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Research Article

Public Interest Litigation in Nigeria and *Locus Standi* Debacle in Edun V. Governor of Delta State: Lessons from India, United Kingdom and South Africa

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ABSTRACT: This paper reviews Nigeria's Court of Appeal decision in Edun v. Governor of Delta State where the court held that the appellant lacks *locus standi* to challenge the validity of the Pension Rights of the Governor and Deputy Governor of Delta State Law, 2008 because he has neither suffered injury nor shown sufficient interest over and above that of every Deltan. It uses legal functionalism theory through analytical methodology while relying on primary and secondary data in examining the development of *locus standi* in Nigeria and the impact of its restrictive application on justice delivery. Considering the need to respond to contemporary developments and further the course of justice, it argues for the liberalization of *locus standi* by Nigerian courts drawing from the practice in India, the United Kingdom, and South Africa. It argues that the liberalization of locus standi will encourage public interest litigation hence, the orthodox requirements of having "sufficient interest" and "suffering/likely to suffer injury" indicia have become otiose to justice and should lead to the discountenancing of the restrictive application. It examines the effect of the judgment on PIL and whether the decision of the Nigerian Supreme Court (NSC) in Centre for Pollution Watch v. NNPC and the Fundamental Rights (Enforcement Procedure) Rules 2009 could be a useful harbinger for liberalization of *locus standi*. It recommends an appeal of Edun's Case to the Supreme Court and the upturning of the same as leeway to liberalizing *locus standi* in favor of public interest litigation.

KEYWORDS: Common law, Justice, *Locus Standi,* Litigant, Injury, Nigeria.

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I. INTRODUCTION

Government and governmental powers[1] in most parts of the world, if not all, are separated into three arms: executive, legislative, and judicial.[2] The legislature makes the law, the judiciary interprets the law, and the executive enforces or executes the law.[3] Thus, courts and other quasi-judicial tribunals constitute the judicial arm of government which is set up as a formal, civilized, and institutionalized avenue for settling disputes that may ensue between individuals, individuals, and government, and *vice versa.*[4] In Nigeria, from independence till date, the various Constitutions have recognized this arrangement by making provisions for these arms of government.[5] At present, the judiciary is provided for under section 6 of the Constitution of the Federal Republic of Nigeria, 1999.[6] Thus, once any person is likely to suffer, is suffering or has suffered a legal wrong, the law permits the person to approach the court for remedy thereby giving credence to the aphorism of *ubi jus, ibi remedium*.[7] Thus, only someone who is likely to suffer, who is suffering or has suffered an injury, or has an interest in a dispute/subject is legally permitted to set the judicial process in motion and not just any person.[8] This requirement is grounded on the common law doctrine of *locus standi.*[9]

Nigeria, as a former British colony, inherited and adopted the doctrine of *locus standi* (LS)[10] in her adjudicatory system to the effect that the court can hear only persons who have an interest in a subject or object.[11] The failure or lack of a legally recognized interest in a dispute would rob the court of jurisdiction over the matter and would lead to the striking out of the case.[12] This is because any proceedings, no matter how well they were conducted, are an exercise in futility

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1 Kabir Mohammed Daniadi, *Outline of Administrative Law and Practice in Nigeria* (Zaria: Ahmadu Bello University Press Ltd., 2012) at 53-64.
2 Ese Malemi, *The Nigerian Constitutional Law*, 3rd ed. ed (Lagos: Princeton Publishers Ltd., 2017) at 69.
3 *Constitution of the Federal Republic of Nigeria 1999 Cap. C23 Laws of the Federation of Nigeria (LFN)*, 2004, S. 4, 5, & 6.
4 *Ibid,* S. 6 (6) (b).
5 Ademola Yakubu, *Constitutional Law in Nigeria* (Ibadan: Demyaxs Law Books, 2003) at 39.
6 *Constitution of the Federal Republic of Nigeria 1999 Cap. C23 Laws of the Federation of Nigeria (LFN)*, *supra* note 3.
7 *Nasiru Bello v Attorney General of Oyo State & Anor*, [1986] 5 (Pt. 45) NWLR at 828.
8 Kehinde M Mowoe, *Constitutional Law in Nigeria* (Ibadan: Malthouse Press Ltd., Ibadan) at 93-177.
9 Abiodun Jacob Dada, *Administrative Law in Nigeria* (Calabar: UNICAL Press, 2011) at 158.
10 In this paper, *locus standi* is simply written as LS or ls.
11 *Attorney General of Kaduna State v Hassan*, [1985] 2 (Pt. 8) NWLR 483.
12 *Odeneye v Efunuga*, [1990] 7 (pt. 164) NWLR 618.

if in want of jurisdiction.[13] The utilitarian value of this of *locus standi* is to safeguard the courts from busybody litigious persons who might set in motion the judicial process in a bid to annoy or ridicule a person, thereby turning the court to a playground or theatre of absurdities.[14] Hence, putting in place the requirement that the likelihood of suffering or actual suffering of injury, otherwise regarded as having a recognized interest is the basis for a litigant to approach a court of law for remedy.[15]

However, sometimes, a person may not have an 'interest' or is 'likely to suffer any injury' but has to approach the court for a remedy based on public interest. This is done to ensure that legal remediable wrongs are not left unremedied due to factors beyond the victim's control.[16] Thus, the need to entrench the culture of accountability, responsiveness of political office holders (as well as agents and agencies of the government), encouragement of public interest litigation,[17] the demands of civilized democratic existence and progressive governance require a shift from the anachronistic "likelihood or actual suffering of injury" requirement for the vesture of *locus standi* to a liberalized position.[18] These factors have led to the liberalization of *locus standi* in most common law jurisdictions, including Nigeria.[19]

However, to the chagrin of reasonable and perceptive Nigerians, the Court of Appeal (CA)[20] in *Edun v. The Governor of Delta State & Ors*[21] wherein the appellant, a tax-paying citizen of Nigeria and resident of Delta State, challenged the legality of the insensitive, irrational, obnoxious, sacrilegious and vexatious Pension Rights of the Governor and Deputy Governor of Delta State Law Cap. P5 Laws of Delta State, 2008. The CA held that the appellant lacked the *locus standi* to

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13 *Gamioba & Ors v Ezeziee & Ors*, [1961] 584 All NLR 585.

14 *Owodunmi v Registered Trustees of the Celestial Church of Christ & Anor*, [2000] 6 SCNJ 399.

15 Peter Oluyede, *Nigerian Administrative Law* (Nigeria: University Press Ltd., 2007) at 504-406.

16 Z Adangor, "Locus Standi in Constitutional Cases in Nigeria: Is the Shift from Conservatism to Liberalism Real?" (2018) 12:1 J Jurisprud Int Law Contemp at 73–91.

17 Olumide Babalola, "Olumide Babalola v Attorney General Of The Federation & Anor. CA/L/42/2016: Another Victory For Public Interest Litigation In Nigeria", online: *mondaq* <https://www.mondaq.com/nigeria/trials-amp-appeals-amp-compensation/893012/olumide-babalola-v-attorney-general-of-the-federation-anor-cal422016-another-victory-for-public-interest-litigation-in-nigeria>.

18 Hilary Nwaechefu & Mary-Ann Ajayi, "Confusion in the Field of Locus Standi Case of Governor of Ekiti State v. Fakiyesi" (2019) 2:1 Redeem Univ Law J at 167–169.

19 John Oluwole A Akintayo & David Tarh-Akong Eyongndi, "Promoting the right to environmental justice through the Supreme Court's liberalization of locus standi in Nigeria" (2019) 25:1 South Afr J Environ Law Policy at 201–231.

20 Court of Appeal is referred to as CA in this paper.

21 *Suit No CA/B/378/2018*, .judgment was delivered on 27th March 2019.

challenge the law as he has not demonstrated how he has suffered any injury over and above any other resident of Delta State.

In the recent past, Nigeria has achieved an unenviable and shameful feat in negativity as serious occurrences of political maladministration and high-level corruption allegations and convictions have occurred.[22] Life expectancy rate has drastically dropped with most Nigerians living below the acceptable international minimum standard. The unemployment rate and employment insecurity keep rising in a geometric progression.[23] There are grave wants of social amenities and the limited available ones are in deplorable states. Uncompleted projects perpetuated by government functionaries in the three tiers of government despite the humongous budgeting and appropriation of funds litter the horizon of Nigeria. All these malaises confront Nigeria unrestrained despite her unquantifiable human and natural resources which are being mismanaged by those in leadership positions vested with political powers for the good of all. The only way to checkmate these unfortunate and reoccurring malaises in modern civilization is for the citizens to approach the courts to determine the constitutionality of the actions/omissions that have birthed these malaises, and this was what the appellant did.

