

**SUPREME COURT OF NIGERIA**  
FRIDAY 23<sup>RD</sup> NOVEMBER, 2012. SC. 439/2011  
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-  
ENEH, B. RHODES-VIVOUR, M. D. MUHAMMAD,  
C. B. OGUNBIYI, JJSC**

BARRISTER J. C. UWAZURUONYE ..... APPELLANT  
AND

1. THE GOVERNOR OF IMO STATE

2. THE ATTORNEY-GENERAL

& COMMISSIONER FOR JUSTICE,

IMO STATE

..... RESPONDENTS

3. CUSTOMARY COURT OF APPEAL

IMO STATE

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COURTS - Issue - Suo motu raising - Where court fails to invite parties to react to such issue - Before basing its judgment thereon - Such act is breach of right to fair hearing - And it renders the judgment a nullity (H1)

ACTIONS - Cause of action - Meaning - This is fact which gives rise to right to sue in court - And it includes every material fact - Which has to be proved to entitle plaintiff to succeed (H2)

ACTIONS - Reasonable cause of action - Meaning - This is cause of action which when only allegation in statement of claim are considered - Have some chances of success (H3)

LOCUS STANDI - Actions - Legal practitioner - Appellant's engagement in active legal practice without more - Does not confer on him any cause of action - Or locus standi to institute the action (H4)

LOCUS STANDI - Meaning of - This is legal capacity of party - To institute action in court - And where party has no locus standi - Court will have no jurisdiction to hear any claim (H5)

ACTIONS - Party - Locus standi - Precondition - To have locus standi to sue - Party must show sufficient interest in the suit - Such that he

will suffer injury from the litigation - If not joined (H6)

### **FACTS**

Appellant (a private legal practitioner) caused originating summons to be issued before the High Court of Imo State, Owerri for the determination of the following questions inter alia, whether the criminal jurisdiction conferred on the Customary Courts in Imo State by s. 14 of Edict No. 7 of 1984 is not void in view of s. 247 of the 1979 Constitution.

Appellant thus sought inter alia, for the court to declare that the aforementioned s. 14 is void and that the Customary Courts, Imo State have no criminal jurisdiction. After hearing arguments from both counsel, the court in its judgment partly granted the reliefs sought by appellant. However, appellant was not satisfied. Hence, he filed appeal in the Court of Appeal Port Harcourt. The court held that appellant's originating summons disclosed no cause of action and thus dismissed the appeal. Aggrieved, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*Whether the learned Justices of Court of Appeal, Port Harcourt Division were right in suo motu raising and deciding in their judgments that the **ORIGINATING SUMMONS** of the appellant did not disclose any reasonable cause of action without affording counsel the opportunity to address them on that issue before dismissing the appeal of the Appellant.*

*Given the nature and purport of an **ORIGINATING SUMMONS**, were the learned Justices of the Court of Appeal Port Harcourt Division right in their decision that there was no controversy between the Appellant and the Respondents in a suit in which the law complained of was applied for interpretation.*

*Whether the Court of Appeal was right in holding that the Appellant has no locus standi to institute the originating summons to challenge the constitutionality or otherwise of section 3(d) of Imo State Edict No. 6 of 1980."*

**HELD**

(Unanimously dismissing the appeal per

**ONNOGHEN JSC)***COURTS - Issue - Suo motu raising*

**1. It is however settled law that where a court fails/neglects to invite parties before it to react to issue(s) raised suo motu before basing its judgment thereon, such an act amounts to a breach of the appellant's right to fair hearing which renders the judgment a nullity. (p. 3427 G)**

*ACTIONS - Cause of action - Meaning*

**2. It is settled law that a cause of action is the fact or combination of facts which gives rise to a right to sue or institute an action in a court of law or tribunal. The term also includes all things which are necessary to give a right of action and every material fact which has to be proved to entitle the plaintiff to succeed/relief. (p. 3428 H)**

*ACTIONS - Reasonable cause of action - Meaning*

**3. On the other hand, a reasonable cause of action is a cause of action which, when only the allegation in the Statement of Claim and, I may add, originating process, are considered have some chances of success. (p. 3429 A)**

*LOCUS STANDI - Actions - Legal practitioner*

**4. I am of the considered view that the fact that appellant is a practicing legal practitioner engaged in active legal practice without more does not confer on appellant any cause of action recognised by law, let alone a reasonable cause of action neither does it confer on him any locus standi to institute the action. (p. 3430 B)**

*LOCUS STANDI - Meaning of*

**5. It is settled law that locus standi is the legal capacity of a party to institute an action in a court of law. Where a party has no locus standi, the court will have no jurisdiction to hear and determine any claims/action. (p. 3430 F)**

*Party - Locus standi - Precondition*

- 6. For a party to have locus standi to sue, he must show sufficient interest in the suit before the court; such as whether the person in question could have been joined as a party to the suit or whether the party seeking relief/redress/remedy will suffer some injury or hardship from the litigation if not joined.**  
(p. 3430 G)

**REPRESENTATION**

- C J. C. UWAZURUONYE ESQ (in person) for appellant  
AHAM EJELAM ESQ for the respondent now appears with A. C. DOMINIC - KALIO ESQ.

