

**SUPREME COURT OF NIGERIA**  
THURSDAY 11TH JULY, 2002, SC. 59/1998  
**CORAM:- M. L. UWAIS CJN, I. L. KUTIGI,**  
**M. E. OGUNDARE, U. MOHAMMED,**  
**A. O. EJIWUNMI, JJSC**

BANK OF BARODA ..... APPELLANT  
AND  
IYALABANI COMPANY LIMITED ..... RESPONDENT

---

COMPANY LAW - Foreign companies - Right of action - Since Nigeria is part of comity of nations - Foreign corporations should be granted right - To sue and be sued in Nigerian courts (H1)

COMPANY LAW - Legal personality - Proof - Addition of LTD or PLC to company's name - Would not necessarily denote a legal person (H2)

COMPANY LAW - Legal personality - Proof - Means - Except where admitted by opposing party - Company claiming legal personality must prove same - By tendering its certificate of incorporation (H3)

ACTIONS - Locus standi - Lack of - Basis - It is only legal person or body capable of suing or being sued - That can possibly lack locus standi - To bring particular action (H4)

PLEADINGS - Amendment - Leave - Parties may amend pleadings in the course of trial - But leave must be granted for so doing (H5)

COURTS - Proceedings - Purpose - Object of court is to decide rights of parties - And not to punish them for mistakes made - In the course of conduct of their cases (H6)

***FACTS***

Plaintiff/appellant instituted this action against defendant/respondent at the High Court of Lagos State. Appellant claimed against respondent for dishonouring its bill of payment. Respondent brought application seeking for an order striking out appellant's statement of

claim and the action as same did not disclose reasonable cause of action. Respondent further contended that appellant has no locus standi to bring the action. Appellant thereafter filed application to amend its statement of claim.

At the end of hearing, the court held in favour of respondent and struck out claim of appellant. Appellant was dissatisfied and thus appealed to the Court of Appeal, Lagos. The court dismissed the appeal and affirmed judgment of the trial court. Aggrieved further, appellant filed appeal at Supreme Court.

### **ISSUES FOR DETERMINATION**

*(i) Whether the High Court and the Court of Appeal were correct in considering the question whether or not the Plaintiff is a juristic person in the absence of Affidavit or other evidence on the matter,*

*(ii) Is the Court of Appeal correct in affirming the decision of the High Court that the Plaintiff has no "locus standi" to bring this action,*

*(iii) Whether the Court below was correct in refusing the Plaintiff's application to amend the Statement of Claim.*

*(iv) What order should the Court of Appeal make in the circumstances."*

**HELD** (Unanimously allowing the appeal per **EJIWUNMI JSC**)

*Foreign companies - Right of action*

**1. It is my humble view, that as this country ranks as a part of the comity of nations, the principle enunciated above with regard to corporations that their creations to a foreign law should also by all means be applied or invoked by granting the right to sue and be sued in Nigerian Courts to such corporations. On that premise, adopt the apt statement of the law by Lord Wright in *Lazard Bros & Co. v. Midland Bank Ltd* (supra). But I will for this purpose substitute Nigeria Courts where English Courts occur in the above passage from the judgment of Lord Wright.** (p. 2164 E)

*COMPANY LAW - Legal personality - Proof*

**2. Having said all the above , I must observe that in the instant case, there can be no doubt that the error of the learned trial judge stemmed from his perception that the Bank of Baroda was a corporation registered in Nigeria. I think that Chief Williams SAN is right in his submission that the Court below by its majority decision was wrong to have upheld the ruling of the trial Court that the plaintiff is not a legal person. It is my respectful view that the addition of 'LTD' or PLC' etc to the name of a plaintiff or defendant would not necessarily denote that such a plaintiff is a legal person. The true status of the plaintiff or defendant more likely to be known during the trial when the status of either party is challenged by the opposing party. (p. 2164 G)**

*COMPANY LAW - Legal personality - Proof - Means*

**3. The several dicta from the decisions of this Court that have been set down above are to show that it is not sufficient for a plaintiff being a corporation or a defendant for that matter to establish its juristic personality by merely stating its name with the addition of "LTD" or "PLC". That status which it is claiming for itself has to be proved except it is admitted by the opposing party, by tendering its certificate of incorporation or such other evidence as would prove its juristic personality. (p. 2166 D)**

*ACTIONS - Locus standi - Lack of - Basis*

**4. In my humble view, the learned counsel for the appellant is right in his submission that it is only a legal person i.e. a person or body capable of suing or being sued that can possibly lack locus standi to bring or pursue particular actions. (p. 2168 G)**

*PLEADINGS - Amendment - Leave*

**5. Now it is settled that pleadings of parties may be amended in the course of the trial of a suit. The basic principle is that leave to amend is to be granted for the purpose of determin-**

***ing in the existing suit the real question or questions in controversy between the parties.*** (p. 2170 A)

*COURTS - Proceedings - Purpose*

- 6. It is a well established principle that the object of the Court is to decide the rights of the parties, and not to punish them for mistakes they made in the conduct of their case by deciding otherwise than in accordance with their rights. I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party.** (p. 2170 B)

**REPRESENTATION**

- Chief F. R. A. Williams, SAN with Mrs. F. Gambari Mohammed for  
the Appellant  
B. A. M. Fashanu for the Respondent

**CASES REFERRED TO**

- Lazard Brothers & Co. v. Midland Bank (1933) AC 289  
Agbonmagbe Bank Ltd v. General Management G. B. Ollivant (1961) All NLR 125  
Njemanze v. Shell B.P. Port-Harcourt (1966) All NLR 8  
ACB Plc v. Emmostrade Ltd [2002] 8 NWLR 503  
J. K. Randle v. Kwara Breweries Ltd. (1986) 6 S.C. 1  
Iyalabami Co. Ltd v. Bank of Baroda (1995) 4 NWLR (pt. 387) 20  
Bank of Baroda v. Mercantile Bank of Nig (1987) NSCC (pt. II) 892  
Cropper v. Smith (1884) 26 Ch. D. 710  
Shoe Machinery Co. v. Cultham (1896) 1 Ch. 108  
Beck v. Value Capital Ltd (No. 2) (1975) 1 WLR 6  
A. U. Amadi v. Thomas Aplin & Co. Ltd. (1972) 1 All N.L.R. (pt. 1) 413  
Adeleke v. Awoluyi (1962) 1 All NLR 260  
Fawehinmi v. Nigerian Bar Association (No. 2) (1989) ANLR 274  
Knight & Searle v. Dove (1964) 2 All ER 307  
Adesanya v. President of the FRN (1981) NSCC 146

**STATUTES REFERRED TO**

Constitutions of the Federal Republic of Nigeria 1999, s. 6 (6)(b)

Companies and Allied Matters Act 1990

Companies Act 1968, ss. 2, 3 and 4

Bills of Exchange Act, Cap. 35, ss. 54, 43(2), 47

### **BOOKS REFERRED TO**

Halsbury's Laws of England, 4th Edition Vol. 8(1) para 983 B

Precedents of Pleadings (12<sup>th</sup> Edition) PP 330-331

Aguda Practice & Procedure etc. 1980 Eden at para 10-04

Practice and Procedure of the Supreme Court, Court of Appeal and High Court of Nigeria 2<sup>nd</sup> Ed p. 345 C

### **LEAD JUDGMENT BY EJIWUNMI JSC**

This appeal is against the majority decision of the Court below (Coram, Onalaja & Acholonu, J.J.C.A., with Ayoola, J.C.A. dissenting). This action was commenced by the plaintiff in the High Court of Lagos State when a writ was issued against the defendant. In this judgment, I will reproduce the Statement of Claim without its particulars. This is because that part of the Statement of Claim is not in dispute in this appeal. The relevant portion of the statement of Claim reads: D

*"1. The Defendant duly accepted the bills of exchange, particulars of which appear hereunder, drawn by Meltroid Limited payable at 90 days after sight to the order of the plaintiff."* E

#### **PARTICULARS**

*2. On the due date of each of the said bills of exchange, the said bills were dishonoured by the Defendant by non-payment."* F

*3. And The Plaintiff as holder claims against the defendant as acceptor;*

*(a) The sum of US \$2,267,007.90 or its equivalent in Naira at G the date of judgment.*

*(b) The sum of DFL1,979,033.41 or its equivalent in Naira at the date of judgment.*

*(c) Interest .on the said sums at the rate of 6% per annum from the date of the writ herein until payment."* H

Upon being served with the writ and the Statement of Claim, the defendant also filed its own statement of Defence. Following the filing of its Statement of Defence, a motion on notice dated 12/3/87 was filed and served by the defendant for an order striking out the

Statement of Claim herein and in particular “Bank of Baroda as plaintiff therein as it disclosed no reasonable cause of action”.

