

SUPREME COURT OF NIGERIA

FRIDAY 17TH JANUARY, 2014. SC. SC.80/2005, 125/2006

**CORAM:- I. T. MUHAMMAD, J. A. FABIYI, M. U. PETER-
ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC**

1. KAYODE BAKARE
2. SOJI AJAYI-BEMBE
3. KOLA SHADEKO
4. TAJUDEEN ONIKOYI
5. DR. MONSURU BAJULAIYE

SHASI - SC.80/2005

..... APPELLANTS

AND

ATTORNEY-GENERAL &
COMMISSIONER FOR JUSTICE
LAGOS STATE - SC.125/2006

AND

1. CHIEF EZEKIEL
AJOSE-ADEOGUN
2. FATAI LAWAL
3. MUSIBAU TAIWO

(For themselves and on behalf of
Deyari, Kueji and Kumuyi Branch of
Obanikoro Chieftaincy Family other
than the Defendants)

4. ATTORNEY-GENERAL
& COMMISSIONER FOR JUSTICE
LAGOS STATE - SC.80/2005

..... RESPONDENTS

AND

1. CHIEF EZEKIEL AJOSE-ADEOGUN
2. FATAI LAWAL
3. MUSIBAU TAIWO

(For themselves and on behalf of
Deyari, Kueji and Kumuyi Branch of
Obanikoro Chieftaincy Family other
than the Defendants)

4. KAYODE BAKARE
5. SOJI AJAYI BEMBE
6. KOLA SHADEKO
7. TAJUDEEN ONIKOYI

8. DR. MONSURU BAJULAIYE
SHASI - SC.125/2006

ACTIONS - Locus standi - Meaning of - Is the legal capacity of plaintiff to institute action in court - In exercise of plaintiff's constitutional right (H1)

ACTIONS - Locus standi - Basis - If statement of claim discloses no personal sufficient interest in subject matter of case - Plaintiff will have no locus to institute action - And court will have no jurisdiction to entertain same (H2)

ACTIONS - Locus standi - Determination - To determine whether or not plaintiff has locus standi - Court should consider his statement of claim (H3)

ACTIONS - Locus standi - Absence of - Objection - On lack of required locus standi - Ought to have been raised in statement of defence - And may then be taken by court when properly moved to do so (H4)

ACTIONS - Locus standi - Affidavit evidence - Determination - Trial court rightly considered the evidence with annexures - Along with statement of claim - To be satisfied that no sufficient interest was disclosed by plaintiffs to entitle them to locus standi (H5)

ACTIONS - Locus standi - Objection - Application - Proper way by which plaintiff ought to have objected - To defendants' application on lack of locus - Was that it was being brought by way of demurrer - Not having filed statement of defence and raised the point in it (H6)

ACTIONS - Aggrieved party - Meaning - Is one whose personal rights have been adversely affected by another person's action - Or by court's decree or judgment (H7)

ACTIONS - Cause of action - Proper parties - Jurisdiction - Cause of action endorsed on writ of summons determines proper parties -

And it is only when such parties are before court - That it becomes competent to adjudicate on the suit (H8)

FACTS

Before the High Court of Lagos State, plaintiffs/1st-3rd respondents commenced this action claiming inter alia, a declaration that Alhaji Kazeem Oriowo Aromire is the Head of Kueji ruling House and overall Head of Obanikoro Chieftaincy family of Lagos pursuant to Lagos Island Local Government letter ref: No. 00160/Vol.II/272 dated 22nd October, 1990. 1st-3rd respondents further filed two applications - an ex parte and the other motion on notice seeking injunctive reliefs. The ex parte application was granted pending the hearing of the one on notice which was then adjourned to a later date. On the day of adjournment, defendants/appellants filed a summons whereby they sought to set aside the order of interlocutory injunction (ex parte application) earlier granted on the ground of lack of locus standi and non service of the Originating processes.

1st-3rd respondents thereafter raised preliminary objection against appellants' summons. Subsequently, preliminary objection was filed by 6th defendant/6th respondent (in Court of Appeal/appellant in appeal no. SC.125/2006), challenging the locus standi of 1st-3rd respondents to institute the action and that the action disclosed no reasonable cause of action. 1st-3rd respondents in response filed counter affidavit to oppose the preliminary objection. The court heard and considered all applications before it. In its ruling, the court struck out 1st-3rd respondents' suit on the ground of lack of locus standi to institute the action. Aggrieved with the stance of the court, 1st-3rd lodged appeal in the Court of Appeal Lagos Division. The court allowed the appeal and set aside the ruling of trial court and remitted the case to be tried by another Judge of the High Court. Dissatisfied, 1st-5th respondents (in Court of Appeal) filed appeal no. SC.80/2005, while 6th respondent (in Court of Appeal) filed appeal no. SC.125/2006 against the same judgment of the Court of Appeal.

ISSUES FOR DETERMINATION

- Whether the court below was right in holding that the trial court was wrong in looking at other documents in the consideration of the plaintiffs' locus standi to institute their action.

- Whether the court below was right in holding that the plain-

tiffs/respondents have the required locus standi as their Statement of Claim stands, to prosecute the action.

- Whether the non joinder of Alhaji Kareem Aromire adversely affected the respondents' action as to render it incompetent.

B HELD (Unanimously allowing the appeals per **ARIWOOLA JSC**)

Locus standi - Meaning of

C 1. What then is "locus standi?" This is a Latin phrase meaning "place of standing". The right to bring an action or to be heard in a given in a given forum.

In other words, locus standi is the legal capacity of plaintiff/claimant to institute an action in a court of law in exercise of

D the claimant's constitutional right. (p. 96 A)

Locus standi - Basis

E 2. That is the reason the issue can be raised in limine after the Statement of Claim has been filed and served. Therefore ordinarily, if the Statement of Claim discloses no personal sufficient interest in the subject matter of the case, the plaintiff will have no locus standi to institute the action and the court will have no jurisdiction to entertain same.

F This court has maintained on locus standi that a plaintiff to enable him invoke the judicial power of the court must show sufficient interest or threat of injury he would suffer which is being sought to be protected. (p. 96 B)

G Locus standi - Determination

H 3. How then does the plaintiff show that it has the necessary or required standing to institute an action? It is now trite that in the determination of locus standi the plaintiff's Statement of Claim should be the only process that should be considered or should receive the attention of the court. The court has maintained this stand. In *Adesokun v. Prince Adegorolu* (1991) 3 NWLR (pt. 179) 261 this court held that in order to determine whether or not a plaintiff has locus standi it is the

Statement of Claim that must be considered. Hence, the well established principle of law that a defendant who challenges the locus standi of the plaintiff in limine is deemed to accept as correct all the averments contained in the Statement of Claim.

As earlier stated, the position has long been made clear and established, that in determining the locus standi of a plaintiff, it is the Statement of Claim that should be scrutinized by the court. But in demurrer proceedings where pleadings have not been completed but the point of law is being taken, the defendant is deemed to have admitted the averments in the Statement of Claim. In other words, in the challenge to locus standi of a plaintiff without having filed defence, the defendant relies on the Statement of Claim and urges the court to strike out the matter on the ground that the Statement of Claim does not show locus standi of the plaintiff. (pp. 96 F/100 A)

Locus standi - Absence of - Objection

4. It is clear from the record, that the defendants/appellants had not filed their Statement of Defence to the plaintiffs/respondents' action when they came up with the Summons. The issue of locus standi, is no doubt an issue of law. As shown on the record, it was raised by the defendants pursuant, inter alia, to Order 22 rules 2, 3 & 4 of the High Court of Lagos State (Civil Procedure) Rules. It is also clear that the objection in the Summons was not on lack of reasonable cause of action but lack of the required locus standi. The law is clear, that the point ought to have been raised in the Statement of Defence and may then be taken by the court when properly moved so to do. (p. 98 E)

Locus standi - Affidavit evidence - Determination

5. In the instant case, the trial court, no doubt considered the Statement of Claim as it should, to ascertain the status of the plaintiffs but went further to consider the affidavit evidence and the attached Exhibits to arrive at the conclusion that the plaintiffs lacked the required locus standi to institute the action.

The trial court in this case was therefore not wrong to have considered the affidavit evidence with the annexures along with the Statement of Claim and was satisfied that no sufficient interest had been disclosed by the plaintiffs to entitle them to locus standi to institute the action. The court below was therefore wrong in holding that the trial court was wrong in looking at the other documents filed with the applications along with the Statement of Claim to conclude that the plaintiffs lacked locus standi. The first issue is accordingly resolved in favour of the appellants. (pp. 98 H/99 C)

Locus standi - Objection - Application

6. Ordinarily, the proper way, in my view, by which the plaintiffs ought to have objected to the application of the defendants was that it was being brought by way of demurrer not having filed their Statement of Defence and raised the point in it. In *Disu & Anor v Ajilowura's* case (*supra*) this court opined that in an application challenging the locus standi of the plaintiffs in which certain facts have to be resolved, a Statement of Defence becomes absolutely necessary. Mere affidavit evidence are not enough to establish such issue. (p. 99 A)

ACTIONS - Aggrieved party - Meaning

7. An aggrieved party is one whose personal, pecuniary or property rights have been adversely affected by another person's actions or by a court's decree or judgment. He can also be referred to as a person aggrieved. Also, an interested party who has a recognizable stake and therefore standing in a matter.

In the instant case the averments in the statement of claim did not show or portray the respondents as persons aggrieved or interested as to have standing in the matter and be able to prosecute the complaint. (p. 104 C)

ACTIONS - Cause of action - Proper parties - Jurisdiction

8. It is now fairly settled law that it is the cause of action as endorsed on the Writ of Summons that determines the proper parties before the court.

And it is trite law that it is only when proper parties are before the court that the court will be competent to adjudicate on the suit, otherwise the court shall be incompetent. In other words, when proper parties are not brought before the court, there is lack of jurisdiction and locus standi as the action is incompetent. B

Therefore, not having made him a plaintiff or joined as one of the plaintiffs, the absence of Alhaji Kareem Aromire adversely affected the respondents' action and rendered it incompetent. Accordingly, Issue No.3 is resolved in favour of the appellants and against the respondents. (p. 104 G) C

REPRESENTATION

H. O. Igbokwe, Esq. - SC.80/2005

S. A. Quadri, Esq. with Olusola Soneye Esq. - SC.125/2006, for the Appellants D

Olusegun Fabunmi, Esq. with Johnny Agim Esq., for the 1st- 3rd Respondents

H. O. Igbokwe, Esq. for 4th-8th respondents in SC.125/2005 E

CASES REFERRED TO

Global Transport Oceanico SA v. Free Enterprises (Nig) Ltd. (2001) 5 NWLR (pt. 706) 426

A-G Enugu State v. Omada (1998) 1 NWLR (pt. 532) 83 F

Ezeafulukwe v. John Holt Ltd (1996) 2 NWLR (pt. 432) 511

Okulate v. Awosanya (2001) 1 SC 107

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

Owodunni v. Rgd. Trustees of CCC (2000) 10 NWLR (pt. 675) 315

Odeneye v. Efunga (1990) 7 NWLR (pt. 164) 618 G

Adefulu v. Oyesile (1989) 5 NWLR (pt. 122) 387

Wilson v. Oshin (2000) 5 SC (pt. 111) 1

Adesokun v. Adegorolu (1997) 3 NWLR (pt. 493) 261

Ladejobi v. Oguntayo (2004) 7 SC (pt. 1) 159

Disu v. Ajilowura (2006) 14 NWLR (pt. 1000) 783 H

Anyaduba v. NRTC Ltd (1992) 5 NWLR (pt. 243) 541

Nwana v. FCDA (2004) 7 SCM 25

Agbakoba v. INEC (2008) 12 SCM (pt. 2) 159

STATUTE REFERRED TO

Obas & Chiefs of Lagos State Law Cap 138 of 1994, ss. 16(1)(a)(b), 17

BOOK REFERRED TO

^B Black's Law Dictionary 9th Edn. p. 1232

LEAD JUDGMENT BY ARIWOOLA JSC

This is an appeal against the decision of the Court of Appeal, Lagos division, hereinafter referred to as the court below delivered on 11th day of November, 2004 - Coram: Ayo Salami, who presided, Aka'ahs, Ogunbiyi, JJCA.