**CASES REFERRED TO**

- Achiakpa v. Nduka (2001) 14 NWLR (pt. 734) 632  
Atanda v. Lakanmi (1973) 3 SC 109  
Adegoke v. Adibi (1992) 5 NWLR (pt. 242) 410  
Kuti v. Jibonu (1972) 1 All NLR (pt. 2) 180  
E Elabanjo v. Dawodu (2006) 16 NWLR (pt. 1001) 70  
P. N. Udoh Trading Co. Ltd v. Abere (2001) 11 NWLR (pt. 723) 114  
Dantata v. Mohammed (2007) 7 NWLR (pt. 664) 176  
Odiase v. Agbo (1992) All NLR 175  
Okorodudu v. Okoromadu (1992) 3 S.C. 25  
F Achiapka v. Nauka (2001) 14 NWLR (pt. 734) 632  
Ajao v. Ashiru (1973) 11 S.C. 23  
Elabanjo v. Dawodu (2006) 15 NWLR (pt. 1001) 70  
Dada v. Ogunsanya (1992) 3 NWLR (pt. 232) 754  
G A-G Lagos State v. Eko Hotels Ltd (2006) 18 NWLR (pt. 1011) 378  
Ojukwu v. Governor of Lagos State (1986) 2 NWLR (pt. 10) 806

**STATUTES REFERRED TO**

- Constitution of Federal Republic of Nigeria 1979, ss. 6(6)(b), 247  
H Land Use Decree 1978, ss. 39 and 41  
Magistrate Courts Law (Amendment) Edict 1990, s. 17(2)(7)  
Imo State Edict No. 6 of 1980, s. 3(d)

**LEAD JUDGMENT BY ONNOGHEN JSC**

On the 16<sup>th</sup> day of March, 1995 appellant caused an Originating Summons to be issued for the determination of the following questions by the High Court of Imo State, holden at Owerri:

*“(1) Whether the Criminal Jurisdiction conferred on the Customary Courts in Imo State by virtue of section 14 of Edict No. 7<sup>B</sup> of 1984 and shown in column 1 of the Third Schedule to the Edict is not void in view of section 247 of the 1979 Constitution.*

*(2) Is prerogative writ an originating process or procedure?*

*(3) If the answer in issue 2 above is in the affirmative, is it<sup>C</sup> proper, and lawful to initiate same in the Customary Court of Appeal which is conferred with only Appellate Jurisdiction by the 1979 Constitution.*

*(4) Can the 1<sup>st</sup> defendant by way of an Edict confer an additional original jurisdiction on the third defendant when section 247<sup>D</sup> of the Constitution has provided for only Appellate and supervisory jurisdiction in matters relating to customary law.*

*(5) If the answer in 4 is in the negative, is the purported amendment conferring original jurisdiction on the 3<sup>d</sup> defendant by virtue of section 3(d) of Edict No. 6 of 1979 which amends the principal Edict by adding a new section 79 not void and unconstitutional by virtue of section 247 of the 1979 Constitution.*

*(6) Is section 17(2) of the Magistrate Court Law (Amendment) Edict, 1990 Edict No. 3 of 1991) conferring unlimited jurisdiction to<sup>F</sup> the Chief Magistrate Courts or Senior Magistrate Courts in suits or matters relating to title or interest in any land not void by virtue of section 39 and 41 of the Land Use Decree of 1978.”*

Appellant sought the following reliefs from the court upon the resolution of the questions supra:<sup>G</sup>

*“(a) For the court to declare as null and void and of no effect section 14 of Edict No. 1984 (sic) and column of the Third Schedule of the said Edict conferring criminal jurisdiction on the Customary Courts, Imo State.*

*(b) For the court to hold that the Customary Courts, Imo State<sup>H</sup> have no criminal jurisdictions.*

*(c) For the court to declare that the 3<sup>d</sup> defendant has no original jurisdiction in respect of prerogative writs and same cannot be initialed before it as section 3 (d) of Edict No. 6 of 1989 is contrary to*

*section 247 of the 1979 Constitution and therefore void.*

*(d) For the court to declare that the Chief Magistrate Courts or Senior Magistrate Courts cannot hear and determine suits or matters relating to title to land as section 17(2) of the Magistrate Courts Law (Amendment) Edict, 1990 is void. ”*

B It has to be mentioned that appellant who is a legal practitioner initiated the action in person for the reliefs quoted supra.

