

SUPREME COURT OF NIGERIA

9TH JULY, 2004. SC. 173/2000

**CORAM:- S. M. A. BELGORE, S. O. UWAIFO, A. O. EJIWUNMI,
D. MUSDAPHER, I. C. PATS-ACHOLONU, JJSC**

1. PRINCE DURO ADEREMI LADEJOBI
2. PRINCE (PROPHET) ONAMADEWALA LADEJOBI APPELLANTS
3. PRINCE ADEBAYO LADEJOBI

(For themselves and on behalf of the
Afurukeregboye Ruling House of Ijebu-Ife)

AND

1. OTUNBAAINOFIAFOLORUNSHO OGUNTAYO
(THE ORADEREMO OF IJEBU-IFE)
2. CHIEF ADEWALE DUDUYEMI ODUNUGA
(THE JEW-OLU OF IJEBU-IFE)
3. CHIEF SEGUN OSIBOTE
(THE ALORAN OF IJEBU-IFE)
4. CHIEF FESTUS JAIYEOLA ADEKOYA
(THE ODELE OF IJEBU-IFE)
5. CHIEF B. ADELEYE OSIBADEJO RESPONDENTS
(THE OLUWO OF IJEBU-IFE)
6. CHIEF AJADI OGUNDEKO
(THE OGBENI ODI OF IJEBU-IFE)
7. CHIEF SHOSE
(Sued for themselves and
as the kingmakers of Ijebu -Ife)
8. THE SECRETARY, IJEBU-IFE LOCAL
GOVERNMENT, OGUN STATE
9. THE EXECUTIVE COUNCIL OF THE
GOVERNMENT OF OGUN STATE OF
NIGERIA
10. THE MILITARY ADMINISTRATOR OF OGUN STATE

ACTIONS - Locus standi - Courts - Judicial precedents - Chieftaincy matters - Locus standi can be available to a ruling house - The principle in

Momoh's case - Does not apply to this case (H1)

CHIEFTAINCY MATTERS - Locus standi - Grievance of a ruling house - Forms a basis for representative action (H2)

ACTIONS - Representative action - Where it avails - Its merit can be attacked vide a motion - But not by way of defence - Or issue of locus standi (H3)

ACTIONS - Locus standi - Cause of action - Representative action on behalf of a ruling house - Whether there is a reasonable cause of action - Is the matter in this case (H4)

ACTIONS - Representative action - On behalf of a ruling house - The real plaintiff should be seen as the ruling house - Not the individuals (H5)

COURTS - Actions - Locus standi - Error of lower courts - In failing to appreciate the proper issue to decide - Will lead to reversal of their decision (H6)

FACTS

Before the High Court Ijebu-Ode, plaintiffs/appellants filed a chieftaincy action for themselves and on behalf of their Afurukeregboye Ruling House, Ijebu-Ife against the defendants/respondents. The stool of Ajalorun chieftaincy became vacant. In the process of presenting candidates from whom to select the chief, 1st respondent was nominated along with the 1st appellant. Appellants are contesting 1st respondent's nomination on the ground that he is not qualified to become the Ajalorun for various reasons averred by them. Appellants claimed various declarations and orders including an order setting aside the purported nomination and selection of the 1st respondent to occupy the said vacant chieftaincy stool.

The 1st respondent filed a motion raising as a preliminary issue the locus standi of the 2nd, 3rd and 4th appellants to institute the suit. It was sought to strike out their names from the suit. In a considered ruling, the

trial court upheld the motion holding that the 2nd - 4th plaintiffs have not shown enough standing to institute and prosecute the case. Appellants' appeal to the Court of Appeal was dismissed. They have further appealed to the Supreme Court raising a single issue of whether or not they have the locus standi to institute this suit.

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

Locus standi can be available to a ruling house

1. It would appear to me that the court below significantly failed to realize that locus standi can be available to a family or Ruling House in chieftaincy matters in a corporate sense. The appellants and the 1st respondent have recognized this in their submissions.

I think the appellants in their representative capacity for themselves and on behalf of the Afurukeregboye Ruling House of Ijebu-Ife are eminently qualified to institute this action. They have shown by the averments in their Statement of Claim that they have the standing to sue. The situation here is completely different from what gave rise to the decision and the principle therein laid down by this court in *Momoh v. Olotu* (Supra) in regard to locus standi. (p. 2039 G / 2041 H)

Locus standi - Grievance of a ruling house

2. The grievance of the Ruling House in question showing how its rights have been infringed forms the foundation of the action. There is no basis on which the respondents can reasonably argue in this case that the facts averred by the appellants do not bear out their locus standi. The said Ruling House can contest what has been done by filing a representative action to protect its corporate interest. I imply nothing about the merit of such action. (p. 2042 D/G)

Representative action - Where it avails

3. An action of that nature can only provoke the issue whether the appellants on record are actually acting on behalf of the Ruling House and with its authority as such. The way to resolve this is not to raise the issue of the locus standi of those appellants on record in court and to ask them to show

how their personal interests have been violated, as has been done here by two courts below. There is the averment in paragraph 4 that “*The plaintiffs have brought this suit with the consent and authority of the bona fide members of the Afurukeregboye Ruling House, on behalf of themselves and for* B *and on behalf of the said Ruling House.*” But the way out may be to challenge the representative capacity claimed by the plaintiffs. The law is that a person has the right to protect his family interest in a property or title and can sue for himself and on behalf of the family in a representative capacity. C In the present case the plaintiffs have exercised that right by bringing this action. There must be proof of substantial opposition in order to deprive them of their representative capacity. This is done by motion and not by way of defence. (p. 2042 H)

