

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON THURSDAY THE 17TH DAY OF MARCH, 2022
BEFORE HIS LORDSHIP
HONOURABLE JUSTICE U. N. AGOMOH
(JUDGE)

SUIT NO: FHC/IB/CS/32/2022

BETWEEN

CHIEF OYEWOLE BOLANLE

= PLAINTIFF

AND

THE ATTORNEY GENERAL OF THE FEDERATION

= DEFENDANT

**RULING ON ISSUE OF LOCUS STANDI/JURISDICTION RAISED
SUO MOTO BY THE COURT**

I have given a careful consideration to the written address of O.J. Dare Esq. on this issue of locus standi/jurisdiction raised suo motu by this court. The plaintiff instituted this suit under



the Originating Summons Procedure wherein he applied for the determination of the following questions to wit:-

- 1. Whether by the combined effect of Sections 1(3), 6(6)(a) and (b), 66(1)(f), 107(1)(f), 137(1)(g) and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 as amended; the provisions of Section 84(12) of the Electoral Act, 2022 can validly limit, remove, abrogate, disenfranchise, disqualify, and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has “resigned, withdrawn or retired” from the said political or public office at least 30 days before the date of the election.**

2. Whether by the combined effect of Section 1(3), 6(6)(a) and (b), 66(1) (f), 107 (1) (f), 137 (1) (g) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the provisions of Section 84 (12) of the Electoral Act, 2022 insofar as it seeks to limit, remove, abrogate, disenfranchise, disqualify and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election, is not unconstitutional, ultra vires and inconsistent with the Constitution, invalid and therefore null and void in its entirety?

The plaintiff then prayed the court to make the following declarations and Orders to wit:

1. A DECLARATION that Section 84(12) of the Electoral Act, 2022 cannot validly and constitutionally limit, remove, abrogate, disenfranchise, disqualify and/or oust the constitutional right or eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any Political Party for the purposes of nomination of such person or candidate for any election, where such person has "resigned, withdrawn or retired" from the said political or public office, at least 30 days before the date of the election.

2. A DECLARATION that the provisions of Section 84 (12) of the Electoral Act 2022 which seeks, tends or purports to limit, remove, abrogate, disenfranchise, disqualify and/or oust the constitutional right or

eligibility of any political office or public office holder to vote or be voted for at any Convention or Congress of any political party for the purposes of nomination of such person or candidate for any election, where such person has “resigned, withdrawn or retired” from the said political or public office, at least 30 days before the date of the election, is grossly ultra vires and inconsistent with 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended) and therefore unconstitutional, invalid, illegal, null and void and of no effect whatsoever.

3. AN ORDER OF COURT nullifying and/or setting aside Section 84(12) of the Electoral Act, 2022 for being unconstitutional, invalid, null, and void to the extent of its inconsistency with the 66(1)(f), 107(1)(g) and

182(1)(g) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

4. AN ORDER OF COURT directing and compelling the Defendant to FORTHWITH delete the provisions of Section 84(12) from the Electoral Act, 2022 with immediate effect.

In support of the Originating Summons is an affidavit of 30 paragraphs deposed to by the Plaintiff with an exhibit marked Exhibit 1 which is the plaintiff's voters card. Also filed is learned counsel's written address.

I have had to reproduce the above to showcase what must be considered in the determination of whether the plaintiff has locus standi/jurisdiction to file this suit.

It is without argument that the issue of locus standi touches on and is closely linked to the question of jurisdiction of the Court. Where plaintiff lacks locus standi, the Court cannot

properly assume jurisdiction to entertain the action. See **Adesanya v President of Federal Republic of Nigeria (1981) 1 NCLR 236, Bewaji v Obasanjo (2008) 9 NWLR (Pt. 1093) 540, Ajayi v Adeblyi (2012) 11 NWLR (Pt.1310) 137 and Daniel v INEC (2015) 9 NWLR (Pt. 1463) 113.**

Let me say that it is our law that the issue of locus standi/jurisdiction can be raised at any stage of proceedings and as such this court decided to raise it at this stage and consequently called upon the plaintiff to address it on same.

It is the submission of Dare Esq. that the plaintiff's locus standi is discernable from the cause of action in this suit wherein he has deposed that he is a citizen of the Federal Republic of Nigeria, a politician, and has a voters card duly issued by the Independent National Electoral Commission (INEC). It is contended that the Electoral Act 2022 made far reaching provisions impinging on the vested and entrenched constitutional rights of political or public office holders to

vote or be voted for at any Convention or Congress of their party and thereby taking away the plaintiff's right and legal interest to have such person in any elective position. It is argued that the effect of the above pointedly show that the plaintiff has a bounden constitutional right, duty and power to ensure that or challenge any act or enactment which is at variance with the Constitution of the Federal Republic of Nigeria. See **A.G Bendel State v. The Federal Republic of Nigeria 1981) 12 NSCS 314, 393**

Counsel argued that Section 84(12) of the Electoral Act 2022 which has breached the plaintiff's constitutional right has endowed the plaintiff with locus standi to file this suit. Counsel urged the court to nullify and or set aside the said Section 84(12) of the Electoral Act 2022.

