

SUPREME COURT OF NIGERIA
19TH JUNE, 2009 SC. 24/2003
**CORAM:- A. M. MUKHTAR, I. F. OGBUAGU, CHUKWUMA-
ENEH, J. A. FABIYI, O. O. ADEKEYE, JJSC**

BASINCO MOTORS LTD. APPELLANT
AND
1. WOERMANN-LINE RESPONDENTS
2. UMARCO (NIGERIA) PLC

STATUTES - Foreign laws & cases - Effect of - They are only persuasive in the interpretation of our constitution & statutes - They can not be relied on - To hold that decisions of our courts - Based on our statutes - Are not good laws (H1)

ADMIRALTY - Bill of lading - Meaning - It is a writing signed on behalf of the owner of a ship - In which goods are embarked - Acknowledging receipt thereof - And undertaking to deliver them - Subject to conditions therein (H2)

ADMIRALTY - Bills of lading - Notify party - Meaning of - It is the party whose name and address appear in a bill - Who is to be notified of the arrival of the goods at the discharge port (H3)

PARTIES - Locus standi - Effect on jurisdiction - It is a forerunner to jurisdiction - Where plaintiff lacks locus standi - Court will decline jurisdiction (H4)

PARTIES - Locus standi - Contracts - Requirements - Claim of plaintiff must, inter alia, reveal a justiciable cause of action - So where action is for breach of contract - There is need for privity of contract (H5)

CONTRACTS - Privity of contract - Purport of - It portrays that generally a contract affects the parties thereto - And cannot be enforced by or against a person - Who is not a party to it (H6)

COURTS - Bills of lading - Notify party - Right of audience - He has

no such right whether in contract or in negligence - Not even in an action for bailment (H7)

CONSTITUTIONAL LAW - Fair hearing - Principles - Effect on issue of locus standi - Locus standi is a threshold issue - Fair hearing is concerned with adjudication - Unless there is locus standi - Court has no jurisdiction to adjudicate (H8)

JUDICIAL PRECEDENTS - Overruling - Applicability - Though Supreme Court may over rule its previous decisions - Where a decision is based on statute - It requires statutory amendment to over rule it (H9)

FACTS

Plaintiff/appellant sued defendants/respondents, jointly and severally, claiming the sum of 38,198.35 Deutsch Marks being the value of consignment of goods short landed by respondents. Appellant also claimed for incidental expenses. Appellant's case was that it had ordered for 2 pallets and one carton of car spare parts from Germany. 1st respondent conveyed the items down to Nigeria and delivered same to the 2nd respondent, who discovered that the container landed with part of the consignment missing. Respondents acknowledged short delivery and accepted liability.

Appellant went to court subsequently, alleging negligence on the part of respondents. During trial, when it became obvious that appellant was not a party to the contract of carriage, respondents applied to have the suit struck out/dismissed, on the ground that appellant lacked locus standi. Upon hearing the application, the court dismissed the suit in limine. Dissatisfied, appellant appealed to the Court of Appeal, which appeal was dismissed. Still aggrieved, appellant has brought this further and final appeal to the Supreme Court.

ISSUES FOR DETERMINATION

1. *“Whether the appellant even though described in the bill of lading as “Notify Party” indeed lacked Locus to sue upon the bill of lading.*

2. *Whether the failure by the lower Court to consider the Reply Brief of Argument filed by the Appellant did not amount to a breach of the Appellant’s right to a fair hearing as guaranteed by*

Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria.

3. Was the lower Court right in holding that the Appellant cannot maintain an action against the Respondent in tort by reason of Section 375(1) of the Merchant Shipping Act 1990 when it is the purchaser and a Bailor for value having paid the price and freight and the property in the goods had passed to it by virtue of it being the holder of the original copy of the bill of lading and in possession of part of the Consignment”.

HELD (Unanimously dismissing the appeal per **ADEKEYE JSC**)
Foreign laws & cases - Effect of

1. The court must interpret the law as it is and not as it ought to be. It is settled principle in the Nigeria Legal System that foreign laws and cases are only persuasive in the interpretation of our Constitution and Statutes. The learned counsel cannot rely on foreign cases to hold that the decision of our courts based on the provision of section 375 (1) of the Merchant Shipping Act 1990, is not good law in that it gives no room for the consideration of the peculiar circumstance of each case in terms of the type and/or the nature of the relevant bill of lading. (p. 1622 C)

ADMIRALTY - Bill of lading - Meaning

2. A bill of lading is defined in Blackburn on Sale 3rd Edition at page 27 as a writing signed on behalf of the owner of the ship in which goods are embarked, acknowledging the receipt of the goods, and undertaking to deliver them at the end of the voyage subject to such conditions as may be mentioned in the bill of lading. The bill of lading is therefore a written contract between those who are expressed to be parties to it. (p.1624 A)

Bills of lading - Notify party - Meaning of

3. A notify party is the party whose name and address appear in a bill of lading who is to be notified by the shipping company or its agent of the arrival of the goods at the discharge port. The notify party is often an agent for the receiver of the goods who arranged for their clearance and transport to the receivers premises. There is normally a box on the bill of lading into which the details of the notify party are

PARTIES - Locus standi - Effect on jurisdiction

4. Condition three above covers the issue of *locus standi*. In order for the court to have jurisdiction, the plaintiff must have *locus standi* to commence or institute the action. The learned Justice Niki Tobi JCA (as he then was) aptly puts this in the case of owners of M.V. Baco liner 3 v. Adeniji 1993 2 NWLR pg 274 pg 195 at Pg 202 paras C - D that “*Locus standi* in my view is a fore runner or precursor to jurisdiction. Accordingly, where it is proved that a plaintiff lacks *Locus standi* to bring an action, the court will decline jurisdiction as it has none. A court of law has no jurisdiction to manufacture *Locus standi* on a party and arrogate to itself jurisdiction. That is never done”. (p. 1625 B)

D

PARTIES - Locus standi - Contracts - Requirements

5. In order to achieve the status of *locus standi*, the claim of the plaintiff must reveal:

- (a) A legal or justiciable right
- E (b) Show sufficient or special interest adversely affected
- (c) A justiciable cause of action

Where the question of *locus standi* comes into the issue of cause of action, a plaintiff who has no privity of contract with the defendant will fail to establish a cause of action, for breach of the contract as he will simply not have a *locus standi* to sue the defendant on the contract. (p. 1625 E/G)

F

CONTRACTS - Privity of contracts - Purport of

G 6. The doctrine of privity of contract portrays that as a general rule, a contract affects the parties thereto and cannot be enforced by or against a person who is not a party to it. In short only parties to a contract can sue or be sued on the contract and a stranger to a contract can neither sue or be sued on the contract even if the contract is made for his benefit and purports to give him the right to sue or make him liable upon it. (p. 1626 A)

H

COURTS - Bills of lading - Notify party - Right of audience

7. It is however now settled by a plethora of cases that by virtue of

section 375 (1) of the Merchant Shipping Act 1990 only a consignee of the goods named in a bill of lading or an endorsee whom the property in the goods have passed and by virtue of those facts will be able to sue on a bill of lading contract. A notify party or addressee has no right of audience on the bill of lading WO13 either in contract or tort of negligence. Even in an action for bailment it is not possible to make a party whose name appears only in regard to notification of the arrival of the consignment assume the role of a bailor or bailee. (p. 1626 E/G)

Fair hearing - Principles - Effect on issue of locus standi

8. The foregoing therefore presupposes that to determine whether a plaintiff is the proper person to institute an action is a threshold determination, which the trial court and the lower court had rightly done. Fair hearing as guaranteed by section 36(1) of the 1999 constitution of the Federal Republic of Nigeria 1999 embraces the twin pillars of justice as follow:-

- (a) Audi alteram partem (Hear the other party).
- (b) Nemo iudex in causa sua (No one should be a judge in his own cause).

Where the appellant has no locus standi to institute an action, the court has no jurisdiction to adjudicate on such matter. (p. 1629 A)

JUDICIAL PRECEDENTS - Over ruling - Applicability

9. He submitted that for suits founded in tort the applicable statutes are the Hague Rules 1931 or Visby Rules 1977. They are regulations of universal applications stated in the bill of lading to be applicable to carriage by sea. The Rules are the basis for the assessment of liability and compensation for losses in Marine cargo claims. Since the issue of *locus standi* on the Bill of lading derives from section 375(1) of the Merchant Shipping Act, and is thereby statutory, it requires a radical change in the law — which is a Legislative Act, for the courts to revisit and overrule their previous decisions on the matter, I must quickly explain that revisiting or overruling its previous decisions by an Apex Court is not a random exercise. This court will surely revisit or overrule its previous decisions to curb perpetration of injustice. Where the cases are based on legislations or statutes it obviously requires an amendment to the particular statutes to overrule such cases.

