

SUPREME COURT OF NIGERIA

10TH JUNE, 1994. SC. 233/1991.

**CORAM:- M. BELLO (CJN), M. L. UWAIS, A. B. WALI,
O. OLATAWURA, M. E. OGUNDARE, S. U. ONU,
Y. O. ADIO, JJSC**

LAWANI ADESOKAN & 3 ORS

(For themselves & as representatives

of Gbangbade Erun Family) 4TH-7TH DEFENDANTS/
APPELLANTS

AND

SUNDAY ADETUNJI & 2 ORS PLAINTIFFS/RESPONDENTS

(For themselves and on behalf of

Daodu Agba, Adekalu and Egbeomo Ruling

Houses of the Onitede of Tede Chieftaincy)

THE GOVERNOR OF OYO STATE & ORS 1ST-3RD & 2
DEFENDANTS/RESPONDENTS

APPEALS - *Conflicting precedents - Where Court of Appeal cannot decide the matter before it without a consideration of the conflicts - Whether such consideration was wrong.*

APPEALS - *Raising of new issues - That were never raised before the Court of Appeal - Where no leave was obtained - Whether the new issues should be struck out.*

JUDICIAL PRECEDENTS - *Obiter dictum - Pronouncement made in an earlier decision of the Supreme Court - That is found to be Obiter dictum - Whether a binding authority on any court.*

JUDICIAL PRECEDENTS - *Inapplicable precedents - Cases relied upon by the appellant - When declared not binding on the Supreme Court.*

JUDICIAL PRECEDENTS - *Ratio decidendi - Statements by Justices of the Supreme Court in a past decision - That constitute the reasoning or principle for the decision - Is binding on all courts.*

LOCUS STANDI - *Want of Locus Standi - Where the trial court*

86 ADESOKAN V. ADETUNJI (1994) 10 KLR 85; (1994) 5 NWLR
dismissed an action for want of Locus - Whether an order for striking out should be substituted.

PRACTICE & PROCEDURE - Discretion of courts - To dismiss an action under the Rules - Upon the raising of point of law - Where lack of locus standi is established - Whether the court should dismiss or strike out the action.

PRACTICE & PROCEDURE - Locus Standi - At whatever stage plaintiff is found to lack locus - Court's jurisdiction is affected - Striking out the action is the course open to the court.

FACTS

The Plaintiffs/Respondents sued the Defendants/Appellants before the Oyo State High Court Ibadan seeking some declarations and an injunction in respect of a Chieftaincy dispute. Upon the service of the statement of claim on the Defendants, they moved the trial court for an order striking out Plaintiffs' statement of claim and dismissing the action for Plaintiffs' lack of locus standi, court's want of jurisdiction and the statement of claim not disclosing any reasonable cause of action. The trial court found that the Plaintiffs have no locus standi and dismissed the suit. The Plaintiffs appealed to the Court of Appeal seeking to set aside the trial court's order or substitute a striking out order in place of the dismissal. The Court of Appeal after a review of various Supreme Court decisions allowed the appeal by ordering that the Plaintiffs' action be struck out. The Defendants/Appellants have now appealed to the Supreme Court to determine whether the proper order should be one of dismissal or striking out where the court held that a plaintiff had no locus standi. The apex court faced with the issue of stare decision had to analyse its two sets of conflicting decisions on the question before it in determining the correct binding judicial precedent.

HELD (Unanimously dismissing the appeal)

1. It is a complete misconception to say that the Court of Appeal could not, in the circumstance before the court, embark on a consideration of conflict between one decision of the Supreme Court and

another; there was no way that court could have come to a decision on the appeal before it without such a consideration. Nor could it be said that a new point was being raised before the Court of Appeal. (P.97 L6)

2. For those issues that were never raised before the Court of Appeal and as no leave of this Court has been sought and obtained to raise them in this court, it is incompetent for the Appellants to raise arguments on them in the manner they have done in their Brief. The point taken under issue 4 by Respondents' Counsel is well taken and consequently paragraphs 8, 9 and 10 on pages 15 and 16 of the Appellants' Brief are struck out. (P.98 L32)

3. *Gambioba & Ors. v. Esezi II & Ors.*, in so far as it pronounces on the consequential order to make where a plaintiff is held to have no locus standi to institute the action before the court, is not binding authority on this Court or any other court for that matter as that pronouncement is obiter dictum. (P. 103 L2)

4. None of the cases relied on by Appellants' Counsel constitutes any authority binding on this court in respect of the issue under consideration in this appeal. (P. 105 L7)

5. The statements made by the learned and noble justices (in *Oloride v. Oyebe*) went beyond obiter dicta; these statements constitute the reasoning or principle for the decision to strike out. The ratio decidendi in the case is that where a plaintiff is held to lack the locus standi to maintain his action, this finding goes to the jurisdiction of the court and denies it jurisdiction to determine the action; the proper order to make in such a situation is to strike out the action and not dismiss it. This decision is binding on this court as well as on all other courts below it. (P. 106 L36)

6. The rules give the courts the discretion to dismiss or otherwise. In view of the reason that lack of standing of the plaintiff (or where a proper defendant is not before the court) affects the jurisdiction of the court to adjudicate in the matter, the proper course, as held in *Oloriode & Ors. v. Oyebe* (supra) is to strike out the action. If the

court has no jurisdiction to adjudicate, it cannot dismiss the action (P.109 L20)

7. The court below is right to substitute an order striking out plaintiffs' action in this case instead of the trial court's order of dismissal of the
 5 action, it is immaterial that pleadings have been completed and full trial conducted. At whatever stage the finding is made that the plaintiff lacks locus standi to maintain the action, the jurisdiction of the court to entertain the action is affected and the course of action open
 10 is to put an end to it by striking it out (P.109 L27)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. The binding element in judicial precedents

15 "What is binding as precedent is not the concrete decision in the former case that is binding only between the parties to it, but the enunciation of the reason or principle upon which the question before the court has been decided. This reasoning or principle upon which the case is decided is known as the ratio decidendi. It constitutes the general reasons for the decision as distinct from the decision
 20 itself or the general grounds upon which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi of a case is ascertained by an analysis of the material facts of the case". (P.99 L34)
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2. When Supreme Court will depart from its previous decision

30 "This court ordinarily adheres to the principle of judicial precedent (stare decisis) and will hold itself bound by its previous decision. However, where it is satisfied that its previous decision is erroneous or was reached per incuriam and will amount to injustice to perpetuate the error, by following such decision it will overrule such decision or depart from it. I need point out that none of the parties herein has, in
 35 accordance with Order 6 rule 5(4) of the Rules of this court, invited us to depart from any of our previous decisions. Therefore, the question of departure from a previous decision does not arise in this case. What is in issue is: which of the two groups of cases relied on by either party is binding on this court as judicial precedent." (P. 101 L2)

3. Where several reasons led to the Court's decision in Momoh v. Olotu - Implications

"It is clear from the judgment of this court in the case, that lack of standing to sue was not the only reason for finding for the defendants. This court found, in addition, that there was no jurisdiction to entertain the claim, that the relief claimed was one which the court ought not to grant and that the statement of claim disclosed no cause of action. In view of these other reasons for refusing plaintiffs claim, it will not be correct, in my respectful view, to hold out the case as an authority for saying that where the only finding, as is in the case in hand, is that the plaintiff lacks locus standi to sue, the proper order to make is one dismissing the action." (P. 103 L33)

BELLO CJN

4. Lack of locus standi - Other factors could lead to dismissal instead of striking out - As in Momoh v. Olotu

"It is clear from the reasons given by the court for dismissing the action that absence of locus standi was only one of the three factors taken into account in dismissing the action. Having regard to the facts that the statement of claim did not disclose any cause of action and the plaintiff had slept for 10 years before filing the action, it is not surprising that the action was dismissed. Lack of locus standi cannot be said to be the reason for dismissing the action" (P.112)

5. Proper order to make where plaintiff has no locus standi

"In my view, upon the authority of OLORIODE v. OYEI (supra) and the cases that follow it, where a plaintiff fails to disclose his locus standi the proper order to be made by a court is to strike out his claim. Therefore, the Court of Appeal was right in striking out the action." (P.112 L32)

WALI JSC

6. Locus standi is the spring board of any action

"The spring board of any action before any court or judicial tribunal is the locus standi of the person instituting the action, because it is only then that he will be en clothed with the legal capacity to commence it. Where there is no capacity to commence the action, the proper order for the court to make is to strike it out. Also the same

thing will apply where the court lacks jurisdiction to entertain the matter. It has no option other than to strike out the action.” (P124L4)

ADIO JSC

7. Where a lower court is faced with conflicting decisions of the Supreme Court

“A lower court, such as the Court of Appeal or a High Court, faced with a situation in which there are conflicting decisions of this court on the same matter cannot undertake the difficult task of finding out how the conflict between the two or more sets of decisions should be resolved. The task of finding a solution is better left to this court which can make a definite and authoritative pronouncement on the matter, as it was done in the lead judgment of my learned brother, Ogundare, J.S.C., and can, if necessary, I overrule or depart from any of its earlier decisions.” (P122 L14)

REPRESENTATION:

K. Alawode Esq. for the Appellants.

Chief Bola Ige with I. Oladokun for Plaintiffs/Respondents.

