Locus Standi in Public-Interest Oil-Related Litigation in Nigeria: An Examination of *Centre for Oil Pollution V. Nigerian National Petroleum Corporation*

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Abstract

The decision of the Supreme Court of Nigeria in the recent case of Centre for Oil Pollution v Nigerian National Petroleum Corporation (2018) LPELR-50830(SC) appears to have signalled a jettisoning of the restrictive application of locus standi in the context of public-interest litigation instituted to protect the environment. The markedly liberal approach adopted by the Supreme Court in the case, which placed less emphasis on the sufficient interest/personal injury test and more emphasis on the need to protect the environment, has expanded the frontiers of locus standi in public interest environmental litigation. Against this background, this article examines the decision in Centre for Oil Pollution v Nigerian National Petroleum Corporation with a view to assessing the extent to which the liberalisation of the locus standi rule has opened up access to environmental justice in Nigeria. The article finds that the Supreme Court's decision in Centre for Oil Pollution v Nigerian National Petroleum Corporation potentially empowers public-spirited individuals and relevant Non-Governmental Organisations to protect the environment by means of litigation. Nevertheless, the article concludes that despite the laudable expansion of the locus standi rule as seen in Centre for Oil Pollution v Nigerian National Petroleum Corporation, the case fell short of providing a reasonably easy pathway to environmental justice for poor villagers. This is because public-interest litigation of the kind seen in Centre for Oil Pollution v Nigerian National Petroleum Corporation can offer no monetary compensation to the impoverished inhabitants of communities who bear the brunt of the environmental degradation resulting from oil spills.

Key words: Locus standi, Litigation, Oil Pollution, Environment, Nigeria

1. Introduction

A recurrent strategy for attacking claims for oil-related environmental damage in Nigeria concerns objections to the hearing of a claim on the ground that the claimant has no *locus standi* to institute the legal action. This is often a first-line defence mechanism set up by the Multi-National Oil Companies (MNOCs) aimed at preventing a hearing on the merits of the claim.

A synthesis of the case law shows that, for the most part, Nigerian judges apply the sufficient interest/special injury test to determine standing to sue. Consequently, the capacity of public-spirited individuals and Non-Governmental Organisations to mount legal challenges against acts of environmental degradation has become greatly impeded, as this set of potential litigants usually does not have any personal legal interest to protect by way of litigation. No doubt, this state of affairs has resulted in unabated and unchallenged environmental devastation.

However, the decision of the Supreme Court in the recent case of *Centre for Oil Pollution v Nigerian National Petroleum Corporation*[1] has signalled a jettisoning of the restrictive application of *locus standi* in the context of public-interest litigation instituted to protect the environment. The markedly liberal approach now adopted by the Supreme Court, which places less emphasis on the sufficient interest/personal injury test and more emphasis on the need to protect the environment, has no doubt expanded the frontiers of *locus standi* in public interest environmental litigation. Against this background, this article seeks to examine the decision in *Centre for Oil Pollution v Nigerian National Petroleum Corporation* with a view to assessing the extent to which the liberalisation of the *locus standi* rule has opened up access to environmental justice in Nigeria.

The article begins by exploring the concept of *locus standi*. This has been done against the general background of private law and public law. The relevant case law has been examined with a view to discovering judicial attitudes to the application of the *locus standi* rules. The article then proceeds to examine the application of the rule in the specific context of oil-related litigation. The article demonstrates that, pre- *Centre for Oil Pollution v Nigerian National Petroleum Corporation,* Nigerian judges often applied the sufficient interest/special injury test to determine a claimant's standing to sue. This made it virtually impossible for public-spirited individuals and Non-Governmental Organisations to protect the environment through litigation. The article finds that the Supreme Court's decision in *Centre for Oil Pollution v Nigerian National Petroleum Corporation* potentially empowers public-spirited individuals and relevant Non-Governmental Organisations to protect the environment by means of litigation. Nevertheless, it is observed that despite the laudable expansion of the *locus standi* rule as seen in *Centre for Oil Pollution v Nigerian National Petroleum Corporation,* the case fell short of providing a reasonably easy pathway to environmental justice for poor villagers. This is because, as noted in the concluding part of the article, public-interest litigation of the kind seen in *Centre for Oil Pollution v Nigerian National Petroleum Corporation* can offer no monetary compensation to the impoverished inhabitants of communities who bear the brunt of the environmental degradation resulting from oil spills.

2. *Locus standi* – An Overview

Locus standi denotes the legal capacity to institute proceedings in a court of law.[2] Also referred to as "standing" or "title to sue", it is the right of a person to be heard on the question before any court or tribunal.[3] "To confer jurisdiction on a court of law, the plaintiff must have *locus standi* to commence or institute the action. Where this is lacking, the court cannot entertain the action as it lacks jurisdiction."[4] The basis for this requirement is to chase away meddlesome interlopers or busy-bodies, and to avoid frivolous suits from persons who have no interest in

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[1] (2018) LPELR-50830(SC)
[2] Per Fatayi Williams, JSC in *Adesanya v President of the Federal Republic of Nigeria* (1981) LPELR-147(SC).
[3] Per Mohammed Bello, JSC in *Adesanya v President of the Federal Republic of Nigeria* (1981) LPELR-147(SC).
[4] Per Tobi, J in *Owners M/V Baco Liner 3 v Adeniji* [1993] 2 NWLR 195, 201-202.

the subject matter of the suit.[5] Therefore, the legal concept of *locus standi* is predicated on the premise that no court is obliged to provide a remedy for a claimant in a matter in which he has no interest, or in a matter in which the claimant's interest is hypothetical or remote.

