

**SUPREME COURT OF NIGERIA**  
FRIDAY 8TH MARCH, 2002. SC. 48/1997  
**CORAM:- M. E. OGUNDARE, U. MOHAMMED,**  
**A. I. KATSINA ALU, U. A. KALGO, A. O. EJIWUNMI, JJSC**

Dr. O. O. SOFOLAHAN &  
MRS. SEYISULE ..... APPELLANTS  
AND  
CHIEF MRS. L. I. FOWLER  
& CORONA SCHOOLS TRUST ..... RESPONDENTS  
COUNCIL

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ACTIONS - Charitable trusts - Proper parties - Attorney-General is a necessary party - As suits instituted by parties other than him will be dismissed (H1)

ACTIONS - Right of action - 1999 Constitution s. 6(6)(b) does not confer locus standi independently - As plaintiff's claim must also disclose cause of action (H2)

ACTIONS - Institution of - Proper party - Since the present action was not filed by proper plaintiffs - The same is deemed incompetent (H3)

ACTIONS - Cause of action - Lack of - Fate - Since Exhibit A did not provide for consent of parents prior to school fees increment - Plaintiffs have no standing to complain (H4)

PRACTICE & PROCEDURE - Actions - On behalf of infants - Proper endorsement was not followed on the court processes - Which default was fundamental and not mere technicality (H5)

**FACTS**

Sometime in the year 1995, the Governing Body of Corona Nursery and Primary School Lagos by virtue of powers conferred on them via Article 5.15.3 of the school's Constitution, increased the schools fees for pupils of the institution. Plaintiffs/appellants who are parents of some of the pupils were not satisfied with the manner the

increment was done. Hence, they instituted this action (as next friends of the pupils) at the High Court of Lagos State, Ikeja seeking for inter alia, an injunction restraining the school authorities i.e. respondents from arbitrary increment of the school fees.

Appellants averred in their affidavit that the school is run as non-profit charitable educational institution. They further stated that respondents have not shown diligence and probity in the management of the school's account. Appellants concluded that the pupils cannot afford the increment in school fees. Respondent raised preliminary objection to the locus standi of appellants to institute the action. At the end of trial, the court ruled against respondents. Dissatisfied, respondents filed appeal at the Court of Appeal, Lagos which declared the action incompetent. Appellants were aggrieved. Hence, they appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*"1. Whether the Appellants had the requisite locus standi to institute proceedings against the Respondents?"*

*2. Whether the Appellants followed the proper practice and procedure in suing as next friends in the Lagos High Court.*

*3. Whether the Federal Attorney General is the only person able to properly institute an action as contained in the claims before the Lagos State High Court?*

**HELD** (Unanimously dismissing the appeal per lead judgment of **KATSINA-ALU JSC**)

*ACTIONS - Charitable trusts - Proper parties*

**1. However, the general practice in regard to parties in actions involving charities is stated thus: "In the case of proceedings involving charities the general rules as to who are the proper parties are subject to two qualifications. In the first place, as already only specified persons may take charity proceedings; in the second place, the Attorney-General is generally a necessary party. He may either act alone ex officio as the officer of the Crown and, as such, the protector of charities, or at the request of a private individual, called a relator, who thinks that the charity is being or has been abused. With**

**the sanctions of the Attorney General an ordinary action may be turned into a relator action, by amendment of the writ and statement of claim. Otherwise actions of this kind, if instituted by parties other than the Attorney General or the Solicitor General, are dismissed..."**

**The above also more or less represents what the position was under the Charitable Trusts Act 1853 which still applies to Nigeria. (p. 626 E)**

*Right of action*

**2. I think it is a misconception to simply rely on section 6(6)(b) of the Constitution permitting the appellants to sue. That section does not create proper parties but allows a proper plaintiff to seek redress in court. He must be a proper plaintiff in the eye of the law. In some cases a proper party is determined by a relevant law on a particular subject matter or by some common law principle or by Rules of court:**

**The claim brought by a plaintiff must disclose a cause of action when the issue of his locus standi is sought to be established apart from whether he is the proper person to institute the action. This means section 6(6)(b) of the Constitution does not confer locus standi independently. (p. 627 C)**