On the 14th day of September, 2000, the 1st-3rd respondents as plaintiffs at the trial court had an action whereby they sought the following reliefs:

(i) A declaration that Alhaji Kazeem Oriowo Aromire is the Head of Kueji ruling House and overall Head of Obanikoro Chieftaincy family of Lagos pursuant to Lagos Island Local Government letter ref: No. 00160/Vol.II/272 dated 22nd October, 1990.

^E (ii) A declaration that pursuant to the registered Chieftaincy Declaration dated 12th of January, 1989 that there are four (4) ruling houses namely – DEYARI, KUEJI, KUMUYI and ILUMO. That they are entitled to present candidate in rotational order as herein - Deyari, Kueji, Kumuyi, Ilumo.

^F (iii) A declaration that consequent upon the death of late Chief Sikiru Oyerokun Ojora who is from Deyari Branch. It is the turn of Kueji branch to present a candidate to fill the vacant stool of the Obanikoro Chieftaincy family.

^G (iv) A declaration that the defendants not being members of Kueji ruling house are not entitled to present a candidate to fill the vacant stool of Obanikoro of Lagos.

^H (iv) An Order of perpetual injunction restraining the defendants whether by themselves, their servants, agents and or privies from selecting a candidate to occupy the vacant stool of the Obanikoro Chieftaincy Family of Lagos and the position of Arole which is not vacant as at now.

(iv) An order of perpetual injunction restraining the 6th defendant whether by itself, its servants, agents, privies and or any of

his functionaries from giving approval of recognition to the purported selection of the 2nd defendant as the Chief Obanikoro elect.

(vii) Such further or other orders as the Honourable court may deem fit to make in the circumstances.

On the same date 74/09/2000 the said 1st-3rd respondents herein as plaintiffs at the trial court filed two applications - an ex parte and the other motion on Notice seeking injunctive reliefs- The Ex parte application was granted on the same day - 14/09/2000 pending the hearing of the one on Notice which was then adjourned to 26th September, 2000.

On the 29th September, 2000, the appellants herein who were defendants and the respondents at the trial and court below respectively filed a summons whereby they sought to set aside the order of interlocutory injunction earlier granted on 26/09/2000 on the ground of locus standi and non service of the Originating processes on the respondents. Attached to the said Summons was a letter written by one Chief M. Ajose - Adeogun marked Exhibit RA2A. Also attached as Exhibit was another letter written by one Alhaji Kareem Aromire.

The 1st-3rd respondents thereafter lodged a preliminary objection against the summons of the defendants dated 13th October, 2000.

On the 30th October, 2000, the sixth (6th) defendant now appellant also filed a preliminary objection challenging the locus standi of the plaintiffs to institute the action and that the action disclosed no reasonable cause of action. The plaintiffs who were 1st-3rd respondents in response filed a counter affidavit dated 17th November, 2000 to oppose the preliminary objection.

The three applications were, with the consent of the parties taken together by the trial court. The trial court considered along with the three applications, the statement of claim and counter affidavit of the plaintiffs/respondents. In its ruling, delivered on 14th September, 2001, the trial court struck out the plaintiffs' suit on the ground that the plaintiffs had no locus standi to institute the action.

Dissatisfied with the decision of the trial court led to an appeal to the court below by the plaintiffs. In its judgment handed down on 11th November, 2004, the court below allowed the appeal and set aside the ruling of the trial court which struck out the plaintiffs/

appellants suit.

The appellants were dissatisfied, hence filed an appeal to this court. The first appeal No. SC.80/2005 was filed by the 1st-5th respondents while the 6th respondent at the court below filed the second appeal No. SC.125/2006 against the same judgment.

B When the appeals came up for hearing on 29th October, 2013 Mr. Igbokwe of counsel for the appellants in SC.80/2005 referred to the appellants' brief of argument filed on 19/3/2010 but which was deemed properly filed and served on 22/2/2012. He
C adopted and relied on the said brief of argument to urge the court to allow the appeal. Mr. Olusegun Fabunmi referred to the brief of argument he filed for the 1st-3rd respondents on 16/04/2012. He adopted and relied on same to urge the court to dismiss the appeal.

D Mr. Quadri of counsel said he did not file any brief of argument for the 4th respondent in the appeal.

As per appeal No. SC.125/2006 by the Attorney General and Commissioner for Justice of Lagos State, Mr. Quadri of counsel referred to the appellant's brief of argument filed on 19/9/2013 but deemed properly filed and served on 29/10/2013. He adopted and
E relied on same to urge the court to allow the appeal.

Mr. Fabunmi of Counsel for the 1st-3rd respondents referred to the brief of argument filed on 16/04/2012 within time. He adopted and relied on same to urge the court to dismiss the appeal. Mr. Igbokwe
F of counsel for the 4th-8th respondents not having filed any brief of argument to the appeal had nothing to urge on the court.

The two appeals Nos:- SC.80/2005 and SC.125/2006 having been based on the same judgment will be considered together.

In the appellants' brief of argument settled by H. Okey
G Igbokwe, Esq., the following four (4) issues were distilled for determination of the appeal and same were adopted by the respondents in their brief of argument.

Issues for Determination

H 1. Whether in the circumstance the trial Judge was right in looking at the application and affidavits challenging the locus standi of the 1st-3rd respondents together with the Statement of Claim.

2. Whether the statement of claim of the 1st-3rd respondents showed sufficient interest to warrant the trial Judge to hold that they had locus standi.

3. Whether under the Obas and Chiefs Law of Lagos State 1994, the 1st-3rd respondents have locus standi to bring the action.

4. Whether the non-joinder of Alhaji Kareem Aromire adversely affected the suit brought by the plaintiffs.

In arguing the appeal, learned counsel for the appellants in their brief of argument took the issues seriatim. B

On issue No.1, he submitted that the courts are permitted to look at only the statement of claim in determining locus standi relying on *Global Transport Oceanico SA & Anor v. Free Enterprises (Nig) Ltd.* (2001) 5 NWLR (Pt. 706) 426. He however contended that in any circumstance where an application has been filed challenging locus standi, the court is permitted to consider such applications and affidavits and counter affidavit filed in the application. He cited *Attorney-General of Enugu State v. John Omada & Ors* (1998) 1 NWLR (Pt. 532) 83 at 95. C D

He submitted that the trial Judge was permitted by law to look at the application and affidavit as a matter of course.

Learned counsel contended that onus to establish locus standi lies and always remain on the plaintiff and the burden never shifts. He relied on *Ezeafulukwe v. John Holt Ltd* (1996) 2 NWLR (Pt.432) E at 511.

He queried whether the plaintiffs' Statement of Claim showed sufficient interest as required by law to give them standing to sue.

He submitted that assuming without conceding that the trial Judge was wrong in looking at or considering other processes other than the Statement of Claim, the presumed mistake will never erase the onus on the plaintiffs to show sufficient interest, to accord them the required locus standi. F

Learned counsel contended that the Statement of Claim filed G by the plaintiffs did not disclose that there was any other candidate who was nominated to contest for the vacant stool. That in fact, from the Statement of Claim it can be deduced that no other candidate indicated interest or was nominated for the vacant stool, save the 2nd appellant who was capped. H

Learned counsel contended further that from the Statement of Claim none of the plaintiffs claimed to be entitled to the stool and none contested. All that the plaintiffs claimed in their Statement of Claim was that it was the turn of Kueji Ruling House to present a

candidate to the Stool. Yet none of the plaintiffs is from the Kueji Ruling House. He submitted that the averment in the Statement of Claim that “the plaintiffs are principal members of Deyari, Kueji and Kumuyi Ruling Houses” was a blanket statement aimed at deceiving the court. He referred to paragraphs 16, 17, 18, 19 and 22 of the
 B Statement of Claim where one Alhaji Kareem Aromire was mentioned as the Head of Kueji Ruling House and also the overall Head of the Obanikoro Chieftaincy Family.

He contended that the said Alhaji Kareem Aromire (Head of
 C Family) was not a plaintiff in the suit and was not part of the emergency meeting wherein decisions were taken to sue. One of the decisions taken at the said emergency meeting was a declaration relating to the Headship of the Family. He submitted that the Head of the family (Alhaji Kareem Aromire) is the only one who can sue in respect of the Headship of the family. He cited *Okulate v. Awosanya* (2001) 1 SC 107 at 124.
 D

Learned Counsel submitted that the plaintiffs (that is 1st-3rd respondents) did not have the locus standi to challenge or defend the Headship of Kueji family and or Obanikoro Chieftaincy family.

E Learned Counsel referred to the Statement of Claim where the plaintiffs averred that they were suing on behalf of Deyari, Kueji and Kumuyi Ruling Houses; and contended that, this is contradictory because, the Deyari and Kumuyi Ruling Houses are said not to be
 F entitled to present candidates to the stool.

On issue No.2, learned counsel referred to the judgment of the court below, where it held that the plaintiffs pleaded sufficient interest in the subject of the suit so as to entitle them to locus standi to prosecute their claim. He contended that in Chieftaincy matters the
 G plaintiffs are required to show in their Statement of Claim what their entitlement is. In other words, the Statement of Claim is expected to disclose a cause of action vested in the plaintiffs. He cited *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 at 6851; *Owodunni v. Registered Trustees of CCC* (2000) 10 NWLR (Pt. 675) 315 at 320.

H Learned counsel contended that in Chieftaincy matters, the plaintiff is not only expected to show in the Statement of Claim that he is a member of the Ruling House concerned but that he is entitled to the vacant stool; In other words, either the candidate of a Ruling house or his family through their authorized representatives can bring

an action. He cited *Odeneye v. Efunga* (1990) 7 NWLR (pt.164) 618 at 641.