D **ACTIONS - Locus standi - Cause of action**

4. The 1st respondent has argued that by paragraph 9 of the statement of claim, the Afurukeregboye Ruling House did the nominations of the candidates; that if the 1st respondent is indeed neither a prince nor a member of E the Ruling House, it is not open to that same Ruling House which nominated him to contend that the 1st respondent is neither a prince nor a member of the said Ruling House. This argument overlooks the fact that having regard to the overall averments and reliefs sought by the said Ruling House, this is F not a, matter of locus standi but purely whether the Ruling House has a reasonable cause of action. That is not what has been canvassed in the preliminary objection raised by the 1st respondent. (p. 2043 E)

G **Representative action - On behalf of a ruling house**

5. It is right to say that when an action has been instituted by representatives of a family or a Ruling House, either in land matters or chieftaincy matters as appropriate, and facts are pleaded and reliefs are claimed indicating that it is in respect of the representative or corporate interest in the subject-matter, H then the real plaintiff or plaintiffs should be seen as the family or Ruling House and not the individuals who have sued in a representative capacity. Such individuals appear on record as suing for the class or family or Ruling House (as in this case) of which they are members. There should, therefore,

not be any confusion as to who is the entity suing: See *Otapo v. Sunmonu* (1987) 2 NWLR (Pt.58) 587. The locus standi should be broadly determined with due regard to the corporate interest being sought to be protected, bearing in mind who the real plaintiff is, or plaintiffs are.

(p. 2044 F)

B

Error of lower courts - In failing to appreciate proper issue to decide

6. In the present case, the court below had available to it for citation various decisions on locus standi. It did well to cite them but, with due respect, it failed, or did not make enough effort, to fully appreciate the facts pleaded in support of the reliefs sought, and to isolate and rely on the decisions relevant to the circumstances of this case. In the result, it fell into error in the conclusion it reached.

C

What has happened in this case, seeing the conclusion reached above by the court below, is that there was a failure to appreciate the facts necessary to support the locus standi of the Ruling House to bring this action, even though they have been pleaded. This derives from a misconception of the ratio decidendi in *Momoh v. Olotu* (Supra).

D

E

I am satisfied that the two courts below failed to realize that the appellants in this action are the Afurukeregboye Ruling House and that the preliminary issue on locus standi which was raised was, and could be raised at all, was whether that Ruling House had disclosed that it has the necessary standing to approach the court for the reliefs being sought on behalf of itself. Having thus missed the crucial point, the error that was occasioned in resolving the preliminary issue was inevitable. It is an established principle of law, arising from the logic of reasoning, that when a court misconceives the nature of what it is called upon to decide, it will in all probability arrive at a wrong conclusion. That was what happened in the present case. I therefore find merit in this appeal and allow it. (p. 2045 A/E/2046 B)

F

G

NOTABLE POINTS OF INTEREST

H

MUSDAPHER.JSC

1. Locus standi - What it denotes

The term “*locus standi*” denotes the legal capacity to institute proceed-

ings in a court of law and is used interchangeably with terms like “*standing*” or “*title to sue*”. It is the right or competence to initiate proceedings in a court of law for redress or assertion of a right enforceable at law. It must also be remembered that the issue of locus standi does not depend on the success or the merits of the case but on whether the plaintiff or the plaintiffs have sufficient interest or legal right in the subject matter of the dispute. (p. 2047 H / 2048 D)

PATS-ACHOLONU JSC

2. Ready access to court - Should not be wrongfully restricted

It is important to bear in mind that ready access to the court is one of the attributes of a civilized legal system, and it will amount to setting the clock back at this stage for any court to dismiss or strike out an action based on the pleading without carefully analyzing the averments and ensuring that there is no nexus. Besides, I make bold to say that it is dangerous to limit the opportunity for one to canvass his case by rigid adherence to the ubiquitous principle inherent in locus standi which is whether a person has the stand in a case. The society is becoming highly dynamic and certain stands of yester years may no longer stand in the present state of our social and political development.

I view with fear and apprehension any attempt by the court to shut off someone who can show how he is affected by the dispute and decides to seek for a remedy and the court with a wave of a hand gives a decision barring him from ready access to the courts on the ground that he has not disclosed sufficient interest to show his connection or what he stands to lose. It is desirable and in fact essential that a party should be given as much latitude as possible the opportunity to canvass his case where the court would then sieve the wheat from the chaff. Let it not be said that a plaintiff is chased out peremptorily from the temple of justice because the court does not feel strongly satisfied that he has shown a strong connection and interest in the matter. (pp. 2052 A / 2053 B)

REPRESENTATION

Abiodun Akinyemi Esq., for the Appellants.

O. O. Ajose Adeogun Esq., for the 1st Respondent
2nd – 10th Respondent unrepresented.

CASES REFERRED TO

- Otapo v. Sunmonu (1987) 2 NWLR (Pt.58) 587 B
Buraimoh Oloriode and Ors. v. Simeon Oyebi and Ors. (1984) 5 S.C.1
Sogunle v. Akerele (1967) NMLR 58
Blackburn v. A.G. (1971) 1 WLR 1037
Nta v. Anigbo (1972) 5 S.C. 156 C
Attorney-General Kaduna State v. Hassan (1985) 2 NWLR (Pt.453) 496
Adefulu v. Oyesile (1989) 12 S.C. 43 (1989) 5 NWLR (Pt. 122)377
Atanda v. Olanrewaju (1988) 10-11 S.C. 1 (1988) 4 NWLR (pt.89) 394
Russian Commercial and Industrial Bank v. Comptoir (1925) AC 112 at 130
Udengwu v. Uzuegbu (2003) 7 S.C. 64; (2003) 13 NWLR (Pt. 836) 136 at D
152 A-B

