

SUPREME COURT OF NIGERIA
25TH FEBRUARY, 2005. SC.251/2000
**CORAM:- I. L. KUTIGI, U. A. KALGO, I. C. PATS-
ACHOLONU, G. A. OGUNTADE, S. A. AKINTAN, JJSC**

HERBERT OHUABUNWA EMEZI APPELLANT
AND
1. AKUJOBIDAVIDOSUAGWU
2. MILITARY ADMINISTRATOR
OF IMO STATE RESPONDENTS
3. ATTORNEY-GENERAL OF
IMO STATE
4. PRINCE COLLINS AMAH
NJOKU-OPARAIGBOKU

APPEALS - Locus standi - Jurisdiction - Resolving other issues will be unnecessary - If Supreme Court finds there is no locus (H1)

CHIEFTAINCY MATTERS - Locus standi - To sue - May be established through family interest - Or clearly averred personal interest (H2)

CHIEFTAINCY MATTERS - Locus standi - Claim in personal capacity - Averment in this case - Did not confer locus standi (H3)

ACTIONS - Locus standi - Absence of - Goes to terminate court's jurisdiction - Unto striking out the claim (H4)

FACTS

By an originating summons before the High court Owerri, plaintiff/appellant in his personal capacity filed a chieftaincy suit against the defendants/respondents. He sought to establish that succession to the kingship stool of Awaka Autonomous Community rotates amongst the three villages that made up the community. That as the 1st respondent hails from the village of the last demised king, he is not be recognised by the government. In the affidavit filed in support of the originating sum-

mons, no averment therein sufficiently established appellant's locus standi to file the suit.

The trial court found in favour of the appellant and granted the declarations that were sought. Respondents' appeal to the Court of Appeal was allowed as it held that appellant has no locus standi to file an action. Appellant has now appealed to the Supreme Court raising 4 issues. But the ultimate court found the issue of locus standi sufficient for determination of the appeal.

ISSUE FOR DETERMINATION

Does the appellant lack the locus standi to initiate this action as held by the lower court ?

HELD (Unanimously dismissing the appeal per **AKINTAN JSC**)

Locus standi - Jurisdiction

1. I intend to start by dealing with the question whether the appellant had the locus standi to bring this action. This is because if that question is resolved against the appellant, there will be no need to proceed further with the other issues raised in the appeal since the trial court's jurisdiction would have been ousted. (p. 630 D)

Locus standi - To sue - May be established through family interest

2. The question whether the appellant had the locus standi to institute the action is the main focus of attack in the appellant's first issue. The position of the law on the subject is that the right of a plaintiff to sue in a chieftaincy matter may arise in two ways: (i) he may establish in his Statement of Claim and lead evidence to show that the right that is being asserted is that of his family by reason of any hereditary interest. In such situation, the action should be by the family through their representatives and it must be clearly pleaded that it is the civil right of the family that is being claimed or pursued; and (ii) the plaintiff may assert his own right to the chieftaincy stool if he could show from his pleadings and evidence, if evidence has been led, the nature of his interest and his entitlement to the stool. It is not enough for him to merely say that he is a member of the family. He has to say further that he had an interest in the chieftaincy title and plead further in his

Statement of Claim how his interest arose. (p. 630 F)

Claim in personal capacity

3. The appellant in the instant case did not seek any relief that conferred any direct benefit on himself. All that he sought in his relief 2(f) is “*a declaration that the next Eze and traditional ruler of the Awaka Autonomous Community in Owerri Local Government Area of Imo State to succeed the late Eze Oshimiri David Osuagwu shall be identified, selected, installed and presented for recognition by the Awaka Autonomous Community from among the indigenes of Ndegbelu village of the Autonomous Community.*” The appellant had deposed in paragraph 1 of his affidavit in support of the originating summons, inter alia:

“That I am the plaintiff in this originating summons and that I am a native of Ndegbelu village of Awaka Autonomous Community in Owerri Local Government Area of Imo State and that I have direct personal interest in the subject-matter of this suit as a candidate for the Ezeship stool of Awaka Autonomous Community.”

The above averment, in my view is not enough to confer on the appellant the required locus standi to institute the claim. This is because, apart from stating that he is a native of Ndegbelu village, which is not enough, and that he has direct personal interest in the subject matter of the suit as a candidate for the stool, he still needs to show how he became a candidate. If, for example, he was a nominee of the Ndegbelu village, then the claim ought to be in representative capacity on behalf of the Ndegbelu village. This has not been shown to be the position in this case. The action was filed by the appellant in his personal capacity. It is therefore clear from the law as declared above that the appellant failed to satisfy the conditions that could confer on him the required locus standi to institute the claim. (p. 631 E)

Locus standi - Absence of

4. The term locus standi denotes the legal capacity based upon sufficient interest in a subject matter to institute proceedings in a court of law to pursue a specified cause. It is the legal capacity to institute an action in a

court of law. It follows therefore that when a plaintiff has been found not to have the standing to sue, the question whether other issues in the case had been properly decided or not does not arise. This is because the trial court has no jurisdiction to entertain the claim. The correct position of the law therefore is that where a plaintiff is held to lack the locus standi to maintain his action, as I have found in this case, the finding goes to the jurisdiction of the court and denies it jurisdiction to determine the action. The proper order to be made in such a situation therefore is to strike out the claim.