Generally, under private law, the issue of the plaintiff's *locus standi* was incorporated in and discussed along with the question of whether the plaintiff had a cause of action. Nigerian courts have long followed the sufficient interest approach in resolving questions of *locus standi*. By this, the courts use sufficient interest in the subject matter of the litigation as the basis for determining the plaintiff's standing to sue.

Consequently, to have standing to sue, a plaintiff must show sufficient interest, i.e., "an interest which is peculiar to the plaintiff and not an interest which he shares in common with general members of the public."[6] Put differently, a party will have *locus standi* in a matter only if he has a special right, or if he can show that he has a sufficient interest in the performance of the duty sought to be enforced. Alternatively, he can sue if his interest is adversely affected. A reliable test for determining whether a person has sufficient interest in the subject matter of the suit is to resolve the question of whether, if the person were not a party in the suit, he could have been justifiably joined as a party. If his joinder was justifiable, then he must have had sufficient interest in the subject matter of the suit. Similarly, any person who shows that he has suffered or is likely to suffer some injury or hardship arising from the matter before the court must be seen as having a sufficient interest in the subject matter of the suit.

In private law, where the cause of action affects the public in general, a plaintiff will have *locus standi* only if he can show that he suffered specific damage beyond the general inconvenience which members of the public have had to contend with as a result of the act of the defendant. The same principle applies in actions brought in a representative capacity by such a plaintiff. Both the plaintiff on record and those whom he represents must show that they have suffered specific injury that is beyond what members of the public have suffered in general.[7] As can be seen, the concept of *locus standi* under private law is narrow, restrictive and rigid.

3. The Restrictive Application of the *Locus Standi* Rule

Generally, Nigerian courts apply the *locus standi* principle in public law and public interest cases in the same restrictive way as they do in private law. For many years, the restrictive nature of *locus standi* posed a great obstacle under public law and public interest litigation in Nigeria. In *Olawoyin v AG Northern Region of Nigeria*,[8] where the appellant challenged the unconstitutionality of the Children and Young Persons Law, the Supreme Court held that he lacked *locus standi* because he had no sufficient interest in the subject matter of the case.[9]

[5] Jamie Cassels, 'Judicial activism and public interest litigation in India: Attempting the impossible?' (1989) *37*(3) TAJCL 495, 498.
[6] *Shell Petroleum Development Company v Chief Otoko & Ors* (1990) 6 NWLR (Part 159) 693.
[7] Ibid.
[8] (1961) LPELR-25065(SC).
[9] This restrictive approach was followed *in Gamioba & Ors v Esezi II* (1961) LPELR-25032(SC).

When the 1979 Constitution of Nigeria came into effect, it was thought then that the *locus standi* principle had been affected by section 6(6)(b) of the 1979 Constitution.[10] However, the High Court in *Isagba v Alegbe*[11], and the Court of Appeal in *Bendel State v Obayuwana*,[12] appeared to hold that the traditional concept of locus standi remained unaffected by the 1979 Constitution.

In 1981, the case of *Adesanya v. President of the Federal Republic of Nigeria*[13] provided the Supreme Court with an opportunity to formulate a test for determining the standing of a plaintiff in public law or public-interest litigation within the context of Nigeria's 1979 Constitution.[14] Generally regarded as the *locus classicus* on *locus standi*, the main question for determination in the Supreme Court was whether a senator (in his capacity as Senator, or in his capacity as a citizen of Nigeria) had *locus standi* to challenge the constitutionality of an appointment made by the President and confirmed by the Senate in accordance with certain sections of the Constitution of Nigeria. A seven-member panel of the Supreme Court unanimously held that the plaintiff lacked standing in the matter, holding that "a general interest common to all members of the public is not a litigable interest to accord standing".[15]

The view expressed by Bello, JSC (as he then was), came to be regarded as the Nigerian test for standing. According to Justice Bello, section 6(6)(b) of the 1979 Constitution was relevant to the issue of whether a private individual has standing to sue in a particular matter. His Lordship expressed the view that "standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of." Justice Bello concluded that the judicial powers of the Nigerian courts vested in them by section 6 are "limited in scope and content to only matters, actions and proceedings 'for the determination of any question as to the civil rights and obligations of that person.'"

In other words, Justice Bello restricted the capacity of an individual to invoke the judicial powers of the Nigerian courts to cases where the civil rights and obligations of that person are directly in issue. In doing this, Justice Bello established a link between standing on the one hand and the jurisdiction of the court on the other. Consequently, Justice Bello was of the view that the appointment made by the President did not in any way affect, nor was it likely to affect, the civil rights and obligations of the appellant.

It is to be noted that Justice Bello did not indicate the ambit of the term "civil rights and obligations", and whether the test will apply in all other contexts besides constitutional cases.

[10] Section 6(6)(b) states: "The judicial powers vested in accordance with the foregoing provisions of this section - … (b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."
[11] [1981] 2 NCLR 424.
[12] [1982] 3 NCLR 206.
[13] (1981) LPER -147 (SC).
[14] The relevant provision in the 1979 Constitution is *impari materia* with that of the current 1999 Constitution of Nigeria.
[15] Per Bello, at p.46.