*ACTIONS - Institution of - Proper party*

**3. It is therefore clear to me that the present action was not brought by the proper plaintiffs as the applicable law stands and this means that it is incompetent not having been properly constituted. (p. 628 A)**

*ACTIONS - Cause of action - Lack of*

**4. The power to make regulations in respect of the amount of school fees to be paid by pupils is conferred exclusively on the Governing Board of the 2<sup>nd</sup> respondent by virtue of article 5.15.3 of its Constitution (exhibit A). There is nothing in that Constitution that the pupils and/or their parents shall be consulted or shall give their consent in the fixing of the amount of the school fees. Upon what standing can the pupils and/or parents go to court to object to increase in school fees? I can**

***find none. And what is the cause of action? There is certainly none.*** (p. 628 B)

*Actions - On behalf of infants*

**5. I have no doubt that it was wrong the way the plaintiffs/  
 B appellants here were stated in the writ of summons and other  
 processes. The names of each of the two parents were stated  
 and were indicated as “Suing as a Parent and the Next Friend  
 of.” This is against the procedure. It also shows that each of  
 C those parents was at the same time pursuing his or her cause  
 since they claim to sue also as parents. The right procedure is  
 that the name of the infant should take the forefront while that  
 of his next friend should follow, labeling each correctly as in-  
 fant and next friend respectively. The proper format is as per  
 D Form 2 in Atkin’s Court Forms, 2<sup>nd</sup> edition, Vol. 21(3) 1997  
 issue, page 402. The law is clear that the next friend in a suit  
 is an officer of the court appointed and allowed to pursue the  
 interests of the minor he represents, he is not regarded as a  
 party to the proceedings. He is not to appear in the proceed-  
 E ings in a way as pursuing his own cause. All these authorities  
 were considered by the court below. The default committed in  
 the title of the suit is in no technicality. It is fundamental.**  
 (p. 628 D)

**F NOTABLE POINT INTEREST**  
**KATSINA ALU JSC**

**1. Role of Corporate Affairs Commission in charitable trust**  
 As already said, under the 1853 and 1872 Acts the Charity Commis-  
 G sioners were vested with certain powers and duties. Similar powers  
 and duties are now vested in the Corporate Affairs commission un-  
 der the Companies and Allied Matters Act, 1990 (the CAMA) Sec-  
 tion 673(1) of CAMA recognizes the incorporation of trust body for  
 H educational and charitable purpose, among others. The question is  
 the law to regulate the way they function. That is to be found in the  
 Charitable Trusts Act 1853: Under that Act, the role of Charity Com-  
 missioners (now to be read as Corporate Affairs Commission in Nige-  
 ria) and that of the Attorney-General as regards proceedings on charity

matters is spelt out. (p. 625 E)

**REPRESENTATION**

T. O. G. Animashaun for the appellants

Mrs. H. A. Balogun, with O. Idemudia for the respondents

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**CASES REFERRED TO**

Dyke v. Stephen (1885) 30 Ch.189

Rhodes v. Swithenbank (1889) 22 Q.B.D. 577

Re Hurst, Addison v. Topp (No.2) (1891) 36 Sol. Jo. 41

Murray v. Sitwell (1902) W.N. 119

Tasha v. Union Bank of Nigeria Plc (unreported) suit no. SC.17/1996

Thomas v. Olufosoye (1986) 1 NSCC (Vol. 17) 323

Senator Adesanya v. The President of the Federal Republic & Another (1981) 1 All NLR 32

Gamioba & Ors v. Ezezi II and Others (1961) All NLR 584

Rendall v. Blair (1890) 45 Ch.D. 139

Strickland v. Weldon (1885) 28 Ch.D. 426

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**STATUTES REFERRED TO**

Charitable Trusts Act 1853 of England

Charitable Trustees Incorporation Act 1872

Companies & Allied Matters Act 1990, s. 673(1)

Charities Act 1993, s. 32 & 33

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

Agricultural Credit Guarantee Scheme Fund Act Cap 13 LFN 1990, s. 15

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**BOOKS REFERRED TO**

Halsbury's Statutes of England 3rd Ed Vol.3 pp 551 - 552

Halsbury's Laws of England 4th Ed Vol.5 Para. 925

Halsbury's Laws of England 4th Ed (Reissue) Vol. 5(2) para. 465 p 300

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**LEAD JUDGMENT BY KATSINA-ALU JSC**

