

SUPREME COURT OF NIGERIA
12TH DECEMBER, 2008. SC. 284/2002
CORAM:- D. MUSDAPHER, G. A. OGUNTADE,
I. F. OGBUAGU, P. O. ADEREMI,
M. S. MUNTAKA-COOMASSIE, JJSC

BENEDICT OJUKWU APPELLANT
AND

1. LOUISA CHINYERE OJUKWU RESPONDENTS

2. TOBECHUKWU OJUKWU

(By Louisa Chinyere Ojukwu as his next friend)

ACTIONS - Locus standi - Requirement - Plaintiff is required to have locus standi whenever he seeks to establish a private right - By showing sufficiency of interest - In the performance of the duty sought to be enforced (H1)

LOCUS STANDI - Sufficiency of interest - Assessment - It is a matter of judicial discretion - Which varies according to the remedy asked for - Plaintiff here has shown sufficient interest in view of the remedy he seeks (H2)

FACTS

The plaintiff/appellant sued the defendant/respondent at the High Court of Anambra State claiming sundry declarations and injunction, centred on contesting the right of the 2nd respondent to share in the Ojukwu-family property. The case of the appellant was that the 1st Respondent, the former wife of one of the appellant's brothers, now late, gave birth to the 2nd respondent long after the death of the said brother but has been purporting that the 2nd respondent was a son of the Late brother and as such a member of Ojukwu family to all intents and purposes. Appellant sued in his capacity as head of the family.

Upon a challenge of the locus standi of the appellant by the respondents, the learned trial judge ruled that the appellant lacked locus standi and dismissed the case. Aggrieved, appellant appealed to the Court of Appeal which substituted the dismissal order with an order for striking out but nevertheless held that appellant lacked locus standi. The appellant has come on a final appeal to the Supreme

3942 *Ojukwu v. Ojukwu* (2008) 12 KLR (pt. 261) p. 3941; (2008) 18 Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was correct after holding that the appellant had proprietary interest in two properties pleaded in paragraphs 20 and 21 of the statement of claim and entitled to react in court of law to protect the said properties to have finally struck out the suit on grounds of lack of locus standi and non-joinder of necessary parties?”

HELD (Unanimously dismissing the appeal per **ADEREMI JSC**)
Louis standi - Requirement

1. The term LOCUS STANDI denotes legal capacity to institute proceedings in a court of law. The fundamental aspect of LOCUS STANDI is that it focuses on the party seeking to get his complaint laid before the court. In matters where a plaintiff seeks to establish a “private right” or special damage” whether under administrative law, in non-constitutional litigation, by way of an application for certiorari, prohibition or mandamus or for a declaratory and injunctive reliefs, as in the instant case, the law is sacrosanct that the plaintiff will have LOCUS STANDI in the matter only if he has a special legal right or alternatively if he can show that he has sufficient or special interest in the performance of the duty sought to be enforced, or where his interest is adversely affected. (p. 3948 B)

LOCUS STANDI - Sufficiency of interest

2. Whether an interest is worthy of protection is a matter of judicial discretion which often varies according to the remedy asked for.

What then is the interest the plaintiff/ appellant has manifested through the averments that will enable him to say and contend that he has legal capacity to institute this action? To answer this all important question, I must have a resort to the averments in the pleadings again. In paragraph 3 of the statement of claim the plaintiff/appellant avers that he is the head or Obi of the Ojukwu’s family. In paragraph 20, he avers that standing is a three-bedroom bungalow owned by the plaintiff’s mother together with the late Christopher Ojukwu. Again, in paragraph 21, he avers that there is a four-bedroom bungalow jointly erected by the plaintiff and Christopher Ojukwu which property was presently being claimed by the 1st defendant/respondent

who had since remarried after the death of Christopher Ojukwu. His interest in the subject-matter of the suit is also played up in paragraph 24. From the averments in the aforementioned paragraphs, I have no doubt that the plaintiff/appellant has shown sufficient and special interest in the subject-matter of the suit which interest is adversely affected or threatened that confers LOCUS STANDI on him. (p. 3948 E)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

1. There is a locus standi once there is justiciable dispute

A person is said to have *locus standi*, if he has shown sufficient interest in the action and that his civil rights and obligations, have been or are in danger of being infringed and that the onus of proof is on the party who has initiated the proceedings.

Since locus standi is the legal capacity to institute proceedings in a court of law, it means that locus standi will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected. There is therefore locus standi, wherever there is a justiciable dispute. (p. 3953 C)

2. Any family member can sue to defend family property

As to the further locus standi of the Appellant, it is now settled law that any member of a family can sue to defend family property.

