

SUPREME COURT OF NIGERIA
8TH JUNE, 2001. SC. 70/1996
CORAM:- M. E. OGUNDARE, E. O. OGWUEGBU, S. U. ONU, U.
A. KALGO, S. O. UWAIFO, JJSC.

PROFESSOR T. M. YESUFU PLAINTIFF/APPELLANT
AND

1. GOVERNOR EDO STATE AND,
VISITOR, EDO STATE UNIVERSITY DEFENDANTS/
RESPONDENTS
2. THE ATTORNEY-GENERAL,
EDO STATE
3. EDO STATE UNIVERSITY

LOCUS STANDI - Capacity to sue - The plaintiff must show sufficient interest - Or threat of injury he would suffer - Which he had failed to do - In this case (H 2)

MASTER & SERVANT - Resignation of appointment - Need not be formally accepted by the employer - Before taking effect (H 1)

FACTS

The appellant instituted action against the defendants/respondents at the trial High Court for certain declarations and injunctions relating to a purported dissolution and reconstitution of the Governing Council of Edo State University Ekpoma.

The appellant was appointed in December 1991 as Pro-Chancellor and Chairman of the governing council of Edo State University Ekpoma for a term of 4 years. In June 1992 the governor of the state expressed his intention to dissolve and reconstitute the Governing council of the University to the appellant and therefore advised him to resign before the dissolution. In July 1992 the appellant wrote a letter to the governor resigning his appointment and asking for a waiver of the statutory 6 months notice he ought to have given. On the same day of receiving the letter, the

governor wrote to the appellant conveying to him the dissolution of the council. The appellant thereafter consequently issued this writ claiming for a declaration that the governor had no power to dissolve or reconstitute the Governing Council under the University's establishing law. He also sought other declarations and injunction.

The action was dismissed by the trial High Court and the decision was upheld on appeal. The appellant has further appealed to the Supreme Court on the lone issue of locus standi.

ISSUE FOR DETERMINATION

“Whether the Court below was right in holding that the Appellant lacked locus standi on the ground that the appellant was estopped from complaining about the dissolution of Edo State University Governing Council by 1st Respondent.”

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

Resignation of Appointment

1. Having regard to the contents of Appellant's letter of 2nd July 1992, particularly the portion of it underlined by me in this judgment, the appellant, by that letter, effectively resigned his appointment as Pro-Chancellor and Chairman of Council of Edo State University. He also by that letter requested for a waiver of the notice he should have given. It does not lie in his mouth to say that he had no reply from the 1st Respondent on his request for waiver of notice. The requirement of notice was not for his benefit but that of the Respondents. I think the two Courts below were right in finding that Appellant resigned his appointment. The resignation need not to have been formally accepted by the Respondents before taking effect - *T. O. S. BENSON Vs. A. ONITIRI* 1960 5 FSC 69. (p. 2008 E)

Locus standi

2. It would appear from the welter of authorities on locus standi that a plaintiff, to enable him invoke the judicial power of the court, must show sufficient interest or threat of injury he would suffer. In the case on

hand, I do not know what legal interest the Appellant would have in the continued existence of Governing Council from whose chairmanship he had resigned; nor the threat of injury he would suffer. I think the two Courts below were right in holding that he had no locus standi to sue for the dissolution of the Governing Council after he had resigned from that body. (p. 2009 C)

NOTABLE POINT OF INTEREST

OGUNDARE JSC

1. Error of lower court in considering an issue not before it - Did not occasion miscarriage of justice

I think the criticism of the Appellant on the lead judgment of the Court below, per Ogundare JCA with which Akpabio and Ige JJCA agreed, is well taken. Ogundare JCA devoted a considerable length of his judgment to estoppel by conduct which was not the issue placed before the Court. Although at the end he related estoppel to locus standi, I think it was a most unnecessary exercise. The learned Justice of Appeal, after all the rambling on estoppel by conduct, came back to the real issue before it, that is, locus standi and concluded that the Appellant had no locus standi to institute his action. The error committed by the Court below has, therefore, not resulted in a miscarriage of justice. I will, therefore say no more on it. (p. 2007 G)

REPRESENTATION

B.O. Kalu (Mrs.), DCL (Edo), for 1st & 2nd Respondents.