In conclusion, therefore, and for the reason I have given above, there is no merit in the entire appeal. I therefore dismiss it and make an order striking out the plaintiff's claim. (p. 632 D)

NOTABLE POINT OF INTEREST
OGUNTADEJSC

1. Originating Summons - Why pleadings need not be ordered in this case
The court below concluded that the plaintiff should have brought his suit by a Writ of Summons which would have involved the filing of pleadings rather than by Originating Summons. It then allowed the appeal without making a consequential order even after it had set aside the judgment of the trial court. When a suit is commenced by an Originating Summons instead of a Writ of Summons, the appropriate order to be made by the court is to direct the suit to proceed with the filing of pleadings. It is apparent to me in this case that nothing is to be derived from an order directing parties to file pleadings since patently the plaintiff has not the slightest chance of converting a clearly incompetent suit into a competent one having regard to the fact that he has not demonstrated how his civil rights were violated or infringed in the light of his obvious inability to show that he has been identified, selected or appointed by the Awaka Autonomous Community as provided by Section 5(1) of the Traditional Rulers and Autonomous Community Law No. 11, 1981.

I think the fair thing to do is to dismiss this appeal and make the order that the plaintiff's suit be struck out. (p. 638 D)

REPRESENTATION

Chief Eze Duru-Iheoma, for the Appellant.

F. C. Dike Esq., for the 1st Respondent.

M. C. Uwasomba, Ag. Director, Legal Drafting, Imo State, for the 2nd and 3rd Respondents.

B

CASES REFERRED TO

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Attorney-General of Ekiti State v. Daramola (2003) 5 S.C 70; (2003) 10 NWLR (Pt. 82) 104 at 153

Adesokan v. Adetunji (1994) 5 NWLR (Pt. 346) 540

Momoh & Anor. v. Olotu (1970) NSCC 99 at 104

Oloriode v. Oyebi (1984) 1 SCNLR 390

Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669

Erejuwa II Olu of Warri v. Kperegbeyi (1994) 4 NWLR (Pt. 339) 416

National Bank of Nig. Ltd. v. Alakija (1978) 9-10 S.C (Reprint) 42; (1978) 9-10 S.C. 59

Eleso v. Govt. of Ogun State (1990) 2 NWLR (Pt. 133) 420

Osakwe v. Government of Imo State & Ors. (1991) 5 NWLR (Pt. 191) 318 at 338

STATUTES REFERRED TO

Constitution (Modification) Decree No. 107 of 1993 s. 5

Traditional Rulers and Autonomous Community Law No. 11 1981 s. 5(1)

LEAD JUDGMENT BY AKINTAN JSC

The present appellant, as plaintiff, instituted this action at Owerri High Court as Suit No. HOW/53/96 against the respondents, as defendants. The action was commenced by Originating Summons in which a number of declarations were sought from the court in respect of the Ezeship Constitution of Awaka Autonomous Community in Imo State. The details of his claim are as follows:-

“Let (1) THE MILITARY ADMINISTRATOR OF IMO STATE of Government House, Owerri (2) THE ATTORNEY-GENERAL OF IMO

STATE of Ministry of Justice Headquarters, Owerri and (3) AKUJOBI DAVID OSUAGWU of Umuodu Awaka in the Owerri Judicial Division within eight days after service of this summons on him including the day of such service cause appearance to be entered for him to this summons which is issued upon the application of HERBERT OHUABUNA EMEZI a native of Awaka Autonomous Community, Owerri and who is claiming aright to be recognized as the Traditional Ruler of the said community (or a kingmaker in Awaka) and whose address for service is Awaka Autonomous Community in Owerri Local Government Area of Imo State for the determination of the following questions:

1.(a) Whether or not by a combined construction of: the Ezeship Constitution of Awaka Autonomous Community entitled:

(I) “LAID-DOWN PROCEDURE ADOPTED IN SELECTION OF THE CHIEF OR TRADITIONAL RULER OF AWAKA AND THE PROCEDURE, THE TRADITIONAL MANNER AND CRITERIA ON WHICH FUTURE SELECTION WILL BE BASED” HANDED OVER TO THE CHIEF EXECUTIVE OF OWERRI LOCAL GOVERNMENT IN OCTOBER, 1979”

and on which the identification, selection, installation and presentation to Imo State Government of late Eze Oshimiri David Osuagwu was based in accordance with Imo State Law No. 11 of 1981 exhibited to this summons; And

(II) THE “GOVERNMENT WHITE PAPER ON THE REPORT OF THE PANEL OF INQUIRY INTO THE TUSSELE FOR THE EZE STOOL OF AWAKA AUTONOMOUS COMMUNITY ON 3RD APRIL, 1994”

succession to the throne as Traditional Ruler of the Awaka Autonomous Community of Owerri Local Government Area of Imo State is Rotatory among the three villages of Ndegbele, Amuzi and Umuodu? If it is, then

(b) Whether the Traditional Rulers and Autonomous communities Law No. 11 of 1981 contemplates the conduct of a plebiscite by Council of body set up by Government to determine the succession pattern to the Ezeship Stool of the Awaka Autonomous Community with a view to

amending the “Community Constitution”? And if not, then

(c) Whether the 1st and 2nd defendants were competent to enact that “AWAKA AUTONOMOUS COMMUNITY (EZESHIP STOOL PLEBISOTE) INTERIM COUNCIL EDICT, 1995? and if not then,

2.(a) A declaration that the “AWAKA AUTONOMOUS COMMUNITY (EZESHIP STOOL PLEBISCITE) INTERIM COUNCIL EDICT, 1995? Is void.

