**ALHAJI KAMORU AGBAJE & ORS**

**V.**

**MISS. ADESOLA OTUNLA & ANOR**

IN THE COURT OF APPEAL OF NIGERIA

ON THURSDAY, THE 2ND DAY OF FEBRUARY, 2017

CA/IB/278/2012

**LEX (2017) - CA/IB/278/2012**

**OTHER CITATIONS**

2PLR/2017/38 (CA)

(2017) LPELR-42382(CA)

**BEFORE THEIR LORDSHIPS**

CHINWE EUGENIA IYIZOBA, J.C.A

HARUNA SIMON TSAMMANI, J.C.A

NONYEREM OKORONKWO, J.C.A

**BETWEEN**

1. ALHAJI KAMORU AGBAJE

2. MR. MUNIRU OWOLABI

3. MR. SAMSON ALAO

4. MR. SAFIU DADA

5. MR. ODERINDE

6. MR. OLUFEMI

7. MR. E. O. DADA

8. MR. BASIRU POPOOLA Appellant(s)

AND

1. MISS. ADESOLA OTUNLA

2. MR. FEMI OTUNLA Respondent(s)

**ORIGINATING COURT(S)**

OYO STATE HIGH COURT, SITTING AT IBADAN (Ruling delivered on the 25th day of September, 2012 with M. F. Oladeinde, J., Presiding)

**ISSUES FROM THE CAUSE(S) OF ACTION**

REAL ESTATE AND PROPERTY LAW:- Locus standi to initiate actions for reliefs/claims relating to land – How determined – Whether a question of law or fact – Proper order where basis of application thereto proves to be a question of fact and not of law

REAL ESTATE AND PROPERTY LAW:- Locus standi to initiate actions for reliefs relating to land – Duty of court to restrict itself to the Statement of Claim – Proper exercise of – Duty of court not to delve into the defence or substantive questions that should be ventilated in the main trial - Legal effect

ESTATE ADMINISTRATION AND PLANNING:- Application to secure the assets under administration from being dissipated – Locus standi to bring same – What applicant/plaintiff must show to establish personal interest - Pleading that plaintiff is a recognised beneficiary/heir entitled under the said estate and that such interest has allegedly been violated – Whether enough to establish locus standi

**PRACTICE AND PROCEDURE ISSUES**

ACTION - LOCUS STANDI - Meaning of locus standi - What a party must show to establish locus standi - Effect of locus standi on jurisdiction of court and when the issue of locus standi can be raised.

ACTION - LOCUS STANDI - What the Court considers in determining whether a plaintiff has locus standi.

APPEAL - GROUND(S) OF APPEAL - Whether a ground of appeal must be related to the ratio decidendi of the judgment appealed against.

APPEAL - ISSUE(S) FOR DETERMINATION - Effect of issue(s) for determination not distilled from/related to ground(s) of appeal.

JUDGMENT AND ORDER - ARREST OF JUDGMENT - Whether the rules of court make provision for the arrest of judgment about to be delivered.

WORD AND PHRASES – “LOCUS STANDI”:- Meaning and nature of the legal concept of locus standi.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Respondents who were Plaintiffs at the Oyo State High Court of Justice, had Claimed against the Appellants a declaration that the land properties of the Plaintiffs’ father lying, being and situate at Akobo Area, Ibadan, devolves on all his children including the Plaintiffs upon his death; a declaration that any sale of the Registered properties of late Chief L. A. Otunla, lying, being and situate at Akobo Area, Ibadan, after his death without the consent or participation of or approval of the Executors of the Estate and/or by unauthorized Family members is null and void and of no effect whatsoever; an Order of Court setting aside any sale of the said land properties and nullifying the interest purportedly acquired by the 4th, 5th and 6th Defendants in respect of illegal sales by unauthorized Family members; an Order of Perpetual Injunction restraining the Defendants from trespassing or continuing in their trespass in respect of the land properties.

