

SUPREME COURT OF NIGERIA,
14TH MAY, 1999. SC. 45/1999
CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE, M. E.
OGUNDARE, E. O. OGWUEGBU, A. I. KATSINA-ALU, O.
ACHIKE, A. O. EJIWUNMI, JJSC.

CHIEF CHUBA EGOLUM PETITIONER/APPELLANT
AND

1. GENERAL OLUSEGUN OBASANJO)
 2. CHIEF ELECTORAL OFFICER OF THE)
FEDERATION (HON. JUSTICE)
EPHRAIM OMOSOSE IBUKUN AKPATA)
 3. THE RETURNING OFFICER FOR THE) RESPONDENTS
PRESIDENTIAL ELECTION)
 4. INDEPENDENT NATIONAL ELECTORAL)
COMMISSION AND 56 OTHERS)
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APPEALS - Technicalities - Duty of the courts - The emphasis is on doing substantial Justice - Rather than on technicalities.

ELECTION PETITION - Amendment - Time to make an amendment - Where the time had passed - The court was right not to have ordered an amendment of the petition.

ELECTION PETITION - Locus standi - Decree No. 6 of 1999 - Provisions of s. 50(i) - Only a person falling within the provisions - Has the locus standi to present a petition under the decree.

ELECTION PETITION - Locus Standi - Person who had a right to contest an election - Petitioner claiming to be such a person - Should state how he acquired that right - In order to establish his locus standi.

ELECTION PETITION - Noncompliance - Power conferred on the Court - By Decree No. 6 of 1999 - Paragraph 50(i) and (4) thereof - By virtue

of it the court can overlook such noncompliance.

INTERPRETATION OF STATUTES - Decree No. 6 of 1999 - Persons entitled to present an election petition - Conflict between a schedule and provisions of s. 50(i) of the Decree - In so far as form TF. 002 is in conflict with the subsection it is invalid.

LOCUS STANDI - Fundamental aspect - Of locus standi - Is that it focuses on the party seeking to get his complaint before the court - And not on the issues he wishes to have adjudicated.

FACTS

The petitioner/appellant filed a petition at the Court of Appeal Abuja challenging the election of the 1st respondent as president of Nigeria. In the petition, he averred in paragraphs 1 thereof as follows:-

"1. Your petitioner Chuba Egolum is a person who, had a right to contest at the above election."

He questioned the election of the 1st respondent on grounds of non-qualification, disqualification, corrupt practices and electoral irregularities. The Chief Electoral Officer of the Federation, the Returning Officer of the Presidential Election and the Independent National Electoral Commission (INEC) were joined as 2nd to 4th respondents. Also joined as respondents were 56 presiding officers at various Polling Stations in the country. On the petition coming before the court for hearing objection was taken by the 1st and 2nd to 4th respondents respectively to the competence of the petition.

After hearing argument by all the counsel to the parties, the Court of Appeal granted the application. The Court held inter alia that although the petitioner would appear to have fallen within section 50(1) (a) of the Decree, having failed however, to specify the right he had to present the petition, the petition was incompetent. The court then struck out the petition. Dissatisfied with the ruling both the petitioner and the 1st respondent appealed against certain aspects of the Court's ruling. Issues were raised by the parties in respect of the appeal and the cross appeal

but the appeal was determined on one main issue.

ISSUE FOR DETERMINATION

"1. Whether a petitioner who is admittedly entitled to present a petition under section 50(1) (a) of Decree No. 6 of 1999 and who states the basis of that entitlement or right to do so in the body of the petition, has not satisfied the provisions of paragraph 5(1) (b) of Schedule 4 of the Decree.

HELD (Unanimously dismissing both the appeal and the cross-appeal per lead judgment of **OGUNDARE JSC**)

Locus Standi - Decree No. 6 of 1999

1. Section 50(1) prescribes the persons who may present election petition under the Decree. He is either a person claiming to have had a right to contest or be returned at the election or he was a candidate at the election. Contrary to the view expressed by Oguntade JCA when in his judgment he said:

"There is no doubt that section 50 of Decree No. 6 of 1999 is a clear departure from the common law practice as to locus standi and to the law on the point in Nigeria. Under section 50 of Decree No. 6 of 1999, a person who was not a candidate at the election could come to court to challenge the conduct of the election. It is in my view a welcome change. I believe that the enthronement of democracy in Nigeria is sufficiently important to all Nigerians to enable anyone who feels aggrieved to approach the court for redress."

I do not think that the decree opens the door as wide as stated by the learned Justice of Appeal. Only a person falling within the provisions of section 50(1) has the locus standi to present a petition under the Decree. (p. 1280 F)

Locus Standi - Person who had a right to contest an election

2. In paragraph 1 of the petition filed by the petitioner in the case on hand, he claimed to be "a person who had a right to contest at the above election." The court below was of the view that paragraph 1 was not sufficient to establish his locus standi and that the petitioner should have

gone further to state how he acquired that right. I think the court below is right . On the face of it paragraph 1 would appear to conform with Form TF. 002 which by paragraph 5(7) would make the petition sufficient for the purposes of paragraph 5 of Schedule 4. But the petitioner in B paragraph 21 claimed that he scored 11,627,789 lawful votes at the election and prayed in paragraph 24(a) of his petition that it be determined that he was duly elected and ought to have been returned. He was thus claiming to be a candidate at the election who was voted for. By the C confused state of his petition, he has thereby put the issue of his locus standi in question. (p. 1281 B)

Locus Standi - Fundamental aspect

3. "The fundamental aspect of locus standi is that it focuses on the party D seeking to get his complaint before the (High) court not on the issues he wishes to have adjudicated." - per Obaseki JSC in Adesanya v. President of Nigeria & Anor. (1981) 12 NSCC 146, 173. It is the bounden duty of the court below to satisfy itself that the Petitioner had locus standi to E present the petition, before proceeding with the hearing of the petition. (p. 1281 H)

Interpretation of Statutes - Decree No. 6 of 1999

F 4. Form TF. 002 appears to be in conflict with section 50(1) of the Decree in that it enlarges the scope of the persons entitled to present a petition when it speaks of "who voted (or had a right to vote, as the case may be)." It is this that must have misled Oguntade JCA into holding the G view I quoted earlier in this judgment. Surely section 50(1) does not confer on a voter a right to present a petition. In so far, therefore, as Form TF. 002 is in conflict with section 50(1) of the Decree, it is invalid. In any event, it cannot assist the petitioner in this case who, in one breath, H breath, he claims to be a candidate who scored votes and should be declared duly elected. Paragraph 5(7) of schedule 4 which makes compliance with Form TF. 002 sufficient for the purpose of paragraph 5 is of no assistance in this case. (p. 1282 H)

Election Petition - Amendment

5. It might be that an amendment of the petition would cure the confused state into which the petitioner has put his locus standi but having regard to the fact that the time had passed for such an amendment to be made to the petition-see paragraph 15(2(a) of Schedule 4 the court below was right not to have ordered an amendment of the petition. (p. 1283 G)

Election Petition - Non-Compliance

6. The court below rightly, in my respectful view, exercised its discretion by applying the provisions of sub-paragraphs (1) & (4) of paragraph 50 of Schedule 4. It is not in dispute that the petition contain an address of the petitioner though not strictly in the form laid down in paragraph 5(4) of schedule 4. In view, however, of the powers conferred on that court by paragraph 50(1) and (4) of schedule 4, it has a discretion which in the circumstances of this case it rightly exercised in favour of the petitioner. I, therefore, dismiss the cross-appeal as lacking in substance. (p. 1284 F)

Appeals - Technicalities

7. The course of justice has moved a long way from the decisions in the cases cited to us by learned leading counsel for the cross-appellant. The emphasis now is more on doing substantial justice rather than on technicalities which the cross-appeal seems to be all about - see: Matthew Obakpolor v. The State (1991) 1 NWLR 113 at p. 129 where this court, per Akpata JSC, observed:

"That there was procedural irregularity is not in doubt. It is however an irregularity which has not led to a miscarriage of justice. The irregularity is not of a magistrate's failure to comply at all with statutory provisions but of a failure to comply with it strictly. It is the paramount duty of courts to do justice and not cling to technicalities that will defeat the ends of justice. It is immaterial that they are technicalities arising from statutory provisions, or technicalities inherent in rules of court. So long as the law or rule has been substantially complied with

and the object of the provisions of the statute or rule is not defeated, and failure to comply fully has not occasioned a miscarriage of justice, the proceedings will not be nullified."

Arua Eme v. The State (1964) 1 All NLR 416, 421; (1964) ANLR 409

B (p. 1284 H)

NOTABLE POINTS OF INTEREST

UWAIS CJN

1. The Essence of pleadings

C The question here is whether paragraph 1 of the Appellant's petition, quoted above, has met the requirements of the aforementioned provisions of Decree No. 6 of 1999. Section 2 of the Decree provides the qualification necessary for a person to acquire before he could contest
D the Presidential election. It stated:-

"2. A person shall be qualified for election to the office of President if:-

(a) he is a citizen of Nigeria by birth,

E *(b) he has attained the age of 40 years;*

(c) he is a member of a political party and is sponsored by that political party; and

(d) he has been educated up to at least School Certificate level or its equivalent."

F Could these important provisions of the Decree be ignored in considering whether a petitioner who claims to have a right to contest the Presidential election has indeed such a right? It is trite that the essence of pleadings is to ascertain with certainty the various matters in dispute between the
G parties to a case - Aderemi v. Adedire, 1966 N.M.L.R. 398 and Oduka & Ors. v. Kasumu & Anor, (1968) N.M.L.R. 28 at p. 31. Pleadings must define the issues in controversy and narrow the scope of the controversy between the parties, thereby preventing a surprise being sprung
H upon either party - Odogwu v Odogwu, (1990) 4 N.M.L.R. 224 at p. 234. Furthermore, pleadings must be sufficient, comprehensive and accurate - Ayoola James v. Mid-Motors Nigeria Co. Ltd., (1978) 11 & 12 S.C. 31 at p. 63. In my opinion, it is in recognition of these estab-

lished principles of pleadings that paragraph 5 sub-paragraph (1) (b) of Schedule 4 to Decree No. 6 of 1999 demands that the right of a petitioner to present an election petition under the Decree must be specified. (p. 1291 F)

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2. Conflict between a schedule of an Act and a section of the Act

It is significant that the paragraph has made no mention of "a person claiming to have had a right to contest" as provided by section 50 subsection (1) (a) of Decree No. 6 of 1999. It in fact extends the right to petition to a voter or a person who has a right to vote, both of whom are not within the contemplation of section 50 subsection (1) of the Decree. In re Baines' case (supra) decided that where an enactment in a schedule to an Act contradicts the earlier provision of a section of the Act, the latter shall prevail over the former. (p. 1292 G)

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3. Construction of a statute must have regard to all the parts

It is an elementary rule of interpretation of statute that construction is to be made of all the parts of a statute together and not one part only by itself - See Turquand v. Board of Trade, (1886) 11 App. Cas. 286 at p. 291. In the case of Canada Sugar Refining Co. v. R. (1898) A.C. 735 it is said at p. 741 thereof -

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

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In my opinion, therefore, to determine whether the Appellant was a person who had the right to contest the Presidential election, recourse must be had to the provisions of section 2 read together with those of section 50 subsection (1) (a) of Decree No. 6 of 1999. The Appellant was under obligation to specify in his petition his right to contest the election, in view of the provisions of section 56, paragraph 5 subparagraphs (1) (b) and (7) and Form TF 002 of schedule 5 all of Decree No. 6 of 1999. To hold otherwise is, in my view, to permit any person not qualified under the provisions of section 2 of the Decree to

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claim that he has the right to contest the election. This would give the opportunity to meddlesome persons who cannot contest the election to bring petition. Such persons could be non-citizens of Nigeria, under-age, not belonging to or sponsored by any political party and being illiterate. Surely this cannot be and will defeat the intendment of the lawmaker in promulgating Decree No. 6 of 1999. I, therefore, hold that the Appellant had not sufficiently shown in his petition that he had the right or standing to bring the petition and the Court of Appeal was right in so holding. (p. 1293 F)

BELGORE JSC

4. Election Petition must conform with the normal procedure in civil cases

It is obvious that the mandatory provisions of s. 50(1) and (2) of the Decree have not been satisfied. The appellant averred in the petition that he is " of Nri Town, Anaocha Local Government, Anambra State" but it is not clear if he is a native or a mere resident of Nri Town so that it is not known if he is a Nigerian citizen. His age is not given and he has not mentioned what political party he belongs to and it is not clear if he contested the election now in question. It is also not stated if he is educated at all. The whole paragraph 1 of the petition has not indicated the locus under which he has filed this petition. The petition challenging any election must conform with the normal procedure in a civil case. (p. 1298 B)

Necessary Party in an election Petition

5. The principle of our law, is that no person shall be guilty without being given an opportunity to defend himself. Every person against whom an allegation is made must be confronted with that allegation so that he can offer hi defence. That is the purport of Section 50(2) of the Decree No. 6 of 1999 (supra). The petitioner who complains that an Electoral Officer, a presiding Officer, a Returning Officer or any other person involved in the election by conduct has initiated the election must presume that officer etc. as a necessary party and must make him a party. In

paragraphs 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 of the petition made many serious allegations including fraud and other electoral offences but the electoral officers, returning officers etc. have not been made parties i.e. respondents to the petition. This shortcoming in the petition made those paragraphs incompetent. (p. 1299 C)

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KATSINA - ALU JSC

6. The right to contest an election

The right to contest an election is not a common law right. It is created by statute and anyone seeking relief under such a law must bring himself strictly within the provisions of the law. The locus standi of any petitioner is a matter touching on the competence and the jurisdiction of the court to entertain the petition. The importance of the standing of a litigant cannot be over-emphasized. (p. 1310 E)

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ACHIKE JSC

7. When to raise the issue of locus standi

It is trite that the locus standi of a plaintiff or a petitioner is a crucial matter touching on the competence and the jurisdiction of the court to adjudicate on the suit or petition or application before it. It is a fundamental jurisdictional question that can be raised at any time during the trial as a preliminary issue or even raised for the first time on appeal. Thus where a jurisdictional issue is raised, the court is obliged to determine or dispose of it before going into the merits of the case. See Momodu v Olotu (1979) 1 All NLR 117, Adesanya v President of Nigeria (1981) 2 NCLR 358, Adefulu v Oyesile (1989) 5 NWLR (Pt. 122) 377 at 410, Ojukwu v Kaine (1997) 9 NWLR (Pt. 522) 613 at 628 and Gambioba & Ors v Esezi 11 & Ors (1961) ANLR 604. (p. 1319 D)

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REPRESENTATION

S. A. Asemota, Esqr., SAN with J.D. Moze for the Appellant.
Chief Afe Babalola, SAN with Chief B. Aiku, SAN; Prince
L. O. Fagbemi, SAN; J. K. Gadzame, SAN; L. O. Akhindo; Dr. Toriola Oyewo; B. K. Ba'aba; Chief B. A. O. Niemociha;

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Dr. Alimi Abdulrasaq Oluwole Aina; Chief Chris. Okolie;
J. E. Ejemba, O. Mudiaga-Odje; Olafemi Okunloye; I. O.
Olorundare; Bolaji Ayorinde; Olalekan Ojo; Ms. Hauwa
Ibrahim; C. N. Nsobundu and Chief Chike Chigbue for the 1st Respon-
dent.

B A. O. Eghobamien, SAN; with O. O. Izzi; I. K. Bawa; M. K. Bala;
Obasuyi, (Miss) for the 2nd - 60th Respondents.

