

SUPREME COURT OF NIGERIA
30TH JUNE, 2000. SC. 126/1995
CORAM:- A. B. WALI, M. E. OGUNDARE, A. I. IGUH,
A. I. KATSINA-ALU, A. O. EJIWUNMI, JJSC.

JOSIAH KAYODE OWODUNNI PLAINTIFF/APPELLANT/
CROSS-RESPONDENT

AND

1. REGISTERED TRUSTEES OF) DEFENDANTS/RESPONDENTS/
CELESTIAL CHURCH OF CHRIST) CROSS-APPELLANTS
2. ALEXANDER ABIODUN BADA)
3. J. O. PASE & ANOR CROSS-RESPONDENTS
(joined by Order of Court Dated December,
1st 1989 as Defendants to counter claim

ACTIONS - *Locus standi* - *What the term denotes*

APPEALS - *Trial Court* - *Discretion* - *Exercise of* - *Circumstances when an appellate court would question* - *The exercise of discretion of a trial judge.*

COURTS - *Discretion* - *Declaration of right* - *The grant of a declaration of right is at the discretion of the court* - *But it is a discretion that must be exercised judicially.*

COURTS - *Discretion* - *Interference with* - *Where the trial judge acted judicially and judiciously* - *It will be improper to interfere with the exercise of his discretion*

EQUITY - *Equitable defence* - *Acquiescence* - *Void act* - *Where the act complained of is void* - *Acquiescence by the complainant would not clothe it with validity.*

LOCUS STANDI - *Constitution of 1979* - *Provisions of section 6 (6) (b)*

- Interpretation of - In Adesanya case - That case did not decide that the subsection prescribes the locus standi of a litigant - But that it prescribes the extent of the judicial powers of the courts.

LOCUS STANDI - *Declaratory reliefs - Sufficient interest - A plaintiff who only claims declaratory reliefs - If he shows sufficient interest in the subject matter of the dispute - Has the necessary locus standi to prosecute the claim.*

LOCUS STANDI - *Lack of - Consequence - Where a Plaintiff has no Locus standi - It is not necessary to consider whether there is a genuine case on the merits*

LOCUS STANDI - *Private law - Cause of action - In Private law the question of locus standi - Is merged in the issue of cause of action.*

LOCUS STANDI - *Public right - Justiciable interest - For a person to invoke judicial power to determine the constitutionality of legislative or executive action - He must show that he has justiciable interest - Which may be affected by the action*

LOCUS STANDI - *Question of - Yard stick in determining - The interest or injury test should remain the yardstick in determining the question of the locus standi of a complainant - And the test is not affected by section 6(6)(b) of the Constitution.*

SUCCESSION - *Corporate body - Religious organization - Pastor - Successor to the office of - Where the constitution of the organization contains express provision - For the appointment of a successor to the office - Any method of succession contrary to the provision is void.*

WORDS & PHRASES - *“Amendment” - What the word means*

FACTS

In the High Court of Lagos State the plaintiff/appellant/Cross-respondent instituted an action against the defendants/respondents/cross-appellants claiming inter alia, that the naming and proclamation of the 2nd defendant, Supreme Evangelist Alexander Abiodun Bada, as successor to the office of Pastor of Celestial Church of Christ, (Nigeria Diocese) is unconstitutional, null and void and of no effect; an injunction restraining the 2nd defendant from parading himself as the Pastor of the Church; and an account of all money collected by the 2nd defendant in respect of the anointment by him of members of the Celestial Church of Christ (Nigeria Diocese) from 24th December, 1985 onward. The dispute between the parties arose as a result of the demise on 10th September, 1985 of Pastor Oshoffa prophet and founder of the Celestial Church of Christ, a religious organization duly registered in 1958 as a corporate body under the Lands (perpetual succession) Act, Cap. 98 Laws of Nigeria, 1958. The Church has chapters (Diocese) in various countries of the world; including Nigeria.

The Nigeria Diocese has a constitution which was adopted in 1980. Section 146 of the said constitution established a body known as the Registered Trustees of the Church and comprised seven members, amongst whom are Pastor/founder Oshoffa who was Chairman, 2nd defendant and plaintiff in these proceedings. All members of the Registered Trustees, except the late Pastor Oshoffa and the plaintiff now constitute the 1st defendant in these proceedings. The 2nd defendant was equally sued in his personal or private capacity. Following the death of Pastor Oshoffa, the 1st defendant met in December, 1985 and chose the 2nd defendant as successor to the late Pastor, as head of the Church. The choice of the 2nd defendant followed a message by one Amu (a non-member of the Church) transmitted to the 1st defendant as coming from the late Pastor to the effect that he (the late Pastor) had named the 2nd defendant as his successor. The plaintiff who was absent at the meeting of the Registered Trustees, on learning of what took place, opposed the choice of the 2nd defendant as Pastor and head of the Church on the ground that the procedure adopted was contrary to section III of the

constitution of the Church in Nigeria. In spite of the opposition of the plaintiff, the 1st defendant during the 1985 Christmas service proclaimed before a congregation of the Church at Imeko, the 2nd defendant as the successor to the office of Pastor of the Church. Since his proclamation
B as Pastor, the 2nd defendant has been performing the duties of that office. Hence the plaintiff instituted the action claiming as aforesaid. The plaintiff contended in his pleadings that he is the only person rightfully entitled to be named and proclaimed successor to the office of Pastor.
C However, the plaintiff did not ask in any of the substantive reliefs he claimed that he be declared the rightful successor to the deceased Pastor/Founder.

In the course of the proceedings, the defendants counter claimed for: a declaration that they are entitled to the possession, management
D and control of the premises and property of the Church building and premises known as the Ijeshatedo Parish, and an injunction restraining the defendants (by counterclaim), their agents, servants and supporters from interfering with the plaintiffs' (by counterclaim) rights over the said
E premises. The defendants to the counterclaim are the plaintiff and two others - J. O. Pase and E. O. Gbinigie who were, by order of court, made parties to the proceedings.

At the conclusion of trial, the learned trial judge in a well-reasoned judgment held inter alia, that the naming and proclamation of the
F 2nd defendant as Pastor of the Church was void. The learned trial judge entered judgment in favour of the plaintiff on his claims but dismissed his claim for account. On the defendants' counterclaim, the learned trial
G judge refused to grant the reliefs claim in order to maintain peace. Dissatisfied, the defendants appealed to the Court of Appeal, Lagos Division. Although the appeal was fully argued based on five issues, the appeal was however decided on Issue (1). The court held allowing the appeal by a majority of 2 to 1 that the plaintiff had no locus standi to institute the
H action. The plaintiff has now appealed to the Supreme Court. The defendants also cross-appealed raising three issues.

ISSUES FOR DETERMINATION

"Does a Plaintiff who merely pleads his interest in the subject-matter of

a suit but does not claim relief for himself in respect of the subject-matter of the dispute have Locus standi to challenge any alleged irregularity in respect of the subject - matter of the suit."

1. Should the Court of Appeal not have allowed the 1st Defendant's appeal against the refusal of the High Court to grant their counter-claim?

2. Should the election of the 2nd Defendant/Respondent by unanimous decision of the congregation of the CCC have been declared invalid, unconstitutional, null and void as being contrary to Constitution of the CCC?

3. Should the Court of Appeal not have allowed the Defendants' appeal against the grant of the Declarations and an injunction.

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

Actions - Locus Standi

1. The term locus standi (or standing) denotes the legal capacity to institute proceedings in a Court of law. Standing to sue is not dependent on the success or merits of a case; it is a condition precedent to a determination on the merits. (p. 2209 G)

Locus Standi - Lack of

2. If the plaintiff has no locus standi or standing to sue, it is not necessary to consider whether there is a genuine case on the merits; his case must be struck out as being incompetent. (p. 2209 H)

Locus Standi - Public right

3. At common law, the position is that, in the realm of public right, for a person to invoke judicial power to determine the constitutionality of legislative or executive action, he must show that either his personal interest will immediately be or has been adversely affected by the action or that he has sustained or is in immediate danger of sustaining an injury to myself, and which interest or injury is over and above that of the general public. In other words, the plaintiff or claimant must show that he has

some justiciable interest which may be affected by the action or that he will suffer injury or damage as a result of the action. The question whether there is such a justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case - see generally the various judgments delivered by their Lordships of this Court in Senator Adesanya v. President of the Federal Republic of Nigeria & Anor. (supra). (p. 2210 A)

Locus Standi - Public Law

4. The position appears to be that in private law, the question of locus standi is merged in the issue of cause of action. For instance, a plaintiff who has no privity of contract with the defendant will fail to establish a cause of action for breach of the contract as he will simply not have a locus standi to sue the defendant on the contract. (p. 2211 B)

Locus Standi - Declaratory reliefs

5. In all the above cases, all that was claimed were declaratory reliefs and injunctions. In no one was any relief being specifically claimed by the plaintiff for himself. This did not prevent the Court ascribing locus standi to those of them who showed sufficient interest in the subject-matter of the dispute. Locus standi was not denied to the plaintiffs in Thomas v. Olufosoye and Maradesa v. Governor of Oyo State (supra) merely because they did not claim any relief for themselves but because they did not show sufficient interest in the subject-matter of the disputes as to entitle them to sue. Certainly all the cases I have mentioned in the course of this judgment and which Sulu-Gambari JCA adverted his mind to do not support the proposition of law upon which the majority of the Court below based their decision on locus standi of the plaintiff to sue in this case. In any event, it cannot be said that the plaintiff would not stand to benefit from the grant of the reliefs he claimed in this case. With the declaration that 2nd Defendant's appointment was void, there would be a vacancy for which the Plaintiff who claimed he had the ambition for the office of Pastor, could now aspire. (p. 2213 H)

Locus Standi - Constitution of 1979

6. From the extracts of their lordships' judgments I have quoted above one can clearly see that there was not majority of the Court in favour of Bello JSC's interpretation of section 6 subsection (6)(b) of the Constitution. It will, therefore, not be correct to say that this Court decided in the ADESANYA case that the subsection prescribes the locus standi of a person wanting to invoke the judicial powers of the court. They all seem to agree, however, that the sub-section prescribes the extent of the judicial powers of the courts. The ADESANYA case which is in the realm of public law, seems to lay it down that to invoke the judicial power of the court a litigant must show sufficient interest or threat of injury he will suffer. (p. 2219 A)

Locus Standi - Question of

7. I think the interest or injury test applied by the Federal Supreme Court in Olawoyin v. Attorney-General of Northern Nigeria (supra) should remain the yardstick in determining the question of the locus standi of a complainant and this is to be determined in the light of the facts or special circumstances of each case. I do not think that that test is affected by subsection (6)(b) of section 6 of the Constitution. (p. 2219 C)

Courts - Discretion

8. It is trite that the grant of a declaration of right is at the discretion of the court but it is a discretion that must be exercised judicially - Abodefin v. Morakinyo (1968) NMLR 179. (p. 2228 G)

Appeals - Trial Court

9. An Appellate court would not, generally, question the exercise of discretion of the trial judge merely because it would have exercised the discretion in a different way if it had been in the position of the trial court. It would however, do so if as a result of such exercise, injustice is meted out to either of the parties or that the trial judgment gave no weight or gave insufficient weight to important considerations - Solanke v. Ajibola (1968) ALL NLR 46. (p. 2228 G)

Discretion - Interference with

10. It is clear from the judgment of the learned trial Judge that he fully considered the consequences of granting the orders sought in this case.

B The property of the church is vested in the Board of Trustees. But they are trustees for the true owners - members of the church. It is imperative, therefore, that the interests of members of the Church must be taken into account in whatever course the court would take. No doubt, the learned trial Judge gave full consideration to all the issues that need be considered and decided to exercise his discretion against the Defendants.

C He acted judicially and judiciously in this matter; I think it will be improper to interfere with the exercise of his discretion. As the learned Judge rightly observed, to take a course different from the one he took

D would only expand the cleavage in the Church and tear it further apart. Had there been a Pastor who could exercise the powers vested in him by the constitution of the church by disciplining erring members, the position would have been different. (p. 2229 B)

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Succession - Corporate body

11. I agree with the learned trial Judge where he said:

"The crucial question, therefore, is whether the alleged spiritual messages said to have been received from deceased Pastor/Founder through many visionaries including AMU are within the meaning and intendment of Section III of Exhibit "H" (Constitution of C.C.C.)? After a thorough and careful consideration of the evidence before me, it is my serious view that the answer to that question is a capital No. In my attempt to answer this all important question; I have been immensely assisted by the testimony of Defence witness No. 2 who testified that the successor to the office of the PASTOR shall be named and proclaimed by the Pastor/Founder himself in his lifetime and that the Constitution does

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H *not empower the Church to name a successor. The C.C.C. is a body incorporated under the Land (Perpetual Succession) Act Cap. 98 Laws of Nigeria, with a written Constitution Exhibit HP which is binding on the Church and its members and contains express provision in section III*

for the appointment or selection of a successor to the post of PASTOR and spiritual Head of the Church. Section III of Exhibit HP is clear and unambiguous, and therefore it does not provide for succession to the office of PASTOR by acceptance, acclamation or empowers the entire Church congregation to name a successor to the Pastor/Founder. Thus the unanimous acclamation given on the 17/25th December, 1985 to the appointment of 2nd Defendant by the congregation at Imeko is totally irrelevant and incapable to vest in the 2nd Defendant the authority to occupy the office of the Pastor in C.C.C."