NOTABLE POINTS OF INTEREST
MUKHTAR JSC

1. *Appellant's reply brief falls foul of the rules*
- B Reading through the appellant's reply brief of argument (to be found on pages 102 - 105), I fail to see that the content of the said brief has met the provision of the said rule reproduced above. It contains either a repetition of the arguments already proffered in the appellant's brief or completely new points, which the appellant is not allowed to raise. Authorities abound on the purport and function of an appellant's reply brief of argument, and where it does not fall within the requirement of the rule, then the reply brief becomes otiose. The purpose and purport of a reply brief is to address fresh points raised in a respondent's brief of argument, and not to introduce fresh points.
- C
- D (p. 1633 B)

OGBUAGU JSC

2. *Passage of property other than by the Bill confers no right to sue*
- E At pages 5 and 6 of the Judgment, the court below, also referred to the case of *Pacers Multi-bynatnic Ltd. v. M. V. "Dancing Sister" (2000) 3 NWLR (Pt.648) 241 CA.* and stated as follows:-
- "In the *"DANCING SISTERS"* case (*supra*) on whether mere passage of property confers right to sue I did say that by virtue of S. 375 (1) of the merchant shipping Act even if the property in the good had passed unto a party otherwise than upon or by reason of the consignment or endorsement, the right of suit does not pass. Property to goods covered by a Bill of lading can only pass to a consignee or endorsement. I do not think the statute does envisage any other mode of passing property in the goods".
- F
- G Again, I agree and cannot fault the above holding which again is supported by the Act. (p. 1637 G)

H **REPRESENTATION**

Mr. G.E. Ojiekhudu the appellant.
Mrs. Ejide Sodipo with Toluwani Adebisi Esq. for the Respondents

CASES REFERRED TO

Financial Merchant Bank Limited v. Nigerian Deposit Insurance Corporation 1995 6 NWLR Pt.400 page 226 at page 234

Broad line Enterprise Ltd v. Monterey Maritime Corporation and Anor 1995 NWLR Pt.417 page 1

Fassasi Adesanya v. Leigh Hoegh A/S 1907 - 1979 NSC page 128 at B page 129

Madukolu v. Nkemdilim 1962 1 All NLR 587

Alfortrin Ltd. v. A. Y. 1996 9 NWLR pt 475 pg. 634

Owodunni v. Registered Trustees of C.C.C. 2000 10 NWLR pt 675 C pg 375

Ajileye v. Fakayode 1998 4 NWLR part 545 page 184

H. H. Eze Umeji v. Attorney General of Imo State 1995 4 NWLR part 391 page 552

Agwasim v. Ejivumerwerhaye 2001 91 NWLR part 7 1 8 page 395 D

Boothia Maritime Incre & ors v. Far East Mercantile Company Limited 20019 NWLR Pt.719 page 572

Nigerbrass Shipping Line Ltd v. Aluminium Extrusion Company Limited (1994) 4 NWLR Pt.341 page 733

Broad line Enterprise Ltd v. Monterey Maritime Corporation and Anor E 1995 NWLR Pt.417 page 1

BOOK REFERRED TO

Blackburn on Sale of Goods, 3rd Edition

F

LEAD JUDGMENT BY ADEKEYE JSC

This appeal is against the judgment of the Court of Appeal, Lagos Division delivered on the 5th day of March 2001. The appellant Basinco Motors Limited as plaintiff instituted an action before the Federal High Court, Lagos, against the Respondents, Woermann-Line and Umarco (Nigeria) PLC as 1st and 2nd defendants jointly and severally for the under mentioned claims: -

a. The sum of 38,198.35 Deutsch Marks or its equivalent in Naira being the value of the plaintiff's consignment of goods short landed by the defendants.

b. The sum of N388,116.12 being incidental expenses incurred by the plaintiff as a result of the defendants negligence and loss of profits on the goods.

The case of the plaintiff before the trial court in a nutshell was that the appellant a limited liability company engaged in the business of automobile spare parts and vehicle accessories ordered for 2 pallets and one carton of car spare parts from Terramem GMBH of Hamburg Germany. Woermann-Line a shipping company based in Hamburg Germany conveyed the items down to Nigeria on board the ship M.V. Fiona in the container LCL 1X20NOEACU484035-1 to be delivered to the warehouse of the 2nd Respondent Umarco (Nigeria) Pic, an agent of the 1st Respondent.. The particulars of the consignment are: -

1. 15 pieces of cylinder head 1150102621.
2. 15 pieces of cylinder head 1150102821.
3. 100 set of ignition cable M102 Engine ZEF 466.
4. 2000 sets Gasket for Hengst filter.

A certificate of value dated 11th day of May 1992 was issued by the shippers to the appellant. On arrival at the Apapa Port Warehouse of the 2nd Respondent a routine check of the container was conducted. It was discovered that the container landed with part of the contents missing. The Respondents acknowledged the short delivery of the consignment and accepted liability in their letter of the 4th of November 1992 to the appellant. The appellant went to court because the 1st Respondent owed it a duty of care to deliver the consignment as contained in the bill of lading Ref.No.W013 of 21st of May 1992. When it became apparent at the trial court that the appellant was not a party to the contract of carriage, the Respondents filed a motion on notice dated the 30th of May 1994 pursuant to Order 27 Rules 1, 2 and 3 of the Federal High Court Civil Procedure Rules 1976, section 375 (1) of the Merchant Shipping Act Cap 224, Laws of the Federation 1990 and under the inherent jurisdiction of the court seeking the following relieves: -

1. *"An order dismissing/striking out this suit on the ground that the plaintiff is not a proper party, not having been named either as consignee or endorsee on the bill of lading and or if so named, having, in turn, endorsed the said bill of Lading to other parties, has no locus standi to institute and maintain the suit.*

2. *An order striking out the name of the 2nd defendant from the substantive suit on the ground that the 2nd defendant is an agent of a disclosed principal".*

The presiding Judge took arguments of counsel in respect of the application. In a considered ruling delivered on the 26th of July 1996 the trial court dismissed the suit in limine for lack of *locus standi* by the plaintiff/appellant.

Dissatisfied with the ruling the appellant filed a Notice of Appeal to the Court of Appeal urging the court to reverse the decision of the trial court. On the 15th of March 2001 the Court of Appeal dismissed the appeal and affirmed the judgment of the trial court. Aggrieved by the decision of the Court of Appeal, the appellant further filed an appeal in this court. At the hearing of this appeal — the appellant adopted and relied on the Brief filed on the 26th of November 2003 and the Respondents also adopted and relied on their joint brief filed on the 25th of February 2004. The appellant formulated three issues for determination as follows: -

1. *“Whether the appellant even though described in the bill of lading as “Notify Party” indeed lacked Locus to sue upon the bill of lading.*

2. *Whether the failure by the lower Court to consider the Reply Brief of Argument filed by the Appellant did not amount to a breach of the Appellant’s right to a fair hearing as guaranteed by Section 36(1) of the 1999 Constitution of the Federal republic of Nigeria.*

3. *Was the lower Court right in holding that the Appellant cannot maintain an action against the Respondent in tort by reason of Section 375 (1) of the Merchant Shipping Act 1990 when it is the purchaser and a Bailor for value having paid the price and freight and the property in the goods had passed to it by virtue of it being the holder of the original copy of the bill of lading and in possession of part of the Consignment”.*

The Respondents distilled two issues for determination arising from the grounds of appeal namely: -

1. *“Whether a person named as a NOTIFY PARTY on a Bill of Lading can institute and maintain an action under any guise in respect of the Bill of Lading.*

2. *Whether the Court of Appeal was right when it upheld the decision of the Federal High Court to determine the locus standi of the Appellant to institute this suit based on the facts in the statement of claim alone”.*

I intend to be guided by the issues raised for determination by the appellant — which I shall proceed to consider *seriatim*.

ISSUE ONE

“Whether the Appellant even though described in the bill of lading as “Notify Party” indeed lacked Locus to sue upon the bill of lading”.