At the pre-trial conference, the 6th - 13th Defendants who are now the Appellants, indicated in the Pre-Trial Information Sheet, that before the trial, they will contend that: “There is no*locus standi* in the Claimant to institute this action as the plots of land of which the 6th - 13th Defendants built their houses did not form part of the estate that Late Otunla by his Will bequeathed to the Claimants or any member of the Otunla Family.”  
  
The said 6th - 13th Defendants filed an “AFFIDAVIT IN SUPPORT OF LACK OF *LOCUS STANDI*OF THE CLAIMANTS TO INSTITUTE THE ACTION.” In response, the Respondents filed a Counter-Affidavit in opposition thereof. The learned trial Judge, without any Motion, permitted counsel for the respective parties to file Written Addresses in respect of the issue of*locus standi.* Those Written Addresses were adopted and argued on the 27/2/2012.

DECISION(S) APPEALED AGAINST

The trial Court delivered a Ruling dismissing the application to strike out the suit in limine for want of locus standi of the Plaintiffs, hence the appeal by the Defendant/Appellants.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANTS:*

(i) Whether the decision of the learned trial Judge that the Respondents have *locus standi* to institute the action on the ground that the Appellants did not file Further Affidavit to the Counter-Affidavit of the Respondents where the issue of identity of land in land agreement attached to the Counter-Affidavit was raised is perverse having regard to the finding of the Court below that the land agreement attached to the Counter-Affidavit on which the issue of identity of land was raised, cannot be acted upon by the Court because it was marked as an exhibit by the Commissioner for Oath.

(ii) Whether the decision of the learned trial Judge that the Respondents have*locus standi*to institute the action against the Appellants is perverse having regard to the fact that the Court below did not resolve the issues raised in the Affidavit of the Appellants and Written Address of the Appellants that from the Will of the late Respondents’ father reference was never made to the parcel of land on which the Appellants built their houses at Omolayo Area, Akobo, Ibadan as forming part of his estate.

(iii) Whether the decision of the learned trial Judge that since pleadings have been completed and issues joined the claim shall be determined on its merit is perverse having regards: (i) to the fact that all deeds of conveyance referred to in the pleading of the Respondents relate to parcel of land at Orita Basorun and Logun Village and none of the Deeds of Conveyance relate to parcel of land at Omolayo Estate Akobo, Ibadan where Appellants have their houses; (ii) to the provisions of Order 15 Rule 18 (a), (b), (d), of the High Court Rules of Oyo State, 2010 and Order 35 Rule 1 of the High Court Rules of Oyo State, 2010 by which pleading can be struck out at any stage of the proceeding on the ground that it discloses no reasonable cause of action and judgment entered at the interlocutory stage of proceeding; (iii) to the fact that the Respondents in the pretrial Conference Forms 17 and 18 did not formulate any issue on *locus standi**a*nd issue never joined with the Appellants on the issue of *locus standi* and Limitation Law raised by the Appellants in their pretrial conference Forms 17 and 18.

(iv) Whether the decision of the learned trial Judge that the Respondents have *locus standi* to maintain the action is perverse having regard to the failure of the Court below to make finding on the issue of law raised in the Appellants’ Written Reply Address on point of law to the Respondents’ Written Address that it is not Deed of Conveyance in respect of property that confers right of inheritance on the children of the deceased but his will and that it is not Deed of Conveyance that confers legal right on the children of the deceased to maintain action in Court but his Will

(v) Whether the Court below was in error to have raised the issue Sumotu (sic) and based its decision on the issue raised Sumotu (sic) without counsel’s address on it.

*BY RESPONDENTS*

Whether the learned trial Judge was right in dismissing the application of the Appellants praying the trial Court to strike out the Respondents’ suit in limine for lack of *locus standi*to institute the suit having regard to the totality of the averments in the Respondents’ Statement of Claim, the Respondents’ reliefs and the other materials before the lower Court as well as the legal principles governing the determination of the *locus standi*of the Claimant to institute this action before a court of law.

*AS ADOPTED BY COURT*

[The Court adopted the Issues presented by the Respondents].