(b) A declaration that no person from Umuodu village of Awaka Autonomous Community is qualified to be recognized as Traditional Ruler to succeed Eze OSHIMIRI DAVID OSUAGWU (deceased) who hailed from the same Umuodu Awaka.

(c) A declaration that the 3rd defendant being a member of the family of late Eze Oshimiri David Osuagwu and as such being from the same Umuodu Awaka as himself is not qualified to be recognized as Traditional Ruler of the Awaka Autonomous Community until the villages of NDEGBELU and AMUZI have each taken its due turn to produce a Traditional Ruler.

(d) Injunction restraining the 3rd defendant from parading himself as the Eze or “Eze-Elect” for the Awaka Autonomous Community until the villages of NDEGBELU and AMAZI have been taken its due turn to produce a Traditional Ruler.

(e) Injunction restraining the 1st and 2nd defendants by themselves or by any person acting through or on their behalf from recognizing or taking any steps towards recognizing the 3rd defendant as Eze and Traditional Ruler of the Awaka Autonomous Community in the Owerri Local Government Area of Imo State until each of the villages of Ndegbelu and Amazi of Awaka have taken their due turn to produce a Traditional Ruler.

(f) A declaration that the next Eze and Traditional Ruler of the Awaka Autonomous Community in the Owerri Local Government Area of Imo State to succeed the Late Eze Oshimiri David Osuagwu shall be identified, selected, installed and presented for recognition by the Awaka Autonomous Community from among the indigenes of the Ndegbelu village of the Autonomous Community.”

The facts he relied on in support of his claim are set out in a seven paragraph affidavit it filed in support of his said Originating Summons. The paragraphs of the affidavit read as follows:

B “1. That I am the plaintiff in this Originating Summons and that I am a native of Ndegbelu village of Awaka Autonomous Community in the Owerri Local Government Area of Imo State and that I have direct personal interest in the subject matter of this suit as a candidate for the Ezeship stool of Awaka Autonomous Community.

C 2. That the documents put forward for construction in this Originating Summons are as follows:

(a) LAID-DOWN PROCEDURE ADOPTED IN SELECTING THE CHIEF OR TRADITIONAL RULER OF AWAKA AND THE PROCEDURE, THE TRADITIONAL MANNER AND CRITERIA ON D WHICH FUTURE SELECTION WILL BE BASED-EXHIBIT“A”.

(b) “GOVERNMENT WHITE PAPER ON THE REPORT OF THE PANEL OF INQUIRY INTO THE TUSSELE FOR THE EZE STOOL OF AWAKA AUTONOMOUS COMMUNITY ON 3RD APRIL, 1994” - E EXHIBIT “B”.

(c) “AWAKA AUTONOMOUS COMMUNITY (EZESHIP STOOL PLEBISCITE) INTERIM COUNCIL EDICT, 1995” and the Traditional Rulers and Autonomous Communities Law No. F 11 of 1981 (as amended).

3. That the 4th defendant is a native of Umuodu village of Awaka herein aforesaid and that the Late Eze Oshimiri David Osuagwu was his uncle who also hailed from the same Umuodu Awaka and that since he died no other Traditional Ruler has been recognized by the Government for the G Awaka Autonomous Community to succeed him.

4. That the 3rd defendant is not laying claim to the throne to succeed him.

H 5. That the 1st defendant had indeed accepted at page 12 of Exhibit “B” hereto that the process of secession to the throne is still rotatory.

6. That the questions put forward for determination in this Originating Summons and the reliefs sought therein do not call for oral evidence for their effectual determination.

7. *That this Originating Summons is only inviting the court to answer questions of law and to make declaration which flow naturally therefrom.”*

The respondents, as defendants, opposed the claim and they filed counter affidavits. The 1st respondent, who was 3rd defendant, deposed B to and filed an 8-paragraph counter-affidavit and a 5 paragraph further counter-affidavit. A 16 paragraph counter-affidavit was filed on behalf of the 2nd and 3rd respondents. The 1st respondent deposed, inter alia, as follows in paragraph 6(a), (f), (g), (i) and (j) of his said counter-affidavit:

“6 (a) *That Exhibit “A” is the making of a few people in Awaka Community, and was NEVER approved by the people of Awaka at any of their meetings as a result.*

(f) *That the process of selecting a new Eze was beset with problems. Amongst the personalities involved were professor P. O. Nwachukwu, Mr. Henry Opara, Mr. Cornelius Njoku and lastly and lately Mr. Herbert O. Emezi. Of all these contestants. Mr. Herbert Emezi’s candidature was the least acceptable to Awaka people.*