Chief S.S Obaro, for Appellant.

Prof. A. Emiola (I.Nwadubike & Dr. S.A. Aiboni with him) for 3rd Respondent.

CASES REFERRED TO

Faponle v. Ojosipe (1988)4 NWLR (Pt.183) 43 at 54-55

Adesanya v. President (1981)5 SC.112

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

Thomas v. Olufosile (sic) (1986)2 SC.325

T.O.S. Benson v. A. Onitiri (1960)5 FSC 69

Momoh v. Olotu (1970)1 ALL NLR 117

Adefulu v. Oyesile (1989)5 NWLR 377

Odeneye v. Efunuga (1990)7 NWLR 618

B Owodunni v. Registered Trustees of Celestial Church of Christ (2000)10 NWLR 315.

LEAD JUDGMENT BY OGUNDARE JSC

C This appeal raises again the vexed question of locus standi, or standing to sue in an action

The Plaintiff, who is now Appellant in this appeal, had sued the Defendants/Respondents claiming:-

D *“1. A declaration that the 1st Defendant has no lawful authority or power to dissolve the Governing Council of the Edo State University Ekpoma, under the law establishing the University or under any other law whatsoever.*

E *2. A declaration that the purported dissolution of the Governing Council of the Edo State University of which Plaintiff is Pro-Chancellor and Chairman, by the 1st Defendant as per his letter reference No. MGP 40/Vol. III/128 of 2nd July 1992 addressed to the Plaintiff is ultra vires, null and void and of no effect whatsoever.*

F *3. An injunction restraining the Defendants jointly and/or severally by themselves or through their agents, servants or privies from reconstituting, recognising or having any dealing whatsoever with any Governing Council of the Edo State University except that of which Plaintiff is Pro-Chancellor and Chairman, until the expiration of his four year*
G *term of office or until removed from office in accordance with the provisions of the Edo State University Law 1991.”*

He filed along with his writ a motion ex parte praying for an interim injunction *“restraining the 1st Defendant or the Edo State Government or*
H *the 3rd Defendant, by themselves, their servants, agents and/or privies from appointing, recognising or otherwise having any dealings with any Governing Council of the Edo State University other than that chaired or headed by the Plaintiff/Applicant pending the hearing and determina-*

tion of the Motion on Notice filed by the Plaintiff/Applicant in this suit for an order of Interlocutory Injunction against the Defendants herein."

There was filed along also a motion on notice for an interlocutory injunction substantially along the prayer sought in the ex parte motion. To the affidavits in support of each motion was exhibited, among other documents, a letter (exhibit A/D) dated 2nd July 1992 written by the appellant to the 1st Respondent. Because of the importance of this letter to the issue raised in this appeal, I shall reproduce it in extenso at this stage. The letter reads:

"My dear Govenor,

EDO STATE UNIVERSITY

RESIGNATION OF APPOINTMENT AS PRO-CHANCELLOR

AND CHAIRMAN OF THE GOVERNING COUNCIL

I wish to refer to the discussion which Your Excellency and the Deputy Governor held with me on Tuesday, 30th June, 1992, during which you informed me of your intention to reconstitute the membership of the Governing Council of Edo State University, essentially because of political pressures from within the SDP. I advised, and still do so advise, that it would not be wise to politicise appointments to the University, particularly when for good traditional reasons, the relevant law took pains to insulate the institution from political and other sectional interests. Under that law each member (except ex-officio) of Council, is appointed for a definite term of four years, and can only be removed on clearly defined grounds, after due process.

2. However, I accept on my part to resign, but I hinted that I would wish to consult other members of the Council. Your Excellency agreed. But last night, the Deputy Governor telephoned ostensibly to hasten my resignation because of the said political pressures.

3. Since I have no intention to embarrass you or the Government in this or any other matter, I have the honour hereby to tender my resignation as Pro-Chancellor and Chairman of the governing Council of Edo State University. The law requires me to give six months notice of such resignation; but Your Excellency indicated that you would waive the requirement and I hereby so request.