Nonetheless, as section 6(6)(b) of the 1979 Constitution did not contain any delimiting language, the Justices' construction of section 6(6)(b) was that the standing-to-sue requirement was a constitutional imperative – to be applied in all cases. Accordingly, the test has been applied in Nigeria in nearly all contexts (be it in contract, tort, administrative law cases, etc).

Indeed, in the latter case of *Thomas v Olufosoye*,[16] which followed the decision in the *Adesanya* case, Obaseki, JSC, who delivered the lead judgment of the Supreme Court, indicated that the standing-to-sue requirement embedded in section 6(6)(b) of the Constitution applied in all cases.[17] Although the Supreme Court decision in the latter case of *Fawehinmi v. Akilu*[18] appeared to broaden the scope of *locus standi* in Nigeria, the Court of Appeal continued to apply the "civil rights" approach, or the *sufficient interest and injury* tests in subsequent public-interest litigation.[19]

Nigerian writers have, quite rightly, criticised the "civil rights" approach of the Nigerian courts.[20] The "civil rights" approach poses a hindrance in public-interest litigation. Its application in public-interest litigation is narrow, restrictive and rigid. As would be seen, the requirement that the plaintiff must satisfy the court that his civil rights and obligations have been injured, or are in danger of being adversely affected by the act complained of, has proven to be problematic in public-interest, oil-related litigation in Nigeria.[21]

4. *Locus Standi* in the Context of Public-Interest Litigation

Regrettably, even with the welcoming decision in *Akilu's* case, NGOs and public-spirited persons could not institute legal actions seeking to compel oil companies to adhere to environmental regulations. This was evident in *Oronto Douglas V. Shell Development Company Ltd & 5 Ors*,[22] where the Federal High Court applied the sufficient interest test and held that the plaintiff lacked locus standi to seek to enforce compliance with relevant provisions of the Environmental Impact Assessment Act in relation to the Liquefied Natural Gas (LNG) project at Bonny being executed by the defendants.[23]

Oronto's case appears to have taken the principle of *locus standi* back to pre-*Akilu* times. The case highlights the circuitousness of Nigerian courts in their interpretation and application of the concept of *locus standi*. As will be seen in the next section, the courts continued to apply the *locus standi* rule in a restrictive manner.

[16] (1986) All N.L.R. 261; (1986) LPELR-3237(SC).
[17] Per Obaseki, JSC, in *Thomas v Olufosoye* (1986) LPELR-3237(SC), at pp. 26 -27.
[18] *Fawehinmi v. Akilu* (1987) 2 NWLR (PT 67) 767.
[19] *AG Akwa Ibom State* v Essien [2004] 7NWLR (part 872) 288, 521; *Sehindemi v Governor of Lagos State* [2006] 10 NWLR (part) 987.
[20] See, for example, Tunde Ogowewo, 'The problem with standing to sue in Nigeria' (1995) 39(1) JAL 1.

[21] See for example, *Oronto Douglas V. Shell Development Company Ltd & 5 Ors* Unreported Suit Number: FHC/2CS/573/93.
[22] Unreported Suit Number: FHC/2CS/573/93.
[23] On appeal ((1998) LPELR-6457(CA)), the Court of Appeal agreed that the sufficient interest test applied, but held that the Federal High Court ought to have examined the statement of claim before making the factual conclusion that the plaintiff had no sufficient interest in the subject matter of the case.

Although in *Adeniran and Anor v Interland Transport Limited*[24], in the context of the individual's capacity to sue in respect of a public nuisance, the Supreme Court, relying on section 6(6)(b) of the 1979 Constitution of Nigeria, abolished the common law *standing* rule in public nuisance, which required a prospective plaintiff to obtain the Attorney-General's consent before suing in respect of a public nuisance, the substantial injury or special damage test remained and continued to apply. Therefore, an individual could sue only if he had suffered special damage over and above the one suffered by the general public.[25]

It is observed that the doctrine of *locus standi*, as it presently stands in Nigeria, poses a great problem in the area of public law and public interest litigation. Once the *locus standi* obstacle is erected, the plaintiff has to jump over it before pursuing the merits of his case. The restrictive manner in which the courts apply the doctrine of *locus standi* means that very few, if any, public-interest plaintiffs in oil-related litigation are able to overcome the challenge to their standing to sue. It is submitted that in the application of the *locus standi* rule in the context of public-interest litigation, the crucial consideration should be the effect that the decision is likely to have on the public. If judgment for the plaintiff would be for the benefit of the public, there should be no reason to decline to hear the case merely on the ground that the plaintiff has suffered no special damage. This is more particularly so when, in reality, the Attorney-General of the Federation of Nigeria has never, and is unlikely to ever, sue the MNOCs to compel them to protect the environment. This is not surprising. The Federal Government and the MNOCs are often business partners in oil operations.

Nigerian courts inherited the doctrine of *locus standi* from the British. However, while in Britain, the doctrine has evolved through case law[26] and has been shaped to meet the demands of the complexities of contemporary society, Nigerian courts have appeared to remain aloof and have refused to move with the times.