I think this conclusion is unassailable and, in the light of it, I must hold that the purported appointment of the 2nd Defendant was rightly voided by the learned trial Judge. (p. 2230 G)

Words & Phrases - Amendment

12. The word "amendment" includes rewriting the whole constitution and substitute the new for the old. The existing constitution was written around the Founder Pastor. With his death an impasse has been created in the affairs of the church and it is only by writing a new Constitution that the logjam can be overcome. (p. 2231 G)

Equity - Equitable defence

13. In any event the appointment, being void, would plaintiff's acquiescence clothe it with validity? I rather think not. I cannot, on the available evidence, find that the defences were established. (p. 2232 F)

NOTABLE POINTS OF INTEREST

OGUNDARE JSC

1. In chieftaincy cases what a plaintiff is required to show to have Locus Standi

Our law reports are replete with authorities that show that in chieftaincy cases, all a plaintiff is required to do is to show in his statement of claim his interest and his entitlement to the chieftaincy title. I may add that the same principle applies to similar cases such as the one presently on hand. Thomas v. Olufosoye (supra) falls in this category as well. (p. 2211 G)

2. *Proper case that would justify the invocation of the Judicial power of the Court*

On what is a 'proper case' that would justify the invocation of the judicial power of the Court, the learned Justice of the Supreme Court observed:

"The type of case or controversy which will justify the exercise by the court of its judicial power must be justiciable and based on bona fide assertion of right by the litigants (or one of them) before it I take the view that the circumstances in which the judicial power under section 6(6)(b) of the 1979 Constitution can be exercised by the court for the purpose of pronouncing on the constitutional validity of an act of the National Assembly or, more particularly, any legislation must be limited to those occasions in which it has become necessary for it (i.e. the Court) in the determination of a justiciable controversy or case based on bona fide assertion of rights by the adverse litigants (or anyone of them) before it to make such a pronouncement. The Court does not, in my view possess a general veto power over legislations by, or acts of, the National Assembly; its powers properly construed, are supervisory, and the supervisory power, in my view can only be properly exercised in circumstances to which I have referred above." (p. 2216 E)

3. *An intermediate court of appeal should decide all issues placed before it*

As I have stated earlier in this judgment, their Lordships Sulu-Gambari and Pats-Acholonu JJ.CA, in their majority decision, dealt only with the issue of locus standi and refrained from pronouncing on the other issues placed before them by the Defendants. This Court has, in a number of cases, frowned at the failure of lower Courts to decide all issues placed before them - see, for example, Odunayo v. The State (1972) 8-9 SC. 290 at p. 296

See also Ifeanyi Chukwu (Osondu) Ltd v. Soleh Boneh Ltd. (2000) 5 NWLR 322, at p. 351. The continuance of this practice cannot be too strongly deprecated. (p. 2222 C)

IGUHJSC

Locus standi is determinable from the statement of claim

4. It cannot be disputed that the question whether or not a plaintiff has a locus standi in a suit is determinable from a totality of all the averments in his Statement of Claim. See Bolaji v. Rev. Bamgbose (1986) 4 N.W.L.R. (part 37) 632, Momodu v. Olotu (1970) 1 ALL N.L.R. 117 at 123. In dealing with the locus standi of a plaintiff, it is his Statement of Claim alone that has to be carefully scrutinized with a view to ascertaining whether or not it has disclosed his interest and how such interest has arisen in the subject matter of the action. Where the averments in a plaintiff's Statement of Claim disclose the rights or interests of the plaintiff which have been or are in danger of being violated invaded or adversely affected by the act of the defendant complained of, such a plaintiff would be deemed to have shown sufficient interest to give him the locus standi to litigate over the subject matter in issue. See Momodu v. Olotu (1970) 1 ALL N.L.R. 117 at 123. (p. 2233 D)

How Locus Standi is established in a claim for declaration

5. In my view, a plaintiff who only claims declaration, so long as he pleads sufficient interest in the subject matter of the suit, has the necessary locus standi to prosecute his claim and it will make no difference that he does not seek any other reliefs. See too In Re Alhaja Afusat Ijebu (1992) 9 N.W.L.R (part 266) 414 at 422- 423. (p. 2234 F)

EJIWUNMIJSC

Guiding principles in the determination of what constitutes a cause of action.

6. In the White Book he found that the principles which serve as guide to the English and Irish Courts in the determination of what may constitute the words "cause of action" are as follows:-

"(1) The Words "Cause of action" comprise every fact (though not every piece of evidence) which it would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the court

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(See Read v. Brown) (1888) 22 QBD 128 per Lord Esher, M.R. at p. 131).

(2) *The Phrase comprises every fact which is material to be proved to enable the plaintiff to succeed. See Cooke v. Gill (1873) L.R.*

B 8 C.P. 197, per Brett, J at 108.

(3) *The words have been defined as meaning "simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person (Per Diplock, LJ, in Letang v Cooper (1965) 1 QB 222 at p. 242);*

C *"(4) In Ireland, these words have been held to mean the subject matter of grievance founding the action, not merely the technical cause of action (O' Keefe v. Weish (1903) 2 JRP 718)."*

D Having quoted with approval the above principles enunciated by the English and Irish Courts, Obaseki JSC, then opined thus:-

"I would say having regard to the Constitutional provisions in section 6(6) (b) of our 1979 Constitution, that a cause of action is the question as to the Civil rights and obligation of the plaintiff's founding the action to be determined by the court in favour of one party against the other party." (p.2248 C)

REPRESENTATION

F Kehinde Sofola, Esqr. SAN (Miss M. O. Amadi-Obi & A. R. Fatunde with him) for the Appellant/Cross-Respondent.

Chief G. O. K. Ajayi SAN with L. O. Fagbemi, SAN, O. I. Olorundare, A. O. Okeaya-Inneh, Miss O. T. Morohundiya and J. Ogar for the 1st & 2nd Respondents/Cross-Appellants.

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CASES REFERRED TO

Adesanya v. President (1981) 12 NSCC, 146; (1981) ANLR 1; (1981) SC. 112

H Odeneye v. Efunuga, (1990) 7 NWLR 618

Thomas v. Olufosoye (1986) 1 NWLR 669

Momoh v. Olotu (1970) 1 ALL NLR 117; (1970) ANLR 121

Moradesa v. The Military Governor of Oyo State (1986) 3 NWLR 125

Olawoyin v. Attorney-General of Northern Nigeria (1961) 2 SCNLR 5;
(1961) 2 NSCC 165

The State v. The President of grade 'A' Customary Court (1967) NWLR
267

Olawoyin v. Attorney-General of Northern Nigeria (1961) 2 SCNLR 5 B

Ojukwu v. Governor of Lagos State (1985) 2 NWLR (pt. 10) 806

Moradesa v. The Military Governor of Oyo State (1986) 3 NWLR (part
27) 125

Oloriode v. Oyebe (1984) 1 SCNLR 390 at p. 400

C

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979; s.6 (6) (b)

Supreme Court Act; s. 22

High Court of Lagos State (Civil Procedure) Rules 1973; O. 22 r. 5

D

LEAD JUDGMENT BY OGUNDARE JSC

This appeal raises once again the vexed question of locus standi which, in spite of a plethora decided cases on it, still remains a Gordian E knot. A number of judicial pronouncements have been made and academic papers written. Rather than the problem being solved, it has become more intractable as the case now on hand demonstrates.

The dispute between the parties arose as a result of the demise F on 10th September, 1985 of the Reverend Pastor Samule Bilehou Joseph Oshoffa, prophet and founder of the Celestial Church of Christ, a religious organization duly registered in 1958 as a corporate body under the Lands (Perpetual Succession) Act, Cap. 98 Laws of Nigeria) 1958. The Church, founded in 1942, has chapters (otherwise called dioceses) in G various countries of the world; including Nigeria. The Nigeria diocese has a constitution which was adopted in 1980. Section 146 of the said constitution established a body known as the Registered Trustees of the Church and comprised seven members, namely, Reverend Pastor Prophet H Founder Samuel Bilehou Joseph Oshoffa who was Chairman, Supreme Evangelist Alexander Abiodun Bada (2nd Defendant in these proceedings), Superior Senior Evangelist Samuel Olatunji Ajanlekoko, Superior

Senior Leader Olayinka Afolabi Adefeso, Superior Senior Leader Josiah Kayode Owodunni (the Plaintiff in these proceedings), Superior Senior Leader Oluremi Olusoga Ogunlesi and Superior Senior Leader Samson Olatunde Banjo, as members. All members of the Registered Trustee, except the late Pastor Oshoffa and the plaintiff, now constitute the 1st Defendant in these proceedings. The 2nd Defendant was equally sued in his personal or private capacity.

Following the death of Pastor Oshoffa, the 1st Defendant met in December 1985 and chose the 2nd Defendant as successor to the late Pastor, as head of the Church. The choice of the 2nd Defendant followed a message by one Amu (a non-member of the Church) transmitted to the 1st Defendant as coming from the late Pastor to the effect that he (the late Pastor) had named the 2nd Defendant as his successor. Amu also gave to the 1st Defendants a parcel said to have come from the late Pastor and containing a wooden cross, cowries shells and a stick of candle. The plaintiff who was absent at the meeting of the Registered Trustees, on learning of what took place, opposed the choice of the 2nd Defendant as Pastor and head of the church on the ground that the procedure adopted was contrary to section III of the Constitution of the church in Nigeria. In spite of the opposition of the plaintiff, the 1st Defendants during the 1985 Christmas service proclaimed before a congregation of the Church at Imeko, the 2nd Defendant as the successor to the office of Pastor of the Church. Since his proclamation as Pastor, the 2nd Defendant has been performing the duties of that office. The plaintiff, on 2nd October 1987, instituted the action leading to this appeal claiming by his writ of summons the following reliefs:-

G "1. A Declaration

(i) *that the naming and proclamation of the Defendant Supreme Evangelist Alexander Abiodun Bada, as successor to the office of Pastor of 'Celestial Church of Christ, (Nigeria Diocese)' is unconstitutional, null and void and of no effect.*

(ii) *that the Trustees of the Celestial Church of Christ (Nigeria Diocese) have no power, under the 1980 constitution of Celestial Church of Christ (Nigeria Diocese) to name the successor to the office of Pastor*

of Celestial Church of Christ (Nigeria Diocese).

(iii) *That any official act undertaken and or performed by the 2nd Defendant as the Pastor and/or the successor to the office of Pastor of the Celestial Church of Christ (Nigeria Diocese) from 24th day of December, 1985 onwards, is invalid null and void and of no effect.*

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2. An Injunction:

(i) *Restraining the defendants, their servants, agents privies, or howsoever from enthroning and/or installing the 2nd Defendant as the Pastor and spiritual Head of the Celestial Church of Christ (Nigeria Diocese).*

C

(ii) *Restraining the 2nd Defendant from parading himself as a Pastor or attiring himself in the robes and regalia of the Office of Pastor of Celestial Church of Christ (Nigeria Diocese).*

3. *An account of all money collected by the 2nd Defendant in D respect of the anointment by him for members of the Celestial Church of Christ (Nigeria Dioceses) from 24th December, 1985 onward."*

Pleadings were filed and exchanged and, by orders of court, amended. In the course of the proceedings, the Defendants counter E claimed for -

(i) A declaration that they are entitled to the possession, management and control of the premises and property of the Church building and premises known as the Ijeshatedo Parish.

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(ii) An Injunction restraining the Defendants by counter-claim, their servants, agents and supporters from interfering with the Plaintiff by counter-claim rights over the said premises. The defendants to the counter-claim are the plaintiff and two others - J. O. Pase and E. O. Gbinigie who were, by order of court made on 1st December 1989, G made parties to the action. In his amended statement of claim plaintiff finally claimed -

1. A Declaration:

(i) *that the naming and proclamation of the 2nd Defendant, H Supreme Evangelist Alexander Abiodun Bada, as successor to the office of Pastor of 'Celestial church of Christ, (Nigeria Diocese)' is unconstitutional, null and void and of no effect;*

(ii) *that the Trustees of the Celestial church of Christ (Nigeria Diocese) have no power, under the 1980 Constitution of Celestial church of Christ (Nigeria Diocese) to name the successor to the office of Pastor of Celestial Church of Christ (Nigeria Diocese);*

B (iii) *that any official act undertaken and or performed by the 2nd Defendant as the 2nd Defendant as the Pastor and/or the successor to the office of Pastor of the Celestial Church of Christ (Nigeria Diocese) from 24th day of December, 1985 onwards, is invalid null and void and of no effect.*

C (iv) *That the purported enthronement and/or installation of the 2nd Defendant on the 24th December, 1987, is ultra vires, null and void.*

2. *An Injunction:*

D *restraining the 2nd Defendant from parading himself as a Pastor and/or attiring himself in the robe and regalia of the office of Pastor of Celestial Church of Christ (Nigeria Diocese).*

E *3. An account of all money collected by the 2nd Defendant in respect of the anointment by him of members of the Celestial Church of Christ (Nigeria Diocese) from 24th December, 1985 onward.*

4. An order for payment by the 2nd Defendant to the Treasurer of the Celestial Church of Christ (Nigeria Diocese) of any sum found due from the 2nd Defendant upon taking such account.

F The action proceeded to trial during which evidence was led on both sides. At the conclusion of the trial, and after addresses by learned leading counsel for the parties, the learned trial Judge (Famakinwa J) in a well-reasoned judgment found:-

G 1. *"..... it does not appear to be important to make a decision as between the Board of Trustees or the congregation who named and proclaimed 2nd defendant as PASTOR of the church. Whichever body that named the 2nd Defendant as PASTOR could not be within the meaning and intendment of Section III of Exhibit PH".*

H 2. *"From the totality of the evidence adduced before me and for reasoning given in this case I declare that the naming and proclamation of 2nd Defendant as Pastor of C.C.C. is unconstitutional, null and void and of no effect."*

3. *"The Pastor/Founder in his life time did not name anybody as his successor.*

4. *"Upon a proper consideration of the whole evidence before me, I am not inclined in this action to make an order for an account in this regard against the 2nd Defendant. Plaintiff has not instituted this action in a representative capacity. 2nd Defendant is not an Accounting party to the Plaintiff. More importantly, there is no shread of evidence before me that 2nd Defendant collected fees for the anointment performed by him on the members of the Church. Again (and this point is fatal to claim on this head) that the monies collected, if at all, were pocketed by the 2nd Defendant. I fail to see the rationale behind the claim for an account for the anointment performed by the 2nd Defendant."*

Upon these findings, the learned Judge entered judgment in favour of the plaintiff on his claims 1 (i) - (iv) and 2 but dismissed his claims 3 and 4 for account and payment over.

On the Defendants' counterclaim, the learned trial Judge found that although title in the property of the Church, including the Ijeshatedo I Parish church building, is vested in the Registered trustees of the Church, he would not grant the reliefs claimed by the Defendants for the reason that to maintain peace, he should refuse the claims. He, thereupon, dismissed Defendants' claims.

The Defendants, quite naturally, were displeased with this judgment and appealed to the Court of Appeal on a number of grounds. They formulated the following issues for the determination of the appeal before that Court, that is to say:

(i) Did the plaintiff have locus standi to maintain the action?