*Yours very sincerely,
(sgd.)
Professor T. M. Yesufu”*

(underlinings are mine)

B The ex parte motion was denied by the learned trial Judge who ordered an accelerated hearing of the motion on notice. Meanwhile however, the Appellant filed his statement of claim in which he pleaded, inter alia, as follows:

C “5. *The Plaintiff avers that by letter dated 27th December, 1991 from the Secretary to the Edo State Government the Plaintiff was appointed Chairman of the Governing Council of the University, which appointment he was to hold for a period of 4 years from the date of appointment as provided in paragraph 2 of the First Schedule to the Edo State University Law of 1991. The said letter shall be founded upon at the trial.*

E 6. *The Plaintiff avers that as pro-Chancellor and Chairman of the Governing Council of the University, he can only be removed from office or resign from that office in accordance with the provisions of paragraph 2(3) and paragraph 7(1)(a) of the First Schedule to the Edo State University Law 1991. This said Law shall be relied upon at the trial.*

F 7. *The Plaintiff avers that there is no provision in the said Law for the dissolution of the Governing Council of the Edo State University which is in fact the embodiment of the University and 1st Defendant and the other Defendants have no power whatsoever to dissolve or reconstitute the Council.*

G 8. *The Plaintiff avers that on the 28th of June 1992, 1st Defendant in the presence of the Deputy Governor of the Edo State at the Government House in Benin City told him of his intention to dissolve the Governing Council of the University on grounds of political pressure and the Plaintiff advised the 1st Defendant against such move as it was beyond his power and as the Council is made up of various bodies within and outside the University and supposed to be completely insulated from politics.*

9. *The Plaintiff avers that following the discussions aforesaid and subsequent pressures on him on telephone, he wrote a letter dated 2nd July 1992 to the 1st Defendant offering to resign as Chairman of Council subject to compliance with the provisions of the Law with regard to resignation from the Council. The said letter of the 2nd July 1992 shall be relied upon at the trial.*” B

22. WHEREOF Plaintiff claims as follows:-

1. A declaration that 1st Defendant as Governor of Edo State and/or Visitor to the Edo State University has no lawful authority or power to dissolve or reconstitute the Governing Council of the Edo State University, Ekpoma under the Law establishing the University or under any other Law whatsoever. C

2. A declaration that the purported dissolution of the Governing Council of the Edo State University of which Plaintiff is Pro-Chancellor and Chairman by the 1st Defendant per his letter reference No. MGP. 40/ Vol. III/128 of 2nd July 1992 addressed to the Plaintiff is ultra vires, null and void and of no effect whatsoever. D

3. A declaration that the Governing Council of the Edo State University of which Plaintiff is Chairman and Pro-Chancellor is still subsisting and the only legitimate and lawful Governing Council of the Edo State University notwithstanding the purported dissolution thereof by the 1st Defendant. E

4. And Injunction restraining the Defendant, jointly and/or severally by themselves, their servants, agents or privies from constituting, re-constituting, recognising, or having any dealings whatsoever with, any Governing Council of the Edo State University except that of which Plaintiff is Pro-Chancellor and Chairman, until the expiration of Plaintiff's four-year term of office or until the present members of the Council resign or are removed from office in accordance with the provisions of the Edo State University. F G

On being served with both the motion on notice and the statement of claim, the Respondents filed, by way of motion on notice, a notice of preliminary objection to both the motion and the action to the effect:- H

“1. That the Plaintiff/Respondent in this matter has no locus

standi to institute this action.

2. *That the whole action is incompetent and should be struck out.*”

The motion was vigorously argued by both sides and, in a reserved ruling, the learned trial Judge observed:

“*Having held that the plaintiff has not shown the personal interest he seeks to protect or any direct injury or likely danger to himself which he is seeking to avert by instituting this action personally, and having held that he has not brought the action in a representative capacity, I come to the conclusion that he has no locus standi to institute this action as he has done, and that the action is therefore, incompetent.*”

And consequently struck out both the motion on notice and the statement of claim and dismissed the action itself.