LEAD JUDGMENT BY UWAIFO JSC

The appellants are principal members of the Afurukeregboye Ruling House of Ijebu - Ife. It has become necessary to fill the vacant stool of the Ajalorun Chieftaincy title of Ijebu-Ife. The appellants are aggrieved that in the process of presenting candidates from whom to fill the vacant stool, at a meeting of the Ruling House held on 20th March, 1995, the 1st respondent was nominated along with the 1st appellant and three others. They said that the 1st respondent who is the Oraderemo and a kingmaker, is not, for various reasons given, qualified to become the Ajalorun: (1) he is not a bona fide member of the Ruling House; (2) he is not a descendant of any previous occupier of the Ajalorun stool; (3) he is not a Prince (Omo-Oba); (4) being a kingmaker, he is disqualified from becoming an Ajalorun. G

The appellants (as plaintiffs) brought this suit in a representative capacity in the High Court, Ijebu-Ode, for themselves and on behalf of the Afurukeregboye Ruling House, seeking the following reliefs against the respondents (as defendants), of whom the 1st - 7th are now the real respondents: H

“a) A DECLARATION that the 1st defendant is not a bonafide

member of the AFURUKEREGBOYE RULING HOUSE of Ijebu-Ife.

b) A DECLARATION that the 1st defendant is not qualified or competent to be nominated to or occupy the stool of the Ajalorun of Ijebu-Ife by virtue of the Ajalorun of Ijebu-Ife Chieftaincy Declaration.

B c) AN ORDER setting aside the purported nomination and selection of the 1st defendant to occupy the stool of the Ajalorun of Ijebu-Ife.

d) AN ORDER of perpetual injunction restraining the defendants jointly and severally from recognizing, presenting, installing or in any manner whatsoever or howsoever treating the 1st defendant as the Ajalorun of Ijebu-Ife.

C e) AN ORDER of perpetual injunction restraining the 1st defendant from holding himself out as or performing the functions of the office of the Ajalorun of Ijebu-Ife.”

D The 1st defendant filed a motion in the High Court raising as a preliminary issue the locus standi of the 2nd, 3rd and 4th plaintiffs to institute the suit. It was sought to strike out their names from the suit. The learned trial Judge (Osidiye, J.), in a considered ruling given on 14th July, 1995, E allowed the motion, holding that the “2nd - 4th plaintiffs have not shown enough locus standi to institute and prosecute this case. They are therefore struck off this case leaving only the 1st plaintiff to continue the action.” The appeal against that ruling was dismissed on December 1, 1999, by the F Court of Appeal, Ibadan Division.

The appellants have asked that this appeal against the judgment of the court below be resolved upon the sole issue whether or not they have the locus standi to institute this suit. The 1st respondent who is the only respondent now challenging this appeal virtually agrees with the sole issue. G It seems to me the learned trial Judge relied essentially on Momoh v. Olotu (1970) ANLR 121 (Second Edition) when he said that the Supreme Court in that case held:

H “That membership of a family is not enough to confer status on anyone to bring an action in a chieftaincy matter since not every member of the family would be interested in the Chieftaincy matter. A plaintiff must show that he has an interest in the chieftaincy title and furthermore state in the Statement of Claim how this interest arose. After perusing the Statement

of Claim properly, I cannot see where 2nd - 4th plaintiffs pleaded their interest in the chieftaincy title and the pleading did not state how such an interest arose. Only the 1st plaintiff pleaded sufficient interest in the chieftaincy title and how his interest arose.”

The 1st respondent pressed the authority of Momoh v. Olotu (Supra) B and similar decisions on the court below as he has done in this court. The court below in the leading judgment of Onalaja, JCA., observed thus:

“To discover the real issue in controversy between the appellants and 1st respondent in particular and to discover whether there is dispute between them and appellants’ locus standi is to look in the instant case critically and analytically at the Statement of Claim using as guide beacon lights the principles of law set out in the cases of Dr. Irene Thomas v. Rt. Rev. Archbishop T. O. Olufosoye (supra). Amusa Momoh v. Jimoh Olotu (supra), Oduneye v. Efunuga (1990) 7 NWLR (Pt. 164) page 638 S.C., D Adefulu v. Oyesile (1989) 5 NWLR (Pt.122) page 377 S.C., Oredoyin v. Arowolo (1989) 4 NWLR (Pt. 144) page 172 S.C, Seidu v. A.G. Lagos State (supra) whether in the statement of claim appellants apart from pleading membership of Afurukeregboye Ruling House showed that their E personal interests had been adversely affected in this action or the civil injury suffered by them or disclosed any reasonable cause of action against 1st respondent, or showed their interests in the chieftaincy tussle, to enable appellants have locus standi to wit that in the averments of the statement of claim there is dispute between appellants and 1st respondent as F held above in M. A. Eleso v. Government of Ogun State (supra)”

The only view one can garner from the above passage is that it tends to be in the direction of what Momoh v. Olotu (supra) decided. Even though the observation cites some decisions where Momoh v. Olotu was explained, that is not reflected in it, nor indeed anywhere else in the judgment of the court below. **It would appear to me that the court below significantly failed to realize that locus standi can be available to a family or Ruling House in chieftaincy matters in a corporate sense. H The appellants and the 1st respondent have recognized this in their submissions.**

The appellants argue that in chieftaincy matters, a right to sue is

available either to a candidate for a disputed stool or a family (or ruling house) whose turn it is to produce a candidate for a vacant stool and which has reason to believe that such a right to produce a candidate is being threatened. On the other hand, the 1st respondent, while conceding the right of a family (or ruling house) to sue in chieftaincy matters through a representative action in an appropriate case, contends that the appellants did not plead sufficient facts in their Statement of Claim to give them locus standi. I should perhaps cite the 1st respondent's argument from the brief filed by him in this regard. It reads:-