(g) *That meanwhile, Awaka people were getting disgusted and E frustrated that for eight years, it has been impossible to select a new Eze. It was recognized that the hindrance was unapproved rotatory system as contained in the guideline with which the past Eze was presented. Consequently, at a general meeting of Awaka Sons summoned solely for that purpose on the 12th of April 1993, the unworkability of the rotatory F system was acknowledged. It was resolved that the rotatory system be discarded. By a majority vote of 113 to 6 Awaka then opted for a hereditary system.*

(h) *That following from this, the family of the pasta Eze was asked G to submit a candidate to Awaka people to be considered and installed as Eze Awaka. The David Osuagwu family unanimously presented Akujobi David-Osuagwu to Awaka people and he was accepted.*

(i) *That on 15th October, 1993, Awaka people presented Akujobi- H Osuagwu as Eze-Elect to the Chairman Owerri Local Government Council. On the 4th November, 1993, at the request of the Deputy Governor, Awaka people presented Akujobi David Osuagwu to him as the*

Eze Elect. That during these two presentations all Awaka people (Oha, men Youths, women and children) were fully represented. The exercise was accepted to Awaka people except the plaintiff and a few of his supporters.

(j) *That on 20th December, 1993, the Oha Awaka crowned me. Akujobi David-Osuagwu as Eze Awaka- the Ezikoche II of the ancient town of Awaka Autonomous Community at Amapu Awaka, our traditional gathering place.”*

Also in the counter-affidavits filed on behalf of the 2nd and 3rd respondents who were 1st and 2nd defendants, it was deposed, inter alia, as follows in paragraphs 5,6,7,10 and 15:

“5. That the issue of successor to the stool amongst the contestants created disharmony and disturbances in the community.

6. That the Government of Imo State, to check the disruption of peace and order, set up a Panel of Inquiry into the cause(s) of the disturbances in the Community.

7. That the Panel of Inquiry set up by the 1st defendant submitted its report based on which the government issued a white paper on the panel’s report.

10. That the 1st defendant enacted the “AWAKA AUTONOMOUS COMMUNITY (EZESHIP STOOL PLEBISCITE) INTERIM COUNCIL EDICT. 1995.”

15. That I am informed by Counsel Okoro C. O. Esq., and I verily believe her that the issues involved in this suit are not issues that can be adequately resolved by an Originating Summons.”

The case thereafter went for hearing before Alinnor, J. The learned Judge granted the declarations sought in his judgment delivered on 24/37/97. The defendants were not satisfied with the judgment and they appealed to the Court of Appeal, Port Harcourt Division. Their appeal was allowed. The present appeal is from the judgment of the Court of Appeal delivered on 23/7/97 (Coram: Katsina-Alu, JCA., (as he then was), Rowland and Onalaja, JJCA).

The parties filed their respective brief of argument in this court. Three briefs in all were filed. The appellant filed an appellant’s brief. The 1st respondent filed one and the third brief was filed by the 2nd and 3rd

respondents. The appellant formulated the following four issues as arising for determination in the appeal:

“1. *Does the appellant lack the locus standi to initiate this action as held by the lower court ?*

2. *Was the lower court light to hold that the trial court lacked the competence to entertain the suit?* B

3. *Was the lower court in order when it held that the Awaka Community Edict was wrongly nullified by the trial court?*

4. *Was the procedure of originating summons rightly used to commence this suit?* C

Similar issues were formulated in both the 1st respondent’s brief and that of the 2nd and 3rd respondents. I therefore consider it not necessary to reproduce them.

The point taken up in the appellant’s issue 1 is that the appellant D failed to show that he has direct personal interest in the subject-matter of the suit as a candidate for the Ezeship stool of Awaka Autonomous Community. It is submitted that in a chieftaincy matter, such as in the present case, a plaintiff must not only say that he is a member of a chieftaincy family, he must also state that he is interested in the chieftaincy E position and state the grounds of his interest. The decisions in Momoh & Anor. v. Olotu (1970) NSCC 99 at 104; Obala of Otan-Aiyegbaju v. Adesina (1999) 2 NWLR (Pt. 590) 161 at 184; and Erejuwa II, Olu of Warri v. Kperegbeyi (1994) 4 NWLR (Pt. 339) 416 at 443 were cited in support F of this submission. It is argued that a careful reading of the appellant’s affidavit will show that he (the appellant) has satisfied the conditions. He stated that he is a native of Ndegbelu village which is the village to produce the next Eze after the death of Eze Oshimiri David Osuagwu. He is also said G to have shown that he was a candidate for the Ezeship stool, a claim said to be admitted by the 1st respondent. The lower court is therefore said to have acted wrongly when it held that the appellant failed to establish that he had the locus standi to institute the action. H

The question whether the lower court was right in entertaining the claim when its jurisdiction has been ousted by Section 5 of Decree No. 107 of 1993 is the one considered in the appellant’s issues 2 and 3. Reference

is made to the relevant provisions of the said Section 5 of the Decree No. 107 of 1993 which provides inter alia that:

“No question as to the validity of this Decree or any other Decree during the period 3 1st December, 1983 to 26th August, 1993 or made after the commencement of this Decree or of an Edict shall be entertained by any court of law in Nigeria.”