This paper critically appraises the propriety of the CA's decision in *Edun v. The Governor of Delta State & Ors vis-a-vis* the need to entrench fiscal prudence and governmental accountability through aggressive promotion of public interest litigation.[24] It argues that the decision diametrically opposes the global modern trend of liberalization of *locus standi* and therefore, is not a welcomed development.[25] Further, it contends that the decision, if left to subsist will be a clog on the wheels of the fight against corruption in Nigeria. It further argues that the Attorney General of the Federation and Minister of Justice who ought to take up such litigation on behalf of the "injured" public, being a government appointee, may be incapable of doing that due to conflict of interest and therefore,

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[22] Since the return to democratic rule, most persons who served as Governors of some of the States in Nigeria, after their tenures, have been charged to Court and convicted for various financial crimes committed while in office such as former Governor Jolly Nyame Bauchi State, Joshua Dariye of Plateau State, James Ibori of Delta State, Lucky Igbenedion of Edo State, Orji Kalu of Abia State, Depreye Alamiesegha of Bayelsa State, just to mention but a few.

[23] David Tarh-Akong Eyongndi & C J Okongwu, "The Legal Framework for Combating Child Labour in Nigeria" (2018) 2:1 UNIPORT Law Rev at 228.

[24] *Suit No. CA/B/378/2018*, *supra* note 21, judgment delivered on 27th March, 2019.

[25] Alex Cyril Ekeke, "Access to justice and locus standi before Nigerian courts" (2014).

leaving the injured without redress. The paper examines the Fundamental Right Enforcement Procedure Rules 2009 as a catalyst for the liberalization of *locus standi* and argues that the decision under review cannot stand the litmus test of appeal based on the Supreme Court's recently celebrated decision in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* wherein *locus standi* was liberalized to promote public interest litigation with the outcome that a Non-Governmental Organisation was allowed to litigate on behalf of citizens who had suffered oil spillage.[26] Going forward, the paper makes vital recommendations.

II. METHODOLOGY

The paper uses the theory of legal functionalism, (a variant of the American Legal Realist movement championed by Dean Roscoe Pounds, Wendell Holmes, and Llewellyn) as its theoretical basis. It adopts analytical and comparative methods in interrogating the practice of *locus standi* in promoting public interest litigation based on the practice in India, the United Kingdom, and South Africa compared to Nigeria. It relies on primary and secondary data sources such as the Constitutions of India and South Africa, statutes, case laws, articles in peer-reviewed journals, textbooks, and online materials in arguing that Nigerian courts should liberalize their application of *locus standi* to encourage public interest litigation.

III. THE DEVELOPMENT AND CIRCUMFERENCE OF *LOCUS STANDI* IN NIGERIA DETERMINED

This section discusses the development and circumference of *locus standi* in Nigeria as a background to the discussion of the case under review. Without a firm grasp of the issue of *locus standi,* it will be difficult to appreciate the profoundness of the decision. Historically, Nigeria is a British colony and as a result, several doctrines applicable there were imported into Nigeria. One such doctrine is *locus standi.* Fatayi Williams Chief Justice of Nigeria in *Abraham Adesanya v. Federal Republic of Nigeria*[27]defined *locus standi* as the "legal capacity to

[26] *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*, [2019] 5 NWLR (Pt 1666) 518.
[27] *Abraham Adesanya v Federal Republic of Nigeria*, [1981] All NLR 1.

institute proceedings in a court of law.[28] It is used interchangeably with "standing" or "title to sue." The Black's Law Dictionary regard it as "the right to bring an action or to be heard in a given forum."[29] There has been scholarly elucidation on the subject.[30] For instance, Oyewo opined thus:[31]

> "The term *locus standi* denotes the legal capacity to institute proceedings in a court of law and is used interchangeably with terms like 'standing' and 'title to sue.' It has been held in several cases to be the right or competence to initiate proceedings in a court of law for redress or assertion of a right enforceable at law. It is generally treated as a threshold issue which must be resolved in favor of the applicant/claimant/plaintiff/petitioner or party for the jurisdiction."

Locus standi operates to forestall busybodies from having access to the court, bearing in mind that the court is a place for serious business where the fountain of justice flows to quench the thirst of aggrieved persons and not *meddlesome interlopers.*[32] If anyone is allowed to set in motion the judicial process against another for just any cause, the floodgate of vexatious litigation will be opened to the embarrassment of many.[33] The court will become a comfortable playground for litigious persons to pursue frivolous causes that might be inspired by malice. The doctrine of *locus standi* is designed to adjust conflicts between two aspects of public interest, namely the desirability of encouraging individual citizens to participate actively in the enforcement of law and the undesirability of encouraging a professional litigant and a meddlesome interloper to invoke the jurisdiction of the courts in matters that may not concern them.[34] This concept which is fundamental in the judicial process in any country differentiates between 'stranger' and 'aggrieved person.'[35]

The doctrine operates to guarantee the sanctity and sanity of the court by ensuring that only persons with "just cause" worthy of legal protection can be

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28 *Sha'Aban v Sambo*, [2010] 19 (Pt. 1226) NWLR 353.

29 B A Garner, *Black's Law Dictionary*, 8th ed. ed (St. Paul: Thompson West, 2004) at 960.

30 Martin C Okany, *Nigerian Administrative Law* (Onitsha: Africana First Publishers, 2007) at 326.

31 Oyelowo Oyewo, *Modern Administrative Law and Practice in Nigeria* (Lagos: University of Lagos Press & Bookshop, 2016) at 300.

32 *Peoples Democratic Party v Lawal & Ors*, 2012, LPELR-7972.

33 *Busari v Oseni*, [1992] 4 (Pt. 237) NWLR 557.

34 E A Taiwo, "Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for a more Liberal Provision" (2009) 9:2 Afr Hum Rights Law J at 548.

35 *Ibid.*

heard by the courts.[36] It is not enough for a person to say that they may suffer indefinitely in common with the members of the public. They must show sufficient interest or right to entitle them to sue on the existing facts or imminent danger.[37] Therefore as a general rule, the simple test is that a person who does not have sufficient interest in a matter cannot get judicial relief as he or she has no *locus standi.*[38]

Locus standi originates from the British common law system and is of great antiquity. It was the subject of the 1858 case of *Ware v. Regent's Canal Co.*[39] Lord Diplock in *Re v. I. R. C., Exp. Federation of Self-Employed* stated that the development of *locus standi* in medieval England is not traceable to any statutory regime as there is no statute evincing its operation, but rather rules of adjudication concocted by judges of the empire.[40] In common law, a person who approaches the court should show his/her interest in the litigation either by demonstrating that injury is likely to be, is being, or has been occasioned against him/her.[41] Lord Esher MR in *Re Reed Bowen and Co* foregrounded that view when he held that "a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him of something."[42] By this, the court meant that the person aggrieved must be someone who has been refused something that he/she had a right to demand.[43]

Due to her colonial ties with Britain, the doctrine of *locus standi,* like several others, was imported into Nigeria and has become a cardinal principle of Nigeria's substantive and procedural law.[44] In *Onyia v. Governor-in-Council,*[45] *locus standi* in its common law nature was applied to hold that Chief Onyia lacked the standing to

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36 Oyolewo Oyewo, "Locus Standi and Administrative Law in Nigeria: Need for clarity of approach by the Courts" (2016) 3:1 Int J Sci Res Innov Technol at 78–99.

37 *Alao v ACB*, [1998] 3 (Pt. 542) NWLR 339.

38 Ese Malemi, *Administrative Law*, 4th ed. ed (Lagos: Princeton Publishing Company, 2012) at 428-429.

39 *Ware v Regent's Canal Co*, [1858] 3 De G & J 212.

40 *Re v I R C, Exp Federation of Self-Employed*, [1982] 617 A. C. 641.

41 Many countries have followed this common law requirement of sufficient interest. E.g. in *Patz v. Greene & Co* (1907) TS 427 433, Solomon J held: 'Where a statute prohibits the doing of a particular act affecting the public, no person has a right of action against another merely because he has done the prohibited act. It is incumbent upon the party complaining to allege and prove that the doing of the acts has caused him some special damage — some peculiar injury beyond that which he may be supposed to sustain in common with the rest of the [community] by an infringement of the law.'

42 *Re Reed Bowen & Co*, [1887] 19 QB D 174.

43 A L Yeside, "Environmental Justice in Nigeria: Examining the Issue of Locus Standi", (2021), online: *unilaglawreview* <https://unilaglawreview.org/2021/01/13/environmental-justice-in-nigeria-examining-the-issue-of-locus-standi/>.

44 B A Eka, *Judicial Control of Administrative Process in Nigeria* (Ife: Obafemi Awolowo University Press Ltd., 2001) at 440.