"It is conceded that the right to sue in a chieftaincy matter may arise by the assertion of a personal right and by the assertion of a corporate right. The corporate right in essence is the right of the family which is usually asserted in a representative capacity. See Eleso v. Government of Ogun State (1990) 2 NWLR (Pt. 133) 420 at 444: Odeneye v. Efunuga (1990) 7 NWLR (Pt. 164) 618 at 641 C-H and Ajagunbade v. Laniyi (1999) 13 NWLR (Pt. 633) 92 at 110 (G), Ill (A). However, the bone of contention in this appeal is whether the appellants pleaded sufficient facts in their Statement of Claim as to clothe them with the locus standi to sue in a representative capacity, asserting corporate right of the family."

It is, therefore, necessary to consider the facts pleaded by the appellants along with the reliefs sought by them. A summary of the facts pleaded has already been given in this judgment. The reliefs have also already been set out. Although the statement of claim is reasonably short, I do not see any reason to reproduce it here. It is necessary to remark that this appeal turns, in the circumstances, on a narrow basis as to the nature of the pleading by the appellants. All I need to do is to analyze the averments. Paragraphs 1,2,3 and 8 state that the 1st appellant and three other appellants are principal members of Afurukeregboye Ruling House of Ijebu-Ode, one of the three Ruling Houses recognized by virtue of the Registered Declaration of the Customary Law regulating the selection to the Ajalorun chieftaincy stool of Ijebu-Ife. The said chieftaincy stool is now vacant and it is the turn of the Afurukeregboye Ruling House to present a candidate to occupy the stool. The 1st appellant has been presented for the stool by the said Ruling House, he being a direct descendant of a past Ajalorun of

Ijebu-Ife, namely Oba Ladejobi.

In paragraphs 7, 9, 10, 11 and 12, it is averred that by the Ijebu-Ife Customary Law as contained in the Registered Declaration, an aspirant to the stool must (a) be a member of the Ruling House whose turn it is to present a candidate and (b) be a direct descendant of a previous holder of the title. The 1st respondent does not qualify under either of the conditions: i.e. he is a stranger and also not a descendant of a previous holder of the stool. But he called a meeting of Afurukeregboye Ruling House wherein he and the 1st appellant were nominated along with three others as candidates for the vacant stool. Instead of the head of the family being privy to the nomination and giving the names of nominees to the Oraderemo (1st respondent) who would present them to the kingmakers, the 1st respondent conveyed the names unilaterally to the kingmakers in violation of the custom.

From the averments, it would appear in essence, that the appellants as representatives of the Afurukeregboye Ruling House have not brought this action simply to ensure that only the 1st appellant or any other qualified candidate of Afurukeregboye Ruling House is presented for the stool. It is more fundamental than that. They want the recognized custom to be observed. They want the right of Afurukeregboye Ruling House to have their turn to present a candidate respected. They want to ensure that a person who is not a direct descendant of a past Ajalorun of Ijebu-Ife is not presented for the stool. Indeed, they said also that a kingmaker like the 1st respondent who in addition is the Oraderemo of Ijebu-Ife cannot become an Ajalorun. It is clear to me that the appellants have pleaded facts to raise issues tending to threaten the position of the Ruling House they represent, which consequence they regard as a violation of the rights of that Ruling House. It can also be seen that they contend that the substantive tenets of the Registered Declaration of the Customary Law regulating the selection to the Ajalorun Chieftaincy cannot be permitted to be violated.

I think the appellants in their representative capacity for themselves and on behalf of the Afurukeregboye Ruling House of Ijebu-Ife are eminently qualified to institute this action. They have shown by the averments in their Statement of Claim that they have the stand-

ing to sue. The situation here is completely different from what gave rise to the decision and the principle therein laid down by this court in **Momoh v. Olotu (Supra)** in regard to locus standi. At page 1 27 of the Report, Ademola, CJN., observed:

B *“Plaintiff has not claimed that he has a standing in this matter which entitles him to bring an action; or that he is representing a certain ruling family in this matter whose interests are affected and who are to be benefited by the declaration sought in the writ or that his existing right or his*
 C *family’s existing right has been infringed..... Mr. Ayoola for the plaintiff agreed before us that since the action was not instituted as a representative action, the court cannot take notice of paragraph 2 of the statement of claim and that this is purely a personal action. On that score, we fail to see the position of the plaintiff, who cannot say, and has not alleged, that his*
 D *personal rights have been infringed.”*

That is not the position in the present case as has been shown by the nature of the averments in the statement of claim and of the claim itself. **The grievance of the Ruling House in question showing how its rights have**
 E **been infringed forms the foundation of the action. There is no basis on which the respondents can reasonably argue in this case that the facts averred by the appellants do not bear out their locus standi.** Perhaps one can say that paragraph 9 of the Statement of Claim seems to
 F suggest that the meeting of the Ruling House where nominations were made was not properly convened and conducted, judging from the status of the 1st respondent whom they say is not a bona fide member thereof. The question may, however, be raised whether the representatives of the
 G said Ruling House can in the circumstances go to court to contest the nominations. But it must be realized that the action so brought by them does not cease to be a representative action of the said Afurukeregboye Ruling House. **The said Ruling House can contest what has been done by filing a representative action to protect its corporate interest. I imply**
 H **nothing about the merit of such action. An action of that nature can only provoke the issue whether the appellants on record are actually acting on behalf of the Ruling House and with its authority as such. The way to resolve this is not to raise the issue of the locus standi of**