In the instant case, learned counsel submitted that the 1st-3rd respondents as plaintiffs did not show in their Statement of Claim that one of them was interested in the vacant stool or that one of them was a candidate. B

He further contended that the plaintiffs did not state in their Statement of Claim which of them was from the Kueji Ruling House which they claimed was entitled to nominate the candidate to the vacant stool. He submitted that it was not sufficient for the Statement of Claim to state that the 1st-3rd respondents were representing the Deyari, Kueji and Kumuyi Ruling Houses. Indeed, Deyari and Kumuyi Ruling Houses were not entitled to nominate any candidate. C

Learned counsel submitted that in the instant case, only an authorised member of Kueji Ruling House could maintain action since, D according to the plaintiffs, it is the turn of Kueji ruling House to nominate a candidate.

On this issue No.2, learned counsel submitted that in ascertaining whether the plaintiffs have locus standi, the Statement of Claim must disclose a cause of action vested in the plaintiff relying on *Adefulu v. Oyesile* (1989) 5 NWLR (pt. 122) 387. E

Issue No.3 is whether under the Obas and Chiefs of Lagos State Law, 1994, the 1st-3rd respondents have locus standi to bring the action. Learned counsel referred to the holding in the judgment of the court below where the court held that indeed the plaintiffs pleaded sufficient interest in the subject matter of the suit in their Statement of Claim as to entitle them to locus standi to prosecute the claim referring to Section 16(1) (a) & (b) of the Obas and Chiefs of Lagos State Law; Cap 138, Laws of Lagos State, 1994. F G

Learned Counsel contended that from the findings of the Court below, in its judgment two sets of people could maintain an action in Lagos under the said Obas & Chiefs of Lagos State Law namely:-

(a) A defeated candidate from the Ruling House entitled to H nominate a candidate;

(b) The Ruling House itself entitled to nominate a candidate.

He submitted that none of the plaintiffs was shown in the Statement of Claim as a candidate. And the Ruling House (Kueji)

which the plaintiffs claimed was entitled to present a candidate did not complain.

Learned Counsel contended that the Head of the said Kueji Ruling House - Chief Kareem Aromire is not a party to the suit and no member of the Kueji Ruling House is a plaintiff in the suit. He submitted that Section 17 of the Obas and Chiefs of Lagos State Law has laid down the procedure for the selection of a candidate and the plaintiffs have not shown in their Statement of Claim that the procedure was breached to their detriment.

Learned counsel referred to Section 17 of the Obas and Chiefs of Lagos State Law and submitted that the Chieftaincy Declaration of the Obanikoro of Lagos has similar procedure as the Obas and Chiefs Law and the plaintiffs did not show in their Statement of Claim that the said procedure was breached. He submitted further that for the plaintiffs to be vested with the right to sue in a Chieftaincy matter, the conditions in the Chieftaincy Declaration must be satisfied. He cited *Wilson v. Oshin* (2000) 5 SC (Pt. 111) 1 at 16.

The 4th Issue for determination is whether the non-joinder of Alhaji Kareem Aromire adversely affected the suit brought by the plaintiffs.

Learned counsel referred to paragraphs 16, 17, 18, 19 and 22 of the Statement of Claim and contended that the plaintiffs had claimed that Alhaji Kareem Aromire is the Head of Kueji Ruling House entitled to nominate a candidate and that he is also the overall Head of the Obanikoro Chieftaincy family. It is however interesting to note that the same Alhaji Kareem Aromire was not part of any meeting wherein the plaintiffs were asked to sue nor was he made a party in the suit.

Reference was made to paragraph 2 of the Statement of Claim where the plaintiffs averred that part of the decision of their meeting of 10th August, 2000 was to file an action in court to seek a declaration relating to the Headship of the family.

He submitted that where any issue arises which concerns Headship of a family, the proper person to challenge or to defend such issue is the Head of family himself. The Headship of a family is a special right of the particular individual and not a family or community right. He cited *Okulate v. Awosanya* (2000) 1 SC 107 at 124.

He submitted further that where as in the instant case, there

was a move to seek declaration relating to the Headship of Obanikoro Chieftaincy family, Alhaji Kareem Aromire should be the one to sue but not the plaintiffs. No other person has the locus standi to defend or challenge the Headship of a family except the Head of the family himself. Therefore, it was submitted that the plaintiffs lacked the locus standi to seek declaration concerning the Headship of the Obanikoro Chieftaincy family. B

Learned counsel referred to Order 14 Rule 19 of the Lagos State High Court (Civil Procedure) Rules and submitted that it envisages a situation where parties are properly before the court and that the parties presenting the case have the requisite locus standi. C

He finally urged the court to resolve the four issues in favour of the appellants and allow the appeal setting aside the decision of the court below.

As earlier noted, the 1st-3rd respondents who were plaintiffs D and appellants at the trial court and court below respectively, adopted the four issues for determination by the appellants herein and argued same seriatim. Since the 4th respondent in appeal No.SC.80/2005 did not file any brief of argument, the 1st-3rd respondents hereby alone shall be referred to as “the respondents”. E

On issue No.1, the respondents agreed with the appellants’ submission to the extent only that the courts are permitted to look at only the Statement of Claim filed by the plaintiffs in determining locus standi. They relied on *Thomas & Ors v. Olufosoye* (1986) 1 NWLR (Pt.18) 669; *Adesokun & Ors v. Adegorolu* (1997) 3 NWLR (Pt. 493) 261; *Global Transport Oceanico SA & Anor v. Free Enterprises (Nig) Ltd* (2001) 5 NWLR (Pt.706) 426; *Prince Duro Aderemi Ladejobi v. Otunba Ainofi Afolorunsho Oguntayo* (2004) 7 SC (Pt.1) 159. F

Learned counsel submitted that in the determination of the locus standi, the courts are not permitted to look at any other process filed by the parties, but the Statement of Claim of the plaintiffs alone. He relied on *Taofik Disu & 13 Ors v. Alhaja Silifat Ajilowura* (2006) 14 NWLR (Pt. 1000) 783. He submitted that the learned trial Judge was in error to have considered the affidavit, counter affidavits and exhibits filed by the parties in arriving at the decision that the respondents had no standi to institute the action. He contended that the learned trial should have restricted himself to the Statement of Claim G H

of the 1st-3rd respondents in arriving at his decision. He submitted that the court below was therefore right in setting aside the decision of the trial court, he urged the court to so hold.

On issue No. 2, the respondents referred to their averments in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 12, 13, 14 and 23 of their Statement of Claim as reproduced in the judgment of the court below and submitted that with the averments in the pleadings the respondents disclosed sufficient interest to institute the action.

Learned counsel referred to the declaratory reliefs (ii), (iii) and (iv) in the Statement of Claim, these read together with the averments in the pleadings will show that the plaintiffs/respondents have sufficient interest to institute the action. He submitted that, in addition to the pleadings and declaratory reliefs, having instituted the action in a representative capacity without any objection, the law is clear that they have the right to institute the action as they did. He relied on *Adefulu & Ors v. Bello Oyesile & Ors* (1989) 5 NWLR (Pt.122) 377.

He referred to the pleadings where the respondents had described themselves as principal members of their respective Ruling Houses and that they were suing in a representative capacity. They further disclosed their interest in the Obanikoro Chieftaincy by averring that there is rotation between the four Ruling Houses and that it is the turn of the Kueji branch to present the candidate for the Obanikoro stool, but that the right was violated by choosing the 2nd defendant who is from the Ilumo branch. He again relied on *Ladejobi & Ors. v Oguntayo & Ors.* (supra) at (2004) 18 NWLR (Pt. 904) 135 and submitted that the respondents had shown in their pleadings sufficient interest that entitled them to institute the action. Hence the court below was right in setting aside the decision of the trial court which struck out the respondents claim. He urged the court to so hold.

On issue No.3 whether under the Obas and Chiefs Law of Lagos State, 1994, the 1st-3rd respondents have locus standi to bring the action, learned counsel for the respondents submitted that the submission of the appellants that the Kueji Ruling House which the respondents claimed was entitled to present a candidate did not complain was totally a misconception. He contended that the Ruling House cannot operate on its own but has to function through the people. In

that wise, the respondents had averred in paragraphs 1 and 3 of their Statement of Claim that the plaintiffs are not only principal members of Deyari, Kueji and Kumuyi Ruling Houses of Obanikoro Chieftaincy family of Lagos, but that they were chosen to represent themselves and, members of Deyari, Kueji and Kumuyi Ruling Houses apart from the defendants. B

He submitted that the said averments are in line with the provisions of Section 16 (1) (a) & (b) of the Obas and Chiefs of Lagos State Law on those that can seek relief from the court whenever a dispute arises in respect of the nomination, appointment and approval of a candidate to fill a vacancy in a recognized Ruling House Chieftaincy. C

Learned counsel conceded that from the provisions of the Obas and Chiefs of Lagos State Law referred to above, only two sets of people could challenge the nomination, appointment and approval of a candidate in respect of a vacancy in a ruling House Chieftaincy. D The two are: (i) The Ruling House itself and (2) A defeated candidate who is a member of the Ruling House. On the locus standi of a Ruling House he cited Adefulu & Ors. v. Bello Oyesile & Ors (supra).

Learned counsel submitted that even though the respondents had averred in paragraph 3 of their Statement of Claim that they represent themselves and members of the Deyari, Kueji and Kumuyi Ruling Houses, that averment is enough to entitle them to standing, even though their locus standi to sue in respect of the Claim stems from the Kueji Ruling House. The appellants also represent that Ruling House. E F

The respondents submitted further that they have the right to protect their recognized customs as embedded in their registered Declaration which was being violated and trampled upon by the appellants. G

Learned counsel referred to the issue raised on Section 17 of the Obas and Chiefs Laws of Lagos State which laid down the procedure for the selection of a candidate as alluded to by the appellants in their brief of argument and submitted that the point was being raised in this court for the first time. It was neither raised in the judgment of the trial court nor that of the lower court. Being a fresh issue, he submitted that the appellants needed leave to raise same and not having shown that leave of court was obtained to raise same, it be- H

comes incompetent and should be struck out. He urged the court to strike it out relying on a few decided cases including; *Daniel Fadina & Anor v. F. Gbadebo* (1978) 3 SC 219; *Ete Etowa Enang & Ors v. Fidelis Ihor Adu* (1981) 11 SC 25.

B On issue No. 4 whether the non joinder of Alhaji Kareem Aromire adversely affected the suit brought by the plaintiffs, the respondents submitted that the non joinder was not material at that point in time. He referred and relied on the provisions of order 14 rule 19 of the High Court of Lagos State (Civil Procedure) Rules, that was in force as at the material time.

C Learned counsel submitted that the trial court is empowered with or without an application to order that the name of any person who ought to have been joined or whose presence is necessary for the determination of the matter in controversy to be joined. The non D joinder of Alhaji Kareem Aromire cannot therefore defeat the case or be a reason to strike out the suit. He relied on *Okoye & Ors v. Nigerian Construction & Furniture Co. Ltd* (1991) 6 NWLR (Pt.109) 501; *Anyaduba v. NRTC Ltd* (1992) 5 NWLR (Pt. 243) 541.

E Learned counsel contended that the issue of headship of the Obanikoro Chieftaincy family was only subsidiary issue before the lower court. He therefore submitted that that should not have been used by the learned trial judge to defeat the case. Indeed, the case was instituted by the respondents in representative capacity. He submitted further that the trial judge was wrong to have held that the F respondents have no locus standi to institute the action and striking out the suit. As a result, the court below was right in reversing the decision of the trial court.