(ii) Where the Constitution of a voluntary association of member proves totally unworkable and the same proves unamendable owing to impossibility of compliance with its existing provisions for amendment, will be (sic) Courts declared (sic) invalid a decision taken by the generality of the membership to surmount the impossible situation?

(iii) Did the Defendants/Appellants make a case different from that made in their pleadings?

(iv) Ought the Plaintiff to have been granted Declaratory and Injunctive remedies in the circumstances of this case?

(v) Was the Court below right to refuse the declaration and Injunction sought by the Registered Trustees having regard to the fact that

B -

(a) their right and title to the church is not disputed;

(b) there is admitted breach of or interference with their right of management and control of the same.

C Although the appeal was fully argued, the appeal was however decided on Issue (1). And in this, the Court of Appeal was divided in its decision. The majority (Sulu-Gambari and Pats-Acholonu JJCA) allowed the appeal on issue (1) only holding that the Plaintiff had no locus standi to institute the action and made no pronouncements on the other four issues. D Uwaifo JCA (as he then was) who dissented held that the Plaintiff had locus standi to institute the action. He resolved issue (ii) against the Defendants and found it unnecessary to pronounce on issue (iii). He dismissed the appeal in respect of the declarations and injunctions granted E by the learned trial Judge. Uwaifo J.C.A. found that judgment ought to be entered in favour of the Defendants on their counter-claim and allowed the appeal as regards the counter-claim only.

F The Plaintiff has now appealed to this Court against the majority decision that he lacked locus standi to institute the action. The Defendants too, further appealed to this Court against the failure of the majority of the Court below to pronounce on the other issues placed by them before that Court.

G Pursuant to the Rules of this court the parties filed and exchanged their respective briefs of argument. The Defendants filed an amended brief incorporating arguments on their cross-appeal, to which the plaintiff filed a reply brief. In his brief plaintiff set out two questions as calling for determination of this appeal.

H These are:

(i) *Whether the Majority Justices of the Court of Appeal stated and applied the law on locus standi correctly.*

(ii) *Whether the plaintiff had the locus standi to institute the*

action.

The Defendants, in their amended brief, compress these two questions into one, to wit:

"Does a Plaintiff who merely pleads his interest in the subject-matter of a suit but does not claim relief for himself in respect of the subject-matter of the dispute have Locus standi to challenge any alleged irregularity in respect of the subject - matter of the suit."

Having regard to the judgment appealed against and the arguments in the briefs, I think the question as formulated in the brief of the Defendant is to be preferred.

In respect of their own appeal, the Defendants have posed the following questions:

1. Should the Court of Appeal not have allowed the 1st Defendant's appeal against the refusal of the High Court to grant their counter-claim?

2. Should the election of the 2nd Defendant/Respondent by unanimous decision of the congregation of the CCC have been declared invalid, unconstitutional, null and void as being contrary to Constitution of the CCC?

3. Should the Court of Appeal not have allowed the Defendants' appeal against the grant of the Declarations and an injunction.

The Plaintiff, in his brief, questioned the competence of the above questions on the ground that they did not arise out of the grounds of the cross-appeal. I have examined those grounds and I am satisfied that the questions raised properly arise from those grounds. There is no substance in the Plaintiff's objection and I hereby dismiss it.

I now proceed to consider the questions raised in the two appeals by taking first the plaintiff's appeal where the only issue is the question of locus standi of the Plaintiff to institute the action.

LOCUS STANDI

The plaintiff, both in his brief and in the oral submissions of his learned leading counsel, Kehinde Sofola Esquire, SAN, has argued that the majority Justices of the Court below were in error when they held that the Plaintiff lacked standing to sue because he did not claim any relief for his own personal benefit. It is submitted that all the authorities

cited in the lead judgment of Sulu-Gambari, JCA did not support this conclusion. It is further submitted that the minority decision of Uwaifo JCA represents the correct law. We are urged to allow the appeal, set aside the majority judgment of the Court below and restore that of the trial High Court.

The Defendants, on the other hand, both in their amended brief and in oral arguments of their learned leading counsel Chief G. O.K. Ajayi, SAN have argued strenuously in support of the majority judgment of the Court below on the question of locus standi. In summary, they C contended -

1. As the Plaintiff did not raise any claim for the determination of his rights, he lacked standing to institute the present action;

2. Adesanya v. President & Anor. (1981) 12 NSCC, 146; (1981) D ANLR 1; (1981) SC. 112 is still good law and its application precluded the Plaintiff from suing; and

3. To open wide the doors to let in a class of litigation not contemplated by section 6(6)(b) of the 1979 Constitution (now section 6(6)(b) E of the 1999 Constitution) would lead to an unwarranted departure from the spirit and the letter of the Constitution.

In his amended statement of claim Plaintiff pleaded, inter alia, as follows:

F "16. The Plaintiff avers that as a member of the Church he is interested in the office of the Pastor and that he has a right under Section III of the Constitution to be named and proclaimed the successor to the office of Pastor.

17. The Plaintiff avers that during his lifetime, Papa S.B.J. G Oshoffa the Pastor/Founder of the Church, often made it known in his words and actions that his successor as Pastor was none other than the Plaintiff.

[illegible]

H 25. *The plaintiff therefore contends that he is the only person rightfully entitled to be named and proclaimed the successor to the office of the Pastor and that the purported proclamation of the 2nd Defendant as the successor is, not only unconstitutional, illegal, null and void but*

also a violation of the plaintiff's civil right and obligation not only to be the one to be named the new Pastor but also to ensure, that the appointment of the successor to the office of Pastor of the Church is in strict accordance with the provisions of the Constitution of the Church.

He has in diverse paragraphs pleaded that the late Pastor Oshoffa had his (Pastor's) preference for him (Plaintiff) to succeed as Pastor. On the strength of these averments Sulu-Gambari JCA who delivered the lead judgment of the Court below with which Pats-Acholonu JCA agreed, observed:

"It is incontrovertible that by the contents of paragraphs 16, 17 and 25, the plaintiff has clearly stated his interest in the matter."

One would think that with this finding the learned Justice of Appeal would conclude that Plaintiff had locus standi to sue. On the contrary, he went on to ask the question:

"Has he showed that his rights and obligations have been trampled upon by claiming that the 2nd appellant is not entitled to be proclaimed and enthroned as Pastor?"

to which question he proffered the following answer:

"Without claiming or praying in his relief that he is the rightful person to be so proclaimed as the Pastor and by asking for an order that all the monies collected by the 2nd appellant for anointments should be paid not to him for the asking but that they should be paid to the Treasurer of the Celestial Church of Christ (Nigeria Diocese), will not be tantamount to showing that his rights and obligations have been trampled upon by a particular individual."

The learned Justice of Appeal then pronounced:

"A person may have sufficient interest. What claims he makes of that sufficient interest or what issues he made out of that particular interest upon which he is invoking the powers of the court to adjudicate upon between himself and his adversary would constitute his right to invoke the powers of the court to adjudicate between him and such adversary. The mere fact that as act of some people may likely affect the civil rights and obligations of a person without claiming what ought to have been settled by the instigator of the case and his adversary as to the

civil rights and obligations of the instigator would not vest in the court the power to adjudicate on the matter."

Applying his proposition of the law to the case before the Court, the learned Justice of Appeal said:

B *"Although it is quite clear from paragraphs 16, 17 and 25 that the 1st respondent disclosed his interest in the matter and stated that he contends (sic) the office of the Pastor and that he was the one appointed or to be confirmed, he made no claim in his prayers or reliefs entitling him to such an order and generally in the rules of pleadings and in the*
 C *absence of any statutory provision to the contrary, courts do not possess the power to grant a claim which was not sought by either party in a proceeding and which was not formulated and in respect of which a party to be prejudiced thereby was not heard - see the case of The State v. The*
 D *President of grade 'A' Customary Court (1967) NWLR 267 I cannot therefore say that the plaintiff/1st respondent has, on the pleadings, effectively disclosed any locus standi.*

Even after this conclusion, the learned Justice, recapitulating the law, E said:

"Locus standi in a claim asking for declaratory order should be predicated on the existence of a legal dispute. A person will have no locus standi where his interests are immediately liable to sustain direct
 F *impairment by the conduct of another; and he is able to show that he engaged with another party in controversy in which his legally recognized interests are directly affected."*

In the course of his judgment, Sulu-Gambari JCA cited, reviewed and claimed to follow the following cases each of which I intend to
 G comment on in this judgment to determine whether they (or any of them) support his proposition of law on locus standi. These cases are:

1. Odeneye v. Efunuga, (1990) 7 NWLR 618
2. Thomas v. Olufosoye (1986) 1 NWLR 669
- H 3. Amusa Momoh v. Jimoh Olotu (1970) 1 ALL NLR 117; (1970) ANLR 121.
4. Moradesa v. The Military Governor of Oyo State & Ors. (1986) 3 NWLR 125.

5. *Olawoyin v. Attorney-General of Northern Nigeria* (1961) 2 SCNLR 5; (1961) 2 NSCC 165.

6. *Senator Adesanya v. President of the Fed. Republic of Nigeria & Anor.* (supra)

It is interesting to observe that in his reference to the above cases, the learned Justice of Appeal made some statements completely at variance with the proposition he eventually made. He said:

"It may be helpful for us to rely and deduce from the attitude of the courts in some cases to ascertain the scope and concept of locus standi.

In Olawoyin v. Attorney-General of Northern Nigeria (1961) 2 SCNLR 5, the Supreme Court held that the court was right to decline to make a declaration in favour of the Plaintiff because it was not shown that he was a person interested or that he has an interest in the subject matter."

Again he said:

"A person affected or likely to be affected, aggrieved or likely to be aggrieved by the person's proceedings has been held to be a person interested or to have sufficient interest in the matter - see Ojukwu v. Governor of Lagos State & Anor. (1985) 2 NWLR (pt. 10) 806.

And yet again, he said:

"It therefore follows that any communication, association or inter-relation between the plaintiff and the matter to which the suit relates may give the person interest to sue - see Moradesa v. The Military Governor of Oyo State & Ors. (1986) 3 NWLR (part 27) 125"

I think I must commend the depth of the research Sulu-Gambari JCA put into this matter. He no doubt brought out some of the landmark cases - both pre and post - 1979 Constitution - often cited and believed to lay down the Nigerian law on locus standi.

The term locus standi (or standing) denotes the legal capacity to institute proceedings in a Court of law. Standing to sue is not dependent on the success or merits of a case; it is a condition precedent to a determination on the merits. It follows therefore, that if the plaintiff has no locus standi or standing to sue, it is not

necessary to consider whether there is a genuine case on the merits; his case must be struck out as being incompetent. At common law, the position is that, in the realm of public right, for a person to invoke judicial power to determine the constitutionality of legislative or executive action, he must show that either his personal interest will immediately be or has been adversely affected by the action or that he has sustained or is in immediate danger of sustaining an injury to himself, and which interest or injury is over and above that of the general public. In other words, the plaintiff or claimant must show that he has some justiciable interest which may be affected by the action or that he will suffer injury or damage as a result of the action. The question whether there is such a justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case - see generally the various judgments delivered by their Lordships of this Court in Senator Adesanya v. President of the Federal Republic of Nigeria & Anor. (supra). I shall say more on this case later in this judgment.

In Oloriode v. Oyebe (1984) 1 SCNLR 390 at p. 400 Irikefe JSC., (as he then was) declared:

"A party prosecuting an action would have locus standi where the reliefs claimed would confer some benefit on such a party."

This is clearly the position in private law. A case in point is Amusa Momoh v. Jimoh Ootu (supra) where, in a chieftaincy matter the plaintiff had pleaded, without more, in paragraph 1 of his statement of claim that he was a member of the ruling house affected by the dispute. Sir Ademola CJN, delivering the judgment of this Court declared

"In regard to paragraph 1 of the statement of claim and the point raised that the plaintiff has no locus standi in the matter, the learned trial judge ruled that as this paragraph has not been denied, the plaintiff cannot be said to have no interest. Now, what is the averment in paragraph 1? The plaintiff says that he is a member of the Olukare family. The question may be asked, is it enough for the plaintiff to state that he is a member of the family? Has he not got to state that he has an interest in the chieftaincy? Surely not every member of a chieftaincy family as

such has interest in the chieftaincy title. We are of the view that it is not enough for the plaintiff to state that he is a member of the family; he has to state further that he has an interest in the chieftaincy title, and furthermore, state in his Statement of Claim how his interest in the chieftaincy title arose. It is difficult to say on the pleadings filed that the plaintiff has any locus in the matter."

The position appears to be that in private law, the question of locus standi is merged in the issue of cause of action. For instance, a plaintiff who has no privity of contract with the defendant will fail to establish a cause of action for breach of the contract as he will simply not have a locus standi to sue the defendant on the contract. It is on this basis one can explain the decision in Momoh v. Olotu. What cause of action has a member of a ruling house who has no interest in a chieftaincy title against the successful candidate? None that I can imagine. It is on the basis of the reasoning in Momoh v. Olotu that one can readily explain the decisions in Odeneye v. Efunnuga (supra) and cases cited therein and that is that "a party must show clearly that he has a right to protect and that his coming to court is to seek remedy so that the right will not be violated per Belgore JSC in Odeneye v. Efunnuga at page 639. Belgore JSC added at page 640 and I agree with him.

"The respondent in this matter on appeal not only claims that he is entitled to be nominated for the vacant stool of Alakenne (which in all respects is enough to confer locus standi) but he went further that his name really came up as one of those nominated which to my mind more that satisfies his right to sue. I find no merit in this issue of locus standi as canvassed by the appellant. Surely the respondent is not a mere busy-body."

Our law reports are replete with authorities that show that in chieftaincy cases, all a plaintiff is required to do is to show in his statement of claim his interest and his entitlement to the chieftaincy title. I may add that the same principle applies to similar cases such as the one presently on hand. Thomas v. Olufosoye (supra) falls in this category as well.

In Maradesa v. Military Governor of Oyo State & Anor. (1986) 3 NWLR 125 at pp. 136-137 a case cited with approval by this Court in

Odeneye v. Efunnuga (supra) - I said:

"Turning now to the facts of this case the question arises: did the appellant show sufficient interest in the matter to which his application related? This question can only be answered by a recourse to the facts deposed to in the only affidavit filed by the appellant. I have already quoted the penultimate paragraphs of this affidavit in the earlier part of this judgment; these paragraphs speak for themselves. It is sufficient to say that nowhere in this affidavit is it shown that the appellant has any interest whatsoever in the chieftaincy to which the 2nd Respondent was appointed, let alone the nature of such interest. It is not shown that the appellant belongs to any Ruling House entitled to present a candidate to fill any vacancy in the Olowu of Orile-Owu chieftaincy, nor that he was ever a candidate or a kingmaker nor that he is even a member of the Orile-Owu community.