those appellants on record in court and to ask them to show how their personal interests have been violated, as has been done here by two courts below. There is the averment in paragraph 4 that “*The plaintiffs have brought this suit with the consent and authority of the bona fide members of the Afurukeregboye Ruling House, on behalf of themselves and for and on behalf of the said Ruling House.*” But the way out may be to challenge the representative capacity claimed by the plaintiffs. The law is that a person has the right to protect his family interest in a property or title and can sue for himself and on behalf of the family in a representative capacity. See *Sogunle v. Akerele* (1967) NMLR 58; *Nta v. Anigbo* (1972) 5 S.C. 156; *Melifonwu v. Egbuji* (1982) 9 S.C. 145; *Atanda v. Olanrewaju* (1988) 10-11 S.C. 1 (1988) 4 NWLR (pt.89) 394. In the present case the plaintiffs have exercised that right by bringing this action. There must be proof of substantial opposition in order to deprive them of their representative capacity. This is done by motion and not by way of defence: see *Russian Commercial and Industrial Bank v. Comptoir* (1925) AC 112 at 130.

The 1st respondent has argued that by paragraph 9 of the statement of claim, the Afurukeregboye Ruling House did the nominations of the candidates; that if the 1st respondent is indeed neither a prince nor a member of the Ruling House, it is not open to that same Ruling House which nominated him to contend that the 1st respondent is neither a prince nor a member of the said Ruling House. This argument overlooks the fact that having regard to the overall averments and reliefs sought by the said Ruling House, this is not a matter of locus standi but purely whether the Ruling House has a reasonable cause of action. That is not what has been canvassed in the preliminary objection raised by the 1st respondent.

In *Adefulu v. Oyesile* (1989) 12 S.C. 43; (1989) 5 NWLR (Pt. 122) 377, this court made a distinction between *Momoh v. Olotu* (supra) and that case, going by the facts pleaded and the reliefs sought in each case. At page 413, Agbaje, JSC., said:

“Unlike the position in Momoh v. Olotu (supra), the plaintiffs in this case have sued not only in their personal capacities but also in a

representative capacity as representing the Ruling House, Agaigi Ruling House of Ilishan-Remo, whose turn admittedly it is to nominate the successor to the office of Olofin of Ilishau which is vacant. Paragraph 1 of the plaintiffs' statement of claim also pleads the latter.

B *It cannot be gainsaid that the interests of Agaigi Ruling House will be affected by any appointment to the office of Olofin of Ilishau which purports to by-pass the nomination of a successor or successors to the office made by the Ruling House. The locus stand! of Agaigi Ruling House, even on the authority of Momoh v. Olotu (supra), to challenge in a court*
 C *action such a purported appointment cannot, in my judgment, be disputed."*

At page 419, Nnaemeka-Agu, JSC., said inter alia:-

"It is noteworthy that a careful reading of Momoh's case shows that it recognizes the fact that in a chieftaincy case, such as this, the right to sue
 D *can be vested in a Ruling House.....In the instant case the four plain-tiffs/respondents brought the action "for themselves and the Agaigi Ruling House of Ilishan-Remo". And the gist of the action is that the selection of the appellant as the Olofin of Ilishan-Remo was done in such a way as to*
 E *constitute a violation of the rights of Agaigi Ruling House to nominate a person or persons of their choice as a candidate or candidates for the chief-taincy selection by the Kingmakers. It is therefore the corporate right of the family, not that of any particular individual member of the family, that*
 F *is in issue."*

It is right to say that when an action has been instituted by representatives of a family or a Ruling House, either in land matters or chieftaincy matters as appropriate, and facts are pleaded and re-liefs are claimed indicating that it is in respect of the representative
 G **or corporate interest in the subject-matter, then the real plaintiff or plaintiffs should be seen as the family or Ruling House and not the individuals who have sued in a representative capacity. Such indi-viduals appear on record as suing for the class or family or Ruling**
 H **House (as in this case) of which they are members. There should, therefore, not be any confusion as to who is the entity suing: See Otapo v. Sunmonu (1987) 2 NWLR (Pt.58) 587. The locus standi should be broadly determined with due regard to the corporate interest being**

sought to be protected, bearing in mind who the real plaintiff is, or plaintiffs are.

In the present case, the court below had available to it for citation various decisions on locus standi. It did well to cite them but, with due respect, it failed, or did not make enough effort, to fully appreciate the facts pleaded in support of the reliefs sought, and to isolate and rely on the decisions relevant to the circumstances of this case. In the result, it fell into error in the conclusion it reached thus per Onalaja, JCA.:

“Applying the above cases and the essential requirements of the averment after a critical, analytical, cool, calm view consideration of the averments in the statement of claim, I come to the irresistible conclusion that appellants only pleaded membership of the chieftaincy ruling house, they did not state how their interest had been adversely affected nor disclose dispute between themselves and 1st respondent, leading me to the conclusion that appellants have not disclosed in the Statement of Claim sufficient legal interest in their action against 1st-respondent thereby and a fortiori they lacked the locus standi to maintain the action against the 1st respondent.”

What has happened in this case, seeing the conclusion reached above by the court below, is that there was a failure to appreciate the facts necessary to support the locus standi of the Ruling House to bring this action, even though they have been pleaded. This derives from a misconception of the ratio decidendi in Momoh v. Olotu (Supra).