G Learned counsel urged the court to resolve the four issues against the appellants and uphold the decision of the court below that the Statement of Claim of the respondents disclosed sufficient interests to enable them institute the action and that the non joinder of Alhaji Kareem Oriowo Aromire cannot affect the rights and interests of the respondents to sue. He finally urged the court to hold that H the appeal was lacking in merit and should be dismissed and order that the substantive action be heard on merit by the trial court.

As I stated earlier, there were two appeals against the same judgment of the court below delivered on 11th November, 2004. The other appeal No. SC.125/2006 was by the Attorney-General

and Commissioner for Justice, Lagos State against all the respondents as indicated above.

In the brief of argument settled by S. A. Quadri, Esq. and filed on 19/9/2003 but deemed properly filed on 29/1/2013 the following three (3) issues were distilled for determination of the appeal:-

Issues for Determination

1. Whether or not in determining the issue of locus standi of the claimants in this case the trial Judge was right or wrong to consider any other process apart from the Statement of Claim.

2. Whether the learned Justices of the Court of Appeal erred in law when they held that Section 16(1) (a) & (b) of the Obas and Chiefs of Lagos State Law, Cap. 138 Volume 6, Laws of Lagos State, 1994 confer locus standi in a person wishing to challenge any nomination or approval of a Chief.

3. Whether the learned Justices of the Court of Appeal erred in Law when they held that the plaintiffs have locus standi when their Statement of Claim discloses no reasonable cause of action.

It is noteworthy that in the brief of argument in this appeal, settled by Olusegun Fabunmi, Esq. for the 1st-3rd respondents who were the appellants at the court below, the issues for determination earlier formulated by the appellants were adopted by the respondents. The 4th-8th respondents herein did not file any process hence the 1st-3rd respondents will be referred to as "the respondents".

Having carefully studied the arguments of both parties in the two appeals, I am satisfied that the arguments and reasoning therein on the same judgment of the court below are the same. I shall therefore not repeat same in this judgment but will refer to any part whenever necessary.

The appellant in the brief of argument came to the following conclusion:-

- That the court of appeal was in error in holding that the plaintiffs/1st-3rd respondents have locus standi to institute the action.

The court of Appeal was in error in holding that Section 16(1) (a) & (b) of the Obas and Chiefs Law of Lagos State Law confer locus standi on some persons wishing to challenge approval of a Chief.

- That Section of the law only deals with qualifications of candidates aspiring to ascend Chieftaincy stool.

- The plaintiffs' case having failed to disclose reasonable cause of action, have no locus standi to institute the action.

In the concluding part of the brief of argument of the respondents they submitted that the appeal lacks merit and should be dismissed. They urged the court to dismiss the said appeal with substantial costs and uphold the decision of the Court of Appeal that the substantive action should be heard on its merit by the trial court.

Before I proceed any further in the consideration of these appeals, I am of the firm view that I need to state the position of the matter. The following facts are not in dispute between the parties having been agreed or conceded by both parties hence those facts need no further proof as they are deemed established.

- That the 1st-3rd respondents herein were the plaintiffs who instituted the action at the trial court against the instant appellants as defendants.

- The said 1st-3rd respondents filed their Statement of Claim in the said case.

- None of the defendants had filed Statement of Defence to the action.

- The defendants to the said action challenged the competence of the plaintiffs to institute the action on the ground that they lack the required locus standi so to do, and the competence of the action for non disclosure of reasonable cause of action.

- The plaintiffs now respondents also filed a counter affidavit against the defendants' objection to their action.

- The trial court by consent of both parties considered all the applications together and ruled that the plaintiffs failed to establish, in their Statement of Claim, their locus standi, rendering their action incompetent and same was accordingly struck out.

- There was an appeal against the order of the trial court to the court below.

- The court below allowed the appeal and held that plaintiffs/respondents disclosed sufficient interest in the subject matter of the suit to entitle them to locus standi to prosecute the claim.

As earlier indicated in this judgment, the parties formulated four and three issues respectively for determination of this appeal but I desire to reformulate or re-couch the issues as the court is entitled to do for the purpose and in the interest of clarity, precision and brevity

from the grounds of appeal filed by both appellants. See *Unity Bank Plc & Anor v. Boueri* (2008) 2 SCM 193; *Emeka Nwana v. FCDA & Ors* (2004) 7 SCM 25; *Agbakoba v. INEC & Ors.* (2008) 12 SCM (Pt. 2) 159.

Accordingly, I shall, in order to narrow down the issues in controversy re-frame the issues for determination as follows:-

- Whether the court below was right in holding that the trial court was wrong in looking at other documents in the consideration of the plaintiffs' locus standi to institute their action.

- Whether the court below was right in holding that the plaintiffs/respondents have the required locus standi as their Statement of Claim stands, to prosecute the action.

- Whether the non joinder of Alhaji Kareem Aromire adversely affected the respondents' action as to render it incompetent.]

Now to the Issues:-

Upon consideration of the challenge on the competence of the plaintiffs/respondents to institute the action on the ground of locus standi, the trial court had come to the following conclusion on page 85 of printed record:-

"...that the plaintiffs have not established their locus standi the action is therefore incompetent and it is hereby struck out."

Before the court below on appeal against the above conclusion of the trial court, the appellants therein and 6th respondent had the following two issues for determination-

(i) Whether or not the appellants have locus standi to prosecute this suit based on the averments contained in their Statement of Claim.

(ii) Whether or not in determining the issue of locus standi the trial Judge can consider any other process apart from the Statement of Claim filed.

In resolving the above issues, in particular, whether or not the plaintiffs had disclosed sufficient interest in the subject matter to entitle them the required locus standi to prosecute their action, the court below reproduced copiously the Statement of Claim and the provisions of the Obas and Chiefs Lagos State Law and came to the conclusion that indeed, the plaintiffs pleaded sufficient interest in the subject matter of the suit hence they are entitled to locus standi. The trial court was therefore held to be wrong to hold that the plaintiffs

had no locus standi to prosecute the case and struck out the same.

What then is “locus standi?” This is a Latin phrase meaning “place of standing”. The right to bring an action or to be heard in a given in a given forum. See Black’s Law Dictionary Ninth Edition page 1026.

In other words, locus standi is the legal capacity of plaintiff/claimant to institute an action in a court of law in exercise of the claimant’s constitutional right. That is the reason the issue can be raised in limine after the Statement of Claim has been filed and served. Therefore ordinarily, if the Statement of Claim discloses no personal sufficient interest in the subject matter of the case, the plaintiff will have no locus standi to institute the action and the court will have no jurisdiction to entertain same. See Professor T. M. Yesufu v. Governor of Edo State & Ors (2001) LPELR 3526; (2001) 8 SCM 189.

The question of what gives a plaintiff the standing to sue for locus standi has been the subject of a number of judicial decisions: See Momoh v. Olotu (1970) 1 All NLR 1171 Senator Adesanya v. The President (1981) 2 NCLR 3581 (1981) 5 SC 112; Adefulu v. Oyesile (1989) 5 NWLR (pt.122) 377; Owodunni v. Registered Trustees of C.C.C. (2000) 10 NWLR (Pt. 675) 315. ***This court has maintained on locus standi that a plaintiff to enable him invoke the judicial power of the court must show sufficient interest or threat of injury he would suffer which is being sought to be protected.***

How then does the plaintiff show that it has the necessary or required standing to institute an action? It is now trite that in the determination of locus standi the plaintiff’s Statement of Claim should be the only process that should be considered or should receive the attention of the court. The court has maintained this stand. In Adesokun v. Prince Adegorolu (1991) 3 NWLR (pt. 179) 261 this court held that in order to determine whether or not a plaintiff has locus standi it is the Statement of Claim that must be considered. Hence, the well established principle of law that a defendant who challenges the locus standi of the plaintiff in limine is deemed to accept as correct all the averments contained in the Statement of Claim.

In *Owodunni v. Registered Trustees of Celestial Church of Christ* (2000) 10 NWLR (Pt. 675) 315, this court held that the question whether or not a plaintiff has locus standi in a suit is determinable in the consideration of the totality of all the averments in the Statement of Claim. In other words, to ascertain the locus standi of a plaintiff in a suit, it is the Statement of Claim alone that has to be carefully scrutinized. This is to see whether or not it has disclosed his interest and how he acquired such interest or how such interest has arisen in the subject matter of the action. See; *Taofik Disu & 13 Ors. v. Alhaja Silifat Ajilowura* (2006) 12 (Pt. 2) SCM 1.

There is no doubt that the only pleading that was before the trial court was the Statement of Claim. The defendants were yet to file any statement of Defence. However, the trial court in resolving the objection and applications on locus standi of the plaintiffs resorted to the affidavits and annexure to the affidavit of the applicants marked as Exhibits. These were letters written by one Alhaji Kareem Aromire dated 16th February, 2000 and another contained in the affidavit of Raheem Aregbe written by Chief M. Ajose-Adeogun on Obanikoro Chieftaincy Family, Kueji & Ilumo Descendants.

As earlier stated, the 1st-5th respondents/appellants herein had before the trial court filed a Summons on 29/9/2000, for an order setting aside the order of interlocutory injunction granted on 26/9/2000 by the trial court on the grounds that:-

(i) The plaintiffs are not the accredited members or representatives of the Kueji and Deyari families and have no locus standi to sue on their behalf.

(ii) The Writ of Summons and Statement of Claim were not served on the 1st-5th defendants/respondents and consequently that the court lacked jurisdiction to entertain the matter.

In support of the said summons was an affidavit deposed to by one Raheem Aregbe who claimed to be an accredited representative of the Deyari/Kumuyi and Kueji/Ilumo branches of the Obanikoro Chieftaincy family. Attached to the said affidavit are various documents marked as Exhibits including Exhibit RA1- copy of the authority from the family. The two letters earlier referred to were also attached to the affidavit and marked Exhibits. In its ruling, the trial court had noted that one of the two letters was written by the Head of the 1st plaintiff's family dissociating himself from the plaintiff's ac-

tion. The plaintiffs upon service on them of the Summons filed a Notice of Preliminary Objection on 13/10/2000.

Before the Summons could be argued, the 6th respondent now appellant - the Attorney General of Lagos State filed an application dated 13/10/2000 seeking an Order striking out the Statement of Claim and dismissing the plaintiffs' action on the following grounds:-

(a) That the plaintiffs have failed to disclose their locus standi to institute this action;

(b) That no reasonable cause of action has been disclosed by the plaintiffs;

(c) That the action was not properly initiated etc.

It is noteworthy that as both applications and Summons with the objection were argued together with the consent of both parties, their counsel argued vigorously in support of their respective stand on the matter of the locus standi of the plaintiffs and competence of the action itself which was to grant the trial court its competence to adjudicate on the matter.

There is no doubt and the point is agreed and conceded by both parties, that in the consideration of whether or not a plaintiff has locus standi to institute an action it is the Statement of Claim alone that the court must consider.