The appellant appealed unsuccessfully to the Court of Appeal (Benin Division) which, in dismissing the appeal to it, however, varied the order of dismissal of the action to one striking out the action.

The Appellant, being still dissatisfied, has now further appealed to this Court upon two grounds of appeal. Pursuant to the rules of this Court, briefs of argument were filed and exchanged. In the Appellant’s brief the lone issue formulated for determination reads:

“*Whether the Court below was right in holding that the Appellant lacked locus standi on the ground that the appellant was estopped from complaining about the dissolution of Edo State University of Governing Council by 1st Respondent.*”

In the briefs of the 1st and 2nd Respondents and 3rd Respondent respectively, three issues are formulated, to wit:

“1. *Whether Exh. D amounted to resignation, and if so whether it thereby extinguished the interest upon which the Appellant could have based his standing to sue in this case.*

2. *Whether the facts disclosed in the affidavits before the High Court are not sufficient for the Court of Appeal to uphold the decision of that court that the Appellant lacked standing to sue in this case without reference to the statement of claim.*

3. *Whether a court of law and equity is precluded from invoking*

the doctrine of equitable estoppel where it was not pleaded by either of the parties to a suit.”

I think the Appellant’s only issue is adequate enough to determine this appeal. I adopt it.

This is a convenient stage to state the facts. The Appellant was by a letter dated 27th December 1991 appointed the Pro-Chancellor and Chairman of the Governing Council of the Edo State University, Ekpoma (now Ambrose Ali University); the appointment was for 4 years. On 30th June 1992, at a discussion between the Appellant and the Governor of the State, the latter expressed his intention to dissolve and reconstitute the Governing Council of the University as a result of political pressures on him. The Appellant advised that the affairs of the University be kept away from politics but the Governor appeared to have made up his mind to dissolve and reconstitute the Council. The Governor was, however, reluctant to dissolve the Council with the Appellant as Pro-Chancellor; he, therefore, advised the Appellant to resign his (Appellant’s) appointment before the dissolution. On 2nd July 1992 the Appellant wrote a letter to the Governor resigning his appointment and requesting the Governor to waive the notice he ought to have given. I have already reproduced the letter in the earlier part of this judgment. On the same day that the Appellant wrote his letter of resignation, the Governor wrote to the former conveying to him the dissolution of the Governing Council of the University. On the 8th July 1992, the Appellant issued his writ.

The question that arises in this appeal is this: will the Appellant have standing to sue the Governor and the other defendants for the dissolution of the Council when he had ceased to be its chairman by his letter of resignation, Exhibit A or D? But before going into the question I want to comment briefly on the attack on the judgment appealed against on the ground that the Court below suo motu took the issue of estoppel and made it the basis of its decision when the issue was not placed before it by the parties. It is argued in the Appellant’s brief thus:

“In our respectful submission the learned JCA was in grave error in formulating an entirely new issue in the appeal before them and on his resolution of that issue alone came to the conclusion that Appellant

had no locus standi. In adopting that approach the court below fell into two fundamental errors:

(a) equating locus standi with estoppel which did not arise from any of the grounds of appeal filed by Appellant.

B *(b) resolving contentious issues in this interlocutory application on the basis of affidavit evidence only and without reference to the statement of claim.*

It is our respectful submission that the factors for determining locus standi are not the same as those for determining estoppel. As learned JCA himself rightly held in FAPONLE V. OJOSIPE (1988) 4 NWLR (pt. 183) 43
C at 54 – 55 which he quoted in extenso at p. 150 of the record:

*‘Estoppel by conduct is a rule of evidence... being a rule of evidence therefore to be on the safe side, it must be pleaded and evidence
D must be led on it by the person relying on it.’*

In other words estoppel cannot be raised as a preliminary objection to the institution of an action. It can only be raised as a defence to an action properly brought before the Court. To argue that a person is estopped
E from making a claim in court there is a presumption that the action is properly before the court i.e., that the action is properly constituted in all respects. Estoppel is only defence put forward by the Defendant(s) in their pleadings in the case and can only be established by evidence.