45 *Onyia v Governor-in-Council*, [1962] 2 All NLR 174.

challenge the amended instrument, which had included some traditional rulers as members of the Asaba Urban District Council on the ground that no rights of his were affected by the inclusion.[46] Thus, the principle whose original application was restricted to private law has been extended to public law in Nigeria upon its reception.[47] The case of *Olawoyin v. A. G. Northern Region*[48] explicates the expansion. In the case, the appellant had sought the court to declare that Part VIII of the Children and Young Persons Law, 1958 had been rendered void and unenforceable under sections 7, 8, and 9 of the Sixth Schedule of the 1960 Constitution. The trial judge, *suo motu,* raised the question of whether such a proceeding could be brought by the appellant within the ambiance of public law and has not alleged the breach of anyone's right or interest. The Court concluded that the plaintiff, having not shown any sufficient interest that is likely to be, is being breached or has been breached, lacked the requisite standing to sue. The court here adopted the restrictive common law approach of the doctrine. By this reasoning, the "sufficient interest" and "injury" twine requirements are the determinants of *locus standi* which were reiterated in *Owodunni v. Registered Trustee, Celestial Church of Christ.*[49]

The Supreme Court, however, plausibly took a seemingly liberal stand on *locus standi* in *Senator Adesanya v. The President of the Federal Republic of Nigeria & Anor* where it dismissed the appeal of the appellant who had challenged the decision of the Senate of the Federal Republic of Nigeria to swear in Hon.[50] Justice Ovie-Whiskey as the Chairman of the Federal Electoral Commission. He objected to the confirmation during debates on the floor but lost. The Supreme Court of Nigeria affirmed the decision of the High Court and Court of Appeal. The Supreme Court of Nigeria held that the appellant had shown no special interest or injury (if any) suffered over and above others although the court was ready to relax the rule where it dealt with constitutional matters. In *Fawehinmi v. Akilu & Anor.,*[51] the Supreme Court of Nigeria relaxed the requirement of *locus standi* in criminal matters to permit a private citizen to maintain an action for the death of

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46 Okany, *supra* note 30 at 327.
47 Eka, *supra* note 44 at 440.
48 *Olawoyin v A G Northern Region*, [1961] 2 SCNLR 5.
49 *Owodunni v Registered Trustee, Celestial Church of Christ*, [2000] 10 NWLR (Pt. 675) 315.
50 *Senator Adesanya v The President of the Federal Republic of Nigeria & Anor*, [1981], 112.
51 *Fawehinmi v Akilu & Anor*, 1987 797.

another (a crime) only prosecuted by the Attorney General of the State or Federation as the case may be.[52]

In Britain, *locus standi* developed as a creation of the judges of the realm opposed to statute. In Nigeria, the enactment of the various Constitutions, particularly the 1979 Constitution of the Federal Republic of Nigeria, brought a major shift in the development of the doctrine as it wore a statutory garment.[53] Sections 6 (6) (b), 33 and 42 (1) (now sections 6(6) (b), 36 and 46 (1) of the Constitution of the Federal Republic of Nigeria, 1999) empower a person who feels aggrieved by the action or omission of any other person (natural or artificial) to seek legal redress in a court of law.[54] Section 6 (6) (b) thereof gives the court judicial power to adjudicate over any dispute between persons, persons and government and *vice versa.*[55] It must be noted that judicial power is different from *locus standi*.[56] While the judicial powers of the Court are powers given to the Court to function as a court whereupon it can make binding verdicts, *locus standi* relates to the competence of the claimant to approach the court if there is any interest, sufficient for legal protection or remedy in the event of it having been, is being breached, or likely to be breached.[57]

In *Buriamoh Oloriode v. Oyebi & Ors* the Supreme Court of Nigeria held that a party prosecuting an action would have *locus standi* where the reliefs claimed would confer some benefits on such a party;[58] such benefit must be personal or peculiar to that party.[59] Thus, interest for the purpose of possessing the requisite standing to sue or defend a suit must not be construed restrictively.[60] In *Moradesa v. Military Governor of Oyo State,*[61] the court held that in defining the meaning of "interest" for

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52 *Constitution of the Federal Republic of Nigeria 1999 Cap. C23 Laws of the Federation of Nigeria (LFN)*, *supra* note 3, S. 150 & 195.

53 M Akusobi, "The Basic Concepts of Locus Standi in Civil Suits vis-a-vis the Doctrine of Legitimate Expectation", (2020), online: <https://threshold-attorneys.com/the-basic-concepts-of-locus-standi-in-civil-suits-vis-a-vis-the-doctrine-of-legitimate-expectation/>.

54 *Bronik Motors Ltd v Wema Bank Ltd*, [1983] 1 SCNLR 296.

55 *Barclays Bank v Central Bank of Nigeria*, [1976] 1 All NLR (Pt 1) 409.

56 *Sha'Aban v. Sambo*, *supra* note 28, 342, Paras. D-E. The Supreme Court per Adekeye JSC (as he then was) held that "judicial power is the power of the court to hear and determine the subject matter in controversy between parties to a suit, while jurisdiction is the authority of a court to exercise its judicial power i.e. the total powers which a court exercises when it assumes jurisdiction to hear a suit."

57 *Mustapha v Corporate Affairs Commission*, [2019] 10 NWLR (Pt 1680) 355.

58 *Buriamoh Oloriode v Oyebi & Ors*, [1984] 5 SC 1 16.

59 See the dictum of *Nigeria Airways Ltd v Lapite*, [1990] 7 NWLR (Pt 163) 392.

60 *Zango v Military Governor, Kano State*, [1986] 2 NWLR (Pt 22) 409.

61 *Moradesa v Military Governor of Oyo State*, [1986] 3 NWLR (Pt 27) 297.

the purpose of determining the *locus standi* of a plaintiff, it should not be given a narrow view but should be regarded as including any connection, association or interrelation between the applicant and the matter to which the application relates.[62] This position was reiterated by the Court of Appeal in *Busari v. Oseni.*[63] The question of what constitutes sufficient interest is a matter of mixed law and fact i.e. a question of fact and degree and the relationship between the applicant and the matter to which the application relates.[64] A person interested includes a person affected or likely to be affected or aggrieved or likely to be aggrieved by the proceedings as decided in *Ojukwu v. Governor of Lagos State.*[65] In *Ikoku v. Tobin,*[66] it was held that the test of determining sufficient interest of a party in a suit is to find out whether the party seeking the redress or remedy will suffer some injury arising from the litigation and if the Court is satisfied that the person will so suffer then the person must be heard as the person is entitled to be heard.[67] However, the injury which must be real and tangible, must be directly related to the litigation and not merely incidental as was held in *Mbanu v. Mbanu.*[68]

Where a claimant seeks declarative relief, the requirement of *locus standi* is more stringent.[69] Such a claimant is under an obligation to demonstrate that the relief sought affects a right that is personally vested in him/her and that he/she has a "real interest" at stake and not merely that there is a violation of a general interest which he/she is a part of.[70] *Locus standi* as an aspect of justifiability focuses on the party and not the issue he/she wishes to have adjudicated.[71] Where a claimant lacks the requisite standing to sue, no issue in the case can be adjudicated upon not even the question of whether or not the statement of claim discloses a reasonable cause of action.[72] The only proper order to make where there is the absence of *locus standi* is to strike out the suit, as was held in *Adelakun & Ors. v.*

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62 T A Oyewo & M C Ogwezzy, *Principles of Administrative Law in Nigeria* (Ibadan: Jator Publishing Co., 2014) at 424.

63 *Busari v. Oseni*, *supra* note 33.

64 *Merchant Bank v Federal Minister of Finance*, [1961] All NLR 598 ; *Zango v. Military Governor, Kano State*, *supra* note 60.

65 *Ojukwu v Governor of Lagos State*, [1985] 2 NWLR (Pt 10) 806.

66 *Ikoku v Tobin*, [1985] 2 NCLR 1326 .

67 B O Iluyomade & B U Eka, *Cases and Materials on Administrative Law in Nigeria*, 2nd ed. ed (Ife: Obafemi Awolowo University Press, 1992) at 569.

68 *Mbanu v Mbanu*, [1961] 2 SCNLR 305.

69 Oyewo & Ogwezzy, *supra* note 62 at 302.

70 *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd*, [2006] 1 SLR (R) 112.

71 *Alhaja Afusat Ijelu & Ors V Lagos State Development And Property Corporation & Ors*, [1992] 9 NWLR (Pt 266); *Alao v. ACB*, *supra* note 37.;

72 *Ruthlinz International Investment Ltd v Ihebuzor*, [2016] 11 NWLR (Pt 1524) ; *Nigeria Airways Ltd. v. Lapite*, *supra* note 59.

Central Bank of Nigeria.[73] Given the need to ensure the protection of society, the neighborhood principle espoused in *Donoghue v. Stevenson*[74] needs rigorous advancement and should be protected more jealously in Nigeria today than ever before. Achieving this requires the liberalization of *locus standi*. The foregoing notwithstanding, the problem of standing in the legal system is still with us. This can be appreciated from Oputa's picturesque statement that:[75]

> "*Locus standi* has been a 'sharp thorn in the flesh', a big glass in the stomach of many a legal system. It is the meeting or rather the crossing point of two essential judicial values, namely: - the desirability of encouraging individual citizens to participate actively in the enforcement of law and the undesirability of encouraging professional litigants and meddlesome interlopers to invoke and ignite the jurisdiction of the Courts in matters that do not concern them, matters to which they are but strangers. The headache has always been where to draw the line."