It is clear from the record, that the defendants/appellants had not filed their Statement of Defence to the plaintiffs/respondents' action when they came up with the Summons. The issue of locus standi, is no doubt an issue of law. As shown on the record, it was raised by the defendants pursuant, inter alia, to Order 22 rules 2, 3 & 4 of the High Court of Lagos State (Civil Procedure) Rules. It is also clear that the objection in the Summons was not on lack of reasonable cause of action but lack of the required locus standi. The law is clear, that the point ought to have been raised in the Statement of Defence and may then be taken by the court when properly moved so to do. See Disu & Ors v. Ajilowura (supra).

However, this point was not taken up either by the plaintiffs/respondents or the trial court itself suo motu, upon invitation of counsels' addresses on the point.

In the instant case, the trial court, no doubt considered the Statement of Claim as it should, to ascertain the status of

the plaintiffs but went further to consider the affidavit evidence and the attached Exhibits to arrive at the conclusion that the plaintiffs lacked the required locus standi to institute the action.

Ordinarily, the proper way, in my view, by which the plaintiffs ought to have objected to the application of the defendants was that it was being brought by way of demurrer not having filed their Statement of Defence and raised the point in it. In Disu & Anor v Ajilowura's case (supra) this court opined that in an application challenging the locus standi of the plaintiffs in which certain facts have to be resolved, a Statement of Defence becomes absolutely necessary. Mere affidavit evidence are not enough to establish such issue.

The trial court in this case was therefore not wrong to have considered the affidavit evidence with the annexures along with the Statement of Claim and was satisfied that no sufficient interest had been disclosed by the plaintiffs to entitle them to locus standi to institute the action. The court below was therefore wrong in holding that the trial court was wrong in looking at the other documents filed with the applications along with the Statement of Claim to conclude that the plaintiffs lacked locus standi. The first issue is accordingly resolved in favour of the appellants.

The second issue is whether the court below was right in holding that the plaintiffs/respondents have the required locus standi as their Statement of Claim stands, to prosecute the action.

The trial court had held that the plaintiffs failed to establish by their Statement of Claim their locus standi to institute the action hence it was struck out, but the court below thought differently. The court considered paragraphs 1, 2, 3, 7 and 11 of the Statement of Claim and opined that the plaintiffs had described themselves as the Principal members of their respective Houses who were suing in a representative capacity. The court below went further to hold that the plaintiffs also disclosed their interest in the Obanikoro Chieftaincy which goes on rotation between the four ruling houses and that it was the turn of the Kueji branch to present the candidate for the stool of Obanikoro but the right has been violated by choosing the 2nd defendant who is from the Ilumo branch, hence their action

asking for the declaratory reliefs.

As earlier stated, the position has long been made clear and established, that in determining the locus standi of a plaintiff, it is the Statement of Claim that should be scrutinized by the court. But in demurrer proceedings where pleadings have not been completed but the point of law is being taken, the defendant is deemed to have admitted the averments in the Statement of Claim. In other words, in the challenge to locus standi of a plaintiff without having filed defence, the defendant relies on the Statement of Claim and urges the court to strike out the matter on the ground that the Statement of Claim does not show locus standi of the plaintiff. See *Disu & Ors v. Ajilowura* (supra).

In determining or deciding whether the respondents have locus standi to sue appellants in the instant case, it is necessary to examine the Statement of Claim of the respondents filed in the trial court.

Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 12, 13, 14 and 23 of the Statement of Claim that are relevant as quoted in the judgment of the court below read thus:

“1. The Plaintiffs are some of the Principal members of Deyari, Kueji and Kumuyi Ruling Houses of the Obanikoro Chieftaincy Family of Lagos.

2. By an emergency meeting of all the branches listed above held on Sunday the 10th August, 2000, it was decided that an action be filed in court to seek declarations relating to the Headship of the Family and the position of the vacant stool of Obanikoro, the minutes of the said meeting will be relied upon at the trial of this suit.

3. In the meeting referred to above. The plaintiffs were chosen to represent themselves and members of Deyari, Kueji and Kumuyi Ruling houses apart from the Defendants.

4. The Obanikoro Chieftaincy Family belongs to the OGALADE CLASS of Lagos white Cap Chiefs.

5. Sometimes in 1976 an Enquiry was set up headed by Late Justice J. O. Kassim of Blessed memory to look into the declaration regulating the selection of a person to the office of Obanikoro of Lagos.

6. A report was issued and the Lagos State Government ex-

pressed its views on the report: the Government Views on the Report of the Enquiry hereby pleaded.

7. In the said report four (4) Ruling Houses were identified and the following order of rotation was recommended namely:

(i) DEYARI RULING HOUSE

(ii) KUEJI RULING HOUSE

(iii) KUMUYI HOUSE

(iv) ILUMO RULING HOUSE

Consequent upon the report a Declaration dated 12th January, 1989 signed by the Oba of Lagos featuring the following order of rotation:

1. DEYARI, 2. KUEJI, 3. KUMUYI 4. ILUMO was validly registered on the 5th of October, 1990: the said registered Declaration is hereby pleaded.

9. Based on that Declaration Chief Sikiru Oyerokun Ojora from DEYARI Ruling House was selected and installed the Chief Obanikoro of Lagos in March, 1991.

10. The said Chief Sikiru Oyerokun Ojora died sometimes in 1998.

11. Based on the Declaration which is still subsisting, it is the turn of Kueji branch to present a candidate for the vacant stool of the Obanikoro of Lagos.

12. The 2nd defendant is from Ilumo Branch of the Obanikoro Chieftaincy Family.

13. The 6th defendant is the office responsible for the administration of Justice in Lagos and constitutes an important arm of the Lagos State Government.

14. It is part of the duties of the 6th defendant to give approval and or recognition to a proposed candidate for the office of the Obanikoro of Lagos...

23. The 2nd defendant is from ILUMO BRANCH and going by the Registered Declaration it is now the turn of KUEJI branch to present a candidate."

It is noteworthy that the respondents in their Statement of Claim above had averred that they were principal members of three of the four ruling houses of Obanikoro Chieftaincy family of Lagos. And that they sued as representatives of the said three Ruling Houses with leave of the trial court.

In paragraphs 16 and 22 of the Statement of Claim, the plaintiffs averred as follows:-

“16. Soon after the death of late Chief Sikiru Oyerokun Ojora as the Obanikoro of Lagos in 1998, the 1st-5th defendants constituted themselves into a Committee and started to run the affairs of the Chieftaincy family without recourse to Pa Kareem Aromire who is both the Head of Kueji Branch and the overall Head of the Obanikoro Chieftaincy family.

22. Pa Kareem Aromire is still living and he is about 86 years old while the 1st defendant who is purportedly chosen is about 67 years old”.

It is pertinent to note that reference was made to the Obas & Chiefs of Lagos State Law, Cap.138 Laws of Lagos State 1994 on the issue at stake. Section 16(1) (a) & (b) of the said Law states as follows:-

“16(1) - Subject to the provisions of Subsection (2) of the Section, a person shall be qualified to be a candidate to fill a vacancy in a recognized Chieftaincy if;

(a) he is proposed by the ruling house or the persons having the right to nominate the candidate according to customary law; and

(b) (i) he is a person whom the ruling house or the persons having the right to nominate candidates are entitled to propose, according to customary law, as a candidate; or

(ii) in case of a ruling house Chieftaincy he is a descendant of a previous holder of that ruling house chieftaincy.”

In Ladejobi v. Osuntayo & Ors (2004) 9-12 SCM (Pt.1) 105 at 122 this court held that in an action involving a disputed chieftaincy title, it is not enough for the purposes of establishing locus standi for a plaintiff to merely claim to belong to one of the disputant families. He has to go further to state in his Statement of Claim what personal interest he has in the disputed chieftaincy and how that interest he has arose. See Obanle v. Adesina (1999) 1 SCNJ 1.

It is noteworthy that the subject matter in this case is not a Chieftaincy title but headship of a Ruling House of Kueji, one of the Ruling houses of Obanikoro Chieftaincy family. It should further be noted that the respondents had averred in their Statement of Claim that the person whom they believed was the Head of Kueji ruling house and overall head of Obanikoro Chieftaincy family was alive,

and healthy though then was 86 years old. No reason was stated in the Statement of Claim how the personal interest of Alhaji Kareem Aromire became their own interest.

In other words, there is no gainsaying that the matter on hand is not a Chieftaincy title dispute. In *Oduneye v. Efunuga*, (1990) 7 NWLR (Pt. 164) 618, this court had enunciated the following conditions or parameters for instituting an action in Chieftaincy matters: B

“(a) A party may by his Statement of Claim and evidence show that the right that is being asserted is that of his family by reason of say their hereditary interest. In such a case, it is the family usually through their representatives who can bring the action on the pre- C

“(b) A party may, by asserting his own right to the Chieftaincy stool. What is required in that case is that his Statement of Claim and evidence that has been called should show the nature of his interest D and his entitlements to the stool. In such a case what he is asserting is his own civil right to the stool and not that of his family and Section 6(6) (b) of the 1979 Constitution has expressly given him a locus standi in such a case.” See *Momoh v. Olotu* (1970) 1 All NLR 117 at 123. E

In the instant case, which is not a Chieftaincy title dispute, the plaintiffs only averred that they both represent the three Ruling houses of Deyari, Kueji and Kumuyi but no indication as to which of them is from the Kueji branch of Obanikoro Chieftaincy family that was said to be entitled to produce the Head of the family and indeed had produced Alhaji Kareem Aromire. F

The sum total of what has been stated is that the respondents did not in their Statement of Claim, which is the only document the court is allowed to consider, shown or given sufficient interest in the position of the Head of Kueji ruling house, who at the same time is the overall Head of Obanikoro Chieftaincy family to entitle them to the required locus standi in the circumstance of this case to prosecute same. They needed to have done much more than they did. As a result, the court below was wrong in holding that the respondents gave the required locus standi to prosecute the action. Issue No. 2 is resolved in favour of the appellants against the respondents. Section 16(i) (a) & (b) of the Obas and Chief of Lagos State Law is therefore not applicable to the instant case. H

The next issue is whether the non joinder of Alhaji Kareem Aromire adversely affected the respondents' action as to render it incompetent.

From the averments in the pleadings and the reliefs sought, it is clear that the substratum of the respondents' complaint is the position of the Headship of Kueji ruling house who doubles as the overall Head of Obanikoro Chieftaincy family of Lagos. It is being alleged that another person not from the ruling house to provide candidate to the seat was being proposed even though Alhaji Kareem Aromire was alive and healthy. Who then is the aggrieved person?

An aggrieved party is one whose personal, pecuniary or property rights have been adversely affected by another person's actions or by a court's decree or judgment. He can also be referred to as a person aggrieved. Also, an interested party who has a recognizable stake and therefore standing in a matter. See Black's Law Dictionary, Ninth Edition page 1232. ***In the instant case the averments in the statement of claim did not show or portray the respondents as persons aggrieved or interested as to have standing in the matter and be able to prosecute the complaint.***

But then, has the non joinder of Alhaji Kareem Aromire adversely affected the respondents' case as to render it incompetent and liable to being struck out? I am not unaware of the then Order 14 rule 19 of the High Court of Lagos State (Civil Procedure) Rules which provide that no cause or matter shall be defeated by reason of misjoinder or non joinder of parties. But the situation on ground is more than merely a misjoinder or non joinder of parties. It is whether the proper plaintiff was before the court.