On the other hand the issue of locus standi goes to the competence or standing of the Plaintiff to institute the action at all. Locus standi is the legal capacity of Plaintiff/Claimant to institute an action in a court of law in exercise of his right under section 6(6)(b) of the constitution of the Federal Republic of Nigeria 1979. That is why it can be raised in limine
G after the statement of claim has been filed and served. If the Plaintiff’s Statement of Claim discloses no personal interest in the claim put forward by him he will have no locus standi to institute the action and the court will have no jurisdiction to entertain same. ADESANYA V. PRESIDENT
H (1981) 5 SC. 112; FAWEHINMI V. AKILU ANOR. 91987) 4 NWLR (pt. 67) 797 and THOMAS V. OLUFOSILE (sic) 1986) 2 SC. 325. Consequently while estoppel is a rule of evidence, locus standi affects capacity to sue.

“It is therefore our respectful submission that the lower court was in grave error when they decided the appeal before them on the basis of estoppel. Moreover estoppel was not one of the two issues distilled from the grounds of Appeal before the lower court and the court should not have given it any consideration much less basing its decision thereon.” B

The 1st and 2nd Respondents in their joint brief, made no answer to the above submissions. The 3rd Respondent, in its own brief made a rather timid answer. It is argued thus:

“The Appellant contends in his Brief that the Court of Appeal fell into error for ‘equating locus standi with estoppel which did not arise from any of the grounds of appeal filed by the Appellant.’ By that, he is contending that estoppel could not be invoked by a judge unless it formed part of the grounds of appeal. C D

Sirs, the fallacy in the Appellant’s conception of estoppel is that he assumes that the rules of procedure which govern litigant’s reliance on the equitable defence of estoppel also restrict the application of the rules of equity by the courts. This conception of the law is erroneous. E

It is humbly submitted that the doctrine of equitable or promissory estoppel is a rule of substantive law which all courts of law and equity are enjoined to apply and indeed, a duty to apply – as was done in this case by the Court of Appeal. We respectfully refer to Order 3, rule 2(6) of the Court of Appeal Rules 1981 (as amended).” F

Appellant’s contention is not that the Court below had no power to apply the doctrines of equity in appeals before it but that in the present matter the issue in dispute was locus standi and not estoppel.

I think the criticism of the Appellant on the lead judgment of G the Court below, per Ogundere JCA with which Akpabio and Ige JJCA agreed, is well taken. Ogundare JCA devoted a considerable length of his judgment to estoppel by conduct which was not the issue placed before the Court. Although at the end he related estoppel to locus standi, I think H it was a most unnecessary exercise. The learned Justice of Appeal, after all the rambling on estoppel by conduct, came back to the real issue before it, that is, locus standi and concluded that the Appellant had no

locus standi to institute his action. The error committed by the Court below has, therefore, not resulted in a miscarriage of justice. I will, therefore say no more on it.

Coming back to the question of the locus standi of the Appellant, the answer lies in the interpretation to be given to the letter the Appellant wrote to the Governor on 2nd July 1992. Mr. Obaro, learned counsel for the Appellant rightly conceded that the trial Court was right in looking into this letter. The letter was pleaded by the Appellant and it was he who tendered it at the hearing of the interlocutory proceedings before the Court. The main contention of the Appellant is that the letter was an offer to resign which took no effect until the legal procedures for effecting his resignation were complied with. It is also contended that by the 1st Respondent's letter dissolving the Council, his offer to resign was aborted.

The Respondents, for their part, contend that the Appellant's letter of 2nd July 1992 was a resignation and not just an offer to resign. They further contend that the Appellant having resigned his appointment lacked locus standi to challenge the dissolution of the Council.