Certainly, in creating a balance with a view to successfully navigate the quagmire as argued above, liberalization of *locus standi* is a leeway. The dictate and demands of justice in contemporary Nigeria require that access to court be promoted rather than inhibition of the same, especially regarding matters that deal with financial probity and accountability by government officials like in the instant case.[76] Doing otherwise is to entrench blatant impunity, financial recklessness, executive and legislature supremacy beyond acceptable limits, and the ultimate collapse of government and governance in Nigeria with its calamitous outcome.

IV. EXPLICATING THE DECISION IN EDUN V. GOVERNOR OF DELTA STATE & ORS ASAN ALBATROSS OF PUBLIC INTEREST

This section of the paper examines the CA's decision in *Edun v. The Governor of Delta State & Ors* by highlighting its brief facts, its impact on the entrenchment of public accountability and transparency in Nigeria, the propriety of the decision, and matters arising therefrom.[77]

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73 *Adelakun & Ors v Central Bank of Nigeria*, [2017] 11 NWLR (Pt 1575) para. 1.

74 *Donoghue v Stevenson*, [1932] A C 562 .

75 C A Oputa, *A Commentary on the Place of the Judiciary in the Third Republic* (Federal Government Printers, 1988) at 34.

76 A F Oluwatayo, "Doctrine of Locus Standi and Access to Justice in Nigerian Court" (2015) 1:5 J Law Glob Policy at 36–54; G N Okeke, "Re-Examining the Role of Locus Standi in the Nigerian Legal Jurisprudence" (2013) 6:3 J Polit Law at 200.

77 *Suit No. CA/B/378/2018*, *supra* note 21, judgment delivered on 27th March, 2019.

The brief facts are that at the High Court of Delta State, Effurun Judicial Division the appellant as claimant, via an Originating Summons dated the 13th day of February 2015, posed several questions for the Court's determination among which are: whether the salient provision of the Pension Rights of the Governor and the Deputy Governor of Delta State Law, Cap. P5, Laws of Delta State, 2008 that provides for both the gratuity and pension of a former Governor and former Deputy Governor who have held offices and completed their constitutional terms of four years, does not conflict with section 124 of the Constitution of the Federal Republic of Nigeria, 1999, section 6(d) of the Revenue Mobilisation Allocation and Fiscal Commission Act, 2004 and section 3(p) of the National Salaries, Income and Wages Commission Act, 2004; whether the provision of section 6 of the Pension Rights of the Governor and the Deputy Governor of Delta State Law, Cap. P5, Laws of Delta State, 2008 and the Second Schedule to the law (which provides further benefits outside gratuity and pension) are constitutional in the face of section 124 of the Constitution of the Federal Republic of Nigeria, 1999; whether the Delta State Government of Nigeria can validly oust or act outside the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and create a separate regime of retirement benefits for former Governor and Deputy Governors of Delta State and whether under section 124(5) of the Constitution of the Federal Republic 1999, former Governor and Deputy Governor of Delta State of Nigeria are entitled to both pension and gratuity or only to either pension or gratuity.

The Claimant/Appellant then urged the Court to make certain declarations. Specifically, the court was urged to declare that; under the joint reading of the provisions of section 124 of the Constitution of the Federal Republic of Nigeria, 1999, section 6 (d) of the Revenue Mobilisation Allocation and Fiscal Commission Act, 2004 and section 3 (p) of the National Salaries, Income and Wages Commission Act, 2004, former Governors and Deputy Governors of Delta State are entitled to be paid gratuity and pension. The Court was also urged to declare that under these laws, former Governors and Deputy Governors of Delta State are not entitled to the benefits in the Second Schedule of the Pension Rights of Governor and Deputy Governor of Delta State Law, 2008. The court was also urged to make an order striking down sections 3, 5, and 6 of the law, Tables A and B of the First Schedule, and the entirety of the Second Schedule of the law for being incompatible with the extant provisions of the Constitution of

the Federal Republic of Nigeria. The Appellant/claimant sought an order restraining the 1st and 2nd Defendants from giving effect to the alleged offensive provisions of the law in issue particularly the entire second schedule as well as an order compelling the defendants to file a comprehensive statement of all the completion-of-tenure benefits/entitlements paid to former Governors or Deputy Governors from 29th May 2003 till date of delivery of judgment in the Honourable Court within 24 days of delivery of judgment in favor of the claimant.

The defendants filed a counter affidavit with a written address and challenged the *locus standi* of the claimant to file the suit. On the 30th day of June 2016, the learned trial judge delivered judgment upholding the objection and struck out the claimant's case for want of jurisdiction based on lack of *locus standi.* The claimant, being dissatisfied, filed a Notice of Appeal dated the 15th day of July 2016 and submitted two issues for the Court of Appeal's determination. The focus of this paper is basically limited to the issue on whether the learned trial judge was right when he held that the Appellant lacked *locus standi* to initiate the suit.

Parties filed and exchanged their briefs of argument. The appellant, in his brief, referred to paragraphs 4, 5, and 5 of the Appellant's Affidavit to support the originating summons where he had averred that he is a citizen of Nigeria, resident of Delta State, a taxpayer, and a legal practitioner whose duties, amongst others, include being a watchdog of the society and making sure that there is probity and accountability in governance. He argued that every Nigerian has the civil right and civic duty of protecting the Constitution and can approach the court to do so as supported in *Fawehinmi v. Halilu Akilu.*[78] He contended that the learned trial judge misconceived the modern trend on *locus standi* hinged on liberalisation of same to accommodate public interest litigation and in human rights cases, the floodgate has been flung opened to accommodate sundry litigation by virtue of the Fundamental Rights (Enforcement Procedure) Rules, 2009.[79] He further contends that the suit, as constituted, is competent and the trial judge ought to have determined it on its merit. He therefore urged the Court of Appeal to allow the appeal.

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78 *Fawehinmi v. Akilu & Anor*, *supra* note 51.

79 *Attorney General, Akwa Ibom State v Obong*, [2001] 11 NWLR (Pt 694) 218.

In response, the respondent submitted that under the Nigerian legal system, the right to invoke the judicial powers of the court is statutory and regulated by the Constitution of the Federal Republic of Nigeria, 1999 and there is no unbridled access to court by every bystander. For a person to invoke and ignite the judicial powers of the Court to maintain an action against any person or authority, their claim must on a facial basis, disclose that their civil right or obligation has been infringed upon as was held in *Daniyan v. Iyagin.*[80] The defendant further contended that, where a party seeks to establish a public right, he is bound to show an injury over and above other members of the public as was held in *Adesanya v. President, Federal Republic of Nigeria,* and that the appellant has not shown that any provision of the law in issue affect any interest that is peculiar to him or any injury that he has or will suffer over and above that of the members of the public.[81] On a final note, they urged the Court of Appeal to dismiss the appeal and uphold the judgment of the trial court that the appellant lacks *locus standi* to initiate the suit.

A. Court Resolution of the Issue

The Court of Appeal acknowledged the fact that the *locus standi* of a claimant is traceable and discoverable from the originating process filed before the court[82] and that the issue of "standing" is germane and must be treated with utmost importance.[83] In the opinion of the court, the test for discovering *locus standi* is whether the claimant from the pleadings has disclosed a sufficient interest in the subject matter of the suit before the court.[84] The Court then posed the question, "Has the Appellant disclosed sufficient interest in his pleadings in the lower court to entitle him to sue?"[85] The Court referred to the Supreme Court of Nigeria's decision in *Pacers Multi-Dynamics Ltd. v. The MV Dancing Sisters & Anor* where the test for ascertaining *locus standi* was laid down.[86] The Court went further to find and hold that from a scrutiny of the originating summons and the supporting affidavit, the appellant has failed to convince the Court that his personal interest

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80 *Daniyan v Iyagin*, [2002] 7 NWLR (Pt 786) 355.
81 *Adesanya v President, Federal Republic of Nigeria*, [2001] 10 FWLR (Pt 46) 859.
82 *Oloride v Oyebi*, [1984] 1 SCNLR 400.
83 *Uwazuruonye v Governor of Imo State*, [2012] 11 SCNJ 70.
84 *Atoyebi v Governor of Oyo State*, [1994] 5 NWLR (Pt 344) 290.
85 *Suit No. CA/B/378/2018*, *supra* note 21, p. 13, judgment was delivered on 27th March, 2019.
86 *Pacers Multi-Dynamics Ltd v The MV Dancing Sisters & Anor*, [2012] All FWLR (Pt 618) 803.

will be affected or has been adversely by the law in issue.[87] It concluded therefore that since the appeal has no scintilla of merit, it fails and is accordingly dismissed.