DECISION OF THE COURT OF APPEAL

1. For an issue to be properly raised on appeal, it must have been raised in the Court below, so that the trial Court would have had the opportunity of expressing its view thereon.

2. The procedure adopted by learned counsel for the Appellant is akin to arrest or stay of the judgment of this Court which had been reserved for delivery.

3. This Court has consistently held that in the determination of *locus standi,* the Plaintiff’s Statement of Claim should be the only process that should receive the attention of the Court. It is also a well-established principle of law that a Defendant who challenges in limine the*locus standi* of the Plaintiff is deemed to accept as correct all the averments contained in the Plaintiff’s Statement of Claim.

4. The entirety of the Respondents’ case is that certain parcels of land that made up the entire estate of their late father, Chief L. A. Otunla were sold or disposed of in violation of the Will of the testator. The Appellants contended that the parcels of land upon which they built their houses do not form part of the estate of the late Chief Otunla. It is therefore not an issue of law, but of fact to be proved by evidence. In other words, it would be for the Respondents to prove by evidence at the trial, that the land upon which the Appellants built was part of the estate of late Otunla, and that it was illegally sold to them. The Appellants having pleaded that they are the children of late Otunla and that they are entitled to inherit under his will, have established their interest and that such interest has allegedly been violated.

5. The issue raised by the Appellants relate only to the identity of the land in contention. The learned trial Judge was therefore right when he held that the issue cannot form or constitute the basis for denying the Respondents of the*locus standi* to institute the action. Whether or not they will eventual succeed in proving their case, is not the issue at this stage. That will be decided after all the parties have made their case on the merit. Accordingly, the trial Judge was right when he held that the Respondents have the requisite *locus standi* to institute the action.

**MAIN JUDGMENT**

**HARUNA SIMON TSAMMANI, J.C.A.** (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the Ruling of the Oyo State High Court, sitting at Ibadan delivered by M. F. Oladeinde, J on the 25th day of September, 2012 in Suit No: I/438/2008.  
  
Before the Oyo State High Court of Justice, the Respondents who were Plaintiffs therein, had taken out a Writ of Summons and a Statement of Claim whereof they claimed against the Appellants as follows:

1. Declaration that the land properties of the Plaintiffs’ father lying, being and situate at Akobo Area, Ibadan, devolves on all his children including the Plaintiffs upon his death which landed properties are registered as No. 14/14/1940, 5/5/1941, 44/44/1927, 3/3/1764, 2/2/1752, 58/58/1940, 3/3/1941, 57/57/1940, 7/7/1941 and 59/59/1940 of the Lands Registry, Ibadan.

2. Declaration that any sale of the Registered properties of late Chief L. A. Otunla, lying, being and situate at Akobo Area, Ibadan, after his death without the consent or participation of or approval of the Executors of the Estate and/or by unauthorized Family members is null and void and of no effect whatsoever.

3. An Order of Court setting aside any sale of the said land properties covered and registered as No: 14/14/1940, 5/5/1941, 44/44/1927, 3/3/1764, 2/2/1752, 58/58/1740, 3/3/1941, 57/57/1940, 7/7/1941, 59/59/1940 at the Lands Registry, Ibadan and nullifying the interest purportedly acquired by the 4th, 5th and 6th Defendants in respect of illegal sales by unauthorized Family members.

4. An Order of Perpetual Injunction restraining the Defendants from trespassing or continuing in their trespass in respect of the land properties as No. 14/14/1940, 5/5/1941, 44/44/1927, 3/3/1764, 2/2/1752, 58/58/1940, 3/3/1941, 57/57/1940, 7/7/1941, and 59/59/1940 of the Land Registry, Ibadan.

At the pre-trial conference, the 6th - 13th Defendants who are now the Appellants, indicated by Paragraph 11 of their Form 18 i.e. the Pre-Trial Information Sheet, that before the trial, they will contend that:

“There is no*locus standi* in the Claimant to institute this action as the plots of land of which the 6th - 13th Defendants built their houses did not form part of the estate that Late Otunla by his Will bequeathed to the Claimants or any member of the Otunla Family.”