It is now fairly settled law that it is the cause of action as endorsed on the Writ of Summons that determines the proper parties before the court. See Okoye v. NCFC (1991) 6 NWLR (Pt. 199) 501; Afolayan v. Ogunrinde & Ors (1990) 1 NWLR (Pt. 27) 359; (1990) 2 SCNJ 62. ***And it is trite law that it is only when proper parties are before the court that the court will be competent to adjudicate on the suit, otherwise the court shall be incompetent. In other words, when proper parties are not brought before the court, there is lack of jurisdiction and locus standi as the action is incompetent.*** See Justice F. O. Ayoola

(nee Akanbi) v. Alhaji B. A. Baruwa & Ors (1999) 11 NWLR (Pt. 628) 595; Okonta v. Philips (2010) 18 NWLR (Pt. 1225) 320; (2010) LPELR 1373.

Therefore, not having made him a plaintiff or joined as one of the plaintiffs, the absence of Alhaji Kareem Aromire adversely affected the respondents' action and rendered it incompetent. Accordingly, Issue No.3 is resolved in favour of the appellants and against the respondents.

In the final result the two appeals are meritorious and should be allowed. Accordingly, the appeals are allowed in the following terms:

(i) The court below was in error in holding that the 1st-3rd respondents as plaintiffs disclosed sufficient interest in their Statement of Claim to accord them locus standi.

(ii) The court below was in error in holding that the trial Judge was wrong to have considered other processes apart from the Statement of Claim when considering the applications before it including the one challenging the locus standi of the respondents.

(iii) Sec. 16 (1) (a) & (b) of the Obas & Chiefs of Lagos State Law was wrongly applied in conferring locus standi on respondents.

(iv) Alhaji Kareem Aromire, as the Head of Kueji family ought to have been before the court, if at all, as the aggrieved person in the complaint of the respondents.

Appeals are allowed. Parties are to bear their respective costs.

I. T. MUHAMMAD JSC

Because of the similarities and relationship between Appeal No. SC.80/2005 and SC.125/2006, the two appeals were, for convenience and with the consent of learned counsel for the respective parties, taken together.

My learned brother, Ariwoola, JSC, treated both appeals to my satisfaction. I do not need to add anything.

I adopt my learned brother's views in both judgments. Both appeals are allowed by me as per the terms set out by my learned brother in his judgment just delivered. I abide by all orders made therein including one on costs.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Ariwoola, JSC. I agree with the reasons therein advanced to arrive at the final conclusion that the appeals should be allowed. I hereby adopt the reasons set out in the lead judgment. I too, hereby allow the appeals.

PETER-ODILI JSC

I agree with the judgment just delivered by my learned brother, Olukayode Ariwoola, JSC and to underscore my support, I shall make some remarks.

The 1st - 3rd Respondents who were Plaintiffs in the trial Court by their writ of summons and statement of claim both dated 14th September 2000, sought the reliefs as stated hereunder:-

i) A declaration that Alhaji Kareem Oriowo Aromire is the Head of Kueji Ruling House and overall Head of Obanikoro Chieftaincy Family of Lagos pursuant to Lagos Island Local Government letter Ref: No. 00160C/Vol.11/272 dated 22nd October, 1990.

ii) A declaration that pursuant to the Registered Chieftaincy dated 12th January, 1989, that there are four (4) Ruling Houses namely: DEYARI, KUEJI, JUMUYI AND ILUMO, that are entitled to present candidates in rotational order as listed herein. That is: DEYARI, KUEJI, KUMUYI and ILUMO.

iii) A declaration that consequent upon, the death of late CHIEF SIKIRU OYEROKUN OJORA who is from Deyari Branch, it is the turn of Kueji Branch to present a candidate to fill the vacant stool of the Obanikoro Chieftaincy family.

iv) A declaration that the Defendants not being members of Kueji Ruling House are not entitled to present a candidate to fill the vacant stool of Obanikoro of Lagos.

v) An order of perpetual injunction restraining the Defendants whether by themselves, their servants, agents and/or privies from selecting a candidate to occupy the vacant stool of Obanikoro chieftaincy Family of Lagos and the position of Arole which is not vacant as at now.

vi) An order of perpetual injunction restraining the 6th Defendant whether by itself, its servants, agents, privies and/or any of its

functionaries from giving approval of recognition to the purported selection of the 2nd Defendant as the Chief Obanikoro elect.

vii) Such further or other orders as the Honourable Court may deem fit to make in the circumstance.

On hearing the 1st - 3rd Respondents, Motion on Notice dated 14/9/2000, the learned trial Judge granted prayers iv, v, vii and viii of the application. B

The Appellants on 29th September, 2000 filed a Summons praying for an order setting aside the order of interlocutory injunction granted to the 1st - 3rd Respondents on 26/9/2000 for being incompetent and lacking in merit and a gross abuse of the process of the Honourable Court. C

The 4th Respondent on 30th October, 2000 filed a Motion on Notice praying the Court for an order striking out the statement of claim and dismissing the 1st - 3rd respondents' action on the grounds that: D

(a) The Plaintiffs have failed to disclose locus standi to institute the action.

(b) No reasonable cause of action has been disclosed by the plaintiffs. E

(c) The action was not properly initiated and/or constituted.

(d) The action is frivolous.

The 1st - 3rd Respondents filed a counter-affidavit of 22 paragraphs on 17th November, 2000 in opposition to the 4th Respondent's Motion on Notice dated 30/10/2000. F

The learned trial judge consolidated and heard the following three applications of the parties:

i) The Appellants' Summons dated 29/9/2000.

ii) The 1st - 3rd Respondents Notice of preliminary objection G dated 13/10/2000.

iii) The 4th respondent's Motion on Notice dated 30/10/2000.

The learned trial judge in a ruling delivered on 14th September, 2001, held that the 1st - 3rd Respondents had not established their locus standi to institute the action and that the action is incompetent and struck it out. H

The 1st - 3rd Respondents dissatisfied with the ruling of the learned trial judge, appealed to the Court of Appeal by their Notice of Appeal dated 14th September, 2001.

The 1st - 3rd Respondents by their Motion on Notice dated 13th December, 2001 applied for amendment of their original Notice of Appeal.

The Brief of argument of the 1st - 3rd Respondents as Appellants at the Lower court was dated and filed on 7th day of May, B 2002.

The Appellants' Brief of argument as 1st - 5th Respondents at the Lower Court was dated 26th June, July, 2002.

The Brief of Argument of the 4th Respondent, as the 6th C Respondent at the Lower court was dated 29th July, 2002, but filed on 31st July, 2002.

The Court of Appeal in a unanimous decision by its judgment delivered on 11th day of November, 2004 allowed the Appeal of the 1st - 3rd Respondents and made an order remitting the case D back to the trial Court to be heard by another judge other than Akinsanya J.

The Appellants by their application before this Honourable Court dated 18th April, 2005, but filed on 12th May, 2005 prayed for enlargement of time within which they may seek leave to appeal, E leave to appeal and extension of time to appeal.

The Appellants' appealed to this Court by a Notice of Appeal dated 22nd June, 2006, but filed on 26th June, 2006.

The two appeals were consolidated for hearing on the same F day and simultaneously.

SC.80/2005:

On the 29th October, 2005, the Appellants through learned counsel on their behalf adopted their Brief of Argument settled by H. Okey Igbokwe filed on 19/3/2010 and deemed filed on 22/2/2012.

G Mr. Igbokwe of counsel raised four issues for determination in the said Appellants' Brief of Argument which are stated as follows:-

i) Whether in the circumstance the trial Judge was right in looking at the application and affidavits challenging the locus standi of the 1st - 3rd Respondents together with the Statement of Claim H (Distilled from Grounds 1 and 4).

ii) Whether the Statement of claim of the 1st - 3rd Respondents showed sufficient interest to warrant the trial Judge to hold that they had locus standi (Distilled from Ground 2).

iii) Whether under the Obas and Chiefs Law of Lagos State,

1994, the 1st - 3rd Respondents have locus standi to bring the action (Distilled from Grounds 3, 5, 7 and 8).

iv) Whether the non-joinder (sic) Alhaji Kareem Aromire adversely affected the Suit brought by the Plaintiffs (Distilled from Ground 6).

For the 1st - 3rd Respondents, learned counsel on their behalf adopted the Brief of Argument settled by Olusegun Fabunmi Esq. filed on 16th April, 2012. In the Brief of Argument, learned counsel adopted for use the four issues as distilled by the Appellants, which questions as raised I have no difficulty in utilizing in the determination of this appeal.

ISSUE NO.1:

This issue raises the poser whether in the circumstances the trial Judge was right in looking at the application and affidavits challenging the locus standi of 1st - 3rd Respondents together with the statement of claim.

In answering the question above raised, learned counsel for the Appellant stated that the Courts are permitted to look at only the Statement of Claim in determining locus standi. He cited *Global Transport Oceanic SA & Anor v. Free Enterprises (Nig.) Ltd.* (2001) 5 NWLR (Pt. 706) 426.

He stated further that it has been held that in some circumstances, the Court is allowed to consider the applications, affidavits and counter- affidavits filed in a challenge to locus standi. He cited *A. G. Enugu State v. John Omaba & Ors* (1998) 1 NWLR (Pt. 532) 83.

Mr. Igbokwe of counsel said the onus to establish locus standi lies always on the plaintiff and the burden never shifts. He said in considering whether the Statement of Claim showed sufficient interest as required by law to give the plaintiffs the standing to sue, that in this instance, the statement of claim did not disclose that there was any other candidate who was nominated to contest for the vacant stool. He went on to contend that from the statement of claim none of the plaintiffs claimed any entitlement to the stool and none contested. That all that was claimed by the plaintiffs is that it was the turn of KUEJI RULING HOUSE to present a candidate to the stool. That curiously none of the plaintiffs is from the KUEJI Ruling House.

Mr. Fabunmi, learned counsel for the Respondents said the Courts are not permitted to look at any other process filed by the

parties but the Statement of Claim of the plaintiff alone in determining locus standi. He cited *Taofik Disu & 13 Ors v. Alhaja Silifat Ajilowura* (2006) 14 NWLR (pt. 1000) 783.

That the learned trial Judge was in error to have considered the affidavits, counter-affidavits and exhibits filed by the parties in arriving at the decision that the 1st - 3rd Respondents had no locus standi to institute the action, That the trial court ought to have restricted itself to only the Statement of Claim in getting at the decision.

The bone of contention here between the parties is whether as posited by learned counsel for the Appellants, the Statement of Claim as well as other documents such as affidavits and exhibits are to be considered when the court is faced with a decision whether the plaintiff has locus standi. The Respondents position being different in that the sole material for consideration is the Statement of Claim.

