

PUBLIC INTEREST LITIGATION

BEING A PAPER PRESENTED BY CHIEF F. O. ORBIH AT THE NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES ON THE 7TH OF JULY, 2010

PREAMBLE:

It will be appropriate to thank the Management and Staffs of the Nigerian Institute of Advanced Legal Studies, both for the kin interest they have shown in the subject matter of this lecture, Public Interest Litigation in recent times and for inviting us to deliver this paper.

The giant step taken by the Institute under the able Leadership of Prof. Epiphany Azingo to draw the attention of the Legal Profession in Nigeria to the importance of Public Interest Litigations is worthy of commendation.

We were therefore not surprised, when the Institute inducted Hon. Justice Bagwati the former Chief Justice of India into its hall of fame. His induction marked the first such honour on any individual since the foundation of the institute.

As we shall see later on in this paper, Hon. Justice Bagwati, perhaps, more than any other individual dead or alive done a lot to change the face of Public Interest Litigation in the world in general and in India in particular.

WHAT IS PUBLIC INTEREST LITIGATION?

Blacks Law Dictionary 7th Edition page 944 defines litigation as:

“The process of carrying on a law suit.”¹

Public Interest is defined in the same dictionary as:

“(1) The general welfare of the public that warrant recognition and protection.

(2) Some things in which the public as a whole put in stake; esp., an interest that justifies governmental regulation.”²

Public Interest Litigation would therefore mean a law suit geared towards an issue, in which the Public as a whole, has a stake, with a view to enhancing it's general welfare.

According to Joseph Chu'ma Otteh.

“Public Interest Litigation is about using the law to empower people, to knock down oppressive barriers to Justice to reclaim and restore the right of Social Justice for the majority of the people. To attack oppression and denial that disenfranchise our people, and about winning back human dignity of the people, it is about caring for the rights of the other, besides ones self. It is about getting Lawyers and Judges committed to this struggle, and using the law more for the benefit of collective, not just individual or private interest.”³

THE IMPORTANCE OF PUBLIC INTEREST LITIGATION

According to Norrison I, Quakers Esq. litigations generally and particularly public interest or strategic impact litigations, are relevant as they provide the tool or machinery for individuals or group of persons to approach or have access to the judiciary to seek redress for human rights violations or constitutional infractions. Although litigation is not the only means for one of the most important tools of achieving change in the society. Litigation provides a catalyst for change in so that its application can reach beyond the individual case in such a way that its outcome affects a large number of people. Public Interest Litigation is thus, a veritable tool for revolutionary change especially if applied judiciously.⁴

Despite its universally acclaimed usefulness, public interest litigation has its own share of critics. Some of these critics hold the view that litigation cannot be itself, reform social institutions. The second related concern according to Femi Falana is that:

“Over – reliance on courts diverts efforts from potentially more productive political strategies and dis-empowers the groups that lawyers are seeking to assist. The result is too much law and too little justice.”

Falana concluded by stating that the above arguments, although powerful in their analysis of the limits of litigation, have generally failed to acknowledge its contributions and the complex ways in which legal proceedings can support political mobilization. We agree with him that:

“Litigation must not divert attention from the need to tackle political and social problems.litigation should be used as a complementary strategy with collective political struggle to challenge structural inequality and injustice and abuse of human rights. Litigation used strategically, can stimulate meaningful change and complement other political efforts; whether litigation “works” or not must be judged in relation to available alternatives. And in order to evaluate the social change potential of litigation in a given circumstance, it is necessary to examine the conditions – political, economic, cultural and organizational within which a law suits operates. For example, when deployed strategically law suits can destabilize entrenched institutional structures and subject them to greater accountability. A law suit that receives widespread attention may raise public consciousness and stimulate movement activity by revealing the vulnerability of structural arrangements that once seemed impervious to change”.⁵

Femi Falana’s activism in the field of public interest litigation can be placed against the backdrop of his philosophy on the subject as highlighted above. For instance in **I.G.P VS A.N.P.P.**⁶, Falana (as counsel) challenged the constitutionality of the Public Order Act which makes it mandatory for a political party to obtain a permit for a public rally or meeting before the same can be allowed to hold, by the police authorities. Only last week in a suit against the Federal Government, he (Falana) contended that the deplorable state of the Lagos-Ibadan express way and the Benin-Shagamu express way was a violation of his right to life and the dignity of his human person guaranteed under the constitution of the Federal Republic of Nigeria. One of the reliefs which he claimed in the suit was for an order on the Police and the department of Custom and Excise to dismantle the numerous police and customs and excise check points respectively, on the said roads, on the

ground that they are nothing short of toll collecting points for those governmental organizations.