The learned counsel for the appellant vehemently defended the position of the “Notify Party” in relation to *locus standi*! On a bill of lading. He made copious submissions in the appellant’s brief that the trial and lower courts failed to give due consideration to the endorsement on the front and reverse side of the Bill of Lading so as to determine the operative part and give effect to them. The learned counsel conceded that in Nigeria the standing to sue on a bill of lading is conferred by statute by section 375 (1) of the Merchant Shipping Act Cap 224 Laws of the Federation of Nigeria 1990, he however disagreed with the pronouncement of the lower court that

“The locus standi to sue on a bill of lading, either in contract, bailment, or tort is statutory. It cannot be conferred by the alleged acts of the Respondent” on page 114 of the record of appeal as not being the correct position of the law. The learned counsel urged this court to be persuaded by the opinion of a world acclaimed law expert in the province of Merchant law, Tetley Williams in his book on MARINE CARGO CLAIMS 3rd Edition that when a bill of lading defines the parties to the contract then it would seem as if the party named as merchant within the context of the terms of the bill would be able to take suit on the contract of carriage if he sustained damage and loss. The learned counsel submitted that the lower court failed to examine the nature of the relevant bill of lading, and that the bill as a document of title is equivalent in law to possession of the goods. This document entitles the appellant as a holder of the original bill of lading to the delivery of the goods. Reference was made to Payne & Ivamy Carriage of Goods by sea Eleventh Edition and the case of Horse v. Bidell Brothers 1912 A.C 18. The learned counsel considered the three types of bill of lading and the legal effect of the holder of the original bill of lading such as the appellant in a contract of carriage of goods by sea. He further made submissions on: -

1. Type of contract and nature of the Bill of lading and its effect on the “Notify Party”.

2. Proprietary/Beneficial Interest of a Notify Party.

3. Implied contracts.

He cited a number of foreign cases from the United Kingdom, United States of America and France to conclude that the appellant though referred to simpliciter as a “Notify Party” may be able to sue as the holder of the original copy of the bill of lading. Furthermore in these countries the holder of the original bill of lading is entitled to possession and can sue upon the contract of carriage in respect of the bearer bill of lading. In the light of the trend in the civil law jurisdictions of the United States of America and France, the decision of this honourable court may not be good law today notwithstanding the provision of section 375 (1) of the Merchant Shipping Act 1990. B
C

The appellant finally urged this court to hold that the rule in the case of *Fassasi Adesanya v. Leigh Hoegh & Co.* 1968 1 All NLR page 333 1967 - 1968 NSCC Vol 5 page 247 and *Breadline Enterprises Ltd v. Monterey Maritime Corporation* 1995 9 NWLR Pt. 417 page 1, D

“where it is sought to prosecute an action on a bill of lading, a plaintiff whose name does not appear (other than by reference to his being notified on the relevant bill and he is therein indicated, such a plaintiff has no locus standi to sue upon the bill is not settled law.” E

The Court is invited to revise its decisions in these cases. The appellant made reference to a number of local and foreign cases in his submissions like *Pacers Multi Dynamic Limited v. MV Dancing Sisters* (2000) 3 NWLR Pt. 648 page 241 *Nigerian National Supply Co. Ltd v. Owners of MV Albion* (1987) - 1990 3 NSC Pt. 220 F

Boothia Maritime Inc & ors v. Far East Mercantile Company Limited 2001 9 NWLR Pt. 719 page 572 *Brawal Shipping Nigeria Limited v. Onwadike & Co. Ltd & Anor* 2000 11 NWLR Pt. 628 page 387 G
Nigerbrass Shipping Line Ltd v. Aluminium Extrusion Company Limited (1994) 4 NWLR Pt. 341 page 733

Carcar Co. v. Suzdal 723 2d 1096 Cour d’ Appel d’ Aix

November 23 DMF 1986 page 668

Brandt v. Liverpool, Brazil And River Plate Steam navigation Co. Ltd H (1924) 1 K.B 575. H

The appellant urged this court to hold that it has *locus standi* to institute this action as a “Notify Party”. The Respondents learned counsel replied that the appellant has not disputed the fact that he is not

the consignee or endorsee on the Bill of Lading No.W013 dated the 21st May 1992, neither has it disputed that it was only named as a Notify Party on the face of the Bill of Lading. One question that begs for an answer is whether a notify party on a bill of lading can institute and maintain an action in respect of the Bill of Lading in its name under any guise. This court is urged to answer this question in the negative. The Respondents submitted that the right to sue or *locus standi* can be conferred by the Constitution or a statute or by some customary law, it cannot be presumed or implied.

The Respondents submitted further that an admiralty action cannot be presumed or implied. The learned counsel referred to the case of Financial Merchant Bank Limited v. Nigerian Deposit Insurance Corporation 1995 6 NWLR Pt.400 page 226 at page 234. The Respondents explained further that in an admiralty action premised on the carriage of goods covered by a bill of lading the source of *locus standi* in such an action as in the appellant's case is statutory.

From the foregoing, the learned counsel concluded that it is only the consignee or endorsee of a bill of lading to whom property in the goods have passed by virtue of such consignment or endorsement that can sue or be sued on it. In effect the appellant is a stranger to the contract of carriage evidenced by a bill of lading No.W013 and as a result does not have the right to sue in respect of the bill of lading. The learned counsel relied on the case of Broad line Enterprise Ltd v. Monterey Maritime Corporation and Anor 1995 NWLR Pt.417 page 1 *Fassasi Adesanya v. Leigh Hoege A/S* 1907 - 1979 NSC page 128 at page 129 ratios 4 and 5.

The learned counsel cited the case of *Thomas Chukwuma Makwe v. Chief Obanu Nwukor* (2001) 14 NWLR Pt.733 page 356 of page 358 Ratio 1 - as to the general rule that contract affects the parties thereto and cannot be enforced by or against a person who is not a party to it. The court is urged to discountenance the cases of *Nigerbrass*, *Onwadike* and *Boothias* which are clearly distinguishable from this case in hand. In these cases the bill of lading were consigned to specific persons and subsequently endorsed to other persons. The Respondents also submitted that the appellant can only succeed in bailment upon the terms of the bill of lading No. WO 13 if he is the consignee or the endorsee of the bill of lading. There is no bailment relationship between the appellant and the Respondents. A

company 11 known as Terramar GMBH, the shipper of the goods and not the appellant, delivered the goods to the 1st Respondent. The issue of bailment was most canvassed and argued before the learned trial Judge. The appellant must also be a consignee or endorsee of the goods named on the bill of lading before any collateral right to sue in negligence can accrue to him, while there can be no possibilities of an implied contract between the appellant and the Respondents. The Respondents urged the court to find this issue in favour of the Respondents. B

I must commend the appellant's learned counsel for the level of research and industry embodied in the Brief in favour of making a "Notify Party" one which can institute an action on contract of carriage by sea based on the bill of lading. The learned counsel conceded that the law as to the parties to sue and be sued on a bill of lading is as amplified in section 375 (1) of the Merchant Shipping Act Cap 224 Laws of the Federation. He did not mince words in saying that this statute requires overhauling, and advocated that this court must revisit its decision in the cases *Fassasi Adesanya v. Leigh Hoegh & Co* (supra) and *Breadline Enterprises Ltd v. Monterey Maritime Corporation* (supra). He suggested a situation in which even if the appellant is a notify party and cannot sue in respect of the statutory provision in section 375 (1) of the Merchant Shipping Act, the Supreme Court may exercise its equitable jurisdiction as the Supreme Court of the United States of America did in the case of *CA* the price for the goods and the freight, the purchaser in this case the appellant even though named as Notify Party" has proprietary and beneficial interests sufficient to entitle him to sue the carrier for the value of the goods. The appellant's learned counsel for this proposition relied on foreign jurisdictions and cited cases from France, United States of America and the United Kingdom, He relied on the opinion of renowned authors as well. The suggestion of the learned counsel for the appellant is well received but the implementation by the Supreme Court will have the effect of taking this court outside its constitutional and traditional role of interpreting the laws and statutes, and plunge it unwittingly by pronouncement into usurping the constitutional role of the legislature. This is precisely the warning of the Supreme Court in the case of *Buhari v. INEC & ors* 2009 Vol. 167 LRCN Vol.167 page 1 at pages 82FF - 83A that: - F G H

“Courts of law, in interpreting the Constitution or a statute have no jurisdiction to read into the Constitution or statute what the legislators did not provide for, and a fortiori read out of the Constitution or statute what is provided for by the legislators. In either way, the courts are abandoning their constitutional functions and stringing into those of the legislature by interfering or interloping with them. As that will make nonsense of the separation of powers provided for in sections 4 and 6 of Constitution, courts of law will not do such a thing, whatever is the pressure by counsel.”

This court has a duty to interpret the applicable or operational law at the time of the occurrence of the event for which parties seek redress in court.

The court must interpret the law as it is and not as it ought to be. It is settled principle in the Nigeria Legal System that foreign laws and cases are only persuasive in the interpretation of our Constitution and Statutes. The learned counsel cannot rely on foreign cases to hold that the decision of our courts based on the provision of section 375 (1) of the Merchant Shipping Act 1990, is not good law in that it gives no room for the consideration of the peculiar circumstance of each case in terms of the type and/or the nature of the relevant bill of lading.

I must remark that the overall submission of the learned counsel for the appellant on this issue is very evasive of the real question for determination of this court in the issue.

This court has a duty to interpret that section of the statute - the Merchant Shipping Act and the locus of a notify party to sue on a bill of lading.

The facts not disputed by the parties are as follows: -

1. That the appellant is the owner of the goods carried by the 1st Respondent covered by the Bill of lading No. W013 of 21st May 1992.
2. That the appellant was referred to as Notify Party in the Bill of lading.