I have equally examined the 2nd Respondent's counter-affidavit. Other than that the applicant is a member of the Maradesa family and that he has joined others in instituting previous proceedings relating to the filling of the vacancy in the Olowu chieftaincy, I can find nothing in it that the appellant can rely on to show his interest, let alone sufficient interest, in the matter to which his application related.

In my view, therefore, the learned trial Judge was right in holding that on the facts before him the appellant had not shown that he had sufficient interest and his application was, rightly in my view, dismissed on this ground."

Olawoyin v. Attorney-General of Nigeria (supra) is a case in the realm of public law. There O brought proceedings to declare unconstitutional certain provisions of the Children and Young Persons Law, 1958 of Northern Nigeria. On appeal to the Federal Supreme court the Court held that only a person who is in imminent danger of coming into conflict with a Law, or whose normal business or other activities have been directly interfered with by or under that Law, that has sufficient interest to sustain a claim that that Law is unconstitutional. Unsworth FJ delivering the judgment of the Court laid down the following test:

"Now did the appellant in the High Court show that he had a

sufficient interest to enable him to apply for a declaratory judgment in accordance with the principles laid down in the case of the Guaranty trust Co. of New York v. Hannay. The appellant did not in his claim allege any interest but his counsel said that the evidence would be that the appellant had children whom he wished to educate politically. There was no suggestion that the appellant was in imminent danger of coming into conflict with the law or that there had been any real or direct interference with his normal business or other activities. In my view the appellant failed to show that he had a sufficient interest to sustain a claim. It seems to me that to hold that there was an interest here would amount to saying that a private individual obtains an interest by the mere enactment of a law with which he may in the future come in conflict; and I would not support such a proposition."

As O. failed to allege or establish any such interest, his case was held to be rightly dismissed. The Court applied the "interest" and "injury" test in denying O of Locus standi in the case. The same test was applied by the court in Gamioba & Ors. v. Ezezi II & Ors. (1961) ANLR 608, 613 where Brett FJ, as he then was, said:

"There is a further test to be applied in a case such as this one. It is always necessary, where the plaintiff claims a declaration that a law is invalid, that the Court should be satisfied that the plaintiff's legal rights have been, or are in imminent danger of being invaded in consequence of the law. We dealt with this point at length in Olawoyin v. Attorney-General Northern Region, (F.S.C. 290/1960), (1961) ALL N.L.R. 269, and it will be enough to say here that since the validity of a law is a matter of concern to the public at large the Court has a duty to form its own judgment as to the plaintiff's locus standi, and should not assume it merely because the defendant admits it or does not dispute it. The plaintiff's locus standi in the present case has not yet been disclosed, and if he has none, his claim must be dismissed on that ground, and it will be unnecessary to decide the question involved in the declaration he claims. For this reason also it is not yet clear that the question set out in counsel's application arises."

In all the above cases, all that was claimed were declara-

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 tory reliefs and injunctions. In no one was any relief being specifically claimed by the plaintiff for himself. This did not prevent the Court ascribing locus standi to those of them who showed sufficient interest in the subject-matter of the dispute. Locus standi was not denied to the plaintiffs in Thomas v. Olufosoye and Maradesa v. Governor of Oyo State (supra) merely because they did not claim any relief for themselves but because they did not show sufficient interest in the subject-matter of the disputes as to entitle them to sue. Certainly all the cases I have mentioned in the course of this judgment and which Sulu-Gambari JCA adverted his mind to do not support the proposition of law upon which the majority of the Court below based their decision on locus standi of the plaintiff to sue in this case. In any event, it cannot be said that the plaintiff would not stand to benefit from the grant of the reliefs he claimed in this case. With the declaration that 2nd Defendant's appointment was void, there would be a vacancy for which the Plaintiff who claimed he had the ambition for the office of Pastor, could now aspire.

F
 A word or two on Adesanya v. President of the Fed. Republic of Nigeria (supra). It appears that the general belief is that this Court laid it down in that case that the law on locus standi is now derived from section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1979 (re-enacted in section 6(6)(b) of the 1999 Constitution) which provided:

G
 6(6) The judicial powers vested in accordance with the foregoing provisions of this section -
 (b) shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings, relating thereto, for the determination of any question as to the civil rights and obligations of that person;"

H
 I am not sure that this general belief represents the correct position. Of the seven Justices that sat on that case only 2 (Bello and Nnamani JJ.SC) expressed views to that effect. Bello JSC, (as he then was), put the law on locus standi or standing in the realm of public law in these words:

"Finally, I would like to make the following observations: A

careful perusal of the problem would reveal that there is no jurisdiction within the common law countries where a general licence or a blank cheque - if I may use that expression without any string or restriction, is given to private individual to question the validity of legislative or executive action in a court of law. It is a common ground in all the jurisdictions of the common law countries that the claimant must have some justiciable interest which may be affected by the action or that he will suffer injury or damage as a result of the action. In most cases the area of dispute, and some time, of conflicting decisions has been whether or not on particular facts and situation the claimant has sufficient interest or injury to accord him a hearing. In the final analysis, whether a claimant has sufficient justiciable interest or sufferance of injury or damage depends on the facts and circumstances of each case: Bengal Immunity Co. v. State of Bihar (1955) 2 S.C.R. 602; Forthingham v. Mellon (1925) 262 U.S. 447; for India and America respectively. Even in the Canadian case of Torson v. Attorney-General of Canada (1974) 1 N.R. 2254, and the Australian case of Mckinlay v. Commonwealth (1975) 135 C.L.R. cited by Chief Fawehinmi, in which liberal views on standing were expressed, the issue of sufficiency of interest was the foundation upon which the decisions in both cases were reached."

I think this passage correctly sums up the law and is in accord with Olawoyin v. Attorney-General of Northern Nigeria (supra). Bello JSC did not, however, stop there. He went on to consider the provision of our Constitution and after quoting section 6(6) (b) of the Constitution (1979 Constitution) went on to observe:

"It may be observed that this sub-section expresses the scope and content of the judicial powers vested by the Constitution in the Courts within the purview of the sub-section. Although the powers appear to be wide, they are limited in scope and content to only matters, actions and proceedings 'for the determination of any question as to the civil rights and obligations of that person'. It seems to me that upon the construction of the sub-section, it is only when the civil rights and obligations of the person, who invokes the jurisdiction of the court, are in issue for determination that the judicial powers of the courts may be invoked. In

other words, standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of."

Idigbe JSC also quoted section 6(6)(b) of the Constitution and B went on to say:

"The expression 'judicial power' in the above quotation is 'the power of the Court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision' [see Justice Miller: The Constitution p. 3141. Judicial Power is therefore invested in the Court for the purpose of determining cases and controversies before it; the cases or controversies, however, must be 'justiciable'. That being so, it is necessary to know in what circumstances a court can, in the exercise of its judicial power pronounce on the constitutional validity of an 'Act' (i.e. legislation) of the Legislature or, an 'act' (i.e. action) of the National Assembly. In attempting to answer this question, I would gratefully adopt the views of Marshall C.J. in Marbury v. Madison (1803) 1 Cranch 137, which, in a summary, are that the right of the Court to declare unconstitutional an act of Congress can only be exercised by it when a proper case between opposing parties has been submitted to it for judicial determination,"

On what is a 'proper case' that would justify the invocation of the judicial F power of the Court, the learned Justice of the Supreme Court observed:

"The type of case or controversy which will justify the exercise by the court of its judicial power must be justiciable and based on bona fide assertion of right by the litigants (or one of them) before it I take the view that the circumstances in which the judicial power under section 6(6)(b) of the 1979 Constitution can be exercised by the court for the purpose of pronouncing on the constitutional validity of an act of the National Assembly or, more particularly, any legislation must be limited to those occasions in which it has become H necessary for it (i.e. the Court) in the determination of a justiciable controversy or case based on bona fide assertion of rights by the adverse litigants (or anyone of them) before it to make such a pronouncement. The Court does not, in my view possess a general veto power over

legislations by, or acts of, the National Assembly; its powers properly construed, are supervisory, and the supervisory power, in my view can only be properly exercised in circumstances to which I have referred above."

It will be observed that Idigbe JSC did not say that it was section 6(6)(b) that gave locus standi but rather that it was this sub-section that prescribed B the judicial power of the court in the separation of powers scheme of the Constitution.

Obaseki JSC was emphatic in his rejection of the notion that section 6(6)(b) is concerned with locus standi. The learned Justice of C the supreme Court after quoting the sub-section, said:

"This provision by itself, in my opinion and respectful view, does not create the need to disclose the locus standi or standing of the plaintiff in any action before the court and imposes no restriction on access to the D courts."

It is the cause of action that one has to examine to ascertain whether there is disclosed a locus standi or standing to sue."

Nnamani JSC appeared to share Bello JSC's view when he said

"Section 6(6)(b) to my mind encompasses the full extent of the E judicial powers vested in the Courts by the Constitution. Under it, the Courts have power to adjudicate on a justiciable issue touching on the rights and obligations of the person who brings the complaint to court. The litigant must show that the act of which he complains affects rights F and obligations peculiar or personal to him. He must show that his private rights have been infringed or injured or that there is a threat of such infringement or injury. It seems to me that the Court must operate within the parameter of the judicial power vested in them by Section G 6(6)(b) of the Constitution and that they can only take cognizance of justiciable actions properly brought before them in which there is dispute, controversy, and above all, in which the parties have sufficient interest. The Courts cannot widen the extent of this power which has been so H expressly defined by the Constitution."

Uwais JSC also agreed with Bello JSC but only to some extent. For he said:

"It is for the foregoing reasons and those given by my learned

brother, Bello, J.S.C. (which I had the privilege of reading in draft) that I feel that the interpretation to be given to section 6 subsection (6) (b) of the Constitution will depend on the facts or special circumstances of each case. So that no hard and fast rule can really be set-up. But the watchword B should always be the 'Civil rights and obligations' of the plaintiff concerned."

I have highlighted above the views expressed by five of their Lordships that determined the Senator Adesanya case. I am only left with two. Sowemimo JSC, (as he then was), declined to express a view C on section 6 subsection (6) (b) of the Constitution. He said:

"On interpretation placed on section 6(6)(b) I prefer to reserve my comments until a direct issue really arises for a determination."

Fatayi-Williams, CJN who expressed his preference for what D the Romans called actio popularis, when he said:

"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 E 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 F law which is consistent with the provisions of the Nigerian Constitution. Indeed, it is his civil right to see that this is so. This is because any law that is inconsistent with the provisions of that Constitution is, to the extent of that inconsistency, null and void by virtue of the provisions of sections 1 and 4 to which I have referred earlier."

G Still found against the Senator on the ground that the latter

"By coming to court to ask for a declaration, the plaintiff/appellant, in these circumstances, has completely misconceived his role as a Senator. In short, Senator Adesanya has no locus standi in this H particular case. He participated in the debate leading to the confirmation of the appointment of the 2nd defendant/respondent and lost. For him, that should have been the end of the matter. The position would probably have been otherwise if he was not a Senator."

From the extracts of their lordships' judgments I have quoted above one can clearly see that there was not majority of the Court in favour of Bello JSC's interpretation of section 6 subsection (6)(b) of the Constitution. It will, therefore, not be correct to say that this Court decided in the ADESANYA case that the subsection prescribes the locus standi of a person wanting to invoke the judicial powers of the court. They all seem to agree, however, that the subsection prescribes the extent of the judicial powers of the courts. The ADESANYA case which is in the realm of public law, seems to lay it down that to invoke the judicial power of the court a litigant must show sufficient interest or threat of injury he will suffer. I think the interest or injury test applied by the Federal Supreme Court in Olawoyin v. Attorney-General of Northern Nigeria (supra) should remain the yardstick in determining the question of the locus standi of a complainant and this is to be determined in the light of the facts or special circumstances of each case. I do not think that that test is affected by subsection (6)(b) of section 6 of the Constitution.

In my respectful view, I think Ayoola JCA, (as he then was), correctly set out the scope of section 6 (b) of the Constitution when in N.N.P.C. v. Fawehinmi & Ors. (1998) 7 NWLR 598, 612 he said.

"In most written constitutions, there is a delimitation of the power of the three independent organs of government, namely: the executive, the legislature and the judiciary. Section 6 of the Constitution which vests judicial powers of the Federation and the States in the courts and defines the nature and extent of such judicial powers does not directly deal with the right of access of the individual to the court. The main objective of section 6 is to leave no doubt as to the definition and delimitation of the boundaries of the separation of powers between the judiciary on the one hand and the other organs of government on the other, in order to obviate any claim of the other organs of government, or even attempt by them, to share judicial powers with the courts. Section 6(6)(b) of the Constitution is primarily and basically designed to describe the nature and extent of judicial powers vested in the courts. It is not

intended to be a catch-all, all-purpose provision to be pressed into service for determination questions ranging from locus standi to the most uncontroverted questions of jurisdiction."

That the sub-section does not lay down the plenitude of the Nigerian law on locus standi is borne out by the decision of this Court in Fawehinmi v. Akilu (1987) 4 NWLR 797 where this Court recognized the right of a citizen to lay a criminal charge against any one committing an offence or who he reasonably suspects to have committed an offence. This view is also shared by Ademola J.C.A. in Bolaji v. Bamgbose (1986) 4 NWLR 632 AT 650-653 where he gave an overview of the law and concluded that the test in section 6(6)(b) of the Constitution be confined to challenges in constitutional and statutory matters only. He observed:

"It should be noted that the extract from the judgment of Fatai-Williams, CJN in the Senator Adesanya case reproduced above sought to make a distinction of what is required as sufficient standing in matters that are constitutional and those that are not; such as common law or administrative law. This distinction is valid and very important in our law having regard to the fact that Section 6 subsection 6(b) of the Constitution of 1979 has created a constitutional locus standi in matters relating to challenges to the provisions of the constitution and statutory enactments under it.