We have no doubt that you will agree with us, that no matter the outcome of that suit, Femi Falana will by the said suit, draw attention of the government and the public at large, to the need to carry out urgent rehabilitation of the said roads and the need to check the government agencies that have converted them to toll collection points, from helpless motorists.

Even though public interest litigation is of paramount importance, it ought to be borne in mind that it has its limitation as a means to ensure fundamental transformation necessary in a country like Nigeria, especially when used in isolation from other means. We are of the strong view that civil rights activists and lawyers at the forefront of public interest litigation must partner with the press in order to achieve their desired objectives. Of what use will an action (such as the latest one by Falana) be, if the press does not draw the attention of public at large to it?

AMERICAN MODEL OR INDIAN MODEL

In Other Words, Should It Be Public Interest Litigation Or Social Action Litigation (SAL)

Public Interest Litigation and Social Action Litigation are designed to achieve the same purpose – using the law more for the benefit of collective, not just individual or public interest.

The goals of Public Interest Litigation or Social Action Litigation may be the same but the methodology used by the adherents of both systems is different. Public Interest Litigation is essentially an American Concept sourced and nurtured in that country. While Social Action Litigation is the India model which is in effect the matured product of the seed of public interest litigation. In other words, public interest litigation represents the mustard seed while public action litigation represents the oak tree.

Joseph Chu'ma Otteh brought out the distinction between the two models as follows:

The idea of providing representation for un-represented causes or people is often subsumed under the rubric of “public interest litigation” a term probably developed in the United States with a robust tradition of public interest lawyering. But the United States model suffers from some of the handicaps associated with private lawyering. It is often resource intensive, in terms of manpower and capitals. Marginalised causes or people will often be represented by paid attorneys, and in deciding questions which these parties bring to law, courts will simply choose from the range of available remedies to redress them.

But in a society afflicted by large scale misery and ignorance like ours, can we afford to choose the America Model? Legal Scholars in India have sought to rebrand their own model of public servicing lawyering differently. Terms like “Social Action Litigation” are employed to show the difference between what they do and what America does. In the SAL model anyone can represent causes and under privileged people, and for that purpose, take action to enforce the rights of these people. This enables a broad variety of people to become social justice agents and not just lawyers. They do not file lengthy processes. They just write a letter which the court accepts under its “epistolary jurisdiction”. The Chief Justice regards this as a writ/petition, and takes it up under the courts fundamental rights enforcement jurisdiction.”⁷

It is important to point out that the highly developed but simple concept of public interest litigation of India had not always been in place. During the emergency period in India (1975 to 1977), state repression and governmental lawlessness was wide spread. Thousands of innocent people including political opponents were thrown into jail and there was complete deprivation of civil and political rights. The post emergency period became an opportunity for judges of the Supreme Court of India to openly disregard the impediments of the Anglo-saxon procedure in providing access to justice for the poor.

Public Interest Litigation emerged as a result of an informal nexus of pro-active judges, media persons and social activists. This trend shows a remarkable

difference between the traditional justice delivery system and the modern informal justice system where the judiciary is performing administrative role. 8

Factors that have contributed to the growth of Public Interest Litigation (PIL) in India

It is necessary to dwell on these factors that have contributed to the growth of PIL phenomenon in India in order for us to explore the possibility of borrowing a leaf from their system. These factors were well articulated by Advocate Aradhana Singh as follows:-