3. That the bill of lading was made to order and the name of the appellant did not appear on it as either the consignor or the consignee.

The rules or principles governing the interpretation of statutory pro-

visions are as follows: -

1. It is the intention of the legislature that should be sought, and same is to be ascertained from the words of the statute alone and not from other sources.

2. Where the word used in the provisions of a statute are clear, simple and unambiguous, they should be given their simple, natural and ordinary meaning. B

3. The court is not concerned with the result of its interpretation, that is, it is not the court's province to pronounce on the wisdom or otherwise of the statute but only to determine its meaning. C

4. The court must not import into a legislation words that were not used by the legislature, and which will give a different meaning to the text of the statute as enacted by the legislature.

5. The court must not bring to bear on the provisions of a statute its prejudices as to what the law should be, but rather should D interpret the law from the clear words used by the legislature.

6. The court must not amend the statute to achieve a particular object or result.

Aqua Ltd v. Ondo State Sports Council 1988 4 NWLR Pt.91 page 622 E

Fawehinmi v. IGP 2000 7 NWLR Pt.66s page 481 UBRBDA v. Alkes 1998 2 NWLR Pt-537 page 328 Awolowo v. Shagari 1979 6 - 9 SC page 51 ANN v. FRN1985 2 NWLR Pt,6 page 137 Salami v. Chairman L.E.D.B 1989 5 NWLR Pt.123 page 539 F

Ogbonna v. A.G. Imo State (1992) 1 NWLR Pt.220 page 647

Adeleke v. O.S.H.A 16 NWLR Pt.1006 page 608

Ojokolobo v. Alamu 1987 3 NWLR Pt.61 page 377

This court taking into consideration the foregoing principles G shall examine the provisions of section 375 (1) of the Merchant Shipping Act Cap 224 Laws of the Federation 1990 as *locus stand!* to sue on a bill of lading either in contract* bailment or tort, and most especially whether an appellant described as a Notify Party in the bill of lading could maintain an action against the Respondents. H

Section 375 reads: -

"Every consignee of goods named in a bill of lading, and every endorsee of a bill to whom the property in the goods therein mention shall pass upon or by reason of such consignment or endorsee-

ment shall have transferred to and vested in him all right of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself."

There is need to examine what is a bill of lading and a Notify Party.

A bill of lading is defined in Blackburn on Sale 3rd Edition at page 27 as a writing signed on behalf of the owner of the ship in which goods are embarked, acknowledging the receipt of the goods, and undertaking to deliver them at the end of the voyage subject to such conditions as may be mentioned in the bill of lading. The bill of lading is therefore a written contract between those who are expressed to be parties to it.

A bill has two main functions: -

- a. It constitutes a receipt for the goods which have been received for shipment.
 - b. It constitutes a contract for the carriage of the goods and delivery thereof as it contains the terms and conditions of carriage."
- Awolaja v. Seatrade Groningen B.V 1993 3 NWLR Pt.280 page 209
Bothia Maritime Inc v. Fareast Mercantile Co. Ltd 2001 9 NWLR Pt.772 page 572 SC.

A notify party is the party whose name and address appear in a bill of lading who is to be notified by the shipping company or its agent of the arrival of the goods at the discharge port. The notify party is often an agent for the receiver of the goods who arranged for their clearance and transport to the receivers premises. There is normally a box on the bill of lading into which the details of the notify party are inserted."

Jurisdiction is a strict matter of law confined by either the constitution or by a statute.

In the case of *Madukolu v. Nkemdilim* 1962 1 All NLR 587 the Supreme Court established the principle that in any civil proceedings or matter before any court of law assumes jurisdiction so as to determine or adjudicate on the cause or matter, the court must be competent. A court shall be deemed to be competent when: -

- a. The court must be properly constituted as regards members and qualifications of the bench and no member is disqualified for one reason or another,
- b. The subject-matter of the case is within the court jurisdiction and there is no feature in the case which prevents the court from

exercising its jurisdiction.

c. The case comes before the court initiated by due process of law and upon fulfilment of a condition precedent to exercise of jurisdiction. Any defect in competence is fatal for the proceedings are a nullity however well conducted.

Condition three above covers the issue of locus standi. In order for the court to have jurisdiction, the plaintiff must have locus standi to commence or institute the action. The learned Justice Niki Tobi JCA (as he then was) aptly puts this in the case of owners of M.V. Baco liner 3 v. Adeniji 1993 2 NWLR pg 274 pg 195 at Pg 202 parags C -D that "locus standi in my view is a fore runner or precursor to jurisdiction. Accordingly, where it is proved that a plaintiff lacks locus standi to bring an action, the court will decline jurisdiction as it has none. A court of law has no jurisdiction to manufacture locus standi on a party and arrogate to itself jurisdiction. That is never done".

The terms locus standi denotes the legal capacity to institute and action in a court of law. It is a status which the plaintiff must have before being heard in court. It is a condition precedent to determination on the merits. ***In order to achieve the status of locus standi, the claim of the plaintiff must reveal:***

- (a) A legal or justiciable right
- (b) Show sufficient or special interest adversely affected
- (c) A justiciable cause of action

Momoh v. Olotu (1970) 1 All NLR pg 117 Bolaji v Bamgbose (±986) 4 NWLR pt 37 pg 632 Adesanya v The President 19815 SC112 Adefulu v. Oyesile 1989 5 NWLR pt 122 pg 377 Thomas v. Olufosoye 1986 1 NWLRpt 18 pg 669 Odeneye v Efunnuga 1990 7 NWLR pt G 164 pg 618 Owodunni v. Registered Trustees of CCC 2000 10 NWLR pt 675 Pg- 315-

Where the question of locus standi comes into the issue of cause of action, a plaintiff who has no privity of contract with the defendant will fail to establish a cause of action, for breach of the contract as he will simply not have a locus standi to sue the defendant on the contract.

Momoh v. Olotu 1970 1 All NLR 117

From the forgoing, it becomes really necessary to explain what

is privity of contract. ***The doctrine of privity of contract portrays that as a general rule, a contract affects the parties thereto and cannot be enforced by or against a person who is not a party to it. In short only parties to a contract can sue or be sued on the contract and a stranger to a contract can neither***

sue or be sued on the contract even if the contract is made for his benefit and purports to give him the right to sue or make him liable upon it Moreover the fact that a person who is a stranger

to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue or be used upon the contract.

Negbenebor v. Negbenebor 19711 ALL NLR 210.

Ikpeazu v. A.C.B Ltd 1965 NMLR 374

D K.S.O. Allied Products, Ltd. V. Kofo Trading Co. Ltd.

(1996) 3 NWLRpt 436 pg 244

Alfortrin Ltd. v. A. Y. 1996 9 NWLR pt 475 pg. 634.

The foregoing doctrine admits of exceptions which are not applicable to the position of a Notify Party in a bill of lading on any relationship

E based on a bill of lading.

It is however now settled by a plethora of cases that by virtue of section 375 (1) of the Merchant Shipping Act 1990 only a consignee of the goods named in a bill of lading or an endorsee whom the property in the goods have passed and by

virtue of those facts will be able to sue on a bill of lading contract.

A notify party or addressee cannot therefore possibly be a party to the contract evidenced in the bill of lading. Furthermore, a plaintiff

G who was not an endorsee of the bill of lading but merely holder of the original copy as in this case, does not have a right to sue on the contract categorically.

A notify party or addressee has no right of audience on the bill of lading W013 either in contract or tort of negligence.

H ***Even in an action for bailment it is not possible to make a party whose name appears only in regard to notification of the arrival of the consignment assume the role of a bailor or bailee.*** The appellant may be a party to another contract on the order of the goods but surely not on the consignment based on the

bill of lading W013 which was between Tetramer GMBH of Hamburg Germany and Woermann line - the 1st Respondent.

I must emphasise that *locus standi* to sue on a bill of lading either in contract, bailment or Negligence in Tort is statutory, derivable from section 375 (1) of the Merchant Shipping Act Cap 224 laws of the Federation 1990. It cannot vest on the appellant by any act of the parties in the circumstances of this case.

Breadline Ent. Limited v. Monterey Maritime

Corporation 1995 9 NWLR pt 417 pg 1.

Fassasi Adesanya v. Leigh Hoegh & Co. 1968 1 All NLR pg. 333-

Seatrade v. Flogret Ltd. 1987-1990 3 NSC pg. 453

Nigerian National Supply Co. v. Owners of M v. Albion 1987 - 1990 3 NSC pg 206

Pacer? Multi Dynamic Ltd, V. M.D. "Dancing Sister" 2000 3 NWLR pt 648 pg 241.

I am of the view that the lower court was right when it held that the appellant has no *locus standi* to institute this action against the Respondent. I therefore resolve issue one in favour of the appellant.