The grounds upon which the respondent sought for the order to strike out the appellant’s suit are as follows:-

- B       “(i) *The Plaintiff has no locus standi to bring this action*  
           (ii) *The Plaintiff is incompetent to institute the action on the face of the Statement of Claim.*”

C       Then by a motion on notice dated 14<sup>th</sup> April, 1987, the plaintiff sought leave of the Court to amend “*the Statement of Claim earlier filed in terms of the document delivered herewith, titled Amended Statement of Claim*”. The amendment sought for by the plaintiff was simply to include in the original Statement of Claim, the following averment:-

- D       “*The said-bills were indorsed by the said Meltroid Limited to the plaintiff.*”

E       The two motions were subsequently heard by the learned judge of the High Court of Lagos State. Following the hearing, the learned judge delivered a considered ruling. In the course of his ruling, the learned judge refused the prayer of the amendment of the plaintiff’s Statement of Claim as he took the view that if the amendment was granted, it would overreach the defendant. He also held that the defendant would be deprived of the defence contained in paragraph 5 of its statement of defence and no amount of costs could adequately compensate the defendant for the injury that it would thereby suffer.  
 F       The learned judge in upholding the order that the claim of the plaintiff be struck out, reasoned thus: -

- G       “*The plaintiff in the instant suits is known simply as “Bank of Baroda. “The Statement of Claim is silent as to its capacity. Going by the name, it is not a natural person, it is a bank, but has not been shown in the Statement of Claim that it has its own distinct legal personality. For this reason, it does not have the necessary locus standi to bring an action - see section 6(6)(b) of the Constitution. Furthermore, there is nothing in the Statement of Claim which establishes*  
 H       *that there is a dispute or controversy- between the parties herein. The plaintiff is not a holder of the bills of exchange sued upon. He therefore again has no locus standi to bring an action against the Defendant”.*

As the plaintiff was dissatisfied with the ruling of the learned

judge, it appealed to the Court below upon three grounds of appeal. The Court of Appeal per its majority judgment as aforesaid, dismissed the appeal and upheld the judgment of the High court. Being still dissatisfied with the judgment of the Court below, the plaintiff has further appealed to this upon the following grounds of appeal which without their particulars, read thus:-

”(i) *The Court below erred in law in deciding that the plaintiff is not legal person and “therefore it has no locus standi to maintain an action.”*

(ii) *The Court below erred in law in failing to observe that there is nothing in the Statement of Claim as filed or as proposed to be amended to justify the inference that the Plaintiff herein is not a legal person*

(iii) *The Court below erred in law in failing to decide in favour of the Plaintiff herein on his appeal against the decision of the High Court of Lagos State to reject its application to amend the Statement of claim herein.*

(iv) *The Court below erred in law in failing to observe that the question whether or not the Plaintiff has legal personality is an issue of mixed law and fact which arises for trial on the pleadings and that*

*absence of an admission by the Plaintiff such an issue cannot be determined or adjudicated upon without trial.”*

In accordance with the Rules of this Court, the parties filed and exchanged their respective brief of arguments. For the plaintiff, its learned leading counsel, Chief Rotimi Williams SAN, identified the following questions for the determination of the appeal.

“(i) *Whether the High Court and the Court of Appeal were correct in considering the question whether or not the Plaintiff is a juristic person in the absence of Affidavit or other evidence on the matter;*

(ii) *Is the Court of Appeal correct in affirming the decision of the High Court that the Plaintiff has no “locus standi” to bring this action,*

(iii) *Whether the Court below was correct in refusing the Plaintiff’s application to amend the Statement of Claim.*

(iv) *What order should the Court of Appeal make in the circumstances.”*

Learned counsel for the respondent, B.A.M. Fashanu, on the other hand, had three issues set out in the respondent's brief. They read thus:- *"(I) Whether it was not the duty of the plaintiff to plead facts that would clothe it with juristic personality in the Statement of Claim.*

B *(2) Upon failing to show its juristic personality on the pleadings, was the High Court not right in striking out the plaintiff's name on the defendant's application at the close of pleadings?*

C *(3) Was the High Court not right in striking out the Plaintiff's Statement of Claim as disclosing no reasonable cause of action and/or for lack of locus standi to bring the action?"*

The learned counsel for the plaintiff, Chief F. R. A. Williams, S.A.N., in the plaintiff/appellant's brief commenced his submission for the plaintiff in this appeal with the question raised in issue The D question raised therein is whether the High Court and the Court of Appeal were correct in considering whether the plaintiff is a juristic person in the absence of affidavit or other evidence on the matter. In the argument set out in the brief, the first observation made for the plaintiff is that the issue of the legal personality of the plaintiff did not E strictly arise from the grounds stated in support of the motion seeking to strike out the claim of the plaintiff The High Court in striking out the claim apparently took the view that it was not shown in the statement of claim that the plaintiff had its own distinct legal personality, F and proceeded to dismiss the suit.

However, the contention of the plaintiff in this appeal is that the decision of the High Court is based upon the erroneous assumption that the Bank of Baroda is a company incorporated under Nigerian law and therefore obliged to have added to its name "LTD", G "PLC" etc. It is further argued for the plaintiff that there was absolutely no basis for that assumption. Learned Senior Counsel then submitted that there was nothing to warrant that conclusion of the majority decision. On this point, reference was made to the minority decision of Ayoola, JCA (as he then was). In his further submission, H he invited the Court to note that under the common law and for over two hundred years, a corporation duly constituted in a foreign country has been recognized as a corporation and accordingly it can both sue and be sued in England. In support of this proposition, our attention was drawn to the following authorities: DICEY CONFLICT



OF LAWS 12<sup>th</sup> Ed. Volume 2 P.1107: HALSBURY'S LAWS OF ENGLAND Volume 8 para 703; LAZARD BROTHERS & Co. v. MIDLAND BANK [1933] A.C. 289 at 297.

Founding himself on the above submission, Learned Senior Counsel then argued that without taking or receiving any evidence whatsoever on the point, it is not possible to rule out the possibility that the Bank of Baroda maybe a foreign company incorporated outside Nigeria. Indeed, it is the contention of the plaintiff that since the bills of exchange sued upon are foreign bills, then prima facie, the probability is that the Bank is a foreign corporation. He has therefore invited this Court to reserve the conclusion of the Court below (per its majority decision) that the Bank of Baroda is not a juristic person.