- a. **The character of the India Constitution.** Unlike Britain, but like Nigeria, India has a written Constitution which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy), provides a frame work for regulating relations between the state and its citizens and between the citizens inter-se.
- b. **India has some of the most progressive legislation to be found any where in the world** whether it be relating to bonded labour; minimum wages, land ceiling, environmental protection, e.t.c. This has made it easier for the courts to haul up the executive before it, when it is not performing its duties, in ensuring the rights of the poor as per the law of the land.
- c. **The liberal interpretation of Locus Standi** where any person can apply to court on behalf of those who are economically or physically unable to come before it, has helped.
- d. **Although social and economic rights given in the Indian Constitution under Part IV are not justiceable, judges have creatively read these into fundamental rights thereby making them judicially enforceable.** For instance, “the right to life” in article 21 has been expanded to include right to free legal aid, right to live with dignity, right to education, right to work, freedom from torture, barfettters and hand cuffing in prisons, etc.

- e. **Sensitive judges** have constantly innovated on the side of the poor. For instance, in the Bandhua Mukti Mochi case in 1983, the Supreme Court put the burden of proof on the respondents, stating that it will put every case of forced labour as a case of bonded labour unless proven otherwise by the employer. Similarly in the Asia workers judgment case, Justice P. N. Bagwati held that any one getting less than the minimum wage can approach the Supreme Court directly without going through labour commissions and the lower courts.
- f. In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and then present it before the bench.

Factors Militating Against Public Interest Litigation in Nigeria

- a. Non justiceability of the rights set out in chapter II of the constitution of the Federal Republic of Nigeria encapsulated in the fundamental objectives and directive principles of state policy. Some of rights spelt out in the said chapter are as follows:
 - i. The obligation placed on Federal, State and Local, Governments to promote unity by ensuring that governmental business is carried out in such manner as to recognize the diversity of the people within the area of its authority under section 14.
 - ii. Promotion of national integration and prohibition of discrimination on ground of place or linguistic association or ties under S. 15.
 - iii. Abolition of corrupt practices and abuse of power under S. 15 of the Constitution.

- iv. Obligation on government to provide suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions unemployment and sick benefits for all citizens under S. 16 of the Constitution.
- v. Equality of all citizens before the law, easy accessibility therefore, under S. 17 of the Constitution.
- vi. Free, compulsory and universal primary education, free university education and free adult literacy programme under S. 18 of the Constitution.
- vii. Freedom of the press order S. 22 of the Constitution.

Now, section 6 of the Constitution provides as follows:

“The Judicial powers vested in accordance with foregoing provisions of the section, (c) shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person as to whether any law or judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this Constitution”.

By the provision of S. 6(c) of the Constitution set out above, the Constitution took away with the left hand, all the basic right which it gave to Nigerians with the right hand under the provisions contained in chapter II of the same Constitution.

In Okojie & Ors V. Attorney General of Lagos State (1981)2 NCLR 350, the application challenged the policy of the Lagos State Government to abolish private schools within the state claiming that it was in violation of the right to education guaranteed under S. 16 (chapter II) of the 1979 Constitution which is impari-material with S. 18 (chapter 11) of the 1999 Constitution. The Court held that by Section 6 of the 1979 Constitution (which is impari-material with S. 6 of the 1999 Constitution), the provisions of chapter II of the Constitution were not

enforceable and that it was not in power of the court to make any pronouncement on them.

The question which arises from the foregoing is: ***should Nigerian courts allow the provisions of S. 6(c) of the Constitution to tie its hands on all matters pertaining to the basic rights provisions in chapter 11 of the Constitution?*** The answer to this question is an emphatic, no. A little bit of judicial activism and creativity on part of the judges will best serve the interest of justice here.

We can draw some inspiration from the Indian Judicial approach to part IV of the Indian Constitution which is similar to the provisions of chapter 11 of the Nigeria Constitution.

We had earlier stated in this paper that although social and economic right given in the india Constitution under part IV are not legally enforceable, the Indian courts have relatively read these into fundamental rights thereby making them judicially enforceable. Nothing stops our courts in Nigeria from doing the same.

For instance, the obligation of government to provide adequate medical and health facilities for all persons under **S. 17** of the Constitution can be enforced under **S. 33 (1)** of the Constitution. **S. 33 (1)** guarantees every citizen the fundamental right to life. We are of the view that the right to life is diminished and rendered meaningless whenever the government fails to provide adequate medical and health facilities for its citizen.