On the 21/10/2011, the said 6th - 13th Defendants filed an “AFFIDAVIT IN SUPPORT OF LACK OF *LOCUS STANDI*OF THE CLAIMANTS TO INSTITUTE THE ACTION.” On the 14/11/2011, the Respondents who were the Claimants in the Court below then filed a “Counter-Affidavit in opposition To The Challenge of Defendants to the*Locus Standi o*f Claimants In Instituting The Action.” It is necessary for me to point out that the Defendants/Appellants did not file any Motion so as to enable them move the Court to strike out the suit for want of *locus standi*of the Claimants/Respondents. However, the learned trial Judge, without any Motion, permitted counsel for the respective parties to file Written Addresses in respect of the issue of*locus standi.* Those Written Address were adopted and argued on the 27/2/2012; and in a considered Ruling delivered on the 25/9/2012, the learned trial Judge dismissed the application to strike out the suit in limine for want of*locus standi* of the Plaintiffs. The Defendants/Appellants are displeased with that decision and have therefore filed this appeal.

The Notice of Appeal which is at pages 106 - 109 of the Record of Appeal was dated the 23/9/2012 and filed on the 26/9/2012. It consists of five Grounds of Appeal which time will not permit me to reproduce. However, in compliance with the Rules of this Court, the parties filed and exchanged Briefs of Arguments. The Appellants’ Brief of Arguments settled by Oluwole Aluko; Esq was dated and filed on the 09/11/2012. The Appellants formulated five (5) issues from the five (5) Grounds of Appeal as follows:

(i) Whether the decision of the learned trial Judge that the Respondents have *locus standi* to institute the action on the ground that the Appellants did not file Further Affidavit to the Counter-Affidavit of the Respondents where the issue of identity of land in land agreement attached to the Counter-Affidavit was raised is perverse having regard to the finding of the Court below that the land agreement attached to the Counter-Affidavit on which the issue of identity of land was raised, cannot be acted upon by the Court because it was marked as an exhibit by the Commissioner for Oath.

(ii) Whether the decision of the learned trial Judge that the Respondents have*locus standi*to institute the action against the Appellants is perverse having regard to the fact that the Court below did not resolve the issues raised in the Affidavit of the Appellants and Written Address of the Appellants that from the Will of the late Respondents’ father reference was never made to the parcel of land on which the Appellants built their houses at Omolayo Area, Akobo, Ibadan as forming part of his estate.

(iii) Whether the decision of the learned trial Judge that since pleadings have been completed and issues joined the claim shall be determined on its merit is perverse having regards: (i) to the fact that all deeds of conveyance referred to in the pleading of the Respondents relate to parcel of land at Orita Basorun and Logun Village and none of the Deeds of Conveyance relate to parcel of land at Omolayo Estate Akobo, Ibadan where Appellants have their houses; (ii) to the provisions of Order 15 Rule 18 (a), (b), (d), of the High Court Rules of Oyo State, 2010 and Order 35 Rule 1 of the High Court Rules of Oyo State, 2010 by which pleading can be struck out at any stage of the proceeding on the ground that it discloses no reasonable cause of action and judgment entered at the interlocutory stage of proceeding; (iii) to the fact that the Respondents in the pretrial Conference Forms 17 and 18 did not formulate any issue on *locus standi**a*nd issue never joined with the Appellants on the issue of *locus standi* and Limitation Law raised by the Appellants in their pretrial conference Forms 17 and 18.

(iv) Whether the decision of the learned trial Judge that the Respondents have *locus standi* to maintain the action is perverse having regard to the failure of the Court below to make finding on the issue of law raised in the Appellants’ Written Reply Address on point of law to the Respondents’ Written Address that it is not Deed of Conveyance in respect of property that confers right of inheritance on the children of the deceased but his will and that it is not Deed of Conveyance that confers legal right on the children of the deceased to maintain action in Court but his Will

(v) Whether the Court below was in error to have raised the issue Sumotu (sic) and based its decision on the issue raised Sumotu (sic) without counsel’s address on it.

that the Appellants by not filing Further Affidavit to the Counter Affidavit did not dispute the issue of the identity of land as highlighted in a land agreement attached to the Counter Affidavit which the Court below in the course of making finding has held cannot be acted upon because it was not marked as an exhibit and endorsed by the Commissioner for Oaths.