It is argued that the contention of the lower court that the trial court faced with the above provisions should have refrained from going further is said to be erroneous. The stand taken by the trial court is said to be in line with the interpretation given to the said provisions by this court in *Peenok Investment Ltd. v. Hotel Presidential Ltd.* (1982) 12 S.C. (Reprint) 1;(1982) 12 S.C. 1 at 137 among other cases. It is submitted that there was no way the trial court could have discovered that the Edict was inconsistent with either the Constitution, the Act of the National Assembly or the Decree if the trial court did not enquire into the validity of the Edict. In other words, the trial court must first declare itself competent to go further before it can arrive at the point where it can say that the Edict is or is not valid, depending on whether the conditions for validity were met. The decisions of this court in *Attorney-General of Bendel State v. Agbofodoli* (1992) 2 NWLR (Pt. 592) 476 at 508; and *Agwuna v. Attorney-General of Federation* (1995) 5 NWLR (Pt. 396) 41 8 at 438 were cited in support of this submission.

Finally, it is submitted in the appellant's Issue 4 that the contention that the suit was wrongly commenced with originating summons is erroneous. While conceding that it is inappropriate to commence an action by way of originating summons when contentious issues and questions of fact are to be resolved, it is submitted that the ultimate question in the instant case is that there was no substantial dispute or contentious issue on the facts in the case. It is therefore argued that the lower court was wrong when it held that commencing the action by originating summons was improper. The facts worthy of consideration in the case are said to be those invoking (a) the interpretation of the constitution of the community exhibited along with the affidavit in support of the originating summons as Exhibit A; (b) interpretation of the Imo State Government

white paper on the chieftaincy dispute (Exhibit B); and (c) to use the results of (a) and (b) in granting or refusing certain reliefs and nullification of the Edict made by the Imo State Government.

It is submitted in reply in the 1st respondent brief, on Issue 1 dealing with locus standi, that since the appellant brought the suit in his personal capacity, he could not assert the right to bring the action by reason of hereditary or other interest pertaining to Ndegbelu village who did not sue through their representatives and whose right the appellant claimed it was to produce the next traditional ruler of Awaka Autonomous Community. Reference is made to paragraph 1 of the supporting affidavit accompanying the originating summons where it is alleged that the appellant made a vague deposition inter alia, that he has “*direct personal interest in the subject-matter of the suit as a candidate for the Ezeship stool of Awaka Autonomous Community*”. It is submitted that since the appellant failed to state the nature of his interest and how the alleged interest in the Ezeship stool arose, his action was incompetent as he has failed to establish his locus standi. The decision in *Eleso v. Government of Ogun State* (1990) 2 NWLR (Pt. 133) 420 is cited in support of this submission.

It is further argued that a close look at the appellant’s claim will show that the appellant did not seek any relief that conferred direct benefit on himself. Reference is made in particular to the plaintiff’s relief 2(f) where he prayed the trial court for: “*a declaration that the next Eze and traditional ruler of the Awaka Autonomous Community in Owerri Local Government Area of Imo State to succeed the late Eze Oshimiri David Osuagwu shall be identified, selected, installed and presented for recognition by the Awaka Autonomous Community from among the indigenes of Ndegbelu village of the Autonomous Community.*” It is submitted that the appellant was making a case for Ndegbelu village as he did not ask the court to declare that he was entitled to be so identified, selected or installed as the Eze, he, therefore, failed to establish his locus standi. This is because the right to sue in the instant case is that of the Ndegbelu village and not that of the appellant even though he is a member of that village. The decision of the lower court in the matter is therefore said to be correct and should be affirmed.

Also in the 2nd and 3rd respondents' briefs similar views are expressed in respect of the appellant's Issue 1. Reference is made therein to the two criteria laid down in *Eleso v. Government of Ogun State*, supra, to wit: that for a plaintiff to establish that he has the locus standi to institute a claim of this nature, he must show by his Statement of Claim: (1) that the right that is being asserted is that of his family by reason of, say, hereditary interest, or (b) the plaintiff may assert his own right to the chieftaincy stool.

The plaintiff in this case is said not to be asserting any family right by reason of hereditary interest and his action was not brought as a representative of Ndegbelu village, whose right he claimed it was to produce the next traditional ruler. He is therefore said to have failed to establish that he has the locus standi to maintain the action.

I intend to start by dealing with the question whether the appellant had the locus standi to bring this action. This is because if that question is resolved against the appellant, there will be no need to proceed further with the other issues raised in the appeal since the trial court's jurisdiction would have been ousted. See *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; *Olariode v. Oyebe* (1984) 1 SCNLR; *Attorney-General of Ekiti State v. Daramola* (2003) 5 S.C 70; (2003) 10 NWLR (Pt. 82) 104 at 153; and *Adesokan v. Adetunji* (1994) 5 NWLR (Pt. 346) 540.