In other words, a member of the family has a right and duty to protect family property and therefore has locus standi to institute an action in respect of any wrong doing to his family land or property. So the Appellant has locus standi in the case leading to this appeal. (p. 3955 A)

REPRESENTATION

B. S. Nwankwo Esq., for the Appellants.

Miss. Chianara Ike for the Respondents.

CASES REFERRED TO

Owodunni v. Registered Trustees of C. C. C. (2000) 6 S.C. (pt. 111) 60 (2)

Gloriole v. Oyebe (1984) 5 S C 1

- Oloriode & Ors. v. Oyebe & Ors. (1984) 5 S.C. 1
 Akinfolari & 2 ors. v. Akinola (1994) 4 SCNJ (Pt.1) 30 @ 61
 Bolaji v. Bamgbose (1986) 4 NWLR 67 (Pt. 67) 632 @ 646
 Chief Gani Fawehinmi v. Col. Akilu (1987) 4 N.W.L.R. (Pt.67) 797;
 (1987) 11-12 SCNJ. 151
 B Attorney-General of Kaduna State v. Mallam Umaru Hassan (1985)
 2 NWLR (Pt.8) 483 @ 525
Prince Oduneye v. Prince Etimuga (1990) 12 SCNJ. 1 @ 7 & 8
 Adefulu & 12 Ors. v. Oyesile & 5 Ors. (1989) 5 NWLR (Pt. 122)
 377; (1989) 12 SCNJ. 44
 C Owodunni v. Registered Trustees of Celestial Church of Christ & ors.
 (2000) 10 NWLR (Pt.675) 315; (2000) 6 SCNJ. 399
 Coker v. Oguntola & ors. (1985) 1 ANLR (PO) 278

D ***LEAD JUDGMENT BY ADEREMI JSC***

The appeal is against the judgment of the Court of Appeal (Enugu Division) delivered on the 21st of June 2000 wherein that court dismissed with costs the appeal lodged thereto by the present appellant but substituted the order of dismissal made by the trial court (High Court Sitting at Nnewi) with an order striking out the suit instead.

Per his statement of claim dated 15th September, 1994 but filed on the 21st September, 1994, the plaintiff/appellant claimed against the defendants/respondents as follows:

- F (1) a declaration on that the said late Christopher Ojukwu is not the father of the 2nd defendant.
 (2) a declaration that the said late Christopher Ojukwu died leaving only three female issues as between him and the 1st defendant.
 G (3) a declaration that the 2nd defendant is not a member of the Ojukwu family of Okpuno Ebenator Uruagu, Nnewi, and cannot inherit therefrom,
 (4) an order of injunction restraining the defendant either by
 H themselves, agent or privies from insisting that the 2nd defendant is a member of Ojukwu's family of Okpuno Ebenator, Uruagu, Nnewi and should inherit therefrom.

The plaintiff/appellant thereafter filed a statement of claim while the defendant/respondent brought two applications filed on 31st

October, 1991 and 22nd March, 1996 praying the trial court to hold that the plaintiff had no locus standi to bring the suit, that the statement of claim did not disclose any valid or reasonable cause of action against the defendant and that the suit is frivolous, vexatious and an abuse of court process. The application was supported by a three paragraph affidavit with paragraph 2 thereof divided into four sub-paragraphs, Arguments for and against the grant of the application were taken by the trial judge. The said application, if I may say, is more of demurrer. In his ruling delivered on the 8th of October, 1997 granting the prayers and dismissing the suit, the learned trial judge said inter alia:

"I have carefully studied the statement of claim, filed in "this suit. It is not disclosed anywhere the nature of marriage contracted between the 1st defendant and late Christopher Ojukwu, This is a vital omission as the nature of the marriage would have assisted in determining the law applicable to Christopher Ojukwu at death.

The plaintiff does not in his claim state that he is entitled to the property of late Christopher Ojukwu by the custom as per paragraph 24 of the statement of claim. The plaintiff has not indicated his interest beyond being the head of the family. In other words, has the plaintiff locus standi to prosecute his suit?

In my view the plaintiff has no locus standi to bring this action and all the necessary defendants have not been joined. The demurrer succeeds and this suit is hereby dismissed."

Dissatisfied with the trial court's ruling, the plaintiff appealed to the court below (Court of Appeal). The plaintiff/appellant in his statement of claim referred to supra had averred;

Para 3

'The plaintiff is the head and Obi of the Ojukwu's family of Okpuno Ebenator Village, Uruagu, Nnewi. The plaintiff is also the head and Obi of Dunuka family (which is the larger family to which the Ojukwu's family belongs) of Okpuno Village Uruagu Nnewi.