CASES REFERRED TO

C Omoboriowo v. Ajasin (1984) 15 NSCC 82

Ngelizana v. Hindi (1965) NNLR 12

Dada v. Fasanmi (1965) WNLR

Thomas v. Olufosoye (1986) 1 NWLR 669 at 686 B

D Adesanya v. President of Nigeria (1981) 12 NSCC 146, 173

Gamioba v. Esezi 11 (1961) 1 All NLR 594; (1961) ANLR 608

Fawehimi v. Akilu In re Oduneye, DPP (1987) 4 NWLR 797

Obakpolor v. The State (1991) 1 NWLR 113 at p. 129

E Eme v. The State (1964) 1 All NLR 416, 421; (1964) ANLR 409

Anyia v. The State (1995) NMLR 62 at p. 65

Akpan v. The State (1986) 3 NWLR 225 at pp.232 & 235

Dean v. Green (1882) 8 P.D. 79

Aderemi v. Adedire 1966 N.M.L.R. 398

F Oduka v. Kasumu (1968) N.M.L.R. 28 at p. 31

STATUTES REFERRED TO

Presidential Election (Basic Constitutional and Transitional Provisions)

G Decree No.6 1999; ss.2, 50, sch.4 parag. 5, 15(2) (a) and 50 (1) and (4)

LEAD JUDGMENT BY OGUNDARE JSC

This appeal was argued orally before us on 31/3/99 when judg-
H ment was reserved to 6/4/99. On that day I dismissed the appeal as well
as the cross-appeal and indicated that I would give my reasons today.
Here are my reasons for dismissing both the appeal and the cross-appeal.

Following the Presidential Election held throughout Nigeria on

the 27th day of February, 1999, the 1st Respondent General Olusegun Obasanjo who was a candidate at the election was declared duly elected having scored 18,739,154 votes against the votes of 11,110,287 scored by his opponent, Chief Samuel Oluyemi Falae. The Appellant herein on 16/3/99 filed a petition at the Court of Appeal Abuja against the election of the 1st Respondent. The Chief Electoral Officer of the Federation (Hon. Justice Ephraim Omorose Ibukun Akpata [(retd.)], the Returning Officer in the Presidential Election and the Independent National Electoral Commission (INEC) were joined as 2nd to 4th Respondents in the petition. Also joined as Respondents were 56 Presiding Officers at various polling Stations in the country.

For the purpose of this appeal the penultimate paragraphs of the petition are - 1, 2, 21 and 24(a) which read:

"1. Your petition Chief Chuba Egolum is a person who had a right to contest at the above election.

2. Your petitioner states that the elections was held on the 27th day of February 1999 when Chief Samuel Oluyemi Falae and General Olusegun Obasanjo were candidates, and on the 1st day of March 1999 the 3rd Respondent declared that Chief Samuel Oluyemi Falae received 11,110,287 votes and that the said General Olusegun Obasanjo received 18,739,154 votes and returned General Olusegun Obasanjo as being duly elected President of the Federal Republic of Nigeria.

21. The petitioner scored in the said election a total of 11,627,789 lawful votes at the election.

24(a) . The petitioner therefore prays:

(a) That it be determined that the 1st Respondent was not duly elected or returned and that the Petitioner was duly elected and ought to have been returned."

(underlinings are mine for emphasis)

On the petition coming before the Court of Appeal for hearing objection was taken by the 1st and 2nd to 4th Respondents respectively to the competence of the petition. The Court of Appeal in its ruling held

(1) that the petition substantially complied with paragraph 5 of

the 4th Schedule to Decree No.6 of 1999 titled Presidential Election (Basic Constitutional and Transitional Provisions) Decree 1999 (hereinafter is referred to as the Decree) in that the petitioner's address for service as stated in the petition was sufficient for the purpose of the law.

B (2) That the petitioner has failed to comply with the provisions of section 50(2) of the Decree in that Presiding Officers affected by some paragraphs of the petition were not joined as Respondents to the petition. The Court ruled that no evidence should be led in respect of misconduct of election officials except those who had been made parties
C to the petition, and

(3) That although the petitioner would appear to have fallen within section 50(1) (a) of the Decree, having failed however, to specify the right he had to present the petition the petition was incompetent. The
D Court then struck out the petition.

Both the Petitioner (who is the Appellant before us) and the 1st Respondent appealed against certain aspect of the court's ruling. The petitioner contended that the court was wrong in holding that evidence in
E respect of certain paragraphs of the petition could not be led and secondly that the petition was incompetent. The 1st Respondent cross-appealed against the decision of the court that the address given on the petition was sufficient compliance with paragraph 5 of schedule 4 of the Decree. Both the 1st respondent and the petitioner, through their learned
F leading counsel, filed Briefs of Argument. Although there was no Practice Direction to this effect I have found the two Briefs very helpful in the determination of this appeal. I am very grateful to both Chief Afe Babalola SAN and Mr. S.A. Asemota, SAN for the assistance rendered in this
G respect. I commend their efforts.

The issues for determination in respect of the main appeal, that is, the petitioner's appeal, are two-fold. They are, as set out in the Appellant's Briefs:

H "1. Whether a petitioner who is admittedly entitled to present a petition under section 50(1) (a) of Decree No. 6 of 1999 and who states the basis of that entitlement or right to do so in the body of the petition, has not satisfied the provisions of paragraph 5(1) (b) of Schedule 4 of

the Decree.

2. *Whether the Court of Appeal was right in holding that evidence cannot be led in respect of some paragraphs of the petition in which allegations of misconduct are made where the electoral or other officials of the Independent National Electoral Commission, concerned are not joined as parties."* B

The issues set out in the Brief of the 1st Respondent are not dissimilar. They are just variants of the issues as formulated in the Appellant's Brief but raise substantially the same questions. In the case of the cross-appeal the following two questions are raised in the Cross-Appellant's Brief: C

"1. *Was the lower court right in not holding that the petitioner/1st respondent's petition was fundamentally defective and therefore, incompetent for non-compliance with the mandatory provisions of paragraphs 5(4) and (5) of Schedule 4 to Decree No. 6 of 1999.* D

2. *Whether or not the lower court correctly interpreted the provisions of paragraph 50(1) of Schedule 4 to Decree No. 6 of 1999 when it held that the said paragraph 50(1) of the said schedule 4 to Decree No. 6 of 1999 enables it to overlook the petitioner/1st respondent's non-compliance with paragraph 5(4) of schedule 4 to Decree No. 6 of 1999."* E

At the hearing of this appeal, Mr. Asemota SAN learned leading counsel for the petitioner referred the court to section 50 of the Decree and submitted that there was nothing in that section requiring a petitioner to state the basis of his right to present a petition. He submitted that the petition specified the right the petitioner had in presenting the petition and that paragraph 1 of the petition was sufficient compliance with the law. While conceding it that the provisions of paragraph 5(1) of Schedule 4 are mandatory, learned counsel submitted that they could not over-ride the provisions of section 50(1). He also submitted that the petitioner did not need to state in his petition the facts contained in section 2 of the Decree. It is learned counsel's submission that there is no conflict between the Schedule and the Decree and that it was only the interpretation of the Court below that was in conflict with the Schedule in that the court below enlarged the provisions of paragraph 5(1) Of schedule 4. He F G H

finally submitted that the petition was in conformity which the requirements of the law and urged this court to so hold.

On Issue (2), learned Senior Advocate referred to the case of Omoboriowo v. Ajasin (1984) 15 NSCC 82 and observed that that case was based on the 1982 Electoral regulations which, according to learned Senior Advocate, had the same purport as Decree No. 6 of 1999. It is learned counsel's submission that the timing of the order relating to non-joinder and exclusion of evidence was wrong. It is learned counsel's view that the court below should have allowed evidence to be led on those paragraphs and if in the process evidence of misconduct against electoral officers who were not joined were given such evidence would be ignored. Learned Senior Advocate explained that it was possible for an allegation of irregularity to be established without imputing criminal conduct to any official. He however, submitted that non-joinder of some officers should not defeat the giving of evidence to prove irregularity in an election petition.

He urged the court to allow the appeal.

Chief Afe Babalola SAN learned leading counsel for the 1st Respondent referred to paragraph 1 of the petition and the decision of the court below on it. Learned counsel observed that all the petitioner did was to lift the provisions of section 50(1) into paragraph 1 of the petition. He submitted that the provisions of sections 2 and 50(1) and paragraph 5(1) (b) of Schedule 4 to the Decree must be wet. It is counsel's view that by the use of the word "specify" in paragraph 5(1) of Schedule 4 the petitioner was required to state in full and explicit terms, to particularize, the right he had to present the petition. He submitted that there was no conflict between the Decree and the Schedule. He urged the court to uphold the decision of the court below on this issue.

On issue (2), Chief Afe Babalola referred to paragraphs 9, 12 to 20 of the petition and submitted that those paragraphs contained allegations of heinous crimes or electoral offences against election officers in all the States mentioned in the said paragraphs. He observed that not all these officers were joined in the petition. Learned Senior Advocate submitted that the court below was right in the conclusion it reached and

that the decision of this court in Omoboriowo v. Ajasin (supra) supported the court below. He observed that the timing of the order was not made an issue in the court below nor is it made a ground of appeal to this court.

On the cross-appeal, Chief Afe Babalola relying on Ngelizana v. Hindi (1965) NNLR 12 and Dada v. Ayo Fasanmi (1965) WNLR, submitted that the petition was defective in that the petitioner's address was not stated on the petition as required by law. He submitted that paragraph 50(1) of Schedule 4 could not cure the defect. He also was of the view that the Court of Appeal could not exercise its discretion suo motu but only on the application of an erring petitioner. He observed that there was no such application by the petitioner before the court below. He urged the court to allow the cross-appeal.

Chief Eghobamien SAN learned leading counsel for the 2nd to the 60th Respondents adopted the arguments preferred by Chief Afe Babalola SAN. He further submitted that a right to present the petition must be explained in the petition by the petitioner. He relied on Thomas v. Olufosoye (1986) 1 NWLR 669 at 686 B - D in support. He argued that it would amount to a breach of the rule of fair hearing if evidence were allowed concerning the conduct of election officials not joined as Respondents. He too urged the court to dismiss the main appeal and allow the cross-appeal of the 1st Respondent.

Mr. Asemota SAN, in reply, reiterated his view that there had been substantial compliance with the Decree. He submitted that it was section 50(1) of the Decree that gave the petitioner locus standi. He submitted equally that paragraphs 13 - 16 of the petition did not indict any election officer in particular except the INEC as a body and that body was joined as a Respondent in this petition. On the cross-appeal he referred the Court to part of the record of the court below where that court exercised its discretion in petitioner's favour pursuant to paragraph 50(1) of Schedule 4. He urged the court to dismiss the cross-appeals.

In a short reply on the cross-appeal Chief Afe Babalola SAN observed that the court below only dealt with the issue of address but not with the issue of occupier and the distance of that address within the

judicial division, issues upon which he addressed the court below extensively.

I think at this stage I need to set out the relevant sections of the Decree and the Schedule 4 thereto:

B Section 2:

"A person shall be qualified for election to the office of President if -

(a) he is a citizen of Nigeria by birth;

(b) he has attained the age of 40 years;

C *(c) he is a member of a political party and is sponsored by that political party; and*

(d) he has been educated up to at least School Certificate level or its equivalent."

D Section 50:

(1) An election petition may be presented by one or more of the following persons -

(a) a person claiming to have had a right to contest or be re-

E *turned at an election; or*

(b) a candidate at the election.

(2) The person whose election is complained of is in this Decree referred to as the respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, the Electoral Officer, Presiding Officer, a Returning Officer or that other person shall for the purpose of this Decree be deemed to be a respondent and shall be joined in the election petition as a necessary party."

G Paragraph 5 of Schedule 4:

"5. - (1) An election petition under this Decree shall-

(a) specify the parties interested in the election petition;

(b) specify the right of the petitioner to present the election peti-

H *tion;*

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

(d) state clearly the facts of the election petition and the ground

or grounds on which the election petition is based and the relief sought by the petitioner.

(2) The election petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively. B

(3) The election petition shall further -

(a) conclude with a prayer or prayers, as for instance, that the petitioner or one of the petitioners be declared validly elected or returned, having polled the majority of lawful votes cast at the election or that the election may be declared nullified, as the case may be; and C

(b) be signed by the petitioner or all the petitioners or by the Solicitor, if any, named at the foot of the election petition.

(4) At the foot of the election petition there shall also be stated an address of the petitioner for service within five kilometres of a post office in the Judicial Division, and the name of its occupier, at which address documents intended for the petitioner may be left. D

(5) If an address for service and its occupier are not stated as specified in sub-paragraph (4) of this paragraph, the petition shall be deemed not to have been filed, unless the Court of Appeal otherwise orders. E

(6) An election petition which does not conform with sub-paragraph (1) of this paragraph or any provision of that sub-paragraph is defective and may be struck out by the Court of Appeal. F

(7) The Form TF. 002 set out in Schedule 5 to this Decree or one substantial like it, shall be sufficient for the purposes of this paragraph." Paragraph 50(1) & (4) of Schedule 4:

"50. - (1) Non-compliance with any of the provisions of this Schedule, or with a rule of practice for the time being operative, except otherwise stated or implied, shall not render any proceeding void, unless the Court of Appeal so directs, but the proceeding may be set aside wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Court of Appeal may think fit and just. G H

(4) An election petition shall not be defeated by an objection as to form if it is possible at the time the objection is raised to remedy the

defect either by way of amendment or as may be directed by the Court of Appeal."

Form TF. 002 reads in part

"PRESIDENTIAL ELECTION (BASIC CONSTITUTIONAL
B AND TRANSITIONAL PROVISIONS) DECREE 1999 IN THE COURT
OF APPEAL.

PETITION

Suit No:

*The election to thefor the Constituency held on the
C day of 19*

Between

A.B.)Petitioner(s)

C.B.)

AND

D E.F.)Respondent(s)

G.H.....)

*The petition of A.B. of(or of A.B. of and C.D. of
..... or as the case may be) whose names are subscribed.*

E *1. Your petitioner A.B. is a person who voted (or had a right to
vote, as the case may be) at the above election (or claims to have had a
right to be returned or elected at the above election) or was a candidate
at the above election, and your petitioner, (here state in like
F manner the right of each petitioner)"*

ISSUE (1):

**Section 50(1) prescribes the persons who may present elec-
tion petition under the Decree. He is either a person claiming to
have had a right to contest or be returned at the election or he was
G a candidate at the election. Contrary to the view expressed by
Oguntade JCA when in his judgment he said:**

*"There is no doubt that section 50 of Decree No. 6 of 1999 is a
clear departure from the common law practice as to locus standi and to
H the law on the point in Nigeria. Under section 50 of Decree No. 6 of
1999, a person who was not a candidate at the election could come to
court to challenge the conduct of the election. It is in my view a wel-
come change. I believe that the enthronement of democracy in Nige-*

ria is sufficiently important to all Nigerians to enable anyone who feels aggrieved to approach the court for redress."

I do not think that the decree opens the door as wide as stated by the learned Justice of Appeal. Only a person falling within the provisions of section 50(1) has the locus standi to present a petition B under the Decree. In paragraph 1 of the petition filed by the petitioner in the case on hand, he claimed to be "a person who had a right to contest at the above election." The court below was of the view that paragraph 1 was not sufficient to establish his locus standi C and that the petitioner should have gone further to state how he acquired that right.

I think the court below is right . On the face of it paragraph 1 would appear to conform with Form TF. 002 which by paragraph 5(7) would make the petition sufficient for the purposes of D paragraph 5 of Schedule 4. But the petitioner in paragraph 21 claimed that he scored 11,627,789 lawful votes at the election and prayed in paragraph 24(a) of his petition that it be determined that he was duly elected and ought to have been returned. He was thus claim- E ing to be a candidate at the election who was voted for. By the confused state of his petition, he has thereby put the issue of his locus standi in question. It is unclear whether he was petitioning as a person who had a right to contest (in which case he would have had to F show that he is a member of a political party and he is sponsored by that political party as stipulated in section 2 of the Decree, but was disallowed from contesting) or as a candidate. It becomes necessary, therefore, for him to state clearly in his petition the basis of which he was claiming to G have a right to present the petition. Paragraphs 21 and 24(a) taken together are clearly in conflict with paragraph 1 of the petition and the trial court, that is, the court below was entitled to be assured of the locus standi H of the Petitioner before allowing him to proceed with the trial of his petition. "The fundamental aspect of locus standi is that it focuses on the party seeking to get his complaint before the (High) court not on the issues he wishes to have adjudicated." - per Obaseki JSC in Adesanya v. President of Nigeria & Anor. (1981) 12 NSCC

1282 Egolum v. Obasanjo (1999) 5 KLR Ogundare JSC
146, 173.

The importance of the standing of a litigant to bring an action was once highlighted by this court. In Alhaji Olorunkemi Ajao v. Mrs. L. E. Sonola & Anor. (1973) 5SC. 119 at p.123, this court, per Coker JSC, observed:

"We consider it generally accepted as a sound legal proposition that the plaintiff to an action must be competent to institute such an action and if such a plaintiff claims by substitution, he has the onus of proving that he has the legal capacity to do the legal act which he had set out to perform . In Lawal & Ors. v. A. Younan & Sons & Co. (supra), the question arose as to right of persons who were granted Letters of Administration in a Customary Court to administer the estate of a deceased person by virtue of that grant to sue for damages on behalf of the dependants of the deceased under the Fatal Accidents Acts, 1846. In the course of the judgment of the Federal Supreme Court, Ademola CJN observed at page 253 of the Report thus:-

'On the view I have taken of this matter, it is clear a person to whom power is given under Customary Law to administer the Estate of a deceased person, is a person empowered by that law to administer the estate of the deceased where Customary Law can be invoked, and such power cannot be extended to matters which are statutory rights under English Law and to which statutory remedies apply.'