The Originating Summons is supported by an affidavit of 20 paragraphs, which, for reasons that would become apparent later in this judgment, it is necessary to reproduce in extenso, as follows:-

C “(1) *I am the plaintiff in this suit.*

*(2) That I sued the defendants as per my ORIGINATING SUMMONS which raised certain fundamental legal issues touching on the practice and procedure of law in Imo State and Nigeria.*

D *(3) That I am a private Legal Practitioner and was called to the Nigerian Bar in 1984 and have been in practice in Owerri since after my call.*

*(4) That as a Legal Practitioner I have paid my 1995 annual practicing fees for which the photocopy of the receipt is attached as*  
E *“A”.*

*(5) That as a legal practitioner In Nigeria I know as a fact that there is in existence the 1979 Constitution upon which the acts of the Executive and even judiciary are measured and scrutinized.*

F *(6) That as a lawyer, I owe it as a duty to see that the provisions of the 1979 Constitution and other laws of Imo State and the Federal Republic of Nigeria are obeyed.*

*(7) That as a legal practitioner and in the course of my professional duties I have come across the various Edicts and the*  
G *Amendments mentioned in my ORIGINATING SUMMONS.*

*(8) That in the course of my duties also I have read in extenso the provisions of the 1979 Constitution and the LAND USE DECREE.*

*(9) That having read the various enactments mentioned above,*  
H *I advised myself and I also most verily believe that the various Edicts mentioned are contrary to the 1979 Constitution and the LAND USE DECREE.*

*(10) That the courts have been dealing, acting and in most cases executing unconstitutional acts occasioned by the various Edicts*

mentioned.

(11) *That as a Legal Practitioner, I know that the 1<sup>st</sup> defendant is not competent to purport to amend any section of the Constitution by way of an Edict*

(12) *That as a Legal Practitioner, I know as a fact, that prerogative writ is an originating process which cannot be initiated at the Customary Court of Appeal except the High Court.* B

(13) *That by the Customary Courts assuming jurisdiction in some criminal matters as Edict No. 7 of 1984 provides, it is doing great havoc to the Constitution and also impeding the rights of Appeal of many citizens of Nigeria.* C

(14) *That I know as a fact that Appeal lies from Customary Court to Customary Court of Appeal.*

(15) *That I know that the Customary Court of Appeal has no criminal jurisdiction.* D

(16) *That it is a fact that any person convicted by the Customary Court in respect of any criminal offence cannot have a right of appeal.*

(17) *That it is also a fact that it is only the High Court and Customary Courts that are given jurisdiction to hear matters relating to title to land and the Magistrate Courts.* E

(18) *That the various amendments contained in the Edicts are in conflict with the Constitution and their existence in our laws constitute constitutional illegalities.*

(19) *That it will be in the interest of justice to erase these amendments from our law books through the order of the court.* F

(20) *That I make this oath in good faith."*

Upon the completion of arguments by both counsel, the trial court, in a judgment delivered on the 11<sup>th</sup> day of March, 1996, answered the six questions posed by appellant at pages 33 and 34 of the record, as follows:- G

*"Question 1: Section 14 of the Customary Court Edict No. 7 of 1984, is unconstitutional in that it has not made any provision for appeal against the decision of the Customary Court, and it has also not made any provision regarding the procedure and the court to which appeals may lie from the Customary Court. To that extent, therefore section 14 of the Customary Court Edict No. 7 of 1984 is null and void. Question 2-5* H

*The Customary Court of Appeal exercises supervisory jurisdiction over the Customary Court, in deserving cases. Issuance of prerogative orders is one mode of exercising such supervisory jurisdiction. It is immaterial that the prerogative writ is described as “original” since prerogative writ is neither “original” nor “appellate”.*

B Question 6:

*Section 17(2) of the Magistrates’ Courts Law (Amendment) Edict 1990 is unconstitutional to the extent that it is inconsistent with section 39 of the Land Use Act, 1978 and therefore null and void.”*

C Appellant being dissatisfied with parts of the above decision appealed to the Court of Appeal, Holden at Port Harcourt, in appeal No. CA/PH/243M/97 in which he formulated the following two (2) issues for determination, to wit:-

D (1) *Whether the 1<sup>st</sup> defendant/respondent was right in amending section 247 of the 1979 Constitution by an Edict conferring original jurisdiction on the 3<sup>d</sup> defendant/respondent (Customary Court of Appeal Imo State) to hear applications on prerogative writs.*

E (2) *Whether the Customary Court of Appeal Imo State (3<sup>d</sup> defendant/respondent) being an appellate court can hear any application on prerogative writs.”*