Thus, the likelihood of suffering or actual suffering of an injury over and above the public was the prime consideration upon which the court based its decision. However, it is our vehement contention that; with due respect, the Court of Appeal in coming to its conclusion above, placed more reliance on shadow than substance. The appellant, having disclosed that he is a Nigerian, a resident of Delta State, a taxpayer, and a legal practitioner serving as watchdog to instill probity and financial accountability in governance, in our view, is competent to challenge the constitutionality of the law in issue which is the crux of the suit. In fact, one of the issues which the appellant submitted for the determination of the trial court was whether or not the law in issue was not unconstitutional by virtue of sections 124 of the Constitution of the Federal Republic of Nigeria, 1999, section 6 (d) of the Revenue Mobilisation Allocation and Fiscal Commission Act, and section 3 (p) of the National Salaries, Income and Wages Commission Act is trite law that every Nigerian citizen (particularly a taxpayer), has the civic right and responsibility of ensuring that the provision of the laws of Nigeria, particularly the Constitution which is the supreme law, is obeyed.[88] This alone vests the appellant with the requisite *locus standi* to institute the suit.[89] While the decision in *Pacers Multi-Dynamics Ltd. v. The MV Dancing Sisters & Anor* relied upon by the court makes the determination of *locus standi* somewhat discretionary, it is submitted that the exercise of discretion by the court is not at large.[90] It must be exercised judicially and judiciously, more so the court must engage in purposive construction of the provisions of the Constitution in particular and any statute in general. This sublime obligation cannot be said to have been discharged based on the conclusion reached by the Court of Appeal in the instant appeal.

Ordinarily, the Attorney General and Commissioner for Justice of Delta State, being the Chief Law Officer of the State, has the right to institute action for and on behalf of Deltans. However, the possibility of doing that in this case is impracticable. The Attorney General and Commissioner for Justice is a member of the State Executive Council, an appointee of the government, and would most

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87 *Suit No. CA/B/378/2018*, *supra* note 21, p. 18, judgment was delivered on 27th March, 2019.

88 *Okechukwu v Etukokwu*, [1998] 5 NWLR (Pt 562) 526.

89 *Mbadinuju v Ezuka & Anor*, [1994] 10 SCNJ 128.

90 *Pacers Multi-Dynamics Ltd. v. The MV Dancing Sisters & Anor*, *supra* note 86.

likely seek to protect the interest of the Governor (prospective beneficiary of the obnoxious law which is being challenged) rather than the populace. The Court did not take cognizance of the fact that Nigeria's democracy has not developed to the extent that such patriotic acts could be performed by the government against itself as it were. While we are not oblivious to the independence of the Attorney General and Commissioner for Justice, the point is that in Nigeria, political loyalty is a restraint to independence particularly with political appointees. Aside this, a government cannot maintain an action against itself in court. The whole proceedings, assuming but not conceding that it was possible, will at best be a mock trial. Judging from the foregoing, the result is that there will be no legal challenge to the law under this circumstance. The money used to make the sundry payments contained in the second schedule of the law is partly derived from taxes which includes that paid by the appellant. If citizens cannot sue to ensure that their taxes are used to provide basic amenities meant for their welfare rather than enriching former Governors and Deputy Governors who, to be mild, had failed to serve meritoriously and had siphoned money (since 1999, the two Governors who had governed Delta State i.e. James Ibori and Emmanuel Uduaghan had been prosecuted and jailed or entered plea bargaining in Nigeria and in the United Kingdom on account of financial impropriety and mismanagement of monies of the State), then one wonders what else they could do. This situation created by the decision of the Court of Appeal is rather unfortunate and should not be allowed to persist as it does not set a good precedent.

V. FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE RULES AND THE LIBERALIZATION OF *LOCUS STANDI* IN NIGERIA

This section demonstrates that contrary to the position of the Court of Appeal above, the law in Nigeria leans towards liberalization of *locus standi* using the Fundamental Rights (Enforcement Procedure) Rules as a prototype. The successive Constitutions in Nigeria contained human rights provisions. These provisions came about due to the legitimate apprehension by minority ethnic groups in Nigeria when discussions for independence were ongoing after the

regional government was introduced by Britain.[91] In other to allay the fears expressed by the minority groups, a Minority Commission was set up in 1957 to examine the issue and make appropriate recommendations.[92] Based on the findings and recommendation of the Commission, a Bill of Rights was included in Chapter III of the 1960[93] Independence and 1963 Republican Constitutions of Nigeria.[94]

In the 1979 Constitution made after return to democratic rule, the Bill of Rights under the two previous Constitutions were retained. The then Chief Justice of Nigeria, Hon. Justice Atanda Fatai Williams, invoked the provision of Section 42 (3) of the 1979 Constitution (now 46(3) CFRN, 1999) which empowered him to make rules for the practice and procedure for the High Court towards the enforcement of Chapter IV as well as the 1979 FREP Rules. However, the 1979 FREP Rules applied several restrictions to the seamless enforcement of human rights, especially against the government. For instance, for an action for enforcement of fundamental rights to be commenced, the leave of Court must first be sought and obtained.[95] Also, there was limitation of time[96] for seeking leave to bring an application which is within 12 months from the date of the alleged violation. Failure to so do, extinguishes the cause of action as was held in *Ogueghe v. Inspector-General of Police.*[97] The Rules also create a jurisdictional tension between the High Court of a State and the Federal High Court as to the appropriate court for the enforcement of fundamental rights violations. While Order 1 Rule 2 gave jurisdiction to a High Court in the State where the cause of action arose, Order 1 Rule 1 defined a court to mean the Federal High Court or the High Court of a state. This created confusion as to which court, between the two, has the jurisdiction to entertain fundamental right enforcement causes.

The problem of the dichotomy between principal and ancillary relief under the 1979 FREP Rules stiffens the enforcement of human rights in Nigeria. This Rule

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91 N J Udombana, "Interpreting Rights Globally: Courts and Constitutional Rights in Emerging Democracies"' (2005) 5:1 Afr Hum Rights Law J at 55.

92 E Brem & O C Adekoya, "Human Rights Enforcement by People Living in Poverty: Access to Justice in Nigeria" (2010) 54:2 J Afr Law at 258.

93 See sections 17-32 thereof.

94 E Nwauche, "The Nigerian Fundamental Rights (Enforcement) Procedure Rules 2009: A Fitting Response to Problems in the Enforcement of Human Rights in Nigeria?" (2010) 10:2 Afr Hum Rights Law J at 503–504.

95 Order 1 Rule 2(2), *Fundamental Rights (Enforcement) Procedure Rules*, 1979.

96 Order 1 Rule 3(1), *Ibid.*

97 *Ogueghe v Inspector-General of Police*, [1999] 1 FHCLR 59.

created the barrier of *locus standi* by the provisions of Order 1 Rule 2 which provides that "any person who alleges that any of the fundamental rights provided for in the Constitution and to which he is entitled has been, is being or is likely to be infringed may apply to the court in the state where the infringement occurs or is likely to occur for redress." Due to these provisions, the Courts in the cases of *Richard Oma Ahonarogo v. Governor of Lagos State*[98] and *Captain SA Asemota v. Col SL Yesufu & Anor*[99] held that only a person whose right is about to be breached, is being breached, or has been breached can sue.

When the Constitution of the Federal Republic of Nigeria, 1999 was made, the Bill of Rights was retained. Under this constitution, the concept of human rights is divided into two categories as contained under Chapters two and four of the Constitution. Chapter two contains the Fundamental Objectives and Directive Principles of State Policy (FODPSP) while Chapter four contains the Fundamental Human Rights (FHRs).[100] They are categorized into non-justiciable and justiciable rights, meaning that the former (i.e. FODPSP) ordinarily cannot constitute a cause of action to be litigated in the court of law as they are unenforceable in Nigeria.[101] However, the latter (i.e. FHRs) can become a subject of litigation in a court of law in the event of the likelihood of or actual breach.[102] Section 46 of the Constitution of the Federal Republic of Nigeria, 1999 empowers anyone whose right contained in Chapter 4 thereof is about to be breached or has been breached to apply to a High Court within the State for the enforcement of same.

However, for such a person to enforce his/her right as provided, there is a need for a procedural guide. Section 46 (3) thereof empowers the Chief Justice of Nigeria to make FREP Rules that will regulate the enforcement of fundamental rights in Nigeria. According to this, in 2009, the then Chief Justice of Nigeria, Hon. Justice Idris Legbo Kutigi wrote the 2019 Fundamental Rights Enforcement Procedure Rules, at present the procedural guide for the enforcement of fundamental rights in Nigeria. The FREP Rules seek to engender an egalitarian platform to enforce fundamental rights in Nigeria as encapsulated

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98 Unreported case. See JHRLP Vol 4 Nos. 1, 2 & 3.

99 *Captain SA Asemota v Col SL Yesufu & Anor*, [1981] 1 NSCR 420.

100 *Archbishop Olubunmi Okogie v Lagos Stat*, [1981] 2 NCLR 350.

101 Taiwo, *supra* note 34, at 548.

102 *Garba v University of Maiduguri*, [1986] 2 NWLR (Pt 18) 559.

in its objectives, which are to ensure that Chapter four of the Constitution and other human rights instruments (local and international) are expansively and purposefully interpreted and applied to advance and actualize the rights guaranteed in them without undue restrictions howsoever.