We think it is settled that competency to institute an action is an essential or indeed a vital factor in deciding the competency of the action itself, and if challenged by a defendant, the plaintiff has the onus of establishing it."

See also: Gamioba & Ors. v. Esezi 11 & Ors. (1961) 1 All NLR 594; (1961) ANLR 608; Senator Abraham Ade Adesanya v. The President of the Federal Republic & Anor. (supra); Fawehimi v. Akilu & Anor. In re Oduneye, DPP (1987) 4 NWLR 797. **It is the bounden duty of the court below to satisfy itself that the Petitioner had locus standi to present the petition, before proceeding with the hearing of the petition.**

Form TF. 002 appears to be in conflict with section 50(1) of

the Decree in that it enlarges the scope of the persons entitled to present a petition when it speaks of "who voted (or had a right to vote, as the case may be)." It is this that must have misled Oguntade JCA into holding the view I quoted earlier in this judgment. Surely section 50(1) does not confer on a voter a right to present a petition. In so far, therefore, as Form TF. 002 is in conflict with section 50(1) of the Decree, it is invalid. In any event, it cannot assist the petitioner in this case who, in one breath, claims to be a person who has had the right to contest and, in another breath, he claims to be a candidate who scored votes and should be declared duly elected. Paragraph 5(7) of schedule 4 which makes compliance with Form TF. 002 sufficient for the purpose of paragraph 5 is of no assistance in this case. As Lord Denman CJ put it in R v. Baines (1840) 12 A & E 210, 226-227; and I agree with him;

"It was argued, for the defendant, that the form of the significavit itself, as given by stat. 53 G. 3, c. 127, in the schedule, proves that the Judge, i.e. the bishop, is the only person who ought to certify, as '..... by divine providence is a form that can only apply to a bishop. It would indeed be singular, if any change in this respect had been intended, that it should have been nowhere indicated in the enactments of the statute, and that this style and title should have been carefully preserved by it. Yet such form, although embodied in the Act, cannot be deemed conclusive of a question of this nature: we have also to consider the language of the section itself to which the schedule is appended; and, if there be any contradiction between the two, which upon fair construction there perhaps will not be found to be, upon ordinary principles the form, which is made to suit rather the generality of cases than all cases, must give way."

It might be that an amendment of the petition would cure the confused state into which the petitioner has put his locus standi but having regard to the fact that the time had passed for such an amendment to be made to the petition-see paragraph 15(2(a) of Schedule 4 which provides:

"(2) After the expiry of the time limited by -

(a) *section 49 of this Decree for presenting the election petition, no amendment shall be made -*

(i) *introducing any of the requirements of sub-paragraph (1) of paragraph 5 of this schedule not contained in the original election petition filed, or*

(ii) *effecting a substantial alteration of the ground for, or the prayer in, the election petition, or.*

(iii) *except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition;"*

the court below was right not to have ordered an amendment of the petition.

In view of what I have been saying above I must resolve Issue (1) against the Appellant. I hold that his petition was rightly struck out by the court below and I affirm that order.

ISSUE (2):

In view of the conclusion I have just reached on Issue (1) the question raised under Issue (2) has become academic. I do not therefore, consider it necessary to go into it any longer in this appeal.

CROSS-APPEAL:

I have considered the submissions of learned counsel for the parties. I find no substance in the cross-appeal. **The court below rightly, in my respectful view, exercised its discretion by applying the provisions of sub-paragraphs (1) & (4) of paragraph 50 of Schedule 4.**

It is not in dispute that the petition contain an address of the petitioner though not strictly in the form laid down in paragraph 5(4) of schedule 4. In view, however, of the powers conferred on that court by paragraph 50(1) and (4) of schedule 4, it has a discretion which in the circumstances of this case it rightly exercised in favour of the petitioner. I, therefore, dismiss the cross-appeal as lacking in substance. The course of justice has moved a long way from the decisions in the cases cited to us by learned leading counsel for the cross-appellant. The emphasis now is more on doing substantial

justice rather than on technicalities which the cross-appeal seems to be all about - see: Matthew Obakpolor v. The State (1991) 1 NWLR 113 at p. 129 where this court, per Akpata JSC, observed:

"That there was procedural irregularity is not in doubt. It is however an irregularity which has not led to a miscarriage of justice. The irregularity is not of a magistrate's failure to comply at all with statutory provisions but of a failure to comply with it strictly. It is the paramount duty of courts to do justice and not cling to technicalities that will defeat the ends of justice. It is immaterial that they are technicalities arising from statutory provisions, or technicalities inherent in rules of court. So long as the law or rule has been substantially complied with and the object of the provisions of the statute or rule is not defeated, and failure to comply fully has not occasioned a miscarriage of justice, the proceedings will not be nullified."

Arua Eme v. The State (1964) 1 All NLR 416, 421; (1964) ANLR 409 Onucha Anya & Ors. v. The State (1995) NMLR 62 at p. 65 and Edeat Akpan v. The State (1986) 3 NWLR 225 at pp.232 & 235 were referred to and followed.

It is for the reasons given above that I dismissed both the main appeal and cross-appeal on 6th April, 1999.

UWAIS CJN

On 6th April, 1999 I dismissed the Appellant's appeal and the 1st Respondent's cross-appeal. I indicated then that I would give my reasons for doing so today. I have had the opportunity of reading in advance the reasons for judgment just read by my learned brother Ogundare, JSC. I agree with his conclusions. However, I wish to express my own reasons for dismissing the appeal and the cross-appeal.

The Appellant was the petitioner in the Court of Appeal, Abuja, where he brought a petition challenging the election of the 1st Respondent as President of Nigeria. In the Petitioner, he averred in paragraph I thereof as follows:-

"1. Your petitioner Chief Chuba Egolum is a person who, had a

right to contest at the above election."

and questioned the election of the 1st Respondent on grounds of non-qualification, disqualification, corrupt practices and electoral irregularities.

B The Chief Electoral Officer of the Federation, the Returning Officer for the Presidential Election, the Independent National Electoral Commission (INEC) and 56 electoral officials were joined as Respondents to the petition.

C By separate motions on notice brought by the 1st Respondent and the 2nd to 60th Respondents, the court below was asked to strike out the petition on the ground that the court had no jurisdiction to entertain it because of the petitioner's lack of standing and/or non-compliance with the provisions of the Presidential Election (Basic Constitutional and
D Transitional Provisions) Decree No. 6 of 1999. In addition, the 1st Respondent requested in his notice of motion, that paragraphs 9 to 19 inclusive, of the petition be struck out for being incompetent. Both motions were consolidated and heard together by the Court of Appeal (Musdapher,
E Mukhtar, Oguntade, Akpabio and Edozie, JJ.C.A.)

In granting the application after hearing argument by all the counsel to the parties, the Court of Appeal held, as per Musdapher, J.C.A. , (who wrote the lead judgment which the other members of the panel
F agreed with) regard to whether paragraphs 9 to 19 of the petition should be struck out:-

"Secondly Chief Afe Babalola also contended that, whereas the petitioner made complaints in paragraphs 9 -20 of his petition against certain electoral officials he failed to join them as parties in the petition.
G *Vide s. 50 (2) of the Decree No. 6 of 1999. He urged it on us to adopt one of three options name: (1) strike out the entire petition (2) strike out the relevant paragraphs and (3) direct that evidence be not led in proof of the allegations contained in those paragraphs. Once again, Eghobamien*
H *associated himself with the submissions of Chief Afe Babalola, Asemota, SAN in reply said that no allegation of misconduct or criminality has been specifically made against the officials. The complaint was generally against INEC. It is my view that the petitioner has failed to comply*

with the very clear provisions of s. 50 (2) of the Decree. The Section does not in its wording distinguish between general and specific complaints. It seems to me that the argument of Mr. Asemota is an attempt to wriggle out of the definitive (sic) provisions of paragraph 50(1) of Schedule 4, I must and do hereby rule that no evidence shall be led in respect of misconduct of the electoral officials except those who had been made parties to this petition. All other complaints concerning officials not made parties are irrelevant."

On whether the petitioner had locus standi or the competence to bring the petition, the court below held as per Musdapher, JCA as follows:-

"I am satisfied that S. 50 creates two or more classes of persons who can question the return to (sic) a presidential election. These are, (1) the candidates, (2) A person who claims to have the right to contest the election (3) A person claiming the right to be returned at the election. Now in paragraph 1 of the petition, the petitioner pleaded thus;

'Your petitioner Chief Chuba Egolum is a person who had a right to contest at the above election.'

Seemingly therefore, (the) petitioner will appear to have fallen within (Section) 50 (1) (a) of the Decree. More than that however, he must also comply with paragraph 5 (1) of Schedule 4 which in subparagraph 1 (b) requires him to 'specify the right of the petitioner to present the election petition.' This in my view means that a petitioner must amplify on the capacity which he relies on to bring the petition, he cannot barely repeat S. 51 (a) and no more. The question now is can this obvious lacuna be cured? I have looked closely at paragraph 5 (6) which provisions guide the court on whether or not to strike out a petition. Also the provisions contained in paragraph 50(1) to Schedule 4 seems to give the court the discretion to save petitions, but regrettably I am unable to save this particular petition, the reason that the defects are fundamental when they do not know the capacity in which the petitioner is pursuing the petition. As at this stage the petitioner cannot be granted leave to amend his petition, the error must therefore be visited with the penalty provided by law. The petitioner is not a candidate at the elec-

tion, but one of the reliefs he is seeking is to be returned as the duly elected President of Nigeria. In the light of the foregoing, the application to strike out petition CA/A/EPPR/13/99 is granted. Accordingly, the petition is truck out."

B Not satisfied with the ruling both the Appellant and the 1st Respondent separately appealed to this court. Although the court had intended to have the appeal argued orally only by waiving the filing of briefs of argument by the parties in view of the limited time allowed by paragraph 2 (2) of the Schedule 4 to the Presidential Election (Basic Constitutional Provisions) Decree No. 6 of 1999, the Appellant and the 1st Respondent were able to file briefs of argument before the date fixed for the hearing of the appeal. The 2nd to 60th Respondents did not file any brief as their counsel was served with the Appellant's and 1st Respondent's
C
D briefs of argument only a day or so before the hearing of the case. We, therefore, allowed their counsel to reply to Appellant's argument orally without filing a reply brief of argument.

MAIN APPEAL

E In the Appellant's brief two issues were formulated. They read thus:-

"2.01. Whether a petitioner who is admittedly entitled to present a petition under section 50(1) (a) of Decree No. 6 of 1999 and who states the basis of that entitlement or right to do so in the body of the petition,
F *has not satisfied the provisions of paragraph 5 (1) (b) of Schedule 4 of the Decree.*

2.02. Whether the Court of Appeal was right in holding that evidence cannot be led in respect of some paragraphs of the petition in
G *which allegations of misconduct are made where the electoral or other officials of the Independent National Electoral Commission, concerned are not joined as parties."*

For the 1st Respondent, two issues were also raised in his brief
H of argument in respect of the Appellant's appeal. They are:-

"1. Was the lower court right in striking out the Appellant's petition for lack of locus standi by reason of the appellant's failure to specify his right to present the petition as prescribed by Decree No. 6 of

2. *Whether or not the lower court correctly interpreted the provisions of paragraph 50 (1) of Schedule 4 to Decree No. 6 of 1999 when it held that the said paragraph 50 (1) of the said Schedule enables it to overlook the petitioner/1st respondent's noncompliance with paragraph 5 (4) of Schedule 4 to Decree No. 6 of 1999.* B

In arguing the Appellant's issue No.1, in the Appellant's brief of argument and orally, Mr. Asemota, learned Senior Advocate, canvassed that section 50 subsection (1) of Decree No. 6 of 1999 enabled the Appellant to bring petition in the lower court and once the provisions thereof were satisfied then the requirements for bringing the petition would have been met. He referred to paragraph 5(1) (b) of Schedule 4 to Decree No. 6 of 1999 and conceded that its provisions were mandatory and not directive. He submitted that the sub-paragraph should not be interpreted D in a manner that would defeat the aim of the main sections of the Decree. He stated that if a person brings a petition, as person qualified to contest the election, that is enough despite the provisions of section 2 of Decree No. 6 of 1999 which prescribes the qualification of a candidate to con- E test the Presidential election. Learned Senior Advocate argued further that if the provisions of Schedule 4 to Decree No. 6 of 1999 conflict with those of a section of the Decree it is the latter that would prevail. He referred, in support of the argument, to Craies on Statute Law, by S.G.G. F Edgar, 7th Edition, page 224 and stated further that the interpretation given by the Court of Appeal to the provisions of Schedule 4 contradicted the provisions of section 50 subsection (1) (a) of the Decree. He contended that though Schedule 4 was enacted by virtue of the provi- G sions of sections 54 and 56 of Decree No. 6 of 1999 its provisions apply also to section 50 subsection (1) of the Decree. Learned Senior Advocate argued that by its interpretation, the Court of Appeal had enlarged the meaning of paragraph 5 sub-paragraph (1) (b) of Schedule 4 by stat- H ing that the petitioner must show the basis of his right to bring the petition. In his view, all that the sub-paragraph required the petitioner to plead was to state his right under section 50 subsection (1) of the Decree. To buttress his argument, he cited the cases of In re Baines, (1840)

12 A & E, 227 and Dean v. Green, (1882) 8 P.D. 79.

Replying, Chief Afe Babalola, learned Senior Advocate, for the 1st Respondent, stated both orally and in the 1st Respondent's brief of argument that a petitioner, as the Appellant, under Decree No. 6 of 1999 must comply with all the provisions of sections 2, 50 subsection (1) (a) and paragraph 5 sub-paragraph (1) (b) of Schedule 4 to the Decree. He referred to the word "specify" in paragraph 5 (1) (b) of Schedule 4 and its meaning in Black's Law Dictionary 6th Edition, paragraph 1399 which is given as "to state in full and explicit terms, to particularize." He contended, in the 1st Respondent's brief of argument, that the locus standi of a plaintiff (sic petitioner) is a matter touching on the competence and jurisdiction of the court being asked to entertain the case. He cited the cases of Adesanya v. President of Nigeria, (1981) 2 NCLR 358; Irene Thomas v. Olufosoye, (1986) N.W.L.R. (part 18) 669 at p. 672; Momoh v. Olotu, (1970) 1 All N.L.R. 117; and Adefulu v. Oyesile, (1985) 5 N.W.L.R. (Part 122) 387 at p. 410 G - H and submitted that it was not enough for the Appellant to simply plead in his petition that he had a right to present the petition, which was a mere repetition of the provisions of section 50 subsection (1) (a) of Decree No. 6 of 1999.

In reply to the contention of the Appellant that there was a conflict between the provisions of Schedule 4 and section 50 sub-section (1), learned Senior Advocate argued that there was no such conflict and that the Schedule was an integral part of the Decree. He pointed out that the Court of Appeal did not hold that there was such a conflict. He cited the case of Ibidapo-Obe v. Luftansa Airways, (1997) 4 N.W.L.R. (Part 498) 124 at p. 162 in support of his argument.

Mr. Eghobamien, Learned Senior Advocate, for the 2nd to 60th Respondents, adopted the argument advanced by Chief Afe Babalola, citing the case of Thomas v. Olufosoye, (supra) at p. 686 B-D and submitting that the Appellant had failed to particularize his locus, for bringing the petition.

The first issues for determination in both the Appellant's and the 1st Respondents briefs of argument are the same even though differently phrased.