In resolving the above issues, the lower court, in its judgment delivered on 30<sup>th</sup> March, 2004, found and held inter alia, at pages 70 – 74 as follows:-

F “*I however feel that having gone this far, it is necessary to see if in fact the appellant in this case has indeed a reasonable cause of action to institute this suit. That leads to a close look at the relevant paragraphs of the affidavit filed in support of the originating summons:- At a glance one would see that the plaintiff/appellant is clearly*

G *doing a yeoman’s job. He however deposed in the affidavit as borne out by paragraph 6 of the affidavit that he owes it as a duty to see that the provisions of the 1979 Constitution, other laws in Imo State and the country as a whole are obeyed. He went on to aver in paragraph 10 that the courts have been dealing and in most cases executing unconstitutional acts occasioned by the various Edicts mentioned.*

H *There lies the crux of the matter.*

*One would want to know at what stage a lawyer could act in such circumstances. I believe that the appellant has by himself supplied the answer that is at the very time a court embarks on an un-*



*constitutional act. In other words, there must be an event in the handling of which the points now raised in vacuous can be canvassed in court with the appropriate relief sought and secured. In this particular instance, the whole thing has assumed the colour and character of an academic exercise. There is no event or exact legal controversy, on which the submissions are based. In such a case, the suit is said to lack reasonable cause of action. This is more so when it is not based on any particular actionable tort. The action taken by the appellant is at best premature and the court is not duty bound to entertain hypothetical suits. It is true that apparent anomalies must be corrected but there are ways of doing so...*

*In this suit too as it were, there has been no controversy as such between the appellant and the respondents. There is no particular suit to which the law complained of was applied and which can give rise to a controversy and the interpretation of the laws applied. That, of course is why I put it mildly by saving the action is misconceived and premature...*

*I have gone this length to show how my mind is working. I hold the strong belief that though as a citizen and as a lawyer the appellant has a right to take interest in whatever laws are enacted for the running of government machinery but when the occasion has not arisen it may amount to mere academic exercise to champion such cause...*

*In the result, the appeal is misconceived and lacks merit. The Originating Summons discloses no cause of action and the appeal is accordingly dismissed...*

It is against the above findings/holdings that appellant has appealed to this Court and submitted the following issues for determination to wit:-

*“(1) Whether the learned Justices of Court of Appeal, Port Harcourt Division were right in suo motu raising and deciding in their judgments that the ORIGINATING SUMMONS of the appellant did not disclose any reasonable cause of action without affording counsel the opportunity to address them on that issue before dismissing the appeal of the Appellant.*

*(2) Given the nature and purport of an ORIGINATING SUMMONS, were the learned Justices of the Court of Appeal Port Harcourt Division right in their decision that there was no contro-*

*versy between the Appellant and the Respondents in a suit in which the law complained of was applied for interpretation.*

(3) *Whether the Learned Justices of Court of Appeal were right in holding that the Customary Court of Appeal (Imo State) 3<sup>d</sup> Respondent can hear and determine application for writ of certiorari, prohibition, mandamus and habeas corpus etc, which are classified prerogative writs.*

(4) *Whether the Court of Appeal was right in holding that the Appellant has no locus standi to institute the originating summons to challenge the constitutionality or otherwise of section 3(d) of Imo State Edict No. 6 of 1980.*”

On the other hand, learned Counsel for the respondents, AHAM EKE EJELAM ESQ in the respondents’ brief deemed filed on 28/4/09 couched the four issues as follows:

“(1) *Whether the Learned Justices of the Court of Appeal, Port Harcourt Division, having identified issues of jurisdiction in the appeal were right in raising suo motu and deciding in their judgment that the ORIGINATING SUMMONS of the Appellant did not disclose any reasonable cause of action.*

(2) *Whether the failure of the Learned Justices of the Court of Appeal, Port Harcourt Division, to call on Counsel to address them on whether or not the Originating Summons of the Appellant disclosed any reasonable cause of action led to a miscarriage of justice and rendered the judgment perverse.*

(3) *Whether the Learned Justices of the Court of Appeal, Port Harcourt Division, were right, in upholding the Learned Trial Judge’s decision that the 3<sup>d</sup> Respondent can hear and determine prerogative writs.*

(4) *Whether the Court of Appeal was right in holding that the Appellant has no locus stand to institute the Originating Summons, since he has not shown how his right has been affected by the operation of section 3(d) of Imo State Edict A/O. 6 of 1989.*”

It is clear that the issues identified for determination by both counsel are virtually the same, though, those by learned Counsel for the respondents are clearer and to the point. However, from the above issues, which arise from the grounds of appeal attacking the decision of the lower court particularly the portion reproduced earlier in this judgment, it will be appropriate to deal with issues 1, 2 and

4 together, leaving issue 3 to be dealt with if the need still exists or depending on the resolution of issues 1,2 and 4.