20 O.A. Boade Esq. Ag. ADLAS Oyo State for 1st - 3rd Defendants/Respondents.

CASES REFERRED TO

25 Momoh v. Olotu (1970) 1 All NLR 117

Gambioba v. Esezi (1961) All NLR 585

Thomas v. Olufosoye (1986) 1 NWLR (Pt. 58) 587

Fawehinmi v. Akilu (1987) 4 NWLR (Pt. 67) 797

Adegoke Motors v. Adesanya (1989) 3 NWLR 250

30 Fawehinmi v. Akilu (1987) 4 NWLR (Pt. 67) 797

RULES REFERRED TO

Supreme Court Rules 1985 O.6 r.5 (4) & r.2

35 High Court of Oyo State Civil Procedure Rules O.24 rr. 1, 2, 3 and 4,

Lagos High Court Rules O. 22 r.4

LEAD JUDGMENT BY OGUNDARE JSC

By a Writ of Summons issued in May, 1987 the plaintiffs (who

are respondents herein) sued all the defendants including the 4th to the 7th defendants who are now appellants before us and shall hereinafter be so referred, claiming: “(a) *Declaration that according to the law, custom and tradition of Tede there are only Three ruling houses for the Onitede of Tede Chieftaincy.*

(b) *A declaration that the instrument dated 18th day of January, 1958 and registered on the 12th day of February, 1958, in so far as it purports to declare the customary law prevailing in Tede with respect to the appointment to the Onitede of Tede Chieftaincy is wrongful, illegal and void.*

(c) *Injunction restraining the first three defendants, their servants, officers and agents from inviting the Gbangbade Erun family to present a candidate for the vacant Onitede of Tede Chieftaincy, and from acting pursuant to or taking any steps to implement the aforesaid registered ‘declaration’.*

On the plaintiffs filing and serving their statement of claim on all the defendants including the appellants, the appellants moved the trial court for an order “striking out the plaintiffs/respondents’ statement of claim and dismissing this action” on the grounds:

“1. *The plaintiffs/respondents have no locus standi to institute this action.*

2. *This Honourable Court has no jurisdiction to entertain this action.*

3. *The plaintiffs/respondents’ Statement of Claim in this case discloses no reasonable cause of action and the action is embarrassing, frivolous, vexatious and an abuse of the process of the Court.”*

The learned trial Judge took arguments from counsel to the respective parties and in a reserved ruling held that the plaintiffs had not shown that they had an interest in the Onitede of Tede Chieftaincy. He further held that:- “The plaintiffs have no locus standi in this matter” and concluded:- “*Having held that the plaintiffs have no locus standi, that is the end of the suit and I am obliged to dismiss it. The suit filed by the plaintiffs is accordingly dismissed. (See generally, Chief Mrs. F.Akintola & Anor v. Mrs. C.FAD. Solano (1986) 2 NWLR (Pt.24) p. 598 per Oputa, J.S.C. at p. 623 of the Report.*”

Being dissatisfied with the order of dismissal of the action the plaintiffs appealed to the Court of Appeal upon the following ground:

“*The learned trial Judge erred in law when he held as follows:-*

‘Having held that the plaintiffs have no locus standi, that is the end of the suit and I am obliged to dismiss it. The suit filed by the plaintiffs is accordingly dismissed.’

Particulars- i. The suit had not been properly tried as pleadings had neither been completed nor evidence taken.

5 *ii. Having held that the appellants had no locus standi to institute the suit, the correct order to make was to strike out the suit and not to dismiss it.”* and sought the following relief from the court:

10 *“An order setting aside the trial Court’s order of dismissal and restoring the suit to the trial Court’s list for determination or alternatively, substituting an order striking out the suit in the place of the trial court’s order of dismissal”*

At the Court of Appeal, the parties filed and exchanged their respective briefs of argument and proffered oral arguments at the hearing of the appeal. In a reserved judgment the Court below [Sulu-Gambari, J.C.A. Ogwuegbu, J.C.A. (as he then was) and Akpabio, J.C.A.], after a review of various judgments of this Court allowed the appeal, set aside the order of dismissal made by the trial court and, in its stead, ordered that the plaintiffs’ action be struck out. Sulu-Gambari, 20 J.C.A. in his lead judgment concluded as follows: *“I come to the final conclusion therefore that where in a case in which the plaintiff is adjudged to have no locus standi, particularly when pleadings have not closed and evidence not yet adduced, the proper order to be made is to strike out the action. Where, however, as in the case of Momoh*
25 *v. Olotu (1970) 1 All NLR 117, it is established.*

(i) that the court has no jurisdiction like when the matter before the court being a Chieftaincy dispute is by the provision of the Constitution not justiciable;

30 *(ii) the statement of claim discloses no cause of action and (iii) the plaintiff does not have locus standi to institute the action, I am of the strong view that the proper order to be made in that circumstance ought to be a dismissal of the suit.*

35 *For the foregoing reasons therefore, the order of the lower court dismissing the suit filed by the appellants cannot stand. The appeal is allowed and that order is accordingly set aside. In its place, an order striking out the appellants’ suit is hereby decreed.”*

The appellants have now appealed against that decision on the following six grounds of appeal: *“(1) The Court of Appeal erred*

in law when it embarked on a consideration of a conflict between the decisions of the Supreme Court in the cases of (1) Gamioba & Ors v. Ezezi II & Ors (1961) 1 All NLR 548; (1961) 2 SCNLR 237 (2) Momoh & Anor v. Olotu (1970) 1 All NLR 117 and Thomas v. Olufosoye (1986) 1 NWLR (Pt.18) 669 on the one hand and the decisions of the Supreme Court in the cases of (1) Oloriode v. Oyebe (1984) 1 5 SCNLR 390; (1984) 5 S.C.1; (2) Otapo v. Sunmonu (1987) 2 NWLR (Pt.58) 587 and (3) Fawehinmi v. Akilu & Anor. (1987) 4 NWLR (Pt.67) 797 on the other when issues warranting the consideration of the conflict were not raised in the plaintiffs/appellants' ground of appeal and when the issues for determination in the two sets of cases 10 alleged to be in conflict are totally different from one another.

(2) The learned Justices of the Court of Appeal erred in law when they, in their lead judgment, held as follows:

'I come to the final conclusion therefore that where in a case in 15 which the plaintiff is adjudged to have no locus standi, particularly when pleadings have not closed and evidence not yet adduced, the proper order to be made is to strike out the action. Where, however, as in the case of Momoh v. Olotu (1970) 1 All NLR 117, it is established (I) that the Court has no jurisdiction like when the matter be- 20 fore the court being a Chieftaincy dispute is by the provision of the, Constitution not justiciable; (II) the statement of claim discloses no cause of action and (III) the plaintiff does not have locus standi to institute the action, I am of the strong view that the proper order to be made in that circumstance ought to be a dismissal of the suit.' 25

(3) The Court of Appeal erred in law in holding that in all the cases in which the Supreme Court made an order of dismissal for a failure to disclose a plaintiff's locus standi and in all the cases where the Court of Appeal followed the same stance neither the Supreme Court nor the Court of Appeal was invited to decide the appropriate 30 order to be made as was done in the case of Oloriode & Ors. v. Oyebe & Ors. (1984) 5 S.C. 1; (1984) 1 SCNLR 390.

(4) The Court of Appeal erred in law in following the decision of the Supreme Court in Oloriode & Ors v. Oyebe & Ors (1984) 5 35 S.C. 1; (1984) 1 SCNLR 390 and in refusing to follow (a) its own decisions in the cases of Thomas & Ors v. Olufosoye (1985) 3 NWLR (Pt. 13) 523 and Prince Asiru Maradesa v. Military Governor of Oyo State & Anor (1986) 3 NWLR (Pt.27) 125 and (b) the decisions of

the Supreme Court in Gamioba & Ors v. Esezi II & Ors (1961) 1 All NR 584; (1961) 2 SCNLR 237 Momoh & Anor v. Olotu (1970) 1 All NLR and Thomas & ors v. Olufosoye (1986) 1 NWLR (Pt. 18) 669.

(5) *The Court of Appeal erred in law in holding that where there are conflicting decisions of the Supreme Court on a point, the lower courts are free to choose which of the divergent decisions to be followed when in such a circumstance the lower courts are obliged to follow the later decision.*

(6) *The learned Justices of the Court of Appeal erred in law when they in their lead judgment, held as follows:-*

10 “What I ought to address my mind to in this case is how to resolve the authorities emanating from the decisions of Supreme Court on this aspect of our jurisprudence.” (The particulars are omitted).

The relief being sought in this Court is a restoration of the order of dismissal of plaintiffs’ claims. In accordance with the Rules of this Court the parties filed and exchanged their respective briefs of argument. The following four issues are set down in the appellants’ brief as arising for determination in this appeal, to wit:

20 “(1) *Whether the appeal lodged to the Court of Appeal in this case involved a consideration of the conflict between the decisions of the Supreme Court in the cases of Gamioba & Ors v. Esezi & Ors (1961) 1 All NLR 585; (1961) 2 SCNLR 237, Momoh & Anor v. Olotu (1970) 1 All NLR 117; Thomas & Ors v. Olufosoye (1986) 1 NWLR (Pt. 18) 669 and the decisions of the same Court in Oloriode & Ors v. Oyebi (1984) 5 S.C. 1; (1984) 1 SCNLR 390; Otapo v. Sunmonu & Ors (1987) 2 NWLR (Pt. 58) 587 and Fawehinmi v. Akilu & Ors (1987) 4 NWLR (Pt. 67) 797.*

30 2. *Whether the final conclusion which the Court of Appeal came to in this case was correct.*

3. *Were the learned Justices of the Court of Appeal correct in holding that unlike what was done in Oloriode & Ors v. Oyebi (supra), neither the Supreme Court nor the Court of Appeal was, in all the cases in which those courts made an order of dismissal for the plaintiffs’ failure to establish their locus standi to sue, invited to decide the appropriate order to be made in such a circumstance.*

4. *Whether the Court of Appeal was correct in not following its own decisions and the decisions of the Supreme Court to the effect that the claims of a plaintiff who has not locus standi to sue must be*

dismissed when the decisions were not overruled in Oloriode & Ors v. Oyebe & Ors (1984) 5 S.C. 1; (1984) 1 SCNLR 390 which the Court of Appeal followed and despite the fact that the Supreme Court in its later decision in Thomas & Ors v. Olufosoye (1986) 1 NWLR (Pt. 18) 669 held that an order of dismissal should be made."

For the plaintiffs/respondents the issues are differently formulated and are set out as hereunder:

"1. Whether the Court of Appeal was right when it held that the main issue in the appeal before it was the appropriate consequential order to make where a plaintiff was held not to have locus standi as a result of an application brought in limine when pleadings have not been completed and evidence not yet taken in the suit.

2. Whether the Court of Appeal was right in its approach to consider all the authorities relied upon by the parties in all their ramifications before reaching its decision.

3. Whether the Court of Appeal was correct when it held that where the plaintiff is adjudged to have no locus standi only particularly when pleadings have not closed and evidence not yet adduced, the proper order to be made is to strike out the action and not to dismiss it.

4. Whether issues not considered by the Court of Appeal and which do not form part of the appeal before it can be raised in this appeal."

In the brief filed on behalf of the 1st and 2nd defendants/respondents the only issue set out reads thus:-

"Whether the proper order in the judgment should be one of dismissal' or of 'striking out' where the court held that a plaintiff had no locus standi in relation to the reliefs he sought from the court."

Having regard to the judgment appealed against, I agree with learned counsel for the 1st and 2nd defendants/respondents that the main issue calling for determination in this appeal is as set out in his brief and I adopt it in my consideration of this appeal. Two minor issues raised in the appellants' brief and plaintiffs/respondents' brief will be considered presently before I go on to the main issue.