Now section 50 subsection (1) (a) and (b) of Decree No. 6 of 1999 provides:-

"50 (1) An election petition may be presented by one or more of the following persons -

(a) a person claiming to have had a right to contest or be re- B
turned at an election; or

(b) a candidate at the election."

The Appellant by paragraph 1 of his petition averred that he was a person who had the right to contest. It is clear, therefore, that the petition was based on the first arm of section 50 sub-section (1) (a) of Decree No. 6 of 1999. In other words, the petitioner claimed to be "a C
person claiming to have had right to contest" the Presidential election.

Section 56 of Decree No. 6 of 1999 prescribes the procedure to be followed in bringing an election petition. It states - D

"56. The rules of procedure to be adopted for election petitions and appealed arising therefrom shall be those set out in Schedule 4 to this Decree."

Paragraph 5 of Schedule 4 states what the contests of a petition E
should be. Sub-paragraph (1) (b) thereof provides:-

"5. (1) An election petition under this Decree shall -

(b) specify the right of the petitioner to present the election peti- F
tion;"

The question here is whether paragraph 1 of the Appellant's pe-
tition, quoted above, has met the requirements of the aforementioned
provisions of Decree No. 6 of 1999. Section 2 of the Decree provides
the qualification necessary for a person to acquire before he could con- G
test the Presidential election. It stayed:-

*"2. A person shall be qualified for election to the office of Presi-
dent if:-*

(a) he is a citizen of Nigeria by birth,

(b) he has attained the age of 40 years; H

*(c) he is a member of a political party and is sponsored by that
political party; and*

(d) he has been educated up to at least School Certificate level

or its equivalent."

Could these important provisions of the Decree be ignored in considering whether a petitioner who claims to have a right to contest the Presidential election has indeed such a right? It is trite that the essence of pleadings is to ascertain with certainty the various matters in dispute between the parties to a case - Aderemi v. Adedire, 1966 N.M.L.R. 398 and Oduka & Ors. v. Kasumu & Anor, (1968) N.M.L.R. 28 at p. 31. Pleadings must define the issues in controversy and narrow the scope of the controversy between the parties, thereby preventing a surprise being sprung upon either party - Odogwu v Odogwu, (1990) 4 N.M.L.R. 224 at p. 234. Furthermore, pleadings must be sufficient, comprehensive and accurate - Ayoola James v. Mid-Motors Nigeria Co. Ltd., (1978) 11 & 12 S.C. 31 at p. 63. In my opinion, it is in recognition of these established principles of pleadings that paragraph 5 sub-paragraph (1) (b) of Schedule 4 to Decree No. 6 of 1999 demands that the right of a petitioner to present an election petition under the Decree must be specified.

Now sub-paragraph (7) paragraph 5 of Schedule 4 states:-

"(7) The Form TF 002 set out in Schedule 5 to this Decree or one substantially like it, shall be sufficient for the purposes of this paragraph."

Paragraph 1 of Form TF 002 provides as follows:-

"1. Your petitioner A.B. is a person who voted (or had a right to vote, as the case may be) at the above election (or claims to have had a right to be returned or elected at the above election) or was a candidate at the above election, and your petitioner(here state in like manner the right of each petitioner)"

It is significant that the paragraph has made no mention of "a person claiming to have had a right to contest" as provided by section 50 subsection (1) (a) of Decree No. 6 of 1999. It in fact extends the right to petition to a voter or a person who has a right to vote, both of whom are not within the contemplation of section 50 subsection (1) of the Decree. In re Baines' case (supra) decided that where an enactment in a schedule to an Act contradicts the earlier provision of a section of the Act, the latter shall prevail over the former. Be this as it may, the last sentence in

bracket in paragraph 1 of Form TF 002 requires the petitioner to state his right for bringing the petition paragraph 1 of the Appellant's petition which merely states "Your petition Chief Chuba Egolum is a person who, had a right to contest at the above election" is therefore a far cry from the provisions of paragraph 1 of Form TF 002 quoted above. It does not specify the right of the Appellant to contest the election by virtue of section 2 of Decree No. 6 of 1999.

Admittedly, sub-paragraph (7) of paragraph 5 of Schedule 4 provides that a petition which is substantially like Form TF 002 is sufficient for the purposes of paragraph 5 of Schedule 4 which deals with the contents of an election petition: but can paragraph 1 of the Appellant's petition or any other paragraph thereof be said to have substantially followed the provisions of paragraph 1 of Form TF 002? This is, however, an aside because it deals with procedure and not substantive law. I therefore need not answer it as the issue is primarily concerned with the locus standi of the Appellant to bring the petition.

The arguments by counsel in this appeal have made reference to the provisions of Sections 2, 50 subsection (1) (a), 56, paragraph 5 sub-paragraphs (1) (a) and (7) of Schedule 4 and Form TF 002 of Schedule 5, all of Decree No. 6 of 1999. The Appellant's contention is that we should not look beyond the provisions of section 50 subsection (1) (a) in determining the right of the Appellant to bring the petition. With respect, I am unable to accept this. It is an elementary rule of interpretation of statute that construction is to be made of all the parts of a statute together and not one part only by itself - See Turquand v. Board of Trade, (1886) 11 App. Cas. 286 at p. 291. In the case of Canada Sugar Refining Co. v. R. (1898) A.C. 735 it is said at p. 741 thereof -

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

In my opinion, therefore, to determine whether the Appellant was a person who had the right to contest the Presidential election, recourse must be had to the provisions of section 2 read together with

those of section 50 subsection (1) (a) of Decree No. 6 of 1999. The Appellant was under obligation to specify in his petition his right to contest the election, in view of the provisions of section 56, paragraph 5 subparagraphs (1) (b) and (7) and Form TF 002 of schedule 5 all of Decree No. 6 of 1999. To hold otherwise is, in my view, to permit any person not qualified under the provisions of section 2 of the Decree to claim that he has the right to contest the election. This would give the opportunity to meddlesome persons who cannot contest the election to bring petition. Such persons could be non-citizens of Nigeria, under-age, not belonging to or sponsored by any political party and being illiterate. Surely this cannot be and will defeat the intendment of the lawmaker in promulgating Decree No. 6 of 1999. I, therefore, hold that the Appellant had not sufficiently shown in his petition that he had the right or standing to bring the petition and the Court of Appeal was right in so holding. The petition was incompetent. It followed that the Court of Appeal lacked the jurisdiction to entertain it - See the cases of Adesanya v. President of Nigeria, (supra) Thomas v. Olufosoye, (supra) Momoh v. Olotu, (supra) and Adefulu v. Oyesile, (supra).

With regard to Appellant's issue No. 2, having come to the conclusion that the Appellant lacked the standing to institute the petition, it becomes unnecessary for me to consider the point raised by the issue on whether the Court of Appeal was right in striking out paragraphs 9 to 19 of the petition. To engage to such exercise would be academic and futile.

Accordingly the Appellant's appeal is hereby dismissed as a whole with costs as contained in my judgment which was delivered on the 6th day of April, 1999.

G CROSS-APPEAL

The issues raised by the 1st Respondent in his brief of argument are thus:-

"1. Was the lower court right in not holding that the petitioner/
H 1st respondent's petition was fundamentally defective and therefore, incompetent for non-compliance with the mandatory provisions of paragraphs 5(4) and (5) of Schedule 4 to Decree No. 6 of 1999.

2. Whether or not the lower court correctly interpreted the provi-

sions of paragraph 50(1) of Schedule 4 to Decree No. 6 of 1999 when it held that the said paragraph 50(1) of the said schedule enables it to overlook the petitioner/1st respondent's non-compliance with paragraph 5 (4) of schedule 4 to Decree No. 6 of 1999."

No issue was formulated by the Appellant/Respondent.

These issues cannot now be considered. Having already held that the Appellant/Petitioner was not competent to bring the petition nor was the petition competent and that the Court of Appeal lacked the jurisdiction to hear it. Consequently anything done by the court below by way of procedure was null and void. It is for this reason that I dismissed the cross-appeal without costs in my judgment which was delivered on the 6th day of April, 1999.

BELGORE JSC

On the 6th day of April, 1999, I dismissed this appeal and reserved the reasons for doing to today. I now give the reasons.

The petitioner, Chief Chuba Egolum who was not a candidate at the Presidential Election held on 27th February, 1999, filed his petition at the Court of Appeal challenging the return made by the Independent National Electoral Commission declaring General Olusegun Obasanjo as elected President. The petition cited non-qualification, corrupt practices and electoral irregularities among the reasons for the petition. The Independent National Electoral Officers were joined as respondents. The petition was filed on the 15th March, 1999. On the 17th March, 1999, the Chief Electoral Officer of the Federation, Hon. Justice E.O. I Akpata (Rtd) (hereinafter referred to as the 2nd Respondent) the Returning Officer for presidential Election (third Respondent), and the Independent National Electoral Commission (hereinafter referred to as "the Commission") applied to have the petition struck out on the ground that :-

1. the petitioner has not satisfied the provisions of sections 2 and 3 of Presidential Election (Basic Constitutional and Transitional Provisions) Decree, (No.6 of 1999.

2. the petition has not shown any right to contest or be returned

at the Election as provided by Decree No. 6 of 1999.

3. the petitioner had not shown that he complied with and/or capable of complying with sections 12 and 13 of Decree No. 6 of 1999."

On the 18th day of March, 1999, the first respondent, General
 B Olusegun Obasanjo in his own motion prayed the Court of Appeal to
 strike out the petition on the ground that the court lacked jurisdiction to
 entertain the petition by reason of petitioner's lack of locus standi. Alter-
 natively the court was asked to strike out paragraphs 9, 10, 12, 13, 14,
 C 15, 16, 17, 18, and 19 of the petition for incompetence. Similar applica-
 tion was filed on behalf of 2nd to 4th respondents. The Court of Appeal
 consolidated the two motions for hearing. The parties argued the mo-
 tions and the Court of Appeal came to the conclusion in its ruling that the
 motions had merit and were granted i.e. that the petitioner had not stated
 D clearly the capacity giving him the right to contest the Presidential Elec-
 tion; and that no evidence should be led in respect of paragraphs 9, 10,
 12, 13, 14, 15, 16, 17, 18 and 19 of the petition because the electoral
 officers in whose areas the shortcomings mentioned in those paragraphs
 E had not been joined as parties. The petition was therefore struck out,
 leading to the appeal to this court.

The appellants formulated the following issues for determination:

"2. 1. *Whether a petitioner who is admittedly entitled to present*
 F *a petition under Section 50(1) (a) of Decree No. 6 of 1999 and who*
states the basis of that entitlement or right to do so in the body of the
petition, has not satisfied the provisions of paragraph 5(1) (b) of Sched-
ule 4 of the Decree.

G "2.2. *Whether the Court of Appeal was right in holding that evi-*
dence cannot be led in respect of some paragraphs of the petition in
which allegations of misconduct are made where the electoral or other
officials of the Independent National Electoral Commission, concerned
are not joined as parties."

H As against these issues the 1st respondent had formulated on his
 behalf the following issues:-

"3.1 ISSUE 1

Was the lower court right in striking out the Appellant's petition

for lack of locus standi by reason of the appellant's failure to specify his right to present the petition as prescribed by Decree No. 6 of 1999?

ISSUE 2

Was the lower court right in its decision that evidence shall not be led in respect of misconduct of electoral officers except those who had been made parties to the petition, and that all other complaints concerning officials not made parties are irrelevant?" B

The appellant, as petitioned merely stated:-

"Your petitioner Chief Chuba Egolum is a person who had right to contest at the election." C

The question is: Will this be sufficient averment of the "right to contest at the election?" This must be answered by reference to the Presidential Election (Basic Constitutional and Transitional Provisions) Decree (No. 6 of 1999) which governs the entire election to the office of the President. D
Section 50(1) states:-

"50(1) An election petition may be presented by one or more of the following persons:-

(a) a person claiming to have had a right to contest or be returned at an election ;or E

(b) a candidate at the election ; or

(2) The person whose election is complained of is in this Decree referred to as the respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, the Electoral Officer, Presiding Officer, a Returning Officer or that other person shall for the purpose of this Decree be deemed to be a respondent and shall be joined in the election petition as a necessary party." F G

By simply asserting to be " a person who has right to contest at the election" a petitioner; has left a lacuna for the respondent to start guessing. It is therefore necessary to set out in detail the qualification giving rise to the right to contest the election. The qualification for election to the office of the President has been clearly set out in section 2 of the Decree as:-

"i. a citizen of Nigeria;

ii. a person that has attained the age of forty years;

iii. a person that is a member of a political party and he is sponsored by that party; and

iv. a person who attained educational standard of School Certificate level or its equivalent."

It is obvious that the mandatory provisions of s. 50(1) and (2) of the Decree have not been satisfied. The appellant averred in the petition that he is " of Nri Town, Anaocha Local Government, Anambra State" but it is not clear if he is a native or a mere resident of Nri Town so that it is not known if he is a Nigerian citizen. His age is not given and he has not mentioned what political party he belongs to and it is not clear if he contested the election now in question. It is also not stated if he is educated at all. The whole paragraph 1 of the petition has not indicated the locus under which he has filed this petition. The petition challenging any election must conform with the normal procedure in a civil case. It is for this purpose that Schedule 4 to the Decree was made whereto in paragraph 5(1) provision is made as follows:-

"5(1) An election petition under this Decree shall -

(a) specify the parties interested in the election petition;

(b) specify the right of the petitioner to present the election petition;

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election and

(d) state clearly the facts of the election petition and the ground or grounds on which the election petition is based and the relief sought by the petitioner."

Therefore an election petition is like pleading is like pleading in civil matters. The petitioner must thus reveal all material facts on which he relies for his petition. In the case of the present appellant who was not a candidate he must specify his right to file the petition as provided in sub-paragraph (b) of paragraph 5(1) aforementioned. Mere averment that the petitioner has a right to contest the election, without more, is not enough; he must specify that right. For a person who actually contested the election, the presumption will be in his favour that he has all the

qualifications set out in section 2 of the Decree and the Independents National Electoral Commission has cleared him to contest; in that case he has filled all the forms necessary for a prospective candidate in Schedule 5 to the Decree. Other person petitioning other than a candidate shall specify his right to present a petition. To specify means to explain clearly, to mention specifically, to state in full and explicit terms, to particularize and explain in detail. The appellant as petitioner never specified his qualification or right to contest the election. Therefore the petition is fundamentally defective as the qualification giving rise to the purported right of the petitioner has not been stated. (*Ibidapo-Obe v. Luftansa Airways* (1997) 4 NWLR (Pt. 498) 124, 162. Thus the petitioner has no locus standi. C

The principle of our law, is that no person shall be guilty without being given an opportunity to defend himself. Every person against whom an allegation is made must be confronted with that allegation so that he can offer his defence. That is the purport of Section 50(2) of the Decree No. 6 of 1999 (*supra*). The petitioner who complains that an Electoral Officer, a presiding Officer, a Returning Officer or any other person involved in the election by conduct has initiated the election must presume that officer etc. as a necessary party and must make him a party. In paragraphs 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 of the petition made many serious allegations including fraud and other electoral offences but the electoral officers, returning officers etc. have not been made parties i.e. respondents to the petition. This shortcoming in the petition made those paragraphs incompetent. D E F

I therefore found no reason to interfere with the unanimous decision of the Court of Appeal on this petition and I dismissed this appeal on the 6th April, 1999. G

As for the cross-appeal I found the Court of Appeal exercised its discretion judiciously by invoking the provisions of paragraph 50(1) and (4) of Schedule 4 to Decree No. 6 of 1999 and I had no reason to interfere with that discretion. The cross-appeal therefore failed and I also dismissed it on the 6th April, 1999. H

OGWUEGBU JSC

On 6-4-99, I dismissed the petitioner's appeal and the 1st respondent's cross-appeal and indicated that I would give my reasons for the judgment today. I now give my reasons. I have had the privilege of
 B a preview in draft of the reasons for the judgment just delivered by my learned brother Ogundare, J.S.C and I agree with his conclusions.

The facts and issues in this appeal have been set out in the lead reasons delivered by my learned brother Ogundare, J.S.C. and it is need-
 C less to repeat them. Two issues raised in the appellant's brief are;

"1. Whether a Petitioner who is admittedly entitled to present a petition under section 50(1) (a) of Decree No. 6 of 1999 and who states the basis of that entitlement or right to do so in the body of the petition, has not satisfied the provisions of paragraph 5(1) (b) of the Decree.