Before further elucidation, it is apt to reiterate the fact that under the 1979 CFRN, the fundamental rights provisions contained in Chapter four also made provision for the creation of rules for the enforcement of such fundamental rights by the Chief Justice of Nigeria.[103] As a result, the Chief Justice of Nigeria then made the 1979 Fundamental Rights (Enforcement Procedure) Rules which regulated human rights enforcement proceedings in Nigeria which, as stated above, had several shortcomings including restricted *locus standi*.[104] The realization of these laudable objectives of the 2009 FREP Rules could be made impossible by the doctrine of *locus standi* especially in its pristine restrictive nature as seen under the erstwhile 1979 FREP Rules. To ensure that this does not occur, the 2009 FREP Rules extinguishes the requirement of *locus standi* in the enforcement of fundamental human rights. Item 3 (e) of the preamble of the Rules provides as follows:

> "The Court shall encourage and welcome public interest litigations in the human rights field, and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations may institute human rights applications on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following; anyone acting on behalf of another person; anyone acting as a member of, or in the interest of a group or class of persons; anyone acting in the public interest, any association acting in the interest of its members or other individuals or groups."

In fact, the strangulating effect of limitation law which extinguishes cause of action upon lapse of time is made inapplicable to fundamental rights enforcement proceedings.[105] This is to ensure that for anyone whose right(s) have been infracted, as contained under any statute, lapse of time is not used as an excuse

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103 Raheem Kolawole Salman & F J Oniekoro, "Death of Locus Standi and the Rebirth of Public Interest Litigation in the Enforcement of Human Rights in Nigeria: Fundamental Rights (Enforcement Procedure) Rules 2009 in Focus" (2015) 23:1 IIUM Law at J 120–123.

104 Abiola Sanni, "Fundamental Rights Enforcement Procedure Rules, 2009 as a tool for the enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The need for far-reaching reform" (2011) 11:2 Afr Hum Rights Law J at 514.

105 Order 3 Rule 1, *Fundamental Rights (Enforcement) Procedure Rules*, *supra* note 95.

to deny the victim of a remedy. In fact, contrary to the established legal maxim of "delay defeat equity" and "equity aids the vigilant and not the indolent," fundamental rights enforcement is not affected by delay howsoever. While *locus standi* continues to be an aspect of Nigeria's *corpus juris,* its application has been liberalized by exclusion in fundamental rights enforcement litigation. Thus, anyone who apprehends an imminent threat of breach or the actual breach of the right of anyone in Nigeria can validly institute proceedings in a High Court within the State where the breach is about to or has occurred for the enforcement of such right. The liberalization is so broad that even non-governmental organizations or associations could institute such proceedings for and on behalf of the victim(s).[106]

Various reasons could be responsible for the inability of a victim of a human rights violation to seek legal redress in court. These could include lack of financial wherewithal, ignorance, fear, socio-cultural cum religious idiosyncrasies, etc. Of course, litigation as a means of dispute resolution is largely expensive and most victims of human rights violations, especially those occasioned by the government or its agent(s), are intimidated from locking horns, and the situation is exacerbated by the financial implication. This can cause a victim to throw in the towel and let God be the judge by resigning to fate. It is apposite to note that the 2009 FREP Rule, although a subsidiary legislation, having been made under Section 46 (3) of the Constitution has been elevated to the status of the Constitution and its provisions are superior and supreme like the Constitution itself. In *Abia State University v. Anyaibe,*[107] it was stated that the Rules form part of the Constitution and therefore enjoy the same force of law as the Constitution. It is worth noting that while the constitutional status of the 2009 FREP Rules is laudable, the same poses a serious challenge when examined within the provisions of the Constitution itself.

A. The Practice in Selected Jurisdictions

Judicial activism is a philosophy that permits the court to espouse the law beyond its stringent and restrictive ambiance in a bid to advance the course of justice. In jurisdictions in which Courts have and are usually inclined to adopt this

[106] Sanni, "Fundamental Rights Enforcement Procedure Rules, 2009 as a tool for the enforcement of the African Charter on Human and Peoples' Rights in Nigeria", *supra* note 104.
[107] *Abia State University v Anyaibe*, [1996] 3 NWLR (Pt 439) 646.

adjudicatory philosophy, judgments delivered are often considered novel and trailblazing as they tend to advance the course of justice devoid of legal technicalities.[108] It is a veritable tool used by the court to safely depart from a position of the law that has become otiose and obsolete due to prevailing contemporary realities requiring a paradigm shift. Within this background, the practice of *locus standi* in fundamental rights enforcement in India, the United Kingdom, and South Africa is examined vis-à-vis Nigeria to draw lessons, particularly for Nigeria.

The justification for the selection of India is that like Nigeria, she is a commonwealth country and has the common law system in addition to being a former British colony. The heterogeneous nature of India, similar to that of Nigeria, as well as the fact that India is the most populated nation in the world while Nigeria is the most populated Black Country in the world, makes comparison between the two on the practice of *locus standi* by their courts apt. A further reason is that Indian courts are known for having a progressive interpretation and application of the law aimed at furthering the course of justice, hence their experience in the area of *locus standi* will serve as a guide for Nigerian courts. The justification for the UK is that Nigeria, by her historical antecedent, inherited the doctrine of *locus standi* from the UK and examining how the courts in the UK have applied this doctrine will enable Nigerian courts to evaluate their practice. The justification for comparison with South Africa is that aside from South Africa having one of the fastest growing economies in Africa, her historical experience with apartheid and other human rights violations has greatly influenced the structuring of her laws and the interpretation by her courts. Nigeria is likely to glean lessons from the experience of South Africa with regard to how South African courts have approached the subject of *locus standi,* coupled with the fact that South Africa, like Nigeria, operates under the common law system.

i. India

With regards to the application of *locus standi*, the Indian courts adopted and applied the now anachronistic restrictive rule. In the 1980s however, there was a

108 I Imam, "Rethinking Judicial Activism Ideology: The Nigerian experience of the extent and limits of Legislative-Judicial Interactions" (2014) 4:1 at 101.

paradigm shift towards liberality.[109] Noteworthy is the fact that section 32 of the Indian Constitution, 1950 liberalized *locus standi* requirement for fundamental rights enforcement. Indian courts have espoused and expanded the frontier beyond the ambits of section 32 of India's Constitution to pave the way for public interest litigation dealing with actions aimed at nullification of laws regarded as unconstitutional, as well as acts/omissions of the government or its agents/agencies.[110] The Supreme Court of India in *Bandhua Mukti Morcha v. Union of India*[111] held that section 32 of the Indian Constitution has conferred on it powers to enforce fundamental rights in the widest possible terms. In *Maharaj Singh v Uttar Pradesh*[112] it was held that where an offense affects the interest of the public, the requirement of *locus standi* will not be deployed to obstruct a private individual from instituting an action against the offender as if it were the state. This is so as the Indian courts do not consider themselves as a merely passive, disinterested onlooker or umpire, but one that has and must play a positive role in organizing the process, granting reliefs sought, and implementing of the outcome of the proceedings.[113]

Thus, in *Hussainara Khatoon v. State of Bihar* persons comprising of children, men, and women were incarcerated for minor offences which if convicted, carried imprisonment terms of less than three months.[114] However, they had remained imprisoned without trial for over ten years. A newspaper carried the story cataloguing their travails and a human right activist sued for the enforcement of their fundamental rights, explicating their plight and perils they have suffered. The Supreme Court of India held that the activist had the *locus standi* to bring the action and ordered speedy hearing of the application, noting that it was corollary to their right to life and dignity of human person. In *Municipal Council, Ratlam v. Vandichand*[115] residents of the municipal council challenged its failure to provide basic sanitary amenities and deterrence of harmful discharge from an alcohol plant despite repeated demands. The council challenged the propriety of the action, arguing that the residents had been aware of the insanitary condition of

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109 *Gupta v President of India*, [1982] AIR SCC.

110 R K Salman & O O Ayankogbe, "Denial of Access to Justice in Public Interest Litigation in Nigeria: Need to learn from Indian Judiciary" (2011) 53:4 J Indian Law Inst at 614.

111 *Bandhua Mukti Morcha v Union of India*, [1984] 2 SCR 67.

112 *Maharaj Singh v Uttar Pradesh AIR*, [1976] SC 2609.

113 *Sheela Barse v Union of India*, [1982] 2 SCR 35, para 12.

114 *Hussainara Khatoon v State of Bihar AIR*, [1979] SC 1377.