The appellants, both in their brief and in the address before us of their learned counsel, Mr. Alawode, contend that the court below was wrong to embark on a consideration of the conflict in the decisions of this Court in Amusa Momoh v. Olotu (1970) 1 All NLR 117;

Gamioba & Ors v. Esezi & Ors (1961) 1 All NLR 585; (1961) 2 SCNLR 237; Thomas & Ors v. Olufosoye (1986) 1 NWLR (Pt. 18) 669 on the one hand and our decisions in Oloriode & Ors v. Oyebe (1984) 1 SCNLR 390; (1984) 5 S.C. 1; Otapo v. Sunmonu & Ors (1987) 2 NWLR (Pt. 58) 587 and Fawehinmi v. Akilu & Ors (1987) 4 NWLR (Pt. 67) 797 on the other hand, because no issue of conflict was raised in the only ground of appeal to the court below and that no leave was obtained to raise an issue not raised in the trial court in the Court of Appeal. Mr. Alawode relies on Adegoke Motors v. Adesanya (1989) 3 NWLR (Pt. 109) 250 in support of his contention, particularly the dictum of Obaseki, J.S.C. at page 281 of the Report. This point is covered by issue 1 in the appellants' brief.

With profound respect to learned counsel, he is labouring under a complete misconception of the dictum of Obaseki, J.S.C. in that case. The learned and noble Justice of the Supreme Court had in his concurring judgment in Adegoke Motors v. Adesanya (supra) at page 281 said as follows:- *"It is not the business of the court to embark on a consideration of a conflict between one decision of the Supreme Court and another decision of the Supreme Court when issues warranting the consideration of the conflict are not raised in the grounds of appeal and when the facts of the two cases alleged to be in conflict are totally different from one another. Caution is a virtue that should not be dispensed with at any stage of the proceedings before any court. Dicta should not be taken and read out of context.*

The principles on the question of raising new points not previously raised in the trial court or Court of Appeal, i.e. courts below, are well settled. They include the requirements of leave of court to raise them and the satisfaction of the court that no further or additional evidence is required on the issues to be considered.

There is of course a total bar against new points designed to establish a case different from the one considered in courts below."

I can see nothing in the above passage that supports the submission of Mr. Alawode. In the plaintiffs' brief before the Court of Appeal, their learned counsel, in support of his contention that the proper order to make in the circumstance of the case on hand should be one striking out the action and not its dismissal, cited decisions of this Court in favour of his contention. In the brief filed on behalf of the present appellants (who were 4th - 7th defendants/respondents

in the court below), their learned counsel, Mr. Alawode cited decisions of this Court and of the Court of Appeal in support of the order of dismissal made by the trial Judge and proceeded to distinguish some of the cases relied on by the plaintiffs in their own brief. Both Chief Bola Ige for the plaintiffs and Mr. Alawode for the present appellants urged the court to accept each other's respective view-point. Sulu-Gambari, J.C.A, in his lead judgment, considered the cases cited to them by learned counsel and came to the conclusion (with which the other learned Justices agreed) that he would follow the later decisions of this Court relied upon by Chief Bola Ige. It is therefore, a complete misconception to say that that Court could not, in the circumstance before the Court, embark on a consideration of conflict between one decision of this Court and another; there was no way that court could have come to a decision on the appeal before it without such a consideration. Nor could it be said that a new point was being raised before the Court of Appeal. The issue before that Court was as to what consequential order ought to be made where a plaintiff was held to have no locus standi in bringing his action. I see no substance whatsoever in appellants' Issue 1.

The second point I want to touch upon is what is put down in the plaintiffs' brief as Issue 4. Chief Bola Ige has argued under his issue 4 as follows: *"The respondents shall at the hearing of this Appeal apply that paragraphs 8,9 and 10 of the appellants on pages 15 and 16 of their brief be struck out for being incompetent as none of them is covered by either the grounds of appeal of the appellants or by any of the four issues formulated on their behalf, nor were they raised at the lower court. It is trite law that any issue not raised in the lower court cannot be raised for the first time in the Supreme Court. See J. Baruwa v. State (1992) 1 NWLR (Pt. 220) 633 at 643-644."*

Later he added: *"It is trite law that there being no appeal by the appellants against the ruling of the trial Judge to the Court of Appeal on whether there was a reasonable cause of action or not the issue cannot now be raised in the Supreme Court whose appellate jurisdiction is to hear and determine on the decision of the Court of Appeal and not on that of the High Court. See Section 213(1) of the Constitution of Federal Republic of Nigeria 1979; B.O. Nwabueze & Anor v. O. Okoye (1988) 4 NWLR (Pt. 91) 664 at 679:"*

Mr Alawode has in appellants' brief submitted as hereunder:

“8. It is trite law that if a party has no *locus standi*, he has no reasonable cause of action. See *Thomas & Ors. v. Olufosoye (supra)* at page 681.

9. The instrument sought to be set aside in this case was registered on 12th February, 1958. Being a Chieftaincy Declaration, no
 5 Court then had jurisdiction to entertain any action concerning it. The plaintiffs’ cause of action in respect of the instrument arose immediately after it was registered. It is my humble submission that the ouster of jurisdiction persists since the law applicable to a case is the law in
 10 force when the cause of action arose. See (1) *Uwaifo v. Attorney-General, Bendel State & Ors (1982) 7 S.C. 124* and (2) *Mustapha v. Governor of Lagos State & Ors (1987) 2 NWLR (Pt. 58) 539*.

10. The first and third legs of the plaintiffs’ claim are ancillary to the second leg which seeks a nullification of the registered declaration.
 15 It is respectfully submitted that on this account also the Court of Appeal was obliged to hold that this case is in all fours with the case of *Momoh & Anor v. Olotu (supra)*. Even on the final conclusion which the Court of Appeal arrived at, it ought to have confirmed the dismissal of the plaintiffs’ claims.”

20 I have set out earlier in this judgment the three grounds on which the appellant had moved the trial court to dismiss plaintiffs’ action. The learned trial Judge found in their favour on the issue of *locus standi* but held that he had jurisdiction to entertain the subject
 25 matter of the action. He specifically found as follows:- “Thus, I am of the view that any provisions whatsoever, in the Chiefs Law Cap. 21 of the Laws of Oyo State or Edict No. 3 of 1985 which purports to oust the jurisdiction of the Court would appear to be inconsistent with the provisions of Section 236 of the 1979 Constitution which
 30 gives the High Court of a State unlimited jurisdiction. I hold, therefore, that my Court has jurisdiction to adjudicate on this suit.”

He made no pronouncement on whether or not the plaintiffs disclosed any cause of action in their pleadings. The present appellants did not appeal to the Court of Appeal against

35 (a) the decision of the trial Judge on the issue of jurisdiction and

(b) on non-pronouncement on the issue of cause of action raised by them.

As those issues were never raised before the Court of Appeal

and as no leave of this Court has been sought and obtained to raise them in this Court it is incompetent for the appellants to raise arguments on them in the manner they have done in their brief. I am of the view that the point taken under his issue 4 by Chief Bola Ige is well taken and consequently, I strike out paragraphs 8, 9 and 10 on pages 15 and 16 of the appellants' brief. I need further to correct the statement that:-

"It is trite law that if a party has no locus standi he has no reasonable cause of action."

This statement is clearly not the law and Thomas & Ors v. Olufosoye (1986) 1 NWLR (Pt. 18) 669 cited in its support does not so decide.

I now come to the main issue for determination in this appeal. Much of the arguments before us, as in the courts below, was concerned with the decisions of this Court in Gambioba & Ors v. Ezezi & Ors (supra) and similar cases, on the other hand and Oloriode & Ors v. Oyebe (supra) and other cases following it, on the other, and which of these two sets of cases we are to follow in the present appeal. It is not in dispute that there are some decisions of this Court where this Court has made a consequential order of dismissal of action after holding that plaintiff lacked locus standi to sue. And yet there are other decisions of this Court where an order of striking out of the action has been made in similar circumstances. Our attention has been drawn to Gambioba & Ors v. Ezezi (supra); Amusa Momoh & Anor v. Olotu (supra) and Thomas & Ors v. Olufosoye (supra) where this Court had entered an order of dismissal of the action. In the second group belong Oloriode & Ors v. Oyebe (1984) 5 S.C. 1; Otapo v. Sunmonu & Ors (1987) 2 NWLR (Pt. 58) 587 and Fawehinmi v. Akilu & Ors (1987) 4 NWLR (Pt. 67) 797 and Road Transport Employers Association of Nigeria v. National Union of Road Transport Workers (1992) 2 NWLR (Pt. 224) 381. In each of these latter cases an order of striking out of the action was made. The question that arises is: which of the two groups of cases is to be followed by us?

Before I proceed to answer this question, however, I need to say a few words on the principle of stare decisis, a principle by which a court is bound to follow decisions in former cases.

As the Lords of Appeal in Ordinary in England put it in their Practice Statement (Judicial Precedent) - (1966) 1 WLR 1234; (1966)

3 All ER 77.

"...the use of precedent (is) an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly
5 development of legal rules."

What is binding as precedent is not the concrete decision in the former case that is binding only between the parties to it, but the enunciation of the reason or principle upon which the question before the court has been decided - *Osborne to Rowlett* (1880) 13 Ch.
10 D 774, 784.

"Judicial authority belongs not to the exact words in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision"
15 sion"

Per Sir Fredrick Pollock in his article: *Continental Law in the Nineteenth Century* (*Continental Legal History Series*), XIIV and quoted by Lord Denning in *Close v. Steel Co. of Wales Ltd* (1962) AC 367,388 (1961) 2 All ER 953 HL. This reasoning or principle
20 upon which the case is decided is known as the ratio decidendi. It constitutes the general reasons for the decisions (as distinct from the decision itself or the general grounds upon which it is based, detached or abstracted from the specific peculiarities of the particular
25 case which gives rises to the decision. The ratio decidendi of a case is ascertained by an analysis of the material facts of the case. A judicial decision is often reached by a process of reasoning involving a major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of
30 the case under immediate consideration. - *FA and AB Ltd. v. Lupton* (1972) AC 634. 658; (1971) 3 All ER 948, 964 HL Per Lord Simon of Glaisdale who explained further: "*The conclusion is the decision of the case, which may or may not establish new law - in the vast majority of cases it will be merely the application of existing law to the facts*
35 *judicially ascertained. Where the decision does constitute new law, this may or may not be expressly stated as a proposition of law: frequently the new law will appear only from subsequent comparison of, on the other hand, the material facts inherent in the major premise with on the other, the material facts which constitute the minor premise.*

As a result of this comparison it will often be apparent that a rule has been extended by an analogy expressed or implied. I take as an example a case remote from the field of jurisprudence with which your Lordships are instantly concerned, because it illustrates clearly, I think, what I have been trying to say National Telephone Co. v. Baker (1983) 2 CR. 186: Major premise: the rule in Rylands v. Fletcher (1868) L.R. 3 H.L. 330: Minor premise: the defendant brought and stored electricity on his land for his own purpose; it escaped from the land; in so doing it injured the plaintiff's property. Conclusion: the defendant is liable in damages to the plaintiff (or would have been but for statutory protection). Analysis shows that the conclusion establishes a rule of law, which may be stated as "for the purpose of the rule in Rylands v. Fletcher electricity is analogous to water" or "electricity is within the rule in Rylands v. Fletcher" That conclusion is now available as the major premise in the next case, in which some substance may be in question which in this context is not perhaps clearly analogous to water but is clearly analogous to electricity. In this way, legal luminaries are constituted which guide the wayfarer across uncharted ways."