In other words, court should lean towards a broader interpretation of our Constitutional provisions wherever possible. We are fortified in our view by the statement of the supreme court coram **Sir Udo Udoma, J.SC in Nafiu Rabiu V. The State**¹⁰ as follows.

“The function of the Constitution is to establish a framework and principles of government, broad and general in terms intended to apply to the varying conditions which the development of our several communities must involve, and therefore mere technical rules of interpretation are to some extent inadmissible in a way as to defeat the principles of government enshrined in the Constitution. And where the question is

whether the Constitution has used and expression in the wider or narrower sense, in my view, this court should whenever possible and in response to the demands of justice lean towards the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the object and purpose of the Constitution”.

It is important to keep the above observation in mind as we consider locus standi as another impediment to the growth and development of public interest litigation in Nigeria.

b. **Locus Standi**

One of the most troublesome impediments to the growth and development of public interest litigation in Nigeria, is the threshold issue of ***Locus Standi*** in all suits instituted in our courts.

Even though the theme of this paper is not ***“Locus Standi”***, none the less, it is so important and interwoven with the concept of PIL that we have no option other than to spend considerable time on it.

By the present state of the law in Nigeria and in other jurisdictions, the determination of ***Locus Standi*** zeros on two major and telling words, one is **‘sufficient’**. The other is **‘interest’**. They both make up the **‘sufficient interest’** concept. The term, sufficient interest, is broad and generic. It is also vague and nebulous. It lacks a precise and apt legal meaning.

It could only be determined in the light of the facts and circumstances of the particular case. The question of what constitutes sufficient interest is one of mixed law and fact, that is to say, it is not a question of law only or a question of fact only but both. In arriving at a decision one way or the other, the court will be guided by the overall interest of the parties in the litigation process in the absence of a specific enabling statute.

This involves two apparently conflicting duties of the Court to vindicate the rights of the plaintiff to set the litigation process in motion and the concomitant right of the defendant not to be dragged into unnecessary litigation by a person who has no standing in the matter or a mere busybody parading the corridors of the Court. By and large, the trial judge, in determining *Locus Standi* will be involved in the delicate balancing of divergent interests, which are diametrically opposed in the enforcement of the judicial process. It is very complex exercise based on the pleadings of the plaintiff.¹¹

In addition, a plaintiff or litigant who says he has *locus standi* must show that such special interest he lays claim to, has been adversely affected by the act or omission, which he seeks to challenge. See *Re Ijelu & Ors. v. L.S.D.P.C. (1992) 9 N.W.L.R. (Pt. 226) 414*, in *K. Line Inc. v. K.R. Int. (Nig.) Ltd. (1993) 5 N.W.L.R. (Pt. 292) 159 at 176*,

Aderemi J.C.A. (as he then was) described special or sufficient interest in the following terms:

“One test of sufficient interest in a matter is whether the plaintiff who instituted the action could have been joined as a party to the suit if some other party commenced the action. Another test is whether the plaintiff seeking the redress or remedy will suffer some injury or hardship arising from the litigation if some other person instituted it”.¹²

Dr. Thio at page 1 of her authoritative book entitled “*Locus Standi and Judicial Review*” made the following pertinent observation:-

“The requirement of locus standi is mandatory in some jurisdictions where the judicial power is Constitutionally limited to the determination of a ‘case’ or ‘controversy’. Or a ‘matter’ which is defined by reference to criteria which include the legal capacity of the parties to the litigation. In other jurisdictions, the requirement is a product of judicial expedience and public policy.”

