

1. GOVERNMENT OF KOGI STATE
 2. KOGI STATE HOUSE OF ASSEMBLY
 3. THE GOVERNOR OF KOGI STATE
 4. ATTORNEY-GENERAL, KOGI STATE
- V.
1. ADAVI LOCAL GOVERNMENT COUNCIL
 2. OKEHI LOCAL GOVERNMENT COUNCIL
 3. OKENE LOCAL GOVERNMENT COUNCIL
- COURT OF APPEAL
(ABUJA DIVISION)

C A/A/147/2002

IBRAHIM TANKO MUHAMMAD, J.C.A. (Presided and Read the Leading Judgment)
ZAINAB ADAMU BULKACHUWA, J.C.A.
MARY PETER ODILI. J.C.A

THURSDAY, 16TH JUNE, 2005

ACTION - Locus standi - Locus standi of a party - Determination of - Relevant document court looks at - Need for pleadings to disclose civil rights of plaintiff breached or sufficient legal interest.

ACTION - Locus standi - Meaning and requirement of. LOCUS STANDI - Meaning and requirement of locus standi.

LOCUST STANDI - Locus standi of a party - Determination of -Relevant document court looks at - Need for pleadings to disclose civil rights of plaintiff breached or sufficient legal

PRACTICE AND PROCEDURE - Locus standi - Locus standi of a party - Determination of - Relevant document court looks at -Need for pleadings to disclose civil rights of plaintiff breached or sufficient legal interest.

PRACTICE AND PROCEDURE - Locus standi - Meaning and requirement of.

PRACTICE AND PROCEDURE - Locus standi to sue - What party must allow establishing.

PRACTICE AND PROCEDURE - Meaning and requirement of locus standi.

WORDS AND PHRASES - Locus standi - Meaning and requirement of.

Issue:

Whether the respondents have locus standi to institute the action against the appellants.

Facts:

Sometime in March 2002, the defendants/appellants announced the creation of additional 25 local government's councils and this brought the number of local government councils to 46 in Kogi State. This was consequent upon the passing into law of a bill under the 1999 Constitution creating the said local government councils and the assenting to the said bill by the 3rd appellant.

The respondents then took out an originating summons before the High Court of Kogi State holden at Okene. The respondents claimed in their originating summons, inter alia, that the provisions of the Kogi State Local Government Law, 2002 in so far as its provisions do not conform with the mandatory provisions of sections 3(6), 7(1)

& (2) and section 8(3), read in conjunction with Part 1 of the 1st Schedule of the Constitution of the Federal Republic of Nigeria, 1999 is unconstitutional, null, void and of no effect whatsoever.

In the affidavit in support of their originating summons, the respondents contended that they neither demanded the creation of new local government areas nor was any referendum held before their purported creation. The respondents contended that they have become adversely affected by the creation of the purported new local government as the revenue accruable to them (i.e. the respondents) has been substantially reduced.

The respondents' motion on notice for an interlocutory injunction restraining the appellants from implementing the provisions of the Kogi State Local Government Law, 2002 was refused by the trial court.

The appellants thereafter raised a preliminary objection to the originating summons on the ground that the respondents have no locus standi to institute the action. The trial court dismissed the preliminary objection.

The appellants being dissatisfied with the ruling of the trial court appealed to the Court of Appeal.

Held (Unanimously dismissing the appeal):

1. **On Meaning and requirement of locus standi** – Locus standi means standing to sue. It is basic and fundamental because if a person lacks it, he becomes a busy body with no sufficient legal interest in the matter being adjudicated in court. Such a person has no right to be entertained or granted audience by a competent court. (P. 336, paras. G-H)
2. **On Relevant material for determining locus standi of a plaintiff** - In ascertaining whether a party, especially plaintiff, has locus standi in an action, the pleadings, that is, the statement of claim, must disclose a cause of action vested in the plaintiff, and the rights and obligations or interests of the plaintiff which have been violated. Where the action is by originating summons, as in this case, the affidavit evidence takes the place of pleadings. [Momoh v. Olotu (1970) 1 All NLR 117; Oloriode v. Oyebi (1984) 1 SCNLR 390; Adefulu v. Oyesile (1989) 5 NWLR (Pt.122) 377; Sokoto v. Dangaji (1998) 11 NWLR (Pt. 575) 656; Busari v. Oseni (1992) 4 NWLR (Pt.237) 557; Klifco Ltd. v. Phillip Holzmann A. G. (1996) 3 NWLR (Pt. 436) 276 referred to.] (P. 336-337. paras. H-B)