Para 4

The 1st defendant was a member of the Ojukwu's family by virtue of her marriage to the late Christopher Ojukwu until sometime after the death of the said Christopher Ojukwu when she re-married to one Gregory Agupusi of The Agupusi family of Okpono Ebenator village, Uruagu Nnewi,

Para 13

However, on the 25th day of September, 1989 approximately two years and two months after the death of Christopher Ojukwu, the 1st defendant gave birth to the 2nd defendant at the chimaobi hospital and maternity, Nnewichi, Nnewi. People were surprised to
B hear the 1st defendant claim that the said child born on the 25th day of September, 1989 belonged to Christopher Ojukwu who had died on 19th July, 1987, as it was biologically impossible.

Para 15

C That the 1st defendant mischievously and with an intent to deceive named the 2nd defendant as Tochukwu Ojukwu to pass him off as a member of the Ojukwu's family,

Para 20

The said late Christopher Ojukwu before his death left his six
D stores situated at No. 38 New Market Road/Ojukwu Street, Nnewi, He also left behind a three bedroom bungalow owned by the mother of the plaintiff and the late Christopher Ojukwu in which the late Christopher Ojukwu lived in before his death.

Para 21

E Despite the fact of 1st defendant's remarriage to the said Gregory Agupusi, she has insisted and also makes (sic) use of the said three bedroom bungalow. The 1st defendant is also claiming for herself a four bedroom bungalow jointly erected by the plaintiff and
F Christopher Ojukwu before their father's death in 1982.

Para 22

The plaintiff has, in his magnanimity, left the 1st defendant use of all the aforementioned properties being that if she remained a member of the Ojukwu's family, she can only have a life interest
G therein.

Para 24

The age long custom and tradition of Nnewi people being that where a man dies intestate without a male issue surviving him, (his father being dead) the eldest male of his parents would inherit his
H property.

Para 25

The plaintiff as, the head of the Ojukwu's family cannot sit by and allow a non-family member to inherit therefrom:

The court below after taking the arguments of the respective

counsel for the appellant and the respondent based on their respective briefs in dismissing the appeal held inter alia:

“I have set out at the beginning of this judgment what the appellant is claiming. It consists of declarations and an injunction. It is the justiciability or otherwise of the declaration and injunction he claims that brought him into trouble. But for these three properties pleaded in paragraphs 20 and 21 of the statement of claim, it is possible that this action might not have arisen. B

The appellant could have a locus standi in respect of some of the properties mentioned in paragraphs 20 and 21 of the statement of claim if proper reliefs are claimed in respect of them. As regards the 6 stores left by Christopher Ojukwu, the appellant avers that the 1st respondent has insisted and continued to manage them. Why should the 1st respondent not manage them when she has three female children of Christopher Ojukwu to look after? As regards the four bedroom bungalow erected by the appellant and Christopher Ojukwu, no meaningful relief has been claimed in respect of it. The pleading and the reliefs claimed do not bring out the real interest of the appellant in the properties or the wrong he suffers in respect of them. D E

An order of dismissal will not in the peculiar circumstances of the case meet the justice of the case. I shall therefore follow the reasoning in Oloriode v. Oyebe (Supra) and make an order of striking out. In the final analysis the order of dismissal made by the lower court is hereby set aside, and in its place the order striking out the suit is substituted. Save to the above order, the appeal is dismissed.” F

Again, being dissatisfied with the judgment of the court below the plaintiff/appellant appealed to this court and the only issue he formulated for determination as set out in his brief of argument filed on 1st November, 2002, is in the following terms: G

“whether the Court of Appeal was correct after holding that the appellant had proprietary interest in two properties pleaded in paragraphs 20 and 21 of the statement of claim and entitled to react in court of law to protect the said properties to have finally struck out the suit on grounds of lack of locus standi and non joinder of necessary parties?” H

The respondents, in their brief filed on 23rd January, 2003 also identified substantially similar issues which, as set out in their

brief of argument areas follows:

“Whether the learned Justices of the Court of Appeal were right in upholding the opinion of the learned trial judge that the plaintiff lacks the locus standi to bring and maintain the suit.”