In arguing the issues, appellant in person submitted in the appellant's brief deemed filed on 1/11/05 that though a court is at liberty to raise an issue for determination suo motu, it is duty bound to invite both counsel to address it on it before basing its decision thereon; that the lower court was in violation of the above principle which renders its decision liable to be set aside by this Court; that the failure of the court to hear from both counsel for the parties on the issues so raised suo motu, the lower court was in breach of their right to fair hearing which breach renders the judgment a nullity, relying on *Achiakpa vs. Nduka* (2001) 14 NWLR (pt 734) 632 at 663 - 664; *Atanda vs. Lakanmu* (1973) 3 S.C 109; *Adegoke vs. Adibi* (1992) 5 NWLR (pt. 242) 410; *Kuti vs. Jibonu* (1972) 1 All NLR (pt. 2) 180.

In respect of issue 2, learned Counsel submitted that the issue before the courts is for the correct interpretation or construction of section 3 (d) of Edict No. 6 of 1989 by way of an Originating Summons and that appellant is a legal practitioner engaged in legal practice since 1984, that the supporting affidavit particularly paragraphs 1-3, 6, 7 and 10 disclosed his interest and how the said section 3(d) of Edict No. 6 of 1989 has affected the state of the law in practice contrary to the 1979 Constitution. In the course of his submission, learned Counsel raised the following question:

*"The question that arises from the Court of Appeal's decision is this: MUST the Appellant who is a legal practitioner engaged in the day to day application of the law sought to be interpreted, wait until a tort is committed and he is consulted before he goes to court for its interpretation as the Court of Appeal seem to suggest?"*

He then proceeded to answer same in the following terms:

*"It is submitted that the Appellant being a legal practitioner and who by his deposition is a legal practitioner engaged in active legal practice cannot wait for such event to occur or to happen, for in the dictum of Oguntade, JCA (as he then was) in the case of: UDOZOR vs. EGOSIONU (1992) 1 NWLR (pt. 218) 458 at 510 H said:-*

*"Laws do get broken. A vigilant person does not wait for an irreversible steps to be taken before he takes a preemptive action."*

On issue 4, learned Counsel submitted that appellant has the

requisite locus standi to institute the action particularly under section 6(b) of the 1979 Constitution; that it is not disputed that appellant is a legal practitioner who engages in legal practice and therefore has a civil right to practice his profession in the law courts and faces obligations to himself, his clients and the courts. Finally, Counsel submitted that:

*“(a) It is absurd to infer that a legal practitioner who seeks for the correct interpretation or construction of an enactment or law in a court of law is a “busy body”.*

*(b) Prior to the enactment of Edict No. 6 of 1989, prerogative writs were only filed in the High Court against inferior courts or Tribunals. The Appellant had cause to challenge the sudden amendment conferring original jurisdiction to Customary Court of Appeal to hear actions on prerogative writs.”*

Learned Counsel then urged the court to allow the appeal.

On his part, learned Counsel for the respondents submitted that an action which does not disclose a reasonable cause of action cannot activate the jurisdiction of the court; that a cause of action is the fact or combination of fact which gives rise to a right to sue, relying on *Elabanjo vs Dawodu* (2006) 16 NWLR (pt. 1001) 70 at 152; *P.N. UDOH TRADING CO. LTD vs ABERE* (2001) 11 NWLR (pt. 723) 114 at 129; *Dantata vs Mohammed* (2007) 7 NWLR (pt. 664) 176 at 203; that the lower court ex rayed the depositions in the affidavit in support of the Originating Summons before coming to the conclusion that appellant has no reasonable cause of action nor does he have locus standi to institute the action.

It is the further submission of learned Counsel for the respondents that the lower court was entitled to take the points suo motu if it deem it fit so to do having regards to the special circumstances of the case particularly the fundamental issues as to whether there is absence of any of the attributes which confers jurisdiction on a court; relying on *Odiase vs Agbo* (1992) All NLR (Reprint) 175 at 186; *Okorodudu vs Okoromadu* (1992)3 S.C. 25.

On locus standi, learned Counsel submitted that it is the averment in the statement of claim that determines a plaintiffs locus standi; that a plaintiff must show sufficient interest in the suit before the court – the interest must be real and tangible in law; that the raising of the issue suo motu by the court and without calling on the parties to

address thereon would not automatically lead to a reversal of the decision particularly as the appellant has not shown that the decision resulted in a miscarriage of justice; that in the instant case the findings of the lower court on the issues were not perverse as they are supported by the facts on record.

Learned Counsel then urged the court to resolve the issues against the appellant and dismiss the appeal.