It follows then logically from this distinction so noted in the extract from the judgment that Section 6 subsection 6(b) of the constitution has laid down a test applicable only to challenges in constitutional and statutory matters and should not come into play in other sphere of the law. More often the tendency is to regard the test laid down in Section 6 (6) (b) as applicable to all situations on the issue of locus standi.

This is doing violence to the plain meaning of the words used in that provision of the Constitution. The Words 'rights' and 'obligations' are not synonymous with the word 'interest' which is the word used in the second test by the courts. The test in Section 6 subsection 6(b) must in my view be confined to its proper limit and must not be allowed to intrude into other areas of law. The issue of locus standi has also been predicated on the second test of sufficiency of interest being shown by the would be

plaintiff in an action."

I think there is some wisdom in the views expressed by his Lordship Ademola JCA. The judgments delivered in the Adesanya case seem to support him. The term "civil rights and obligations" applies more in the sphere of public law than in the realm of private law where the cause of action test will be more appropriate. B

In the case on hand, the Court below, per Sulu-Gambari JCA found, from the pleadings of the Plaintiff, that -

"These paragraphs established that the 1st respondent is a member of the Church; that he has an interest in the appointment of the Pastor; that the late S.B.J. Oshoffa - the erstwhile Pastor and Founder, in his life made it known by words and actions that the 1st respondent was his successor. He contended that he was the rightful person to be named and proclaimed the successor to the office of the erstwhile Pastor and that the purported proclamation of the 2nd appellant as successor was not only unconstitutional, illegal, null and void but violated the 1st respondent's civil rights and obligations to ensure that the appointment of the successor was made in accordance with the provisions of the Constitution of the Church." C D E

After a review of the authorities on locus standi, the learned Justice of Appeal observed that

"It is incontrovertible that by the contents of paragraphs 16, 17 and 25, the plaintiff has clearly stated his interest in the matter". F
(underlining is mine for emphasis)

With this finding, the plaintiff ought to have been found to have locus standi to institute his action. Sulu-Gambari JCA was grossly in error when he later said: G

"I cannot therefore say that the plaintiff/1st respondent has, on the pleadings, effectively disclosed any locus standi."

He was obviously led into this error by his belief that to have locus standi, the plaintiff must have claimed a declaration that he "declared the rightful one to be appointed; or that correct procedure be followed for the consideration of himself as a candidate to be appointed" No doubt, this conclusion cannot be supported in the light of all the authorities on H

the point, many of which the learned Justice of Appeal adverted his mind to. If, as he found, and rightly in my view, that the plaintiff's pleadings clearly disclosed his (plaintiff's) interest in the matter in dispute it is gross error to deny him locus standi.

B I agree with the conclusion reached by Uwaifo JCA on the issue under discussion. Accordingly, I resolve the issue of locus standi in favour of the plaintiff. Consequently, his appeal succeeds and it is hereby allowed by me. I set aside the majority decision of the Court below and hold that the Plaintiff has locus standi to maintain his action. Before
C deciding on what consequential order to make I need to first consider the cross-appeal of the Defendants.

As I have stated earlier in this judgment, their lordships Sulu-Gambari and Pats-Acholonu JJ.CA, in their majority decision, dealt only
D with the issue of locus standi and refrained from pronouncing on the other issues placed before them by the Defendants. This Court has, in a number of cases, frowned at the failure of lower Courts to decide all issues placed before them - see, for example, Odunayo v. The State
E (1972) 8-9 SC. 290 at p. 296 where sowemimo JSC (as he then was) observed:

*"Although Mrs. Solanke's argument before the appeal court, was on a different aspect from that raised by Mr. Adebegi, the learned counsel
F who defended the appellant at the Ado-Ekiti High Court, nothing was said in the judgment of the Appeal Court about the points she had raised. The result of this was that, on a further appeal before us, learned counsel had to address us on the decision of the High Court as 'confirmed by the Western State Court of Appeal'. In a capital offence, there is the right of
G a further appeal from the decision of the Western State Court of Appeal to this Court. Such appeal should in normal circumstances be directed against the decision of the Western State Court of Appeal. As no reasons were given why they rejected the new points raised before them by Mrs.
H Solanke, this Court had to embark upon a consideration of the evidence and judgment of the court of trial on the basis that the judgment of that Court had been adopted by the Appeal Court. There must be, and there are a number of cases where it is most desirable, especially in the case of*

an intermediate Court of appeal, that the final Court of Appeal, which is the Supreme Court of Nigeria, should have the benefit of the opinion of that Court on points raised before it, should it come up for further consideration by this Court. We did not have that benefit in this case and so we have had to have recourse to the evidence and judgment at the High Court."

See also Ifeanyi Chukwu (Osondu) Ltd v. Soleh Boneh Ltd. (2000) 5 NWLR 322, at p. 351 where I observed:

"Before I proceed further I like to comment briefly on the course taken by the Court of Appeal in this case. Ogebe JCA in his lead judgment said:

'The answer to the first issue is a capital YES. Since this issue disposes of this appeal, I shall not engage in an academic exercise in discussing the other issues.'

This approach to the issues placed before the court is, to say the least, unfortunate. The course taken, while permissible with the final Court of Appeal is not always the proper course for an intermediate court to take. Unless in the clearest of cases, an intermediate court should endeavour to resolve all issues put before it. There are decided cases of this court which enjoin a trial court even where it has dismissed an action to consider and pronounce on the quantum of damages to be awarded in the event of the plaintiff finally succeeding."

The continuance of this practice cannot be too strongly deprecated. In their brief of argument, the Defendants urged us to exercise the powers of this Court under section 22 of the Supreme Court and decide those issues by rehearing the appeal. At the oral hearing of the appeal, however, their learned leading counsel resiled from this position and urged us instead to remit the appeal to the Court below for it to decide those other issues, that is, in the event of our resolving the issue of locus standi in favour of the plaintiff, as it is now the case.

This matter commenced in October 1987, that is, almost 13 years ago. It must have undoubtedly polarized the Celestial Church of Christ and dispirited its members. All the materials for resolving the issues not touched upon are now before the Court, more so that they are

mostly questions of law. I think the interests of the parties demand a quick resolution of those issues. It is right and just that this Court should rehear the appeal on those issues pursuant to section 22 of the Supreme Court Act.

B 1ST DEFENDANT'S COUNTER-CLAIM:

It is not in dispute that the legal title to all properties of the church, including the Ijeshatedo I Oluwaseyi Parish, is vested in the Registered Trustees of the Church. The Defendants pleaded in their counter-claim, inter alia, as follows:

C 2. *The land, building and premises on which the Church of the Celestial Church of Christ Ijeshatedo I Oluwaseyi Parish is erected on the property of the Celestial Church of Christ.*

D 3. *The affairs of the said Church and the control of the church buildings and property is entrusted to the Parish Council under a President.*

E 4. *The 1st Defendant by Counter-claim was appointed President of Ijeshatedo I Parish by the late Founder/Pastor in his life-time and he functioned as such and exercised powers of control over the said premises and properties by virtue of the said appointment.*

F 5. *Although the 1st Defendant by Counter-claim initially accepted the 2nd Plaintiff by Counterclaim as Supreme Head and Pastor the 1st Defendant by Counter-claim has lately changed his position, denied the 2nd plaintiff by counter-claim as the Pastor of the Celestial Church.*

G 6. *The 2nd Plaintiff by Counter-claim as such Pastor is entitled with such members of the Board of Trustees and other members of the Celestial Church as he shall choose, to pay Pastoral visits to any Celestial Church worldwide enter into the same and worship therein.*

H 7. *In January 1988 the 2nd plaintiff by counter-claim and the Board of Trustees announced the intention of the 2nd plaintiff by counter-claim to pay a Pastoral visit to Ijeshatedo I Parish on the 24th of January, 1988 and communicated this fact to the 1st defendant by counter-claim and to the whole word.*

8. *Notwithstanding the notification the 1st defendant by counter-claim caused letter to the written to the 2nd plaintiff by counter-claim and the other plaintiff by countr-claim denying them right of access to*

30. *The Plaintiff denies that the 2nd plaintiff by Counter-claim is a Pastor and contends that the 2nd Plaintiff by Counter-claim is not entitled either singly or with any member or members of the Board of Trustees and/or other members of the Church to pay any 'Pastoral' visit to any Celestial Church of Christ worldwide including Ijeshatedo I Oluwaseyi Parish.*

31. *As to paragraphs 7 and 8 of the Counter-claim the Plaintiff contends that the so-called 'Pastoral' visit was a brazen ploy deliberately embarked upon by the Defendants to frustrate the successful outcome of this suit in favour of the plaintiff and to accord false legitimacy to the otherwise illegal installation.*

32. *Save that the plaintiffs by Counterclaim were not welcomed at the Ijeshatedo I Oluwaseyi Parish on a 'Pastoral' visit on the day in question and that the presence of the Police was with a view to ensuring that no breach of the peace occurred, the plaintiff denies paragraphs 9 and 10 of the Counter-claim."*

The Cross-Respondents in their statement of defence to the counter-claim pleaded thus:

"2. These defendants do not admit paragraphs 1, 3, 4, 5, 6, 7, 8, 9 of the counter-claim.

3. Save that as members of the Parochial Committee these defendants are responsible for the day-to-day affairs of the parish under section 125 of the church's Constitution, these defendants deny paragraph 10 of the counter-claim and say that they never used any force or violence on the car belonging to any member of the Celestial Church of Christ at Ijeshatedo on 24th January, 1988 or on any other day.

4. As members of the Parochial committee responsible for the day-to-day affairs of the church these defendants contend that it is absolutely necessary for them to have free and unimpeded access to the church buildings and premises for the effective discharge of their constitutional duties.

The learned trial Judge had this to say:

"After a serious and thorough perusal of the evidence before me, it is my considered view that it would not be expedient to make the

order sought for in the counterclaim. It is, indeed, undisputed fact that since 2nd Defendant is not a PASTOR of C.C.C. he ought (not) to have planned a Pastoral visit to Ijeshatedo I Parish Oluwaseyi, where there is a strong objection to his nomination as Pastor of the Church.

However, 2nd Defendant has won my admiration and respect as he had shelved his proposed visit to Ijeshatedo I Parish, at least for the sake of peace in the Church. Having abandoned the visit, the administrators of Ijeshatedo I Parish acted in error to deny the Board of Trustees to come into the Church at Ijeshatedo. The posture being taken to this matter by the Parochial Committee, Ijeshatedo I Parish is confrontational and unreasonable. The plaintiff who is the Chairman/President of Ijeshatedo should have exhibited a bit of diplomacy and also to exercise some restraint in the matter. He is one of the Trustees of CCC and he has a duty to see that peace reign all over the Church. Two wrongs they say never make right."

Having made the above observations, the learned trial Judge nevertheless declined to make the orders sought by the Defendants in the counterclaim. He reasoned thus:

"The relationship between the Board of Trustees and Parochial Committee represented by plaintiff 2nd and 3rd Defendants is already strained. In my way of thinking, to make a declaration that the Defendants are entitled to the possession management and control of the premises and property of the Church building and premises known as Ijeshatedo I Parish would further tear apart the church from the middle down. Moreover to accede to the counter-claim in the action would amount to a total dissolution of the Parochial committee of Ijeshatedo I Parish which would not be helpful as it is only the Pastor who could make an order for the dissolution of a Parochial Committee."

He went further to say:

"At the moment, there is nobody who is a Pastor of C.C.C. I think seriously in my mind that in order to maintain peace and tranquility in the Church, the court in the exercise of his discretionary power ought to refrain from making the declaration sought herein. Chief G.O.K. Ajayi, SAN has posed the question whether the members of the Parish Council

of a Parish Church of C.C.C. are entitled to prevent the Pastor and the members of the Board of Trustees as such from entering for worshipping in a church belonging to the C.C.C. I answered the question in the negative - No. If there is a Pastor. But where as it is in this case there isn't a Pastor, there would be some difficulties as it is only the Pastor who could pay a Pastoral visit to the Parishes. Thus the whole action itself in the counter-claim predicated on the assumption that there is a lawful Pastor. In this premises, it is my serious view that it would be most inexpedient to make orders for (1) possession of the premises in issue and (ii) Injunction restraining the Plaintiff, his servants, agents supporters with the Defendants right over the premises. The Trustees including the Plaintiff are custodians of the properties of C.C.C. The Board of Trustees are holding the said properties in trust for whole members of C.C.C. So far here, there isn't any real or likelihood threat to the property of C.C.C. at Ijeshatedo I. Therefore, in my discretionary power I decline to make the order sought for in the counterclaim. Both claims in the counter-claim fail and they are dismissed accordingly."

It is argued on behalf of the Defendants that as the plaintiff and members of the Parish Council effectively prevented the Trustees from entering the premises of the Ijeshatedo premises and threatening violence, the legal owners of the property were being denied the exercise of the rights of ownership. It, therefore, became necessary to have the 1st Defendants' rights declared and that the same be protected by an order of injunction. It is also submitted that once a court found the exercise of one of the rights and incidents of ownership by an undoubted owner was being challenged and indeed denied, such an owner is entitled to a declaration in respect of his rights.

It is trite that the grant of a declaration of right is at the discretion of the court but it is a discretion that must be exercised judicially - Abodefin v. Morakinyo (1968) NMLR 179. An Appellate court would not, generally, question the exercise of discretion of the trial judge merely because it would have exercised the discretion in a different way if it had been in the position of the trial court. It would however, do so if as a result of such exercise, injustice is

meted out to either of the parties or that the trial judgment gave no weight or gave insufficient weight to important considerations - Solanke v. Ajibola (1968) ALL NLR 46; Saffieddine v. C.O.P (1965) 1 ALL NLR 54 at 56-57; Enekebe v. Enekebe (1964) 1 ALL NLR 102; Charles Osenton & Co. v. Johnson (1942) AC 130, 138; Holland v. Holland (1918) p. 273, 280; State v. Gali (1974) 5 SC. 67 at 73-74. B

It is clear from the judgment of the learned trial Judge that he fully considered the consequences of granting the orders sought in this case. The property of the church is vested in the Board of Trustees. But they are trustees for the true owners - members of the church. It is imperative, therefore, that the interests of members of the Church must be taken into account in whatever course the court would take. No doubt, the learned trial Judge gave full consideration to all the issues that need be considered and decided to exercise his discretion against the Defendants. He acted judicially and judiciously in this matter; I think it will be improper to interfere with the exercise of his discretion. As the learned Judge rightly observed, to take a course different from the one he took would only expand the cleavage in the Church and tear it further apart. Had there been a Pastor who could exercise the powers vested in him by the constitution of the church by disciplining erring members, the position would have been different. D E F

I resolve this issue too against the Defendants.