This Court ordinarily adheres to the principle of judicial precedent (stare decisis) and will hold itself bound by its previous decision. However, where it is satisfied that its previous decision is erroneous or was reached per incuriam and will amount to injustice to perpetuate the error, by following such decision it will overrule such decision or depart from it - Johnson v. Lawanson (1971) 1 All NLR 56; Bucknor-Maclean v. Inlaks Ltd. (1980) 8-11 S.C.1: Odi v. Osafile (1985) 1 NWLR (Pt.1) 17; Rossek v.A.C.B. Ltd. (1993) 8 NWLR (Pt.312) 382. I need point out that none of the parties herein has, in accordance with Order 6 rule 5(4) of the Rules of this Court, invited us to depart from any of our previous decisions. Therefore, the question of departure from a previous decision does not arise in this case. What is in issue is: which of the two groups of cases relied on by either party is binding on this Court as judicial precedent.

I will start with the first group. In Gambioba & Ors v. Ezezi II & Ors (supra) plaintiffs sued for a declaration that a certain trust instrument was invalid or void upon the grounds, inter alia, that it was made in the exercise, or purported exercise of power ultra vires the Nigeria (Constitution) Order in Council, 1960, or inconsistent with it,

that it was invalid as an improperly constituted trust, or was void for uncertainty. No pleadings had been ordered, nor evidence adduced, when counsel on both sides joined in an application to the High Court for an Order referring the question of the constitutionality of Section 4 of the Western Region Communal Lands Rights (Vesting in Trustees) Law, 1958, Cap. 24 to the Federal Supreme Court under section 108 of the Constitution of the Federation, 1960. The specific question agreed was: *"Whether the power conferred upon the Minister under Section 4 of Western Region Law No. 45 of 1958 (Cap. 24) to appoint trustees in respect of Communal Rights is inconsistent with the provisions of the Nigeria Constitution."* The High Court Judge thereupon ordered, *"that the... cause be transferred from the High Court of Justice, Warri Judicial Division, to the Federal Supreme Court, Lagos, for hearing and determination."* This order was stated therein to have been made pursuant to Section 108 of the Constitution of the Federation, 1960.

It was held; striking out the reference:

"(1) The only issue referable, under sub-section (2) of Section 108 of the Constitution of the Federation, 1960, to the Supreme Court is a question of law as to the interpretation of a constitution. The subsection does not confer upon the High Court the power to transfer a cause to the Supreme Court for hearing and determination."

(2) Except where the question involves the jurisdiction of the court or the competency of the proceedings, a Reference to the Supreme Court under Section 108 of the Constitution of the Federation is premature if there remains undecided by the High Court any issue which could finally determine the proceedings, without recourse to the constitutional question referred."

In the course of the judgment of this Court, Per Brett, FJ. (as he then was) some pronouncements were made, one of which went thus:

"There is a further test to be applied in a case such as this one. It is always necessary, where the plaintiff claims a declaration that a law is invalid, that the Court should be satisfied that the plaintiff's legal rights have been, or are in imminent danger of being, invaded in consequence of the law. We dealt with this point at length in Olawoyin v. Attorney-General Northern Region F.S.C. 290/1960;

(1961) All NLR 269; (1961) 2 SCNLR 5 and it be have enough to say here that since the validity of a law is a matter of concern to the public at large the Court has a duty to form its own judgment as to the plaintiff's locus standi and should not assume it merely because the defendant admits it or does not dispute it. The plaintiff's locus standi in the present case has not yet been disclosed, and if he has none, his claim must be dismissed on that ground, and it will be unnecessary to decide the question involved in the declaration he claims. For this reasons also it is not yet clear that the question set out in counsel's application arises."

See page 613 of the Reprint of the Report. One point to be observed is that the above passage was not one of the reasonings for the decision of the Court to strike out the reference for incompetence, that is, it was not a ratio decidendi in the case. It was an observation made by the Court, going beyond what was necessary to the decision and laying down a rule not necessary for the purpose of the case.

Statement like the above passage which are mere passing remarks are known as "obiter dicta" and they have no binding authority, as a ratio decidendi, although they may have some persuasive efficacy - Attorney-General v. Dean and Canons of Windsor (1860) 8 HL Cas. 369; G and C Kreglinge v. New Patagonia Meat and Cold Storage Co. Ltd. (1914) AC 25, 39 HL; Cornelius v. Phillips (1918) AC 199, 211 HL; Penn-Texas Corp'n v. Murat Anstalt & Ors. (No.2) (1964) 2 All ER 594, 597 F& H. per Lord Denning M.R.; Rossek v. A.C.B.Ltd. (supra) Per Uwais, J.S.C. at p.458C

Gambioba & Ors v. Ezezi & Ors II & Ors. (supra) in so far as it pronounces on the consequential order to make where a plaintiff is held to have no locus standi to institute the action before the court, is not binding authority on this Court or any other court for that matter as that pronouncement is obiter dictum.

I now turn attention to Amusa Momoh v. Olotu (supra). The plaintiff had sued claiming "a declaration that the correct custom for the selection of an Olukare is not from father to the eldest son, but devolves on whosoever the Owelukare family in conclave puts forward and is accepted by the King-makers." Pleadings were ordered, filed and exchanged. Before trial began, the defendants brought a motion praying the court to order a dismissal of the plaintiff's action

on the ground that it is frivolous, vexatious and an abuse of the process of the court, and also on the grounds that:-

(a) The court has no jurisdiction to entertain the claim;

(b) The relief claimed is one which the court ought not to grant;

and

(c) The plaintiff has no locus standi to maintain the action.

It was also sought in the alternative to strike out the statement of claim on the ground that it disclosed no cause of action, and that judgment be entered for the defendant. The learned trial Judge dismissed the motion holding that he had jurisdiction to entertain the claim and that the plaintiff had locus standi to maintain the action. The application to strike out the statement of claim was also refused. On appeal on this Court, it was held, per Sir Ademola, C.J.N. at page 127 of the Reprint of the Report:

"In view of the above premises we fail to see how the plaintiff can maintain an action on the statement of claim filed. We think that the learned trial Judge was in error when he ruled that the matter before him was not a Chieftaincy matter, and that on the face of it, the statement of claim disclosed a cause of action, or that the plaintiff has a locus standi; or that the 1st defendant had signed a declaration about which the plaintiff can justifiably complain. The learned trial Judge was clearly wrong in refusing to strike out the statement of claim and/or the action before him. We are of the view that the action should have been dismissed and we will accordingly so order."

It is clear from the judgment of this Court in the case that lack of standing to sue was not the only reason for finding for the defendants. This Court found, in addition, that there was no jurisdiction to entertain the claim, that the relief claimed was one which the court ought not to grant and that the statement of claim disclosed no cause of action. In view of these other reasons for refusing plaintiff's claim, it will not be correct, in my respectful view, to hold out the case as an authority for saying that where the only finding, as is in the case in hand, is that the plaintiff lacks locus standi to sue, the proper order to make is one dismissing the action.

The third case in the Group 1 cases is *Thomas & Ors v. Olufosoye* (supra). This case was decided purely on the issue of locus standi. The plaintiffs were held to have no standing to sue and their action was dismissed by the trial Judge. The appeals to the Court of

Appeal and this Court failed. The issue of the consequential order to make was never argued before this Court. In the course of his lead judgment however, Obaseki, J.S.C. observed at page 682 of the Report:

“The term ‘locus standi’ was extensively discussed in the case of Senator Adesanya v. The President of the Federal Republic & Anor⁵ (supra) (1981) 1 All NLR 32. It cannot stand independently from the provisions of section 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1979 and the consequences of a failure to disclose a plaintiff’s locus standi has been settled by the pronouncement of this Court as long ago as 1961 in the case of Gamioba & Ors v. Ezezi & Ors. (1961) All NLR 584; (1961) 2 SCNLR 237. It is that if he has none, his claim must be dismissed.”

The Court’s attention was never drawn to its earlier decision in Oloriode, given barely two years earlier in which the Court (Conam: Irikefe, J.S.C. (as he then was), Obaseki, Eso, Nnamani and Uwais, J.J.S.C.) held unanimously that where a plaintiff is found to lack locus standi to maintain his action, the action is to be struck out. I shall say more on this case later in this judgment. As I shall show presently, Oloriode was and is still binding on the Court; not having at any time since the decision was given, been overruled.

With profound respect to the learned Justice of the Supreme Court, it will not be totally correct to say that “the consequences of a failure to disclose a plaintiff’s locus standi has been settled in Gambioba’s case. As I have just shown, that case was decided on a number of issues and no reason was given for entering an order of dismissal of the action. It is not clear from the judgment that the order of dismissal was made in respect of a particular defect found or because of the cumulative effect of all the defects. The dictum of Obaseki, J.S.C. is, at best obiter and because it was made in complete forgetfulness of the earlier decision of the Court in Oloriode, it cannot be binding authority for the proposition that where a plaintiff fails to show locus standi, his action must be dismissed. As Viscount Haldane warned in *Cornelius v. Phillips* (1918) AC 199, 211 HL.-

“...I wish to add that dicta by judges, however, eminent, ought not to be cited as establishing authoritatively propositions of law unless these dicta really form integral parts of the train of reasoning directed to the real question decided. They may, if they occur merely

at large, be valuable for edification, but they are not binding."

Having read the judgments of their Lordships in *Thomas v. Olufosoye*. I cannot say there was an intention to decide the proposition of law under consideration in the appeal now on hand.

The sum total of all I have been saying above is that none of
5 the cases relied on by Mr. Alawode constitutes any authority binding on this Court in respect of the issue under consideration in this appeal.