*2. Whether the Court of Appeal was right in holding that evi-
 D dence cannot be led in respect of some paragraphs of the petition in which allegations of misconduct are made where the electoral or other officials of the Independent National Electoral Commission, concerned
 E are not joined as parties."*

In his own brief, the 1st respondent/cross-appellant formulated two issues in his brief, namely:-

*"1. Was the lower court right in striking out the Appellant's
 F petition for lack of locus standi by reason of the appellant's failure to specify his right to present the petition as prescribed by Decree No. 6 of 1999.*

*2. Was the lower court right in its decision that evidence shall
 G not be led in respect of misconduct of electoral officers except those who had been made parties to the petition, and that all complaints concerning officials not made parties are irrelevant."*

The two sets of issues are substantially the same.

Arguing the first issue in the main appeal, Chief Asemota, S.A.N.
 H both in his written brief and oral argument submitted that it is only section 50 of the Decree that prescribes the persons who have the right or are entitled to present an election petition and it did not say that one must state the basis of such right. It was his further submission that the

petitioner complied with the provisions of section 50(1) of the Decree and that there is nothing in section 50(1) that required the petitioner to specify the right to present the petition. He referred the court to Form TF 002 of the Decree and contended thus:

"All that paragraph 5 of the 4th Schedule requires of a Petitioner is that he should specify in his petition the right (which-ever it may be) by which he under section 50(1) has brought the petition."
(underlining is for emphasis).

After conceding that paragraph 5(1) of the Schedule 4 is mandatory, he maintained that it should not be interpreted in such a way as to defeat the main aim of the Decree. He further submitted that it was sufficient for the petitioner to state that he had a right to contest the election and that the court below by its interpretation of paragraph 5(1) (b) of Schedule 4 enlarged the provisions of section 50(1) (a) by adding the requirement that the petitioner should specify the basis of his right to present the petition. The court was referred to Craies on Statute Law, 7th edition, page 224 and the case of In re Baines (1840) 8 P.D. 79. He urged the court to allow the appeal.

In reply, Chief Afe Babalola for the 1st respondent submitted in the 1st respondents' written brief and orally that where the person is claiming to have had a right to contest as the petitioner, he must comply with paragraph 5(1) (b) of Schedule 4 by specifying his right to present the petition in order to have the requisite locus standi to present the petition. In his words, "the locus standi of any plaintiff is a matter touching on the competence and jurisdiction of the court to entertain the suit." He referred the court to the following cases: Adesanya v. President of Nigeria (1981) 2 N.C.L.R. 358, Thomas v. Olufosoye (1981) N.W.L.R. (Pt. 18) 669 at 672, Momoh v. Olotu (1970) 1 All N.L.R. 117 and Adefulu v. Oyesile (1985) 5 N.W.L.R. (Pt. 122) 410. He further submitted that such a petitioner must also comply with section 2 of the Decree and that it is not enough for the appellant merely to plead that he had a right to present the petition as that amounts to merely repeating the provision of section 50(1) (a) of the Decree. We were referred to Blacks' Law Dictionary 6th edition, paragraph 1399 where the word "specify" is stated to

mean" to state in full and explicit terms, to particularize."

Chief Afe Babalola, S.A.N. further argued that paragraph 5(1)(b) of Schedule 4 forms an integral part of the Decree and must therefore be complied with. He cited the cases of Ibidapo Obe v. Luftansa Airways B (1997) 4 N.W.L.R. (Pt. 498) 124 at 162, Board of Custom & Excise v. Barau (1980) 10 S.C. 48 and Seven Up Bottling Co. v. Abiola (1996) 7 N.W.L.R. (Pt. 463) 714. He urged that the appeal of the petitioner be dismissed.

C Chief Eghobamien, S.A.N. for the 2nd to 60th respondents adopted the arguments of Chief Afe Babalola, S.A.N. He cited and relied on the case of Thomas v. Olufosoye (supra) at 686 para B-D and submitted that the petitioner should state fully his right to present the petition.

D I will now consider those provisions of the Decree referred to us which are relevant to the determination of Issue (1) in the main appeal. They are sections 2, 50(1) and 56 and paragraphs 5(1) (b) and (7) of Schedule 4.

Section 2:

E "2. A person shall be qualified for election to the office of President if -

(a) he is a citizen of Nigeria by birth;

(b) he has attained the age of 40 years;

F (c) he is a member of a political party and is sponsored by that political party; and

(d) he has been educated up to at least school Certificate level or equivalent."

Section 50(1)

G "50. (1) An election petition may be presented by one or more of the following persons -

(a) a person claiming to have had a right to contest or be returned at an election; or

H (b) a candidate at the election."

Section 56

"56. The rules of procedure to be adopted for election petitions and appeals arising therefrom shall be those set out in Schedule 4 to this

Decree."

Paragraph 5(1) (b) of Schedule 4:

"5. (1) An election petition under this Decree shall

(a).....

(b) specify the right of the petitioner to present the election petition: B

.....

(7) The Form TF 002 set out in Schedule 5 to this Decree or one substantially like it, shall be sufficient for the purposes of this paragraph."

Section 50(1) prescribed the classes of persons who can present election petition under the Decree. He has to be a person claiming to have had a right to contest or be returned at the election; or a candidate at the election. In paragraph 1 of the petition, the appellant averred as follows: C

"1. Your petitioner Chief Chuba Egolum is a person who had a right to contest at the above election." D

It was not enough for the petitioner to aver that he had a right to contest at the election as contended by Chief Asemota, S.A.N. He had to go further by setting out fully and explicitly how he came to have the right to present the petition. That is what paragraph 5(1)(b) of Schedule 4 to the Decree required him to do and this must be stated in the petition. E

Paragraph 5(1) (b) of Schedule 4 requires the petitioner to supply the particulars of his right to present the petition and such particulars are as to whether he is a citizen of Nigeria by birth, has attained the age of 40 years, is a member of a political party who is sponsored by that political party and whether he possessed the minimum educational qualification. These are the qualifications which a person aspiring to contest the election to the office of President must possess under section 2 of the Decree. They are material facts which the petition must contain. In the absence of these particulars stating the basis upon which the petitioner claimed to have had the right to present the petition, he cannot be said to have established his locus standi to present the petition. See Thomas v. Olufosoye (1986) 1 N.W.L.R. (Pt. 18)669 at 686 and 690-692, Momoh & Or. v. Olotu (1970)1 All N.L.R. 117 at 123. F G H

I agree with the submission of Chief Afe Babalola, S.A.N. that

paragraph 5(1) (b) of Schedule 4 is an integral part of Decree No. 6 of 1999 and must be complied with. Schedule 4 is as much a part of the Decree and it is as much an enactment as any other part. See Attorney-General v. Lamplough (1876) 3 EX D 214 at 229. The said Schedule 4 contains rules of procedure for election petitions. It is induced by section 56 and its provisions are as important as a section is. However, where, an enactment in a schedule contradicts an earlier clause, the clause prevails against the schedule. Se Re Baines (1840) 12 A & E 227. That is not the case in the appeal before us. In my view the court below did not enlarge the provisions of section 50(1) (a) by reference to paragraph 5(1) (b) of Schedule 4.

Reference was made to paragraph 5(7) of Schedule 4 in the course of the arguments of counsel. Form TF.002 is set out in Schedule 5 of the Decree and it reads in part:-

"1. Your petitioner A.B. is a person who voted (or had a right to vote, as the case may be) at the above election (or claims to have had a right to be returned or elected at the above election) or was a candidate at the above election, and your petitioner, (here state in like manner the right of each petitioner)....."

It has to be stressed that generally forms in schedules are inserted merely as examples and for convenience. They are only to be followed implicitly so far as the circumstances of each case admit. See Barlett v. Gibbs (1843) 5 M & G 81 at 96, (134 E.R. 490 at 496.) I have no doubt that Form TF. 002 is no more than an example of what a Presidential Election Petition should contain. Paragraph 1 thereof has even no provision that the petitioner is a person claiming to have had a right to contest as provided in section 50(1) (a) but it was inserted in paragraph 1 of the petition. The petitioner would have gone further to specify his right to present the petition as required by paragraph 5(1) (b) of Schedule 4.

In my view, there was no substantial compliance with Form TF. 002 for the purposes of paragraph 5(7) of Schedule 4. In the circumstances, the appellant failed to disclose in his petition all the facts which gave him the locus standi to bring the petition. The petition was incompetent and was rightly struck out by the court below for lack of jurisdic-

tion to entertain it. See Adesanya v. President of Nigeria (supra). Thomas v. Olufosoye (supra), Adefulu v. Oyesile (supra) and Momoh v. Olotu (supra),

Having resolved Issue (1) against the appellant, any consideration of Issue (2) formulated in the appellant's brief will be an academic exercise which courts do not engage in. B

CROSS-APPEAL

The main complaint of the 1st respondent/cross-appellant is the non-compliance by petitioner with the provisions of paragraph 5(4) and (5) of the 4th Schedule to the Decree in that the address for service of the petitioner was not stated at the foot of the petition and the court below overlooked the mandatory provisions. The court below saw no merit in the objection and exercised the discretion given it in paragraph 50(1) of the 4th Schedule to overlook the errors complained of. The said errors were not substantial as to void the petition. D

It is for the above reasons that I dismissed the petitioner's appeal with costs as ordered in my judgment delivered on 6-4-99.

It is for the same reasons that I dismissed the cross-appeal on E the same day with no order as to costs.

KATSINA -ALU JSC

On 6 April, 1999 I dismissed the Appellant's appeal and the 1st Respondent's cross-appeal. I indicated then that I would give my reasons today. I have had the advantage of reading in draft the reasons for judgment just read by my learned brother Ogundare, JSC. I agree with the reasons he has given. However, I also give my reasons for dismissing both the appeal and the cross-appeal. F G

The Appellant Chief Chuba Egolum brought a petition at the Court of Appeal, Abuja challenging the election of the 1st Respondent General Olusegun Obasanjo. The appellant, it must be pointed out from the outset, was not a candidate at the election. In the petition, he averred in paragraph 1 thereof thus:

"I. your petitioner Chief Chuba Egolum is a person who, had a

right to contest at the above election."

By a motion on notice dated 17th March, 1999 and filed the same day 2nd - 4th respondents prayed the lower court to strike out the petition on the grounds that:

B *"1. The petition is not in accordance with paragraph 5(1) (b) of Schedule 4 of Decree No. 6 of 1999 in that:*

(a) the petitioner has not satisfied the provisions of Sections 2 & 3 of the said Decree in the petition.

C *(b) the Petitioner has not shown any right to contest or be returned at the Election as provided by Decree No. 6 of 1999.*

(c) the petitioner has not shown that he complied with and/or capable of complying with sections 12 and 13 of Decree No. 6 of 1999.

D *2. The Petitioner lacks locus standi in respect of the reliefs being claimed by him in the petition."*

The 1st Respondent also by a motion on notice dated 18 March 1999 and filed the same day, prayed the lower court for the following orders:

E *"1. An order of court striking out the petition on the ground that the court has no jurisdiction to entertain the petition, by reason of the petitioner's lack of locus standi to present same and/or for non-compliance with the mandatory provisions of the Presidential Election (Basic*
F *Constitutional and Transitional and Provisions) Decree No. 6 of 1999 and therefore incompetent." Alternatively to (1) above.*

2. An order of the court striking out paragraphs 9, 10, 12,13,14,15,16,17,18 and 19 of the petition for being incompetent."

G Both motions were consolidated and heard together on 22 March, 1999. In the course of its ruling, the lower court with respect to paragraphs 9 to 19 of the petition held as follows:

H *"Secondly Chief Afe Babalola also contended that, whereas the Petitioner made complaints in paragraphs 9-20 of his petition against certain electoral officials he failed to join them as parties in the petition. Vide S. 50(2) of the Decree No. 6 of 1999. He urged it on us to adopt one of the three options namely: (1) strike out the entire petition (2) strike out the relevant paragraphs and (3) direct that evidence be not led in*

proof of the allegations contained in those paragraphs. Once again, Eghobamien associated himself with the submissions of Chief Afe Babalola. Asemota, SAN in reply said that no allegations of misconduct or criminality has been specifically made against the officials. The complaint was generally against INEC. It is my view that the petitioner has failed to comply with the very clear provisions of S. 50(2) of the Decree. The Section does not in its wording distinguish between general and specific complains. It seems to me that the argument of Mr. Asemota is an attempt to wriggle out of the definitive provisions of the relevant law. In the circumstances under the provisions of paragraph 50(1) of Schedule 4, I must and do hereby rule that no evidence shall be led in respect of misconduct of the electoral officials except those who had been made parties to this petition. All other complaints concerning officials not made parties are irrelevant."

On the issue of locus standi, the lower court held thus:

"I am satisfied that s. 50 creates two or more classes of persons who can question the return to a presidential election. These are, the candidates, (2) A person who claims to have the right to contest the election (3) A person claiming the right to be returned at the election. Now in paragraph 1 of the petition, the petitioner pleaded thus:

"Your petitioner Chief Chuba Egolum is a person who had a right to contest at the above election."

Seemingly therefore, Petitioner will appear to have fallen within 50 (1) (a) of the Decree. More than that however, he must also comply with paragraph 5(1) of Schedule 4 which in sub-paragraph 1(b) requires him to "specify the right of the petitioner to present the election petition ." This in my view means that a petitioner must amplify on the capacity which he relies on to bring the petition, he cannot barely repeat s.51 (a) and no more. The question now is can this obvious lacuna be cured? I have looked closely at paragraph 5(6) which provisions guide the court on whether or not to strike out a petition. Also the provisions contained in paragraph 50(1) to Schedule 4 seems to give the court the discretion to save such petitions, but regrettably I am unable to save this particular petition, the reason that the defects are fundamental in that the respon-

dents cannot be expected to proceed to trial when they do not know the capacity in which the petitioner is pursuing the petition."

The petition was accordingly struck out. Both the Petitioner, Chief Chuba Egolum and the 1st respondent appealed to this court.

B The Appellant raised two issues for determination in his brief. They read thus:-

1. *"Whether a Petitioner who is admittedly entitled to present a petition under Section 50(1)(a) of Decree No.6 of 1999 and who states the basis of that entitlement or right to do so in the body of the petition,*
C *has not satisfied the provisions of paragraph 5(1)(b) of Schedule 4 of the Decree.*

2. *Whether the Court of Appeal was right in holding that evidence cannot be led in respect of some paragraphs of the petition in*
D *which allegations of misconduct are made where the electoral or other officials of the Independent National Electoral Commission, concerned are not joined as parties.*

For the 1st Respondent two issues were also raised in his brief
E in respect of the Appellant's appeal. They are:

1. *"Was the lower court right in striking out the Appellant's petition for lack of locus standi by reason of the appellant's failure to specify his right to present the petition as prescribed by Decree No. 6 of*
F *1999?*

2. *Was the lower court right in its decision that evidence shall not be led in respect of misconduct of electoral officers except those who had been made parties to the petition, and that all other complaints concerning officials not made parties are irrelevant?"*

G Main Appeal

I shall deal first with the issue of locus standi. The contention here is simple. It was said for the Appellant that Section 50(1) of Decree No. 6 of 1999 enabled the Appellant to bring a petition in the lower court
H and once he satisfied the provisions thereof, he did not have to look beyond. It was contended that by paragraph 1 of his petition the Appellant satisfied the requirements of S.50(1) of the Decree.

The Learned Senior Advocate for the 1st Respondent disagreed.

So did Mr. Eghobamien, learned Senior Advocate for the 2nd to 60th Respondents. It was said that a petition under Decree No. 6 of 1999 must comply with all the provisions of sections 2, 50(1)(a) and paragraph 5(1)(b) of Schedule 4 to the Decree.

Section 50(1) of Decree No. 6 of 1999 provides:

"50-(1) An election petition may be presented by one or more of the following persons -

(a) a person claiming to have had a right to contest or be returned at an election;

or

(b) a candidate at the election."

As I have already indicated, the Appellant was not a candidate at the election. He came as a person claiming to have had a right to contest. Paragraph I of the petition makes this very clear. He averred that "Your petitioner Chief Chuba Egolum is a person who, had a right to contest at the above election." As the lower court said, this would ordinarily appear to satisfy the requirement of S.50(1)(a) of the Decree. But it would seem that there is more to it. The court below held that he had a duty under the Decree to specify his right to bring the petition. This is so because of the provisions of paragraph 5(1)(b) of Schedule 4 to the Decree. It reads:

"5-(1) An election petition under this Decree shall -

(b) specify the right of the petitioner to present the election petition."