Having regard to the contents of Appellant's letter of 2nd July 1992, particularly the portion of it underlined by me in this judgment, the appellant, by that letter, effectively resigned his appointment as Pro-Chancellor and Chairman of Council of Edo State University. He also by that letter requested for a waiver of the notice he should have given. It does not lie in his mouth to say that he had no reply from the 1st Respondent on his request for waiver of notice. The requirement of notice was not for his benefit but that of the Respondents. I think the two Courts below were right in finding that Appellant resigned his appointment. The resignation need not to have been formally accepted by the Respondents before taking effect – T. O. S. BENSON Vs. A. ONITIRI 1960 5 FSC 69 where the facts are not too dissimilar with the facts of the present case as regards the issue of resignation from an appointment. In BENSON V. ONITIRI, Ademola, CJF (as he then was) said at page 82 of the Report:

“There is absolute power to resign and no discretion to refuse to accept notice. In the present case, I do not think it matters to whom the

notice of resignation was addressed, whether to the Minister who made the appointment or to the Board, on which Benson was serving.”

Later, in his judgment, to which Abbot, FJ and Brett, FJ concurred, the learned Chief Justice of the Federation added –

“I am of the view that a notice of resignation to either is good, B nor do I think it necessary for the Board or anybody else to reply that the resignation is accepted.”

The question of what gives a plaintiff the standing to sue or locus standi has been the subject of a number of judicial decisions – see MOMOH V. OLOTU 1970 1 ALL NLR 117; ADESANYA V. THE PRESIDENT C (1981) 5 SC. 112; ADEFULU V. OYESILE (1989) 5 NWLR 377; ODENEYE V. EFUNUGA (1990) 7 NWLR 618; OWODUNNI V. REGISTERED TRSUTEES OF CCC (2000) 10 NWLR 315. **It would appear from the welter of authorities on locus standi that a plaintiff, D to enable him invoke the judicial power of the court, must show sufficient interest or threat of injury he would suffer. In the case on hand, I do not know what legal interest the Appellant would have in the continued existence of Governing Council from whose E chairmanship he had resigned; nor the threat of injury he would suffer. I think the two Courts below were right in holding that he had no locus standi to sue for the dissolution of the Governing Council after he had resigned from that body.**

Consequently, I must hold that this appeal is bereft of any merit. I F dismiss it accordingly with N10,000.00 (ten thousand naira) costs to each set of Respondents.

OGWUEGBU JSC

I have read before now the judgment just delivered by my learned brother Ogundare, J.S.C. I entirely agree that the appeal should be dismissed. H

The plaintiff was the Pro-Chancellor and Chairman of the Governing Council of Edo State University, Ekpoma now called Ambrose Alli University. He instituted the action leading to this appeal claiming that the

Governor of Edo State and Visitor of the said University has no lawful authority or power to dissolve the Governing Council of Edo State University under the law establishing the institution or under any other law whatsoever, a declaration that the purported dissolution of the Council of which the plaintiff is the Chairman by the 1st defendant in his letter dated 2nd July, 1992 addressed to the plaintiff is ***ultra vires, null and void*** and an injunction restraining the defendants jointly and severally from reconstituting, recognising or having any dealing with any Governing Council of Edo State University except that which he is the Pro-Chancellor and Chairman until the expiration of his four year term of office.

A motion *ex-parte* was filed along with the writ of summons praying for an order of interim injunction pending the hearing of the motion on notice filed by the plaintiff. The plaintiff's letter to the Governor dated 2nd July, 1992 and marked exhibits "A"/"D" was annexed to the plaintiff's affidavit in support of his motion for interlocutory injunction. The letter is material to the case and is reproduced in full hereunder:-

“ Date: 2nd July, 1992.

His Excellency
Chief (Dr.) John Odigie-Oyegun
The Governor
Edo State of Nigeria
Benin City.

My dear Governor,

EDO STATE UNIVERSITY: RESIGNATION OF APPOINTMENT AS
PRO-CHANCELLOR AND CHAIRMAN OF THE GOVERNING COUNCIL

I wish to refer to the discussions which Your Excellency and the Deputy Governor had with me on Tuesday, 30th June, 1992, during which you informed me of your intention to reconstitute the membership of the Governing Council of Edo State University, essentially because of political pressures from within the SDP. I advised, and still do so advise, that it would not be wise to politicise appointments to the University, particularly when for good traditional reasons, the relevant law took pains to

insulate the institution from political and other sectional interest. Under that law each member (except ex-officio) of Council, is appointed for a definite term of four years, and can only be removed on clearly defined grounds, after due process.