ISSUE TWO

Whether the failure by the lower court to consider the Reply Brief of Argument filed by the appellant did not amount to a breach of the Appellant's right to fair hearing as guaranteed by section 36(1) of the 1999 constitution of the Federal republic of Nigeria. The contention of the learned counsel for the appellant on this issue are as follows:-

(a) That the nature of the claim and cause of action was such that the action as filed by the plaintiff (the appellant in this appeal) ought to be heard on the merit and not one that should be dismissed in limine as the trial court had done.

(b) That the failure of the lower court to consider the arguments or submissions of the appellant in the Reply Brief of argument constituted a breach of the appellant's constitutional right , to fair hearing under section 36(1) of the 1999 constitution.

(c) That the failure of the lower court to consider the said Reply Brief of argument had occasioned a miscarriage of justice and the judgment ought to be set aside.

The learned counsel for the Respondents in replying on this issue

relied on the case of *Owodunni v. Registered Trustees of C.C.C.* 2000 10 NWLR pt 675 pg 375 from where he quoted from the decision of the Supreme Court as follows:-

(1) That *locus standi* is a threshold issue.

B (2) Standing to sue is not on the success or merits of a case but on the showing of the plaintiffs case in his statement of claim. It is a condition precedent to a determination on the merits. It follows therefore that if the plaintiff has no *locus standi* or standing to sue, it is not necessary to consider whether there is a genuine case on the merits
C his case must be struck out as being incompetent.

(3) That the question whether or not a plaintiff has a *locus standi* in a suit is determinable from a totality of all the averments in his statement of claim. Thus in dealing with the *locus standi* of a plaintiff, it is his statement of claim alone that has to be carefully
D scrutinized with a view to ascertaining whether or not it has disclosed his interest and how such interest has arisen in the subject-matter of the action.

The learned counsel further submitted that though the appellant pleaded the bill of lading evidencing contract of carriage in paragraphs 7 and 25(1) of its statement of claim, there is no paragraph where he averred that it was the consignee or endorsee of the bill of lading. This court must hold that the lower court scrutinized the appellant's statement of claim and the endorsement on the bill of lading and consequently arrived at a just decision.
F

I have considered the submissions of the learned counsel for the parties. The argument and submission of the learned counsel for the Respondents based on the decision of this court in *Owodunni's* case is impeccable. I see the submission of learned counsel for the
G appellant as a misconception of what *locus standi* denotes. *Locus standi* have been described as an unquestionable threshold issue. In order that a court may have jurisdiction the plaintiff must have *locus standi* to commence or institute the action. Hence *locus standi* has also been described as a forerunner to jurisdiction. Owners *M.V. Baco Liner 3 v. Adeniji* 1993 3 NWLR pt 274 Pg 195-
H

In the celebrated case of *Madukolu v. Nkemdilim* 1962 1

AUNLR587- the Supreme Court pronounced that a court is competent if

"The case comes before the court initiated by due process of

law and upon fulfilment of a condition precedent to exercise of jurisdiction”.

This condition relates to the issue of *locus standi* to institute an action.

The foregoing therefore presupposes that to determine whether a plaintiff is the proper person to institute an action is a threshold determination, which the trial court and the lower court had rightly done. Fair hearing as guaranteed by section 36 (1) of the 1999 constitution of the Federal Republic of Nigeria 1999 embraces the twin pillars of justice as follow:-

(a) Audi alteram partem (Hear the other party).

(b) Nemo iudex in causa sua (No one should be a judge in his own cause).

Where the appellant has no locus standi to institute an action, the court has no jurisdiction to adjudicate on such matter, Appellant also raised the question that the failure of the lower court to consider its Reply Brief of argument had occasioned a miscarriage of justice and the judgment must be set aside.

It is glaring that the issues raised in the Reply Brief is meant to circumscribe and revisit the settled position of the law as to who can maintain an action on a Bill of Lading as stipulated in section 375(1) of the Merchant Shipping Act. The Court below is not bound to consider the argument, in the interest of justice and the court had rightly taken that step. On the overall the judgment of the lower court shows a dispassionate consideration of the facts raised in respect of the appeal, before taking a decision.

It is my conclusion that it will be a waste of precious litigation time and money and even in the peculiar circumstance of this case amount to an abuse of court Process where the issue of *locus standi* is statutory to proceed to determine this case on merit.

Issue Two is resolved in favour of the Respondents.

ISSUE THREE

“Was the lower court right in holding that the appellant cannot maintain an action against the Respondent(sic) in tort by reason of section 375 (1) of the Merchant Shipping Act 1990 when it is the purchaser and a bailor for value having paid the price and freight and the property in the goods had passed to it by virtue of it being the holder of the original copy of the bill of lading and in possession of part of the consignment”.

The learned counsel for the appellant submitted that the reasoning of the low court in its judgment that in other causes founded in contract or in tort once the plaintiff relies on the bill of lading, to successfully maintain an action, the plaintiff's name must be indicated on the bill of lading, as consignee or endorsee is erroneous in law.

B The learned counsel cited foreign cases in support of the reasons for holding this view particularly.

Margarine Union GMBH v. Cambay

Princes S.S Co. (The Wear Breeze) 1967 2 Lloyd's Report 315 at pg. 329 1969 1 QBD pg 219 at pg 241. Leigh and Sullivan Ltd. S.

C Aliakmon Shipping Co. Ltd. (the Aliakmon) 1986 2 WLR pg, 302. He also considered the Hague Rules 1931 and Visby Rules 1977. He urged this court to hold that:-

(1) The appellant's suit as formulated in the statement of claim D is one for bailment and not in contract.

(2) S.375 (1) of the Merchant Shipping Act, 1990 is not available to suits in tort, and therefore not applicable to the action.

(3) Being an action founded in tort, the trial Court was duty bound to examine all the evidence before it and not the bill of Lading alone, in order to determine whether or not the appellant was the owner of the consignment and hence entitled to the full delivery of the goods.

(4) Being an action in tort, it was outside the realms of cases which could be dismissed in limine by the preliminary objection of the Respondents on the ground that the Appellant is a 'Notify Party' and therefore lacked the *locus standi* to institute an action.

The learned counsel in addition cited Breadline Enterprises Ltd. V. Monterey case Brawal Shipping Company Ltd, v. Onwadike & Co. Limited case and Boothia Maritime Inc case. The court is urged to allow the appeal and revisit its decision in *Fassasi Adesanya v. Leigh Hoegh & Co.* and *Broadline Enterprises Limited v. Monterey Maritime* cases.

H The learned counsel for the Respondents replied that the lower court arrived at a proper decision by upholding the Ruling of the trial court where the plaintiff's suit was dismissed in limine pursuant to Order 27 Rule 3 of the Federal High Court Rules 1976.

Furthermore he added that it will be a dangerous precedent for this court to revisit its decision in the cases of *Fassasi Adesanya*

and Broadline Enterprises Limited. The submission of learned counsel for the appellant on this issue to my mind cuts the picture of a drowning man struggling to hold on to everything within sight to stay or remain afloat. The learned counsel extended its argument and submission on this issue to cover bailment which is tort. You can only have *locus* to sue where your name appears as consignee or endorsee on the bill of lading as laid down in Broadline Enterprises Ltd case, Adesanya's case, Nigerian National Supply Co. case, Pacers multi-dynamic Limited case. The foregoing cases are distinguishable from Niger-brass Shipping Line Limited v. Aluminium Extrusion Limited (1994)4 NWLR pt 341 pg. 233.

Onwadike & Co. Ltd v. Brawal Shipping Nigeria Limited 1966 1 NWLRpt 422 pg. 65 where in these last two cases the Bills of lading were re-endorsed to other persons beyond the specific consignees. Issue of *locus standi* by virtue of section 375(1) of the Merchant Shipping Act Cap 224 covers cases in contract, bailment and negligence in tort — which makes it statutory.

The learned counsel for the appellant in his submission in this appeal canvassed vigorously that this court must expand its coast of adjudication on the issue of *locus standi* as it relates to a Notify Party on a Bill of lading based on section 375(1).

He cited foreign cases though he admitted that they only have persuasive, value but are meant to serve the following purposes: -

1. *"To highlight the error the lower Court fell into by showing that section 375(1) of the Merchant Shipping Act 1990, just like its counter-part section??? i Bills of Lading Act 1855 is not applicable to suits in tort.*

2. *In tort (delict) a 'Notify Party' or a consignee or endorsee who has no title simply because the bill of lading was not transferred or endorsed to him can successfully maintain an action in so far as he can prove ownership and that property in the goods had passed to him at the time the damage or loss occurred".*

He submitted that for suits founded in tort the applicable statutes are the Hague Rules 1931 or Visby Rules 1977. They are regulations of universal applications stated in the bill of lading to be applicable to carriage by sea. The Rules are the basis for the assessment of liability and compensation for losses in Marine cargo claims.