I shall now turn attention to the Group 2 cases relied on by
10 Chief Bola Ige. In *Oloriode & Ors v. Oyebi* (supra), it was held by this Court that the parties had no locus standi to initiate the two consolidated actions. It then considered the proper order to make in the circumstance. Irikefe, J.S.C. (as he then was) held, at page 17 of the Report:-

15 *"I am of the view that the learned trial Judge in this matter was clearly in error in the face of his earlier finding that the proper parties in Suit No. IK/74/73 were not before him to have dismissed the case instead of striking it out. A dismissal in that circumstance postulates that that action was properly constituted, a direct antithesis*
20 *of his finding on representation. Accordingly, this appeal succeeds on this ground and my order is that Suit No. IK/74/73 and Suit No. IK/261/73 are hereby struck out."*

Obaseki, J.S.C. in his own judgment observed at page 28:-

25 *"When a party's standing to sue is in issue in a case, 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. See Flast v. Cohen 392 US 83 88 S. Ct. 1942; Senator Adesanya v. President of Nigeria & Anor (1981) 2 NCLR*
30 *358.*

Having pleaded facts which show that the Ladega Oyero family and not Agbenaje family owns the and in dispute, the Agbenaje family is incompetent to prosecute the claim as it stands and since it was not amended, the proper order to make will be an order to strike out the claim and ac-
35 *tion."*

Eso, J.S.C. at pages 30-32, also observed as follows:-

"Now, the learned trial Judge having heard evidence and after a really painstaking assessment, dismissed both actions. If the wrong plaintiffs brought an action before the court, what should the court have done?"

Is it a matter for dismissal as the trial court has done or one for striking out. Indeed that is the question this court is called upon to answer.

If a person prosecuting an action has no locus standi, should the action be dismissed? Chief Williams submitted, and I am in full agreement, that a person who asserts the right claimed or against whom the right claimed is exercisable must be present to give the court the necessary jurisdiction. Presence here is not just physical presence. He can put in appearance by counsel, but if he makes a claim and in a second breath asserts the claim belongs to another person, that other person cannot be said to be present to prosecute the claim that has been made on his behalf. Indeed, he may not even be aware of such claim. And the person making the claim will have no standing before the court as he has no interest in the claim he makes. It is in this context that I will admit the linking of locus standi with the jurisdiction of the court, for as Obaseki, J.S.C. said in the case of Senator Adesanya v. President of Nigeria (1981) 2 NCLR 358 at p. 393 it is the cause of action that one has to examine to ascertain whether there is disclosed a locus standi or standing to sue.

I have come back again to what the order of the court ought to have been. In Senator Adesanya v. President of Nigeria (supra) the claim of the plaintiff was dismissed and not struck out - see the judgment of Fatayi-Williams CJN at p. 378 of the report. All the Justices in the case agreed with that order. The Supreme Court in Abubakri v. Smith (1973) 6 S.C. 31 merely dismissed the appeal of the appellant from the judgment of the High Court which had earlier dismissed plaintiff's claim. The question of what order to make in the circumstance was not raised before the Supreme Court in the two cases. Incidentally the court in Abubakri v. Smith (supra) approved of, and applied the reasoning of Plowman, J. in Heyting v. Dupont (1963) 1 WLR 1192 who, instead of dismissing plaintiff's claim, merely indicated that he had no jurisdiction to adjudicate upon the plaintiff's claim - See p. 1199.

I think the proper order when the court has no jurisdiction to adjudicate upon a matter of whatever reason, like the parties before the court having no locus standi, is to strike out the action. It is for these reasons and the reasons well stated by my brother Irikefe, J.S.C. in his judgment that I will also allow this appeal and strike out the claims before the court."

Nnamani and Uwais, J.J.S.C. also agreed that the proper order to make in the circumstance is one striking out the action.

The statements made by the learned and noble Justices went beyond obiter dicta; these statements constitute the reasoning or principle for the decision to strike out. The ratio decidendi in the case is that where a

plaintiff is held to lack the locus standi to maintain his action, this finding goes to the jurisdiction of the court and denies it jurisdiction to determine the action; the proper order to make in such a situation is to strike out the action and not dismiss it. This decision is binding on this Court as well as on all other courts below it. As I have earlier remarked, we have not been invited to depart from it and I can, therefore, see no justification for not applying it.

In *Otapo v. Sunmonu* (supra) the issue here being considered did not *stricto sensu* arise in the case but in an obiter dictum of Karibi-Whyte, J.S.C. at page 615 where *Oloriode v. Oyebe* (supra) was followed.

In *Fawehinmi v. Akilu & Anor: In Re Oduneye* (1987) 4 NWLR (Pt. 67) 797, the issue was whether the applicant for an order of mandamus had locus standi to make the application. This court found that he had. In the course of the lead judgment of Obaseki, J.S.C., he observed at page 830 of the Report thus:

"It is fundamental that an applicant for leave to apply for an order of mandamus must have locus standi to make the application before leave can be granted by the court. Indeed the party making any claim and bringing any application before the court must have locus standi. See Senator Adesanya v. President of Nigeria (supra); Irene Thomas v. Olufosoye (supra) Amusa Momoh & Anor v. Jimoh Olotu (1970) 1 All NLR 117. If the plaintiff has no locus standi, the court has no jurisdiction to entertain the matter and it must be struck out. See Oloriode & Ors v. Oyebe & Ors (1984) 5 S.C. 1 at 28; (1984) 1 SCNLR 390. When a party's standing to sue (i.e locus standi) is in issue, the question is whether the person whose standing is in issue is the proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable. Oloriode & Ors v. Oyebe & Ors. (1984) 5 S.C. 1 at 28 (1984) 1 SCNLR 390 per Obaseki, J.S.C."

This passage, in my respectful view, is an obiter dictum but as the learned Justice of this Court followed the earlier decisions of Court, the dictum ought to be accorded respect.

The last and most recent of the cases in Group 2 is *The Road Transport Employers Association of Nigeria v. The National Union of Road Transport Workers* (supra) The Association had sued the Union in the High Court claiming the right, and that the Union had no such right, to collect dues, levies and fees from transport workers at the motor parks across the country. It also claimed an injunction. The matter went to trial at the end of which the trial Judge, after amending the claims entered judgment for the Association and awarded it wider reliefs than those formulated by the plain-

tiffs. The Union appealed and the Court of Appeal, in allowing the appeal held that the Association had no locus standi to maintain four of the claims in the action and dismissed the action. The Association appealed to this Court contending, as in the case on hand that having held that it had no locus standi to institute the action as constituted, the only order the Court of Appeal ought to make was one striking out the action and not a dismissal of same. 5

This Court upheld that contention. Babalakin, J.S.C., delivering the lead judgment of the Court observed at p. 391 C-E of the report: *"When a court holds that a plaintiff has no locus standi in respect of a claim the consequential order to be made is striking out of such claim and not a dismissal of the claim."* 10

The rationale is that holding that a plaintiff has no locus standi goes to the jurisdiction of the court before which such an action is brought. When the question that a plaintiff has no locus standi to institute an action arises all that is being said in effect is that the court before which such an action is brought cannot entertain the adjudication of such an action. The court cannot dismiss a claim the merit of which it is not competent to enquire into. The Court of Appeal having held that the plaintiff/appellant has no locus standi to bring claims 1, 2, 3 and 4 above cannot embark on the adjudication on the claims which will lead to a pronouncement on the merit of the issues raised therein as the Court of Appeal did. 15 20

The proper order to make in the circumstances of this case is an order striking out the claims and not that of dismissal as done by the Court of Appeal in this case. See the cases of Oloriode v. Oyebe (1984) 5 S.C. 1; (1984) 1 SCNLR 390; Nigeria Airways v. Lapite (1990) 7 NWLR (Pt.163) 25 392."

Uwais, J.S.C. in his concurring judgment at p. 392 said:

"After finding that the plaintiff had no locus standi, the Court of Appeal dismissed its claims. This again is erroneous because the appropriate order that the Court should have made is that of striking out the claims and not dismissal- see Oloriode v. Oyebe (1984) 5 S.C.1 at page 30; (1984) 1 SCNLR 390 and Otapo v. Sunmonu (1987) 1 S.C. 228 at page 284; (1987) 1 NWLR (Pt. 58) 587." 30

The other Justices that sat on the case also shared the same conclusion. 35

This is a decision that is binding on this Court. The ratio decidendi is clear and that is, that where a plaintiff is held to lack standing to maintain his action the proper order to make is one striking out the action.

I need to make reference, at this stage, to Order 24 rules 1, 2, 3 and

4 of the High Court (Civil Procedure) Rules 1988 of Oyo State which read as follows:

"1. No demurrer shall be allowed.

2. Any party shall be entitled to raise by his pleading any point of law, and any points so raised shall be disposed of by the Judge who tries
5 *the cause at or after the trial:*

Provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

3. If, in the opinion of the Court or a Judge the decision of such
10 *point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.*

4. The Court or a Judge may order any pleading to be struck out on
15 *the ground that it discloses no reasonable cause of action or answer; and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."*

20 These rules are verbis verbissima with Order 22 rules 1-4 of the former rules of that Court. See (Cap. 44 Laws of Western Nigeria, 1959, page 58). They are not different from the Lagos State High Court Rules that featured in some of the cases I have reviewed in this judgment. Suffice it to say that the rules give the courts the discretion to dismiss or otherwise.

25 In view of the reason that lack of standing of the plaintiff (or where a proper defendant is not before the court) affects the jurisdiction of the court to adjudicate in the matter, the proper course, as held in *Oloriode & Ors v. Oyebi* (supra) is to strike out the action. If the court has no jurisdiction to adjudicate, it cannot dismiss the action.

30 The conclusion I reach is that the court below is right to substitute an order striking out plaintiffs action in this case instead of the trial court's order of dismissal of the action. It is immaterial that pleadings have been completed and full trial conducted. At whatever stage the finding is made that the plaintiff lacks locus standi to maintain the action, the jurisdiction
35 of the court to entertain the action is affected and the course of action open is to put an end to it by striking it out. I, therefore, find no merit in this appeal which I accordingly dismiss with N1,000.00 costs to each set of respondents.

BELLO CJN

The plaintiffs had instituted a suit against the defendants concerning Chieftaincy dispute in the trial court. The court found the plaintiffs had no locus standi and dismissed the suit. On appeal, the Court of Appeal affirmed the finding on locus standi but substituted the order of dismissal 5 with the order of striking out the suit.

The main issue canvassed in their brief appears to be simple. When the court finds a plaintiff has no locus standi in the suit he has instituted before it, should the court dismiss the suit or strike it out? The apparent simplicity of the issue has been marred by some conflicting decisions of this 10 Court.