The gravamen of the argument in the appellant’s brief of argument is that the appellant has locus standi to bring this action while the respondents contended to the contrary in their own brief of argument. What does LOCUS STANDI denote? Going by settled judicial authorities, ***the term LOCUS STANDI denotes legal capacity to institute proceedings in a court of law. The fundamental aspect of LOCUS STANDI is that it focuses on the party seeking to get his complaint laid before the court. In matters where a plaintiff seeks to establish a “private right” or special damage” whether under administrative law, in non-constitutional litigation, by way of an application for certiorari, prohibition or mandamus or for a declaratory and injunctive reliefs, as in the instant case, the law is sacrosanct that the plaintiff will have LOCUS STANDI in the matter only if he has a special’ legal right or alternatively if he can show that he has sufficient or special interest in the performance of the duty sought to be enforced, or where his interest is adversely affected.*** All of the above will however depend on the facts of each case. However, ***whether an interest is worthy of protection is a matter of judicial discretion which often varies according to the remedy asked for.*** See: (1) *Owodunni v. Registered Trustees of C. C. C.* (2000) 6 S.C. (pt. 111) 60 (2) *Gloriole v. Oyebi* (1984) 5 S C 1 and *Prof. Yesufu v. Gov. of Edo State & Ors* (2001) 13 NWLR (PT.731) 511. ***What then is the interest the plaintiff/ appellant has manifested through the averments that will enable him to say and contend that he has legal capacity to institute this action? To answer this all important question, I must have a resort to the averments in the pleadings again. In paragraph 3 of the statement of claim the plaintiff/appellant avers that he is the head or Obi of the Ojukwu’s family. In paragraph 20, he avers that standing is a three-bedroom bungalow owned by the plaintiff’s mother together with the late Christopher Ojukwu. Again, in paragraph 21, he avers that there is a four-bedroom bungalow jointly erected by the plaintiff and Christopher Ojukwu***

which property was presently being claimed by the 1st defendant/respondent who had since remarried after the death of Christopher Ojukwu. His interest in the subject-matter of the suit is also played up in paragraph 24. From the averments in the aforementioned paragraphs, I have no doubt that the plaintiff/appellant has shown sufficient and special interest in the subject-matter of the suit which interest is adversely affected or threatened that confers LOCUS STANDI on him. See Oloriode & Ors. v. Oyebe & Ors. (1984) 5 S.C. 1. The only issue raised by the appellant is consequently answered in the negative. I answer the only issue identified by the respondent in their brief of argument in a similar manner-in the negative.

This appeal is consequently meritorious and it is allowed. The judgment of the court below and the ruling of the trial court are hereby set aside. In their place, I hereby enter an order that the plaintiff has LOCUS STANDI in this case and I hereby order that the trial of the case shall commence in the High Court of Justice, New Judicial Division before another judge.

The costs of this appeal is assessed at N50, 000.00 in favour of the plaintiff/appellant.

MUSDAPHER JSC

I have had the preview of the judgment of my Lord Aderemi, J.S.C. just delivered with which I entirely agree. For the same reason contained in the judgment, which I adopt as mine, I also allow the appeal and set aside the decisions of the courts below and hold that the appellant has sufficient interest in the subject matter of the suit before the trial court. I abide by the order of costs contained in the aforesaid judgment.

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother, Aderemi. J.S.C. I agree with his reasoning and conclusion that this appeal is meritorious. I would also allow it. I subscribe to the order made on costs.

OGBUAGU JSC

The Appellant was the Plaintiff in the High Court of Anambra

State sitting at Nnewi in the Nnewi Judicial Division. He had initially, sued the 1st defendant/Respondent who caused an unconditional appearance to be entered on her behalf. Thereafter, he filed his Statement of Claim dated 10th October, 1991, but filed on 11th October, 1991. On 31st October, 1991, an application was filed on behalf of
B the 1st Defendant/Respondent for an Order dismissing the suit on three grounds or points of law which read as follows:

"(a) The Plaintiff/Respondent has no locus standi to bring this suit.

C *(b) The Statement of Claim did not disclose any valid or reasonable cause of action against the defendant.*

(c) The suit is frivolous; vexatious and abuse of the process of court"

D The 1st Defendant/Respondent, swore an affidavit in the support of the application/motion.

In re-action, the Appellant filed an application on 7th May, 1992 seeking an Order joining the 2nd Defendant/Respondent as a defendant in the suit and a further Order, enabling the Appellant to sue the 1st Defendant/Respondent not only for herself, but as Next
E Friend of the 2nd Defendant/Respondent. The application which was supported by an affidavit was duly granted on 4th November, 1993. On 21st September, 1994, the Appellant filed a "Claim" and on the same date, filed his Statement of Claim reflecting the said joinder. On
F 23rd March, 1996, another application was filed on behalf of the Respondents for an Order of Court, dismissing the suit on points of law which read as follows:

"a) The Plaintiff/Respondent has no locus standi to bring this suit.