She observed further at pages 2 and 3 of the same book as follows:-

“The problem of locus standi in public law is much intertwined with the concept of the role of the judiciary in the process of government. Is the judicial function primarily aimed at preserving legal order by confining the legislative and executive organs of government within their powers in the interest of the public (jurisdiction de droit objectif)? Or is it mainly directed towards the protection of private individuals by preventing illegal encroachments on their individual rights (jurisdiction de droit subjectif)? The first contention rests on the theory that the courts are the final arbiters of what is legal and illegal. Since the dominant objective is to ensure the observance of the law, this can best be achieved by permitting any person to put the judicial machinery in motion, like the action popularis of Roman law whereby any citizen could bring such an action in respect of a public delict. Requirements of locus standi are therefore unnecessary in this case since they merely impede the purpose of the judicial function as conceived here. On the other hand, where the prime aim of the judicial process is to protect individual rights, its concern with the regularity of law and administration is limited to the extent that individual rights are infringed, and in the absence of the latter, it does not come into play.

The problem is highlighted in a country with a written Constitution which establishes a Constitutional structure involving a tripartite allocation of power to the legislature, the executive and the judiciary as co-ordinate organs of government. On one hand, the judiciary, as the guardian of the fundamental law of the land has the role of passing on the validity of the exercise of powers by the legislature and executive and to require them to observe the Constitution of the land. The situation thus calls for a system of judicial control in favour of jurisdiction de droit objectif.”

Common law concept of locus standi

Here in Nigeria, the problem of locus standi is compounded by the fact that the common law concept where the right to sue accrues only to a person who has a legal right or whose legal right has been adversely affected or who has suffered or is likely to suffer special damage in consequence of an alleged wrong has been

reinforced by the Constitutional provisions of Section 6 of the 1979 Constitution. This compounding has further confounded the problem. But one has to recognize the fact that locus standi means the legal capacity to challenge the order or act etc. standing confers on an applicant the right to be heard as distinct from the right to succeed in the action or proceeding for relief.¹³

In an action to assert a public right or to enforce a performance of a public duty it is only the Attorney-General of the Federation or that of a state, who in law has locus standi.

“For the avoidance of doubt, it may be necessary to distinguish the power of the Attorney-General to bring any proceedings before the supreme court in accordance with the provisions of Section 20 of the Supreme Court Act with respect to the exercise of the original jurisdiction of the Court under subsection 1 Section 212 of the Constitution from the powers of the Attorney-General under General Public Law to secure the enforcement of public right.

In addition to the provisions of the Petitions of Right Act, Cap. 149 Vol. V. Laws of the Federation of Nigeria and Lagos, 1958 and the Petitions of Right Laws of the several States which empower the Attorney-General to prosecute claims by their respective Governments against any private person, by virtue of the public law of a state, its Attorney-General has the power to institute in any Court of competent jurisdiction any civil proceedings, with or without a realtor, involving the rights and interest of the public which he deems necessary for the enforcement of the laws of the state, the preservation of order and the prevention of public wrongs.

Mention may also be made of the Attorney-General for New South Wales v. The Brewery Employees Union (1908) 6 C.L.R. 469 at pp. 550 – 551 where O’Conner, J. said:- “It is a principle well established in British law that when corporation or public authority clothed with statutory powers exceeds them by some act which tends in its nature to interfere with public rights and so to injure the public, the Attorney-General from the community, with or without a realtor, according to circumstances to

protect the public interests, although there may be no evidence of actual injury to the public.” Per Bello, J.S.C., A.G Federation v. A-g Imo State and Ors.

Suit No. S.C.88/1982; (1982) 13 N.S.C.C. 567 at 578.

The case of Keyamo v. House of Assembly, Lagos State (2000) 12 N.W.C.R. (A-680) 196 has again brought to the front burner, the hurdle of locus standi which any person of persons involved in PIL in Nigerian must cross before he can institute and or maintain a law suit. In that suit a Lagos Lawyer and human rights activist instituted a suit (vide an originating summons) challenging the constitutionality of the setting up of a panel by the Lagos House of Assembly, to probe the Governor over allegations pertaining to crime of forgery. The Court of Appeal upheld the ruling of the Lagos High Court to the effect that the plaintiff lacked the locus standi to institute the action. The said Court, Coram Galadima J.C.A, held as follows:

“I have carefully perused and considered the entire originating process issued by the appellant in the lower Court. Not only has he woefully failed to disclose his legal authority to demand for the declarations sought but also failed to show what injury or injuries he will or would suffer. Can the fact that the appellant claimed to be over 18 years of age, a Nigerian Citizen, a legal practitioner and a registered voter, qualified to vote and be voted for, without more, be clothed with requisite locus standi to bring this action? In paragraph 6 of his statement the appellant claims thus:- “That the plaintiff presently has many clients who intended to contest for the position of Governor and members of state House of Assembly at the next elections and have approached the plaintiff for proper advice as to the powers and functions of these offices”.