2ND DEFENDANT'S APPOINTMENT AS PASTOR

The remaining issues formulated before the Court below revolve on the validity of the appointment of the 2nd Defendant as Pastor and his subsequent enthronement. The learned trial Judge dealt exhaustively with this issue and concluded that the appointment was void. This finding has come under attack in the cross-appeal. G

Article III of the constitution of the church (Exhibit HP) provides H the only method of succession to the late Pastor Oshoffa. It reads:

"III. SUCCESSION INTO THE OFFICE OF THE PASTOR

Whereas the Pastor and Founder of Celestial Church of Christ

has proclaimed publicly that, by divine inspiration, it has been revealed unto him concerning the mode for the appointment or selection of a Successor to the post of Pastor and Spiritual Head of the Church, it is here firmly established that:-

B (i) *The successor to the office of Pastor can be from any rank in the hierarchy of the Church and shall, at a time chosen by God to reveal this unto the erstwhile incumbent of the post of Pastor, be named and proclaimed the successor;*

C (ii) *On succeeding after the transition of his predecessor in office, the new Pastor shall occupy the Pastor's Chair in the inner alter (sic)".* It is not in dispute that the late Pastor, while alive, did not name a successor. There was thus a failure of the method of appointing a successor. What should the Church have done in the circumstance?

D Chief Ajayi has argued that all members of the Church could come together and appoint one of themselves as Pastor. This, learned Senior Advocate argued, was what the church members did on 17th December 1985 when, during Christmas festival, they proclaimed the
E 2nd Defendant the new Pastor. With profound respect to learned counsel, this scenario was not borne out by the pleadings and evidence. What is clear from the pleadings and evidence is that the decision of the 1st Defendants to name the 2nd Defendant the Pastor of the Church was
F based on the purported message from Hades Amu claimed the late Pastor sent through him to the Church. It was the affirmation of this decision, which the Defendants claimed was in compliance with Article III of their Constitution, that we had on 17th December, 1985. That is the case the Defendants set up in their pleadings. Chief Ajayi in his address in the
G court of trial and in this Court, has set up a new case which the learned trial Judge rightly rejected at the trial as not having been pleaded.

I agree with the learned trial Judge where he said:

H *"The crucial question, therefore, is whether the alleged spiritual messages said to have been received from deceased Pastor/Founder through many visionaries including AMU are within the meaning and intendment of Section III of Exhibit "H" (Constitution of C.C.C.)? After a thorough and careful consideration of the evidence before me,*

it is my serious view that the answer to that question is a capital No. In my attempt to answer this all important question; I have been immensely assisted by the testimony of Defence witness No. 2 who testified that the successor to the office of the PASTOR shall be named and proclaimed by the Pastor/Founder himself in his lifetime and that the Constitution does not empower the Church to name a successor. The C.C.C. is a body incorporated under the Land (Perpetual Succession) Act Cap. 98 Laws of Nigeria, with a written Constitution Exhibit HP which is binding on the Church and its members and contains express provision in section III for the appointment or selection of a successor to the post of PASTOR and spiritual Head of the Church. Section III of Exhibit HP is clear and unambiguous, and therefore it does not provide for succession to the office of PASTOR by acceptance, acclamation or empowers the entire Church congregation to name a successor to the Pastor/Founder. Thus the unanimous acclamation given on the 17/25th December, 1985 to the appointment of 2nd Defendant by the congregation at Imeko is totally irrelevant and incapable to vest in the 2nd Defendant the authority to occupy the office of the Pastor in C.C.C." E

I think this conclusion is unassailable and, in the light of it, I must hold that the purported appointment of the 2nd Defendant was rightly voided by the learned trial Judge.

The question then arises: What is the way out? The learned trial Judge provided an answer to this question. He advised:

It is the duty of the C.C.C. to fill the 'gap' by amending the Constitution accordingly."

Chief Ajayi has submitted that the amendment advised by the learned trial Judge would be impossible as the Constitution of the Church provides for the consent of the Founder Pastor to any amendment, a consent that could no longer be forthcoming as the said Founder Pastor is dead. I regret I do not accept this submission. **The word "amendment" includes rewriting the whole constitution and substitute the new for the old. The existing constitution was written around the Founder Pastor. With his death an impasse has been created in the affairs of the church and it is only by writing a new Constitution that the**

logjam can be overcome. Afterall, the present constitution of the Church is a replacement of a previous one - see the preamble to the constitution. Article 184 provides for its amendment. In the absence by death of the Pastor, surely the Pastor-in-Council should be able to act. But until the constitution is validly amended, the members at general meeting cannot act to appoint a new Pastor - Harrington v. Sendall (1903) 1 Ch. 921, a case which also provides an answer to the defence of acquiescence raised by the Defendants.

C As the learned trial Judge had rightly pointed out, it is not the duty of the court to advise the Church on what to do. What I have said here is only in reaction to the submissions of learned Senior Advocate, Chief Ajayi and to show that the position is not as hopeless as it seems.

D As regards the equitable defences raised by the Defendants, the short answer is that plaintiff took his action even before the enthronement of the 2nd Defendant. In addition, the Defendants in their further amended statement of defence, in paragraph 19, pleaded thus:

E *"19. The Defendants deny paragraph 26 of the Amended Statement of Claim and aver that the 2nd Defendant is indeed performing the duties of his office properly and with the wholehearted support and obedience of the Celestial Church of Christ worldwide with the exception of the Plaintiff.*

F This averment coming from the Defendants does not portray the plaintiff as having acquiesced in the appointment of the 2nd Defendant. **In any event the appointment, being void, would plaintiff's acquiescence clothe it with validity? I rather think not. I cannot, on the available evidence, find that the defences were established.**

G From all I have said above, the conclusion I reach is that the cross-appeal fails and it is hereby dismissed by me. In the circumstance, I hereby restore the judgment of the trial High Court given by Famakinwa J. on 10th January, 1992.

H I award to the plaintiff N10,000.00 costs of this appeal and N2,000.00 costs of the appeal in the Court below.

WALI JSC

I have had the privilege of reading in advance the lead judgment of my learned brother, Ogundare, J.S.C., and I agree with his reasoning and conclusion for allowing the main appeal against the Court of Appeal judgment and dismissing the cross-appeal against the same. The judgment of the trial court is hereby restored and I adopt the consequential order of costs made in the lead judgment.

IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ogundare, J.S.C. and I am in entire agreement with the reasoning and conclusions therein

It cannot be disputed that the question whether or not a plaintiff has a locus standi in a suit is determinable from a totality of all the averments in his Statement of Claim. See Bolaji v. Rev. Bamgbose (1986) 4 N.W.L.R. (part 37) 632, Momodu v. Olotu (1970) 1 ALL N.L.R. 117 at 123. In dealing with the locus standi of a plaintiff, it is his Statement of Claim alone that has to be carefully scrutinized with a view to ascertaining whether or not it has disclosed his interest and how such interest has arisen in the subject matter of the action. Where the averments in a plaintiff's Statement of Claim disclose the rights or interests of the plaintiff which have been or are in danger of being violated or adversely affected by the act of the defendant complained of, such a plaintiff would be deemed to have shown sufficient interest to give him the locus standi to litigate over the subject matter in issue. See Momodu v. Olotu (1970) 1 ALL N.L.R. 117 at 123, Adesanya v. President of the Federal Republic of Nigeria (1981) 5 S.C. 112 at 149-150, Eleso v. Government of Ogun State (1990) 2 N.W.L.R. (part 133) 410 at 444, Oloriode v. Oyebe (1984) 1 S.C.N.L.R. 390 at 401 etc.

In the present case, the plaintiff did not only plead that he is a member of the Celestial Church of Christ, an honorary Evangelist, a member of the board of trustees, chairman of the International Management Committee and the 1st Vice Chairman of the Council of

honorary Evangelists of the said church, it was further averred that he is interested in the office of the Pastor of the Church and that he has a right under section III of the Constitution of the church to be named and proclaimed the succession to the said office of Pastor. It was also pleaded
 B that Papa Oshoffa, the Pastor/Founder of the church, had during his life time named the plaintiff and no one else as his successor. The plaintiff therefore contended in his said pleadings that he is the only person rightfully entitled to be named and proclaimed the successor to the office of Pastor
 C and that the purported proclamation of the 2nd defendant as the successor of the deceased Pastor/Founder is not only unconstitutional but illegal and null and void. It is clear that the plaintiff's claim is that he had the civil right and obligation to ensure that the appointment of the office of Pastor is carried out in a way that does not adversely affect his interest in
 D that office.

There can be no doubt, in the face of the above averments in the Statement of Claim, that the plaintiff disclosed sufficient interest in the subject matter of his claim. The complaint of the defendants, however,
 E is that the plaintiff did not in any of the substantive reliefs he claimed ask that he be declared the rightful successor to the deceased Pastor/founder. They therefore submitted that although the plaintiff's Statement of Claim disclose that he had sufficient interest in the subject matter of the suit, he
 F was, in law, without locus standi to prosecute the action for the sole reason that he did not seek the relief that he be declared the rightfully successor to the late Pastor.

I cannot, with profound respect, accept the above proposition
 G of law as well founded. In my view, a plaintiff who only claims declaration, so long as he pleads sufficient interest in the subject matter of the suit, has the necessary locus standi to prosecute his claim and it will make no difference that he does not seek any other reliefs. See too In Re Alhaja Afusat Ijebu (1992) 9 N.W.L.R (part 266) 414 at 422- 423, Odeneye v.
 H Efunnuga (1990) 7 N.W.L.R. (part 164) 618 and Order 22 rule 5 of the High court of Lagos State (Civil Procedure) Rules. I do not therefore hesitate to resolve the issue of locus standi in this case in favour of the plaintiff.

Turning now to the cross-appeal, it is evidence that my learned brother did exhaustively consider the same in his leading judgment. I have nothing more to add.

In the final result, it is my view that the appeal succeeds and it is hereby allowed. The majority judgment of the court below is set aside B and I declare that the plaintiff has locus standi to maintain this action. The cross-appeal is without substance and it is hereby dismissed. The judgment of famakinwa, J. delivered on the 10th January, 1992 is hereby restored. I abide by the order as to costs contained in the leading judgment. C

KATSINA-ALU JSC

I agree entirely with the judgment of my learned brother Ogundare, JSC in this appeal. I will only say a few words by way of D emphasis on the crucial issue of the locus standi of the plaintiff.

In the action the plaintiff claimed as follows:

1. A Declaration

(i) That the naming and proclamation of the 2nd Defendant E Supreme Evangelist Alexander Abiodun Bada, as successor to the office of Pastor of "Celestial Church of Christ (Nigeria Diocese)" is unconstitutional null and could and of no effect.

(ii) That the Trustees of the Celestial Church of Christ (Nigeria F Diocese) have no power under the 1980 constitution of Celestial Church of Christ (Nigeria Diocese) to name the successor to the office of Pastor of Celestial Church Christ Nigeria Diocese).

(iii) That any official act undertaken and or performed by the G 2nd defendant as the Pastor and/or the successor to the office of Pastor of the Celestial Church Christ (Nigeria Diocese) from 24th day of December, 1985, onwards, is invalid null and void and of no effect.

2. An Injunction:

(i) Restraining the defendants, their servants, agents privies, or H howsoever from enthroning and/or installing the 2nd Defendant as the Pastor and spiritual Head of the Celestial Church of Christ (Nigeria Diocese).

(ii) Restraining the 2nd Defendant from parading himself as a Pastor or attiring himself in the robes and regalia of the office of Pastor of Celestial Church of Christ Nigeria Diocese.

3. An account of all money collected by the 2nd Defendant in respect of the anointment by him of members of the Celestial Church of Christ Nigeria Diocese from 24th December, 1985 onward.

4. An Order for payment by the 2nd Defendant to the Treasurer of the Celestial Church of Christ Nigeria Diocese of any sum found due from the 2nd Defendant upon taking such account.

In his statement of claim the plaintiff averred in paragraphs 16, 17 and 25 as follows:

16. The plaintiff avers that as a member of the Church he is interested in the office of the Pastor and that he has a right under Section III of the Constitution to be named and proclaimed the successor to the office of Pastor. The plaintiff avers that during his lifetime, Papa S.BJ. Oshoffa the Pastor/Founder of the Church, often made it known in his words and actions that his successor as Pastor was none other than the plaintiff.

25. The plaintiff therefore contends that he is the only person rightfully entitled to be named and proclaimed the successor to the office of the Pastor and that the purported proclamation of the 2nd Defendant as the successor is, not only unconstitutional, illegal, null and void but also, a violation of the plaintiff's civil right and obligation to ensure, that the appointment of the Successor to the office of Pastor of the Church is in strict accordance with the provisions of the Constitution of the Church. After a full hearing the learned trial judge in a reserved judgment granted the declarations sought in paras. 1(i), (ii), (iii) and (iv) as well as the injunction in para. 2. He however dismissed the claims in paras. 3 and 4. On the issue of the plaintiff's locus standi to institute the suit the learned trial judge held thus:

"Specifically the plaintiff did not claim on the action that he should be declared a successor to the office of PASTOR in the church. But in his pleadings and evidence, he is contending seriously that he has an interest in the office of the Pastor which has become vacant since the

demise of the Pastor Founder Plaintiff disclosed his interest in the subject matter of the suit and how it arose."

The learned trial judge found that from the averments in the statement of claim, the plaintiff had the locus standi to institute the action. He was of the clear view that from the decisions of this court and the Court of Appeal, the question whether or not a plaintiff has the locus standi to institute an action should be determined from the averments in the pleadings and not from the relief he claims.

On appeal by the Defendants to the Court of Appeal, that court held by a majority of 2 to 1 that although on the pleaded facts the plaintiff showed a sufficient interest in the office of Pastor of the Church but because he did not claim to be declared Pastor by the court, he had no locus standi to institute the action. The suit was accordingly struck out.