5. *Locus Standi* in the Context of Oil-Related Litigation

As indicated earlier, the recent Supreme Court case of *Centre for Oil Pollution v Nigerian National Petroleum Corporation*[27] represents a watershed in the jurisprudence relating to *locus standi* within the context of environmental protection cases. In this section, the decisions of the trial High Court, the Court of Appeal and the Supreme Court in the *Centre for Oil Pollution* litigation are discussed extensively. This has been necessary to demonstrate the strong judicial fidelity that the traditional approach to *locus standi* previously attracted, even in environmental protection cases. It will be seen from the analysis of the decision of the Supreme Court in the case that the Court now appears ready to play its rightful role in actively protecting the environment. This the Court has done by expanding the frontiers of *locus standi* in public interest oil-related litigation.

[24] (1991) LPELR-88(SC).
[25] *Fawehinmi v President, Federal Republic of Nigeria* (2007) 14 NWLR (Pt.1054) 275.
[26] See for example, *Regina v Inland Revenue Commissioners, EX Parte National Federation of Self-Employed and Small Business Ltd* [1982] AC 617; *R v. Inspectorate of Pollution and another, Ex Parte Greenpeace Ltd. No.2* [1994] 4 ALL ER 329 (QB).
[27] (2018) LPELR-50830(SC).

In determining the *locus standi* of the plaintiff in *Centre for Oil Pollution v Nigerian National Petroleum Corporation,*[28] the High Court and the Court of Appeal both applied the civil rights and injury test. Here, the plaintiff/appellant was a Non-Governmental Organisation (NGO) incorporated in accordance with Part C of the Companies and Allied Matters Act 2004 and carrying out the function of ensuring reinstatement, restoration, and remediation of environments impaired by oil spillage and pollution. As plaintiff in the Federal High Court, the Centre instituted an action against the Nigerian National Petroleum Corporation (NNPC) over crude oil spillage in Acha Autonomous Community of Isukwuato Local Government Area of Abia State caused by the negligence of the defendants. The plaintiff claimed inter alia, the reinstatement, restoration and remediation of the impaired and contaminated environment in Acha Autonomous Community; and the provision of potable water supply as a substitute for the soiled and contaminated Ineh/Aku streams, which were greatly affected by the spillage and which served as the major source of water supply to the Community and its environs. The plaintiff also sought the provision of medical facilities for the evaluation and treatment of the victims affected by the oil spillage and contaminated streams.

The defendant raised a preliminary objection to the hearing of the suit on the ground that the plaintiff lacked *locus standi* to institute the action. The High Court upheld the objection, holding that the plaintiff "failed to disclose its civil rights and obligations that have been affected by the alleged oil spillage, to be able to have an unimpeded right of access to the Court."[29]

On appeal to the Court of Appeal,[30] learned counsel to the appellant argued that the law on *locus standi* had changed to the extent that pressure groups, NGOs and even public-spirited taxpayers are cloaked with the *locus standi* to maintain an action for the public interest, although they may not have suffered any personal injury. The learned counsel referred the Court to the English cases of *Regina v Inland Revenue Commissioners, EX Parte National Federation of Self-Employed and Small Business Ltd*[31], where Lord Diplock had held:

> It would, in my view, be a grave lacuna in our system of public law if a pressure group or even a single public-spirited taxpayer were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the Court to vindicate the rule of law and get unlawful conduct stopped.[32]

Despite the appellant's seemingly sound arguments, the Court of Appeal felt bound by decades of precedents to strike out the appeal. Relying on the *Adesanya* case, the Court of Appeal reiterated: "For a person to have locus standi, he must be able to show that his civil rights and obligations have been or are in danger of being infringed…."[33] The Court maintained that "the

[28] (2013) LCN/5875(CA). Note that this case was decided 8 years after Gbemre's case. above.
[29] ibid.
[30] *Centre for Oil Pollution v Nigerian National Petroleum Corporation* (2013) LPELR 20075 (CA).
[31] [1982] AC 617.
[32] ibid 618.
[33] *Centre for oil Pollution* case.

members of the Community itself are better placed, positioned and armed with the standing to sue the Respondent for any damage caused."[34]

While the Court of Appeal may have been constrained by precedent to find that the appellant did not possess the requisite standing, it is hardly true that the members of the Acha community are better "placed, positioned and armed" to seek legal redress. It can hardly be doubted that the affected villagers lacked the financial means to enforce their rights and seek remedies. Acha, like most Niger Delta communities, is a rural and agrarian settlement largely dependent on nature for subsistence. The local inhabitants of the Niger Delta are generally subsistence farmers and fishermen/women who derive their source of livelihood from the land and water bodies around their villages. Thus, these are not people who are by any means "placed, positioned and armed" to seek legal redress. More telling is the pollution of her only source of water supply, the Aku River, hitherto famed for its crystal clarity and spring-like quality, which reportedly became murky with mud and oil film as a consequence of the spill. Ostensibly, this attracts a cauldron of intractable diseases, causing ill-health amongst the indigenes. The Court of Appeal did not appear to appreciate that the indigent members of Acha Community who were directly affected by the spillage may not be able to institute the case themselves. Indeed, the court in the English case of *R v. Inspectorate of Pollution and another, Ex Parte Greenpeace Ltd. No.2*[35], envisaged this fact when, in allowing Greenpeace standing to sue in circumstances similar to those of the Centre for Oil Pollution case, it stated:

> Those it [Greenpeace] represents might not have an effective way to bring the issues before the Court. There would have to be an application either by an individual employee or a near neighbour. In this case, it is unlikely that they would be able to command the expertise which is at the disposal of Greenpeace. Consequently, less well-informed challenge might be mounted, which would stretch unnecessarily the Court's resources, and which would not afford the Court the assistance it requires in order to do justice between the parties. The time has arrived for a re-examination of the common law rules of standing in environmental matters involving the State and for an adaptation of such rules to meet the ever-changing needs of society.[36]

There is no doubt that the Court of Appeal's decision is rooted in the "interest and injury" test. The essence of this test is that a person would have *locus standi* to institute an action in court only if (1) he is able to establish that he has sufficient interest in the subject matter of the litigation such that his interest would be adversely affected if he is not heard on the matter; or (2) he has suffered injury, or is likely to suffer injury arising from the act of the defendant. The "interest and injury" test is of common law origin and has, over the years, been confined to private law litigation in common law countries, including Nigeria. However, the statement of Bello, JSC (as he then was) in *Adesanya v. President of the Federal Republic of Nigeria*[37] led many to believe that with the coming into force of section 6(6)(b) the 1979 Constitution of Nigeria (which is the same as section 6(6)(b) of the current 1999 Constitution), the test became

[34] *Centre for oil Pollution* case
[35] [1994] 4 ALL ER 329 (QB).
[36] *Greenpeace*, Per Otton J at 350.
[37] (1981) LPELR-147(SC).

embedded in the Constitution and formed the basis for determining *locus standi* in all circumstances. In interpreting the provisions of section 6(6)(b) in relation to the standing of the plaintiff to sue, Bello held that "… standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of."[38]

On further appeal[39], the Supreme Court jettisoned the "interest" and "injury" test for determining *locus standi* in the context of public law or public-interest litigation. Nweze, JSC, who delivered the lead judgment of the Court, rejected section 6(6)(b) of the Nigerian Constitution as the source of *locus standi*.[40] Indeed, his Lordship stated that Bello's viewpoint had no support from a majority of their Lordships in the *Adesanya* case.[41]

With the above, the Supreme Court firmly relocated the rule of *locus standi* squarely within the confines of the common law. This served as a prelude to the liberalisation of the *locus standi* rules as seen in *Centre for Oil Pollution v. Nigerian National Petroleum Corporation***.** As Diplock, LJ, observed in *Rev v. I. R. C., Ex P. Fed. of Self-Employed* (1982) A.C. (H. L. (E)) 640 – 641, the *locus standi* rules were made by judges, and "by judges they can be changed; and so, they have been over the years to meet the need to preserve the integrity of the rule of law."[42]

For Nweze, the "narrow and rigid conception of *locus standi* means that it is only a person who has suffered a specific legal injury by reason of actual or threatened violation of his legal right to legally-protected interest who can bring an action for judicial redress."[43] His Lordship viewed this "narrow and rigid conception of *locus standi*" as "a common feature of private law." He criticised the extension of the rule to the province of public law in several decided cases.[44]

In addition to following Justice Bello's notion that the rule of *locus standi* was rooted in the Nigerian Constitution and applied with equal force in all circumstances, the trial court and the Court of Appeal appeared to treat the facts in *Centre for Oil Pollution v. NNPC* as falling within the confines of private law, thus requiring the application of the traditional concept of *locus standi* (based primarily on the "interest and injury" test). However, the Supreme Court took a

[38] See pp. 55 - 56, paras. D – C of the judgment.
[39] (2018) LPELR-50830(SC).
[40] See p. 44 of the Law Report. His Lordship relied on similar views expressed by Ogundare, JSC *in Owodunni v. Registered Trustees of Celestial Church of Chris* (2000) LCN/2894 (SC).
[41] See p. 53 of the law report. See also T. I. Ogowewo: 'Wrecking the Law: How Article 111 of the Constitution of the United States led to the discovery of a Law of Standing to sue in Nigeria' 26 Brook. J. Int'l L. (2017) 528, 559.
[42] Referred to by Nweze, JSC in *Centre for Oil Pollution v. NNPC,* at p. 56 – 57 of the judgment.
[43] P. 40 of the Judgment.
[44] See *Olawoyin v. Attorney-General, Northern Nigeria*(1961) 2 SCNLR 5, (1961) 2 NSCC 165*; Gamioba and Ors v. Esezi II* (1961) All NLR 608, (1961) 2 SCNLR 237, 613; *Eastern Nigeria v. Attorney General of the Federation* (1964) 1 ANLR 224; Odeneye v. Efunuga (1990) 7 NWLR (Pt. 164) 618; *Thomas v. Olufosoye* (1986) 1 NWLR (Pt 18) 669, (1986) 2 SC 325, (1986) 1 NSCC 323, (1986) 1 All NLR (Pt. 1) 215, (1986) LPELR - 3237; *Amusa Momoh v. Jimoh Olotu* (1970) 1 41 7/9/2021 57/170 All NLR 117, (1970) NSCC 99, (1970) ANLR 121; *Moradesa v. The Military Governor of Oyo State and Or*s (1986) 3 NWLR 125; *Olawoyin v. Attorney-General, Northern Nigeria; Senator Adesanya v. The President of the Federal Republic of Nigeria and Anor* (1981) 12 NSCC 146, (1981) ANLR 1, (1981) SC 1112.

different approach, treating the same facts as falling within the scope of public law, thereby requiring a liberalised application of the rules of *locus standi*. This perhaps explains the different outcomes emanating from the lower courts on the one hand, and from the Supreme Court on the other hand.