The learned Justice of Appeal obviously considered the appellants as individuals fighting their personal cause. He did not see the Afurukeregboye Ruling House as the appellants, or perhaps did not give that aspect any consideration. This is plain from reading his judgment from the beginning to the end. For instance, in the passage I earlier quoted from the judgment of the learned Justice of Appeal, he sought on the question of locus standi to “discover the real issue in controversy between the appellants and 1st respondent in particular and to discover whether there is dispute between them,” and then later he reasoned that what had to be ascertained was

“whether in the statement of claim, appellants apart from pleading membership of Afurukeregboye Ruling House showed that their personal interests had been adversely affected in this action or the civil injury suffered by them.” (Emphasis mine)

B I am satisfied that the two courts below failed to realize that the appellants in this action are the Afurukeregboye Ruling House and that the preliminary issue on locus standi which was raised was, and could be raised at all, was whether that Ruling House had disclosed that it has the necessary standing to approach the court for the reliefs being sought on behalf of itself. Having thus missed the crucial point, the error that was occasioned in resolving the preliminary issue was inevitable. It is an established principle of law, arising from the logic of reasoning, that when a court misconceives the nature of what it is called upon to decide, it will in all probability arrive at a wrong conclusion: See Udengwu v. Uzuegbu (2003) 7 S.C. 64; (2003) 13 NWLR (Pt. 836) 136 at 152 A-B. That was what happened in the present case.

E I therefore find merit in this appeal and allow it. I set aside the decisions of the two courts below together with the costs awarded. It is ordered that the suit be heard on its merits by a judge of the Ogun State High Court other than Osidipe, J., I award the appellants N2,000.00 as costs in the High Court, N5,000.00 as costs in the Court of Appeal and N10,000.00 as costs in this court against the 1st respondent.

BELGORE JSC

G (Also agreed with the lead judgment.)

EJIWUNMI JSC

H Being privileged to have read in advance the draft of the judgment just delivered by my learned brother, Uwaifo, JSC., there can be no doubt that he had comprehensively reviewed the facts in the appeal and arrived at the right decision with regard to the sole issue raised in this appeal. This

issue being, whether the court below properly considered whether the appellants possessed the locus standi to institute the action against the respondents.

As it is clear from a close reading of the judgment of the court below that Onalaja, JCA., totally misconstrued the decision of this court in Momoh v. Olotu (1970) ANLR 121 (Second Edition), the judgment of the court below proceeded on that wrong premise, this appeal must be allowed. The appellants have clearly by their pleadings indicated quite clearly that they commenced the action in a representative capacity to protect the interests of their ruling house, namely, the Afurukeregboye Ruling House. It is settled law that a person has the right to protect his family interest in a property or title and can therefore sue for himself and on behalf of the family in a representative capacity. See Sogunle v. Akerele (1967) NMLR 58: Nta v. Anigbo (1972) 5 S.C. 156: Melifonwu v. Egbuji (1982.) 9 S.C. 145; Atanda v. Olanrewafu (1988) 10-11 S.C 1; (1988) 4 NWLR (Pt.89) 394. The appellants, having chosen to protect and therefore pursue their family interests by commencing this action, ought not to have been denied that right by the court below.'

For the above reasons and the fuller reasons given in the said judgment of my learned brother, Uwaifo, JSC., the appeal is allowed by me and the judgments of the two courts below are set aside. I award costs to the appellants in the sum of N2,000 as costs in the High Court, N5,000 as costs in the Court of Appeal and N10,000 as costs in this court against the 1st respondent. In addition, it is hereby ordered that the matter be heard de novo by another judge of the Ogun State High Court.

MUSDAPHER JSC

Once again this appeal also raises the issue of locus standi. A suit is aimed at the vindication of some legal rights. The existence of the legal rights is thus an indispensable prerequisite of initiating any proceedings in a court of law. In other words, there must be recognized under the law, a factual situation, the existence of which will entitle one person. The term "locus standi" denotes the legal capacity to institute proceedings in a court

of law and is used interchangeably with terms like “*standing*” or “*title to sue*”. It is the right or competence to initiate proceedings in a court of law for redress or assertion of a right enforceable at law. See *Attorney-General Kaduna State v. Hassan* (1985) 2 NWLR (Pt.453) 496. *Adefulu v. Oyesile* B (1989) 12 S.C. 43 (1989) 5 NWLR (Pt. 122)377. It has been held that there must be a legal dispute between a person who makes a claim and the one against whom the claim is made and the action must be justiciable to resolve the dispute. In the case of *Buraimoh Oloriode and Ors. v. Simeon Oyebi and Ors.* (1984) 5 S.C.1, the plaintiffs sued for a declaration of title under C customary law to a piece of land in their favour. But their pleadings disclosed that the title to the land did not descend to them alone but to a large family of which they were only a branch. It was held that, in such circumstances, they have no *locus standi* to institute the action. In ascertaining D whether the plaintiff or the plaintiffs have standing to initiate the proceedings, the Statement of Claim should be looked at: See *Adosokan v. Adegorolu* (1997) 3 SCNJ 1 at 15. It must also be remembered that the issue of *locus standi* does not depend on the success or the merits of the case but on E whether the plaintiff or the plaintiffs have sufficient interest or legal right in the subject matter of the dispute. In an action involving a disputed chieftaincy title, it is not enough for the purposes of establishing *locus standi* for a plaintiff to merely claim to belong to one of the disputant families, F he has to go further to state in his Statement of Claim what personal interest he has in the disputed chieftaincy and how that interest arose. See *Obanla v. Adesina* (1999) 1 SCNJ 1. But where the interest is not personal but belongs to the whole family as where a non-member of the family is said to be nominated to the chieftaincy, the whole family as a group would appear G to have the legal standing to vindicate their right to nominate their member to the chieftaincy stool in a representative capacity. See *Adefulu v. Oyesile* (supra).