Per MUHAMMAD, J.C.A. at pages 338-339, paras. H-E:

"In his ruling, the learned trial Judge, held, inter alia –

'Since the cause of action or the subject-matter of the originating summons has to do with the constitutionality or otherwise of the law creating new local government areas, the plaintiffs who are complaining that their areas have been affected are best suited to bring this action. If they don't have locus standi, no one else could possibly have.

The plaintiffs have shown by their originating summons that they have sufficient interest in instituting this action. The plaintiffs have sufficient justiciable interest to give them standing. Whether the plaintiffs are described as Local Government Councils or Local Government Areas, they have locus standi or standing to litigate the constitutional questions raised in their originating summons.'

The learned trial Judge supported his decision with the case of *Adesanya v. The President (supra)*. Thus from the totality of the above, I am convinced that the respondents have shown sufficiently that their personal interest has been adversely affected by the action of the appellants. Their pecuniary interest has also been shown to be affected. I found that the respondents have met all the requirements for locus standi as set out by the Supreme Court in the case of *Adesanya v. The President (supra)*. I am satisfied that the learned trial Judge took the right decision."

Nigerian Cases Referred to in the Judgment:

Adefulu v. Oyesile (1989) 5 NWLR (Pt.122) 377
Adesanya v. President, F.R.N. (1981) 2 NCLR 358
Busari v. Oseni (1992) 4 NWLR (Pt.237) 557
Klifco Ltd. v. Philipp HolzmannA.G. (1996) 3 NWLR (Pt.436) 276.
Momoh v. Olotu (1970) 1 AH NLR 117
Odeneye v. Efunuga (1990) 7 NWLR (Pt.164) 618
Olawoyin v. A.-G., Northern Nigeria (1961) 2 SCNLR 5
Oloriode v. Oyebi (1984) 1 SCNLR 390
Owodunm v. Registered Trustee (2000) 10 NWLR (Pt.675) 315
Sokoto v. Dangaji (1998) 11 NWLR (Pt.575) 656

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria 1999, Ss. 3(6), 7(1), (2), 8(3), part 1 of the 1st Schedule Kogi State Local Government Law, 2002

Appeal:

This was an appeal against the ruling of the High Court which dismissed the preliminary objection of the appellants challenging the locus standi of the respondents. The Court of Appeal, in a unanimous decision, dismissed the appeal.

History of the Case:

Court of Appeal

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

Names of Justices that sat on the Appeal: Ibrahim Tanko Muhammad, J.C.A. (Presided and Read the Leading Judgment); Zainab Adamu Bulkachuwa, J.C.A.; Mary Peter Odili, J.C.A

Appeal No: CA/A/147/2002

Date of Judgment: Thursday, 16th June, 2005
Names of Counsel: Appellants and counsel absent
K. K. Eleju, Esq. (with him. S. A. Oke, Esq.) -for the Respondents

High Court:

Name of the High Court: High Court of Kogi State, Okene

Counsel:

Appellants and counsel absent

K. K. Eleja, Esq. (with him, S. A. Oke, Esq.) - for the Respondent

I.T. MUHAMMAD, J.C.A. (Delivering the Leading Judgment):

By an originating summons, the plaintiffs before the Kogi State High Court of Justice holden at Okene (lower court) raised the following questions for determination -

- "(i) Whether the 2nd defendant could purport to pass a bill creating additional local government in Kogi State without strict adherence to the provisions of sections 3(6), 7(1) & (2) and 8(3) of the Constitution of the Federal Republic of Nigeria 1999.
- (ii) Whether the 3rd defendant could purport to assent to a bill purportedly passed by the 2nd defendant in clear contravention of the provisions of sections 3(6), 7(1) & (2) and 8(3) of the Constitution of the Federal Republic of Nigeria 1999.
- (iii) Whether the defendants jointly and severally could purport to carry out or give effect and or implement the provisions of any law purporting to create new local government councils in Kogi State in clear contravention of the mandatory provisions of sections 3(6), 7(1) & (2) and 8(3) of the Constitution of the Federal Republic of Nigeria 1999.
- (iv) Whether the provisions of the Kogi State Local Government Law 2002 creating new local government councils in clear contravention of the Federal Republic of Nigeria 1999 (sic) are valid, extant and enforceable,
- (v) Whether in any event the defendants could in the purported execution of the law creating new local government councils in Kogi State defeat, take away, abrogate, delimit or in any other manner affect adversely the accrued rights of the plaintiff to their just due from the Federation account and the state's accruable revenue due to them."