Since the issue of locus stand! on the Bill of lading derives from section 375(1) of the Merchant Shipping Act, and is thereby statutory, it requires a radical change in the law — which is a Legislative Act, for the courts to revisit and overrule their previous decisions on the matter, I must quickly explain that revisiting or overruling its previous decisions by an Apex Court is not a random exercise. This court will surely revisit or overrule its previous decisions to curb perpetration of injustice. Where the cases are based on legislations or statutes it obviously requires an amendment to the particular statutes to overrule such cases.

I however encourage the learned counsel for the appellant to continue to lead the crusade for a change in that particular statute so as to eradicate any inherent injustice in implementing section 375 (1) of Merchant Shipping Act, 1990.

I resolve this issue also in favour of the respondents. In sum this appeal lacks merit and it is hereby dismissed. The judgements of the trial court and the lower court are affirmed. Parties are to bear their costs.

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Adekeye JSC. I agree entirely with the reasoning and conclusion that the appeal is devoid of merit and deserves to be dismissed. However, I would like to highlight some points, most especially, on issue (2) raised for determination in the appellant's brief of argument. The issue reads as follows:-

“2. Whether the failure by the lower court to consider the Reply Brief of Argument filed by the Appellant did not amount to a breach of the Appellant's right to a fair hearing as guaranteed by Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria.”

Order 6 Rule 5 of the Court of Appeal Rules, 1981 (being the Rules that was applicable at the time the appellant's reply brief of argument was filed in the Court of Appeal) makes the following provision:-

“The appellant may also, if necessary within fourteen days of

the service on him of the respondent's brief but not later than three clear days before the date set down for the hearing of the appeal file and serve or cause to be served on the respondent a reply brief which shall deal with all new points arising from the respondents brief." Underlined above is mine.

Reading through the appellant's reply brief of argument (to be found on pages 102 - 105), I fail to see that the content of the said brief has met the

6 provision of the said rule reproduced above. It contains either a repetition of the arguments already proffered in the appellant's brief or completely new points, which the appellant is not allowed to raise. Authorities abound on the purport and function of an appellant's reply brief of argument, and where it does not fall within the requirement of the rule, then the reply brief becomes otiose. The purpose and purport of a reply brief is to address fresh points raised in a respondent's brief of argument, and not to introduce fresh points] See Ajileye v. Fakayode 1998 4 NWLR part 545 page 184, H. H. Eze Umeji v. Attorney General of Imo State 1995 4 NWLR part 391 page 552, and Agwasim v. Ejivumerwerhaye 2001 91 NWLR part 7 1 8 page 395.

The argument of the learned counsel of the appellant that the non consideration of the appellant's reply brief of argument in the lower court amounted to a breach of the appellant's right to fair hearing does not hold water. I will reproduce the provision of section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 at this juncture. It reads:-

"36-(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

In the instant case, I do not see that there was any breach of the appellant's right of fair hearing, most especially when one thoroughly reads the appellant's brief of argument, which contains all relevant arguments that thoroughly and carefully covered the issues related to the grounds of appeal. The learned justice of the Court of Appeal gave the arguments in the appellant's and respondent's brief

of argument the attention they deserved by considering them. The above constitutional provision does not impose upon a court the duty to deal with the same arguments over and over, and allow unnecessary repetitions to weigh it down. In other words, the doctrine of fair hearing does not extend to over stretching the court with unnecessary arguments that are not allowed by law.

For the foregoing discussion, the said issue two is resolved in favour of the respondents.

In the final analysis, I also dismiss the appeal in its entirety, as I endorse all the detailed arguments and findings in the lead judgment. I abide by the consequential orders in the lead judgment.

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Lagos Division (hereinafter called “the court below” and stated in the Appellant’s Brief to be “High Court of Appeal”) delivered on 5th March, 2001 affirming the Ruling of the Federal High Court, Lagos - per Kafarati, J. delivered on 26th July, 1996, dismissing the Suit of the Appellant that was the Plaintiff in the trial court.

Dissatisfied with the said decision, the Appellant has further appealed to this Court on four grounds of appeal. It has formulated three issues for determination, namely -

“ 1. *Whether the Appellant even though described in the bill of lading as “Notify Party” indeed lacked Locus to sue upon the bill of lading.*

2, *Whether the failure by the lower Court to consider the Reply Brief of Argument filed by the Appellant did not amount to a breach of the Appellant’s right to a fair hearing as guaranteed by Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria.*

3. *Was the lower Court right in holding that the Appellant cannot maintain an action against the Respondent in tort by reason of S.375 (1) of the Merchant Shipping Act, 1990 when it is the Purchaser and a Bailor for value having paid the price and freight and the property in the goods had passed to it by virtue of it being the holder of the original copy of the bill of lading and in possession of part of the Consignment”.*

On its part, the Respondent formulated two issues for determination, namely -

“1. Whether a person named as a “NOTIFY PARTY” on a Bill of Lading can institute and maintain an action under any guise in respect of the Bill of Lading.

2. Whether the Court of Appeal was right when it upheld the decision of the Federal High Court to determine the locus standi of the Appellant to institute this suit based on the facts in the statement of claim alone “.

When this appeal came up for hearing on 24th March, 2009, both learned counsel for the parties, adopted their respective Brief. While Ojiekundu, Esqr - learned counsel for the Appellant urged the Court to allow the appeal, M/S Sodipo - leading learned counsel for the Respondent, urged the Court, to dismiss the appeal. Thereafter, Judgment was reserved till today.

I note that in both Briefs of the parties, it is not stated under which of the grounds of appeal, their respective issues arose. However, having regard to grounds 1,3 and 4 of the grounds of appeal, I will ignore the omission and deal with issues 1 and 3 of the Appellant with the said two issues of the Respondent together as they are substantially the same although differently couched. In doing so, in my respectful view, a determination of the provision of Section 375 (1) of the Merchant Shipping Act, Cap. 224 Laws of the Federation, 1990 (hereinafter called “the Act”), will assist me in arriving at a just decision in this appeal. The provision, reads as follows:

“Every consignee of goods named on a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement shall have transferred to and vested in him all right of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the Bill of Lading had been made with himself”.

The above, is a Statutory provision and it is very clear and unambiguous. It is now settled that where a statute is clear and unambiguous, it must be given its literal meaning or interpretation. It is the duty of the court to apply such words as intended by the legislature. There are too many decided authorities in this regard, but see recently, the case of *Calabar Central Cooperative Thrift & Credit*

Society Ltd, d 2 ors. v. Ekpo (2008} 2 SCNJ. 307 @ 328-329; (2008) 1-2 5.C. 229.

I note that at pages 44 and 45 of the Records, the learned trial Judge, stated inter alia, as follows:

" *The main issue here is whether on the face of the bill of lading (the basis of the relationship between the plaintiff and the defendant) has the locus standi to institute the suit herein. It was argued on behalf of the defendant/Applicant that since the plaintiff's name appeared only as a notify party on the bill of lading it cannot said (sic) to have any right of action on the said bill; it being a stranger to the contract. As to who has a right to sue on a bill of lading the supreme court had settled the matter. It decided in *Broadline Enterprises Ltd. v. Moantary (sic) Corp. supra* that where it is sought to prosecute an action on a bill of lading itself a plaintiff whose name does not appear (other than reference it (sic) (meaning to) this being notified) on the relevant bill) and he is therefore neither the endorsee nor the consignee therein such a plaintiff has no locus stand! to sue upon the bill of lading. In this case there is no reference to the plaintiff in the bill apart from being referred to as notify party see page 10 and 25. (sic) This case was cited by the plaintiff to show that its action is predicated on negligence and not in contract. With respect to the Learned Counsel although it is settled that an action can He in negligence anising art (sic) of bailment but it has to be established first that the plaintiff has the locus stand/ to institute the said action.,....." .*

[the underlining mine]

His Lordship, stated briefly, the facts in *Broadline's* case and continued thus:

"*Similarly in the or *Nigerbros Shipping line Ltd. v. Alluminium Extrusion Industries Ltd. supra*, the bill of lading was endorsed to the plaintiff who later endorsed it to a third party. The question before the court then was whether the plaintiff was a party to the bill of lading to enable it maintain suit its instituted (sic) having endorsed the said bill to a third party. In all there (sic) (these) cases the plaintiff therein was either named as consignee or endorsees. But in this case the situation is different. The plaintiff was only a notify-party as far as the bill is concerned".*

Then at page 45, he concluded -

"As I said earlier in this ruling that in determining the issue of

locus standi in cases of this nature it is only the bill of lading he does not have a right to sue. See the case of SEA TRADE v. FLOGRET LTD. supra. With these previews I hold that the plaintiff herein is not a party to the bill of lading in (Exhibit A & B to the applicant's affidavit). I also hold the view that this court has no jurisdiction to entertain this suit". B

I agree.