It would appear that the appellant is not only fighting for his own personal interest but also of his “clients” who intend to contest for the position of Governor and members of Legislative House of the state at the next elections. Of all the reliefs being claimed by the appellant, none of them relate to him personally or his faceless clients whose future political

interest he now seeks to protect. This approach is speculative and untenable in law.

It is a mere academic exercise. Merely being a registered voter (even without proof of same) is not sufficient to sustain the prayers of the appellant. The appellant has simply not disclosed his interest in this suit. See the recent decision of this Court in Babatunde Adenuga v. Odumeru (unreported) Suit No. CA./L/270/99 judgment delivered on 24/1/2000.”

What is the way forward on Locus Standi?

There is a pressing need to shift from the narrow stance of the Apex Court in the Abraham Adesanya’s case to a more liberal approach on issues of Locus Standi, in cases pertaining to Public Interest Litigation. This would be in line with the notable pronouncement of Tobi J.C.A. (as he then was) in the case of Busari V. Oseni (1992) 4 N.W.L.R (Part 237) 557 at 589 wherein he stated as follows:

Concept of Locus Standi

“In my view, the frontiers of the concept of locus standi should not be static and conservatively so at all times and for all times. The frontiers should expand to accommodate the dynamics and sophistication of the legal system and the litigation process respectively. In other words, the concept must move with the time to take care of unique and challenging circumstances in the litigation process. If the concept of locus standi is static and conservative while the litigating society and the character and constants of litigation are moving in the spirit of a dynamic changing society, the concept will suffer untold hardship and reverses. That will be bad both for the litigating public and the concept itself.” – per Tobi J.C.A. in Busari V. Oseni Suit No. CA/L/284/288; (1992) 4 N.W.L..R (Pt. 237) 557 at 589.

-Per Galadima, J.C.A. in Keyamo V. House of Assembly, Lagos State Suit No. CA/L/01/2000; (2000) 11 W.R.N 29 at 43; (2000) 12 N.W.L.R. (Pt. 680) 196 at

Need to revisit the judgment of the Supreme Court in the Abraham Adesanya's case

There are highly notable pronouncements in the Abraham Adesanya's case, in the leading judgment of Bello J.S.C (as he then was), which do not seem to be in complete alignment with the final orders and conclusion of the supreme court in that case but which are nevertheless very useful guides to a desired new approach to the concept of Locus Standi in Nigerian law. I hereby reproduce them as follows:

- a) ***“With these observation in mind, I take significant cognizance of the fact that Nigeria is a developing country with multi ethnic society and a written federal constitution, where rumour mongering is the past time of the market places and the construction sites. To deny any member of such a society who is aware or who believes or is led to believe, that there has been an infraction of any of the provisions of our constitution, or that any law passed by any of our Legislative Houses, whether Federal or State is unconstitutional, access to a court of law to air this grievances on the firmly excuse of lack of sufficient interest is to provide a ready recipe for organized disenchantment with the judicial process”***

- b) ***“In Nigerian context, it is better to allow a party to go to court, and be heard than to refuse him access to our courts. Non-access, to my mind, will stimulate the free for all in the media as which law is constitutional and which law is not. In any case, our courts have inherent powers to deal with vexatious litigants or frivolous claims. To re-echo the works of a learned Hand, if we are to keep our democracy there must be one commandment – thou shall not ration justice”***

- c) ***“To my mind, it should be possible for a person who is convinced that there is an infraction of the provisions of Sections 1 and 4 of the Constitution which I have enumerated above, to be able to go to court and ask for the appropriate declaration and consequential relief required. In my view, any person, whether he is a citizen of Nigeria or not, who is***

resident in Nigeria or who is subject to laws in force in Nigeria, has an obligation to see to it that he is governed by a law which is consistent with the provision of the Nigeria Constitution. Indeed, it is his civil right to see that this is so. This is because, any law that is inconsistent with the provisions of the Constitution is to the extent of the inconsistency, null and void by virtue of the provisions of Sections 1 and 4 to which I have referred to earlier.”

d) “However, except in the extreme or obvious case of abuse of courts how then can one conceive of a judicial process where access to the courts, by persons with grievances is based solely on the court’s own value judgment in a multi-ethnic country where more than two hundred languages are spoken? I would rather err on the side of access than on that of restriction.”