Dependent on the above questions, the plaintiffs made the following claims: -

1. Declaration that the provisions of the Kogi State Local Government Law 2002 in so far as its provisions do not conform with the mandatory provisions of sections 3(6), 7(1) & (2) and section 8(3) read in conjunction with part 1 of the first schedule of the Constitution of the Federal Republic of Nigeria 1999 is unconstitutional, null, void and of no effect whatsoever.
2. Declaration that the defendants jointly and severally could only lawfully, legally and constitutionally execute, give effect to and to implement only laws validly passed and assented to in accordance with the provisions of the 1999 Constitution of the Federal Republic of Nigeria.
3. Declaration that the provisions of Kogi State Local Government Law 2002 are inconsistent with and are breaches of the mandatory provisions of sections 3(6), 7(1) & (2) and 8(3) of the 1999 Constitution and to that extent are unconstitutional, ultra vires the powers of the defendants, null and void ab initio.
4. Order of this honourable court setting aside all the offensive sections of the Kogi State Local Government Law 2002 in so far as they are inconsistent with the

provisions of section 8(3) of the 1999 Constitution of the Federal Republic of Nigeria.

5. Perpetual injunction restraining the defendants by themselves, their agents, privies, servants or any other person howsoever deriving authority and or power from them or at their behest from further giving effect to, implementing, enforcing or in any other manner take steps to actualize the provisions of the Kogi State Local Government Law 2002 to the disadvantage, detriment and or against the interest of the plaintiffs."

A motion on notice was filed before the lower court on 23/5/2002 and the motion was asking for an interlocutory injunction restraining the defendants from further giving effect to implementing, enforcing or in any manner take steps to actualize the provisions of the Kogi State Local Government Law 2002 in so far as those provisions affect, concern, derogate from the accrued rights of the plaintiffs to their detriment or disadvantage pending the final determination of the substantive matter. After taking arguments on this motion, the learned trial Judge refused to grant interlocutory injunction and made an order for speedy trial of the substantive matter which was adjourned to 25/7/2002 for hearing.

On 25/7/2002, learned SAN for the plaintiffs showed his readiness to go on with the case, though he was served at about 8.45am with a counter-affidavit to the originating summons and a notice of preliminary objection. This notwithstanding, learned SAN showed his readiness to go on with the preliminary objection, Learned counsel for the defendants as well showed his readiness to go on with his preliminary objection. The lower court looks the preliminary objection on the day and reserved ruling for 8/8/2002.

On 8/8/2002, ruling was delivered by the learned trial Judge in which he overruled the preliminary objection and adjourned the p substantive case for hearing on 25/9/2002.

It is against that ruling the defendants now as appellants filed their notice of appeal to this court. The notice of appeal contained one ground of appeal.

In their brief of argument, the appellants formulated the following issue for determination.

"Whether the respondents herein have locus standi to institute the action against the appellants."

The respondents filed their brief too. They formulated the following issue:

"Whether the trial court was not right in its conclusion that the respondents possessed the requisite locus standi to institute this action."

Let me briefly state the salient facts as contained in the record of appeal which give rise to this case. Sometime in March 2002, the defendants/appellants announced the creation of additional 25 local government's councils and this brought the number of local government councils to 46 in Kogi State. This was consequent upon the passing into law of a bill under the 1999 Constitution creating the said local government councils and the assenting to the said bill by the 3rd appellant.

The respondents on 22nd May 2002, instituted an action (by way of an originating summons) at the Kogi State High Court, Okene, to challenge the creating of the 25 new local government councils in the state by the state government. In the affidavit in support of their originating summons, the respondents contended that they neither demanded the creating of new local government areas nor was any referendum held before their

purported creation. The respondents contended that they have become adversely affected by the creation of the purported new local government as the revenue accruable to them (i.e. the respondents) has been substantially reduced.