On the one hand, we have the judgment of this Court in Gamioba & Ors v. Ezezi II & Ors (1961) 2 SCNLR 237; (1961) 1 All NLR 548 followed by Amusa Momoh & Anor v. Olotu (1970) 1 All NLR 117 and Thomas & Ors v. Olufosoye (1986) 1 NWLR (Pt.18) 669 which appears to 15 support the view that where a plaintiff has locus standi, his claim should be dismissed. On the other hand, the decisions of this Court in Oloriode & ors v. Oyebe & Ors (1984) 5 S.C. 1; Otapo v. Sunmonu & Ors (1987) 2 NWLR (Pt. 58) 587; Fawehinmi v. Akilu & Anor (1987) 4 NWLR (Pt. 67) 2 NWLR (Pt. 224) 381 clearly establish that in such a situation the suit should be 20 struck out. The submissions of learned counsel in this appeal call for the resolution of the conflict.

In the lead judgment, my learned brother, Ogundare, J.S.C., has taken pains to examine in meticulous details the aforestated cases decided by this Court. I agree with my learned brother that the pronouncement of 25 Brett, F.J. in Gambioba & Ors v. Ezezi (supra) to wit “*The plaintiff’s locus standi in the present case has not yet been disclosed, and if he has none, his claim must be dismissed on that ground*” was indeed an obiter dictum. Brett, F.J. stated at the beginning of the judgment of the Court, “*We think it necessary to strike this matter out, as not being properly before us*”. It 30 was finally struck out because the High Court had no power to transfer a cause to the Supreme Court for hearing and determination. It follows therefore Gambioba v. Ezezi is not an authority for the proposition that where a plaintiff has no locus standi his claim should be dismissed.

A careful perusal of the judgment of this Court in Amusa Momoh v. Olotu (1970) 2nd Ed. All NLR 121 would disclose that the Court dismissed the appeal for three reasons. The first reason was stated at p. 125 of the report thus:

“We are in no doubt that the learned Acting Chief Justice was in

error when he held that the matter before him was not a Chieftaincy question. Whichever way one looks at the case, it is clear that the claim should have been dismissed."

The jurisdiction of the Court on Chieftaincy matters ousted by the then Constitution of the Federation.

5 The second reason was stated at p. 126 of the report as follows:

"We observe that the pleadings of the defendants clearly put to the plaintiff the position as it was in 1956. If he disputed the facts in paragraph 4 of the Statement of Defence of the 2nd defendant, he should have filed a reply to that Statement of Defence and so join issue thereon with the
10 *defendants. If paragraph 4 of the Statement of Defence of the 2nd defendant (supra) is correct, where then is the cause of action against the defendants for a declaration made in June 1956 by the 1st defendant, which declaration had been rejected by the 2nd defendant?*

Was the plaintiff aware that the declaration signed by the 1st defendant as Chairman of the Ikare District Council on 14th June, 1956 had been rejected by the 2nd defendant? Was he aware that as a result of an enquiry made another body, was set up under one Bada who was then Chairman of the Ikare District Council and that that body on 22nd October, 1956 made an amended declaration?

20 *Was he aware that the declaration (as amended) had been approved and registered since 1956? If plaintiff is aware of all these, and there is nothing to show since the statement of defence had been filed that he was not, why must he ten years later (1966), bring the present action against the 1st defendant) It is clear that the action is misconceived."*

25 Thirdly, the Court proceeded to consider the locus standi of the plaintiff and concluded at p. 127:

"It is difficult to say on the pleadings filed that the plaintiff has any locus standi in the matter."

30 It is pertinent to observe that the Court did not make any pronouncement on the order to make for lack of locus standi in its consideration thereof. It did not state whether the matter should be dismissed or struck out for the plaintiff's lack of locus standi.

 Finally, the Court summarised its conclusion on page 27 in these terms:

35 *"In view of the above premises we fail to see how the plaintiff can maintain an action on the statement of claim filed. We think that the learned trial Judge was in error when he ruled that the matter before him was not a Chieftaincy matter, and that on the face of it, the Statement of Claim disclosed a cause of action, or that the plaintiff has a locus standi;*

or that the 1st defendant had signed a declaration about which the plaintiff can justifiably complain. The learned trial Judge was clearly wrong in refusing to strike out the Statement of Claim and/or the action before him. We are of the view that the action should have been dismissed and we will accordingly so order."

It is clear from the reasons given by the Court for dismissing the 5 action that absence of locus standi was only one of the three factors taken into account in dismissing the action. Having regard to the facts that the Statement of Claim did not disclose any cause of action and the plaintiff had slept for 10 years before filing the action, it is not surprising that the action was dismissed. Lack of locus standi cannot be said to be the reason 10 for dismissing the action.

I agree with the decision of my learned brother Ogundare, J.S.C.; that Thomas v. Olufosoye (supra) was the only case decided by this Court purely on the issue of locus standi wherein Obaseki, J.S.C., who delivered the lead judgment (concurrent by Eso, Uwais, Kawu, Oputa, JJ.S.C.) ob- 15 served at page 682 of the report:-

"The term 'locus standi' was extensively discussed in the case of Senator Adesanya v. The President of the Federal Republic of Nigeria Anor (supra) (1981) 1 All NLR 32. It cannot stand independently from the provisions of Section 6(6) of the Constitution of the Federal Republic of Nigeria 20 1979 and the consequences of a failure to disclose a plaintiff's locus standi has been settled by the pronouncement of this Court as long ago as 1961 in the case of Gambioba & Ors v. Ezezi & Ors (1961) All NLR 584; (1961) 2 SCNLR 237. It is that if he has none, his claim must be dismissed."

Apart from Gambioba v. Ezezi, no other authority was cited by the 25 learned Justices in dismissing the claim. With all due respect, as shown in this appeal, the pronouncement of Brett, FJ. in Gambioba v. Ezezi (supra) was an obiter dictum. The ratio decidendi of the case did not settle the issue that where a plaintiff has no locus standi his claim should be dismissed. The earlier decision in Oloriode v. Oyebi where the Court held in 30 such a situation the claim should be struck out escaped the attention of the Court in Thomas v. Olufosoye. Accordingly, the order of dismissal of the claim in the latter case was reached per in curiam.

In my view upon the authority of Oloriode v. Oyebi (supra) and the cases that follow it, where a plaintiff fails to disclose his locus standi the 35 proper order to be made by a court is to strike out his claim. Therefore, the Court of Appeal was right in striking out the action.

For the foregoing reasons and the reasons fully stated in the lead judgment of my learned brother, Ogundare, J.S.C., the appeal should be

dismissed, I endorse the order as to costs.

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by
 5 my learned brother Ogundare, J.S.C. I agree entirely with the judgment, I
 too will accordingly dismiss the appeal with N1,000.00 costs to each set of
 the respondents.

10 **UWAIS JSC (PRONOUNCEMENT)**

The Honourable Justice Olajide Olatawura, who sat with us on the
 14th day of March, 1994 to hear this appeal retired on the 3rd day of May,
 1994. Before his retirement, he took part in the conference which we held
 on the appeal on the 23rd day of March, 1994 and he was of the opinion
 15 that the appeal should be dismissed.

In accordance with the proviso to section 258 subsection (2) of the
 Constitution of the Federal Republic of Nigeria, 1979, Cap. 62. I hereby
 pronounce the opinion of Honourable Justice Olajide Olatawura that the
 appeal be dismissed.

20

WALI JSC

I have read before now the lead judgment of my learned brother
 Ogundare, J.S.C., and I entirely agree with the reasoning and conclusion
 25 contained therein.

The spring board of any action before any court or judicial tribunal
 is the locus standi of the person instituting the action, because it is only
 then that he will be clothed with the legal capacity to commence it.
 Where there is no capacity to commence the action, the proper order for
 30 the court to make is to strike it out. See *Dada & ors v. Ogunsanya & Anor*
 (1992) 3 NWLR (Pt. 232) 754. Also the same thing will apply where the
 court lacks jurisdiction to entertain the matter. It has no option other than
 to strike out the action. See *Oloriode & Ors v. Oyebe & Ors* (1984) 5 S.C.
 1.

35 It is for these and the fuller reasons given in the lead judgment of my
 learned brother, Ogundare, J.S.C. that I also hereby dismiss this appeal
 and adopt the consequential orders made in the lead judgment, including
 that of costs.

ONU JSC

The appellants who were the 4th to the 7th defendants were sued in the Oyo State High Court holden in Ibadan as representatives of Gbangbade Erun Family along with 1st to the 3rd defendants/respondents jointly by the three plaintiffs/respondents for and on behalf of the Oaodu Agba. Adekalu and Egbeomo Ruling Houses of the Onitede of Tede Chieftaincy wherein the latter claimed from the former, the following reliefs:-

“(a) A declaration that according to the law, custom and tradition of Tede there are only three ruling houses for the Onitede Chieftaincy.

(b) A declaration that the instrument dated 18th day of January, 1958 and registered on the 12th day of January, 1958, in so far as it purports to declare the customary law prevailing in Tede with respect to the appointment to the Onitede of Tede Chieftaincy is wrongful, illegal and void.

(c) Injunction restraining the first three defendants, their servants, officers and agents from inviting the Gbangbade Erun Family to present a candidate for the vacant Onitede of Tede Chieftaincy, and from acting pursuant to or taking any steps to implement the aforesaid registered ‘declaration’”

Pleadings were ordered but after the plaintiffs/respondent had filed and served their Statement of Claim on all the defendants, the appellants moved the trial court for an order “striking out the plaintiffs/respondents Statement of Claim and dismissing this action” on the grounds:

“1. The plaintiffs/respondent have no locus standi to institute this action.

2. This Honourable Court has no jurisdiction to entertain this action.

3. The plaintiffs/respondents’ Statement of Claim in this case discloses no reasonable cause of action and the action is embarrassing, frivolous and vexatious and an abuse of the process of Court.”

The learned trial Judge heard arguments from Counsel on both sides and in a reserved ruling held that the plaintiffs/respondents had no locus standi in the matter and in consequence dismissed the suit.