First, Nweze held the Nigerian National Petroleum Corporation (the defendant in the case) to be a public authority. This decision was crucial to the outcome of the case. It provided the pillars upon which the Supreme Court applied principles of public law to resolve the issue of the *locus standi* of the plaintiff. For Nweze, "what is obvious, from the appellants' pleadings, is that the respondent, a public authority, has by these acts complained of, acted in violation both of its constitutional obligation (Section 20 thereof) and its statutory obligations."[45] Again, because the oil spill that emanated from the defendant's pipelines was stated to have impacted the "unowned" environment (i.e., environmental space, including land and water bodies not owned by any individual person or entity), the Supreme Court viewed the resulting injury as one against "public interest."[46]

In answering the question as to who has the standing to complain against violations of the public right to a clean environment, Nweze relied heavily on the purpose of the judicial function, as espoused by Dr. Thio, in his book, Locus Standi and Judicial Review,[47] cited in *Gupta v. President of India and Ors* (supra) at page 22, per Bhagwati J., where the learned author stated:

> 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 courts are the final arbiters of what is legal and illegal.... Requirements of *locus standi* are therefore unnecessary in this case since they merely impede the purpose of the 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.

An examination of the lead judgment shows clearly that in relation to the instant case, Nweze perceived the judicial function as "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)." Thus, his Lordship determined that "requirements of *locus standi* are therefore unnecessary."[48]

Justice Nweze's treatment of the case as one coming within the purview of public law becomes even clearer when his Lordship relied heavily on the statement of Lord Diplock *in Rex v. Inland Revenue Commissioner* (1981) 2 WLR 722, 740:

[45] Referred to by Nweze, JSC in *Centre for Oil Pollution v. NNPC case* at p. 56 – 57 of the judgment.
[46] P. 41 of the Judgment.
[47] Su Mien Thio, *Locus standi and judicial review* (Singapore University Press, 1971).
[48] P. 51 of the Judgment.

> It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the Federation, or even a single public-spirited tax-payer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the Court to vindicate the rule of law and get the unlawful conduct stopped.... It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to parliament for the way in which they carry out their functions. They are accountable to parliament for what they do so far as regards efficiency and policy, and of that parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the Court is the only judge.

Nweze accepted that "there is considerable force in the view that it is by liberalising the rule of *locus standi* that it is possible to effectively police the corridors of powers and prevent violations of law."[49] Thus, the Supreme Court came to the inevitable conclusion that "in environmental matters, such as the instant one, NGOs, such as the plaintiff in this case, have the requisite standing to sue."[50]

A number of important considerations account for the outcome of *Centre for Oil Pollution v. Nigerian National Petroleum Corporation* at the Supreme Court. First was the fact that the defendant was held to be a public authority with constitutional and statutory responsibilities to protect the environment. This factor located the case within the context of public law. Thus, it was easy for the Supreme Court to utilise theories of public law to resolve the issue of the *locus standi* of the plaintiff.

Secondly, the area allegedly impacted by the oil spill was the "unowned" environment belonging to no one in particular. The injury allegedly occasioned by the oil spill was categorised as public injury, thus making the act of the defendant a public nuisance, and out of the sphere of private nuisance. Again, this made it easy for the Supreme Court to dispense with the traditional "interest and injury" test for determining the *locus standi* of the plaintiff.

The third consideration is that the plaintiff couched its claim as one vindicating the public's right to a clean environment. It sought only to remediate and restore the polluted environment. It did not seek relief of a personal nature or for personal benefit. Kekere-Ekun, JSC (as she then was), appeared to have this in mind in her concurring judgment.[51]

Fourthly, there is ample indication that the penurious state of the villagers who are the direct victims of the oil spill, and their inability to mount a meaningful legal challenge to the activities of the defendant, greatly influenced the Supreme Court's decision to confer *locus standi* on the plaintiff, an NGO whose objective was the protection of the environment for the benefit of the general public. This is evident in the contributions made by some of their Lordships.[52]

[49] At pp. 64 – 65 of the judgment.
[50] ibid, p. 65.
[51] ibid, at p. 107.
[52] See, for example, Okoro, JSC, at pp. 123 – 124 of the judgment, and Aka'ahs, JSC, at pp. 92 – 93 of the judgment.

6. Has the *Centre for Oil Pollution Watch* Case Improved Access to Justice for Penurious Victims of Oil Pollution in Nigeria?

The decision in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation*[53] is no doubt significant as case law authority for the proposition that a pressure group in appropriate cases have *locus standi* to sue an oil operator for remediation of the environment polluted by oil spills emanating from the operator's oil pipelines, despite not suffering any particular damage, or not being able to pass the *sufficient interest/particular injury* test that is the traditional determinant of *locus standi* in nuisance cases. Some writers[54] have hailed the decision as guaranteeing impoverished victims of environmental degradation access to environmental justice by permitting Non-Governmental Organisations to take out public-interest litigation on their behalf. To what extent has the Supreme Court's decision in the *Centre for Oil Pollution Watch* case improved access to justice for penurious victims of oil pollution in Nigeria?