For the defendant, it is submitted by its learned counsel, B.A.M. Fashanu, that it is duty of the plaintiff, who filed the action to show in its Statement of Claim that it has juristic personality or locus standi to bring the action. This, it is argued, is because the lower Court is vested with judicial powers to adjudicate in respect of matters “*between persons*”, in accordance with the provisions of Section 6 (6) (b) of the Constitutions of the Federal Republic of Nigeria, 1979 and 1999. It is also argued for the defendant that by its Statement of Claim, the plaintiff merely stated itself to be “*Bank of Baroda*” without a single averment in the pleadings as to what the plaintiff is- a natural person, an incorporated company or registered bank. If any of such additions had been stated in the pleadings, then the Court would have been enabled to know that the plaintiff is a legal person. And as the plaintiff did not so identify itself, it could not go further to show that it was involved in the things averred in the Statement of Claim. In support of that submission, he cited the following cases: Agbonmagbe Bank Ltd v. General Management G. B. Ollivant [1961 ] All NLR 125; Njemanze v. Shell B.P. Port-Harcourt [1966] All NLR 8.

The Court below, he argued, only emphasized that if the plaintiff was incorporated under Nigeria law, then it ought to have put “LTD” to its name to have the standing to sue. Hence he argued, the Court was right to have said that the Court should not be made to speculate as to whether the plaintiff was a corporate body that has “*decided not to add LTD or PLC in its quest for an adjudication to a cause.*”

It is plain from the arguments of learned counsel, which I have tried summarize above, that the central question is whether the plaintiff need do any more than it has done to commence proceedings against the defendant. In other words, the question really is, whether there is anything to suggest that the plaintiff had no legal personality. This question was considered by Ayoola, J.C.A., in his dissenting judgment from that of the majority in the Court below and answered it admirably. As I agree with the views he expressed in that judgment, I will quote herein the relevant portion of the said judgment. It reads: -

“Even if it is conceded that the plaintiff may not have been a natural person, there is nothing on the face of the statement of claim to show that the plaintiff is not a juristic person. The learned judge seemed to have proceeded from the premises that because the plaintiff’s name did not end with ‘limited’ the plaintiff was not a juristic person. In so doing he erred. A company suing by its corporate name can only simply describe itself as “the plaintiff” in the statement of claim. The statement of law in this regard is contained in Bullen & Leake & Jacobs: *Precedents of Pleadings* (12<sup>th</sup> Edition) PP 330-331 as follows:

Public companies and other corporations aggregate whether incorporated by charter, by prescription, by Act of Parliament, or by statutory registration, sue and are sued by their corporate name. This must be set out in full on the writ and in the heading of every pleading though in the body of the pleadings, it is sufficient to say “the plaintiffs” or “the defendants” or “the plaintiff company” or “the defendant company” as the case may be. Where a plaintiff has sued in what appeared to be its corporate name and has described itself simply as “the plaintiff” in the statement of claim it cannot be said that the writ or statement of claim shows a lack of legal personality on the face of it even though it is open to the defendant to challenge the juristic personality of the plaintiff. Where that is done, an issue to be tried would have arisen. That issue should not be determined on the basis of mere speculation or assumptions. It was not until the enactment of the Companies and Allied Matters Act 1990 that the law stipulated that the name of an unlimited company should end with the word “Unlimited”. Under the Companies Act 1968 which was in operation at the time when this action was instituted (in 1986) and

determine (in 1987) there was no requirement that an unlimited company's name should end with "unlimited". (See sections 2, 3 and 4 of the Companies Act 1968). An unlimited company could be registered prior to 1990 without the addition of the word "unlimited" to its name. It goes without saying, that such company would certainly not have the word "limited" at the end of its name. Where the name on which a plaintiff sues before 1990 appears to be a corporate name but did not include the word "limited" at the end thereof, an assumption that such plaintiff is not a corporate body would be erroneous. While it may be open to a defendant to challenge the legal capacity of a plaintiff to sue, the plaintiff should not be deprived, on the basis of a mere assumption, of the opportunity of proving his or its capacity to such. The law has been aptly put in *Aguda Practice & Procedure* etc. 1980 Edition at para 10-04 as follows:

*'A plaintiff to an action must be competent to institute such an action and if his competency is challenged then the onus of proving that he has legal capacity to institute the action lies on him.'*

It is only where it is obvious that a party is not a legal person that the matter can be dealt with without much ado and the non juristic party struck out or the action struck out if such a "party" is the "plaintiff" Such was the case of *Agbomagbe Bank Ltd v. General Manager G.B.O. Ollivant Ltd [1961] 1 All N.L.R. 116* in which it was obvious that "General Manager" had no juristic personality. The present case 'is different. Nothing on the face of the writ or the statement of claim shows that Bank of Baroda is not a juristic person. The mere fact that its name did not end with "limited" does not raise any reasonable presumption that it was not a juristic person or is it evidence of that fact.'

In my humble view the very clear and adroit analysis of the question and the succinct answer proffered thereto should be enough to resolve issue 1 in favour of the plaintiff. But I will go on to also accept the submission of learned counsel for the plaintiff that it is not beyond the bounds of possibility that the Bank of Baroda is a foreign company incorporated in Nigeria. If that be the case, the Nigerian Courts ought to accord the status granted to it by the country of its incorporation. This principle said to be by the Comity of Nations has long been accepted as binding by the English Courts. This principle fell for consideration in *Lazard Brothers & Co. v. Midland Bank [1933]*

A.C. 289 at p. 297, Lord Wright declared the law thus: -

‘ “English Courts have long since recognized as juristic persons corporations established by foreign law in virtue of the fact of their creation and continuance under and by that law. Such recognition is said to be by the comity of nations. Thus in *Henriques v. Dutch West Indian Co.* [(1728) 2<sup>nd</sup> Raym 1532, 1535] the Dutch Company were permitted to sue in the Kings Bench on evidence being given of the proper instruments whereby by the Law of Holland they were effectually created a corporation there’. But as the creation depends on the Act of the foreign state which created them, the annulment of the Act of creation by the same power will involve the dissolution and non-existence of the corporation in the eyes of English law. The will of the sovereign authority which created it can also destroy it, English law will equally recognize the one as the other fact.”

D See also Halsbury’s Laws of England, 4<sup>th</sup> Edition Vol. 8(1), para. 983, where the principle was put thus: -

“English law recognizes the existence of a corporation duly created in a foreign country, and will allow it to sue and be sued in England in its corporate capacity. It follows that whether a corporation has continued in existence or has been dissolved is likewise governed by law of its place of incorporation.”

**It is my humble view, that as this country ranks as a part of the comity of nations, the principle enunciated above with regard to corporations that their creations to a foreign law should also by all means be applied or invoked by granting the right to sue and be sued in Nigerian Courts to such corporations. On that premise, adopt the apt statement of the law by Lord Wright in *Lazard Bros & Co. v. Midland Bank Ltd* (supra). But I will for this purpose substitute Nigeria Courts where English Courts occur in the above passage from the judgment of Lord Wright.**

**Having said all the above , I must observe that in the instant case, there can be no doubt that the error of the learned trial judge stemmed from his perception that the Bank of Baroda was a corporation registered in Nigeria. I think that Chief Williams SAN is right in his submission that the Court below by its majority decision was wrong to have upheld the ruling of the trial Court that the plaintiff is not a legal person.**

***It is my respectful view that the addition of 'LTD' or PLC' etc to the name of a plaintiff or defendant would not necessarily denote that such a plaintiff is a legal person. The true status of the plaintiff or defendant more likely to be known during the trial when the status of either party is challenged by the opposing party.*** This point came up for consideration in this Court in

ACB Plc v. Emmostrade Ltd [2002] 8 NWLR 503. In this case the appellants in their statement of defence denied the legal personality of the respondent company. This they did by specifically denying the paragraph of the statement of claim stating that the respondent company is a limited liability company. At the hearing of the case, the respondent did not lead evidence to establish its corporate existence, as it did not tender its certificate of incorporation. The trial Court and the Court below apparently held that the respondent need not establish the status by producing its certificate of incorporation. However, on appeal to this Court, it was held that the respondent should have produced its Certificate of incorporation. In support of this view, Uwaifo J.S.C, in the course of his judgment referred to the Registered Trustees of Apostolic Church v. Attorney-General Mid-Western State (1972) NSCC (Vol.7) 247, where the plaintiffs averred in their Statement of Claim that the Apostolic Church was incorporated under the Land (Perpetual Succession) Act. The defendants in their statement of defence denied this and put them to strict proof. This Court, per Sowemimo, Ag. JSC. (as he then was) in that case at page 250; said: -