G *b) The Statement of Claim did not disclose any valid or reasonable cause of action against the Defendant (sic).*

c) The suit is frivolous, vexatious and abuse of process of court,

d) The reliefs sought will not effectively determine the dispute and will serve no useful purpose".

H On 2nd July, 1996, the Appellant changed his counsel. The learned trial Judge - Ononiba, J. (as he then was) after hearing arguments of the learned counsel for the parties, in a considered Ruling delivered on 8th October, 1997, dismissed the suit. His Lordship, stated at page 41 of the Records inter alia, as follows:

“In my view the plaintiff has no locus standi to bring this action and all the necessary defendants have not been joined. I need not deal with other matters raised in the objection. The demurrer succeeds and this suit is hereby dismissed”.

The Appellant appealed to the Court of Appeal, Enugu Division -Coram Ubaezuonu, Fabiyi and M.D. Muhammad, JJCA. In its painstaking considered Judgment delivered on 21st June. 2000 - per Ubaezuonu, JCA, it unanimously also dismissed the appeal. At page 100 of the Records, His Lordship, stated inter alia, as follows:

“The appellant could have a locus standi in respect of some of the properties mentioned in paragraphs 20 and 21 of the Statement of Claim if proper reliefs are claimed in respect of themThe pleading and the reliefs claimed do not bring out the real interest of the appellant in the properties or the wrong he suffered in respect of them. As I remarked earlier, the pleading is replete with careless work. Be that as it may, it cannot be denied that on a more careful and proper pleading the locus standi which does not exist in the present state of the pleading may be given rise to. I am not prepared to say that with measure of ingenuity (sic) in amendment, locus standi may be restored, at least, with respect to part of the claim. As the Statement of Claim stands, with the reliefs claimed thereon. I am of the view that the lower court was right in holding that the appellant lacked the locus standi to prosecute the action”.

At page 102 of the Records, His Lordship concluded thus:

“In this case on appeal, I have shown that the appellant could have locus standi in respect of some of the items of the claim if with a measure of ingenuity some amendments are made or if the claim have been properly framed and facts properly pleaded. An order of dismissal will not in the peculiar circumstances of the case meet the justice of the case. I will therefore follow the reasoning in Oloriode vs. Oyebe (supra) and make an order of striking out. In the final analysis the Order of dismissal made by the lower court is hereby set aside, and in its place the Order striking out the suit is substituted. Save as to the above Order, the appeal is dismissed. The Respondents shall have reduced costs of this appeal which I fix at N2, 000”.

Dissatisfied with the said Judgment, the Appellant has appealed to Court. In his Brief of Argument filed on 1st November, 2002, one lone issue for determination, has been formulated. It reads

thus:

“Whether the Court of Appeal was correct after holding that the Appellant had proprietary interest in two properties pleaded in paragraphs 20 and 21 of the Statement of Claim and entitled to react in a court of law to protect the said properties, to have finally struck out the suit on grounds of lack of locus standi and non-joinder of necessary parties”.

On their part, the Respondents in their Brief of Argument II filed on 23rd January, 2003, have formulated also only one issue for determination, namely

“Whether the learned justices of the Court of Appeal were right in upholding the opinion of the learned trial judge that the plaintiff lacks the locus standi to bring and maintain the suit”.

When this appeal came up for hearing on 6th October, 2008, both learned counsel for the parties, adopted their respective Brief. While the learned counsel for the Appellant Nwankwo urged the Court to allow the appeal, Ike (Miss) learned counsel for the Respondents, urged the Court to dismiss the appeal. Thereafter, Judgment was reserved till today.

The reliefs sought in the said Statement of Claim at page 23 of the Records, read as follows;

“1. A declaration that the said late Christopher Ojukwu is not the father of the 2nd defendant.

2. A declaration that the said late Christopher Ojukwu died leaving only three female issues as between him and the 1st defendant.

3. A declaration that the 2nd defendant is not a member of the Ojukwu family of Okpuno Ebenator Uruagu Nnewi, and cannot inherit therefrom.

4. An Order of injunction restraining the defendants either by themselves agents or privies from insisting that the 2nd defendant is a member of the Ojukwu's family of Okpuno Ebenator, Uruagu Nnewi and should inherit therefrom”.

The crux of this appeal as noted by the Court of Appeal (hereinafter called “the court below”), is *locus standi*.