It is undeniable that the direct victims of oil pollution are poor fishermen and farmers who inhabit the vast lowlands of the Niger Delta of Nigeria. The effects of oil spills range from loss of livelihood resulting in further impoverishment, to diseases associated with drinking polluted water and breathing in polluted air. Although the oil spills usually affect the general environment, such as the ocean, inland waters, the air and other "unowned" environmental spaces, the fact remains that the harmful crude usually flows into, and degrades private property belonging to individual villagers and local communities. These may include fishing equipment, artificial lakes and other private water bodies, camping settlements, farmlands and other properties. Thus, a single incident of an oil spill may constitute both public nuisance and private nuisance.

It is also undeniable that there are access-to-justice issues confronting penurious villagers who are often the direct victims of oil spills. These problems are two-fold. First, poor villagers suffer from a lack of resources to effectively engage the MNOCs in the often long and exhausting legal battles for redress in respect of personal damage occasioned by oil spills. Oil-related litigation is quite technical and requires very senior and experienced lawyers to competently conduct proceedings in Court. More often than not, the MNOCs engage Senior Advocates of Nigeria (equivalent to Queen's Counsel in England) to defend proceedings brought against them. These senior advocates usually have at their disposal a huge team of lawyers who are versatile in every aspect of the proceedings and who can assist in carrying out extensive research. Their services are expensive and out of reach for poor villagers. This problem was quite clearly highlighted by their Lordships in the *Centre for Oil Pollution Watch* case.

Again, due to the demands of the law of evidence and the requirement to prove a causal link between the damage allegedly caused by the oil spill on the one hand, and the oil spill complained of on the other hand, there may be a need to call expert evidence to fortify the case

[53] (2018) LPELR-50830(SC).
[54] See for example, Adeniyi Olutunbosun & Kingsley Onu, 'The Liberalisation of Locus Standi in Environmental Cases in Nigeria: An Appraisal of the Supreme Court's Decision in Centre for Oil Pollution Watch v NNPC' (2020*)* 11(2) TGRBPL 1.

against the defendant.[55] Impoverished villagers are unlikely to have the financial resources to obtain expert witnesses to counter those secured by the oil companies. All these constitute impediments to access to justice for poor villagers.

The second problem relates to the jurisprudence concerning oil pollution litigation in Nigeria - the difficulties associated with the traditional rules of *locus standi* in public nuisance cases, and the law relating to representative actions, both of which pose almost insurmountable obstacles to access to environmental justice for poor villagers. It is observed that neither case law nor legislation has provided a reasonably easy pathway to environmental justice for poor villagers. Cases such as *Amos v. Shell-BP Petroleum Development Company of Nigeria Limited*,[56] and *Shell Petroleum Development Company Nig Ltd v Otoko*,[57] highlight some of the acknowledged access-to-justice issues. These cases exemplify the problems of access to justice for penurious members of rural communities who have suffered individual losses as a result of acts constituting public nuisance. The effect of the two decisions set out above is two-fold. First, no individual has *locus standi* to sue in respect of public nuisance except that individual establishes that he has suffered special damage over and above what the general public experiences. Secondly, where it is shown that members of a particular community suffered individual losses as a result of acts constituting public nuisance, each individual must institute a separate suit to claim damages. In other words, a representative action cannot be instituted for the benefit of all the members of the Community who have suffered special damage.

The typical rural community in the Niger Delta region can consist of hundreds, and sometimes a few thousand, rural dwellers who are fishermen and farmers. Oil spills in public waterways often result in individual losses in the form of damage to fishing equipment, loss of employment, loss of safe sources of drinking water, ill-health, etc. The decision in *Amos v. Shell-BP Petroleum Development Company of Nigeria Limited* is to the effect that each of the hundreds or thousands of rural dwellers separately and adversely affected by the oil spill would be required to take out separate proceedings to pursue their individual claims for damages. This is one of the greatest impediments to access to justice for impoverished rural dwellers. The law denies them the reasonable choice of putting together their scarce resources for the purpose of instituting a single representative action for their common benefit. As Chechey quite rightly observed:

> Unlike the non-communal English society in which the rule as to public nuisance was developed, in Nigeria, people live in communities, especially in the Niger-Delta region, where the worst incidents of environmental pollution occur. So, how they share the proceeds of special damages awarded, which is the true worry informing the dichotomy of who sues in respect of public nuisance, is not the business of anybody.[58]

It is submitted that while the recent decision of the Supreme Court in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* has to some extent relaxed the rule of *locus*

[55] See for example, *Seismograph Services Ltd. V. Onokpasa* [1972] 4 SC 123.
[56] (1977) LPELR-24892(SC).
[57] [1990] 6 NWLR (Part 159) 693.
[58] Chechey, W.A 'Judgment and Remedies in Environmental Cases' (a paper presented at the Judicial Training Workshop organised by UNEP and NJI, Abuja, 28th – 30th March 2006).

standi in cases of public nuisance by permitting pressure groups or public-spirited individuals to sue even where they suffer no personal damage, the inherent limitations in the decision offer little benefit for penurious villagers who suffer personal losses occasioned by the acts of oil operators. First, the decision in the *Centre for Oil Pollution Watch* is limited to cases where a pressure group or a public-spirited person claims only reliefs that are beneficial to the general public. The decision is no authority for any proposition suggesting that pressure groups could now pursue claims for special damages on behalf of victims of oil pollution. Thus, penurious villagers are still required, in line with the decisions in *Amos v. Shell-BP Petroleum Development Company of Nigeria Limited*[59] and *Shell Petroleum Development Company Nig Ltd v Otoko*[60], to sue for their own benefit.