*“Although the evidence was led as to named persons being made Trustees, the certificate of Incorporations was never produced with section 6 of the Act under considerations they have no power to sue or be liable to being sued.”*

And in J. K. Randle v. Kwara Breweries Ltd. (1986) 6 S.C. 1, where again the question raised was whether the plaintiff in that case established legal personality upon which issue was joined, Uwais, J.S.C. (as he then was) commented thus: -

*“The appellant sued the respondent as a company incorporated under the Companies Act, 1968. He failed to prove the incorporation by the production of the certificate of incorporation. As the averment in the statement of claim that the defendant was so incorporated was categorically denied by the respondent in its statement*

*of defence the failure to prove the incorporation was fatal to the appellant's case."*

In *ACB Plc v. Emostrate Ltd.* (supra) Kalgo, J.S.C. at page 520 had the following to say:

*"It is also not enough to assume that because company uses the name 'Limited' on the writ of summons as plaintiff, that company must be a limited liability company entitled to sue. The company's status must be proved especially in this case where it was denied to be a limited liability company at the time of the transaction. This was not proved in this case and cannot be presumed either. The respondent as plaintiff, is therefore not a legal entity or juristic person entitled to sue and be sued in law. See Carlen (Nig.) v. University of Jos [1994] 1 N.W.L.R. (Pt. 323) 631; Shittu v. Ligali [9141] 16 NLR 23; Fawehinmi v. NBA. (No. 2) [1989] 2 NWLR (Pt. 105) 558. The respondent is also not one of the bodies or associations which even though not incorporated, have been expressly or impliedly conferred with a right to sue or be sued by statutes".*

***The several dicta from the decisions of this Court that have been set down above are to show that it is not sufficient for a plaintiff being a corporation or a defendant for that matter to establish its juristic personality by merely stating its name with the addition of "LTD" or "PLC". That status which it is claiming for itself has to be proved except it is admitted by the opposing party by tendering its certificate of incorporation or such other evidence as would prove its juristic personality.*** It is therefore my respectful view that it is misleading for the Court below, per Pats-Acholonu, JCA, to say that:

*"When those companies take out a writ, it is expected that they should add PLC or LTD as the case may be to their other names to form the full names of the Corporate body. I am unable to find a plausible reason why the appellant seemed to be fighting shy of telling the world in statement of claim who it really is. I find it difficult not to infer that by its name the appellant may well be a corporate body that has decided not to add Ltd or Plc in its quest for an adjudication to a cause."*

Consistent with that view of the plaintiff, the Court below then held thus: -

*"Since I do not know who the Bank of Baroda is and there is*

*nothing on the record to show in which capacity it took out the writ as by way of explaining itself in pleadings, I do agree with Court below that it is not a legal person otherwise it would have said so. Therefore it has no locus standi to maintain an action.* “

Now in the instant case, it is manifest from the pleadings that the plaintiff brought the action by merely describing itself as the Bank of Baroda. But the defendant averred in paragraphs 3 and 4 of its Statement of Defence thus: -

*“Para 3 - The defendant avers that the plaintiff is not a natural person and cannot sue in the name in which it has brought this action without specifying who (if any) is the person or are the persons who may be carrying on business under the name of the plaintiff, if such name is a “business name” within the meaning of that expression in the Registration of Business Names Act, 1961.*

*Para 4 - The plaintiff, as its name stands on the Statement of Claim cannot be and is not a limited liability company within the Companies Act of Nigeria.”*

Now in striking out the claim at the stage of the proceedings, it is clear that the learned trial judge did not consider whether the parties had joined issue with each other on the status of the plaintiff so as to resolve that issue. It would appear that the learned trial judge having failed to recognize that a dispute was between the parties, simply accepted the averment of the defendant and held that the plaintiff had no juristic personality, for the reason that the plaintiff did not have attached to its name “LTD”, “PLC” etc. In my respectful view the parties should have been allowed to call evidence to determine that issue. This, if done, would have led to the determination of the status of the plaintiff. If the plaintiff in the end fails to prove its juristic personality to sue and be sued, the claim will be dismissed. The Court below was clearly in error in upholding the ruling of the trial Court dismissing the claim.

With all the pervasive doubts in the judgment of the Court below to which I have referred to above, the Court below ought to have considered that the doubts expressed with regard to the status of the plaintiff would have been cleared if the trial Court had allowed evidence to resolve the question as to plaintiff’s status. This is more so where the trial of the action was still to commence, I refer on this to Aguda’s Practice and Procedure at para. 31.16, where the learned

author said: -

“Prior to hearing a suit, a Court ought not to dismiss or strike out a pleading or the entire action because of an accidental curable defect in the pleadings but in order to expedite the hearing of the action the Court should give the defaulting party an opportunity to rectify the defect; as it may deem just: *Bello Adeleke v. Falade Awoluyi & Another* [1962] 1 All NLR 260 (FSC). If by an amendment, the Statement of Claim will disclose a cause of action, the Court will grant an amendment as sought; but the Suit will be dismissed if an amendment however ingenious, cannot make the statement of claim disclose, a cause of action.”

From what I have said above, it is clear that the learned trial judge should not have struck out the “Bank of Baroda” as well as the Statement of Claim. It is equally erroneous for the trial Court to have dismissed the suit at the stage it did. And, as I have endeavoured to show above, the Court below also wrongly upheld the ruling of the trial Court. The question as to whether the plaintiff had no locus standi to prosecute this action will now be considered. For the appellant, it was argued that the Court below by its majority decision fell into error by holding that the plaintiff did not establish that it had locus standi to pursue the action. Learned counsel for the respondent however urged this Court to hold that the Court below was right. In his judgment, Pats-Acholonu JCA in order to come to the conclusion that the plaintiff had no locus standi, reasoned thus: -

“I do agree with the court below that it (*Bank of Baroda*) is not a legal person otherwise it would have said so. Therefore it has no locus standi.” Onalaja, JCA., for his part said thus: -

“In concord with the lead judgment, I endorse the conclusion that appellant (*Bank of Baroda*) failed woefully to establish that it is a legal or juristic person thereby failure of his locus standi.”

**In my humble view, the learned counsel for the appellant is right in his submission that it is only a legal person i.e. a person or body capable of suing or being sued that can possibly lack locus standi to bring or pursue particular actions.** In his minority judgment, Ayoola JCA, had this to say on this point, at pp. 134-135 of the record: -

“It is to be observed in passing that the question of a plaintiff’s essential legal personality to commence an action is not to be con-



*fused with the question of standing to sue. A plaintiff must be accorded legal recognition before any question of standing can arise. The question of the existence of legal personality relates to the very existence of the plaintiff, or as the case may be the defendant, whereas the question of locus relates to the existence of the right of the plaintiff, a natural or artificial person to sue. The learned judge* <sup>B</sup>  
*seemed to have confused the two questions."*

It is clear from the above reasoning which I gratefully adopt as my own, that the learned trial judge wrongly came to the conclusion in holding that the plaintiff had no locus standi. I do not consider it necessary to say more on the resolution of this issue. The Court below also by its majority decision fell into the same error by affirming the ruling of the learned trial judge who had prejudged the status of the plaintiff without hearing evidence on the point. I will therefore resolve that issue in favour of the plaintiff. I wish however to point <sup>C</sup>  
out as a matter of interest that during the hearing of this matter in the Court below, the attention of the Court was drawn to the case of Iyalabami Co. Ltd v. Bank of Baroda [1995] 4 NWLR (pt. 387) p.20; and Bank of Baroda v. Mercantile Bank of Nigeria Ltd. [1987] NSCC (pt. II) p.892; [1987] 3 NWLR pt. 60 p.233. The Court below, per <sup>D</sup>  
Acholonu JCA, observed quite rightly that the issue of legal personality was not raised in these cases. However, what is of significance in the two cases is that the learned counsel who appeared in the two cases namely Chief F. R. A. Williams, S.A.N. and B. A. M. Fashanu, <sup>E</sup>  
are the same counsel appearing in this matter. Though the issue was <sup>F</sup>  
not raised in those cases, yet it seems to me that the point is not without its own significance. I say no more.