As I indicated earlier in this judgment the all important question for determination by this court is the one of locus standi of the plaintiff. Locus standi is unquestionably a threshold issue and it has been held in a number of cases that it is dependent, not on the merits of a plaintiff's case but on the showing of the plaintiff's case in his statement of claim. The following cases will suffice - Momodu v. Olotu (1970) ALL N.L.R. 17; Bolaji b. Bamgbose (1986) 4 N.W.L.R. 632; Adesanya v. The President (1981) ALL NLR 32; Adefulu v. Oyesile (1989) 5 NWLR (pt. 18) 699; Odeneye v. Efunuga (1990) 7 NWLR (pt. 18) 618. In all these cases it was held that the issue as to whether or not a plaintiff has a locus standi to bring the suit is determinable from the averments in the Statement of claim. Once the averments disclose the rights and obligation or interest of the plaintiff which has been violated or threatened with violation or infringement then the plaintiff clearly has the locus to institute the suit.

In Momodu v. Olotu this court per Ademola, CJN said:

"We are of the view that it is not enough for the plaintiff to state that he is a member of the family; he has to state further that he has an interest in the chieftaincy title, and furthermore state in his statement of claim how his interest in the chieftaincy title arose. It is difficult to say on the pleadings filed that the plaintiff has any locus in the matter."

In Bolaji v. Bamgbose it was said:

"Secondly locus standi being a threshold question can be raised before the defendant files his statement of defence. In deciding on the locus standi of the plaintiff the statement of claim alone has to be looked into."

B I must say that the court below started off on a correct footing when it stated:

"Generally in determining whether the plaintiff has locus standi, resort must always be had by the court on a thorough examination of the statement of claim not on the evidence or affidavit to be adduced or being adduced before the court see His Pre-eminence Bolaji v. Rev. Bamgbose (1986) 4 NWLR pt. 37) 632."

C At that stage, the court below should have affirmed the decision of the trial judge that the plaintiff has locus standi to bring this action. But D something went wrong. The court below continued in this manner:

"A person may have sufficient interest. What claims he makes of that sufficient interest or what issue he made out of that particular interest upon which he is invoking the powers of the court to adjudicate E upon between himself and his adversary would constitute his right to invoke the powers of the court adjudicate between him and such adversary."

This is a new angle and it is wrong. What the plaintiff has to show on his F pleadings is a sufficient interest in the matter. This onus, both courts below held that the plaintiff amply discharged. Besides, Order 22 Rules 5 of the Lagos State High Court (Civil Procedure) Rules 1973 provides:

"No action or proceeding shall be open to objection, on the ground that a mere declaratory judgment or order is sought thereby, and the court G may make binding declarations of right whether any consequential relief is or could be claimed or not."

I am therefore in total agreement with my Lord Ogundare, JSC that the plaintiff has locus standi in this matter. I also would allow the appeal and H dismiss the cross-appeal with costs as awarded by my learned brother Ogundare JSC.

EJIWUNMI JSC

I have had the privilege of reading in its draft form the leading judgment of my learned brother Ogundare JSC, and I do agree with all the reasons given for allowing this appeal. However, permit me to add a few words of my own. B

This appeal which stems from the judgments of the court below, came to that court following the success of the appellant in the trial court, before Famakinwa J. The reliefs sought by the appellant at the trial court are as follows:-

"(i) That the naming and proclamation of the 2nd defendant, Supreme Evangelist Alexander Abiodun Bada, as successor to the Office of Pastor of Celestial Church of Christ, (Nigeria Diocese is unconstitutional, null and void and of no effect. C

(ii) That the Trustees of the Celestial Church of Christ (Nigeria Diocese) have no power, under the 1980 constitution of Celestial Church of Christ (Nigeria Diocese) to name the successor to the office of Pastor of Celestial Church of Christ (Nigeria Diocese) D

(iii) That any official act under taken and/or performed by the 2nd Defendant as the Pastor of the Celestial Church of Christ (Nigeria Diocese) from 24th day of December, 1985 onwards, is invalid null and void and of no effect E

(iv) That the purported enthronement and/or installation of the 2nd Defendant on the 24th December, 1987, is ultra vires, null and void. F

2. An injunction:-

Restraining the 2nd Defendant from parading himself as a Pastor and/or attiring himself in the robe and regalia of the office of Pastor of Celestial Church of Christ (Nigeria diocese) G

3. An account of all money collected by the 2nd defendant in respect of the anointment by him of members of the Celestial Church of Christ (Nigeria Diocese) from 24th December, 1985 onward.

4. An order for payment by the 2nd Defendant to the treasurer of the Celestial Church of Christ (Nigeria Diocese) of any sum found due from, the 2nd Defendant upon taking such account." H

The defendants not to be outdone, also filed counter-claim, herein

they sought for the following reliefs:-

"(i) A Declaration that they are entitled to the possession, management and control of the premises and property of the Church building and premises known as the Ijeshatedo parish.

B *(ii) An injunction restraining the Defendants by counter-claim their servants, agents and supporters from interfering with the plaintiffs by counter-claim rights over the said premises."*

As the facts, have been fully set down in the leading judgment of my Lord Ogundare JSC, I do not need to do so in this judgment. However, it suffices to be reminded that all the parties to this suit are all members of the Celestial Church of Christ. That the Church was founded and though headed by the Reverend Pastor Samuel Belehou Joseph Oshoffa, he was also the Chairman of the body known and registered as the Registered Trustees of the Church. The body by virtue of Section 146 of the Constitution is composed of seven members. They consisted of, Reverend Pastor Samuel Belehou Joseph Oshoffa, Chairman, Supreme Evangelist Alexander Abiodun Bada (2nd defendant in these proceedings), Superior Senior Evangelist Samuel Olatunji Ajanlekoko, Superior Senior leader Olayinka Afolabi Adefeso, Superior Senior Leader Josiah Kayode Owodunmi (the Plaintiff in these proceedings), Superior Senior Leader Samson Oluremi Olusoga Ogunlesi and Superior Senior Leader Samson Olatunde Banjo. All members of the Registered Trustees except the Chairman, the late Pastor Oshoffa and the Plaintiff, now constitute the 1st Defendant in these proceedings. The crux of the case of the plaintiff/Appellant appears to be that the 2nd defendant was not properly appointed to that office as the procedure adopted was contrary to section 111 of the Constitution of the Church. It is pertinent to add that the 2nd defendant was chosen to be the successor to the late Pastor, in December, 1985, during the Christmas service before a congregation of the Church at Imeko.

H At the trial both sides gave evidence at the end of which following the addresses of counsel, the learned trial judge delivered his judgment. The learned trial judge in that judgment found as follows:-

"(1) it does not appear to be important to make a decision

as between the Board of Trustees or the congregation who named and proclaimed 2nd Defendant as Pastor of the Church, whichever body that named the 2nd defendant as Pastor could not be within the meaning and intendment of Section III of "Exhibit PH"

(2) From the totality of the evidence adduced before me and for reasoning (sic) given in this case, I declare that the naming and proclamation of 2nd defendant as Pastor of Celestial church of Christ is unconstitutional, null and void and of no effect.

(3) That Pastor/Founder in his life time did not name anybody as his successor.

(4) Refused the order for payment of money and the order for the 2nd defendant to make an account of money received by him"

But the learned trial judge refused to grant the counter-claim of the defendants.

Being dissatisfied with the judgment of the trial court, the defendants appealed to the Court of Appeal (Lagos Division). In view of the judgment of the Court below, which is now on appeal in this court, I would set down the issues that the court below; itself set down for the determination of the appeal. They read:-

"(i) Did the plaintiff have locus standi to maintain the action?

(ii) Where the Constitution of a Voluntary Association of members prove totally unworkable and the same proves unamendable owing to impossibility of compliance with its existing provisions for amendment, will be/Courts declared (sic) invalid a decision taken by the generality of the membership to surmount the impossible situation?

(iii) Ought the plaintiff to have been granted Declaratory and Injunctive remedies in the circumstances of this case?

(iv) Was the Court below right to refuse the declaration sought by the Registered Trustees having regard to the fact that -

(a) their right and title to the Church is not disputed.

(b) their is admitted breach of or interference with right of H management and control of same.

The Court below by its majority judgment (Sulu-Gambari, and Pats-Acholonu JJCA) having considered the first issue, and reached the

conclusion that the plaintiff had no locus standi to maintain the action, upheld the defendants' appeal. The other issues were not determined in view of their decision that the plaintiff had no locus standi. Uwaifo, JCA (as he then was) who wrote the minority judgment, however dismissed the defendants' appeal on the issue of whether the plaintiff had locus standi to maintain the action. But he upheld the counter-claim of the defendants.

The main question raised in this appeal, therefore, is whether the Court below by its majority judgment was right to have held that the plaintiff had no Locus Standi to maintain the action.

It is the submission of Kehinde Sofola Esq the learned Senior Advocate for the plaintiff both in the briefs filed for the plaintiff, and in his oral arguments before us that the majority Justices of the Court below were wholly wrong to have held that the plaintiff had no Locus Standi to maintain the action because he did not claim any relief for his personal benefit. It is the further submission of the learned Senior Advocate that the decision reached in the lead judgment of Sulu-Gambari JCA, was not in accordance with the authorities to which, references were made in the judgment. Whereas, it is the contention of the learned Senior Advocate that the decision of Uwaifo JCA, in his minority judgment represents the correct position of the law.

In support of his contention reference was made to section 6(6) (b) of the 1979 constitution and to various passages culled from the judgments of some of the Justices of the Supreme Court in Adesanya v President of the Federal Republic of Nigeria & Anor (1981) 12 NSCC 146.

As the submissions made by Chief G. O. K. Ajayi SAN are not dissimilar to that made before the court below, I will begin with the consideration of this issue by referring to the relevant portions of the judgment of Sulu-Gambari JCA. In that context, I refer to pages 757 - 758 of the printed record, where His Lordship said:-

"Locus Standi is a threshold issue which the Court must first decide to determine whether the instigator of an action has the right to bring the mechanism of the Court into operation. It follows that the

answer to the threshold question of Locus Standi is that the instigator does not have the requisite interest, no consideration of the issue in dispute can take place. It is the legal capacity to institute proceedings in a court of law and before the judicial powers of any court in this country can be invoked. Reference must be had to the provisions of section 6(6) (b) of the Federal Republic of Nigeria Constitution, 1979 because it is these provisions that are considered to have limited the powers of the Court to the determination of dispute between persons concerning any question as to their civil rights and obligation"

The learned Justice of the Court of Appeal, therefore made references to excerpts from the judgments of Bello JSC (as he then was), Idigbe JSC, and Obaseki JSC, in Adesanya v President of the Federal Republic of Nigeria & Anor (supra).

In support of the proposition that in the determination of the Locus Standi of a plaintiff, it is his Statement of Claim that must first be considered: the following cases were referred to:- His Pre-Eminence Bolaji Idowu v Reverend Bamgboye (1986) 4 NWLR (part 37) 632; Olawoyin v Attorney General of Northern Nigeria (1961) 2 SCNLR 5; Ojukwu v Governor of Lagos State & Anor (1985) 2 NWLR (part 10) 806; Moradesa v The Military Governor of Oyo State & Anors (1986) 7 NWLR (part 27) 125; Odeneye v Efunuga (1990) 7 NWLR (part 164) 618; Amusa Momoh v Jimoh (1970) 1 ALL N.L.R. 117.

At the end of that exercise, His Lordship Sulu-Gambari the learned Justice of the Court of Appeal, then said that it is incontrovertible that the plaintiff had by paragraphs 16, 17 and 25 of his pleadings, clearly stated his interest in the matter. And after asking himself several questions with regard to the claim, such as whether the plaintiff had showed that his rights and obligations have been trampled upon by claiming that the 2nd appellant is not entitled to be proclaimed and enthroned as Pastor without claiming or praying in his relief that he is the rightful person to be so proclaimed as the Pastor. His Lordship then said, rightly in my view, that:-

"A person may have sufficient interest. What claims he makes of that sufficient interest or what issues he made out of that particular

interest which he is invoking the powers of the court to adjudicate upon between himself and his adversary would constitute his right to invoke the powers of the court to adjudicate between him and such adversary".

Then at page 765, of the Printed Record, the following statement

B was made:-

"Although it is quite clear from paragraph 16, 17 and 25 that the 1st respondent disclosed his interest in the matter and stated that he contends the office of the Pastor and that he was the one appointed or to be confirmed, he made no claim in his prayers or reliefs entitling him to such an order and generally in the rules of pleadings and in the absence of any statutory provision to the contrary, courts do not possess the power to grant a claim which was not sought by either party in a proceeding and which was not formulated and in respect of which a party to be prejudiced thereby was not heard - see the case of The State Vs The President Grade A Customary Court (1967) NWLR 267."

The question then is whether that conclusion which denied the right of locus Standi to the plaintiff because he laid no claim in his pleadings that he was the one who ought to have been appointed as the Pastor, rather than the 2nd defendant was right.

In order to determine this question, I would refer, first to the provisions of section 6(6) (b) of the 1979 Constitution and the pronouncements made thereon in the Adesanya's case (supra) by the Justices of this Court. Secondly, the other cases which have been referred to earlier in this judgment would be examined briefly.

It is hoped that a consideration of these cases would assist us in identifying what is truly required of the court in the quest of determining the Locus Standi of a plaintiff. I however immediately concede it that the concept of Locus Standi as a status which a plaintiff must have before being heard in our court is certainly not new in our jurisprudence - see such cases as Amusa Momoh Vs Jimoh (Supra), Gamioba & Ors Vs Ezezi II & Ors (1961) ALL N.L.R. 584. But, it seems to me that it is in the Adesanya's case (supra), that it received full judicial consideration, which led to the epoch-making pronouncements by the learned Justices of this Court, and in the course of which the provisions of section 6(6)(b)

of the 1979 constitution were considered in relation to the issue raised in this appeal.

In order to appreciate the comments and observations of Learned Justices of this Court in the Adesanya's case, in this regard, it is desirable to state briefly the facts in the Adesanya's case (Supra) Adesanya, the plaintiff/appellant was a senator of the National Assembly. The second respondent was appointed by the 1st respondent, as chairman of the Federal Electoral Commission, and the appointment was ratified by the senate, after a debate in which the appellant took part. The plaintiff challenged this appointment, claiming that the 2nd respondent was a public officer (chief Judge of Bendel state) both at the time of the appointment and at the time of confirmation, and as such, he was disqualified from being appointed as a member of the Federal Electoral Commission and such appointment was null and void. The action was in essence one of "declaration of right". The High Court of Lagos held in favour of the plaintiff. The respondents appealed to the Court of Appeal, contending that the plaintiff had no Locus Standi to institute such an action. The counsel for the appellant maintained that he had Locus Standi and the matter was then considered as an appeal from the Court of Appeal to this Court. In the course of their judgments, Locus Standi was considered in the light of the provisions of section 6(6)(b) of the Constitution of Nigeria 1979. This reads:-

"6(6) The judicial powers vested in accordance with the foregoing provisions of this section;

(b) Shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person".