Let me deal briefly with the words LOCUS STANDI. At page 87 of the Records, the lower court stated that literally, the expression consists of two latin words meaning a “place to stand”. That used in

connection with a court action, it means a place to stand in a suit. That it is usually, used in connection with a plaintiff who has commenced a suit. It is however, settled that it denotes the legal capacity to institute proceedings in a court. See the case of Akinfolari & 2 ors. v. Akinola (1994) 4 SCNJ (Pt.1) 30 @ 61 - per Onu, JSC. (rtd.). See also the cases of Chief Dr. Irene Thomas & ors. The Most Rev. Timothy Olufosoye (1986) 1 NWLR (Pt. 18) 669 @ 604-685; (1986) 2 SC. 325; Bolaji v. Bamgbose (1986) 4 NWLR 67 (Pt. 67) 632 @ 646; Chief Gani Fawehinmi v. Col. Akilu (1987) 4 N.W.L.R. (Pt.67) 797; (1987) 11-12 SCNJ. 151 to mention but a few.

Also settled, is that a person is said to have *locus standi*, if he has shown sufficient interest in the action and that his civil rights and obligations, have been or are in danger of being infringed and that the onus of proof is on the party who has initiated the proceedings. See the case of *Prince Oduneye v. Prince Etimuga* (1990) 12 SCNJ. 1 @ 7 & 8. Since locus standi is the legal capacity to institute proceedings in a court of law, it means that locus standi will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected. There is therefore locus standi, wherever there is a justiciable dispute.

Thus, in the Book - "*Law of Declaratory Judgments*" by Lazar Sama at page 12, referred to by Oputa, JSC in his concurring Judgment in the case of *Attorney-General of Kaduna State v. Mallam Umaru Hassan* (1985) 2 NWLR (Pt.8) 483 @ 525, it is stated therein that the court has sufficient leeway or outright discretion, to decide whether or not an applicant for a relief or reliefs, has the legal interest to sue. It is assumed that the locus standi of an applicant, must be determined in the light of the special relief sought and that accordingly, declaratory discretion and discretion on standing, must unavoidably, suffer a degree of fusion. For this proposition, the Author cited/referred to the Canadian case of *Thorson v. Attorney-General of Canada* (No. 2) [1975] 1 S.C.R. 138 @ 145 proffered by Laskin. J. Therein, the test of justiciability as referred to in the case of *Prince Oduneye v. Prince Etimuga* (supra), was also stated. Oputa, JSC, also @ page 526 referred to another test of standing - i.e. whether there exists a dispute between the parties. In other words, locus standi, is determined by the Statement of Claim just like jurisdiction. See the cases of *Adefulu & 12 Ors. v. Oyesile & 5 Ors.* (1989) 5 NWLR (Pt.

122) 377; (1989) 12 SCNJ. 44; Owodunni v. Registered Trustees of Celestial Church of Christ & ors. (2000) 10 NWLR (Pt.675) 315; (2000) 6 SCNJ. 399; Bolaji v. Bamgbose (supra) and recently; Adesanya & 2 Ors. v. Prince Adewole (2006) 6 JNSC (Pt.23) 349 @ 371; (2006) 7 SCNJ. 501 @ 520.527: (2006) 7 S.C. (pt. 1 II) 19 @ 36 - 37, 53. See also the Nigerian Bar Journal Vol. XIX No. 2, 1983 page 81 by Dr./Mrs. A. Sasu.

In concluding this issue and as a matter of fact, in the recent case of Prince, Ladejobi & 2 ors. v. Otunba Oguntayo & 9 Ors. (2004) 18 NWLR (Pt.904) 135; (2004) 7 SCNJ. 298 @ 315, Musdapher, JSC, in his concurring Judgment stated at page 173 inter alia, as follows:

“.....The term “locus standi” denotes the legal capacity to institute proceedings in a court of law and is used interchangeably with term like “standing” or “title to sue”. It is the right or competence to institute proceedings in a court of law for redress or assertion of a right enforceable at law”.

His Lordship also referred to the cases of Attorney-General, Kaduna State v. Hassan and Adefulu v. Oyesile (supra) and went on thus - *“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.”*

He also referred to the case of Buraimoh Oloriode & ors. v. Simeon Oyebi & ors. (1984) 5 SC. 1- and continued inter alia, as follows:

“In ascertaining whether the plaintiff or the plaintiff have standing to initiate the proceedings the Statement of Claim should be looked at”.