I will now consider the refusal by the trial Court to allow the plaintiff to amend its pleadings. Though the plaintiff appealed against <sup>G</sup>  
that aspect of the ruling of the trial Court to the Court below, yet that Court did not make any pronouncement on it. Presumably, learned Senior Counsel for the appellant argued, that was so since the Court below reached the conclusion that the plaintiff was not a legal person, and therefore, had no locus standi to sue. It is however the <sup>H</sup>  
submission of learned counsel that the trial Court ought to have granted the amendment. On the other hand, it is argued in the brief filed for the defendant, that the amendment was properly refused by the trial Court and that the Court below did not pronounce in the

order for the amendment, as it was futile so to do as the proposed amendment did not disclose the plaintiff's corporate personality.

***Now it is settled that pleadings of parties may be amended in the course of the trial of a suit. The basic principle is that leave to amend is to be granted for the purpose of determining in the existing suit the real question or questions in controversy between the parties. It is a well established principle that the object of the Court is to decide the rights of the parties, and not to punish them for mistakes they made in the conduct of their case by deciding otherwise than in accordance with their rights. I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party.*** Cropper v. Smith [1884] 26 Ch. D. 710. See Shoe Machinery Co. v. Cultham [1896] 1 Ch. 108, 112; Beck and Ors v. Value Capital Ltd. & Ors (No. 2) [1975] 1 W.L.R 6; A. U. Amadi v. Thomas Aplin & Co. Ltd. [1972] 1 All N.L.R. (pt. 1) 413 at 419-420; Bello Adeleke v. Falade Awoluyi and Anor. [1962] 1 All N.L.R. 260, 262. See Practice and Procedure of the Supreme Court, Court of Appeal and High Court of Nigeria 2<sup>nd</sup> Edition 345 para. 27.07. See paragraph 18/19/5 on pp. 327-328 of 1991 White Book. Bearing in mind the principles enunciated above, I see no reason not to grant the application for amendment of its pleadings by plaintiff. The plaintiff in accordance with its prayer is hereby granted leave to amend its pleadings by adding the following paragraph to its Statement of Claim:

*“Each of the said bills was indorsed by the said Meltroid Limited to the Plaintiff before it was overdue.”*

For all the reasons given above, this appeal is hereby allowed. The plaintiff is also granted the leave sought to amend its pleadings and the case is hereby remitted to the High Court of Lagos State to be heard expeditiously. In terms of costs, I award to the plaintiff the sum of N2,000.00 as costs in the Court below and the sum of N10,000.00 as costs for its success in this Court.

**UWAIS CJN**

I have had the advantage of reading in draft the judgment read by my learned brother, Ejiwunmi, JSC. I entirely agree with the

judgment.

Accordingly I too hereby allow the appeal. I adopt the order contained in the said judgment.

---

**KUTIGI JSC**

B

I read in advance the judgment just rendered by my learned brother, Ejiwunmi, J.S.C. I agree with his reasoning and conclusions. I will also allow the appeal and set aside the decisions of the lower courts. I endorse the consequential orders contained in the said judgment including the order for costs.

---

**OGUNDARE JSC**

By a writ of summons issued in February, 1986, the Bank of Baroda, as plaintiff, sued Iyalabani Company Ltd., as defendant claiming various sums of money, as holder of some bills of exchange, the particulars of which she gave in the statement of claim filed along with the writ. In the statement of claim she averred as follows:

“1. The Defendant duly accepted the bills of exchange, particulars of which appear hereunder, drawn by Meltroid Limited payable at 90 days after sight to the order of the plaintiff. E

2. On the due date of each of the said bills of exchange, the said bills were dishonoured by the Defendant by non-payment. F

**PARTICULARS**

3. AND The Plaintiff as holder claims against the Defendant as acceptor,

(a) The sum of US\$2,267,007.90 or its equivalent in Naira at the date of judgment. G

(b) The sum of DFL1,979,033.41 or its equivalent in Naira at the date of judgment.

(c) Interest on the said sums at the rate of 6% per annum from the date of the writ herein until payment.”

The defendant entered an appearance and filed a statement of defence in which she averred:

“3. *The defendant avers that the plaintiff is not a natural person and cannot sue in the name in which it has brought this action without specifying who (if any) is the person or are the persons who*

may be carrying on business under the name of the plaintiff, if such name is a "business name" within the meaning of that expression in the Registration of Business Names Act, 1961.

4. The plaintiff, as its name stands on the Statement of Claim cannot be and is not a limited liability company within the Companies Act of Nigeria.

5. The defendant further avers that the plaintiff was not the holder of the bills sued on at the commencement of this action.

6. The defendant denies that it had any notice of the dishonour of the bills of exchange sued on.

7. With further reference to paragraph 2 of the Statement of Claim the defendant denies that it agreed to an interest of 18 per cent on the bill sued on and avers that the said interest rate is too arbitrary.

8. The defendant has never agreed to pay interest at more than  $8\frac{3}{4}\%$  on any bills drawn upon and accepted by it.

9. The defendant denies that the amount payable on the bills sued on is the equivalent of the sums in Naira at the date of judgment but rather it is the equivalent in Naira at the dates of maturity of the bills."

Subsequent to the filing of the statement of defence, the defendant also filed a motion on notice praying the trial court for-

"An order striking out the Statement of Claim herein and in particular 'Bank of Baroda' as plaintiff therein as it discloses no reasonable cause of action;"

upon the grounds;

"(i) The plaintiff has no locus standi to bring this action

(ii) The plaintiff is incompetent to institute the action on the face of the Statement of Claim"

The plaintiff also filed a motion on notice praying for-

"an order for leave to amend the Statement of claim herein in terms of the document delivered herewith, titled 'Amended Statement of claim' and marked 'Exhibit RBA/1' in which amendment was sought by the addition of a new paragraph 2 while the original paragraph 2 became paragraph 3. By the proposed amendment paragraph 2 of the proposed amended statement of claim now reads:

"The said bills were endorsed by the said Meltroid Ltd. to the plaintiff."

The two motions came before Silva, J. of the High Court of Lagos State (the trial court) for hearing and after hearing learned counsel for the parties, the learned trial judge dismissed Plaintiff's application for amendment of the statement of claim. He held that as the plaintiff had not been shown that it had its own distinct personality, it had no locus standi to bring the action. He held further that there was nothing in the statement of claim that established that there was a dispute between the parties. Consequently, he granted defendant's application and struck out both the plaintiff's name and the statement of claim.

The plaintiff appealed unsuccessfully to the Court of Appeal. That Court, in a split decision (Pats-Acholonu and Onalaja, JJ.CA; Ayoola, JCA, as he then was, dissenting) held, per Pats-Acholonu, JCA, that there is nothing on the face of the statement of claim to suggest that the plaintiff had a distinct legal personality. Ayoola, JCA, in his dissenting judgment made the following findings.