The Respondents’ Brief of Argument is that dated the 27/10/2016 and filed on the 01/11/2016 pursuant to Order of this Court made on the 18/10/2016 whereof the Respondents were given 14 days from the 18/10/2016 to file the Respondents’ Brief of Arguments. Therein, the Respondents raised only one issue for determination as follows:

Whether the learned trial Judge was right in dismissing the application of the Appellants praying the trial Court to strike out the Respondents’ suit in limine for lack of *locus standi*to institute the suit having regard to the totality of the averments in the Respondents’ Statement of Claim, the Respondents’ reliefs and the other materials before the lower Court as well as the legal principles governing the determination of the *locus standi*of the Claimant to institute this action before a court of law.

The Appellants also filed a Reply Brief on Points of Law to the Respondents’ Brief of Arguments. It was dated and filed on the 02/11/2016.

I have carefully read the Record of Appeal and the Briefs of Arguments filed by the parties. After also reading the issues formulated by the parties, I am of the view that the sole issue raised by the Respondents is adequate enough to determine this appeal thereon. Accordingly, this appeal shall be determined on the sole issue formulated by the Respondents.

I also wish to note that this appeal was heard on the 12th day of January, 2017 when counsel for the parties adopted their Briefs of Arguments and judgment was reserved in the matter. However, on the 16/1/2017, Mr. Oluwole Aluko of learned counsel for the Appellant filed a Motion seeking that we grant him leave to further address the Court:

on issue of law that this suit that was not instituted by the Executors and Trustees appointed by late Otunla in his Will is incompetent and as all the Deeds of Conveyance of the property referred to in his Will is incompetent and as all the Deeds of Conveyance of the property referred to in his Will at page 61 line 13 of the record relate to property used by his company; Nigeria Cloria Company Ltd as ware houses at Orita Basorun and Logun Village and not to the houses of the Appellants/Applicants at Omolayo Akobo, Ibadan.

The Motion is said to be brought pursuant to Section 6(6)(b) of the 1999 Constitution of Nigeria, Section 36(1) of the 1999 Constitution; and 122(2) and 124(1) (b) of the Evidence Act, 2011. Learned Counsel also relied on the English case of Varty v. British South Africa Co. (1965) p. 508 at 515 which is said to be approved by the Supreme Court in Adigun v. A.G; Oyo State (1987) 4 S.C. p. 272.

I wish to point out that appeals are heard on the issues formulated by the Appellant or the Court were necessary, and which issues must take their root(s) from the Ground(s) of Appeal filed. In that respect, any issue that is not predicated on the Grounds of Appeal is incompetent and must be struck out. SeeIwuoha v. NIPOST (2003) 8 NWLR (pt. 822) p. 308; Fabiyi v. Adeniyi (2000) 6 NWLR (pt. 662) p. 532 and Agbaisi v. Ebikorefe (1997) LPELR - 226 (SC). In the instant case, the point to be argued by the Appellant is not related to nor does it take root from any of the grounds of appeal filed.

I also wish to point out that a Ground of Appeal and the issue raised therefrom, must relate to the decision of the trial Court. In other words, it must be an appeal against a *ratio decidendi* in the decision. See Fabiyi v. Adeniyi (supra); M.B.N. Plc. v. Nwobodo (2005) 14 NWLR (pt. 945) p. 379; Kalu v. Uzor (2006) 8 NWLR (pt. 981) p. 66 and Minister, P.M.R. v. EL. (Nig.) Ltd 12 NWLR (pt. 1208) p. 261. In the instant case, the ground for challenging the *locus standi* of the Plaintiffs/Respondents, as stated by the learned trial Judge in page 99 lines 5 of the Record of Appeal is as follows:

The 6th - 13th Defendants challenged the Claimants’ *locus standi* to institute this action in Form 18 of the Pre-Trial Conference on the ground that the plots of land on which the 6th - 13th Defendants built their houses did not form part of the estate that Late Otunla by his Will bequeathed to the Claimants or any member of the Otunla Family.