The question whether the appellant had the locus standi to institute the action is the main focus of attack in the appellant's first issue. The position of the law on the subject is that the right of a plaintiff to sue in a chieftaincy matter may arise in two ways: (i) he may establish in his Statement of Claim and lead evidence to show that the right that is being asserted is that of his family by reason of any hereditary interest. In such situation, the action should be by the family through their representatives and it must be clearly pleaded that it is the civil right of the family that is being claimed or pursued; and (ii) the plaintiff may assert his own right to the chieftaincy stool if he could show from his pleadings and evidence, if evidence has been led, the nature of his interest and his entitle-

ment to the stool. It is not enough for him to merely say that he is a member of the family. He has to say further that he had an interest in the chieftaincy title and plead further in his Statement of Claim how his interest arose. The above position of the law was clearly stated by Ademola, CJN., in *Momoh & Anor. v. Olotu* (1970) NSCC 99 at 104 as follows:

“In regard to paragraph 1 of the Statement of Claim and the point raised that the plaintiff has no locus standi in the matter, the learned trial Judge ruled that as this paragraph has not been denied, the plaintiff cannot be said to have no interest. Now, what is the averment in paragraph 1? The plaintiff says that he is a member of the Olukare family. The question may be asked, is it enough for the plaintiff to state that he is a member of the family? Has he not gut to state that he has an interest in the chieftaincy title? Surely not every member of a chieftaincy family as such has interest in the chieftaincy title. We are of the view that it is not enough for the plaintiff to state that he is a member of the family; he has to state further that he has an interest in the chieftaincy title, and furthermore state in his Statement of Claim how his interest in the chieftaincy title arose. It is difficult to say on the pleadings filed that the plaintiff has any locus in the matter.”

The appellant in the instant case did not seek any relief that conferred any direct benefit on himself. All that he sought in his relief 2(f) is “a declaration that the next Eze and traditional ruler of the Awaka Autonomous Community in Owerri Local Government Area of Imo State to succeed the late Eze Oshimiri David Osuagwu shall be identified, selected, installed and presented for recognition by the Awaka Autonomous Community from among the indigenes of Ndegbelu village of the Autonomous Community.” The appellant had deposed in paragraph 1 of his affidavit in support of the originating summons, *inter alia*:

“That I am the plaintiff in this originating summons and that I am a native of Ndegbelu village of Awaka Autonomous Community in Owerri Local Government Area of Imo State and that I have direct personal interest in the subject-matter of this suit as a candidate for the

Ezeship stool of Awaka Autonomous Community.”

The above averment, in my view is not enough to confer on the appellant the required locus standi to institute the claim. This is because, apart from stating that he is a native of Ndegbelu village, which is not enough, and that he has direct personal interest in the subject matter of the suit as a candidate for the stool, he still needs to show how he became a candidate. If, for example, he was a nominee of the Ndegbelu village, then the claim ought to be in representative capacity on behalf of the Ndegbelu village. This has not been shown to be the position in this case. The action was filed by the appellant in his personal capacity. It is therefore clear from the law as declared above that the appellant failed to satisfy the conditions that could confer on him the required locus standi to institute the claim: see also *Erejuwa II Olu of Warri v. Kperegbeyi* (1994) 4 NWLR (Pt. 339) 416; and *Eleso v. Government of Ogun State* (1990) 2 NWLR (Pt. 133) 429.

The term locus standi denotes the legal capacity based upon sufficient interest in a subject matter to institute proceedings in a court of law to pursue a specified cause. It is the legal capacity to institute an action in a court of law. It follows therefore that when a plaintiff has been found not to have the standing to sue, the question whether other issues in the case had been properly decided or not does not arise. This is because the trial court has no jurisdiction to entertain the claim. The correct position of the law therefore is that where a plaintiff is held to lack the locus standi to maintain his action, as I have found in this case, the finding goes to the jurisdiction of the court and denies it jurisdiction to determine the action. The proper order to be made in such a situation therefore is to strike out the claim. See *Oloriode v. Oyebi* (1984) 1 SCNLR 390; *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669; *Momoh & Anor. v. Olotu*, supra, and *Madukolu v. Nkemdilim*, supra.

In conclusion, therefore, and for the reason I have given above, there is no merit in the entire appeal. I therefore dismiss it and make an order striking out the plaintiff's claim. I award

N5,000.00 as costs to the 1st respondent and N5,000.00 to the 2nd and 3rd respondents jointly.

KUTIGIJSC

I have had a preview of the judgment just delivered by my learned B brother, Akintan, JSC. I agree with him that the appeal lacks merit and ought to be dismissed. It is accordingly dismissed. Plaintiff/appellant's claims are struck out since he lacked the locus standi to maintain the suit (see for example, Momoh & Anor. v. Oloto (1970) All NLR 121. I endorse C the consequential orders made in the lead judgment.

KALGOJSC

I have had a preview of the judgment just delivered in this appeal by my learned brother, Akintan, JSC. I entirely agree with the reasoning and D conclusions reached therein. He has properly in my respectful view dealt with the issues relevant to the determination of the appeal and I agree with him that there is no merit in the appeal. The decision of the Court of Appeal cannot be faulted in the circumstances of this case. I therefore find no E merit in the appeal and I dismiss it. I affirm the decision of the Court of Appeal and abide by the consequential orders made in the leading judgment including the orders as to costs.