1. *"There is nothing on the face of the statement of claim to suggest that the plaintiff had no distinct legal personality." Even if it is conceded that the plaintiff may not have been a natural person, there is nothing on the face of the statement of claim to show that the plaintiff is not a juristic person. The learned judge seemed to have proceeded from the premises that because the plaintiff's name did not end with 'limited' the plaintiff was not a juristic person. In doing so he erred."*

2. *"Where a plaintiff has sued in what appeared to be its corporate name and has described itself simply as 'the plaintiff in the statement of claim it cannot be said that the writ or statement of claim shows a lack of legal personality on the face of it even though it is open to the defendant to challenge the juristic personality of the plaintiff. Where that is done, an issue to be tried would have arisen. That issue should not be determined on the basis of mere speculation or assumptions."*

3. *"While it may be open to a defendant to challenge the legal capacity of a plaintiff to sue, the plaintiff should not be deprived, on the basis of a mere assumption, of the opportunity of proving his or its capacity to such".*

4. *"Nothing on the face of the writ or the statement of claim shows that Bank of Baroda is not a juristic person. The mere fact that*

*its name did not end with 'limited' does not raise any reasonable presumption that it was not a juristic person nor is it evidence of that fact. Upon a challenge to the plaintiff's legal capacity to sue, the learned judge should have tried that issue and given the plaintiff the opportunity of proving its legal personality."*

B 5. "A plaintiff must be accorded legal recognition before any question of standing can arise. The question of the existence of legal personality relates to the very existence of plaintiff, or, as the case may be the defendant whereas the question of locus standi relates to the existence of the right of plaintiff, a natural or artificial person, to sue. The learned judge seemed to have confused the two questions."

C 6. "In this case the statement of claim contained sufficient facts which disclosed a reasonable cause of action, namely: the right in which the plaintiff claimed (as holder (payee) the capacity in which D the defendant was sued (as acceptor); the fact of dishonour and the particulars of the claim. In my judgment the learned judge erred in holding that the statement of claim did not establish that there was a dispute. His error in that conclusion is further heightened by the fact that the defendant deemed it fit to join issue on almost all the aver- E ments in the statement of claim."

7. That the plaintiff's application to amend should have been granted. The plaintiff has appealed to this Court against the majority decision of the Court of Appeal (hereinafter is referred to as Court F below) upon four grounds of appeal. The parties filed and exchanged their respective briefs of argument. In the plaintiff's Appellant's Brief the following four questions are raised, that is to say:

G "(i) Whether the High Court and the Court of Appeal were correct in considering the question whether or not Plaintiff is a juristic person in the absence of affidavit or other evidence on the matter.

(ii) Is the Court of Appeal correct in affirming the decision of the High Court that the Plaintiff has no 'locus standi to bring this action.

H (iii) Whether the court below was correct in refusing the Plaintiff's application to amend the Statement of Claim.

(iv) What order should the Court of Appeal make in the circumstances?"

The set of questions raised by the defendant in her Respondent's Brief are not too dissimilar to the first three questions

above, although differently couched.

Question (1) Whether the High Court and the Court of Appeal were correct in considering the question whether or not the Plaintiff is a juristic person in the absence of affidavit or other evidence on the matter.

I have set out above the pleadings of the parties in the trial court. It is evident that defendant's contention that the plaintiff is not a juristic person is based on the fact that the plaintiff does not have the word "Limited" at the end of its name. Hence, it is contended that she is not a limited liability company within the "Companies Act of Nigeria". Pats-Acholonu, J.C.A. appeared to have accepted defendant's contention. For in his judgment with which Onalaja, JCA agreed, the learned Justice of the Court of Appeal observed:

*"Following this law [Companies and Allied Matters Act] it is the usual accepted practice for a company to bring an action in its full name since the name of a Company end with Ltd., Plc.. Ltd/Gate and Ultd as the case may be. It follows that no company that fails to reflect its true name or states only half its name in an action can be regarded, as being serious in sustaining such an action."*

The learned Justice later said:

*"We have heard of Barclays Bank, Bank of the North, Westminster Bank, Union Bank. When these Companies take out a writ, it is expected that they should add PLC or Ltd. as the case may be to their other names to form the full names of the Corporate Body. I am unable to find a plausible reason why the appellant seemed to be fighting shy of telling the world in its Statement of Claim who it really is. I find it difficult not to infer that by its name the appellant may well be a corporate body that has decided not to add Ltd. or Plc in its quest for an adjudication to a cause. I am not going to speculate further."*

It is submitted on behalf of the plaintiff that the reasoning and conclusion of the majority of the justices of the court below were based upon an erroneous assumption that the plaintiff, Bank of Baroda, is a company incorporated under Nigerian law which assumption lacked any basis. We are urged to adopt the reasoning of Ayoola, J.C.A. to the effect that:

*"A company .suing by its corporate name can only simply describe itself as the "plaintiff" in the statement of claim. The statement*

*of law in this regard is contained in Bullen & Leake & Jacobs: Precedents of Pleadings (12<sup>th</sup> Edition) pp. 330-331 as follows:*

*‘Public companies and other corporations aggregate whether incorporated by charter, by prescription, by Act of Parliament, or by statutory registration, sue and are sued by their corporate name, this must be set out in full on the writ and in the heading of every pleading, though in the body of the pleading, it is sufficient to say ‘the plaintiffs’ or ‘the defendants’ or ‘the plaintiff company’ or ‘the defendant company’ as the case may be’*

Where a plaintiff has sued in what appeared to be its corporate name and has described itself simply as ‘the plaintiffs’ in the statement of claim it cannot be said that the writ or statement of claim shows a lack of legal personality on the face of it even though it is open to the defendant to challenge the juristic personality of the plaintiff. Where that is done, an issue to be tried would have arisen. That issue should not be determined on the basis of mere speculation or assumptions. It was not until the enactment of the Companies and Allied Matters Act 1990 that the law stipulated that the name of an unlimited company should end with the word ‘unlimited’. Under the Companies Act 1968 which was in operation at the time when this action was instituted (in 1986) and determined (in 1987) there was no requirement that an unlimited company’s name should end with ‘unlimited’. (See sections 2, 3 and 4 of the companies Act 1968). An ‘unlimited company could be registered prior to 1990 without the addition of the word ‘unlimited’ to its name. It goes without saying, that such company would certainly not have the word ‘limited’ at the end of its name. Where the name on which a plaintiff sues before 1990 appears to be a corporate name but did not include the word ‘limited’ at the end thereof, an assumption that such plaintiff is not a corporate body would be erroneous. While it may be open to a defendant to challenge the legal capacity of a plaintiff to sue, the plaintiff should not be deprived, on the basis of a mere assumption, of the opportunity of proving his or its capacity to sue. The law has been aptly put in Aguda Practice & Procedure etc. 1980 Edtn. At para. 10-04 as follows: -

*‘A plaintiff to an action must be competent to institute such an action and if his competency is challenged then the onus of proving that he has legal capacity to institute the action lies on him.’*



It is only where it is obvious that a party is not a legal person that the matter can be dealt with without much ado and the non juristic party struck out or the action struck out if such a 'party' is the 'plaintiff. Such was the case of Agbonmagbe Bank Ltd. v. General Manager, G.B. Ollivant Ltd. & Anor. 1961 1 All N.L.R. 116 in which it was obvious that "General Manager" had no juristic personality. B  
The present case is different.

"The main plank of the submission for the defendant is that it is the duty of a plaintiff, who files an action to show in the statement of claim that it has juristic personality or locus standi to bring the C  
action.