See the case of Adesokun v. Adegorola (1997) 3 NWLR (pt. 493) 261; (1997) 3 SCNJ. 1 @ 15 (also supra) was referred to.

It need be emphasized and this is also settled that the issue of locus standi, does not depend on the success or the merits of the case, but on whether the plaintiff has or the plaintiffs have sufficient interest or legal right in the subject- matter of the dispute. See Ladejobi & ors. v. Ogunlayo & ors. (supra).

In the light of the foregoing, the court below, having conceded, found as a fact and held that the Appellant has locus standi in some of his claims which finding/or concession, is supported by the aver-

ments at least in paragraphs, 3, 4, 20, 21, 24 and 25 of the Statement of Claim, it was not justified, to have dismissed the Appellant's action. The Order of striking out notwithstanding, is of no moment. I so hold.

As to the further locus standi of the Appellant, it is now settled law that any member of a family can sue to defend family property. See the case of Coker v. Oguntola & ors. (1985) 1 ANLR (PO) 278. In other words, a member of the family has a right and duty to protect family property and therefore has locus standi to institute an action in respect of any wrong doing to his family land or property. See the cases of Sogunle v. Akerele (1967) NMLR 58, 60; Ugwu v. Agbo (1971) 10 S.C. 27. 40; and Alhaji Gegele v. Alhaji Layinka & 6 ors. (1993) 3 SCNJ. 39 @ 45; So the Appellant has locus standi in the case leading to this appeal.

It need be stressed and this is also settled, that a head of family, as in the instant case, can take an action to protect family property without prior authority of the other members of his family. See the cases of Animashawun v. Osuma & ors. (1972) 4 SC. 200 @ 214; Njoku & ors. v. Eme & ors. (1973) 5 SC.. 293 and Anatogu v. Attorney-General of East Central State & ors. (1976) ECSLR 453. In Sogunle's v. Akerele & ors. (supra), it was further held that a member of a family can take steps to protect family property or his interest in it. If he has not the authority of the family to bring the action, the family would not be bound by the result unless for some reason the family is estopped from denying that the action was binding. See also the case of Melifonwu & ors. v. Egbuji & ors. (1982) 9 SC. 145 @ 159. In this case on appeal. I have referred to the pleading of the Appellant in paragraph 3 of his Statement of Claim. For the avoidance of doubt, I herein reproduce it. 'It reads as follows:

'The plaintiffs the head and Obi of the Ojukwu's family of Okpuno Ebenator Village, Uruagu Nnewi. The plaintiff is also the head and Obi of Dunuka family (which is the larger family to which the Ojukwu's family belong) of Okpuno Ebenator Village, Uruagu Nnewi'.

The above averment is very clear and unambiguous.

In the case of Udugba v. Emeruo & anor. (1966) NMLR 102, there was a claim for declaration of title and the issue was the competence of a party, putting title of his family in issue before a Customary

court. Competence of course, depends not on form, but on whether in fact the family knew and approved of his action. It was held inter alia, that the appellant, was competent to put the title of his family in issue on the evidence, there being an unavoidable inference, that the other members of his family, knew of and approved his action and he, being the most senior member of the family except one member whom he described as being “abroad”. The appeal was allowed, but instead of granting declaration that the land belonged to the plaintiff, the declaration granted, was that the land, belonged to his said family.

I have had the privilege of reading before now, the lead Judgment of my learned brother, Aderemi, JSC. In my humble and respectful view, the justice of this matter is an Order for a retrial of the case before another Judge as ordered by my learned brother Aderemi, JSC, As to when and why a Re-trial should or ought to be granted or not. See the cases of Karibo & ors. v. Grend & anor. (1992) 3 NWLR (Pt.230) 426; (1992) 4 SCNJ. 12; PB. Olatunde & Co. Nig. Ltd. (1994) 4 SCNJ. (Pt.) 65 & 76 and Musa She (Jnr) & anor v. Da Rap Kwan & 4 ors (2000) 5 SCNJ. 101@ 120, just to mention but a few. In view of the observations of the court below in its said Judgment part of which I have reproduced earlier in this Judgment, the Appellant may have got the “hint” that all may not be very well with his pleadings. His learned counsel through an amendment may wish to avail himself with the opportunity given to the Appellant by the court below, to put his house in order so to say, if he wishes, I say no more on this matter.

In conclusion, it is from the foregoing, that I too, allow the appeal. I also abide by the consequential orders of my learned brother, Aderemi, J.S.C. including that on costs.