We must confess that one question that has always intrigued us is how come that despite the very liberal and progressive views expressed in the leading judgment of Bello J.S.C. (as he then was), the Abraham Adesanya’s case ended on a conservative note? Reading between the lines, what weighed most in the need of Supreme Court Justices was the fact that the Plaintiff who was a senator at all times material to the case, participated in the process leading to the senate confirmation of the appointment of Honourable Justice Ovie Whiskey, as the chairman of the Federal Electoral Commission, before heading to court to challenge the same appointment. Having regard to the principle of separation of powers under the said Constitution, a judicial intervention in favour of the Plaintiff would have been inappropriate. It is clear from the very progressive notable pronouncement of Bello J.S.C. set out above that we do not have to embark on a voyage of discovery to India in order to overhaul our law on the concept of locus standi. All that is required is for our courts to revisit the judgment of Bello J.S.C. (as he then was) in Senator Abraham Adesanya’s case any time the need arises.

Fawehimi V. Akilu (1982) 18 N.S.C.C. (Pt. 11) 1265 at 1301

It is worthy of note that the Supreme Court made a welcome departure from its stance in the Abraham Adesanya's case, in Fawehimi V. Akilu. In that case, the irrepressible Chief Gani Fawehimi went to the High Court to ask for an order of mandamus to *inter alia* compel the D.P.P. of Lagos State to come to a decision on whether or not he would prosecute the suspect in the Dele Giwa's murder. The High Court struck out his case on the ground that he lacked the locus standi to institute it. That decision was upheld by the Court of Appeal. On further appeal to the Supreme Court, the decision was reversed. Kayode Eso had the following to say at page 1301 of the judgment:

“In the instant appeal before this court I think with respect, that the lead judgment of my learned brother Obaseki J.S.C. is an advancement on the position hitherto held by this court on “locus standi”. I think, again with respect, that it is a departure from the former narrow attitude of this Court in the Abraham Adesanya's case and subsequent decisions, for strictly speaking for my Lord (Nnamaeka-Agu)(as he then was) who no doubt was bound by those decisions at that time was right in his interpretation of the stand of this Court, and so, strictly on those authorities of this Court, along, his judgment with respect, could not be faulted when he said; “in this country the result of all the cases is that the common law concept that only a person who has locus and can sue is the only person who has suffered or is in imminent danger of suffering an injury-damage, or detriment to himself. This is the result of all the cases including Adesanya's case (supra) Thomas v. Olufosoye (1986) 1 N.W.L.R. 699: A-G Kaduna v. Hassan (1985) 2 N.W.L.R. 433 and Gambia v. Ezezi (1961) All N.L.R. 584”

My humble view, and this Court should accept it as such, is that the present decision of my learned brother, Obaseki, J.S.C. in this appeal has gone beyond the Abraham Adesanya's case. I am in complete agreement with the new trend, and with respect, my agreement with the judgment is that it has gone beyond the Abraham-Adesanya case.”

We are of the view that it is only the new trend in the Chief Gani Fawehimi's case (supra) that can save our jurisprudence from the shackles of its colonial heritage as far as the concept of locus standi in Nigeria is concerned.