2. However, I accept on my part to resign, but I hinted that I would wish to consult other members of the Council. Your Excellency agreed. But last night, the Deputy Governor telephoned ostensibly to hasten my resignation because of the said political pressures. B

3. Since I have no intention to embarrass you or the Government in this or any other matter, I have the honour hereby to tender my resignation as Pro-Chancellor and Chairman of the Governing Council of Edo State University. The law requires me to give six months notice of such resignation; but Your Excellency indicated that you would waive the requirement and I hereby so request. C D

Yours very sincerely,

(sgd)

Professor T. M. Yesufu."

By a letter dated the same 2nd July, 1992, the Governor wrote to the plaintiff dissolving the University Council with effect from the same date. E

Both the trial court and the Court of Appeal held that the plaintiff had no *locus standi* to bring the action. He has further appealed to this court against the decision of the Court of Appeal. The last paragraph of the plaintiff's letter (Exhibit "D") did not leave any one in doubt that the resignation was complete and effective and the Governor of Edo State had no discretion to refuse to accept it in the circumstances of this case. There was no obligation on the Governor to reply that the resignation was accepted. See *Benson v. Onitiri* (1962) 5 F.S.C.69. As to the requirement of six months notice of his resignation, the Governor assured the plaintiff that he would waive it. It was no longer a condition since the Governor alone would complain that the plaintiff did not give the necessary notice and he has not complained. So there was no condition attached to the letter of resignation. F G H

The platform from which the plaintiff could have initiated these proceedings having disappeared as a result of his resignation, can it be

said that he still has the standing or the legal capacity to institute this action? The civil rights and obligations of the plaintiff which would be violated or adversely affected by the dissolution of the Council are his rights and obligations *qua* Pro-Chancellor and Chairman of Governing Council of the University. He no longer held the positions at the time he instituted the action by virtue of his resignation. The plaintiff therefore lost the legal basis to challenge the dissolution and reconstitution of the Governing Council of the institution. He has not shown sufficient justifiable interest or injury to maintain the action. See *Adesanya v. The President of the Federal Republic of Nigeria & Or. (1981)1-5 SC.112, Momoh & Or. V. Olotu (1970)1 All NCR.117 and Owodunni v. Registered Trustees of Celestial Church of Christ (2000)10 NWLR 315.*

In view of the above decisions, it is impossible to see how the plaintiff could prosecute this claim in view of the averments in his statement of claim and exhibit "D"

I am therefore in no doubt that the plaintiff has no *locus standi* to institute these proceedings and I agree totally with the reasons for dismissing this appeal set out in the judgment of my learned brother Ogundare, J.S.C. I would also dismiss the appeal and I hereby dismiss it with costs to the respondents as assessed in the judgment of Ogundare, J.S.C.

ONU JSC

I had a preview of the judgment of my learned brother Ogundare, JSC just delivered and I agree with his reasoning and conclusion that the appeal be and is hereby dismissed. I have nothing further to add thereto other than to adopt the same as mine including the order for costs therein made.

KALGO JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother Ogundare JSC in this appeal. I entirely agree with his reasoning and conclusion to the effect that there is no

merit in the appeal and it ought to be dismissed.

The main issue for consideration in this appeal is the question of locus standi of the Plaintiff/Appellant to sue based on the proper interpretation of the letter he wrote to the first defendant/respondent on the 2nd of July, 1992. That letter was referred to as Exhibit 'A' in the affidavit of the plaintiff/appellant filed in support of the motion on notice praying the trial court to issue interlocutory injunction restraining the 1st and 3rd defendants/respondents, or their agents from appointing or recognising any Governing Council of the Edo State University other than the one chaired by the plaintiff/appellant pending the determination of his suit. The learned trial judge referred to this letter as Exhibit D throughout his ruling.