The stance of the Respondents seems the correct position since it is the Plaintiff so to speak that had drawn the red line of battle. It follows logically that it is his grievance or a perceived wrong that has initiated the dispute between the parties. Taken further, is to say that, it is what Plaintiff has set out that produces the tone of the contention and by implication the plaintiffs pleadings or statement of claim is where the locus standi of the claimant is to be discerned. Going elsewhere to discover that standing to bring the suit would portend a danger of going into the full consideration of the on-coming contest between the parties at such a preliminary stage. The safety valve in my humble view is that the court faced with the question of locus standi should keep itself within the boundary of the statement of claim and no more. I am anchoring in this regard with the following cases of this court, viz:- *Thomas & Ors v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669; *Adesokan & Ors. v. Adegorolu* (1997) 3 NWLR (Pt. 493) 261; *Global Transport Oceanic SA & Anor v. Free Enterprises (Nig.) Ltd.* (2001) 5 NWLR (Pt 706) 426; *Ladejobi v. Oguntayo* (2004) 7 SC (Pt. 1) 159.

For effect, I shall cite the dictum of this court in *Taofik Disu & 13 Ors v. Alhaji Silifat Ajilowuna* (2006) 14 NWLR (Pt. 1000) 783 where it held thus:-

“In determining locus standi, the statement of claim is the only process to be relied on. In demurrer proceedings, the defendant is deemed to have admitted the averments in the Statement of Claim.

Similarly, in the procedural concept of locus standi, the defendant relied on the Statement of Claim and urges the Court to strike out the matter on the ground that the Statement of Claim does not donate locus standi to the plaintiff. In both processes, the averments in the statement of claim are the final arbiter, if I may use that expression unguardedly.” B

It is therefore not difficult for me to go along with the position of the Respondents that the learned trial judge was wrong not to have restricted or confined himself to the statement of claim of the 1st - 3rd Respondents in arriving at his decision and so the Court of Appeal was right to set aside what the trial court did in that regard. C

From the foregoing, the issue is resolved in favour of the Respondents and against the Appellants.

ISSUES 2 AND 3:

These two issues ask the questions whether the Statement of Claim showed sufficient interest for which the Plaintiff now 1st - 3rd Respondents can be said to have locus standi. Also, whether under the Obas and Chiefs Law of Lagos State, 1994, the 1st - 3rd Respondents have locus standi to bring the action. D

It was argued for the Appellants that the 1st - 3rd Respondents did not show in their statement of claim that one of them was interested in the vacant stool or that one of them was a candidate. Also missing from the statement of claim was that one of them was entitled to nominate the candidate to the vacant stool. He referred to Odeneye v. Efunga (1990) 7 NWLR (Pt. 164) 618 at 641; Thomas v. Olufosoye (1986) NWLR (Pt. 18) 669 at 685; Owodunni v. Registered Trustees of CCC (2000) 10 NWLR (pt. 675) 315 at 320. E F

Learned counsel for the Appellants contended that in ascertaining whether the plaintiff in an action have locus standi, the statement of claim must disclose a cause of action vested on the Plaintiff. He cited Adefulu v. Oyesile (1989) 5 NWLR (Pt. 122) 387. G

Mr. Igbokwe of counsel further submitted that Section 17 of the Obas and chiefs Laws of Lagos State had laid down the procedure for the selection of a candidate and the plaintiffs had not shown in their Statement of Claim that the procedure was breached to their detriment. That for the plaintiff to be vested with the right to sue in a Chieftaincy matter the conditions in the Chieftaincy Declaration must be satisfied. He relied on Wilson v. Oshin (2002) 6 SC (pt. iii) 1 at 16. H

Responding, Mr. Igboke of counsel for the 1st - 3rd Respondents stated that the Respondents have instituted the action in a representative capacity, the law is very clear that they have the right to institute the action. He cited *Adefulu & Ors v. Bello Oyesile & Ors v. Oguntayo* (1989) 5 NWLR (Pt. 122) 377.

B That once the 1st - 3rd Respondents as Plaintiff sued in a representative capacity, it was not necessary to show that one of them was interested in the stool to have locus standi. He referred to *Prince Ladejobi & 2 Ors* (2004) 18 NWLR (Pt. 904) 135; *Adamawa State v. A.G. Federation* (2005) 18 NWLR (Pt. 958) 581 etc.

C On the matter of qualification to sue within the ambit of the Obas and Chiefs of Lagos State Law, learned counsel, Mr. Fabunmi said Section 16 (1) (a) and (b) thereof adequately so provided for the plaintiffs to sue.

D For the Respondents 1st - 3rd, it was submitted that grounds 3 and 8 of the Notice of Appeal raised issues which were not raised in the two Courts below and no reasons proffered as to why those cases should be taken before the Supreme Court for the first time and no leave sought or obtained. That those grounds and issues should be struck out. He referred to *Daniel Fadina & Anor v. F. Gbadebo* (1979) 3 SC 219; *Ete Etowa Enang & Ors v. Fidelis Ihor Adu* (1981) 11 SC 25 Etc.

F To answer the questions above raised is to first go into the Obas and Chiefs Law of Lagos State 1994, the operative law in this instance, Section 17 thereof which has laid down the procedure for the selection of a candidate.

“Section 17 of the Obas and Chiefs Law provides:-

G (1) *“When a vacancy occurs in a ruling house chieftaincy and Declaration has effect with respect to that Chieftaincy;*

(a) The Council Manager of the competent Council shall announce the name of the ruling house entitled according to customary law to provide candidate to fill that vacancy;

H *(b) Not later than thirty days after the announcement by the Council Manager the members of the ruling House, acting either jointly or severally, shall submit the name of a candidate or candidates to the Kingmakers;*

(c) If within the time provided by paragraph (b) of this subsection, the ruling house named in the announcement fails to submit

the name or names of a candidate, and there are more than one ruling house, the Council Manager shall make an announcement accordingly and the ruling house next entitled according to the order of rotation contained in the declaration shall be entitled to submit a name or names within the period of thirty days immediately following such announcement, and so on according to the same procedure, until the name of a candidate or candidate is submitted to the Kingmakers;

(d) Within not more than seven (7) days after the submission of the name of a candidate or candidates, the kingmakers shall proceed to select a person to fill the vacancy in accordance with the provision of paragraph (e) of this subsection."

What comes out clearly is that the plaintiffs are as prescribed by the law to show in their statement of claim their entitlement, which pleadings must disclose a cause of action vested in the plaintiff. Therefore, the plaintiff is obligated to show in that pleading that he is a member of the Ruling House and entitled to the vacant stool. That the only exception is where the plaintiff as representing his family is pushing forward the right of his family to produce the candidate for installation as king. This is not the case in the matter at hand where the plaintiffs did not show that they are from the KUEJI ruling house which house is indisputably entitled to nominate the candidate to the vacant stool. See *Thomas v. Olufosoye* (1986) 1 NWLR (pt. 18) 669 at 685; *Owodunni v. Registered Trustees of the Celestial Church of Christ* (2000) 10 NWLR (pt. 675) 315 at 320.

For emphasis is to bring across the fact that the Ruling House, KUEJI which the plaintiffs claim was entitled to present a candidate did not complain and no member of the family is a party to the suit. It throws up the curious situation of a person crying more than the bereaved and with the difficulty of showing how he has been aggrieved in the perceived wrong unless it is now being said that an interloper should be heard and can protest the denial of the right of a person who is not bothered. Clearly, the plaintiffs have not established that they come within the ambit of the conditions set down by the Chieftaincy Declaration of the Obanikoro of Lagos with the same procedure and conditions as the Obas and Chiefs Law 1994. See the case of *Wilson v. Oshin* (2000) 6 SC (pt. 111) 1 at 16.

These two issues are resolved against the Respondents and

in favour of the Appellants.

ISSUE NO.4:

This raised the question whether the non-joinder of Alhaji Kareem Aromire adversely affected the suit brought by the Plaintiff. In answer, learned counsel for the Appellants said that where any issue arises which concern Headship of a family, the proper person to challenge or to defend such issue is the Head of family himself. That the headship of a family is a special right of the particular individual and not a family or community right. That it follows that in the case at hand, to seek declaration relating to the Headship of Obanikoro Chieftaincy family, Alhaji Kareem Aromire should be the one suing and not the plaintiffs. He relied on the case of *Okulate v. Awosanya* (2000) 1 SC 107 at 124.

In response, Mr. Fabunmi, learned counsel for the 1st - 3rd Respondents said the non-joinder of Alhaji Kareem Oriowo Aromire who was then the head of Kueji Ruling House as a plaintiff to the action was not material at that point in time. That Order 14, Rule 19 of the High Court of Lagos State Civil Procedure Rules that was in force at that time was clear on this point.

It was further stated that the trial court is also empowered with and without an application to order that the name of any person who ought to have been joined or whose presence is necessary for the determination of the matter in controversy to be joined. That the non-joinder of Alhaji Kareem Oriowo Aromire cannot defeat the case or be a reason to strike out the suit. He cited *Okoye & Ors v. Nigerian Construction & Furniture Co. Ltd.* (1991) 6 NWLR (pt. 199) 501; *Anyaduba v. NRTC Ltd* (1992) 5 NWLR (pt. 243) 541.

This issue seems to me to have been settled by the earlier issues 2 and 3 in that the plaintiffs having not shown how they were affected were not in a position to have joined the Head of the Obanikoro family, that is Alhaji Kareem Aromire. This is because a suit such as this one, initiated by persons who clearly were interfering in a process not concerning them will not cure the defect by bringing in the person who ought to vie for the Headship of the family that ought to have commenced the action if they were aggrieved. The prevailing circumstance is akin to a person telling another that he ought to be angry at a wrong the non affected person has seen which the person who is supposed to be affected does not see any injury or

irritation. In my humble take, the issue of joinder of the Head of the family does not arise. See *Okulate v. Awosanya* (2000) 1 SC 107 at 124.

This issue is resolved against the Respondents and in favour of the Appellants. The conclusion being that the decision of the Court of Appeal wrongly arrived at should be set aside as I too allow the Appeal. B

SC.125/2006:

On the same day, 14th September, 2000 the suit that brought about SC.80/2005 the plaintiff and Appellants at the Court of Appeal filed two motions, one ex-parte and the other Motion on Notice seeking injunctive reliefs. The Ex-parte motion was granted on that same date pending the hearing of the Motion on Notice which was adjourned and after hearing was granted on the 26th September, 2000. C D

On the 29th September, 2000, the 4th - 8th Respondents (defendants at the trial Court and respondents at the Court of Appeal) filed a summons seeking to set aside the order of interlocutory injunction granted on the 26th September, 2000 on the ground of locus standi and non-service of the originating processes on the respondents and attached to the said summons was Exhibit RA2A, a letter written by one Chief M. Ajose-Adeogun and also attached as exhibit was another letter written by one Alhaji Kareem Aromire. E

The 1st - 3rd respondents lodged a preliminary objection against the Summons of the 4th - 8th respondents dated 13th October, 2000. On the 30th October, 2000, the appellant herein, 6th defendant and respondent at the trial court and Court of Appeal also filed a preliminary objection challenging the locus standi of the 1st - 3rd respondents to institute the action and that the action disclosed G no reasonable course of action.

The 1st - 3rd respondents filed a counter affidavit to the Appellants' preliminary objection. F

The three applications, viz:-

1. Summons dated 29th October, 2000 filed by the 4th - 8th Respondents (1st - 5th Defendants at the trial Court and 1st - 5th Respondents at the Court of Appeal. H

2. The 1st - 3rd Respondents, (plaintiffs at the High Court and Appellant at the Court of Appeal notice of preliminary objection

against the summons filed by the 4th - 8th Respondents dated 13th October, 2000.