I have given careful consideration to the arguments adduced by learned counsel both in their respective Briefs and in oral arguments. With profound respects to their Lordships that constituted the majority of "the Court below, I think their reasoning in this matter D  
has no support in law. It is not every corporate body that comes before the court that is registered under Nigerian law. It is a principle of common law, and this is accepted in this country, that a corporation incorporated in a foreign country may sue or be sued in our courts. "It is not uncommon that this often happens in our courts. E  
Lord Wright had this to say in Lazard Brothers & Co. vs. Midland Bank [1933] AC. 289 at p.297:

*"English Courts have long since recognized as juristic persons corporations established by foreign law in virtue of the fact of their creation and continuance under and by that law. Such recognition is said to be by the comity of nations. Thus in Henriques v. Dutch West India Co. [1972] 2 Ld. raym. 1532, 1535 the Dutch company were permitted to sue in the King's Bench on evidence being given 'of proper instruments whereby the law of Holland they were effectually created a corporation there.' See also: Halsbury's Laws of England 4<sup>th</sup> Edn. Volume 8 para. 703 and Dicey; Conflict of Laws 12<sup>th</sup> ed Volume 2 p. 1107.* F  
G

The issue of judicial personality to sue or be sued has come before this Court in a number of cases. Incidentally Onalaja, J.C.A. H  
referred to some of these cases but, with respect to him, failed to apply them in this case. The issue was fully discussed by this Court in Fawehinmi v. Nigerian Bar Association & Ors. (No, 2) (1989) ANLR. 274; [1989] 2 NWLR 558 where Agbaje. JSC who read the lead

judgment in the case cited with approval the dictum of Mocatta, J. in Knight & Searle v. Dove [1964] 2 All ER 307 at 309. The dictum of Mocatta, J. is very instructive, and I quote it hereunder: The learned Judge had said:

- “Counsel for the defendants formulated a general proposition as to when in the English courts an action can be brought by or against a party other than a natural person, and gave illustrations of each part of the proposition. Counsel for the plaintiffs was prepared to accept the proposition, though he questioned the classification of some of the illustrations. The proposition was that no action can be brought by or against any party other than a natural person or persons unless such party has been given by statute, expressly or impliedly, or by the common law, either (a) a legal persona under the name by which it sues or is sued or (b) a right to sue or be sued by that name. As to (a) namely, legal personae, this may be divided into (i) corporations sole; (ii) corporations aggregate, incorporated by Royal Charter or special Act of Parliament or under the Companies Acts; (iii) bodies incorporated by foreign law; and (iv) ‘quasi-corporations’ constituted by Act of Parliament, such as the War Damage Commission: see *Inland Revenue Commissioners v. Bew Estate Ltd* (1956) 2 All E.R. 210 at pp. 213, 214; (1956) 1 Ch. 407 at pp. 415, 416. As to (b), namely, parties which are not legal personae, but have a right to sue or be sued by a particular name, these may be subdivided into (i) partnerships: see *R.S.C., Ord. 81*; (ii) trade unions and friendly societies, both of which types have a membership; and (iii) foreign institutions authorized by their own law to sue and be sued, but not incorporated: see, for example, *Chaff and Hay Acquisition Committee v. Hemphill*, (1947) 74 CLR 375, a decision of the High Court of Australia, on appeal from New South Wales.”

Again in *Carlen (Nig.) Ltd. v. University of Jos & Anor.* (1994) 1 NWLR 631, the issue was again exhaustively discussed and a number of authorities referred to. Onalaja, JCA after citing a number of these authorities on went to say:

- “From the foregoing the onus is on the plaintiff to aver its legal capacity. With regret appellant has not and did not establish that it is a juristic person or that it was incorporated under the COMPANY DECREE (at the time of commencement of the action).”

I think the learned Justice, with respect, was in error when he

said that “the onus is on the plaintiff to aver its legal capacity”. I think the correct statement of the law is that where the legal capacity of the plaintiff is challenged by the defendant, the onus is on the former to prove this legal capacity. I believe it is this error that led their Lordships astray. This burden to prove a matter can only be discharged by leading evidence, oral or documentary, in proof of same. The plaintiff was not given the opportunity to do so in this case, before her action was struck out. I think both courts below are wrong in the course taken by them. B

I am of the respectful view that the reasoning and various findings of Ayoola, JCA quoted above correctly state the law. The two cases cited in the Respondent’s Brief, that is Agbonmagbe Bank Ltd. v. General Manager, G.B. Ollivant (1961) ANLR 125 and Njemanze v. Shell B.P. Port Harcourt (1966) ANLR 8 are just not apposite to the case on hand. Having joined issue in the pleadings on plaintiff’s legal personality, the learned trial judge should not have struck out the case in limine but should have given the plaintiff the opportunity to prove her legal personality. He was wrong in the action he took and their lordships of the Court below constituting the majority were equally wrong in affirming him. D E

#### Question 2

Is the Court of Appeal correct in affirming the decision of the High Court that the Plaintiff has no “locus standi” to bring this action. In paragraph 3 of her statement of claim the plaintiff is described as “holder” of the bills of exchange in dispute in this case and the defendant as the ‘acceptor’ of those bills. In paragraph 5 of the statement of defence the defendant denied that plaintiff was the holder of the bills sued on “ *at the commencement of this action*”. An issue was thereby joined whether plaintiff was, or was not, the holder of the said bills. That is an issue to be resolved on evidence. But without calling for evidence, the learned trial Judge resolved that the plaintiff had no locus standi to sue, and found that she was not the holder of the bills. The learned Judge said: “*Furthermore, there is nothing in the Statement of claim which establishes that there is a dispute or controversy between the parties herein: The Plaintiff is not a holder of the bills of exchange sued upon. He therefore, again has no locus standi to bring an action against Defendant.*” (words in italics mine) F G H

The majority Justices of the Court below did not address the

issue as to whether or not a cause of action was disclosed in the statement of claim. Ayoola, J.C.A., in his dissenting judgment, did. The learned Justice said:

“In this case the statement of claim contained sufficient facts which disclosed a reasonable cause of action, namely: the right in which the plaintiff claimed (as holder [payee] the capacity in which the defendant was sued (as acceptor): the fact of dishonour and the particulars of the claim. In my judgment the learned judge erred in holding that the statement of claim did not establish that there was a dispute. His error in that conclusion is further heightened by the fact that the defendant deemed it fit to join issue on almost all the averments in the Statement of Claim. I agree entirely with the above views of the learned Justice of the Court of Appeal (as he then was). The statement of claim clearly disclosed a cause of action and the plaintiff as holder of the bills of exchange in contention in this case has locus standi to sue the Defendant, the acceptor of the bills, for non-payment. Had the learned trial Judge adverted his mind to section 54 of the Bills of Exchange Act, Cap. 35 as to the liability of an acceptor of a bill of exchange and section 43(2) of the Act as to the consequences of the dishonour of a bill by non payment, he would not have concluded that the Plaintiff had no locus standi to institute the present action. A bill is dishonoured for non-payment- see section 47 of the Act.