MUNTAKA-COOMASSIE JSC

This is an appeal against the judgment of the Court of Appeal 2nd Enugu Division delivered on 21st day of June, 2000 in which the decision of the trial court was affirmed by the court below. The suit concerned itself with paternity and or inheritance of the 2nd defendant an infant. The matter in the High Court Nnewi Anambra State was to resolve the issue whether the late Christopher Ojukwu is the father of the 2nd defendant/respondent (Tobechukwu), Ojukwu

an infant, i.e. is he or is he not a lawful and legitimate son of the late Christopher Ojukwu.

The defendants, now respondents filed a preliminary objection to the hearing of the suit filed by the plaintiff/appellant to the effect that the 2nd defendant, Tobechukwu Ojukwu, is not a member of Ojukwus' family of Uruagu Nnewi, and therefore has no right of inheritance; in other words he cannot be an heir to the late Christopher Ojukwu. See pages 30-36 of the record. B

After considering the preliminary objection the trial court dismissed the suit for lack of locus standi. On page 41 of the record, the trial court " has this to say: - C

"In my view the plaintiff has no locus standi to bring this action and all the necessary defendants have not been joined. I need not deal with other matters raised in the objection. The demurrer succeeds and this suit is hereby dismissed" D

The plaintiff, not satisfied with the above decision, unsuccessfully, appealed to the Court of Appeal Enugu Division hereinafter called court below. See pages 80-104 of the record. In striking out the appeal the court below unanimously held as follows: -

"In this case on appeal, I have shown that the appellant could have locus standi in respect of some of the items of the claim if the claim if with a measure of ingenuity some amendments are made or if the claims have been properly framed and facts properly pleaded. An order of dismissal will not in the peculiar circumstances of the case meet the justice of the case. I shall therefore follow the reasoning in Oloriode v. Oyebe (supra) and make an order of striking out. In the final analysis the order of dismissal made by the lower court is hereby set aside, and in its place the order striking out the suit is substituted. Save as to the above order, the appeal is dismissed. The respondents shall have reduced costs of this appeal which I fix at N2, 000". E F G

The appellant still not satisfied and lodged an appeal to this court urging the court to settle the riddle involved in this appeal.

I had the privilege of reading in draft-form the judgment of my learned brother, Aderemi, J.S.C. who admirably solved the so-called riddle to my satisfaction. I agree that the plaintiff/appellant cannot be correctly described as "a busy body". It has been stated times without number that the issue of jurisdiction is so fundamental that it must be determined as soon as it is raised. The decisions of both the H

trial court and court below, with respect, cannot be correct. The issue of jurisdiction of that court should have been settled first and foremost before going into any other issue.

It is strongly stated in this court that once an objection is raised (by way of preliminary objection as in this appeal), to the competence or jurisdiction of a court to entertain a matter, the court should deal with that issue at the earliest opportunity and not wait till the end of the case as opined by the Court of Appeal in the instant case. See *Tiza v. Begha* (2005) 15 NWLR (pt. 949) 616 at 638 per Musdapher, J.S.C. who held thus: -

“..... whenever a challenge is made to the competence of a court to entertain a matter, the court should deal with that issue at the earliest opportunity and not wait till “at the end of the case” as opined by the Court of Appeal in this matter. See *Nnonye v. Anyichie* (2005) 2 NWLR (pt. 835) 537; *Amoo v. Alabi* (2005) 12 NWLR (pt. 835) 357; (2003) 7 SC 154”.

Kabo Air Ltd. v. Inco Beverages Ltd. (2003) 6 NWLR (pt. 811) 323; *Onyema v. Oputa* (1987) 3 NWLR (pt. 60) 259.

It is a fact that cannot be altered that jurisdiction of a court of law is so fundamental and crucial to the adjudication failure of same the whole proceedings thereafter will be affected by a fundamental vice (to borrow computer language) which will render the proceedings a complete nullity. That being the case, whenever the jurisdiction of a court is challenged that issue be settled first one way or the other before the actual hearing of the suit. The issue of jurisdiction cannot be lawfully deferred at all - *Ojokolobo v. Alamu* (1987) 3 NWLR (pt. 61) 377; *A-G of the Federation v. Sode* (1990) 1 NWLR (pt. 128) 500 at 542.

For the reasons and analysis I have given and the fuller and more comprehensive discussions adumbrated in the judgment of my learned brother, Aderemi, J.S.C., I too, will allow the appeal and set aside the decision of the court below. And finally to say that the plaintiff now appellant has the required “Locus standi” to institute the said action. I abide by the consequential orders made by my learned brother, Aderemi, J.S.C. N50,000 costs to the appellant.