From the facts of the case and the submissions of both Counsel, it is not in any doubt that the issue as to whether appellant disclosed a reasonable cause of action in the action he instituted giving rise to the appeal and whether he has the requisite locus standi to initiate the action were raised by the lower court suo motu and without the court calling on Counsel for the parties to address it on the points so raised. Also not in dispute is the fact that the lower court proceeded to base its decision in the appeal on the said issues so raised suo motu and without hearing from the Counsel for the parties.

The question that naturally arises from the agreed facts is simply what is the legal effect(s) of the action of the lower court? It is in this respect that both Counsel hold different opinions.

Whereas appellant submits that the action of the lower court in the circumstances of the case amounts in law to a breach of appellant's right to fair hearing thereby rendering the decision reached as a result null and void and of no effect whatsoever, learned Counsel for the respondents contends that it is not every case where an issue is raised suo motu by a court and without address thereon on behalf of the parties that would lead to a reversal of the decision reached thereon by an appellate court, that the appellant still has the duty to go further to prove that the act of the lower court in the circumstance of the case has led to a miscarriage of justice, which appellant has failed to establish in the instant case.

***It is however settled law that where a court fails/neglects to invite parties before it to react to issue(s) raised suo motu before basing its judgment thereon, such an act amounts to a breach of the appellant's right to fair hearing which renders the judgment a nullity.*** In the case of *Achiapka vs Nauka* (2001) 14 NWLR (pt. 734) 632 at 664, this Court, per IGUH, JSC stated the law as follows:-

*“When a court raises a point suo motu, the parties must be given an opportunity to be heard on the point particularly the party that shall be aggrieved as a result of the resolution of the point. In the instant case, the Court of Appeal by raising suo motu the issue of the link between NKPO UNO, Uba Nduka and Aniobu Lands and drew*  
 B *conclusion thereon without giving the Respondent an opportunity to be heard breached the Respondent right to fair hearing.”*

See also *Adiase vs Agho* (1972) All NLR (pt. 1) 170; *Ajao vs Ashiru* (1973) 11 S.C 23; *Atanda vs Lakanmi* (1974) 3 S.C 109;  
 C *Adegoke vs Adibi* (1992) 5 NWLR (pt. 242) 410 at 420 - 421.

However, in the instant appeal, appellant has gone further to argue that on the facts on record before the court, the lower court was in error in holding that appellant’s case did not disclose a reasonable cause of action neither did appellant disclose any locus standi to  
 D institute the action. In other words, appellant has now joined issues with the lower court on the issues so raised suo motu by that court which makes it necessary for this Court at this stage not to order a rehearing of the appeal but to proceed to determine the issues on their merit so as to determine whether the lower court is right or  
 E wrong in its conclusions on the issues so raised suo motu and without recourse to the parties. This Court is well equipped to do so having regards to the fact that the affidavit in support of the Originating Summons which was relied upon by the lower court in coming to the conclusions is before this Court and had, in fact been reproduced in  
 F extenso earlier in this judgment and Counsel for both parties have addressed the Court on the matter in their respective briefs of argument which they adopted in argument of the appeal during oral hearing of same on the 23<sup>rd</sup> day of September, 2012. I had also reproduced the relevant portions of the judgment of the lower court on  
 G the issues in question thereby making it very easy for one to determine the issue as to whether the lower court is right or wrong in its conclusions that appellant’s suit did not disclose a reasonable cause of action and that appellant does not have a locus standi to institute  
 H the action.

***It is settled law that a cause of action is the fact or combination of facts which gives rise to a right to sue or institute an action in a court of law or tribunal. The term also includes all things which are necessary to give a right of action and***

**every material fact which has to be proved to entitle the plaintiff to succeed/relief** - see *Elabanjo vs Dawodu* (2006) 15 NWLR (pt.1001) 70 at 152; *P.N Udoh Trading Co. Ltd vs Abere* (2001) 11 NWLR (pt.723) 114 at 129.

**On the other hand, a reasonable cause of action is a cause of action which, when only the allegation in the Statement of Claim and, I may add, originating process, are considered have some chances of success.** See *Dantata vs Mohammed* (2007) 7 NWLR (pt. 664) 176 at 203. B

Appellant in contending that he has disclosed a reasonable cause of action and that he has locus standi referred the court to paragraphs 1, 2, 3, 6, 7 and 10 of the affidavits in support of the Originating Summons, which were reproduced in the judgment of the lower court and earlier in this judgment amongst others and submitted that as *“a legal practitioner engaged in active legal practice cannot wait for such as event (a tort to be committed) to occur or to happen... before approaching the court.”* For the above, appellant relied on what he called *“the dictum of or Oguntade, JCA, as he then was, in the case of UDOZOR vs EGOSIONU (1992) 1 NWLR (pt 218) 458 at 510...”* C D E