The appellants filed a joint counter-affidavit to the respondents' originating summons and also filed a notice of preliminary objection to the jurisdiction of the court on the grounds, inter alia, that the respondents have no locus standi to institute the action.

While making submissions on the issue formulated, learned counsel for the appellants argued that for the respondents to have judicial power to determine the constitutionality of a legislative or executive action, they must show that they have some justiciable and sufficient interest which will be affected by the action or that they will suffer an injury as a result of the action. *Owodunni v. Registered Trustee* (2000) 10 NWLR (Pt. 675) 315, (2000) 6 SCNJ 399 at 416, was cited in support. Learned counsel for the appellants submitted further that the respondents in the affidavit annexed to their originating summons had not shown that they were in imminent danger of coming into conflict with the Kogi State Local Government Law, 2002, which they challenged. They have failed to show that they have sufficient interest to sustain their claims. Case of *Olawoyin v. A.-G., of Northern Nigeria* (1961) 2 SCNLR 5, (1961) 2 NSCC 165 was referred to. He further argued that the respondent must go further to show that the injuries they were in danger of sustaining will be over and above the injury to be suffered by the general public. The respondents failed to show that and failed as well, to show the injuries to be suffered by all the other 46 local government councils of Kogi State as the injuries complained about by the respondents were common to and affected all (the local government councils in the State. He cited and relied on the case of *Adesanya v. President of the Federal Republic of Nigeria & An or.* (1981) 2 NCLR 358, (1981) 12NSCC 146. Learned counsel urged this court to allow the appeal.

The submissions of learned SAN for the respondents are as follows: in determining issue of locus standi, the court limits its search to the claim of the plaintiff as set out in the statement of claim or the supporting affidavit in case of a case instituted through originating summons/motion. Several authorities were cited among which is *Busari v. Oseni* (1992) 4 NWLR (Pt.237) 557. Learned SAN argued that paragraphs 2, 3, 4, 5, 7, 8, and 9 of the affidavit in support of the originating summons clearly demonstrated the interest and the detriment that the creation of additional local governments has caused the respondents. The Constitution of the Federal Republic of Nigeria recognized only 21 local government areas in Kogi State which share the revenue accruable to local governments in Kogi State from the Federation account. Other detriments effects caused by the creation of those additional local government areas were stated in details by the respondents. He argued that the respondents had the locus standi to have instituted the action. The respondents have shown that their personal interest had been adversely affected by the action of the appellants. So also their pecuniary interest. Learned SAN supported his submissions with several cases such as *Adesanya v. The President* (1981) ANLR (Reprint) 1 at page 7; *Owodunni v. Registered Trustees of CCC* (supra) *Odeneye v. Efunuga* (1990) 7 NWLR (Pt.164) 618 etc. He stated that the case of *Olawoyin v. A.-G., Northern Nigeria* (supra) cited by the appellants is in apposite to the facts of this appeal. He urged this court to dismiss the appeal and uphold the decision of the trial court.

This appeal is on a narrow compass of locus standi. Locus standi as defined in the legal circle is standing to sue. It is basic and fundamental because if a person lacks it, he becomes a busybody with no sufficient legal interest in the matter being adjudicated in court. Such a person has no right to be entertained or granted audience by a competent court. In ascertaining whether a party, especially plaintiff, has locus standi in an action, the pleadings, i.e. the statement of claim must disclose a cause of action vested in the plaintiff and the rights and obligations or interests of the plaintiff which have been violated. See *Momoh v. Olotu* (1970) 1 All NLR. 117; *Oloriode v. Oyebi* (1984) 1 SCNLR 390; *Adefulu v. Oyesile* (1989) 5 NWLR (Pt.122) 377; *Sokoto v. Dangaji* (1998) 11 NWLR (Pt.575) 656; *Klifco Ltd. v. Philipp Holzmann A.G.* (1996) 3 NWLR (Pt.436) 276.