This appeal is from a judgment of the Court of Appeal (Lagos Division) delivered on the 11<sup>th</sup> day of December, 1996. The court declared the action instituted by the appellants as incompetent

and struck it out. The appellants have now appealed to this court, raising five issues for determination as follows:

“1. *Whether the Appellants had the requisite locus standi to institute proceedings against the Respondents?*

2. *Whether the Appellants followed the proper practice and procedure in suing as next friends in the Lagos High Court.*

3. *Whether the Federal Attorney General is the only person able to properly institute an action as contained in the claims before the Lagos State High Court?*

4. *Whether the Court of Appeal, could properly make a determination of the nature of the trust of the 2<sup>nd</sup> Respondent and the nature of the contract of education on an interlocutory appeal.*

5. *Whether the Court of first instance could properly grant an order for interim injunction during the hearing of motion on notice for interlocutory injunction on the facts before the court.”*

I shall endeavor to deal with issues 1,2, and 3 together. The resolution of those issues will determine whether there is need to go into issues 4 and 5. But first let me state the relevant facts of this case. The facts which led to this appeal are a bit complex but I find that the court below lucidly narrated them. I shall have to rely on those facts as they appear in the transcript. On 2 August, 1995, the plaintiffs/respondents took out a writ of summons against the defendants at the High Court of Lagos. Following that, the plaintiffs/respondents (to whom I shall refer hereinafter as the appellants) obtained an ex-parte order of interim injunction made by Alabi J., against the defendants/respondents (to whom I shall refer hereinafter as the respondents) on 9<sup>th</sup> August, 1995, restraining the respondents from “*intimidating, harassing, expelling or threatening to expel or in any way victimizing and/or disturbing or interfering with any of the pupils of Corona Nursery/Primary school Gbagada from academic and/or extra curriculum activities of Corona School or disturbing the legal rights, ingress and egress of the parents of the children of Corona School, particularly members of the PTA pending the determination of the motion on notice.*”

Leave was granted to the appellants to sue as next friends of their wards. Leave was also given to them to “*sue for and on behalf of the class of parents of Corona Nursery/Primary Schools at Apapa, Gbagada/Victoria Island/Ikoyi who oppose the arbitrary increase in*

*fees and the management and mal-administration of Trust funds.”*

These orders were made in line with five out of six prayers sought for in the motion ex-parte. The other prayer to restrain the respondents from increasing the school fees of N13,600.00 and N21,500.00 payable by Corona Nursery School pupils respectively a session for the 1995/96 session was adjourned to be heard later inter partes. B

In the affidavit relied on by the appellants in support of their ex-parte motion, the following facts were disclosed:

(a) A decision was reached at the meeting of parents of pupils of Corona Schools to challenge the schools authorities in their way of management of the schools and the arbitrary increase of school fees. C

(b) Corona schools are run as charitable educational institutions upon Trust which was created by the Constitution of the Corona Schools Trust Council (CSTC or Trust Council) to provide qualitative education on a non-profit making scheme. D

(c) The accounts of the Trust are not managed with diligence, efficiency and probity and the Trustees have failed in the fiduciary duty of care entrusted to them through prudent investment of funds and assets of the Trust Council. E

(d) The fees and other income rose sharply from N26,150,090 in 1993, with a surplus of N7,106,240 to N48,346,627 in 1994, with a surplus of N11,142,813.

(e) The Trustees have failed to submit audited accounts by a reputable firm of accountants to members of the Parent/Teacher Association (PTA) despite numerous requests. F

(f) The proposed increase in school fees for the 1995 session from N13,600 to N33,500 and from 21,500 to 41,500 per pupil for the Nursery and Primary Schools respectively cannot be afforded by G the pupils and if the increases are effected, the pupils will be constrained to leave the Schools with irreparable damage to them.