Other Factors Militating Against Public Interest Litigation

- (i) S.12 of the Constitution of the Federal Republic of Nigeria. This section provides that “no treaty between the Federation and any other country shall have the force of law in Nigeria except to the extent to which such treaty has been enacted into law by the National Assembly.” The obvious implication of this provision is that international treaties which have been duly entered into by Nigeria and which are beneficial to the public at large cannot be enforced unless enacted into law by the National Assembly.
- (ii) The inherent conservative bent of the legal profession. It is this bent that explains why the case of Abraham Adesanya still reigns supreme on the concept of locus standi despite the departure from the same in Fawehimi v. Akilu by the Supreme Court.
- (iii) Obsolete, archaic procedural and substantive laws. We have already seen examples of these in our exposition of the law relating to locus standi and the old common law principle that only the Attorney-General can institute an action to address a wrong done to the public.
- (iv) The fusion of the office of the Attorney-General with that of Minister of Justice. The conflict of interest between the two offices has virtually made it impossible for the Attorney-General to perform the role of defender of public interest, effectively.

The way forward in Public Interest Litigation

In his paper titled Public Interest Law, Geoff Budlender made the following suggestions on the way forward in public interest litigation. Which I find very interesting. I hereby reproduce them:

1. There is need to create institutions which are dedicated to this work, and which can take it in a systematic and strategic manner. There is need to plan the work strategically, select the right lawyer, select appropriate cases, select proper forum, and select the right defendant. The institution needs to work with other institutions to maximize the impact of a singly case and to celebrate partial victories.
2. There is need to build public interest law institutions which are sturdy and sustainable – financially, politically and structurally.
3. “Routine” case work can be very important in identifying the important issues to litigate, finding the right client, and ensuring work can be done by an associated organization, with the two co-operating closely and sharing information and strategies.
4. The effect of the legal work is greatly strengthened by links with community organizations. The lawyers can provide valuable organizational support to those movements.
5. Effectual legal activism needs to be linked with lobbying and work through media, parliament and other institutions which can inform and change public and government behavior.
6. The impact of the work of the public interest lawyers can be greatly multiplied if they co-operate with sympathetic lawyer in private practice.

CONCLUSION

We wish to conclude with a quotation from Mr. Andries Nel, MP, the South-African Deputy Minister of Justice and Constitutional Development, as follows:

“We believe that rights without access to the means to enforce such rights is meaningless. In his address to the Second Judicial Conference President Zuma emphasized the importance of access to justice and stated that: “When we talk of judicial transformation and access to justice, we are

talking about three issues in particular. We want to ensure that even the poorest of the poor do enjoy access to justice. Secondly, that the justice that people access is of a high standard and thirdly, that justice is attained without undue delay.”

In our journey towards creating a greater awareness of the strategic impact of public interest litigation, we must work towards attaining the ideals contained in the statement quoted above.

THANK YOU FOR LISTENING.

END NOTES

1. Blacks law dictionary 7th edition 944.
2. See blacks law dictionary 7th edition Page 744.
3. Joseph Chu'ma Executive Director, Access to Justice. Made this opening remark at a symposium organized by Access to Justice on 7th August, 2009.
4. See Litigation as Machinery for Political Economy and social reforms in Nigeria a paper presented by him at a symposium on Public Interest Lawyering organized by Access to Justice on 7th August, 2009.
5. See Public Interst Litigation (2) by Femi Falana published in the Vanguard Newspaper of December 31st, 2009.
6. (2007) 18 NWLR (Part 1066) 457.
7. Joseph Chu'ma Otteh, Executive Director, Access to Justice in his welcome address to participants symposium on Public Interest Lawyering on 7th August, 2009.
8. Public Interest Litigation by Advocate Vicab George.
9. Ibid.
- 10.(1950) 811 SC. 130 at page 148-149.
- 11.Per Tobi J.C.A. (as then was) in Busari v. Oseni (1992) 4 N.W.C.R. (Part 237) 557 at 587
- 12.Per Aderemi J.C.A. in Ilorin v. Benson (2000) 9 N.W.L.R. (Part 673) 570 at 578.
- 13.Per Oputa J.S.C. in A-G Kaduna State v. Hassan (1983) 2 N.W.L.R. 483 AT 522.
- 14.Dr. Thio – Locus Standi and Judicial Review Page 1, 2 & 3. The Supreme Court also quoted this observation in Abraham Adesanya v. President of Nigeria.
- 15.Abraham Adesanya v. President Federal Republic of Nigeria (1981) 2 N.C.L.R. 385.