Being dissatisfied with the ruling, the appellants appealed to the Court of Appeal (hereinafter referred to as the court below) which reversed the order of dismissal of the trial court. The appellants’ complaint in this Court from the Court below, revolves in the main on the following concluding passage from its judgment dated 18th February, 1991, to wit:

“(i) I come to the final conclusion therefore that where in a case in which the plaintiff is adjudged to have no locus standi, particularly when

pleadings have not closed and evidence not yet adduced, the proper order to be made is to strike out the action. Where, however, as in the case of Momoh v. Olotu (1970) 1 all NLR 117, it is established (i) that the Court has no jurisdiction like when the matter before the court being a Chief-taincy dispute is by the provision of the Constitution not justiciable;

5 *(ii) the Statement of Claim (iii) the plaintiff does not have locus standi to institute the action, I am of the strong view that the proper order to be made in that circumstance ought to be a dismissal of the suit.*

For the foregoing reasons therefore, the order of the lower court dismissing the suit filed by the appellants cannot stand. The appeal is al-
10 *lowed and that order is accordingly set aside. In its place, an order striking out the appellants' suit is hereby decreed."*

The Counsel for the parties filed and exchanged briefs of argument in accordance with rules of Court.

The four issues formulated at the instance of the appellants for de-
15 termination in this appeal are:-

"1. Whether the appeal lodged to the Court of Appeal in this case involved a consideration of the conflict between the decisions of the Supreme Court in the cases of Gambioba & Ors v. Ezezi & Ors 1 (1961) 1 All NLR 585, (1961) 2 SCNLR 237, Momoh & Anor v. Olotu (1970) 1 All
20 *NLR 117, Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669 and the decisions of the same court in Oloriode v. Oyebi (1984) 5 S.C. 587: Otapo v. Sunmonu & Ors (1987) 2 NWLR (Pt. 58) 587 and Fawehinmi v. Akilu & Ors (1987) 4 NWLR (Pt. 67) 797.*

2. Whether the final conclusion which the Court of Appeal came to
25 *in this case was correct.*

3. Were the learned Justices of the Court of Appeal correct in hold-
ing that unlike what was done in Oloriode & Ors. v. Oyebi (supra), neither the Supreme Court nor the Court of Appeal was, in all the cases in which those courts made an order of dismissal for the plaintiffs' failure to estab-
30 *lish their locus standi to sue, invited to decide the appropriate order to be made in such a circumstance.*

4. Whether the Court of Appeal was correct in not following its own decisions and the decisions of the Supreme Court to the effect that the claims of a plaintiff who has no locus standi to sue must be dismissed when
35 *the decisions were not overruled in Oloriode & Ors v. Oyebi & Ors (1984) 5 S.C.1: (1984) 1 SCNLR 390 which the Court of Appeal followed and despite the fact that the Supreme Court in its later decision in Thomas & Ors v. Olufosoye (1986) 1 NWLR (Pt. 18) 669 held that an order of dis-*
missal should be made."

The plaintiffs/respondents on their part submitted four issues as arising for our consideration. They are:

"1. Whether the Court of Appeal was right when it held that the main issue in the appeal before it was the appropriate consequential order to make where a plaintiff was held not to have locus standi as a result of an application brought in limine when pleadings have not been completed and evidence not yet taken in the suit.

2. Whether the Court of Appeal was right in its approach to consider all the authorities relied upon by the parties in all their ramifications before reaching its decision.

3. Whether the Court of Appeal was correct when it held that where the plaintiff is adjudged to have no locus standi only particularly when pleadings have not closed and evidence not yet adduced, the proper order to be made is to strike out the action and not to dismiss it.

4. Whether issues not considered by the Court of Appeal and which do not form part of the appeal before it can be raised in this appeal." 15

The sole issue submitted at the instance of the 1st to 3rd defendants respondents (3rd respondent would seem to have voluntarily opted out of the appeal) which I consider the dominant issue and hereby adopt in my brief consideration of this appeal relevantly states:

"Whether the proper order in the judgment should be one of 'dismissal' or of 'striking out' where he held that a plaintiff had no locus standi in relation to the reliefs he sought from the court."

At the hearing of the appeal on 14th March, 1994 all three counsel for the parties adopted their respective briefs and expatiated thereon. Mr. Alawode for the appellants, laid emphasis on the one point that there is no issue warranting a consideration of the conflict between the decisions of the Supreme Court in *Amusa Momoh & Anor v. Jimoh Olotu* (1970) 1 All NLR 117 and *Otugor Gambioba & Ors v. Ezezi & Ors* (1961) All NLR 584; (1961) 2 SCNLR 237 with the instant case. This, learned counsel said, is in view of the decision in *Adegoke Motors v. Adesanya* (1989) 3 NLR (Pt. 109) 250, a case not decided on locus standi, adding that the correct decision is that in *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 at 693. After learned counsel had adverted our attention to the Rules of Oyo State High Court which he invoked in his application to the trial court to dismiss the plaintiffs/respondents' suit on grounds of want of standing to institute this action from the outset, want of jurisdiction on their part to entertain the action and how their (plaintiffs' /respondents') Statement of Claim in the case disclosed no reasonable cause of action etc. as contained in the Record, he cited Order 22 rule 4 of the Lagos High Court Rules as

being in *pari materia* thereto. What learned counsel for the appellants has in effect done by his submission is no more than a slight deviation from his line of attack adopted in the first group of cases starting with *Gambioba v. Ezezi* (*supra*) contained in his brief and given full consideration in the lead judgment of my learned brother Ogundare, J.S.C. However, since learned

5 counsel says that he relies solely on *Thomas v. Olufosoye* (*supra*), that case must stand alone to be considered on the one hand as against those in the second group of cases which he alleges are in conflict with the instant case, namely *Oloriode v. Oyebe* (1984) 5 SC 1; *Otapo v. Sunmonu* (1987) 2 NWLR (Pt. 58) 587 and *Fawehinmi v. Akilu* (1987) 4 NWLR (Pt. 67) 797.

10 With due deference to learned counsel, as no conflict was raised in the only ground of appeal to the court below from which the lone issue here in my view is distilled and no leave was sought to raise an issue not hitherto raised in the two courts below, reliance on *Adegoke Motors Case* (*supra*) in support of his contention here cannot, in my view, be of any avail to him.

15 This is because it is trite law that in an appeal, parties are not allowed to make a new and different case. In other words, parties are not allowed to raise new issues or to proffer new evidence without the express leave of court duly sought and obtained to do so. See *Ejiofodomi v. Okonkwo* (1982) 11 S.C. 74 and *Adegoke Motors Case* (*supra*) at page 266.

20 It is also trite that it is the duty of a party wishing to raise such new points not previously raised in the courts below, to seek leave of court to raise them in accordance with the principles settled by this Court in a host of cases on the question of raising such new points by satisfying the court that no further or additional evidence is required on the issues to be consid-

25 ered. See *Akpene v. Barclays Bank* (1972) 1 SC 47; *Fadiora v. Gbadebo* (1978) 3 SC 219; *Abaye v. Ofili* (1986) 1 S.C. 231; (1986) 1 NWLR (Pt.15) 134 and *A-G Oyo State v. Fairlakes Hotel Ltd.* (1988) 5 NWLR (Pt. 92) 1.

Hence, as the appellants did not appeal to the court below from the decision of the trial court on the issue of jurisdiction and on non-pronounce-

30 ment on the issue of cause of action raised by them and no leave of this court was sought and obtained to raise them herein, they are estopped from doing anything of the sort here. It is in this wise, that the case of *Thomas v. Olufosoye* (*supra*) wherein it was held, following a full trial, *inter alia*, that failure to disclose any *locus standi* is fatal to the action should be

35 distinguished from the instant case which touches on what consequential order to make - 'a dismissal' or 'a striking out' - in a Chieftaincy matter where only the Statement of Claim was filed after pleadings were ordered, but evidence was yet to be adduced. Consequently, the objection taken by Chief Ige to paragraph 8, 9, and 10 in appellants' brief at pages 15 and 16

thereof is well taken and these paragraphs are accordingly struck out for being incompetent as none of them is covered by either the grounds of appeal or any of the four issues formulated on their behalf. Nor indeed, were they raised at the court below; it being trite law that any issue not raised in the lower court cannot be raised for the first time in the Supreme Court. See *J. Biruwa v. The State* (1992) 1 NWLR (Pt.220) 633 at 643- 5 644. The plaintiffs/respondents' issue 4 is accordingly discountenanced.

Learned counsel for the appellants having by his submission restricted himself to the case of *Thomas & ors v. Olufosoye* (supra) in the first group of cases, it is only left for me to comment on that case briefly. The case was decided purely on the issue of locus standi. In it the plaintiffs were held to 10 have no standing to sue and their action was dismissed by the trial Judge. Both the Court of Appeal and this Court dismissed their appeals and the issue of the consequential order to make never arose. It is therefore misleading as learned counsel for the appellants has submitted in this case, that it is trite law that if a party has no locus standi he has no reasonable 15 cause of action.

And as between *Thomas v. Olufosoye* (supra) vis-a-vis the second group of cases there is no conflict as I shall seek to show herein.

Coming to the second group of cases, the learned writer of the lead judgment in the court below, hit the nail on the head when in the following 20 two rolled up sentences he summed up what I consider as the crux of the matter succinctly thus: *'...This appeal raises a point of paramount importance in that it poses in a neat form the question of what consequential order is to be made by the court where it is established that the plaintiff has no locus standi to prosecute his claims before the court of law. The law on 25 this point can be said to be still in a state of flux requiring definite and positive pronouncement.'*

After meticulously considering the ratio decidendi in *Oloriode v. Oyebe* (supra); *Chief Otapo v. Chief Sunmonu & Ors* (supra) and *Fawehinmi v. Akilu & Anor* (supra) the learned Justices of the court below arrived at their 30 penultimate conclusion set out hereinbefore in this judgment, which conclusion, I am satisfied, is right. When the question of which of the two groups of cases should be followed by us is therefore posed, the answer I would proffer should naturally be the second group. This is because it is that group that answers positively that the consequential order to make in 35 the instant case should be as 'striking out' and not 'a dismissal'. In as much as the decision of this Court in *Oloriode v. Oyebe* (supra) has not been overruled by a full panel of this Court and it is still the law, the binding force of stare decisis and precedent will ensure that it is followed until

overruled. And until then, the ratio decidendi emanating from that decision will continue to have force and application to similar or identical decisions coming up on appeal for adjudication and such decisions will continue to be binding on all lower courts in the hierarchy of courts in the country. As Oputa, J.S.C. aptly put it in *Fawehinmi v. N.B.A. & Ors* (No.2) (1989) 2 5 NWLR (Pt. 105) 558 at 650.