It is because of the above and the fuller reasons contained in the H leading judgment of my Lord, Uwaifo, JSC., that I too find merit in this appeal. The *Afurukeregboye* Ruling House, suing as a corporate body and in a representative capacity has the *locus standi* to approach the court for the relief being sought on behalf of itself. I accordingly allow the appeal and set

aside the decisions of the lower courts with the costs awarded. I remit the case to the High Court for the suit to be heard on its merits by another Judge of Ogun State High Court other than Osidipe, J. I abide by the order for costs contained in the aforesaid leading judgment.

B

PATS-ACHOLONU JSC

The appellants who were equally the plaintiffs and of Afurukeregboye Ruling House of Ijebu Ife claim that as the Ajalorun stool, is vacant following the death of the former incumbent occupier of the stool it is now the turn of the plaintiff family to present a candidate. The first defendant, 1st respondent known as Oraderemo of Ijebu-Ife convened a meeting of the Ruling House to nominate a candidate to be presented to the assemblage of kingmakers. They averred that contrary to the tradition of their people whereby the Oraderemo would forward the names of the nominees to the kingmakers, the 1st respondent (1st defendant) on his own conveyed the names of the people to the Kingmakers who without any investigation of whatever kind selected the 1st respondent to ascend to the throne. They complained that the 1st respondent is not a bonafide member of the Afurukeregboye Ruling House not having descended from that family and not also being a Prince. Besides, they further averred that being a kingmaker, the 1st respondent cannot be made an Ajalorun.

F

The respondents without filing any pleadings moved that the names of 2nd, 3rd and 4th plaintiffs be struck out on the ground that they had no locus standi to maintain the action. The preliminary objection was up-held by the trial court and the names of the plaintiffs were struck out. On appeal, the Court of Appeal affirmed the decision of the court of 1st instance, whereupon the plaintiffs further appealed to this court.

G

Only one issue was formulated and it is this:

“Whether or not the appellants have the locus standi to institute this suit”.

H

For a court to normally strike out an action or the names of the prominent members of a class that institute an action on the ground that there is no locus standi is a grave matter that requires utmost judicial care-

ful appraisal and understanding and reflection of the empirical facts placed before it.

To strike out the action or the names of the principal members who institute the action without a thorough assessment of the claim and subject-
B ing the contents of the pleading to merciless scrutiny if a very serious matter which on the surface of it seems to show that there is an element of using a short circuit method to determine a case without at least the court getting into the nitty gritty of the matter, and muter to peremptorily dismiss or strike
C out a case on the altar of lack of locus standi.

When a family or a Ruling House in a chieftaincy matter is faced with the issue of representation, this court has in numerous cases expanded the horizon of locus standi so as to enable a family contesting the matter to be allowed to put its case squarely, as the rights and interest of the Ruling
D House cannot be thrown out without doing incalculable damage to the case of the party. The issue of locus standi as it affects chieftaincy cases which are very volatile matters in the society such as ours, and which with a wrong step taken may invariably lead to a rise of passion, and in many cases
E lead to mayhem, arson, and sometimes murder, should not be treated lightly by the courts. Thus, in *N. A. Eleso v. The Government of Ogun State & 4 Ors.* (1990) 2 NWLR (Pt. 133) P. 420 at 442 Obaseki, JSC., said:

“(8) *On the issue of locus standi the Plaintiff/Respondent cannot*
F *be described as having no locus standi to institute these proceedings. He was not only eligible candidate but was also a candidate for the minor chieftaincy of Balogun of Ijaiye. He was nominated validly for appointment and contested with the 4th defendant/appellant for the chieftaincy. He cannot therefore be described as one having no interest in the subject matter*
G *of the action. He has in my view sufficient interest to give him locus standi.*

(a) *The right of a plaintiff to sue in a chieftaincy contest shows that the right that is being asserted is that of his family by reason of say their hereditary interest. In this type of case, it is the family, usually through their*
H *representative who can bring the action on the premise that it is civil right of the family that has been pleaded.*

(b) *The plaintiff may assert his own right to the chieftaincy stool. What is required in such a case, is that his statement of claim and evi-*

dence-if evidence has been called should show the nature of his interest and his entitlement of the stool. In such a case, he had locus standi by virtue of Section 6(6)(b) of the 1979 Constitution, see Momoh v. Olotu (1970) 1 All NLR 117 at 123, Senator Adesanya v. President Shehu Shagari (1981) 2 NCLR 358 (1981) 5 S.C. 112, Thomas v. Olufosoye (1986) 1 NWLR B (Pt.18) Page 689 referred to applied, adopted and followed in Chief Boniface Amadi Ogbuehi & 3 Ors. v. The Governor of Imo State & 3 Ors. (1995) 9 NWLR Pt. 417 page 53 CA unreported CA/1/182/93 between Oba Oyewunmi Ajagunbade III (Soun of Ogbomoso) and 2 Ors. v. Gabriel Afolabi Laniyi C delivered on 15th day of July, 1999.”

The appellants were peeved with the seeming iron-handed manner bothering on an imperial and inexorable attitude of the lower court treating this matter, hence this appeal. The appellants cited the cases of Eleso v. The Government of Ogun State (1990) 2 NWLR (Pt. 133) p. 420; Odemeye v. D Efunnga (1990) 7 NWLR (Pt. 164) 618 and Adefulu v. Oyesile (1989) 12 S.C. 43 (1989) AII NLR 698, to show that in chieftaincy matters, it is the family whose interest is at stake that can competently take out an action through their accredited representatives. In that case, the message being E sent out is that it is not just the principal person contesting or appointed or nominated by the Ruling House that has the locus standi but the totality of the family or the Ruling House since what is in issue is a matter that directly affects the interest of the family to show their collective interests. In Odeneye F v. Efunnga (Supra), this court enunciated the following condition or parameters for instituting an action in chieftaincy matters;

“(a) A party may by his statement of claim and evidence show that the right that is being asserted is that of his family by reason of say their G hereditary interests. In such a case, it is the family usually through their representatives who can bring the action on the premises that it is the civil right of the family that has been breached.