Exhibit D was copied on page 7 and on pages 63 - 64 of the record. It was addressed to the 1st defendant/respondent by the appellant himself and was dated 2nd July 1992. The relevant part of Exhibit D reads:-

"3. Since I have no intention to embarrass you or the Government in this or any other matter, I have the honour hereby to tender my resignation as Pro-Chancellor and Chairman of the Governing Council of Edo State University. The law requires me to give six months notice of such resignation; but Your Excellency indicated that you would waive the requirement and I hereby so request."

(Underlining mine)

By this letter, it is very clear to me that the appellant has resigned his appointment as Pro-Chancellor of the Edo State University as soon as he signed the letter and it took effect as soon as the 1st defendant/respondent received it. And when the appellant in the letter said "Your Excellency indicated that you would waive the requirement," it is very clear that the matter of waiver was discussed earlier between the appellant and the 1st defendant/respondent. And when the appellant said in the letter that "I hereby so request" he was thereby complying with the agreement by the 1st respondent as visitor to waive the required six months notice once he (appellant) agreed to resign. There was therefore no need for the 1st defendant/respondent to write a formal letter accepting the resignation of the appellant. It is also incorrect in my view, to say that the 1st defen-

dant/respondent in his letter dissolving the Edo State University Council (Exhibit B but referred to by trial judge as Exhibit E) must indicate his acceptance of the resignation of the appellant, because they are two separate acts under the relevant University Law. Therefore since the 1st
B defendant/respondent agreed to waive the six months required notice for the appellant's resignation, he was presumed to have accepted the resignation just before the dissolution of the University Council. It is also trite law that in the circumstances of this case, the resignation need not be
C formally accepted before it took effect. See Benson V Onitiri (1960)5 FSC 69. I am therefore satisfied that the appellant having resigned from his position as Pro-Chancellor and Chairman of Council of Edo State University with effect from 2nd July 1992, has no interest to protect in that position and has no business to sue the respondents as he did in the
D trial court. He has no standing or right to sue in this case and has no cause of action.

I therefore agree with the Court of Appeal affirming the decision of the trial court that the appellant lacked locus standi to sue the respondents in this case. For the above and more detailed reasons given by
E Ogundare JSC in the leading judgment, I agree that there is no merit in this appeal. I accordingly dismiss it with N10,000.00 costs in favour of the respondents.

F _____

UWAIFO JSC

I read in advance the judgment of my learned brother Ogundare JSC with which I am in agreement for the reasons he has given.

G The letter of resignation of the appellant ended in parts as follows:

"..... I have the honour hereby to tender my resignation as
Pro-Chancellor and Chairman of the governing Council of Edo State University. The law requires me a six months notice of such resignation;
H but your Excellency indicated that you would waive the requirement and I hereby so request."

Learned counsel for appellant in his oral argument before us said that there was no evidence of the waiver by the Governor to whom the letter

was addressed and therefore that the resignation did not take effect. I cannot contemplate that what the appellant needed, even from the tone of that passage from his letter of resignation, was a formal evidence of waiver. What he said was to put on record that the Governor had indicated he would dispense with the requirement of six months' notice which the appellant would normally have been expected to give. He then requested the Governor to do so. In other words, this was nothing other than a parting reminder to the Governor by the appellant that he was going away following his resignation, the Governor should ensure that the dispensation of the six months' notice to which he has agreed stood.

As it turned out the Governor did not again raise that issue of notice. He could not have done so having indicated that he would not, thereby allowing the appellant to resign short of the normal procedure. Besides, the notice is for the benefits of the respondents so that under no circumstances can the appellants argue that for his resignation to be effective depended on the waiver being formally communicated to him. That will be less than a comical standpoint. I have no doubt in my mind that the resignation as stated in this letter to the Governor took immediate and valid effect the moment it was handed in. The dissolution of the Governing Council of the University thereafter did not affect him. He had ceased to be a member.

I too come to the conclusion that the appellant had no interest to protect or nothing to fear when he took his action. He lacked locus standi. I hold that the appeal lacks merit and accordingly I dismiss it with N10,000.00 costs to each set of respondents.

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