3. The appellant herein (6th defendant at the High Court and 6th respondent at the Court of Appeal) filed notice of preliminary objection dated 30th October, 2000.

B The three applications were, with the consent of the parties, heard together and in doing so, the presiding judge of the High Court considered along with the three applications, the statement of claim of the claimants and the counter affidavit of the plaintiff filed in response to the appellant's notice of preliminary objection. He ruled on 14th September, 2001, struck out the suit on the ground that the claimants/1st - 3rd respondents have no locus standi. The Claimants/1st - 3rd respondents dissatisfied with the judgment of the trial court filed an appeal at the Court of Appeal, Lagos Division which court D allowed the appeal, setting aside the ruling of the trial Court.

The appellant was dissatisfied with that judgment of the appellate Court and has come before the Supreme Court on appeal.

E Learned counsel for the Appellant adopted the Brief of Argument settled by himself S. A. Quadri, filed on 7/4/2010 and deemed filed on 22/2/12. In the Brief were formulated three issues which are as follows:-

i. Whether or not in determining the issue of locus standi of the Claimants in this case, the trial Judge was right or wrong to consider any other process apart from the Statement of Claim. (Ground F 1 of the Notice of Appeal).

ii. Whether the learned Justices of the Court of Appeal erred in law when they held that Section 16 (i) (a) & (b) of the Obas and Chiefs of Lagos State Law Cap. 138 Volume 6 Laws of Lagos State G 1994 confer locus standi in a person wishing to challenge any nomination or approval of a Chief (Ground 2 of the Notice of Appeal).

iii. Whether the learned Justices of the Court of Appeal erred in law when they held that the Plaintiffs have locus standi when their statement of claim discloses no reasonable course of action. (Ground H 3 of the Notice of Appeal).

Learned counsel for the Appellant also adopted the Reply Brief settled by S. A. Quadri, filed on 19/9/13 and deemed filed on 29/10/13.

For the 1st - 3rd Respondents was adopted their Brief of

Argument settled by Olusegun Fabunmi and filed on 16/4/2012. The Respondents 1st - 3rd adopted the three issues couched by the Appellant.

It seems to me that the three issues are so intertwined and could easily be taken together since at the bottom of the issues is whether or not the Plaintiffs had the locus standi to institute the suit and what material is needed in considering the justiciability of the action and who has the necessary standing to initiate the action. B

Canvassing arguments for the Appellant, learned counsel S. A. Quadri Esq. contended that the term “Locus Standi” denotes the legal capacity to institute proceedings in court of law. That standing to sue is not dependent on the success or merits of a case since it is a condition precedent to the determination on the merits. That locus standi will be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected. He cited *Odeneye v. Efunuga* (1990) 4 NWLR (pt. 164) 618 at 630, *Owodunni v. CCC* (2000) 6 SC (pt. 3) 60 at 73. C

For the Appellant was submitted that when a party standing to sue is in issue in a case, the question is whether the person standing to sue is a proper person to request an adjudication of a particular issue or claim and not whether the claim is justiciable. That in this instance, the claim of the plaintiff/1st - 3rd respondents requested for adjudication at the Lower court are in respect of:- E

i) Appointment of the Head of Kueji Ruling House and overall Head of Obanikoro Chieftaincy Family. F

ii) Selection and appointment of candidate to fill the vacant stool of chief Obanikoro of Lagos.

Mr. Quadri stated on that any dispute as to the Headship of a family is not a chieftaincy matter but that of a family status and it is a special and legal position of an individual to the rest of the members of the family and not a family or community right. That being a member of a family alone is not sufficient to clothe the plaintiffs with locus standi to challenge the nomination and appointment of another member as Head of the family. That there is need to show plaintiffs sufficient interest in the post and that their personal right will be immediately affected by the appointment of another person as the Head of the family. He cited *Oloriode v. Oyebe* (1984) 1 SC NLR 390 at 392; *Okulate v. Awosanya* (2000) 1 SC 107 at 124; Thomas G H

v. Olufosoye (1986) 2 SC 325 at 330.

Learned counsel for the Appellant further contended that the non-joinder of Pa Kareem Aromire whose individual right as Head of the family is in issue was not made a plaintiff in the action and so that failure to join the necessary party in the action in this instance is an irregularity which leads to injustice and unfairness to the opposing party warranting the setting aside of the judgment on appeal. He referred to Ayorinde v. Oni (2000) 2 SC 33 at 42.

It was further submitted for the Appellant that a different consideration applies to the issue of locus standi in family chieftaincy dispute as opposed to other disputes over family property. That in the later case any member of the family is vested with locus standi to sue in protection of family property right. Whereas in chieftaincy dispute, apart from being a member of the family, the plaintiff to have locus standi must show by his pleadings the nature of his interest and his entitlement to the Chieftaincy stool or that the right that is being asserted is that of his family by reason of their hereditary interest. That in the later case, it is the family usually through their representatives or candidates that bring the action. He went on to say that in this present case the plaintiffs have failed to show in their statement of claim that one of them has an interest in the vacant chieftaincy stool and how his interest arose.

Learned counsel placed reliance on Olowosago v. Adebajo (1988) 1 NWLR (Pt. 88) 275; Odeneye v. Efunuga (1990) 7 NWLR (Pt. 164) 618 at 641; Momoh v. Olotu (1970) 1 All NLR 123.

Mr. Quadri of counsel pointed out that the Plaintiffs/1st - 3rd respondent have sued for themselves and on behalf of DEYARI, KUEJI and KUMUYI branches of Obanikoro Chieftaincy family and by paragraphs 1 - 3 of their Statement of Claim that they are principal members of DEYARI, KUEJI and KUMUYI ruling houses but they have failed to state which of the ruling houses each of them belong to or represent. That they have also failed to state their genealogical history how each of them related to the ruling houses.

Mr. Quadri further stated that this representative action can be regarded as a joint action by the 3 ruling houses as a party in the suit. That the plaintiffs have failed to show in their statement of claim that all the three ruling houses suing as plaintiffs have a joint right to nominate and present the next candidate to fill the vacant stool. That

although members of Deyari and Kumuyi ruling houses are members of Obanikoro Chieftaincy family they did not have the same or common interest and grievances with Kueji ruling house on the nomination of the candidate. The three ruling houses cannot maintain this action in a representative capacity as it is a settled requirement of the law that the persons who are represented and the persons representing them should have the same interest in the cause or matter. That the Deyari and Kumuyi ruling houses cannot maintain this action when it is not their turn to nominate or present a candidate to fill the vacant stool. He relied on *Adesanoye v. Akinwale* (1997) 3 NWLR (Pt. 495) 654; *Elendu v. Ekwoaba* (1988) 12 NWLR (pt. 578) 320. B C

Learned counsel for Appellant stated that the provisions of Section 16 of the Obas and Chiefs of Lagos State Law, read all together is in respect of qualifications and disqualifications of candidates ascending vacant chieftaincy stool. That the determinant factor as to whether the plaintiff/1st - 3rd respondents have locus standi is not the provisions of the Obas and Chiefs Law but the pleadings and other material evidence before the court. That the Court below was wrong in its application of what principle should operate in chieftaincy matter in the matter of locus standi. He cited *Odeneye v. Efunuga* (1990) 7 NWLR (Pt. 164) 618 at 641. D E

Mr. Quadri of counsel said that the plaintiff's case as constituted disclosed no reasonable cause of action. That the Courts can only redress wrongs where a wrong has been alleged. That even if an amendment is granted, it cannot cure the defect. He stated on that the relevant consideration in determining where there is a reasonable cause of action is the statement of claim and where absolutely necessary recourse to other processes such as affidavits and exhibits in the court's file. He cited *Adesokan v. Adegorolu* (1993) 3 NWLR (pt. 3) NWLR (Pt. 179) 293; *Kolo v. FBN* (2003) 3 NWLR (pt. 806) 216 at 234. F G

For the appellant, the contention that the plaintiffs disclosed no cause of action is a serious one in that it discloses no cause of action is a serious one in that it goes to challenge the locus standi of the plaintiff to institute the action which challenge touches on the competence of the Court of trial and jurisdiction to adjudicate. He referred to *Adepoju v. Afnja* (1994) 8 NWLR (Pt. 362) 437 at 452. H

In responding, Mr. Fabunmi for the 1st - 3rd Respondents said

the Courts are not permitted to look at any other process but the Statement of Claim in determining locus standi. He cited several judicial authorities such as *Taofiq Disu & Ors v. Alhaji Silifat Ajilowuna* (2006) 14 NWLR (pt. 1000) 783.

B For the Respondents 1st - 3rd, it was submitted that the pleadings and other materials before court must be married with the provisions of the relevant statute since the pleadings cannot stand alone and in this instance Section 16 (1) (a) & (b) of the Obas and Chiefs of Lagos State Law which have stated the qualifications or otherwise
C for those who can seek relief from the court on dispute arising from the nomination, appointment and approval of a candidate to fill a vacancy in a recognized Ruling House Chieftaincy. That only two sets of people could challenge the process leading to the filling of a vacancy in a Ruling House Chieftaincy and these are:

- D (1) The Ruling House itself;
(2) A defeated candidate who is a member of the Ruling House. He cited *Adefulu & Ors v. Bello; Oyesile & Ors* (1989) 5 NWLR (Pt. 122) 377.

E That the Court of Appeal was correct in its decision, and the 1st - 3rd Respondents had the right to institute the action in a representative capacity. He cited *prince Ladejobi & Ors. v. Otunba Oguntayo & Ors* (2004) 18 NWLR (pt. 904) 135.

F What is sought in this appeal is simple and narrow and fortunately had been adequately answered in Appeal NO. SC/80/2005 which was heard together with the present appeal. That question is what material should be utilized by a court faced with the consideration of whether or not a plaintiff has the necessary locus standi to bringing an action. My answer is definitely that the Statement of Claim
G is the necessary and only material in the consideration of locus standi. To go into other processes is to say that since the standing is not found in the statement of claim, a foray into other materials would probably produce the standing to sue being looked for. That would lead to exploratory adjudication with the attendant risk of prejudging
H the main suit in limine. See *Thomas v. Olufosoye* (1986) 1 NWLR (pt. 18) 669; *Adesokan & Or v. Adegorolu* (1997) 3 NWLR (pt. 493) 261 etc.

From the foregoing and the fuller reasoning in the lead judgment, I have no hesitation in not only answering the questions herein

raised against the Respondents and allow the appeal. The appeal is hereby dismissed. I abide by the consequential orders made by my learned brother.

M. D. MUHAMMAD JSC

My learned brother Ariwoola, JSC had obliged me a pre-view of his lead judgment in respect of the two consolidated appeals just delivered. I entirely agree with the reasoning and conclusion therein that the appeals succeed. I am unable to improve on his lordship's thorough and lucid treatment of the issues raised by the appeals. I adopt the judgment in allowing the appeals and abide by the consequential orders the lead judgment contains including the order on costs.

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