115 *Municipal Council, Ratlam v Vandichand*, [1980] AIR 1622.

the place but still chose to reside there, constituting a case of *volenti non fit injuria*. Aside from this, the council contended that it lacks the financial wherewithal to meet the demands of the residents. The Magistrate observed that *locus standi* under the Indian Constitution as well as the attitude of the court has moved it from individualism to communality and therefore, countenanced the applicant's *locus standi* and ordered the respondent to provide the basic amenities sought by the residents. In *Upendra Baxi (Dr) v. State of Uttar Pradesh*[116] two law professors petitioned the Supreme Court for the enforcement of the rights of inmates who were living in inhumane conditions in a protective home contrary to section 21 of the Indian Constitution and had been subjected to various human rights violations including sexual exploitation and trafficking. The Supreme Court accorded them *locus standi* to maintain the action for and on behalf of the indigent inmates in the overall interest of the public and justice. The court made orders which were significantly beneficial to the sufferers. In fact, in *Meera Massy v. SR Malhotra,*[117] a law professor was granted *locus standi* to challenge the improper appointment of lecturers who lacked the minimum requirement on the basis of genuine interest in education. The Indian Supreme Court has vigorously liberalized both administrative and constitutional regulatory matter in furtherance of public interest litigation as exemplified by the aforementioned cases and in particular *Wadhera v State of Bihar,*[118] in which it granted *locus standi* to a law professor to challenge an alleged improper implementation of a constitutional provision, unlike the previously discussed decision by the Nigerian Court of Appeal. Judging by the foregoing, it is beyond contestation that the Indian courts have impressively liberalized *locus standi* in furtherance of public interest litigation.

From the foregoing, it is crystal clear that India, like Nigeria, had restrictively applied *locus standi* in the enforcement of human rights. However, noting the challenges of this restrictive approach and armed with the liberal provision under the Indian Constitution, the courts have since adopted liberal interpretation and application of the *locus standi* requirement in fundamental rights enforcement cases and have consequentially encouraged public interest litigation with the concomitancy of advancing access to court and justice. The courts have not only sanctioned Indian statutes containing fundamental rights but have applied

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[116] *Upendra Baxi (Dr) v State of Uttar Pradesh*, [1983] 2 SCC 308.
[117] *Meera Massy v SR Malhotra AIR*, [1998] SC 1153.
[118] *Wadhera v State of Bihar AIR*, [1987] SC 579.

international human rights instruments as interpretation aids and have commendably shunned every attempt at restricting the enjoyment of these rights.

ii. United Kingdom

As far back as the 19th century, the United Kingdom[119] has a history of the restrictive application of *locus standi* as laid down in *Ex P. Sidebotham Case,*[120] to the effect that for a person to maintain an action, he must show that he has suffered an injury or is likely to do so personally. Considering the difficulties associated with this restrictive application based on contemporary needs, it came under serious judicial attack in the 1960s necessitating a detraction. The first attack was from Lord Denning in *R v. Paddington Valuation Officer, ex-parte Peachey Property Corp Ltd,* in which the English Court held that one need not suffer an injury or threat of it to seek to quash the wrong or illegal action of a government agency/agent.[121]

Prior to 1978, there were different tests adopted by the court to grant *locus* in cases of certiorari, prohibition and injunction, mandamus, and judicial review.[122] Section 31(3) of the Supreme Court Act, 1981 as well as Order 53 of the UK Supreme Court Rules laid down the process for determining whether an applicant has *locus* or not, which is the demonstration that the applicant has sufficient interest in the dispute and not necessarily have suffered or is likely to suffer injury. Thus*, locus standi* has been liberalized to allow public-spirited individuals and non-governmental organizations to bring actions in the interest of the public and on behalf of underprivileged members of the public, as was determined in *R v. Inland Revenue Commissioner, ex-parte National Federation of Self-employed and Small Business Ltd.*[123]

Thus, in the UK, the courts are guided by indicia such as the strength and importance of the ground of challenge and proximity of the decision to the

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[119] United Kingdom is subsequently written as UK in this article.

[120] *Ex P Sidebotham Case*, [1880] 14 Ch D 465.

[121] *R v Paddington Valuation Officer, ex-parte Peachey Property Corp Ltd*, [1966] 1QB 400-401.

[122] M D A Jalil, "Locus Standi Rule for Judicial Review: The Current Law in in the UK and Malaysia" (2004) 8:1 J Undang Dan Masy at 60.

[123] *R v Inland Revenue Commissioner, ex-parte National Federation of Self-employed and Small Business Ltd*, [1982] AC 617.

applicant in determining an applicant's *locus* in a case. Hence in *R v. Greater London Council: Ex-Parte Blackburn,*[124] in which a taxpayer sought an order of the court restraining the council from assigning its responsibility of movie censorship to a third party and thereby allowing the showing of pornographic movies, the applicant's *locus* was challenged on the ground that he has not shown how the action sought to be restrained would prejudice him over and above other members of the society. Lord Denning noted that if the applicant lacks standing, then everyone does. Thus, he concluded that unconstitutional action of the council or government should not be shielded from public scrutiny. Moreover, the UK courts have granted *locus* even to Non-Governmental Organisations (NGO's).[125] Hence, in *R v. Inspectorate of Pollution, ex-parte, Greenpeace,*[126] the court granted *locus* to the applicant to challenge the government's decision to authorise a nuclear power plant construction on the basis that the NGO was a responsible and esteemed body with genuine concern over the environment, which is representative of the interest of all its members. In *R (on the application of Friends of the Earth) v. Environment Agency*[127] the court countenanced the *locus standi* of the NGO to challenge the government action of amending the waste management license necessary for the dismantling of a ship with toxic cargo at a particular protected site. The implication of this decision is that the UK Courts have liberalized *locus standi* to accommodate several categories of disputes which were hitherto impossible. Granting *locus standi* to NGO and public-spirited individuals as has been done in the UK enhances access to the courts and by implication, access to justice delivery which is necessary for an egalitarian society. Just like India, the UK started off with the anachronistic restrictive interpretation and application of *locus standi* with its consequent negative outcomes. However, realising the paramount nature of justice and the need to advance access to court, the UK courts abandoned this restrictive pathway for liberalism. This has engendered accountability in governance and advancement of human rights in the UK, particularly the act of vesting NGOs with *locus* in human rights litigation. The Nigerian courts need to follow this commendable example of the UK in order to ensure that widespread violation of fundamental rights, especially by the government and its agents/agencies with the attendant fear and high cost of

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124 *R v Greater London Council: Ex-Parte Blackburn*, [1976] NWLR 550.

125 Non-Governmental Organisation is simply referred to in this work as NGO.

126 *R v Inspectorate of Pollution, ex-parte, Greenpeace*, [1994] 4 All ER 329.

127 *R (on the application of Friends of the Earth) v Environment Agency*, [2003] EWHC 3193.

litigation, do not allow the culture of impunity to thrive. Interestingly, Nigeria inherited the restricted approach of the doctrine of *locus standi* from Britain, which is part of the UK. However, having realized the shortcomings of the restrictive approach, the UK has since taken proactive judicial steps and has liberalized the application of the doctrine in order to further the course of justice through removal of barriers to access to court. Nigeria, which is a former British colony, cannot therefore be more Catholic than the Pope. It is apposite to note that while these jurisdictions (i.e. India, South Africa and UK) have liberalized the application of the doctrine of *locus standi,* it is not effectuated with careless abandon.

iii. South Africa

South Africa is a foremost jurisdiction in Southern Africa with the fastest growing economy in the region and a progressive legal system with a deep history of human rights violation. Examining the practice of *locus standi* in this country, particularly as applied by its courts, will help Nigeria in navigating its present quagmire. Prior to the enactment of the Constitution of the Republic of South Africa, 1996[128] (1996 CRSA), the restrictive application of *locus standi* was upheld in South Africa by her courts. Thus, only a person who has or is likely to personally suffer injury could maintain an action. This position was upheld in *Darylmpel v. Colonial Treasurer.*[129] The fulfilment of this interest in the dispute or suffering of injury requirement would cause the court to grant *locus,* as was the case in *Director of Education, Transvaal v. MaCagie & Ors.*[130] In this case, the plaintiffs were two unsuccessful applicants for appointment to the rank of school principal and were granted *locus* to challenge the unconstitutional appointments by the Director of Education on the basis that the appointees did not meet the conditions as advertised. The Director's argument that they had no *locus* was discountenanced on the ground that they had demonstrated that the appointment had prejudiced them. In *Bagnall v. Colonial Government,*[131] the court rejected the idea of public interest litigation when it held that there was no precedent to the effect that an individual has been allowed to ventilate a public wrong in the interest of

[128] The Constitution of the Republic of South Africa, 1996 is hereinafter simply referred to as 1996 CRSA.
[129] *Darylmpel v Colonial Treasurer*, [1910] TPD 372.
[130] *Director of Education, Transvaal v MaCagie & Ors*, [1918] TS 616.
[131] *Bagnall v Colonial Government*, [1907] 24 SC 470.

the general public, meaning that public injury can only be litigated by the state even if suffered by the citizens. This decision was taken even though it was becoming increasingly fashionable for private persons to be granted *locus* to maintain public interest litigation for the general wellbeing of the society.