(g) The appellants (now respondents) are contemplating an action to dissolve or wind-up the 2<sup>nd</sup> appellant (now 2<sup>nd</sup> respondent) “*since it is not being run in accordance with the provisions and intendment of the law and the trust*” and if this dissolution is carried out it will not be in the interest of the pupils of the Corona Schools or of those who wish the Schools well. H

The reliefs sought in the substantive suit were stated in the

writ of summons as follows:

“(1) *A perpetual injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants jointly and severally from increasing the fees of pupils of Corona Nursery and Primary Schools in an arbitrary manner.*

(2) *A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are:*

B (a) *Trustees to the children presently at school at Corona Nursery and Primary Schools.*

(b) *Trustees to fee paying parents due to the fact that the parents contribute to the trust.*

C (c) *That as Trustees and custodian of an educational and/or charitable trust, the 1<sup>st</sup> and 2<sup>nd</sup> defendants owe a statutory duty of care to the general public since any child can enter a Corona Trust School.*

D (d) *That the 1<sup>st</sup> and 2<sup>nd</sup> defendants act or have a duty to act in a fiduciary capacity to the beneficiaries of the trust and must mandatorily exercise prudence, probity, integrity and diligence in the exercise of their fiduciary responsibilities.*

(e) *An account that the 2<sup>nd</sup> defendant file and make accounts for the years 1992, 1993, 1994 and 1995.*

E (f) *An order that reputable firm of chartered accountants, provided such a firm is not a member/trustee of the Corona School Trust council audit annually the accounts of the 2<sup>nd</sup> defendant and any parent/child be entitled to a copy of the audited accounts upon*  
F *payment of a nominal sum not exceeding N100, and the chairman of the PTA Gbagada be entitled as of right to a copy of the audited accounts for each financial year.”*

The respondents on the basis of these reliefs brought an application on a preliminary issue to have the action struck out based on the fact that (i) the 2<sup>nd</sup> respondent being a public charitable trust, the appellants cannot seek any of the reliefs in the substantive suit; (ii) the proper party is either the Corporate Affairs Commission, Abuja, or the Federal Minister of Trade or the Attorney-General of the Federation; (iii) there is no contractual relationship asserted by the appellants as to their right to challenge the increase in school fees; and (iv) the pupils, as infants, have not instituted the action but their parents on their behalf and the action is not therefore properly constituted in law. On 5<sup>th</sup> September, 1995, Adeyinka, J. ruled against the respondents. But as already said the court below declared the action



incompetent.

Now, to issues 1, 2 and 3. It is clear that the appellants' position is that the Corona Schools are run as charitable educational institutions upon a trust which was created by the constitution of the 2<sup>nd</sup> respondent. It is said that the Schools are expected to provide qualitative education on a non-profit making scheme. It was principally upon that plank, as it appears to me, that the action was brought to seek the various reliefs stated in the writ of summons. The court below considered the applicable law to charities and charitable organizations. It came to the conclusion that there is no indigenous law and that the Charitable Trusts Act 1853 of England applied as part of the received law in this country. It also found that the Charitable Trustees Incorporation Act 1872 provided for Charity Commissioners vested with certain powers and duties in regard to charitable organizations.

Under the Charitable Trusts Act 1853, the said Commissioners were empowered to act in the case of any charity to promote its work assigned to it by its trust objects. It was also to ensure that no proceedings shall be entertained or proceeded with in any court unless authorized by the Commissioners, or taken by themselves or by the Attorney-General. As already said, under the 1853 and 1872 Acts the Charity Commissioners were vested with certain powers and duties. Similar powers and duties are now vested in the Corporate Affairs commission under the Companies and Allied Matters Act, 1990 (the CAMA) Section 673(1) of CAMA recognizes the incorporation of trust body for educational and charitable purpose, among others. The question is the law to regulate the way they function. That is to be found in the Charitable Trusts Act 1853: see Halsbury's Statutes of England, 3<sup>rd</sup> edition, Vol. 3 pp. 551-552. Under that Act, the role of Charity Commissioners (now to be read as Corporate Affairs Commission in Nigeria) and that of the Attorney-General as regards proceedings on charity matters is spelt out.