The contention of the appellant, in my view, is rather too simplistic. I think it is a matter of common sense that Section 50(1)(a) of the Decree and paragraph 5 (1)(b) of Schedule 4 to the Decree must be read together. This is so for the reason that the Appellant was not a candidate at the election and it was therefore incumbent upon him to state in full and explicit terms his right to present the election petition. How would he do this? This is where Section 2 of the Decree comes in. It provides as follows:

"2. A person shall be qualified for election to the office of President if -

(a) *he is a citizen of Nigeria by birth;*

(b) *he has attained the age of 40 years;*

(c) *he is a member of a political party; and is sponsored by that political party; and*

B (d) *he has been educated up to at least School Certificate level or its equivalent.*

These clearly are the requirements a person who wishes to contest at the election must meet. It follows that a person who claimed to have had the right to contest must be a person who met the above stated conditions. C Regrettably the appellant did not supply these facts about himself in this regard. And as the learned counsel for the Appellant rightly conceded, paragraph 5(1)(b) of Schedule 4 to the Decree is in mandatory terms. This means that a petitioner who claimed to have had a right to contest at D the election was bound to comply with paragraph 5(1)(b) schedule 4 to the Decree by specifying his right to present the petition in order to have the requisite locus standi to present the petition. See Ezeobi v Azeoka (1989) (Pt.98) 478 at 487.

E The right to contest an election is not a common law right. It is created by statute and anyone seeking relief under such a law must bring himself strictly within the provisions of the law. The locus standi of any petitioner is a matter touching on the competence and the jurisdiction of F the court to entertain the petition. The importance of the standing of a litigant cannot be over-emphasized. In Alhaji Olorunkemi Ajao v. Mrs. L.E. Sonola & Anor. (1973)5 SC. 119 at 123 this court, per Coker JSC held as follows:

G *"We think it is settled that competency to institute an action is an essential or indeed a vital factor in deciding the competency of the action itself, and if challenged by a defendant, the plaintiff has the onus of establishing it."*

H See also Adesanya v. The President of the Federal Republic & Anor. (1981) 12 NSCC 146.

In the light of what I have said above, I must say that I am not impressed by the Appellant's submission that the court should not look beyond the provisions of Section 50(1)(a) of the Decree in determining

the right of the Appellant to bring this petition. It is a settled rule of construction that all the parts of a statute must be construed together in order to promote the general purpose of the lawmaker. I am therefore of opinion that in order to determine the locus standi of the Appellant to bring this petition, recourse must be had to the provisions of Sections 2 B and 50(1)(a) of Decree No. 6 of 1999 and also paragraph 5(1)(b) of Schedule 4 to the Decree. In the result, the Appellant by paragraph 1 of the petition, had not sufficiently shown that he had a standing to bring the petition. The petition was therefore incompetent. It was rightly struck C out by the Court of Appeal.

In view of the conclusion I have reached on issue No. 1, I do not deem it necessary to consider issue No. 2.

It was for the reasons stated above that I dismissed the appeal D on 6 April 1999.

CROSS-APPEAL

The 1st Respondent's appeal is against the ruling of the lower court that the Appellant had substantially complied with paragraph 5(4) and (5) of Schedule 4 to Decree No. 6 of 1999. E

This appeal cannot be entertained since I have come to the conclusion that the petition was incompetent and also that the appellant lacked the standing to bring the petition. It is for this reason that I dismissed the cross-appeal on 6 April 1999. F

ACHIKE JSC

On 31/3/99 when this appeal came before us, the Court made it G clear that because of time constraint, it would dispense with writing of briefs and counsel could on oral submissions, but without prejudice to receiving and acting on briefs previously prepared by counsel. After taking counsel's oral submissions, judgment was reserved to 6/4/99. On H the adjourned day, I dismissed the appeal and awarded N10,000.00 costs to each set of respondents, so also the cross-appeal for reasons to be given later. These are my reasons for the dismissal of the appeal and the cross-appeal.

Consequent to the Presidential election held in the whole country on 27/2/99 General Olusegun Obasanjo, the 1st Respondent who was one of the two contestants at the said election was declared duly elected by the 2nd Respondent, the Chief Electoral Officer of the Federation, Hon. Justice Ephraim Omorose Ibukun Akpata. The 1st Respondent polled 18,739,154 against 11,110,287 votes polled by Chief Samuel Oluyemi Falae, the only other contestant. Dissatisfied with the outcome of the election, the petitioner, Chief Chuba Egolum, herein Appellant, filed a petition at the Court of Appeal, sitting as a court of first instance, against 1st and 2nd Respondents, as well as the 3rd Respondent, the Returning Officer for the Presidential Election, the 4th Respondent, the Independent National Electoral Commission and 56 other Respondents. In paragraph 24 of his petition, the petitioner prayed for the following reliefs:

"(a) That it be determined that the 1st Respondent was not duly elected or returned and that the Petitioner was duly elected and ought to have been returned.

Or in the alternative

(b) That it may be determined that the presidential election held on 27th February, 1999 was void.

(c) That the petitioner may have such further or other orders as may be just.

At the hearing before the Court of Appeal, 2nd - 4th Respondents, by months filed on 17/3/99 objected to the petition, and prayed the Court to strike out the petition on grounds of incompetence, namely that:

1. (a) the petitioner had not satisfied the provisions of sections 2 and 3 of the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 6 of 1999, hereinafter referred to as Decree No. 6 of 1999.

(b) the Petitioner has not shown any right to contest or be re-turned at the election as provided by Decree No. 6 of 1999.

(c) the petitioner has not shown that he complied with and/or capable of complying with sections 12 and 13 of Decree No. 6 of 1999.

2. The Petitioner lacks locus standi in respect of the reliefs being

claimed by him in the petition.

The 1st Respondent filed another motion on 18/3/99 also taking an objection to the petition and prayed the Court of Appeal to strike out the petition on grounds that the Court had no jurisdiction to entertain it by reason of the petitioner's lacks of locus standi and for non-compliance with the mandatory provision of the said Decree No. 6. Alternatively, he urged the court to strike out paragraphs 9, 10, 11, 13, 14, 15, 16, 17, 18 and 19 of the petition for being incompetent in that the petition complained of the conduct of some of the electoral officers who were not joined in the petition as parties thereto.

After consolidating the two motions with consent of counsel and hearing of legal arguments, the Court of Appeal ruled as follows:

(a) that the petition substantially complied with the provisions of Decree No. 6 of 1999 and that stating the address for service of the petitioner in the manner it was stated in the petition was sufficient service and that paragraph 50(1) of the 4th schedule gave the court discretion to overlook minor errors in the petition.

(b) that the petitioner having failed to comply with the provisions of section 50(2) of Decree No. 6 of 1999, no evidence shall be led in respect of misconduct of the electoral officials except those who had been made parties to the petition, and

(c) that even though the petitioner appears to have fallen within section 50(1) (a) of the Decree, he must further comply with paragraph 5(1) (b) of Schedule 4 to the Decree which requires that an election petition under the Decree shall "(1) (B) specify the right of the petitioner to present the election petition." (emphasis is supplied)
Accordingly, the lower court ruled that the petition was incompetent and ordered that it be struck out.

Dissatisfied, the petitioner appealed on two grounds, so also did the 1st Respondent cross-appeal, on two grounds of appeal.

The appellant postulated two issues for determination in the main appeal, namely,

"1. Whether a petitioner who is admittedly entitled to present a petition under section 50(1) (a) of Decree No. 6 of 1999 and who states

the basis of that entitlement or right to do so in the body of the petition, has not satisfied the provisions of paragraph 5(1) (b) of Schedule 4 of the Decree.

2. *Whether the Court of Appeal was right in holding that evidence cannot be led in respect of some paragraphs of the petition in which allegations of misconduct are made where the electoral or other officials of the Independent National Electoral Commission, concerned are not joined as parties."*

For the 1st Respondent two issues identical to those of the appellant were formulated, to wit,

" Issue 1

Was the lower court right in striking out the Appellant's petition for lack of locus standi by reason of the appellant's failure to specify his right to present the petition as prescribed by Decree No. 6 of 1999?

Issue 2

Was the lower court right in its decision that evidence shall not be led in respect of misconduct of electoral officers except those who had been made parties to the petition, and that all other complaints concerning officials not made parties are irrelevant?.

Mr. S.A. Asemota, SAN, leading counsel for the appellant, submits that it is only section 50 of Decree No. 6 that prescribes the person entitled to file a petition and is silent on any other requirement on a petitioner to specify the right of the petitioner to present the petition.

To counsel, since the law does not specifically state the description of the person to initiate an election petition, it is enough for a petitioner to set out the content of section 50(1) in one's petition. It is counsel's further submission that paragraph 5(1) of Schedule 4 to the said Decree provides for the content of an election petition and the said paragraph 5(1) accords with the provisions of section 50. Counsel submits that the provisions of paragraph 5(1) of Schedule 4 are mandatory but they are not to be interpreted to defeat the main provisions of the Decree, and refers to Crates on Statute law, 7th edition, p. 224. To counsel, compliance with paragraph 5(1) (b) of Schedule 4 is necessary for a contestant in the election but does not extend to a person \, who like the petitioner,

comes under section 50(1) and would not be required to satisfy the facts set out in section 2 of Decree No.6 of 1999. It is also counsel's submission that it was the Court of Appeal that enlarged the provisions of the schedule 4, i.e. paragraph 5(1), by reading into it additionally that the petitioner should state the basis of his right whereas all that the Schedule requires is that he should specify the right, whatever it may be, under section 50(1) that the petitioner brought his petition. In any event, he finally submits that if the provisions of the Schedule contradict the main provisions of the Decree, the main provisions will prevail and calls in aid Re Baines (1840) 12 A & E 227 and Dean v. Green (1882) 8 P.D. 79. C

In the result, he urges the court to hold that the Appellant has satisfied the necessary requirement to file a competent petition.

On Issue 2, counsel observed that he was aware of the decision of this Court in Omoboriowo v. Ajasin (1984) 15 NSCC 82 or (1984) 1 S.C. 206 at pp 245-246, based on the 1982 Electoral Regulations that are similar to the provisions of Decree No. 6 of 1999. According to counsel, the provision that calls for interpretation is section 50(2) which requires the petitioner complaining of the conduct of an Electoral Officer etc. or any person who took part in the conduct of an election..... to join same "in the election petition as a necessary party." It is counsel's submission that the timing of the of the order of not leading evidence in respect of paragraphs of the petition that offend non-joinder of persons complained of is erroneous because the lower court ought to have allowed the petitioner to first call evidence it wishes and if the evidence is led against a person not joined for his conduct in the election, such evidence would be ignored by the court but not if such evidence is led merely to elicit irregularity and which may not attack or touch on the conduct of the Electoral Officer etc. Counsel exemplifies with Form EC8 - see p. A491 of the Decree which if a presiding officer failed to furnish the information thereon will render the vote cast void but would not mean that the presiding officer has committed a crime for which he may be punished. H It is his final submission on this is issue that it is after evidence has been completely led at the trial can, a distinction between a mistake of irregularity on the one hand, and a misconduct based on fraud of officer, on the

other hand, be made. It is therefore counsel's view that the non-joinder as alleged should not defeat the evidence that would be led in proof of irregularity in an election petition. Such distinction, according to counsel was made in Omoboriowo case.

B He urged that the appeal be allowed.

Chief Afe Babalola, SAN, leading counsel for the 1st Respondent, submits that for the petitioner to succeed he must satisfy the requirements set out in sections 2 and 50(1) and paragraph 5(1)(b) of Schedule 4 to the Decree. Counsel says that petitioner simply lifted the provisions of section 50(1) of the Decree and stated it in paragraph 1 of the petition whereas the petitioners is obliged to further comply with section 2 and 50(1) of the Decree as well as paragraph 5(1) of the Schedule 4, as he had earlier observed. It is his submission, referring to p. 10 of 1st Respondent's brief, that the meaning of the word "specify" as set out in paragraph 5(1) (b) of Schedule 4, calling in aid Black's Law Dictionary, 6th edition p. 1399 is "to state in full and explicit terms, to particularize." He further submits that there is no conflict between the main provisions of Decree and the Schedule and urges us to confirm the lower court's decision on issue one.

On issue two, counsel says that paragraphs 9, 12 to 20 of the petition made heinous allegations of offences yet not all the electoral officials concerned were joined in the election petition as necessary parties as required under section 50(2) of Decree No. 6 of 1999. Accordingly, issues having been settled in respect of the petition and the reply, the order of the lower court as it relates to joinder of the necessary parties is sustainable. He further submits that as regards the Issue of Limiting the order for non-joinder raised only in this court this point cannot be canvassed without leave of the court.

On the cross-appeal, the cross-appellant through his counsel appeals on the two grounds of appeal from which the following two issues for determination are formulated:

"1. Was the lower court right in not holding that the petitioner/ 1st respondent's petition was fundamentally defective and therefore, incompetent for non-compliance with the mandatory provisions of para-

graphs 5(4) and (5) of Schedule 4 to Decree No. 6 of 1999.

2. Whether or not the lower court correctly interpreted the provisions of paragraph 50(1) of Schedule 4 to Decree No. 6 of 1999 when it held that the said paragraph 50(1) of the said Schedule enables it to overlook the petitioner/1st respondent's non-compliance with paragraph 5(4) of schedule 4 to Decree No. 6 of 1999." B

The central complaint of the two issues of the cross-appeal as submitted by counsel relates to the lower court's exercise of its discretion on irregularity by the petitioner's failure to state his address for service within five kilometres of a post office in the judicial Division and stating the name of the occupier (vide paragraph 5(4) of Schedule 4 to the Decree) and the lower court's failure to strike out the petition for non-conformance with paragraph 5(6) of Schedule 4 to the Decree. For the judicial attitude in this regard, counsel calls in aid some decisions of the High Court namely, Ngellzana v Hindi (1965) NMLR 12 and Dada v Ayo Fasanmi (1965) WR NLR 94 at 96. He finally submits that anyone seeking the court's indulgence must first seek and apply for it but should not be exercised suo motu by the court. He finally urged us to allow the cross-appeal. C D E

Chief A. O. Eghobamien SAN, leading counsel for the 2nd to the 60th Respondents associated himself with the submissions made by Chief Afe Babalola, in both the main appeal, and the cross-appeal. He reiterated the submission under paragraph 5(1) of 4th Schedule that the right to present a petition must be clarified in the petition and also urged the court to dismiss the appeal and allow the cross-appeal. F

Mr. Asemota, in reply to the main appeal reiterated the gist of his earlier submission that there was substantial compliance and again urged that the appeal be allowed and the cross-appeal be dismissed. G

Chief Afe Babalola, in reply on the cross-appeal, observed that the lower court dealt with the question of five kilometres from the nearest Post Office but never dealt with the issue of the occupier. H

In the consideration of this appeal, it will be needful to bear in mind that the court is invited to adjudicate on an election petition and that the general attitude of the court in this regard is that a petition contesting

the result of an election is sui generis; it is not an action for a purely civil claim nor a criminal trial.

Main Appeal

Issue One

B It is section 50(1) that stipulates the persons who can present an election petition, namely,

"(a) a person claiming to have a right to contest or be returned at an election; or

(b) a candidate at the election".

C And to this end, the appellant, as petitioner, averred in paragraph 1 of his petition:

"Your petitioner, Chief Chuba Egolum is a person who, had a right to contest at the above election."

D and this averment, petitioners's learned counsel, Mr. Asemota, submitted was sufficient as the very same section 50(1) (a) did not prescribe that the petitioner must further state the basis of such right. The lower court disagreed with this approach and took the view that for a petitioner
E to establish his locus standi under section 50(1) (a) it was imperative that he should expatiate on the basis of that right.

I wish to state that there is some apparent force in the submission by appellant's learned counsel if the law rested only on the provisions of section 50(1) (a) because the petitioner would have, in my
F opinion strictly satisfied the provisions prescribed under the law for his legitimate standing to initiate an election petition. Obviously, in my view, there is apparently a greater latitude and new vistas opened to imponderable potential petitioners provided under section 50(1) (a) of Decree No.
G 6 of 1999 wherein a person who was not a candidate at the election has a locus standi to challenge the conduct of an election. Undoubtedly, the number of such challengers would have been staggering and alarming to the chagrin of the unsuspecting Nigerian polity and the election tribunals
H that must, of necessity, be established to cope with the situation.

