paragraph H; *Reg v Foreign Secretary of State for Foreign and Common Wealth Affairs, Exp parte World Development Movement Ltd* (1995) 1 WLR 386; *R v Inspectorate of Pollution and Anor, Ex Parte Greenpeace Ltd.(No.2) (1994) All ER 329; R v Somerset County Council and ARC Southern Ltd, Ex Parte Dixon (1998) Environment* LR 111; *R v Secretary of State for Foreign and Common Wealth Affairs, ex parte World Development Movement Ltd* (1995) 1 All E.L.R 611, 620 where an NGO was held to have *locus standi*.
[54]*Maharaj Signh v State* UP AIR 1976 SC 2607; *Raflam Municipal Council v Vardhichard*, AIR 1980 SC 1622; *S P Gupta v Union of India*, AIR 1982 SC 149, 189.

The Supreme Court concluded its decision on the liberalization approach to the application of *locus standi* when, finding for the appellant, it held:

> In all, then, I take the humble view that, in environmental matters, such as the instant one, NGOs, such as the plaintiff in this case, have the requisite *standi* to sue. After all, as Dr. Thio (supra) opined, and I agree with the erudite author, the 'judicial function (is) primarily aimed at preserving legal order by confining the legislative and executive organs of government within their powers in the interest of the public (*jurisdiction de droit objectif*). Against this background, I hold that the lower courts erred in law. I, therefore, enter an order allowing this appeal. The matter shall, forthwith, be remitted to the Chief Judge of the Federal High Court for re-assignment to another judge of that court for expeditious hearing and determination. Appeal allowed.

It is to be observed that the counsel in the above case did not draw the attention of the Supreme Court to its earlier decision of *Adediran v Interland Trans. Ltd*[55], wherein it expressed the position that a private individual has the *locus standi* to sue for tort of nuisance in his own name in respect of injury sustained by him, from a public nuisance. He, however, cannot not do so in all other cases involving relator actions without the sanction of the Attorney General of the Federation. In fact, the Attorney General of the Federation, who is the defender of the public right, has to be joined. The Supreme Court held:

> It is well settled that a nuisance whether public or private is an injury which confers on the person affected a right of action. Even where the private individual brings action as the relation of the Attorney General, he must disclose a right of action on his own account. The Attorney General is merely a nominal party. In reality, it is the civil rights and obligations of the person who has sustained the injury that is in issue. Hence, the circumstances, even an injury to the public may also constitute injury to the individual. The burden is on the individual to establish his injury. [56]

This position will not stand in situations where it is the government or any of its agencies that is the defendant. The Attorney General cannot be joined as a plaintiff and still defend the government or the government agency involved. It is our view that *Adediran's* case belongs to the restrictive position of the application of *locus standi*, since for relator actions, the Attorney General must be joined as plaintiff. Fortunately, the current decision of the Supreme Court in *Centre for Oil Pollution Watch v NNPC* (supra), has not only addressed the issue of restrictive application of *locus standi*, but has also solved the problem of the Attorney General, the Chief Law officer of the Federation, being a plaintiff against the government or its agency. This paper further holds the humble view that since the case of *Adesanya v President, Federal Republic of Nigeria* was brought to the attention of the apex court and it still rendered a decision in favour of liberalization of the application of *locus standi*, even if *Adediran's* case had been brought to its attention, its decision would not have been different. *Adedeiran's* case was decided in 1991. It is submitted that it is safe to conclude that *Adediran's* case belongs to the archaic restrictive position, which no longer holds sway. It is clear that the Supreme Court, without saying so expressly, has deliberately shifted from the shackles of narrow and restrictive application of *locus standi*, which hitherto had served technical, rather than substantial justice.

From the foregoing, it is established that the current position of the apex court with regard to the principle of *locus standi* is that of liberalization of its application. This is primarily because, over the years, many cases that have merit have been unfortunately struck out by the Supreme Court on the ground of strict application of the principle of *locus standi*. This has always been a cloak in, or an impediment to, the realization of justice, which is the sole constitutional mandate of the judiciary. It is a clear case of sacrificing the interest of just on the altar of technicality. Before concluding this work, it is considered apt, to observe that, what is today the current trend of liberalization in Nigeria featured in England as far back as 1982, when the Nigerian judiciary was clinging tenaciously to arid dogmatism. The case of *R v Inland Revenue Commissioner ex p. National Federation of Self Employed and Small Businesses Ltd*.[57]is illustrative. In the case, the House of Lords held, amongst others, that in line with the current judicial approach to judicial review sufficient interest was given the widest possible meaning while reserving to the court a discretion in particular cases to refuse a hearing or deny a remedy.