His Lordship Fatayi Williams CJN, after a very detailed analysis of concept of "Locus Standi" as developed in jurisdictions with Common Law background such the United Kingdom, the United States of America and India, then considered the provisions of section 6(6) (b) of the 1979 constitution. He then made this very pertinent observation:-

"Admittedly in cases where a plaintiff seeks to establish a "private

right" of 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 his interest is adversely affected. What constitutes a legal right, sufficient or special interest, or interest adversely affected, will, of course, depend on the facts of each case. Whether an interest is worthy of protection is a matter of judicial discretion which may vary according to the remedy asked for."

Bello JSC (as he then was), made the following observations on the above quoted provisions of the 1979 Constitution when he said:-

"It may be observed that this subsection expresses the scope and content of the judicial powers vested by the constitution in the Courts within the purview of the subsection. Although the powers appear to be wide, they are limited in scope and content to only matters, actions and proceedings "for the determination of any question as to the civil rights and obligations of that person." It seems to me that upon the construction of the subsection, it is only when the civil rights and obligations of the persons, who invokes the jurisdiction of the court, are in issue for determination that the judicial powers of the courts may be invoked. In other words standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of" (Underlining mine).

Idigbe JSC, in his own contribution had this to say:-

"The expression "Judicial Power" in the above quotation is "The power of the Court of decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision" (See Justice Miller - The Constitution P. 314). Judicial power is therefore invested in the Court for the purpose of determining cases and controversies before it; the case or controversies however, must be

justiciable The type of case or controversy which will justify the exercise by the court of its judicial power must be justifiable and based on a bona fide assertion of right by the litigants (or one of them) before it."

Nnamani JSC, made this observation in the course of his own judgment, that:-

"Section 6(6)(b) encompasses the full extend of the judicial powers vested in the courts by the constitution, under it, the courts have power to adjudicate in a justiciable issue touching on the rights and obligations of the person who brings the complaint to court. The litigant must show that the act of which he complains affects rights and obligations peculiar or personal to him. He must show that his private rights have been infringed or injured or that there is a threat to such infringement or injury. It seems to me that the courts must operate within the perimeter of the judicial power vested in them by section 6(6) (b) of the Constitution and that they can only take cognizance of justiciable actions properly brought before them in which there is dispute, controversy, and above all, in which the parties have sufficient interest. The courts cannot widen the extent of this power which has been so expressly defined by the Constitution."

Uwais JSC, (as he then was) in his judgment felt that the interpretation to be given to section 6 subsection 6(b) of the Constitution will depend on the facts or special circumstances of each case. So that no hard and fast rule can really be set up.

His Lordship Obaseki JSC took the following view of the provisions, when he said:-

"This provision by itself, in my opinion and respectful view does not create the need to disclose the locus standi or standing of the plaintiff in any action before the court and imposes no restriction on access to the courts. It is the cause of action that one has to examine to ascertain whether there is disclosed a locus standi or standing in sue."

It is pertinent, in my respectful view to refer to Thomas & Ors v Olufosoye (1986) 1 NSCC 323, Obaseki JSC, developed further that the determination of whether a plaintiff should be accorded "Locus Standi"

must be predicated on whether he has an established cause of action. At page 331, His Lordship said thus:-

"The term *Locus Standi* was extensively discussed in the case of Senator Adesanya V The President of the Federal Republic & Another (Supra) (1981) 1 ALL NLR 32. It cannot stand independently from the provisions of Section 6 (6) (b) of the Constitution of the Federal Republic of Nigeria 1979 and the consequences of a failure to disclose a plaintiff's locus standi has been settled by the pronouncement of this court as long ago as 1961 in the case of Gamioba & Ors. V Ezezi II & Ors. (1961) ALL NLR 584. It is that if he has none, his claim must be dismissed."

His Lordship then looked into the 1976 white Book, for the meaning of cause of action. In the White Book he found that the principles which serve as guide to the English and Irish Courts in the determination of what may constitute the words "cause of action" are as follows:-

"(1) The Words "Cause of action" comprise every fact (though not every piece of evidence) which it would be necessary for the plaintiff to prove, if traversed, to support his right to the judgment of the court (See Read v. Brown) (1888) 22 QBD 128 per Lord Esher, M.R. at p. 131).

(2) The Phrase comprises every fact which is material to be proved to enable the plaintiff to succeed. See Cooke v. Gill (1873) L.R. 8 C.P. 197, per Brett, J at 108.

(3) The words have been defined as meaning "simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person (Per Diplock, LJ, in Letang v Cooper (1965) 1 QB 222 at p. 242);

"(4) In Ireland, these words have been held to mean the subject matter of grievance founding the action, not merely the technical cause of action (O' Keefe v. Weish (1903) 2 JRP 718)."

Having quoted with approval the above principles enunciated by the English and Irish Courts, Obaseki JSC, then opined thus:-

"I would say having regard to the Constitutional provisions in section 6(6) (b) of our 1979 Constitution, that a cause of action is the question as to the Civil rights and obligation of the plaintiff's founding

the action to be determined by the court in favour of one party against the other party."

Perhaps, I may add that the above definition of what is a cause of action is not dissimilar to what Fatayi Williams JSC, said in the course of his judgment in SAVAGE V UWAECHIA (1972) 3 SC 225, 232; (1972) B ANLR 255 - It reads:-

"A cause of action is defined in Stroud's Judiciary as the entire set of circumstances giving rise to an enforceable claim. To our mind, it is, in effect, the fact or combination of facts which give rise to a right to sue and it consists of two elements - the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage. As Lord Esher said in Cooke V Gill (1873) LR 8 CP 107 and later in Read V Brown (1888) 22 QBD 128 (CA), it is every fact that it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. See also Kusada V. Sokoto Native Authority, SC 131/68 delivered on 13th December, 1968, where the definition in Read V Brown (supra) was referred to with approval."

The question that now falls for consideration is whether there are any discernible principles that have emerged from the dicta quoted from the judgments of their Lordships of this Court in the Adesanya case (supra), and Thomas & Ors Vs Olufosoye (Supra). I do think so. First, it is in my respectful view, common ground that the courts must operate within the judicial powers vested in the courts by virtue of the provisions of section 6(6)(b) of the Constitution of 1979 (now of 1999).

The judicial powers so vested in our courts shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions or proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. Secondly, a plaintiff who desires to sue another in our courts must be accorded by the Court "Locus Standi" or "Standing to sue" to maintain such an action against the other party. To achieve that status, it is manifest that the claim of the plaintiff must reveal a legal or justiciable right or show sufficient or special interest adversely affected. It is also my respectful view that the claim(s) ought to reveal a justiciable "cause

of action", a phrase which has been interpreted to include the fact or combination of facts which give rise to the right to sue. And, or every fact that would be necessary for the plaintiff to prove if traversed, in order to support his right to the judgment of the court.

B With all the above in mind, I will now turn to the instant case to consider whether the court below was right to have held that the plaintiff/appellant had no locus to maintain the action. For this purpose, it is necessary to refer to the relevant paragraphs of the pleadings of the plaintiff/appellant.

C They are as follows:-

"Para 16 - The plaintiff avers that as a member of the Church he is interested in the office of the Pastor that he has a right under section III of the Constitution to be named and proclaimed the successor to the office of Pastor.

D Para 17 - The plaintiff avers that during his lifetime, Papa S.B.J. Oshoffa the Pastor/Founder of the Church, often made it known in his words and actions that his successor as Pastor was none other than the plaintiff.

E Para 25 - The Plaintiff therefore contends that he is the only person rightfully entitled to be named and proclaimed the successor to the office of the Pastor and that the purported proclamation of the 2nd Defendant as the successor is, not only unconstitutional, illegal, null and void but also a violation of the plaintiff's civil right and obligation not only to be the one to be named the new Pastor but also to ensure, that the appointment of the successor to the office of Pastor of the Church is in strict accordance with the "provisions of the Constitution of the Church."

F Thus, the plaintiff in the averments reproduced, had in my own humble view, disclosed the interests, which he had in commencing the action.

G The first of such interests being that as the late Papa Pastor Oshoffa had indicated his preference for him as he successor in his life time, he should have been the one proclaimed as Pastor rather than 2nd defendant. Secondly, his other interest for challenging the proclamation of the 2nd defendant as the Pastor of the Church is that it was not in strict accordance with the provisions of the constitution of the Church.

The relevant section of the Constitution which was breached according to the plaintiff/appellant, is its section III, and which reads:-

"III SUCCESSION INTO THE OFFICE OF THE PASTOR

Whereas the Pastor and Founder of Celestial Church of Christ has proclaimed publicly that by divine inspiration, it has been revealed unto him concerning the mode for the appointment or selection of a Successor to the post of Pastor and Spiritual Head of the Church, it is here firmly established that:-

(i) The successor to the Office of Pastor can be from any rank in the hierarchy of the Church and shall, at a time chosen by God to reveal this unto the erstwhile incumbent of the post of Pastor, be named and proclaimed the successor;

(ii) On succeeding after the transition of his predecessor in office, the new Pastor shall occupy the Pastor's Chair in the Inner Alter (sic)"

It is evident from the facts that were presented at the trial that the 2nd defendant was not appointed in accordance with the above quoted unique provisions of the Constitution of the Celestial Church of Christ. As there was even no semblance of compliance with it, the learned trial judge was compelled to say about the appointment of the 2nd defendant thus:-

"The crucial question, therefore, is whether the alleged spiritual messages said to have been received by the deceased Pastor/Founder through many visionaries including Amu are within the meaning and intendment of Section III of Exhibit "H" (Constitution of C.C.C.)? after a thorough and careful consideration of the evidence before me, it is my serious, view that the answer to that question is a capital No. In my attempt to answer this all important question; I have been immensely assisted by the testimony of Defence witness No. 2 who testified that the successor to the office of the Pastor shall be named and proclaimed by the Pastor/Founder himself in his lifetime and that the Constitution does not empower the church to name a successor. The C.C.C. is a body incorporated under the Land (Perpetual succession) Act Cap 98 Laws of Nigeria, with a written Constitution Exhibit "HP" which is binding on the Church and its members and contains express provision in section III

for the appointment or selection of a successor to the post of PASTOR and Spiritual Head of the Church. Section III of Exhibit "HP" is clear and unambiguous, and therefore it does not provide for succession to the office of Pastor; by acceptance, acclamation or empowers the entire Church congregation to name a successor to the Pastor/Founder. Thus the unanimous acclamation given on 17/25th December, 1985 to the appointment of 2nd Defendant by the congregation at Imeko is totally irrelevant and incapable to vest in the 2nd Defendant the authority to occupy the office of the Pastor in C.C.C."

The Statement of the learned trial judge, obviously shows that the appointment of the 2nd defendant as the Pastor of the Celestial Church of Christ, and as successor to the late Papa Pastor Oshoffa was clearly in breach of the provisions of Section III of the Constitution of the Church. While it is also clear that the learned trial Judge did not think much of the other interest indicated by the plaintiff/appellant, that is that he was the preferred candidate of the late Pastor Oshoffa to succeed him upon his demise, can it be said that the plaintiff/appellant for that reason alone should be denied locus standi to maintain this action? I do not think so. It must be remembered that the plaintiff/appellant was at the time he commenced this action a very senior member of the Church, being a Senior Apostle, and a trustee of the Church. In my own view, the fact that his evidence that he was the preferred successor by the late Pastor Oshoffa was unacceptable to the trial court, cannot by itself, deny him the right to have the locus standi to maintain the action. This is moreso when as the learned trial judge, rightly affirmed the complaint of the plaintiff/appellant that the proclamation and conferment on the 2nd Defendant as the Pastor of the Church in succession to the late Papa Pastor Oshoffa, was unconstitutional, null and void.

It is also my respectful view that the case in hand must be distinguished from the facts and circumstances of the Adesanya's case (supra). True enough, it was held in the Adesanya's case that Adesanya had not alleged that the appointment of the Respondent Justice Ovie-Whiskey - as the Chairman of the Federal Electoral Commission, had in any way affected, or that it was in any way likely to affect his right or

interest, that is, any of his civil rights and obligations; and therefore, it was further generally held that "in those circumstances he cannot possibly be considered as having any locus standi to prosecute his claims in these proceedings"

In the instant case, the facts are different. The pleadings apart, evidence was led in this case which from the findings of the learned trial judge above, suggest that it was proper of the plaintiff to have commenced the action to, at least, challenge the legality of the selection and proclamation of the 2nd defendant as the Pastor of the Celestial church of Christ. I think that the Court below, per sulu-Gambari JCA, must, with respect, be held to be in error when His Lordship took the view that as the Plaintiff/Appellant did not ask to be named as the successor to the late Pastor Oshoffa, he cannot be granted "locus standi" to prosecute the claim. From what I have said above, including the findings of the learned trial judge, it is my respectful view, that the facts and circumstances of the instant case were certainly sufficient to vest the plaintiff/appellant with "locus standi" to maintain the action. I must therefore hold that the court below was wrong to have held that the plaintiff/appellant was not vested with the "locus standi" to prosecute the claim. Having so held, I must uphold the decision of Uwaifo JCA (as he then was) that the plaintiff/appellant had the locus standi to maintain the action.

Flowing from that decision, I agree, for the reasons given in the judgment of my learned brother Ogundare JSC, that outstanding issues be resolved by this court and that they be resolved against the Respondents. I also agree for the reasons given in the lead judgment that the cross-appeal lacks merit and it is hereby dismissed by me.

In conclusion, as the appeal is meritorious for the reasons given above, and the fuller reasons given in the leading judgment of my learned brother Ogundare JSC, the appeal is allowed, and I hereby restore the judgment of the trial High Court delivered by Famakinwa J. on 10th January, 1992.

The Plaintiff/Appellant is awarded N10,000.00 as costs of this appeal, and N2,000.00 costs of the appeal in the court below.