Before I leave this issue, I must remark, howbeit briefly on the seeming confusion in the minds of the learned trial judge and the majority Justices of the Court below. This is in respect of capacity to sue and locus standi, that is, standing to sue. The learned trial Judge observed:

“*The plaintiff in the instant suit is shown simply as ‘Bank of Baroda’ The Statement of Claim is silent as to its capacity. Going by the name, it is not a natural person, it is a Bank, but it has not been shown in the Statement of Claim that it has its own distinct legal personality. For this reason it does not have the necessary locus standi to bring an action - see Section 6(6)(b) of the Constitution.*”

The learned Judge, with respect to him, seemed to have confused the legal capacity of the Plaintiff to sue with her right or standing to sue, one may have legal capacity to sue but may not have the right or standing to institute the action. A glaring example of this is

Senator Abraham Adesanya v. President of the Federal Republic of Nigeria & Anor. (1981) NSCC 146; (1981) 5 SC. 12, (1981) ANLR 1; 2 NCLR 358. Neither is the failure to disclose a cause of action in the statement of claim a case of locus standi. Their Lordships that constituted the majority in the Court below did not, with respect, fare better than the learned trial Judge. Pats-Acholonu, J.C.A. observed: B

*“Since I do not know who the Bank of Baroda is and there is nothing on the record to show in which capacity it took out the writ as by way of explaining itself in pleadings, I do agree with the court below that it is not a legal person otherwise it would have said so. Therefore it has no locus standi to maintain an action.”* C

And Onalaja, J.C.A. in his own contribution, said:

*“In concord with the lead judgment I endorse the conclusion that appellant failed woefully to establish that it is a legal or juristic person thereby failure of its locus standi”.* D

With respect, both learned Justices of the Court of Appeal fell into the same error as the learned trial Judge. I think Ayoola, J.C.A. put the issue in correct perspective when he, quite rightly in my humble view, remarked:

*“It is to be observed in passing that the question of a plaintiff’s essential legal personality to commence an action is not to be confused with the question of standing to sue. A plaintiff must be accorded legal recognition before any question of standing can arise. The question of the existence of legal personality relates to the very existence of the plaintiff, or, as the case may be the defendant, whereas the question of locus standi relates to the existence of the right of the plaintiff, a natural or artificial person, to sue. The learned judge seemed to have confused the two questions.”* E F

### Question 3

Whether the court below was correct in refusing the Plaintiff’s application to amend the Statement of Claim. G

The learned trial Judge refused plaintiff’s application to amend her statement of claim for the reason that “the amendment if granted will overreach the Defendant and deprive them of the defence contained in paragraph 5 of their statement of defence, and no amount of costs can adequately compensate them for the injury that will thereby be done to them.” Again, both Pats-Acholonu and Onalaja, JJ.CA who delivered the majority decision of the Court below did H

not address the issue of the refusal, by the trial court, of plaintiff's application to amend. Ayoola, J.C.A. in his dissenting judgment faulted the learned trial judge's refusal to grant the amendment sought.

In *Adetutu v. Aderonhunmu* (1984) 1 SCNLR 515 at pp. 523-524; [1984] NSCC 389 at p. 396 Bello, JSC, as he then was, restated the principles governing amendment of pleadings. He said:

*"The principle for the guidance of a court in exercise of its discretionary power to allow or refuse an amendment of pleading has been stated by this Court in several cases. The principle may be reiterated. Generally an amendment of pleading for the purposes of determining the real question in controversy between the parties ought to be allowed at any stage of the proceedings unless such amendment will entail injustice or surprise or embarrassment to the other party or the applicant is acting mala fide or by his blunder the applicant has done some injury to the respondent which cannot be compensated by costs or otherwise. In other words, the discretion ought to be exercised so as to do what justice and fair play may require in the particular case."* See *Oguntimeyin v. Gubere & Anor.* [1964] All N.L.R. 176, *Amadi v. Thomas Aplin Ltd.* [1972] 1 All N.L.R. 130, 409, *Chief Ojah & Ors. v. Chief Ogboni & Ors.* [1976] 4 S.C. 69; *Chief Okafor v Ikeanyi & Ors.* [1979] 3 & 4 S.C. 99 and *Ibanga & Ors. v. Chief Usanga* [1982] 5 S.C. 103. See also *Oguntimhin v. Gubere* [1964] ANLR 169 where this court approved of an amendment to the pleadings made at the trial where the amendment was made to bring the pleadings into line with the evidence. See also *Loutfi v. C. Czarnikow Ltd.* [1952] 2 All ER 823 (cited with approval in *Oguntimhin*) where an amendment was allowed because *"it is simply setting out in the pleadings that which has emerged in the course of the case as an issue between the parties."* In *George v. George* (1964) 1 All NLR 136 this Court held that an amendment of pleadings should be allowed by the trial court if such amendment would enable an important point of law to be properly pursued and exhausted. Again, this Court has held in numerous cases that an amendment should be granted as may be necessary and proper for the purpose of determining the real question or questions in controversy between the parties - *Amadi v. Thomas Aplin & Co. Ltd.* [1972] ANLR 413; *Okafor v. Ikeanyi* [1979] 3-4 SC, 99; *Ojah v. Ogboni* [1976] 4 SC 69. These decisions are in line with the provisions of

*Order 25 rule 1 of the High Court of Lagos State (Civil Procedure) Rules Cap 52 Laws of Lagos State 1973 in force at the time of these proceedings in High Court. The rule provided:*

*‘The Court or a Judge in Chambers may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings in such manner and on such terms as may be just, and all such amendments shall be necessary for the purpose of determining the real questions in controversy between the parties.’* <sup>B</sup>

See now Order 26 rule 1 High Court of Lagos State (Civil Procedure) Rules, Cap 41, Laws of Lagos State 1994. Strangely <sup>C</sup> enough, the learned trial Judge made no allusion to this rule in his ruling when it was clear on the motion paper that plaintiff brought her application under Order 25.

Turning to the case on hand, the amendment sought by the plaintiff could only be for the purpose of determining the real question or questions in controversy between the parties. Paragraph 1 of the statement of claim shows that the bills in controversy were drawn by Meltroid Ltd. and payable at 90 days after sight to the order of the plaintiff. Paragraph 3 shows that the defendant was the acceptor of the bills and, by paragraph 2, the bills were dishonoured by her non-payment. The defendant, in paragraph 5 of her statement of defence, averred that the plaintiff was not the holder of the said bills at the commencement of the action. The amendment sought by the plaintiff was to show that the said bills drawn by Meltroid Ltd. were <sup>D</sup> indorsed by the said Meltroid Ltd. to the plaintiff. I cannot see how this amendment could be said to overreach, as erroneously held by the learned trial judge. Rather, in my respectful view, it would only help to determine the real question in controversy between the parties as by her paragraph 5 the defendant was challenging the right of <sup>E</sup> the plaintiff to sue on the bills. The plaintiff needed that amendment to show *ex abundanti cautela*, her right to sue on the bills. I say so because of the definition of “holder” in section 2(1) of the Bills of Exchange Act, Cap 35 Laws of the Federation of Nigeria 1990 which <sup>F</sup> definition runs thus: <sup>G</sup>

“Holder” means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof.” <sup>H</sup>

The conclusion I reach on Question 3 is that the learned trial judge wrongly exercised his discretion by refusing the amendment

sought by the plaintiff. The Court below ought to have interfered with this wrongful exercise of discretion. That Court was, therefore, wrong in failing to do so.

Question 4

B What order should the Court of Appeal make in the circumstances?

C This question does not strictly arise from the grounds of appeal but rather, it relates to the relief sought from this Court. It goes without saying that having held that the trial court wrongly exercised its discretion in refusing plaintiff's amendment the proper order for the Court to make is one granting the application for amendment.

D It is for the reasons stated herein that I subscribe to the conclusion of my learned brother, Ejiwunmi, J.S.C. allowing this appeal, setting aside the judgments of the two courts below and making orders dismissing defendants application in the trial court seeking to strike out plaintiff's name and statement of claim and granting plaintiff's application to amend her statement of claim in the manner set out in the proposed amended statement of claim. I order that the case be sent back to the High Court of Lagos State to be tried on its merit. And in view of the age of the case I further order that the trial be conducted with utmost dispatch.

E I award to the plaintiff N10,000.00 costs of this appeal, N2,000.00 costs of the appeal in the Court of Appeal and N100.00 costs of the proceedings in the High Court.

---

**MOHAMMED JSC**

G I have had the advantage of reading the opinion of my learned brother, Ejiwunmi, J.S.C., in the judgment just read and I agree with him that this appeal is a meritorious one. I do not hesitate in allowing it as my learned brother has done. I set aside the majority judgment of the Court of Appeal and order that the case be sent back to the Lagos State High Court to be tried on its merit. I abide by the order H made on costs in the lead judgment.