Apart from proceedings by the Attorney-General and those relating to exempt charity (in England) no charity proceedings may be entertained or proceeded with in any court unless the Charity Commissioners have by order authorized the taking of proceedings: see *Rendall v. Blair* (1890) 45 Ch.D. 139; Halsbury's Laws of England, 4<sup>th</sup> edition, vol. 5 para. 925. In *Strickland v. Weldon* (1885)

28 Ch. D. 426, an action was brought by five members of St. Saviour's Church Building Committee (on behalf of themselves and all other members of the Committee) against the Reverend in charge who was a former member of the Committee, claiming an account of all moneys received and paid by him in respect of the Church Building Fund during the period of his membership. It was held that the said Committee members could not sue and that even if all the subscribers to the fund had brought the action, it would still be defective because of the absence of the Attorney-General. In England the plaintiffs who can institute action in charity proceedings have now somewhat been expanded under the Charities Act 1993 but the Charitable Trusts Act 1853 is still applicable in Nigeria.

Even so, the position is that apart from proceedings by the Attorney-General, those taken by the Charity Commissioners under the powers conferred by the Charities Act 1993) and proceedings relating to an exempt charity, no charity proceeding relating to a charity may be entertained or proceeded with in any court unless the Charity Commissioner have by order authorized the taking of the proceedings. These are provided for in sections 32 and 33 of the 1993 Act. ***However, the general practice in regard to parties in actions involving charities is stated thus:***

***"In the case of proceedings involving charities the general rules as to who are the proper parties are subject to two qualifications. In the first place, as already stated, only specified persons may take charity proceedings; in the second place, the Attorney-General is generally a necessary party.***

***He may either act alone ex officio as the officer of the Crown and, as such, the protector of charities, or ex relatione at the request of a private individual, called a relator, who thinks that the charity is being or has been abused.***

***With the sanctions of the Attorney General an ordinary action may be turned into a relator action, by amendment of the writ and statement of claim. Otherwise actions of this kind, if instituted by parties other than the Attorney General or the Solicitor General, are dismissed..."***

[See Halsbury's Laws of England, 4<sup>th</sup> edn., Reissue. Vol. 5 (2), para. 465 page 300]

***The above also more or less represents what the posi-***

**tion was under the Charitable Trusts Act 1853 which still applies to Nigeria.** The judgment of the court below largely took this position and the appellants have not effectively argued against this except to say in their brief of argument as follows:

*“We respectively (sic) submit that in determining the Locus Standi of the Appellants the Court of Appeal had no need to rely on antiquated English statutes as part of the applicable received law in Nigeria notably the Charitable Trustees Act 1853 and the Charitable Trustees Incorporation Act 1872. The applicable law is contained in section 6(6)(b) of the constitution as interpreted by various decided Supreme court cases all of which are binding on the Court of Appeal under the principle of stare decisis.”*

***I think it is a misconception to simply rely on section 6(6)(b) of the Constitution permitting the appellants to sue. That section does not create proper parties but allows a proper plaintiff to seek redress in court. He must be a proper plaintiff in the eye of the law. In some cases a proper plaintiff is determined by a relevant law on a particular subject matter or by some common law principle or by Rules of court: see SC 17/1996: Tasha v. Union Bank of Nigeria Plc. delivered by this court on 29<sup>th</sup> January, 2001 (unreported) and section 15 of the Agricultural Credit Guarantee Scheme Fund Decree 1977 now Act in Cap. 13 Laws of the Federation 1990 (until it was amended). The claim brought by a plaintiff must disclose a cause of action when the issue of his locus standi is sought to be established apart from whether he is the proper person to institute the action. This means section 6(6)(b) of the Constitution does not confer locus standi independently.*** This can be found in Thomas v. Olu-Fosoye (1989) 1 NSCC (Vol. 17) 323 a 331 where Obaseki JSC observed:

*“The term ‘locus standi’ was extensively discussed in the case of Senator Adesanya v. The President of the Federal Republic & Another (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 and others (1961) All NLR 584.”*

***It is therefore clear to me that the present action was not brought by the proper plaintiffs as the applicable law stands and this means that it is incompetent not having been properly constituted.*** Again, the issue of the locus standi of the appellants to challenge the 2<sup>nd</sup> respondents right to increase school fees was dealt with by the court below. ***The power to make regulations in respect of the amount of school fees to be paid by pupils is conferred exclusively on the Governing Board of the 2<sup>nd</sup> respondent by virtue of article 5.15.3 of its Constitution (exhibit A). There is nothing in that Constitution that the pupils and/or their parents shall be consulted or shall give their consent in the fixing of the amount of the school fees. Upon what standing can the pupils and/or parents go to court to object to increase in school fees? I can find none. And what is the cause of action? There is certainly none.***