The question I ask myself is who is this plaintiff? The plaintiff in his affidavit in support of the Originating Summons properly described himself as Politician and a citizen of the

Federal Republic of Nigeria. He said he is a duly registered voter that has issued to him Voters Card by the Independent National Electoral Commission (INEC). It is important to appreciate who this plaintiff is, this is because it is the position of our law that the issue of locus standi does not depend on the success or the merits of the case but on whether the plaintiff has a legal right in the subject matter which is Section 84 (12) of the Electoral Act 2022 to be able to commence the suit.

The said Section 84(12) Electoral Act 2022 provides thus;

“No Political appointee, at any level shall be voting delegate or be voted for at any convention or congress of any political party for the purpose of nomination of candidate for an election”

One then may ask what this legal right is. The courts have held that it is an interest recognized and protected by the law. In this regard, I will rely and adopt Salmon’s description

of a right. That every right involves a threefold relation in which the owner of it stands -

"(i) It is a right against some person or persons

(ii) It is a right to some act or omission of such person or persons.

(iii) It is a right over or to something to which that act or omission relates," See Salmon on Jurisprudence Tenth Edition at p.234. See also Paton Jurisprudence 3rd Ed., p.250.

Hear the submission of Dare Esq. "Importantly, the cause of action and underlying claim of the plaintiff bothers on the interpretation of the Constitution.... In any event, the question of constitutionality or legality of the offending provisions of Section 84(12) of the Electoral Act, 2022 vis a vis Sections 1(3), 6(6)(a) and (b), 66(1)(f), 137(1)(g), and 182(1)(g) of the Constitution of the Federal Republic of

Nigeria 1999 as amended does not create any public right or public duty.

I am of the view that the wordings of Section 84(12) of the Electoral Act 2022 are without ambiguity, the right created are exercisable by political or public office holders, it is personal. It is for any political or public office holder who believes that his right has been infringed upon as a result of that Section to approach the court for redress, and not do so by proxy or better still by a person who is not a political or public office holder. It is a personal right which a man has to accrue to himself. This I must say is quite different and distinguishable from situations that cover public interest.

It is counsel's contention that the persons the plaintiff may likely want to vote for will be disenfranchised by the provisions of the said Section 84(12) of the Electoral Act 2022 as amended.

The courts have held that its duty to declare a violation of the provision of the Constitution arises only where there is a dispute before it brought by legitimate disputants who would be affected by the illegality complained of.

The judicial powers vested on the court expansive as it is, can only be invoked by a proper application brought by a person who has sufficient legal interest to bring the action.

It is my respectful view that the right created under Section 84(12) of the Electoral Act 2022 is personal to a Political or Public Office holder. It cannot therefore be said as learned counsel would want this court to, that the right of every Nigerian particularly the plaintiff herein has been infringed upon under Section 84(12) supra. I do not think so.

Having given a calm consideration to the submission of learned counsel on these issues raised suo moto by this court it remains to say that this court is not persuaded by the submissions of plaintiff's counsel. It is evident from all the

paragraphs of the affidavit in support that the plaintiff herein is not a political or public office holder and therefore not one of those affected by the provisions of the said Section 84(12) of the Electoral Act 2022. There is no evidence before the court that this plaintiff is a member of any political party as none has been mentioned. I say so because for him to challenge the constitutional provision, he must show sufficient justiciable interest or sufferance of injury or damage that he will suffer as a result of Section 84 (12) of the Electoral Act 2022. Therefore, he lacks locus standi.

As regards the defendant herein The Attorney General Of the Federation, I have also given a consideration to the submission of learned counsel, I must make it clear that the issue at this stage is not whether the plaintiff ought to obtain the fiat of the Hon the Attorney General and Minister for Justice or not but whether there is any cause of action or

dispute against the defendant, furthermore, the defendant does not reside in this jurisdiction nor carry out business here. This court I must make clear does not have constitutional powers to preside and take a decision over an absentee defendant.

The question I ask is; if all registered voters decide as the plaintiff has done to file suits all over the country in the pretense of protecting and defending the constitution, will there be harmony? My answer with respect is a 'NO' because it will cause anarchy and chaos as such a situation will certainly be contrary to the very spirit of the object and purpose of the constitution as there will be multiplicity of suits on the same subject matter by self-acclaimed persons alleging interests and rights to protect the constitution.

Consequent upon my thoughts above, it is my firm view that this Court lacks the competence to assume jurisdiction over a case that the plaintiff lacks the locus standi to institute.

The resultant effect is that this suit is hereby struck out. I
make no order as to costs.



U.N. AGOMOH

JUDGE

17/3/2022

APPEARANCE

**O.J. DARE ESQ HOLDING
THE BRIEF OF ANDERSON ESQ**

FOR PLAINTIFF