Secondly, *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* has not abolished the judge-made prohibition of representative actions where members of a particular community are found to have suffered separate, individual losses. In this regard, the decisions in *Amos v. Shell-BP Petroleum Development Company of Nigeria Limited* and *Shell Petroleum Development Company Nig Ltd v Otoko* remain effective.

It is submitted that the decision in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* has not placed the direct victims of oil pollution in Nigeria on a better pedestal where they could have easy access to environmental justice in respect of their personal losses.

As can be seen above, *locus standi* has become a formidable barrier to access to justice for those seeking to challenge actions or inactions leading to environmental degradation in Nigeria. The idea that unless a claimant is able to establish particular personal damage or interest over and above what the general public suffers, he cannot seek judicial remedy for the destruction of the environment, is unacceptable given the now well-known impact that environmental degradation has on humankind.

While the Supreme Court of Nigeria has, by its decision in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation,* expanded to an appreciable extent the frontiers of *locus standi* in environmental protection cases, the shortcomings of the decision as noted above cannot be ignored. In order to effectually remove the barrier of *locus standi* in aid of environmental protection, legislative action is needed. Appropriate legislative action[61] will greatly enhance the capacity of the courts to protect the environment without unnecessary considerations for the niceties of the rules of *locus standi*.

7. Conclusion and Recommendations

This article has demonstrated that the traditional concept of *locus standi* has had a considerable impact on access to justice for victims of oil-related environmental damage in Nigeria. A discussion of the *locus standi* rule has indicated that judges in Nigeria mainly apply the sufficient interest/special injury test to determine a claimant's standing to sue. The resultant

[59] (1975) LCN/2013 (SC).
[60] (1990) 6 NWLR (PT. 159) 693.
[61] Recommended in the next section.

effect of this approach is that the legal capacity to sue for environmental damage is bestowed only on a person who has suffered damage. This restrictive approach impedes the ability of public-spirited individuals and Non-Governmental Organisations to mount legal challenges against acts of environmental degradation in Nigeria. This is because such individuals and organisations often have no personal legal interest to protect by way of litigation. There is little doubt that this has helped to exacerbate the environmental devastation of the Niger Delta region of Nigeria.

While it is heart-warming that the decision of the Supreme Court in the recent case of *Centre for Oil Pollution v Nigerian National Petroleum Corporation*[62] appears to have signalled a jettisoning of the restrictive application of *locus standi* in the context of public-interest litigation aimed at protecting the environment, it is observed that the case fell short of providing a reasonably easy pathway to environmental justice for poor villagers. This is because public-interest litigation of the kind seen in *Centre for Oil Pollution v Nigerian National Petroleum Corporation* can offer no monetary compensation to the impoverished inhabitants of local communities who bear the brunt of the environmental degradation resulting from oil spills.

There is no gainsaying that there are existing statutes which protect the environmental rights of poor villagers. For example, section 11 (5) of the Oil Pipelines Act 1956[63] requires that compensation must be paid to any person who has suffered damage as a result of the operations of an oil pipeline licence holder. Similar provisions are contained in section 101 of the Petroleum Industry Act, 2021. However, the traditional concept of *locus standi* is inherent in these statutes. This is because, given the textual legislative context, only persons who are directly affected by an oil spill and have suffered damages can sue for compensation if an oil pipeline licence holder denies liability.

As noted earlier, the vast majority of those affected by the monumental oil pollution in the Niger Delta of Nigeria are poor rural farmers and fishermen who lack the financial and technical capacity to institute legal action to protect their environmental rights and seek appropriate compensation. No legislative action has been taken to address this problem. The environmental rights of poor villagers become meaningless if they are not in a position to protect them when trampled upon. This is why legislative action is needed to expand the scope of *locus standi* in environmental litigation.

While the Supreme Court's decision in *Centre for Oil Pollution v Nigerian National Petroleum Corporation* is laudable, its shortcomings are glaring. First, the decision does not enable NGOs and public-spirited individuals to institute legal action for the financial benefit of the poor farmers and fishermen who are usually the persons directly affected by oil spills. Secondly, the adoption of an incremental and reactive model of expanding the scope of *locus standi*, a distinctive quality of case law, is not fit for purpose, given the urgency of the matter. What is more? Given that case law is less predictable and subject to change as circumstances may require, there is no guarantee that a future panel of the Supreme Court would not roll back the appreciable expansion that has been achieved in *Centre for Oil Pollution v Nigerian National*

[62] (2018) LPELR-50830(SC).
[63] Saved by the Petroleum Industry Act, 2021.

Petroleum Corporation. In light of the above, it is recommended that the National Assembly conduct public hearings aimed at comprehensively examining the problems of *locus standi* in oil spill litigation. The public hearings should lead to the enactment of a comprehensive statute that adequately expands the scope of *locus standi* beyond what has been achieved in *Centre for Oil Pollution v Nigerian National Petroleum Corporation.* Only then will the environmental rights of poor villagers truly matter.