Finally, as to the title of this action supposedly brought on behalf of infants, ***I have no doubt that it was wrong the way the plaintiffs/appellants here were stated in the writ of summons and other processes. The names of each of the two parents were stated and were indicated as "Suing as a Parent and the Next Friend of..." This is against the procedure. It also shows that each of those parents was at the same time pursuing his or her cause since they claim to sue also as parents. The right procedure is that the name of the infant should take the forefront while that of his next friend should follow, labeling each correctly as infant and next friend respectively. The proper format is as per Form 2 in Atkin's Court Forms, 2<sup>nd</sup> edition, Vol. 21(3) 1997 issue, page 402. The law is clear that the next friend in a suit is an officer of the court appointed and allowed to pursue the interests of the minor he represents, he is not regarded as a party to the proceedings: see Dyke v. Stephen (1885) 30 Ch.189; Rhodes v. Swithenbank (1889) 22 Q.B.D. 577. He is not to appear in the proceedings in a way as pursuing his own cause: see Re Hurst Addison v. Topp (No.2) (1891) 36 Sol. Jo. 41; Murray v. Sitwell (1902) W.N. 119. All these authorities were considered by the court below. The default committed in the title of the suit is in no technicality. It is fundamental.***

In the result, I find no merit whatsoever in this appeal. I ac-

cordingly dismiss it with N10,000.00 costs in favour of the respondents against the appellants. I will add here that it is desirable for the National Assembly to make indigenous laws on trusts and charities as they have exclusive jurisdiction to do so under item 10 of the Exclusive Legislative List in the 1999 Constitution.

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### **OGUNDARE JSC**

I agree with the judgment of my learned brother Katsina-Alu JSC just delivered. For the reasons given by him I, too, am of the view that the Appellants would have no locus standi to institute their action against the Respondents. They sued the Respondents for breach of trust; but they are not beneficiaries of the trust. They as parents, had, at best, contractual relationship with the Respondents. But they did not sue for breach of any contract they might have with the Respondents.

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As the action stands, Olabosipo Sofolahan, Tunde Sule, Tife Sule and Toyosi Sule are not the plaintiffs. They, as minors, could sue in appropriate cases but only by their next friends. Order 13 rule 8 of the High Court of Lagos State (Civil Procedure) Rules provides:

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*“Infants may sue as plaintiffs by their next friends and may defend by their guardians appointed for that purpose.”*

The name of the infant appears as the plaintiff with an indication that he sues by his next friend. That is not what was done in this case.

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The Court of Appeal, per Uwaifo JCA as he then was, dealt adequately with the issues of law and practice arising in this case. I have no reason to disturb the conclusion the Court reached. I see no merit in this appeal which I, too, dismiss with N10,000.00 costs to the Respondents.

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### **MOHAMMED JSC**

I agree also to dismiss this appeal. The appeal has no merit because the present action was not brought by proper plaintiffs. Above all the plaintiffs have no locus standi to sue the defendants/respondents seeking for the reliefs they prayed for in the writ of summons. As my learned brother, Katsina-Alu J.S.C., has done I will also dis-

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miss the appeal. I award 10,000.00 costs to the respondents.

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**KALGO JSC**

I had the privilege of reading in advance the judgment of my  
B learned brother Katsina-Alu JSC just delivered in this appeal. I en-  
tirely agree with him that the appellant as plaintiffs at the trial were  
not proper parties to sue according to the relevant Constitutions of  
the school concerned. I therefore find no merit in the appeal. I dis-  
C miss the appeal and affirm the decision of the Court of Appeal deliv-  
ered on 11<sup>th</sup> of December, 1966. I award the respondent the costs  
of N10,000.00 against the appellants.

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**EJIWUNMI JSC**

D The judgment just delivered by my learned brother, Katsina-  
Alu, JSC was read by me before now. As I am in entire agreement  
with his reasoning and conclusion thereon, I adopt the judgment as  
my own and I also dismiss the appeal with costs in the sum of  
E N10,000.00 in favour of the Respondents.

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