PATS-ACHOLONUJSC

I have read the judgment of my learned brother and noble Lord, Akintan, JSC., and I agree with his conclusion. The whole facts of this case portray the appellant as a mere busy body who not fighting for his family or for himself decided to institute this action. Although the courts G nowadays tend to be less strict on the issue of locus standi where the plaintiff is able to establish a modicum of a right or interest in respect of a cause that affects him or his family, but where the whole gamut of a case demonstrates an uncanny effect or attempt to seek access to the court for H a matter nebulous, the result which would neither ensure to the plaintiff nor to his family then obviously, the proponent of such an action ought not be listened to as he is a mere intermeddler if not unduly constituting himself

into a litigating nuisance. In my view the appellant lacks the locus standi to institute the action.

In the circumstances, the appeal fails and is dismissed and the action is hereby struck out.

B _____

OGUNTADEJSC

C The appellant was the plaintiff at the Owerri High Court of Imo State where he commenced by Originating Summons a suit against the respondents seeking a number of declaratory reliefs in respect of the Ezeship Constitution of Awaka Autonomous Community.

D A perusal of the affidavit he filed in support of his originating summons reveals that the cause of the dispute was the question which of three villages or communities was qualified to produce its son as the traditional ruler or Eze of the Awaka Autonomous Community. The last Eze Oshimiri David Osuagwu died in 1985. He was from the Umuodu village of Awaka Autonomous Community. The two other villages are E Ndegbelu and Amuzi. The plaintiff contended that succession to the Ezeship should be rotational and not confined to the village of Umuodu.

In the affidavit in support of the originating summons, the plaintiff deposed in paragraphs 1, 3, 4 and 5:

F *"1. That I am the plaintiff in this originating summons and that I am a native of Ndegbelu village of Awaka Autonomous Community in the Owerri Local Government Area of Imo State and that I have direct personal interest in the subject matter of this suit as a candidate for the Ezeship stool of Awaka Autonomous Community.*

G *3. That the 4th defendant is a native of Umuodu village of Awaka herein aforesaid and that the late Eze Oshimiri David Osuagwu was his uncle who also hailed from the same Umuodu Awaka and that since he died no other Traditional Ruler has been recognized by the Government for the H Awaka Autonomous Community to succeed him.*

4. That the 3rd defendant is not laying claim to the throne to succeed him.

5. That the 1st defendant had indeed accepted at page 12 of Exhibit

“B” hereto that the process of succession to the throne is still rotatory.

The above paragraphs make it abundantly clear that the purpose of plaintiff’s suit was to assert the rights of the villages of Ndegbelu and Amuzi as against those of Osuagwu from where the deceased Eze Oshimiri David Osuagwu hailed.

The trial court gave a judgment on 24/3/93 wherein it granted the declaratory reliefs sought by the plaintiff. The defendants had contended that the plaintiff lacked the requisite locus standi to bring the suit. The trial court, dismissing the defendants’ objection said at pages 89-91 of the record:

“In determining the question of locus standi only the affidavit of the plaintiff should be looked at, for on him lies the burden to show that his civil rights and obligations have been or are in danger of being violated Adesanya v. President of Federal Republic of Nigeria (1981) 5 S.C. 112 at 149-150. That is the reason for setting out the paragraph of the affidavit of the plaintiff which is considered germane and relevant to the threshold issue of locus standi now being considered.

For a plaintiff, in a chieftaincy matter to possess locus standi, he must show that (a) he belongs to any ruling house (or council) entitled to present a candidate to fill the vacancy, or (b) he is a member of the community that is entitled to produce the traditional ruler) or (c) he was a candidate (for the contest). See Ebongo v. Uwemedimo (1995) 8 NWLR (Pt. 411) 22 at 45.

The plaintiff, has shown in the affidavit in support of the originating summons, that he is a native of Ndegbelu village. The community that should produce the traditional ruler should find or come to the conclusion that the stool is rotatory. Again plaintiff deposed in the first paragraph of his affidavit in support which has been duly set out above that he has personal interest in the subject matter, that is the right to succession to the stool, and that he is in fact a candidate in the Ezeship tussle. These facts were not denied by any of the defendants. Rather 3rd defendant denied paragraphs 2, 4, 5, 6 and 7 of the plaintiff’s affidavit while the 4th defendant among others denied paragraph 2 of the affidavit of the plaintiff. Thus the plaintiff’s deposition that he is a member of Ndegbelu

community who have the turn to produce an Eze-elect in a rotatory system and his deposition that he is a candidate in the contest of who becomes the next traditional ruler of Awaka have remained uncontroverted, by any or all the defendants. In the face of the factual situations, the plaintiff cannot
 B be said to lack the locus standi to commence this action. And in *Eleso v. The Governor of Ogun State & Ors.* (1990) 2 NWLR (Pt. 133) 420 at 444, Karibi-Whyte considering locus standi in chieftaincy matters showed one of the ways of establishing it thus:-

C On the other hand, a man may be asserting his own right to the chieftaincy stool. What is required in that case is that his Statement of Claim - and evidence if evidence has been called - should show the nature of his interest and his entitlement to the stool."

D The plaintiff has complied with these requirements as already shown. On the facts deposed and considered I am satisfied that the plaintiff possesses the locus standi to institute this action and I so hold."