The court below - per Galadima, JCA, at page 4 of its Judgment, after referring to the cases of *Breadline Enterprises Ltd, v. Monterey Maritime Corporation & anor.* (1995) 9 NWLR Pt.417) 1 @ 29, (it is also reported in (1995) 10 SCNJ, 1]: *Fasassi Adesanya v. Leigh Hoeqh \$t Co.* (1968) 1 All NLR 333 which is also reported in (1967 - 1968) NSCC Vol. 5 page 241 (1907 - 1979) NSC128 cited and relied on in the respective Brief of the parties, and *Seatrade v. Flogret Ltd.* (1987) - 1990) 2 NSC 453 @ 454 which in each of the D cases, it partly reproduced, at page 5 of the Judgment, it stated inter alia, as follows:

".....,, However the question that arises in this case is whether a person mentioned as a Notify Party on a Bill of Lading can institute and maintain any action in its own name, under any guise in respect of the Bill of Lading. By virtue of 5.375(1) of the Merchant Shipping Act (supra), provision of which is already reproduced above it is quite clear that it is only the consignee or endorsee of a Bill of Lading to whom property in the goods have passed that can sue or be sued on it". E F

I agree as the provision of Section 375 (1) of the Act, is clear as already noted by me and as demonstrated in the decided authorities referred to.

At pages 5 and 6 of the Judgment, the court below, also referred to the case of Pacers Multi-Dynamic Ltd. v. M. V. "Dancing Sister" (2000) 3 NWLR (Pt.648) 241CA. and stated as follows: G

"In the "DANCING SISTERS" case (supra) on whether mere passage of property confers right to sue I did say that by virtue of S. 375 (1) of the merchant shipping Act even if the property in the good had passed unto a party otherwise than upon or by reason of the consignment or endorsement, the right of suit does not pass. Property to goods covered by a Bill of lading can only pass to a consignee or endorsement. I do not think the statute does envisage H

any other mode of passing property in the goods”.

Again, I agree and cannot fault the above holding which again is supported by the Act. I am satisfied with the greatest respect to the lengthy submissions in the Brief of the Appellant, that it is now firmly settled that the locus standi to sue on a Bill of Lading either in contract, bailment or tort, is statutory and it is derived from the Act and therefore, cannot be conferred on the Appellant, by the alleged acts of the Respondents having regard, to the circumstances of the case leading to the instant appeal. I agree and hold that the Appellant is a Notify Party. It has no locus standi to institute or maintain the said suit based on the said Bill of Lading No. W013 which evidenced the said contract of carriage, as it was not a party (but merely a stranger) to the said contract. See the case of *Makwe v. Chief Nwukor & anor, (2001) 14 NWLR (Pt. 733) 356 @ 358- (2001) 7SCNJ. 87* also referred to in the Respondent’s Brief. I say so, because and this is also settled, that the right to sue or locus standi, or standing to sue, cannot be presumed or implied. It can only be conferred by statute as in the instant case or by the Constitution or by some customary law. See the case of *Financial Merchant Bank Ltd, v. Nigerian Deposit Insurance Corporation (1995) 6 NWLR Pt. 400) 226 @ 234 C.A.* also cited and relied on in the Respondent’s Brief.

I note that the Appellant has cited and relied on the Book Authority - Payne & Ivamy’s Carriage of Goods by Sea 11th Edition page 72 in submitting that the said Bill of Lading, entitles it as a holder of the original Bill of Lading, to the delivery of the goods. I have already referred to and reproduced, part of the holding in the case of *Pacers Multi-Dynamic Ltd, v. M.V. “Dancing Sisters” (supra)*. I agree with the Respondents in paragraph 4.07 of their Brief, that the mere fact that a person (and I add a company), is in possession of a Bill of Lading or takes delivery of goods, does not confer on him, or it, the right to sue in respect of the goods if he or it, is not a party to the contract of carriage. See the case of *Brawal Shipping (Nig.) Ltd, v. F.I. Onwadike Co. Ltd, anor. (2000) 11 NWLR (Pt. 678) 387* (it is also reported in *(2000) 6 SCNJ. 508*) also cited and relied on in the Briefs of the parties, but which fact, is distinguishable from the instant case leading to this appeal. But see the case of *Owners of M. V. Baco Liner 3 v. Adeniji (1993) 2 NWLR (Pt. 274) 195 @ 197 C.A.* also cited and relied on in the Respondent’s Brief. For purposes of em-

phasis, as rightly held by the court below, once a plaintiff relies on a Bill of Lading in an action founded in either contract or tort, such plaintiffs name, must be contained or mentioned on the said Bill of Lading as the consignee or endorsee in order to be able, to successfully or legitimately, maintain the action. See the case of *Adesanya v Leigh Hoegh & Co.* (supra). B

I note that the Appellant in its paragraph 5.51 (iv) under the Summary of its submissions, of its Brief, stated as follows:

“Without prejudice to the foregoing submission, even if the Appellant is a ‘Notify Party’, and cannot sue upon the bill of lading as a result of the Statutory provision, this Honourable Court may exercise its equitable jurisdiction as the Supreme Court of the United States of American (sic) did in the CAVCAR V. SUZDAL case and hold that having paid the price for the goods and the freight, the purchaser, (in this case the Appellant) even though named as a ‘Notify’ has proprietary and beneficial interests sufficient to entitle such it to sue the carrier for the value of the goods (sic)’. C D

At paragraph 5.52 of the Brief, the Appellant prays this Court inter alia,

“(1) To hold that the Appellant in the circumstances of his (sic) case has Locus Standi to institute this action notwithstanding that the Appellant is named in the bill of Lading as ‘Notify Party’.” E

Having made the above concession, this is the end of this appeal. More so, the Act having been conceded by the Appellant as being Statutory, this Court, regrettably, cannot accede to the above prayer of the Appellant. It has a duty and is bound to apply the said statutory provision unless and until it is either amended or repealed by the legislature. The Courts do not make laws. They only interpret them. F G

I note that surprisingly, the Appellant at page 28 of its Brief in No. 6 Conclusion, now makes a U-turn and prays this Court, to allow the appeal on the ground -

“that the suit being one for bailment, S.375 (1) of the Merchant Shipping Act, 1990 is irrelevant and inapplicable to the suit. Furthermore, that even if the suit had been founded in contract, the Appellant is defined by the bill of lading as a consignee and that property in the goods actually passed to it such as to cloth the Appellant with the requisite locus stand! to institute the action”.* H

[the underlining mine]

Whether a claim is in contract or bailment based on a Bill of Lading, the relevant party, must be either the consignee or endorsee of the Bill of Lading.

From the above, my inescapable inference or conclusion, is that the Appellant, with respect, like a confused and drowning man, wants to clutch or cling even on a straw, to avoid sinking. Having in my respectful but firm view, stood in this appeal, on quick sand so to speak, this appeal, decidedly, collapses like a pack of cards. It fails and it is dismissed with costs.

Finally, I note that there are concurrent findings of fact and Judgments of the two lower courts and on the many decided authorities, I cannot and will not disturb the same or interfere. See the recent case of *Mallam Jimoh & ors. v. Mallam Akande & anor. (2009) 1 SCNJ. 107 @ 129 (2009) 5 NWLK (Pt.1135) 549 @ 577; (2009) 1-2 S.C. 116 @ 140-141*. I or this Court, has no reason to revisit or overrule, the decisions in the cases of *Adesanva v. Leigh Hoegh and Broadline Enterprises Ltd, v. Monterey Maritime Corporation (supra)* as demanded by the Appellant. The request, with respect, is uncalled for and is completely misconceived in the extreme.

I have had the privilege of reading before now, the lead Judgment of my learned brother, Adekeye, JSC who exhaustively, dealt in greater details, with the issues of the parties, I agree with the reasoning and conclusion. This is why I too, dismissed the appeal which lacks substance and therefore, unmeritorious. I hereby, affirm the decision of the court below affirming the ruling of the trial court.

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CHUKWUMA-ENEH JSC

This appeal is against the decision of the Court of Appeal, Lagos Division (court below) which has dismissed in its entirety the plaintiff's claim in the trial court against the defendants.

Aggrieved by the decision, the defendants have appealed to this court upon a notice of appeal containing four grounds of appeal. In the Appellant's (Plaintiff) brief of argument filed in this matter it has raised three issues for determination and in the Respondents' (Defendants) brief of argument they have distilled 2 issues for determination. These issues alongside with the facts of this case have been

set out in extenso in the lead judgment of my learned brother Adek-eye JSC, which I have read before now. I adopt the same for this short contribution.

The facts of this case have once again agitated another closer scrutiny of the provisions of Section 375 (1) of the Merchant Shipping Act, Cap. 224 Laws of the Federation, 1990 (the Act) visa-vis as it concerns whether the instant plaintiff has the standing to maintain the instant suit it has filed against the defendants, which is founded on the Bill of Lading No.W013 evidencing the contract of carriage by sea of some goods destined for Lagos ports; even moreso when on the face of the said bill of lading the plaintiff has been designated as a 'Notify Party' simpliciter. In other words, the plaintiff is neither an endorsee nor a consignee but a mere 'Notify Party' And the all important question to be resolved in this matter is whether the plaintiff as a "Notify Party" has the necessary standing to maintain the instant suit. In that wise, therefore, Section 375 (1) of the Act is central in determining the issue of the plaintiff's locus standi vis-a-vis the peculiar facts of this case; the provision of the said section has been set out hereinafter.