(b) A party maybe asserting his own right to the chieftaincy stool. What is required in that case is that his statement of claim and evidence H that has been called should show the nature of his interest and his entitlements to the stool. In such a case, what he is asserting in his own civil right to the stool and not that of his family and Section 6(6) (b) of 1979 Consti-

tution has expressly given him a locus standi in such a case.”

B It is important to bear in mind that ready access to the court is one of the attributes of a civilized legal system, and it will amount to setting the clock back at this stage for any court to dismiss or strike out an action based on the pleading without carefully analyzing the averments and ensuring that there is no nexus. Besides, I make bold to say that it is dangerous to limit the opportunity for one to canvass his case by rigid adherence to the ubiquitous principle inherent in locus standi which is whether a person has the stand in a case. The society is becoming highly dynamic and certain stands of yester years may no longer stand in the present state of our social and political development. Consider, for example, the locus standi of a trader who sells his wares in the market. The law of the land vests in the local governments the duty to establish and regulate markets within their domain, if a trader finds out that due to the negligence of the local government concerned, the market is in a state of disrepair, and the condition of the market being affected by the rot, can it be stated that he cannot complain and at the same time take an action against the local government if his inability to sell has been adversely affected by the condition of the market? **E** The court should exercise utmost caution in throwing out a case because of the issue of locus standi.

F In its judgment, the lower court had referred to *Blackburn v. A.G.* (1971) 1 NWLR 1037, where Mr. Blackburn who felt strongly about the treaty of Rome which ought to surrender the sovereignty of the crown in parliament. In that case the point was raised as to whether Mr. Blackburn had the locus standi to institute the action, he being a British citizen, Lord Denning., presiding and reading the lead judgment had held thus -

G “*I would not myself rule him out on the ground that he has no standing. But I do rule him out on the ground that these courts will not impugn the treaty-making power of Her Majesty.*”

H He was not ruled out because he had no standing. He was a British citizen who strongly felt that Government or Parliament would be affected where the sovereignty of his government will be diminished. He was affected. That is the spirit of patriotism. By the same token, it will be idle to pretend that with the nature of averment clearly demonstrating the interests

of the appellants as to how their family or Ruling House would be adversely affected, the judgment of the court below is in order. It is with the greatest respect absurd to rule them out on the altar of overtly over-stretched interpretation and application of locus standi. I believe that where the court conceives that a proponent of a matter is somehow connected to a dispute in which he feels that he should exercise his right of access to the court to protect his own interest or indeed group interest, he should not be shut out as long as it can be discerned from the pleadings that he had a protectible interest of some sort. I view with fear and apprehension any attempt by the court to shut off someone who can show how he is affected by the dispute and decides to seek for a remedy and the court with a wave of a hand gives a decision barring him from ready access to the courts on the ground that he has not disclosed sufficient interest to show his connection or what he stands to lose. It is desirable and in fact essential that a party should be given as much latitude as possible the opportunity to canvass his case where the court would then sieve the wheat from the chaff. Let it not be said that a plaintiff is chased out peremptorily from the temple of justice because the court does not feel strongly satisfied that he has shown a strong connection and interest in the matter.

The Court of Appeal had stated in its judgment thus:

“Let me reiterate that when the issue of challenge to the locus standi of the Plaintiff is invoked to resolve it, the court only looks at the Writ of Summons and the Statement of Claim.”

Granted that in some instances this is usually the case, I cannot and indeed fail to understand that the plaintiffs/appellants have not shown that there is a justiciable issue or that they have no standing in this case. Let me restate some salient averments contained in their pleadings:

1. The 1st plaintiff is a member and secretary of the Afurukeregboye Ruling House of Ijebu-Ife, Ijebu-East Local Government Area of Ogun State and also a contestant to the vacant stool of the Ajalorun chieftaincy title of Ijebu-Ife, Ogun State.

2. All the other plaintiffs are also principal members of the Afurukeregboye Ruling House, which is one of the three (3) recognized Ruling Houses entitled to provide candidates for the Ajalorun chieftaincy

stool of Ijebu-Ife, by virtue of the Registered Declaration of the Customary Law regulating the selection to the Ajalorun Chieftaincy.

3. The plaintiffs have brought this suit with the consent and authority of the bonafide members of the Afurukeregboye Ruling House, on behalf of themselves and for and on behalf of the said Ruling House.

4. The 1st Defendant is the ORADEREMO of Ijebu-Ife and also one of the Kingmakers of Ijebu-Ife.

I fail to see how it can to say that the appellants are agitating a non justiciable issue and that they have no interest, that is, a protectible interest, and therefore, could not be afforded access to the court to canvass for a remedy. Such a holding would have the effect of closing the door of the court to people with genuine grievances, and have come to the court to seek a remedy. I do not with greatest respect, agree with the strong stringent view expressed by the lower court. It is to be observed that the court below wrote a 22 page Judgment or ruling to belabour that the appellants have no locus standi. Such an exercise to my mind shows that the lower court was unduly tasked to find a fault somewhere. It was not an easy exercise for it to make a case that there is no locus standi. I agree with the judgment of my learned brother, Uwaifo, JSC., that the appeal has merit.

In the final result, I hold that the appeal succeeds and I set aside the judgment of the court below and abide by the consequential orders made in the lead judgment.

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