To address the prevailing contemporary developments which had made public interest litigation inevitable, the Interim[132] as well as the 1996 CRSA made provision for the liberalisation of *locus standi*. Hence, in *Ferreira v. Levin NO& Ors: Vryenhoek & Orsv. Powell NO & Ors,*[133] O' Regan J held that section 7(4) of the 1993 Interim Constitution has expanded the application of *locus standi* beyond the common law purview. Section 38 of the 1996 CRSA has liberalized *locus standi* in South Africa by specifying the conditions under which a person would be adjudged to have requisite *locus standi.* These conditions include bringing action for and on behalf of others due to impecuniosity and in the interest of the public by a natural or artificial persons. In *Minister of Health & Ors v. Treatment Action Campaign & Ors,*[134] the respondent realized that the government had failed to provide a widely recommended mother-to-child transmission anti-retroviral drug in all state medical facilities except two in each province. The most affected by this failure were the innocent and vulnerable babies. The application to the Pretoria High Court was determined with the outcome that the government had a duty to provide the drug to all pregnant infected mothers. The government appealed several times, one of which was against the *locus standi* of the respondent to maintain the action. The Constitutional Court held that the government's response was unreasonable and that the respondents had the *locus* to bring the action in the interest of the public, particularly persons who would be affected by the failure to make available the drug to all medical facilities for easy access. Again, in *Lawyers for Human Rights v. Ministry of Home Affairs & Anor*[135] the 2nd applicant was arrested and incarcerated without trial for seven days under the provisions of the Immigration Act 13, 2002. The applicants sought to challenge certain provisions of the Act about how illegal immigrants in South Africa were to be treated pending deportation. The High Court found that the provisions of the Immigration Act which were in issue, infracted section 12 of the 1996 CRSA.

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[132] See section 7(4), *Constitution of the Republic of South Africa Act No. 200 of 1993*.
[133] *Ferreira v Levin NO & Ors: Vryenhoek & Ors v Powell NO & Ors*, [1996] 1 SA 984.
[134] *Minister of Health & Ors v Treatment Action Campaign*, [2002] 10 BCLR 1033 (CC).
[135] *Lawyers for Human Rights v Ministry of Home Affairs & Anor*, [2004] 4 SA 125 (CC).

It also found and held that the applicant had *locus* to maintain the action and that what would constitute public interest litigation is based on the peculiarity of the case at hand and not general.

From the foregoing, it is apparent that the liberalisation of *locus standi* in India and South Africa came through the instrumentality of the constitution and not through an ordinary act of the parliament or a delegation legislation. The seeming liberalisation introduced in Nigeria under the FREP Rules, 2009 is patently conflictual with the express provisions of section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 which empowers anyone whose right is threatened or has been breached to approach a court within the State for the enforcement of his/her right. The rationale for the foregoing postulation is that the operational phrase in section 46 of the Constitution, 'anyone whose right has been breached or is under threat of breach' is synonymous with the restrictive approach as opposed to liberalisation. Thus, to achieve the desired statutory liberalisation, section 46 will have to be amended in the same way and manner of section 38 of the 1996 CRSA. This is to ensure that the commendable objective of the FREP Rules of 2009 is not rendered nugatory if their propriety is challenged.

From the foregoing, it is crystal clear through comparative analysis that India, UK and South Africa started off as jurisdictions where *locus standi,* particularly in fundamental right enforcement disputes, was applied restrictively by the courts. However, in India and South Africa, legislative steps were taken to liberalize the operation and application of *locus standi* with judicial fortification and popularisation. In the UK, the move to liberalisation was driven by the efforts of the courts. The analysis of the practice in these jurisdiction shows that their courts, as well as parliament, had realized the need and indeed liberalized *locus standi* in order to ensure access to court and litigation of suits that might not be litigated due to several factors that might hinder the actual victim(s). Thus, while the courts in these jurisdictions have not totally alienated the suffering or likelihood of suffering injury requirement as the basis of setting legal machinery in action to seek remedy, they have acknowledged the fact that there are special situations in which a person need not fall into this mould to be clothe with the requisite *locus standi.* This is because the demand of overriding public interest would require that a person who has neither suffered, is likely to suffer, or is

directly or indirectly impacted by a legal wrong, is allowed to litigate a legal grievance on behalf of the victim(s). Several factors impair the ability of a person who has or is likely to suffer legal wrong from seeking remedy. A few of these factors include impecuniosity, ignorance, intimidation, etc. Where insistence is made on the fact that only sufferers or likely sufferers of injury can approach the court of law for legal redress, the presence of any of these factors would mean that such a wrong will remain without attempt at remedy. A situation like this is an injustice to humanity. The implication of the practice of *locus standi* as seen in these jurisdictions is that accountability and safeguard of fundamental rights and civil liberties are cherished and protected by all and sundry for the benefit of the injured and the society at large.

Several factors are considered in an application that requires a liberal interpretation to be adopted. Factors such as the ability of the actual victim to litigate by bearing the cost of litigation, the extent to which the litigation will serve the interest of the public/course of justice, the subject matter of the dispute, and the state of life of the actual victim.

VI. CONCLUSION

From the above, it is clear that courts were created to ensure that disputes are settled in a civilized manner. However, only persons who have suffered, are suffering, or are likely to suffer injury are permitted to approach the court for redress. If everyone is allowed to access the court, the court would become a playground for busybodies who will set in motion the judicial process to the annoyance of others. So, a claimant must show sufficient interest for the dispute to be heard. This requirement is known as possessing *locus standi* and its origin is traceable to Britain's common law. However, it has become part and parcel of Nigerian procedural jurisprudence by virtue of her colonial antecedence. A restrictive application of the doctrine can wreak avoided hardship. The need to accord the public justice in deserving cases has counted for the relaxation of the stringent nature of *locus standi* in most developed nations and Nigeria, as seen in the preceding section, has relaxed the doctrine in some areas. Public interest litigation, whose expected standard the government would not live up to even with its paramount responsibility of protection, must be encouraged as a veritable

tool for ensuring equitable distribution of public good and protecting the vulnerable public from injuries.[136]

The Court of Appeal's decision in which the Court held that the appellant lacked the requisite *locus standi* to challenge the competence of the Delta State House of Assembly to make the Pension Rights of the Governor and the Deputy Governor of Delta State Law, Cap. P5, Laws of Delta State, 2008 as well as the law's legality is, with due respect, an affront to public interest litigation. There is evidence of Nigerian Courts adopting a liberal approach to *locus standi* where it bothers on the validity of a law *vis-a-vis* the Constitution as was done in *Chief Isiagba v. Alagbe and Others*[137] by the Bendel State High Court and the Kwara State High Court in *Alhaji Adefalu and Others v. The Governor of Kwara State and Others*.[138] In these cases, the various High Court accorded the claimants *locus standi* to challenge the concerned State law and declared them invalid as same run afoul the Constitution. The kleptomaniac nature of the said law and its perforating effect on the financial fortune of the State cannot be overemphasized.[139] In fact, it is a fruitless venture to imagine that, in Nigerian politics where "he who pays the piper dictates the tune" and table manners require that "one does not talk while eating", the Attorney General of Delta State, a government appointee, cannot take up litigation against the law. The irresistible conclusion is that only public-spirited individuals like the appellant can challenge the law for and on behalf of the people of Delta State. The Court of Appeal failed to take cognizance of the new trend in the application of *locus standi* which is liberalisation as seen in cases such as *Gani Fawehinmi v. President, Federal Republic of Nigeria*[140]and of course, *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*[141] which was decided in the same year by the Supreme Court.

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136 Hameed Ajibola Jimoh, "Application Of The Doctrine Of 'Locus Standi' To The Defeat Of Public Interest Litigation In Nigeria: A Cause For The Worsening Situations Of Nigeria", (2020), online: *TheNigeriaLawyer* <https://thenigerialawyer.com/application-of-the-doctrine-of-locus-standi-to-the-defeat-of-public-interest-litigation-in-nigeria-a-cause-for-the-worsening-situations-of-nigeria/>.

137 *Chief Isiagba v Alagbe and Others*, [1981] 2 NCLR 424.

138 *Alhaji Adefalu and Others v The Governor of Kwara State and Others*, [1984] 5 NCLR 766.

139 M O Ubani, "Is the Concept of Locus Standi still A Hinderance to Public Interest Litigation in Nigeria? - Former NBA VP, Monday Ubani", (25 November 2019), online: *BarristerNG.com* <https://barristerng.com/is-the-concept-of-locus-standi-still-a-hinderance-to-public-interest-litigation-in-nigeria-former-nba-vp-monday-ubani/>.

140 *Gani Fawehinmi v President, Federal Republic of Nigeria*, [2007] 14 NWLR (Pt 1054) 275.

141 *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*, *supra* note 26.

Based on the above, given the laudable stance adopted by the Supreme Court on the requirement of *locus standi* and the need to entrench public probity, financial accountability, executive responsibility, and the spirit of selfless service, it is recommended that the appellant should appeal the decision to the Supreme Court as there is a high possibility of the appeal succeeding. Also, given the present political situation and the government's ongoing war against corruption and entrenchment of public accountability, Courts should tilt towards liberalization of *locus standi* beyond the present scope of dispute to all cases where the public interest is at stake.

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