Where the action is filed before a court of law by an originating summons or motion as in this case, affidavit evidence takes the place of pleadings. It is clear from the affidavit in support of the originating summons sworn to by one Engineer Yakubu Mamman Khan, a political office holder at Local Government Secretariat Central Office, Okene, that -

- "1. That I am the elected chairman of the 3rd plaintiff and by virtue of my position I am very conversant with the facts of this matter and i have the authority of the Chairman and Council Leaders of all the plaintiffs to swear to this oath on their behalf.
2. That I know as a fact that under and by virtue of section 3 and Part I of the First Schedule of the Constitution of the Federal Republic of Nigeria 1999 there are 21 Local Government Councils in Kogi State recognized by the said Constitution and their names arc set out in the said Part I of the First Schedule of the Constitution.
3. That I know as a fact that the Chairmen of all the 21 local government councils were elected at the local government elections conducted in 1988 but we all assumed office after being sworn-in in 1999.
4. That I know as a fact that since we assumed office monies from the Federation account due to the local government in the State were distributed in accordance with the applicable law among the 21 recognized local governments.
5. That I know as a fact that accruable revenue to the 21 local governments was shared on the acceptable revenue formula operating in the Federation.
6. That I know as a fact that sometime in March 2002 the defendants announced the creation of additional 25 local government councils from the existing 21 and this brought the number of local government councils to 46 in Kogi State.
7. That i know as a fact that a new council by the name of Adavi East was created from the 1st plaintiff, a new Ihima Local Council was created from the 2nd plaintiff, while Esomi and Ageva Local Councils were created from the 3rd plaintiff.
8. That I know as a fact that since the said creation of the new councils from the plaintiffs and other local government councils in Kogi State, same has impacted negatively on the revenue accruable to the old councils

especially the plaintiffs herein whose share of the Federation Account has been reduced by the defendants in order to cater for the new councils.

9. That I know as a fact from my knowledge and interaction with the Chairmen and Legislative Leaders of the other plaintiffs that they never demanded for the creation of the new councils nor was any referendum held before the purported creation of the new councils.
10. That I know as a fact that after the announcement of the new councils, the mass of the people in the State rose against the exercise, especially the people of the plaintiff's councils.
- 11.....
- 12.....
13. That I know as a fact that in the purported creation of the new councils the 3rd defendant had allowed his personal interest to override his official interest of fairness and justice to the majority of the people of Kogi State.
14. That I know as a fact that the creation of the new councils was carried out to the detriment of the Kogi Central and West Senatorial Zones but to the advantage of the Kogi East Senatorial Zone from where the 3rd defendant comes from (sic).
15. That I know as a fact that the 3rd defendant was unfair, unjust and biased in the way and manner he earned out the purported creation of the new councils.

“In his ruling, the learned trial Judge, held, inter alia –

"Since the cause of action or the subject-matter of the originating summons has to do with the constitutionality or otherwise of the law creating new local government areas, the plaintiffs who are complaining that their areas have been affected are best suited to bring this action. If they don't have locus standi, no one else could possibly have.

The plaintiffs have shown by their originating summons that they have sufficient interest in instituting this action. The plaintiffs have sufficient justiciable interest to give them standing. Whether the plaintiffs are described as Local Government Councils or Local Government Areas, they have locus standi or standing to litigate the constitutional questions raised in their originating summons."

The learned trial Judge supported his decision with the case of *Adesanya v. The President* (supra). Thus from the totality of the above, I am convinced that the respondents have shown sufficiently that their personal interest has been adversely affected by the action of the appellants. Their pecuniary interest has also been shown to be affected. I found that the respondents have met all the requirements for locus standi as set out by the Supreme Court in the case of *Adesanya v. The President* (supra). I am satisfied that the learned trial Judge took the right decision. Accordingly, I find no merit in this appeal and same is hereby dismissed. I affirm the decision of the lower court. I make no order as to costs.

BULKACHUWA, J.C.A.: I have read before now the judgment just delivered by my learned brother Muhammad, J.C.A. I agree with his reasoning and the conclusion reached that the appeal

lacks merit. I dismiss same and affirm the decision of the lower court delivered on 8/8/2002. I make no orders as to costs.

ODILI, J.C.A.: I have read the draft of the judgment of my learned brother, I. T. Muhammad. I agree with the judgment and the reasons thereof. I too dismiss the appeal and I make no order as to costs.

Appeal dismissed.