*“Laws do get broken. A vigilant person does not wait for an irreversible steps to be taken before he takes a preemptive action”* but the submission is erroneous particularly as OGUNTADE, JCA, as he then was, never sat on the panel that decided the case, but OGUNDARE, JCA, as he then was. Secondly, my, Lord OGUNDARE, JCA, as he then was, though presided in the case, never said anything like what has been ascribed to him. All he said can be found in his concurring judgment at page 473 of the report to wit: F

*“I have had the advantage of a preview of the judgment of my learned brother Jacks, J.C.A just delivered. I agree with his reasoning and the conclusion reached by him. I have nothing more to add. I too dismiss the appeal with costs as assessed in the lead judgment.”* G

The other member of the panel of Justices that heard the appeal was OMOSUN, JCA whose decision is very similar to OGUNDARE, JCA's supra. That apart, it is important to note that what learned counsel is relying on is admitted by him to be a statement made obiter - if it was ever made at all in any judgment. H

The above notwithstanding, the reason why appellant con-

tends that he has a reasonable cause of action and locus standi is not supported by the paragraphs of the affidavit in support of the Originating Summons which constitute the facts of the case from which the issue of cause of action/reasonable cause of action can be conveniently determined.

B ***I am of the considered view that the fact that appellant is a practicing legal practitioner engaged in active legal practice without more does not confer on appellant any cause of action recognised by law, let alone a reasonable cause of action neither does it confer on him any locus standi to institute the action.***

Haven gone through the record of appeal and submission of both Counsel on the issues it is my considered view that the lower court is right in its conclusion that

D *“... there must be an event in the handling of which the points now raised in vacuo can be canvassed in court with the appropriate relief sought and secured in this particular instance, the whole thing has assumed the colour and character of an academic exercise. There is no event or exact legal controversy on which the submissions are*  
 E *based. In such a case, the suit can be said to lack reasonable cause of action. This is more so when it is not based on any particular actionable tort.”*

Appellant has also submitted that section 6(6)(b) of the 1979  
 F Constitution clothes with the requisite locus standi to institute the action in question. The question is whether appellant is right in the submission? ***It is settled law that locus standi is the legal capacity of a party to institute an action in a court of law. Where a party has no locus standi, the court will have no jurisdiction to hear and determine any claims/action.*** See *Dada vs Ogunsanya*  
 G (1992) 3 NWLR (pt. 232) 754.

***For a party to have locus standi to sue, he must show sufficient interest in the suit before the court; such as whether the person in question could have been joined as a party to the suit or whether the party seeking relief/redress/remedy will suffer some injury or hardship from the litigation if not joined***  
 H -see *A-G Lagos State vs Eko Hotels Ltd* (2006) 18 NWLR (pt. 1011) 378 at 450; *Ojukwu vs Governor of Lagos State* (1986) 2 NWLR (pt. 10) 806.



Appellant has sought refuge under section 6(6) (d) of the 1979 Constitution as being the provision that grounds his locus standi in the action. What does it say? It provides thus:-

“ *The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons or between government or authority and any person in Nigeria and all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person.* ” B

Does the above provision confer locus standi on appellant to institute the present action having regards to the facts of the case? C The answer is clearly in the negative. The section does not confer locus standi on the appellant particularly as appellant has failed, from the affidavit evidence on record to show that the questions sought to be determined by the trial court in the Originating Summons relate to appellant’s civil rights and obligations nor has he shown that he is D a person who is in imminent danger of any conduct of the adverse parties (respondents in this appeal) which would have made him not only connected but in close proximity with the suit and that the result of any litigation outside him or without his Presence/participation will directly affect his legal rights to his detriment. For section 6(6) (d) E of the said 1979 Constitution to apply appellant must prove that his civil rights and obligations will be affected or are affected in the matter to be determined by the court, otherwise he is a busy body and his case a hypothetical or academic one which the courts have held F in very many decisions not to be justiciable as the courts are without jurisdiction to hear and determine same.

I therefore agree with the reasoning and conclusion of the lower court in its judgment to the effect that:

*In this suit too as it were, there has been no controversy as G such between the Appellant and Respondents. There is no particular suit to which the law complained of was applied and which can give rise to a controversy and the interpretation of the laws applied.* ”

In the circumstance I resolve the issues against appellant and in favour of the respondents. Haven done so, I see no need to go into H any consideration of issue No. 3 which has now been rendered not only irrelevant but hypothetical and academic as it no longer arise from a live action.