That ground therefore had nothing to do with the issue or fact of instituting the action by Executors and Trustees of the Estate of the Late Otunla. For that issue to be properly raised, before us, it must have been raised in the Court below, so that the trial Court would have the opportunity of expressing its view thereon. See also Ikweki v. Ebele (2005) 11 NWLR (pt. 936) p. 397 and Saraki v. Kotoye (1992) NWLR (pt. 264) p. 156.On the above premise, I see no reason for staying judgment in this appeal.

I wish to further add that this procedure adopted by learned counsel for the Appellant is akin to arrest or stay of the judgment of this Court which had been reserved for delivery. In the case of Newswatch Communications v. Attah (2006) All FWLR (pt. 318) p. 580 at 581 this Court held that:

The procedure for arrest of judgment is now hardly known in our civil jurisprudential system. It is the act of staying a judgment, or refusing to render judgment in an action at law in Criminal cases after verdict. It is usually for some intrinsic matter appearing on the face of the record, which would render the judgment if given erroneous or reversible under the old Common Law Rule the procedure for arrest of judgment was not peculiar to the Criminal cases alone. It was available in civil case under the old Common Law Rules, but the procedure is alien to the rule of Court and does not apply in civil matters. SeeBob-Manuel v. Briggs (1995) 7 NWLR (pt. 409) p. 537.

The above cited decision of this Court was given approval by the Supreme Court in the case of Shettima & Anor v. Goni & Ors (2011) 18 NWLR (pt. 1279) p. 413 at 446 Paragraphs A - C where Onnoghen, JSC (as he then was) held that:

Apart from the peculiar nature of the proceedings giving rise to the appeal, generally speaking and by the decision of this Court inNewswatch Communications Ltd v. Attah (supra) the rules of Court have no provision for arrest of judgments about to be delivered by a Court. There is however an exception to that general rule as can be gleaned from the decision of this Court in the case ofDingyadi v. INEC (No. 1) (2010) 18 NWLR (pt. 1224) 1; (2010) 4 - 7 SC (pt. 1) 76 where the Sokoto Division of the Court of Appeal sitting on appeal in an election matter was stopped, by this Court, from delivering a judgment in an appeal arising from election petition filed in abuse of process as it is the duty of every Court to prevent abuse of its process or process of the Court.

This position was reiterated by the Supreme Court in the case of Ukachukwu v. PDP & Ors (2013) LPELR-21894 (SC) per Onnoghen, JSC (as he then was). Though there is no specific application seeking to arrest or stay the judgment of this Court, I am of the view that the effect or consequence of the Appellants’ Motion filed on the 16/1/2017 is to stay the judgment of this Court. For the above reason, this application is hereby refused. In any case, for the reasons earlier stated in this judgment on the said Motion, it is my view that the Motion is incompetent. It is hereby discountenanced.

Now on the substantive appeal, it was contended by learned counsel for the Appellants that, the issue of*locus standi*raised related to the construction of the Will of the Respondents’ father in respect of the property at Orita Basorun and Logun Village. That in response to the Affidavit of the Appellants, the Respondents did not refer to anywhere in the Will of late Otunla where reference was made to the parcel of land on which the Appellants built their houses at Omolayo Area, Akobo, Ibadan. That, the Respondents referred to the land agreement dated 12/1/1978 and made between Oyebamiji and the children of Chief L. A. Otunla but same was rejected by the trial Court on the ground that it was not marked as an exhibit. Learned Counsel then contended that, the decision of the learned trial Judge that the Respondents have*locus standi* to maintain the action is perverse, because the Appellants did not file a Further Affidavit to the Counter Affidavit since the trial Court had found that the Land Agreement attached to the Counter Affidavit cannot be acted upon. Furthermore, that it is not the law that where a Counter Affidavit or Further Affidavit is not filed, the issue raised in the Affidavit is deemed established, because a Further Affidavit or Counter Affidavit is not required where the Affidavit is defective. The case of Oduwole v. Famakinwa (1990) NWLR (pt. 143) p. 239 at 247 was referred to. It was therefore submitted that, even if the Land Agreement had been properly exhibited by the Respondents in their Counter Affidavit, it would still have been valueless as the parcel of land referred to in the Agreement did not form part of the lands in the Will of the Respondents’ father.