4. Conclusion and Recommendations

This paper has indubitably attempted to re-evaluate the jurisprudence of the Supreme Court of Nigeria on the application of the principle of *locus standi*. It has, among others, considered the concept of *locus standi*, its earlier

[55] (1991) 9 NWLR (Pt. 214) 155.
[56] Ibid 180
[57] (1982) A.C. 617.

dogmatic application in Adesanya's case and Thomas' case and the liberal application in the subsequent cases of *Fawehinmi* and *Centre for Oil Pollution Watch.* In a similar vein, the work has also established that the Supreme Court has to advocate for the liberal approach to the application of the concept of *locus standi* in public interest litigations primarily to enhance smooth, effective and efficient dispensation of justice devoid of the rigours of technicality of the principle of *locus standi*. Much as the standing of litigants has to be screened to weed off mere busy bodies, the application of *locus standi* ought to be liberalized in order not to deny access to court and justice to genuine litigants.mIn the light of the foregoing, the following recommendations are pertinent:

i. The continuous application of the liberalized approach to the application of the principle of *locus standi* in public interest litigations by the Supreme Court will, no doubt, enhance the role of NGOs, human rights activists and advocates with regard to litigating socio-economic matters that affect the poor.[58] This is so because public spirited individuals and NGOs often have the resources and expertise to litigate on issues that affect the poor but are denied the locus or standing to institute an action in court on such issues.[59] In fact in other climes,[60] the constitutions specifically accorded *locus standi* to NGOs and other individuals, by allowing individuals and groups to apply to Court for the enforcement of the human rights of others.

ii. The liberalization approach to the application of the principle of *locus standi*, just like the Supreme Court has made it clear in the Cenre for Oil Pollution Watch case, will make the Attorney –General not to be the *dominus litis* in public interest litigations. This is so because the Attorney General is, by virtue of his office, the representative of the government. Where the defendant alleged to be the committer of the public nuisance is the government or a public corporation, the Attorney –General, quite naturally, for political exigencies, and as a party interested, may be reluctant to go to court against the government, as he who pays the piper dictates the tune.

iii. The liberalized approach to the application of the principle of *locus standi* should be included in the Constitution of the Federal Republic of Nigeria, 1999, as amended, as it is the case in other climes. For example, Article 2 of the Ghanaian Constitution provides as follows:

1. A person who alleges that:
   (a) an enactment or anything contained in or done under the authority of that or any other enactment;
   (b) any act or omission of any person is inconsistent with or in contravention of a provision of this Constitution may bring an action in the Supreme Court for a declaration to that effect.
2. The Supreme Court of Ghana shall, for the purposes of declaration under Clause (1) of this article, make such orders or give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made.[61]

iv. Although in Nigeria, the Fundamental Rights (Enforcement Procedure) Rules 2009, which replaced the Fundamental Rights (Enforcement Procedure) Rules, 1979, provides among others, that *locus standi* is irrelevant in fundamental rights matters, it is recommended that the Nigerian Constitution should be amended to liberalize the application of *locus standi* in other public interest litigations. This will, no doubt even be in tandem with the biblical exhortation that 'Bear ye one another's burdens, and so fulfill the law of Christ'.[62]

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[58]M Eliantonio & N Stratevia, *'The Locus Standi of Private Applicants Under Article 230(4)EC Through a Political Lens' Maastricht Faculty of Law Working Paper 2009/13 4. See also Juma, D, 'Access to African Court on Human and Peoples Right: A Case of Poacher turned Gamekeeper' Essex Human Rights Review (2007) (4)(2) 15.*

[59]N Themudo, 'NGOs and Resources: Getting A Closer Grip on A Complex Area'German Law Journal (2000) (14) (01) 289.

[60]Article 22 of the 2010 Constitution of Kenya provides: 1. Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. 2. In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by – a) a person acting on behalf of another person who cannot act in their own name; b) a person acting as a member of, or in the interest of, a group or class of persons; c) a person acting in the public interest; or d) an association acting in the interest of one or more of its members. Section 38 of the Constitution of South Africa, 1996, provides that: Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened and the court may grant appropriate relief, including a declaration of rights. The persons who may approach the court are – a) anyone acting in their own interest; b) anyone acting on behalf of another person who cannot act in their own name; c) anyone acting as a member of, or in the interest of, a group or class of persons; d) anyone acting in the public interest; and e) and association acting in the interest of its members. Section 32(2) of the Constitution of the Federal Republic of Uganda, 2006, provides: Any person or organization may bring an action against the violation of another person's group's or group's human rights.

[61] The Supreme Court of Ghana in *Sam (No. 2) v. Attorney General* (2000) SCGLR 305 held that any citizen of Ghana is entitled to invoke Article 2 of the Constitution for interpretation or enforcement of the Constitution without the requirement of establishing a special interest in the outcome of the case. Thus, every citizen has an inherent right to enforce the Constitution.

[62]Galatians 6:2