Firstly, it is settled law that where competent parties are not before the court, the court lacks the power to adjudicate over the matter placed before it. In this regard a plaintiff has to have the requisite locus standi to bring an action against a defendant otherwise the suit is liable to be struck out as standing to sue goes to the court's jurisdiction to deal with the matter. It is trite law that standing to sue is conferred by law. Locus Standi means simply the standing to sue, that is, the legal capacity to bring proceedings in a court of law; it is a threshold matter. See: THOMAS V. OLUFOSOYE (1986) NWLR (Pt. 10) 609 at 685, ADEFULU V. OYESILE (1989) 5 NWLR 377 at 418-419, and OTAPO & ORS. V. SUNMONU & ORS. (1987) 2 NSCC (Vol.18) 677 at 702. And in this case the basis to sue has to comply with the provision of Section 375 (1) of the Act and it provides as follows:

"Every consignee of goods named on a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such

goods as if the contract contained in the Bill of Lading had been made with himself."

Construing the foregoing provision which is clearly unambiguous, that is, by giving to the words used by the provision the meaning the lawmaker has intended for the words literally, that is, taking the words in their literal meaning unequivocally suggest that a notify party cannot sue as plaintiff in contracts of carriage of goods by sea covered under bills of lading as the instant one. The provision equally makes it clear that only an endorsee or a consignee of bills of lading to whom the property in the goods, the subject matter of the contract of carriage by sea has passed by reason of such endorsement or consignment shall have transferred to and vested all rights of suit. There is no way save by stretching the words of the provision to its absurdity that the instant plaintiff could bring itself within the above definition.

Happily the provision has been severally construed by this court in a number of decided cases and they are binding decisions on this court and I refer to a few of them to buttress my point in this regard such as ADESANYA V. LEIGH HOEGH & CO (1968) NSCC (Vol.5) 247, and BROADLINE ENTERPRISES LTD. V. MONTEREY MARITIME CORPORATION (1995) 9 NWLR (Pt.417) 1 at page 49. These decisions are in unison in holding that it is beyond argument that a notify party being a total stranger to the contract evidenced by the bill of lading cannot have a right of suit on the bill of lading as provided in Section 375(1) of the Act. It is only a consignee of goods named in the Bill of Lading or an endorsee to whom the property in the goods have passed that could by virtue of the circumstances sue on a Bill of Lading in other words that has right of suit.

The instant plaintiff, therefore, as a Notify Party vis-a-vis the instant bill of lading No. WO13 cannot come within the ambit of either endorsee or consignee as contemplated by the provisions of Section 375(1) of the Act so as to have the enabling competence that is, locus standi to institute this suit as he is not a party to the contract evidenced in the said bill of lading. Having failed on this crucial respect to show that he is vested with any right of suit as per the said bill of lading, this action is unmaintainable by the plaintiff.

It is for the above reasons and a much fuller reasoning and conclusion reached in the lead judgment of my learned brother

Adekeye JSC, that I agree there is no merit in this appeal, I too dismiss it and endorse the orders in the said lead judgment.

FABIYI JSC

I have had a preview of the judgment of my learned brother Adekeye, JSC. I am in complete agreement with the reasons advanced therein to arrive at the conclusion that the appeal lacks merit and should be dismissed. B

At the trial Federal High Court in Lagos, the appellant who was not a party to the Bill of Lading No. W013 of 21st May, 1992 instituted an action against the respondents claiming the sum of DM38,198.35 or its Naira equivalent for automotive spare parts alleged to have been short-landed. Based on the averments in the statement of claim, the respondents filed an application to contest the locus standi of the appellant, a 'Notify Party' to institute the action. The learned trial judge was properly addressed by counsel on both sides. In the considered ruling handed out on 26th July, 1996, Kafarati, J. found that the appellant lacked the requisite *locus standi* to institute the action and dismissed same. C D E

The appellant felt unhappy with the stance of the learned trial judge and appealed to the court below for a further consideration and redress. The court below, based on briefs of argument filed on behalf of the parties, handed out its own judgment on 15th March, 2001 wherein, the appeal was dismissed. F

This is a further appeal to this court by the appellant who desires to try its chance based on constitutional right, as it were.

On behalf of the parties, learned counsel filed well researched briefs of argument. The three issues distilled in the appellant's brief of argument have been reproduced in the judgment of my learned brother. The two issues decoded in the respondents' brief are of moment. For ease of reference, they read as follows:- G

"1. Whether a person named as a 'NOTIFY PARTY' on a Bill of Lading can institute and maintain an action under any guise in respect of the Bill of Lading. H

2. Whether the Court of Appeal was right when it upheld the decision of the Federal High Court to determine the locus standi of the appellant to institute this suit based on the facts in the statement

of claim alone.”

In maritime and shipping matters, issue of *locus standi* is traceable from Section 375 (1) of the Nigerian Merchant Shipping Act Cap. 224, Laws of the Federation of Nigeria, 1990. It provides as follows:-

B “Every consignee of goods named in a bill of lading, and every
endorsee of a bill to whom the property in the goods therein men-
tioned shall pass upon or by reason of such consignment or endorse-
ment shall have transferred to and rested in him all right of suit, and
C be subject to the same liabilities in respect of such goods as if the
contract contained in the bill of lading had been made with himself.”

The above provision has been clearly interpreted by this court in *Fasasi Adesanya v. Leigh Hoegh & Co.* (1968) 1 All N.L.R. 333 and *Broadline Enterprises Ltd. v. Monterey Maritime Corporation* D (1995) 9 N.L.R. (pt. 417) 1 at 49. It has been consistently pronounced that it is a consignee or an endorsee in a bill of lading that can prosecute an action in respect of same. A “Notify Party” whose name is not listed in the provision of the stated law is deemed to be excluded. As such, he has no ground to stand in pursuit of an action on a
E contract to which he is not a party. The trial judge was right when he found that the appellant had no I claim accruing to it by virtue of the bill of lading.

Let me stress the point that any suit by a “Notify Partly” is not
F initiated by due process of law and upon fulfillment of a condition precedent to exercise of jurisdiction by the court. This is as pronounced by this court in *Madukolu & Ors. v. Nkemdilim & Ors.* (1962) 1 All N.L.R. 587.

The appellant strenuously urged that the decision in *Fasasi* G *Adesanya v. Leigh Hoegh & Co.* (supra) and *Breadline Enterprise Ltd. v. Monterey Maritime Corporation* (supra) be revisited. Such is an up hill task the appellant herein. This is so since the function of the court is to interpret the law as it is and not how the appellant feels it ought to be. It is the function of the Legislature to amend the law
H That is not the business of the court as being urged on us by the appellant.

I only need to comment on issue 2 briefly. It is whether the trial court was right to determine appellant’s *locus standi* to institute the suit based on the facts in the statement of claim alone. It is clear that

issue of locus standi goes to the jurisdiction of the court to entertain a suit. Whenever an issue touches the jurisdiction of the court, it must be taken timeously before any other issue. This is because any step taken by a court without jurisdiction is to no avail. The decision in the case of *Ma'aji Galadima v. Alhaji Adamu Tambai* (2000) 11 N.W.L.R. (pt. 677) 1 is of moment here. B

In *Josiah Kayode Owodunni v Registered Trustees of C.C.C. & 2 Ors.* [2000] 10 N.W.L.R. (pt. 675) 315 at 357, this court pronounced that locus standi is unequivocally threshold issue. It is not dependent on the merits of a case but on the showing of the plaintiffs' case in his statement of claim. The question whether a plaintiff has locus standi to sue is determinable from the totality of averments in his statement of claim. If there is no requisite locus standi to sue by a plaintiff it is not necessary to consider whether there is a genuine case on the merit. I must note here the decisions on the point in *Momoh v. Olotu* [1970] 1 AHN.L.R. 117, *Bolaji v. Bamgbose* [1986] 4 N.W.L.R. (pt. 37) 632, *Abraham Adesanya v. The President, Federal Republic of Nigeria* (1981) 5 S.C. 112, *Odeneye v. Efunuga* (1990) 7 N.W.L.R. (pt. 164) 618. C

In short, I say that there is no big deal in issue 2. The trial court was right in determining the locus standi of the appellant based on 35 his statement of claim alone. That is how it should be. E

It is for the reasons stated above and the fuller ones contained in the lead judgment that I feel propelled to dismiss the appeal for want of merit. I order accordingly and endorse the consequential orders contained in the judgment of my learned brother. F

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