“Our law is the law of the practitioner rather than the law of the philosopher. Decisions have drawn their inspiration and their strength from the very facts which framed the issues for decision. Once made, these decisions control future judgments of the Courts in like or similar cases. The 10 facts of two cases must either be the same or at least similar before the decision in the earlier case can be used in a later case, and even there, merely as a guide. What, the earlier decision establishes is only a principle, not a rule. Rules operate in an all or nothing dimension. Principles do not. They merely incline decisions one way or the other. They form a principium 15 or a starting point.

Where one ultimately lands from that starting point will largely depend on the peculiar facts and circumstances of the case in hand.”

This then takes me briefly to what constitutes ratio decidendi, stare decisis and precedent respectively hereinbefore alluded to.

20 In the case of *Tejumade Clement & Anor v. Bridget v. Iwuanyanwu & Anor* (1989) 3 NWLR (Pt.107) 39 in which the question posed was whether the Court of Appeal in exercising the jurisdiction vested in it by the 1979 Constitution to grant leave to appeal to the Supreme Court, is bound to apply the Rules of the Supreme Court, in particular, Order 6 rule 2 of 25 1985 Supreme Court Rules, Oputa, J.S.C. in restating redefining and re-emphasising this branch of our law observed inter alia at pages 53 and 54 of the Report thus:

“The ratio decidendi of a case is the reason for the decision, the principle of the decisions. A court of lower in the judicial hierarchy is bound 30 by the ratio decidendi of a higher court not necessarily the obiter dictum. That seems to be the first rule designed, no doubt, to ensure uniformity in decision-making, foster stability, and enhance the development of a consistent and coherent body of law as well as assure equality of treatment for litigants similarly situated” See Eperokun v. University of Lagos (1986) 35 4NWLR (Pt. 34) 162 at page 193.

“The manner in which the Judge chooses to argue the case is not the all important thing. Rather it is the principle he is deciding. See U.T.C. (Nig) Ltd v. Pamotei (1989) 2 NWLR, CPt.103) 244 at 293.” “Stare decisis et non quela movere, meaning literally - To stand by what has been decided

and not to disturb and unsettled things which are established. Stare decisis thus means to abide by former precedents where the same points come again in litigation. Stare decisis presupposes that the law has been solemnly declared and determined in the former case. It thus precludes the Judge of the subordinate courts from changing what has been determined. In other words, they should keep the scale of justices even and steady not liable to waiver with every Judge's opinion."

"Under the doctrine of stare decisis, lower courts are bound by the theory of precedent. Now a precedent is an adjudged case or decision of a higher court considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. Courts attempt to decide cases on the basis of principles established in prior cases. Thus, prior cases which are close in facts or legal principles to the case under consideration are called precedents."

Back to the mainstream of the argument. It has been submitted by learned counsel for the plaintiffs/respondent, Chief Ige, and rightly in my view, that while in the Thomas v. Olufosoye case (supra) the issue of consequential order was not raised, this court has by its decision in Road Transport Employers Association of Nigeria v. The National Union of Road Transport Workers (1992) 2 NWLR (Pt. 224) 381 now provided a sign-post. In that case, which is similar to the one in hand, the main issue agitated was: what is similar to the one in hand, the main issue agitated was: what is the proper order to make in the circumstances where an appellate court holds that a plaintiff had no locus standi in relation to the reliefs he seeks from the court - should it be one dismissing the action or one striking it out? In answer to the question, Babalakin, J.S.C. who wrote the lead judgment (concurring in by Uwais, Kawu, Wali, and Omo JJ.S.C.) citing with approval the cases of Oloriode v. Oyebe (supra) and Nigeria Airways v. Lapite (1990) 7 NWLR (Pt. 163) 392. C-E said with lucidity and clarity as follows:- *"When a court holds that a plaintiff has no locus standi in respect of a claim the consequential order to be made is striking out of such claim and not a dismissal of the claim."*

The rationale is that holding that a plaintiff has no locus standi goes to the jurisdiction of the Court before such an action is brought. When the question that a plaintiff has no locus standi to institute an action arises all that is being said in effect is that the court before which such an action is brought cannot entertain the adjudication of such an action. The Court cannot dismiss a claim the merit of which it is not competent to enquire into. The Court of Appeal having held that the plaintiff/appellant has no locus standi to bring claims 1,2,3 and 4 above cannot embark on the

adjudication on the claims which will lead to a pronouncement on the merit of the issues raised therein as the Court of Appeal did.

The proper order to make in the circumstances of this case is an order striking out the claims and not that of dismissal as done by the Court of Appeal in the case. A dismissal in those circumstances postulates that
 5 *that action was properly constituted."*

The Court below faced with a similar - indeed an identical circumstance in the instant case, rightly agreed to be bound by authority of judicial precedent. See *Rossek v. A.C.B. Ltd.* (1993) 8 NWLR (Pt. 312) 382. That is how it should be and indeed ought to be.

10 Besides, the learned trial Judge having earlier on in his ruling founded on a motion dated 13th July, 1987 and brought at the instance of the appellants (who were applicants therein) to strike out the plaintiffs/respondents' Statement of Claim on the ground (i) that the latter had no locus standi to institute the action; (ii) that the trial court had no jurisdiction to
 15 entertain the action and (iii) that their Statement of Claim disclosed no reasonable cause of action, were met with the following reply by the trial court, to wit:

"Thus, I am of the view that any provision whatsoever in the Chiefs Law, Cap. 21 of the Laws of Oyo State or Edict No.3 of 1985 which
 20 *purports to oust the jurisdiction of the Court would appear to be inconsistent with the provisions of Section 236 of the 1979 Constitution which gives the High Court of a State unlimited jurisdiction to adjudicate on this suit."*

The proper order to make is one striking out the action and I so
 25 hold. Moreover, Order 24 rule 4, Oyo State High Court (Civil Procedure) Rules invests the court with a discretion whether to strike out or to dismiss the action. Order 24 rule 4 pertinently provides:-

"The Court or Judge may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in
 30 *any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed or judgment to be entered accordingly, as may be just."*

In the instant case, I am of the firm view that the appropriate order
 35 to make is one of striking out. Accordingly, this appeal fails.

For the fuller reasons given by my learned brother Ogundare, J.S.C. in his judgment; a preview of which I have had and with which I fully agree, I will myself also dismiss the appeal and abide by the order of costs contained in the lead judgment.

ADIO JSC

I have had the privilege of reading, in draft, the judgment just delivered by my learned brother, Ogundare, J.S.C., and I entirely agree with his reasoning and conclusion. The appeal does not succeed and I too dismiss it and abide by the order for costs. 5

In view of the importance of the issue involved I want to make some comments. My learned brother, Ogundare, J.S.C., has set out the facts of this case in full and I adopt them. The main issue is the nature of the order which a court should make if the court finds that the plaintiff, who has instituted the action, has no locus standi. There were decisions of this court, mentioned in the lead judgment of my learned brother, Ogundare, J.S.C., in which the order which this court made was one striking out the actions and there were instances, also mentioned in the lead judgment of my learned brother, Ogundare, J.S.C., in which this Court dismissed the actions. A lower court, such as the Court of Appeal or a High Court, faced with a situation in which there are conflicting decisions of this court on the same matter cannot undertake the difficult task of finding out how the conflict between the two or more sets of decisions should be resolved. In aid of the lower courts, are some legal principles guiding them on what to do where there are two or more conflicting decisions of a higher court, on the same point. The task of finding a solution is better left to this court which can make a definite and authoritative pronouncement on the matter, as it was done in the lead judgment of my learned brother, Ogundare, J.S.C., and can, if necessary, overrule or depart from any of its earlier decisions. What is needed is a concise, clear and authoritative pronouncement on the question whether in certain specified circumstances, where a plaintiff has no locus standi to institute an action the proper order to make is one striking out the action and whether in other specified circumstances the proper order is one dismissing the action or whether once the court finds that a plaintiff has no locus standi to institute an action the proper order to make in all such cases is one striking out the action or one dismissing the action. 10 15 20 25 30

My learned brother, Ogundare, J.S.C. has after a careful analysis of the relevant previous decisions of this court, come to the conclusion that where a court finds that a plaintiff who has instituted an action has no locus standi to do so, the proper order to make, in the circumstances, is one striking out the action. I entirely agree with him because the legal implication of a finding by a court that the plaintiff, who has instituted an action, has no locus standi to do so is that the court has no jurisdiction to entertain the action. See *Oredoyin v. Arowolo* (1989) 4 NWLR (Pt. 114) 172. In 35

Dada & Ors v. Ogunsanya & Anor (1992) 3 NWLR (Pt. 232) 754, the respondents, in the Lagos High Court, sought, inter alia, to challenge the nomination of the 1st appellant as the lay president of the African Church of Nigeria at a conference. After the respondents had filed their amended Statement of Claim, the appellant, without filing any pleading moved the
 5 High Court for an order striking out the Statement of Claim and dismissing the action. In his ruling on the application, the learned trial Judge held, inter alia, that the respondents had no locus-standi to institute the action and struck it out. There was an appeal to the Court of Appeal which allowed the appeal and set aside the ruling. On further appeal to this Court,
 10 Kawu, J.S.C. reading the lead judgment, in the case, dismissing the appeal, stated (at p. 764), inter alia; as follows:-

“It is settled law that locus standi is the legal capacity to institute an action in a court of law - Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669, and if a person had no legal standing to institute an action, the court
 15 will have no jurisdiction to entertain his claims - See Madukolu v. Nkemdilim (1962) 1 all NLR 587 at 595.

If a court finds that it has no jurisdiction to entertain an action what is the nature of the order that it should make? There is authority for the proposition or principle that if a court finds that it has no jurisdiction to
 20 entertain an action, the proper order which it should make is an order striking out the action. That was the conclusion of this court in Fawehinmi v. Akilu & Anor., (1987) 4 NWLR (Pt. 67) 797. Obaseki, J.S.C., at p. 830, stated inter alia as follows:-

*“It is fundamental that an application for leave to apply for an order
 25 of Mandamus must have locus standi to make application before leave can be granted by the Court. Indeed the party making any claim and bringing any application before the court must have locus standi If the plaintiff has no locus standi, the court has no jurisdiction to entertain the matter and it must be struck out. See Oloriode & Ors v. Oyebi & Ors
 30 (1984) 5 S.C. 1 at 28; (1984) 1 SCNLR 390.”*

Babalakin, J.S.C., came to the same conclusion in Road Transport Employers Association of Nigeria v. National Union of Road Transport Workers (1992) 2 NWLR (Pt. 224) 381.

It is for the foregoing reasons and the fuller reasons given in the lead
 35 judgment of my learned brother, Ogundare, J.S.C., that I entirely agree that this appeal has no merit. I too dismiss it and abide by the order for costs. Appeal dismissed.