But that was not to be because the legislator, in his wisdom, constructed the number of persons who can claim locus standi to question an election petition by further stipulating in paragraph 5 (1) (b) of

Schedule 4 to the Decree that

"5(1) An election petition under this Decree shall

(a).....

(b) specify the right of the petitioner to present the election petition;'

B

As it were, to consummate a person's right to present a petition it is imperative that the person, should, in compliance with paragraph 5 (1) (b) of Schedule 4, specify his right to present the petition in order to have the requisite locus standi to present the election petition. It is therefore clear that when Mr. Asemota learned appellant's counsel, strenuously argued, in his own words, that "it is only section 50 of Decree No. 6 of 1999 which prescribes the persons who have a right or are entitled to present an election petition," that submission was not well-founded; it was outrageously, myopic and slanted. It is a basic principle of interpretation that the provisions of a statute are to be construed as a whole and not disjointly in order to achieve the desired goal of the legislator.

C

D

It is trite that the locus standi of a plaintiff or a petitioner is a crucial matter touching on the competence and the jurisdiction of the court to adjudicate on the suit or petition or application before it. It is a fundamental jurisdictional question that can be raised at any time during the trial as a preliminary issue or even raised for the first time on appeal. Thus where a jurisdictional issue is raised, the court is obliged to determine or dispose of it before going into the merits of the case. See Momodu v Olotu (1979) 1 All NLR 117, Adesanya v President of Nigeria (1981) 2 NCLR 358, Adefulu v Oyesile (1989) 5 NWLR (Pt. 122) 337 at 410, Ojukwu v Kaine (1997) 9 NWLR (Pt. 522) 613 at 628 and Gambioba & Ors v Ezezi 11 & Ors (1961) ANLR 604. In my opinion, it will be palpably erroneous for me to subscribe to the view that the appellant has a locus to question an election result by petition by merely stating, as the appellant did, in paragraph 1 of his petition that " he is a person who, had a right to contest at the election." That will leave his locus nebulous and unsatisfactory. Thus, he has to state further his right to present the petition as enjoined by paragraph 5(1) (b) of the 4th Schedule. The word specify employed by the law-maker under paragraph 5(1) (b) is striking.

E

F

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Paragraph 5(1) is in peremptory terms. Additionally, the word specify is dictatorial. To specify means "to state clearly and definitely" per Oxford Advanced Learner's Dictionary, 5th edition, at paragraph 1142. While in The Concise Oxford Dictionary of Current English, 5th edition by E. McIntosh at p. 1230, the word means "to name expressly, mention definitely (items, details etc)" and in Black's Law Dictionary, 6th edition p. 1399, it means "to state in full and explicit terms; to state precisely or in detail; to particularize."

It is therefore clear that by appellant's failure to specify in the body of his petition his right to present the said petition left him with no standing to present the petition. It should be recalled that it is the election held on 27th February, 1999 in the office of President of the Federal Republic of Nigeria that is at stake. At paragraph 21 and 22 of his petition, the appellant averred as follows:

"21. The petitioner scored in the said election a total of 11, 627,789 lawful votes at the election.

22. The 1st Respondent scored a total of 7,262,348 lawful votes at the election."

And in paragraph 24(a) of his petition appellant prayed (a) that "it be determined that the 1st Respondent was not duly elected or returned and that the petitioner was duly elected and ought to have been returned, or in the alternative (b) that it may be determined that the presidential election held on 27th February, 1999 was void."

There appears to be a serious mix-up here as can be seen from the above three paragraphs of the petition. Paragraph 21 showed that the Petitioner/Appellant scored a total of 11,627,789 whereas it was common knowledge that the only contestants in the said election were the 1st Respondent and Chief Samuel Oluyemi Falae. It is ridiculous therefore for the appellant to make such far-reaching claim that he scored certain number of votes without any showing that he was a candidate at the election. By this claim, his locus to present his petition under section 50(1) of the Decree became worrisome as it may all be that paragraph 1 of his petition vis-a-vis the votes allegedly scored by him are incompatible because he cannot present a petition both as a person claiming to

have a right to contest or be returned at the election, on the one hand, and also claim to be "a candidate at the said election", on the other. On this point alone, it is my view that the petition was misconceived and therefore incompetent. By the same token the petitioner's claim under paragraph 24(a) to be declared that he was duly elected, is, to say the least, a B stupendous folly. To my mind, these ridiculous assertions in paragraphs 21, 22 and 24(a) of the petition bring the issue of a petitioner's locus standi to the fore and makes it compelling that the court seized of an election petition must be satisfied, at the outset, that the petitioner has a C locus in order not to take the court on a frolic.

The mix-up adumbrated above wherein as it were, the Petitioner presented his petition both as a person claiming the right to present a petition as well as a candidate at the very same election makes it compelling for the Appellant herein not only to comply with paragraph 5(1) (b) D of the Schedule 4 of specifying his right to present the petition but for the petitioner to further satisfy the court as to the facts set out in section 2 of the Decree. Despite the far-reaching claims of assertions of the Appellant in paragraphs 21 and 24(a) of his petition, the court in the entire E petition was not afforded the opportunity to scrutinize whether or not the Appellant scaled the conditions stipulated in section 2 of the Decree.

I wish to touch briefly on Form TF. 002 provided for under paragraph 5(7) of Schedule 4 to the Decree which states that " The Form F TF. 002 set out in Schedule 5 to this Decree or one substantially like it, shall be sufficient for the purposes of this paragraph." (emphasis supplied). Form TF. 002 has been faithfully reproduced in the leading judgment (as set out in Schedule 5 to the Decree (vide P. A503 of the Decree) G and therefore not needful to be copied in my judgment save its paragraph 1 which reads as follows:

"1. Your petitioner A.B. is a person who voted (or had a right to vote, as the case may be) at the above election (or claims to have had a right to be returned or elected at the above election) or was a candidate H at the above election, and your petitioner (her state in like manner the right of each petitioner)"

A form, such as Form TF.002, inserted in schedules of an enactment is,

as a general rule, a guide or an example that is ideally formulated as acceptable for the purposes of doing something prescribed in the enactment. A form is inserted in the schedule as a matter of convenience. Such a form is never full-proof nor exhaustive, thereby leaving a leeway
 B for a party to fashion the content of his own form to meet the circumstances of his own case. The form, as would be expected, may obtain facts or particulars which may be wholly irrelevant to a case in hand and the party using the example of the form in the schedule is at liberty to delete unnecessary parts of the inserted for, and, indeed, may add to it in
 C order to meet the peculiar circumstances of his case. Where, therefore, as it may happen that there is a contradiction between the main provision of a statute and the form in the schedule, that should present no difficulty; upon principle, the form which is expected to conform with the main
 D provisions of the enactment would give way to the main provisions of the enactment. And, as Lord Cottenham put it pointedly, in Re baimes (supra):

"If the enacting part of the statute cannot be made to correspond with the schedule, the latter must yield to the former."

The same view was affirmed by Brett, L.J. in Att-Gen. v. Lamplough (1878) 3 EX D 214 at p. 229 when he said that if an enactment in a schedule contradicts an earlier clause of an enactment, the earlier clause
 F prevails against the schedule.

Applying the above to the circumstances of the case of the Petitioner/Appellant and bearing in mind his positive assertion in paragraph 1 of his petition (shorn of the mix-up in paragraphs 21, 23 and 24(a) of his petition) as well as the fact that the petition was solely presented by the
 G Appellant, paragraph 1 above would simply read as follows:

"1. Your petitioner Chief Chuba Egolum is a person who claims to have had a right to contest at the above election."

In other words the words from the word "voted" in paragraph 1 of the
 H Form TF. 002, including all the words in parentheses, are completely irrelevant and should be ignored. Thereafter, the Petitioner brought his petition in line with paragraph 1 of Form TF. 002 by adding the phrase "had a right to contest at the above election" which in turn brought the

Petitioner in line with his claim, qua petitioner, within the provisions of section 50(1) (a) of Decree No. 6 of 1999. By this approach the Appellant's petition was substantially sufficient for the purposes of paragraph 5 of schedule 4 to the Decree. No doubt, I think it was for all this that the lower court expressed its satisfaction with the form of the petition when it observed, per the leading judgment of Musdapher, JCA as follows:

"Seemingly, therefore, petitioner will appear to have fallen within 50(1) (a) of the Decree."

In the result, I am satisfied that form TF. 002 is not ambiguous in its application. Regrettably, therefore, I am unable to subscribe to the view expressed in the leading judgment of my brother, Ogundare JSC that the said Form TF. 002 is in conflict with section 50(1) of Decree No. 6 of 1999.

All in all, I resolve Issue one against the Appellant and uphold the Ruling of the lower court which struck out the petition.

Issue Two

With the resolution of Issue one against the Appellant, any inquiry on Issue Two becomes a mere scholarly exercise which I need not engage in.

Cross Appeal

It is clear that the cross-appeal, in essence, questioned the exercise of discretion of the trial court wherein it overlooked the error in the petition as to the Appellant's address for service within five kilometres of a post office in the Judicial Division, and the name of its occupier, more so when the petition in fact contains an address for service on the Appellant and secondly the Appellant never complained of lateness of services of processes on him. There is no doubt that the plenitude of the powers of the Court of Appeal under paragraph 50(1) of Schedule 4 accords it enough powers to overlook the shortcomings in a petition. This is a matter of discretion. In any event, the errors complained of are purely or technical nature and play no role in relation to the substantially of the competence of the petition. The heydays of technicality are now over because the weight of judicial authorities has today shifted from undue reliance on technicalities to doing substantial justice even-handedly to the

parties to the case. In the light of what I have said, the two authorities of Ngelizama v Hindi (supra) and Dada v Ayo Fasanmi (supra) have not been shown to command current judicial respect or acceptance even though ordinarily they are only of persuasive effect.

B I find no merit in the cross-appeal.

It was for these reasons and the reasons contained in the leading judgment of my learned brother, Ogundare, JSC, just read, and which I had the privilege of reading in draft that led me to dismiss the appeal and the cross-appeal on 6/4/99. I had on the same day made orders as to costs.

EJIWUNMI JSC

D At the conclusion of the hearing of oral argument in this appeal on the 13th of March, 1999, judgment was reserved to the 6th of April, 1999. On that day I dismissed the appeal and also the cross-appeal and indicated that I would give my reasons today. My Lords, my task in this
E case is rendered considerably lighter by reason of the fact that I have had the advantage of reading in draft the lead judgment prepared by my learned brother, Ogundare JSC. While I agree with the reasoning and conclusion of my learned brother leading to the dismissal of the appeal and cross-
F appeal, nevertheless, I wish to frame my own reasons as I have earlier indicated.

The genesis of this appeal is that following the Presidential Election held throughout the Federal Republic of Nigeria on the 27th day of February, 1999, the Chief Electoral Officer of the Federation (Hon. Justice Ephraim Omorose Ibukun Akpata (Rtd). On the 27th day of February, 1999, declared the 1st Respondent General Olusegun Obasanjo who was a candidate at the election duly elected having scored 18,739,154 votes against the votes of 11,110,287 scored by Chief Samuel Oluyemi
G H Falae, his opponent.

On the 16th of March, 1999, the appellant filed a petition at the Court of Appeal, which by virtue of the provisions of Section 48 of the Presidential Election (Basic Constitutional and Transitional Provisions)

Decree No.6 of 1999 is seized with the original jurisdiction to hear and determined any question as to whether:-

- (a) Any person has been validly elected to the office of President or Vice-President under this Decree; or
- (b) The term of office of the president or Vice-President has ceased; or
- (c) A question or petition brought before the Court of Appeal has been properly or improperly brought.

The appellant's petition which was so filed was against the election of the 1st respondent. The Chief Electoral Officer of the Federation (Hon. Justice Ephraim Omorose Ibukun Akpata (Rtd), the Returning Officer for the Presidential Election and the Independent National Electoral Commission (INEC) were joined as 2nd to 4th Respondents in the petition. Also joined as Respondents were the 56 Presiding Officers at various polling stations spread throughout the country.

In the 24 paragraphed petition various allegations were made by the petitioner, who did not contest the election, about the conduct of the election. But in respect of this appeal it is my view that the germane paragraphs of the petition are the penultimate paragraphs, which read:-

"1. Your petitioner Chief Chuba Egolum is a person who had a right to contest at the above election.

2. Your petitioner states that the election was held on the 27th day of February, 1999 when Chief Samuel Oluyemi Falae and General Olusegun Obasanjo were candidates, and on the 1st day of March, 1999 the 3rd respondent declared that Samuel Oluyemi Falae received 11,110, 287 votes and that the said General Olusegun Obasanjo received 18,739,154 votes and returned General Olusegun Obasanjo as being duly elected President of the Federal Republic of Nigeria."

"21, The petitioner scored in the said election a total of 11,627,789 lawful votes at the election.

24(a) The petitioner therefore prays:-

(a) That it be determined that the 1st respondent was not duly elected or returned and that the petitioner was duly elected and ought to have been returned"

Or in the alternative -

(b) That it may be determined that the Presidential Election held on 27th February, 1999 was void."

By a motion on notice dated 17th March, 1999 and filed the same day 2nd - 4th Respondents prayed the lower court to strike out the petition on the grounds that :-

"1. The petition is not in accordance with paragraph 5(1) (b) of Schedule 4 of Decree No. 6 of 1999 in that :-

(a) the petitioner has not satisfied the provisions of Sections 2 & 3 of the said Decree in the petition.

(b) the Petitioner has not shown any right to contest or be returned at the Election as provided by Decree No. 6 of 1999.

2. The petitioner lacks locus standi in respect of the reliefs being claimed by him in the Petition."

The 1st respondent also by a motion on notice dated 18th March, 1999 and filed the same day, prayed the lower court for the following orders:-

"1. An order of court striking out the petition on the ground that the court has no jurisdiction to entertain the petition, by reason of the Petitioner's lack of locus standi to present same and/or for non-compliance with the mandatory provisions of the Presidential Election (Basic Constitutional and Transitional Provisions) decree No. 6 of 1999 and therefore incompetent."

Alternatively to (1) above.

2. An order of the court striking out paragraphs 9, 10, 12, 13, 14, 15, 16, 17, 18, and 19 of the petition for being incompetent."

Both motions were consolidated and heard together on 22nd March, 1999.

After hearing addresses by learned Senior Counsel appearing for the parties, the Court of Appeal delivered a well considered ruling. By that ruling, the objection was upheld and the petition struck out.

It is manifest from the lead ruling delivered by Musdapher, JCA, with which the other members of the panel agreed, the court took the view that by stating the address for service of the petitioner in the man-

ner he did, the petitioner had substantially complied with the provisions of the law (viz paragraphs 5(4) - 5(7) to Schedule 4 of Decree No. 6 of 1999).

With regard to whether paragraphs 9 - 19 of the petition should be struck out, the Court of Appeal, per musdapher JCA, said inter alia, B thus:-

"The complaint was generally against INEC. It is my view that the petitioner has failed to comply with the very clear provisions of S. 50(2) of the Decree. The Section does not in its wording distinguish C between general and specific complaints. It seems to me that the argument of Mr. Asemota in an attempt to wriggle out of the definitive (sic) provisions of paragraph 50(1) of Schedule 4. I must and do hereby rule that no evidence shall be led in respect of misconduct of the electoral D officials except those who had been made parties to this petition. All other complaints concerning officials not made parties are irrelevant."

On the Locus Standi or his competence to bring the petition, the court below as per Musdapher, JCA, held thus:-

"I am satisfied that S. 50 creates two or more classes of persons E who can question the return to a presidential election. These are, the candidates, (2) A person who claims to have the right to contest the election (3) A person claiming the right to be returned at the election. Now in paragraph 1 of the petition, the petitioner pleaded thus:- F

"Your Petitioner Chief Chuba Egolum is a person who had a right to contest at the above election."