In conclusion, I affirm the decision of the lower court that ap-

pellant has not disclosed a reasonable cause of action neither has he established any locus standi to initiate the action. The above being the case, it is clear that the action so constituted in the said circumstances is grossly incompetent and liable to be struck out. It is therefore my view that suit No. HOW/92/95 be and is hereby struck out  
B for want of jurisdiction, with costs which I assess and fix at N100, 000 against appellant and in favour of respondents. Appeal is dismissed.

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**CHUKWUMA-ENEH JSC**

C I am privileged to read in draft the judgment in this appeal prepared and delivered by my learned brother Onnoghen JSC with which I agree entirely.

The facts and the arguments of the parties have been set out in  
D extenso in the lead judgment and I adopt the same for this short contribution. That said; I must add that the lower court has rightly found “.....there must be an event in the handling of which the points now raised in vacuo can be canvassed in court with the appropriate relief sought and secured in this particular instance, the whole thing  
E has assumed the colour and character of an academic exercise. There is no event or exact legal controversy on which the submissions are based. In such a case, the suit can be said to lack reasonable cause of action. This is more so when it is not based on any particular action-  
F able tort;”

This action has particularly raised the crucial question of locus standi as a threshold issue which a plaintiff has to possess in the quest of seeking reliefs in actions as the instant one otherwise he becomes a bushy-body. Locus standi, in other words that is “title to sue” means  
G the standing in law to bring an action. The legal implication is that a plaintiff without the standing to sue in a matter risks having his action dismissed - meaning that the court can only hear a plaintiff who has title to sue no matter the public importance of the issues raised in the action as in this matter, in this case the appellant contends having  
H brought this action because he is a legal practitioner whose advice is constantly being sought by his clients as being the reason he wants the issues raised in this matter for a pronouncement one way or the other by the court.

I see the main issue in this matter from the perspectives of the

foregoing principle and that there has to be some real issue In controversy as between the parties in a suit vis-a-vis the import and purport of Section 6(6) of the 1999 Constitution (as amended) which has emphasized civil rights and obligations of the plaintiff suing in a matter as in this case in order to give a court seized of the matter the jurisdiction to entertain the same. This court has no power to interpret the said Section 14 Customary court Edict No.7 of 1984 and Section 17(7) of the Magistrate Court Law (amendment) Edict 1990 Edict No.3 of 1991 as it were, in vacuo. Not even with some significant shift in recent decisions of this court on the issue of locus standi has the position of our law on this matter advanced beyond what is decided as in *Adesanya v. President of Nigeria* (1981) 2 NCLR 376. The appellants clearly lack the competence to take these issues in vacuo. This action being incompetent is hereby dismissed. And I abide by the orders in the lead judgment.

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### **MUHAMMAD JSC**

My learned brother Onnoghen, JSC had obliged me a preview of his lead judgment in this appeal. I agree with his reasonings and conclusion that the appeal lacks merit and that it should be dismissed.

The Appellant went to the trial court without any cause of action to challenge the constitutionality of the amendment the then Imo State Government effected in respect of edict No. 7 of 1981. The appellant must be reminded that a court of law is not a laboratory for the conduct of experiments regarding grief or rights that are yet to engulf or enure, as it were, to the plaintiff. Access to court avails only that person whose right has been violated and not a busy bodied litigant who seeks for solutions to problems that are yet to occur. Time is too precious for it to be wasted in the venture the Appellant desires to involve the court. Courts have always firmly declined such invitations aimed at tackling academic or hypothetical questions. See *Adelaja v Alade* (1999) 6 NWLR (pt.608) 544. Appellant's fate should not be any different.

It is for the foregoing but more so the fuller reasons contained in the lead judgment that I also dismiss the appeal. I abide by the consequential orders decreed therein.

**OGUNBIYI JSC**

I have read in draft the lead judgment by my brother Onnoghen, JSC and I agree that the appeal is devoid of any merit and should be dismissed.

B Briefly I would wish to state that a cause of action has to be disclosed to warrant an enquiry as to whether the amendment of the Edict No 7 of 1981 of Imo State conferring original jurisdiction on the Customary Court of Appeal Imo State to hear prerogative writs -  
C contravenes section 247 of the 1979 constitution.

The exercise embarked upon by the appellant is futile wherein he has no justiciable cause of action. In otherwords the originating summons taken out by the appellant is futile as it is an academic exercise. This is especially where the appellant's complaint is focused  
D against potential transgressors of the constitution. See Senator Abraham Adesanya v. President of the Federal Republic of Nigeria (1981) 5 SC 112 at 159 per Bello JSC (as he then was). The appellant's act portrays a person of busy body whose interest is neither at stake nor is he set to pursue any legitimate and existing cause  
E of action.

I agree entirely with the lead judgment by my brother Onnoghen, JSC that this appeal has no merit and I also dismiss same in like terms and abide by the order made as to costs.

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