The court below, in reacting to the issue as to the competence of the plaintiff to bring the suit, Rowland, JCA., who wrote the lead judgment
 E observed at pages 154-155:

"It seems to me that apart from the plaintiff/respondent stating at paragraph 1 of his affidavit in support of the originating summons (see page 4 of the bundle of papers) that he had 'direct personal interest in the
 F subject matter of this suit as a candidate for the Ezeship Stool of Awaka Autonomous Community, he did not go further to state the nature of his interest or how his personal interest in the Ezeship stool arose. This is so, because it is the Autonomous Community that has the right to identify, select, appoint and install its Eze and present him to the Chief Executive
 G of the Local Government which has power or jurisdiction over the said Autonomous Community. This right is created by Section 5(1) of the Traditional Rulers and Autonomous Communities Law No. 11 of 1981 of Imo State, which provides as follows:

H '5(1) Each Autonomous Community shall identify, select, appoint and install its Eze and present him to the Chief Executive of the Local Government over the said Autonomous Community.

See also *Osakwe v. Government of Imo State & Ors.* (1991) 5

NWLR (Pt. 191) 318 at 338. Again, the plaintiff/1st respondent did not show any where in his affidavit that he has been identified, selected, appointed, installed or presented to the Chief Executive of the Local Government by the people of Awaka Autonomous Community, or how he became a candidate for the Ezeship stool as to possess the locus standi to institute or maintain this action. It is not in doubt that locus standi affects the jurisdiction of the court before which an action is brought, and if there is no locus standi to file the action in the 1st place, the court cannot properly found jurisdiction to entertain the matter. See Central Bank of Nigeria & Ors. v. N. A. B. Kotoye (1994) 3 NWLR (Pt. 330) 66 at 173. From the foregoing, it is my well considered view that the plaintiff/1st respondent does not have the locus standi to institute this action.”

My learned brother, Akintan, JSC, has in the lead judgment in this court identified with the views expressed by the court below on locus standi. I entirely agree with him. The right to succession to the Ezeship, which the plaintiff sought to assert was created by the Traditional Rulers and Autonomous Communities Law No. 11 of 1981. Section 5(1) of the said Law provides that each autonomous community shall “*identify, select, appoint and install its Eze and present him to the Chief Executive of the Local Government which has power or jurisdiction over the said autonomous community.*”

The plaintiff by his suit was only trying to show that the Ndegbelu village was the community entitled to present a candidate for the Ezeship. The Awaka autonomous community had not yet identified, selected or appointed and installed the plaintiff as provided under Section 5(1) above. Indeed, the plaintiff’s right to be so identified, selected or appointed is only prospective on the success of the suit he brought since according to plaintiff’s claim, he wanted a candidate from Ndegbelu as the Eze. Clearly, therefore, the rights, which the plaintiff sought to assert by his suit were those belonging to the villages of Ndegbelu and Amazi. The trial court overlooked the fact that the plaintiff did not bring his suit as a representative of the two villages. He clearly lacked the legal standing to bring the suit.

The court below in its judgment considered the question whether or not the plaintiff approached the trial court by the right procedure. At

pages 162-163 of its judgment, the court below concluded in these words:

“It seems to me that a dispute such as the one we have in the case in hand, will qualify as hostile proceedings, which can only be resolved by oral evidence from the parties and/or their witnesses. To proceed merely by Originating Summons, as the trial court did in this case, would not meet the justice of the case.

In the result, all the three issues formulated by the appellant in this appeal and also adopted by the plaintiff/1st respondent having been resolved in favour of the appellant, this appeal succeeds. I therefore allow this appeal. I set aside the judgment of Alinnor, J., in Suit No. HOW/53/96 delivered on 24th March, 1997. I also set aside all the consequential orders made by the lower court including the order as to costs. The appellant is entitled to his costs which I assess at N3,000.00 in his favour against the plaintiff/1st respondent.”

The court below concluded that the plaintiff should have brought his suit by a Writ of Summons which would have involved the filing of pleadings rather than by Originating Summons. It then allowed the appeal without making a consequential order even after it had set aside the judgment of the trial court. When a suit is commenced by an Originating Summons instead of a Writ of Summons, the appropriate order to be made by the court is to direct the suit to proceed with the filing of pleadings. See *National Bank of Nig. Ltd. v. Alakija* (1978) 9-10 S.C (Reprint) 42; (1978) 9-10 S.C. 59 It is apparent to me in this case that nothing is to be derived from an order directing parties to file pleadings since patently the plaintiff has not the slightest chance of converting a clearly incompetent suit into a competent one having regard to the fact that he has not demonstrated how his civil rights were violated or infringed in the light of his obvious inability to show that he has been identified, selected or appointed by the Awaka Autonomous Community as provided by Section 5(1) of the Traditional Rulers and Autonomous Community Law No. 11, 1981. See *H Eleso v. Govt. of Ogun State* (1990) 2 NWLR (Pt. 133) 420.

I think the fair thing to do is to dismiss this appeal and make the order that the plaintiff's suit be struck out. I abide by the orders including those on costs made by my learned brother, Akintan, JSC., in the lead judgment.