Seemingly therefore, Petitioner will appear to have fallen within 50(1)(a) of the Decree. More than that however he must also comply with para- G graph 5(1) of Schedule 4 which is sub-paragraph 1 (b) requires him to "specify the right of the petitioner to present the election petition." This in my view means that a petitioner must amplify on the capacity which he relies on to bring the petition, he cannot barely repeat S. 51(a) (sic) and H no more."

Being dissatisfied with the ruling both the Appellant and the 1st Respondent appealed to this court. Before relating the submissions made before us, it is pertinent to observe that in view of the short time available

for the hearing and determination of this appeal, Briefs of argument, which now from a regular feature of hearing in our appellate courts, was not expected of counsel. But I am glad to note that Chief Afe Babalola SAN of leading counsel to the 1st Respondent, in anticipation of whatever position the court would take on the matter, had duly filed the Brief of Argument for the 1st Respondent/cross-appellant. S.A. Asemota, SAN leading counsel for the Appellant also filed the Brief of Argument for the appellant. The Briefs so filed have been of immense help in the consideration of this appeal. I commend their efforts accordingly.

"In the appellant's Brief, the following are the two issues identified for the determination of the appeal.

1. Whether a Petitioner who is admittedly entitled to present a petition under section 50(1) of Decree No. 6 of 1999 and who states the basis of that entitlement or right to do so in the body of the petition, has not satisfied the provisions of paragraph 5(1) (b) of Schedule 4 of the Decree.

2. Whether the Court of Appeal was right in holding that evidence cannot be led in respect of some paragraphs of the petition in which allegations of misconduct are made where the electoral or other officials of the Independent National Electoral Commission, concerned are not joined as parties."

Similarly, two issues were set down for the determination of this appeal in the 1st respondent's brief. They are as follows:-

"(1) Was the lower court right in striking out the appellant's petition for lack of locus standi by reason of the appellant's failure to specify his right to present the petition as prescribed by Decree No. 6 of 1999?

(2) Was the lower Court right in its decision that evidence shall not be led in respect of electoral officers except those who had been made parties to the petition, and that all other complaints concerning officials not made parties are irrelevant?"

It is plain from a perusal of the issues identified above for the determination of this appeal, that they are all to the same effect. But , I would for the purpose of this judgment consider the argument of counsel

in the light of the issues identified in the appellant's brief.

In my humble view, the main issue for determination of this appeal is whether the appellant had the requisite locus standi to present the petition. For the appellant, the contention of his Senior Counsel, S.A. Asemota S.A.N. is that the appellant had the requisite locus standi. The argument he presented to the court both in his oral argument and in the appellant's brief in support of his contention appears to be that the appellant satisfied the provisions section 50 subsection (1) of Decree No. 6 of 1999. He further argued that once an appellant had fulfilled the provisions of section 50(1) of Decree No. 6 of 1999 despite the provisions of section 2 of Decree No. 6 of 1999 which prescribes the qualification of a candidate to contest the Presidential election, such a person is qualified to present the election petition. On the effect of paragraph 5(1) (b) of Schedule 4 of Decree No. 6 of 1999, while learned Senior Counsel conceded that is provisions were mandatory and not directive, yet he submitted that the sub-paragraph should not be interpreted in a manner that would defeat the aim of the main sections of the Decree. Learned Senior Counsel further argued that if the provisions of Schedule 4 of Decree No. 6 of 1999 conflict with those of the Decree, it is the latter that would prevail. In support of this argument, he called in aid; Craies on Statute Law, by S.G.G. Edgar; 7th Edition, page 224. He then stated that the interpretation given by the Court of Appeal to the provisions of Schedule 4 contradicted the provisions of section 50 subsection 1 (a) of the Decree. He then concluded his submission by saying that though schedule 4 was enacted by virtue of the provisions of sections 54 and 56 of Decree No. 6 of 1999, its provisions also apply to section 50 subsection (1) of the Decree. In support of his argument that all that the petitioner needed to plead was to state his right under section 50 subsection (1) of the Decree, he referred to the following cases:- In re-Baines (1840) 12 A & E, 227 and Dean v Green (1882) 8 P.D. 79.

The thrust of the argument of Chief Afe Babalola S.A.N., when he replied for the 1st Respondent is that the appellant lacked the locus standi to present the petition. He duly, adopted the 1st respondent's brief and also elaborated upon it during his oral submissions before the court.

He opened his submission by inviting the Court to note that all civil cases are won or lost on the pleadings of the parties. An election petition he argued cannot be treated differently. He found support for his submission in the case of Amodu v. Amodu (1990) 5 NWLR (Pt.151) 356 at B 371.

Next, it is argued for the 1st respondent that the right to contest an election is not a common law right. It is not also a natural right, but it exists only under statutory provisions enacted for that purpose. Vide Adesanya V. President of Nigeria (1981) 2 NWLR 358 Irene Thomas V. Olufosoye (1986) NWLR (Pt. 18) 669 at page 672 ; Momoh v. Olotu (1970)1 ALL NLR 121 and Adefulu v. Oyesile (1985) 5 NWLR (Pt. 122) 387 at 410. He then submitted that the law applicable in the instant case is the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 6 of 1999. He further submitted that it is the provisions of Decree No.6 that the locus standi of the appellant to present this petition have to be determined. He then referred specifically to section 50(1) and paragraph 5(1) of schedule 4 to Decree No. 6 of 1999, and contended that those provisions specify the right of the appellant to present the petition and to have the requisite locus standi so to do. In this regard, he referred to the case of Ezeobi v. Nzeoka (1989) 1 NWLR (Pt. 98) 478 at 487 where a similar provision was interpreted by the Court of Appeal to that effect. The learned Senior Counsel therefore invited the Court to hold that paragraph 5(1) (b) of schedule 4 to Decree No. 6 of 1999 forms an integral part of the Decree and must be complied with by the appellant. In support of this submission, he referred to the following cases :- Ibidapo Obe V. Lufthansa Airways (1997) 4 NWLR (Pt.498) P. 124 at 162; Board of Customs & Excise V. Barau (1980) 10 SC. 48 and Seven-Up Bottling Co. V. Abiola (1996) 7 NWLR (Pt. 463) 714.

It is also contended by learned Senior Counsel for the 1st respondent that it is well settled in our jurisprudence that the locus standi of any plaintiff is a matter touching on the competence and the jurisdiction of the Court to entertain the suit. Vide Adesanya v. President of Nigeria (1981) 2 NCLR 358; Thomas Irene V. Olufosoye (1986) NWLR (Pt.18) 669 at 672; Momoh V. Olotu (1970) 1 ALL NLR. 117; Adefulu V. Oyesile

(1989) 5 NWLR (Pt. 122) 377 at 410.

Therefore, he argued, it is not enough to simply plead in his petition that he had a right to present the petition. He must give such particulars as are required of him by the law. In the instant case, the provisions of Decree No. 6 of 1999.

Mr. Eghobamien, learned Senior Advocate, to the 2nd - 60th respondents, having adopted the argument of Chief Afe Babalola SAN also submitted that the appellant had failed to give particulars of his locus standi for bringing the petition. He cited the case of Thomas Vs. Olufosoye (supra).

In view of the reference made to some sections of the Presidential Election (Basic Constitutional and Transitional Provisions Decree 1999, I will now set down those that I deem necessary.

Section 2

"A person shall be qualified for election to the office of President if :-

- (a) he is a citizen of Nigeria by birth;*
- (b) he has attained the age of 40 years;*
- (c) he is a member of a political party and is sponsored by that political party; and*
- (d) he has been educated up to at least, School Certificate level or its equivalent."*

Section 50:

"(1) An election petition may be presented by one or more of the following persons:-

- (a) a person claiming to have had a right to contest or be returned at an election or*
- (b) a candidate at the election.*

(2) The person whose election is complained of is in this Decree referred to as the respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or that other person shall for the purpose of this Decree be deemed to be a respondent and shall be joined in the election petition as a necessary party."

I have earlier observed that the crucial point in this appeal is whether the appellant has locus standi to present this petition. In the view of S.A. Asemota Esq, S.A.N. the bare statement of the appellant, that:-

B *"Your petitioner Chief chuba Egolum is a person who, had a right to contest at the above election."*

Chief Afe Babalola, SAN and S.A. Eghobamien, SAN for the respondents do not think that the pleading of the appellant is sufficient. They had urged that the ruling of the Court below be affirmed.

C Now, in the course of his argument, S.A. Asemota Esq, in support of his position that sought solace in the Judgment of Oguntade, JCA, where His Lordship inter alia said thus:-

D *"There is no doubt that section 50(1) of Decree No. 6 of 1999 is a clear departure from the common law practice as to locus standi and to the law on the point in Nigeria, Under section 50(1) of Decree No. 6 of 1999, a person who was not a candidate at the election could come to Court to challenge the conduct of the election. It is in my view a welcome change. I believe that the enthronement of democracy in Nigeria is sufficiently important to all Nigerians to enable anyone who feels aggrieved to approach the Court for redress."*

F I do not think that the door has been opened as wide as suggested by Oguntade, JCA. However, it is to be noted that his view is not without support, having regard to the views expressed in Adesanya V. President of Nigeria & Anor 1981) NSCC 146 where fatayi Williams CJN at pages 159-160, his Lordship said:-

G *"To my mind, it should be possible for any person who is convinced that there is an infraction of the provisions of sections 1 and 4 of the Constitution which I have enumerated above to be able to go to Court and ask for the appropriate declaration and consequential relief if relief is required. In my view, any person whether he is a citizen of Nigeria or not, who is resident in Nigeria or who is subject to the laws in force in Nigeria, has an obligation to see to it that he is governed by a law which is consistent with the provisions of the Nigeria Constitution. Indeed, it is civil right to see that this is so. This is because any law that*

is inconsistent with the provisions of the Constitution is to the extent of that inconsistency, null and void by virtue of the provisions of sectional and 4 to which I have referred earlier".

However, later in the same judgment i.e. Adesanya v. President of Nigeria (supra), the learned Chief Justice of Nigeria made it clear that the locus standi of a person when challenge the provisions of the Constitution must be viewed differently in non-constitutional litigation. His Lordship at pages 160 - 161 said:-

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

Then, in the judgment of Obaseki, JSC in the Adesanya's case (supra) His Lordship observed at page 173 that:-

"Locus Standi or standing to sue is an aspect of justiciability and as such the problem of locus standi is surrounded by the same complexities and vagaries inherent in justiciability. The fundamental aspect of locus standi is that it focuses on the party seeking to get his complaint before the High Court not on the issues he wishes to have adjudicated."

From the above dicta, it does appear that a person such as the appellant in this case must first establish his locus standi to present the petition, as the focus is on him so to do. And in so far as the petition arose from an act that is regulated by statute, i.e. the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 6 of 1999, he is obliged to fulfil the conditions set down in the said Decree to establish his locus standi. However, the appellant in paragraph 1 of his petition, in apparent compliance with section 50(1) (a) of Decree No. 6 of

1999 averred thus:-

"Your petitioner Chief Chuba Egolum is a person who had a right to contest at the above election."

The Court below took the view that paragraph 1 was not sufficient to establish his locus standi. The petitioner should have gone further to state how he acquired that right. The Court below is undoubtedly right. If, as it is argued for the appellant, that he had a right to contest the election, then he must show what invest him with that right. The enabling statute has to be read as a whole to see whether there are other provisions in Decree No.6 which he had to satisfy to give him the right to present the petition. It is manifest that while section 50(1) of Decree No. 6 makes provisions for a person who had the right to present an election petition, there is also the provision in paragraph 5(1) (b) to schedule 4 of the Decree which stipulates that:-

"An election petition under this decree shall -

(a)

(b) Special the right of the petitioner to present the petition."

Learned Senior Counsel for the 1st respondent Chief Afe Babalola SAN, stressed in his oral argument and in the 1st respondent's brief that the word "specify" in paragraph 5(1) (b) of Schedule 4 to Decree No. 6 of 1999 according to Blacks Law Dictionary 6th Ed. para. 1399 means, to state in full and explicit terms, to particularize." He then submitted that it is mandatory for the appellant to specify such particulars as would invest him with the locus standi to present the petition. I think again that the submission of Chief Afe babalola SAN is right. Though Learned Senior Counsel for the appellant was prepared to concede this point, he however submitted that the provisions in paragraph 5(1)(b) of schedule 4 to the Decree should not be read to defeat the provisions of section 50(1) of the Decree.

It is also the contention of S.A. Asemota Esq SAN that in so far as the appellant had presented his petition in conformity with From T.F 002, stipulated in paragraph 5(7) Schedule 4 of Decree No. 6 he had done all that he needed to do to have a valid petition to challenge the election of the 1st respondent. He then cited the 7th Edition of Caries on

statute Law by S.S.G. Edgar and referred specifically to the case of R.V.Baines (1840) 12 A & E 210,226. On this the learned author of Caries on Statute Law said at page 225, thus:-

"As a general rule, "forms in schedules are inserted merely as examples, and are only to be followed Implicitly so far as the circumstances of each case may admit", consequently, it may sometimes happen that there is a contradiction between the enactment and the form in the schedule. In such a case "It would be quite contrary to the recognized principles upon which Courts of Law construe Acts, of Parliament to restrain the operation of an enactment by any reference to the words of a mere form given for convenience' sake in a schedule. This was well put by Lord Denman C.J. in R.V. Baines, "it was argued" said he, "that the form of the significavit itself, as given in the schedule, proves that the Judge, i.e. Bishop, is the only person who ought to certify, as "by divine providence" is a form that only apply to a Bishop..... such form, although embodies in the Act cannot be deemed conclusive of a question of this nature; we have also to consider the language of the section to which the schedule is appended, and if there be any contradiction between the two upon ordinary principle, the form which is made to suit rather the generality of cases than all cases, must give away".

The principle of interpretation that is clearly stated above cannot be of any assistance to the appellant. Put simply, the form in a schedule to statute. In the instant case the argument that because the petition of the appellant was in conformity with. Form TF 002, cannot avail the appellant. A perusal of form TF.002 would show that it is not in consonance with the provisions of S.50 (1)(a) of Decree No. 6, the principal section that enables an election petition to be presented by a person qualified so to do.

In view of the submission of Chief Afe Babalola SAN that the petitioner ought to have complied with section 2 of Decree No. 6, 1999, I will now examine the provisions of that section. Its provisions stipulate that - a person shall be qualified for election to the Officer of President if (a) he is citizen of Nigeria by birth; (b) he has attained the page of 40

years; (c) he is a member of a political party and is sponsored by that political party; and (d) he has been educated up to at least School Certificate Level or its equivalent. It is significant that the appellant's petition is silent in respect of any of the above requirements of Section 2 of Decree No.6. In my opinion the provisions of section 2 of the Decree were not enacted in vain.

It is my respectful view that a person who claims to have a right to challenge the election of a President should himself be a person qualified to contest the election. Rather than give such particulars as are germane to himself, the petitioner in the instant case, made the ridiculous claim that he scored in the said election, a total of 11,627,689 lawful votes at an election in which he was not a candidate.

In my opinion, a petitioner such as the appellant in the instant case, may present an election petition by virtue of section 50(1) of Decree No. 6 of 1999, but it is necessary for that petitioner to comply with the provisions of paragraph 5(1) (b) in the Schedule to Decree No. 6 of 1999. Compliance in that regard means that the petitioner shall state in full and in explicit terms that he had a right to contest the election. In doing this his starting point, is in my respectful view, compliance with the provisions of section 2 of Decree No. 6 of 1999.

The appellant in this appeal having failed to give such particulars as indicated above, the court below was right to have come to the conclusion that he had no locus standi to present the election petition against the 1st respondent. The ruling of the lower court is upheld accordingly. In view of the conclusion I have reached that the appellant did not have the locus standi to present the petition, I do not deem it necessary to consider issue No. 2 raised in this appeal.

CROSS APPEAL

I have duly considered the submission made for the parties in respect of the cross-appeal. The issue agitated being whether the petition contains the address of the Petitioner in the Form laid down in paragraph 5(4) of schedule 4. It is not in dispute that the petition contains an address of the petitioner that is not strictly in the form laid down in paragraph 5(4) of Schedule 4. However, as I am satisfied that the Court

of Appeal rightly exercised the discretionary power conferred on it by sub-paragraphs (1) and (4) of paragraph 50(1) of Schedule 4, in favour of the Petitioner, I therefore dismiss the cross-appeal as it lacks merit. It is for all the reasons given above that I dismissed the main appeal and the cross-appeal on 6th April, 1999.

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