Learned Counsel for the Appellants went on to submit that the Will of the Respondents’ father is a documentary evidence, the contents of which by Section 128(1) of the Evidence Act, 2011 cannot be varied by any document or oral evidence. That it was clearly pointed out by the Appellants in their Written Address to the Court below that, none of the Deeds of Conveyance of the Respondents’ father refer to any parcel of land at Omolayo Estate, Akobo, Ibadan and that the Will never made reference to any parcel of land at Bamgbose Village, Off Olorunda, Abaa Road, Ibadan. Furthermore, it is not the Deed of Conveyance of the deceased’s property that confers legal right on the deceased’s children to inherit or maintain an action in Court in respect of his property, but his Will. That in the instant case, the Respondents cannot refer to anywhere in the Will of late Otunla where reference was made to any parcel of land at Bamgbose Village Off Olorunda Road, Ibadan or Omolayo Estate, Akobo, Ibadan as forming part of his estate.

Learned Counsel for the Appellant then cited the case of Ajadi v. Okenihun (1985) 1 All NLR (pt. 1) p. 213 at 219 to submit that, it is not the duty of an Appellate Court to enquire into a dispute but will only inquire into how a dispute has been resolved. It was then contended that the learned trial Judge omitted Paragraphs 5, 6, 7, 8, 9 and 10 of the Appellants’ affidavit in Support of the issue of lack of *locus standi.* That the contents of those paragraphs establish clearly that the parcels of land referred to in the Will of the Respondents’ father did not form part of the land at Omolayo Estate, Akobo, Ibadan where the Appellants built their houses. It was further contended that the trial Court did not resolve the issues raised in the Appellants’ Affidavit to the effect that from the Will of late Otunla, the location of the property referred to in the Will is at Orita Basorun, Ibadan and Logun Village, and not at Omolayo Area, Akobo, Ibadan where the Appellants built their houses. Furthermore, that without resolving the issues of law raised in the Appellants’ Written Address, the learned trial Judge terminated the issue of *locus standi*summarily on the Grounds that since parties have joined issues on the pleadings, the Suit should be determined on its merit. It was thus submitted that the trial Court erred, because:

(i) Oral evidence is not required for the construction of the Will of the Respondents’ father, to establish the location of the land in contention.

(ii) The Appellants’ Motion dated and filed on the 18/4/2012 raised the issue that from the pleadings of the Appellants, there is no issue raised that the property of the Appellants situate at Omolayo Area, Akobo, Ibadan is under the administration of the Executor of late Otunla and therefore the Respondents have no *locus standi*to institute the action.

(iii) The Court below refused to follow the Supreme Court decision inAjao v. Sonola (1973) 1 N.M.L.R p. 355 at 357-361.

(iv) The Respondents did not contest the issue of*locus standi* as canvassed by the Appellants.

Learned Counsel for the Appellants further submitted that, the finding of the trial Court that the issue of *locus standi* cannot be determined at that interlocutory stage is erroneous, because:

(a) The Will of late Otunla is documentary evidence and the reliefs of the Respondents are based on the contents of that Will.

(b) The attention of the trial Court was drawn to the decision of the Supreme Court in Ajao v. Sonola (supra)

(c) The pleadings of the Respondents did not raise the issue that from the Will of late Otunla, the houses of the Appellants at Omolayo Area, Akobo, Ibadan formed part of the Estate of late Otunla being administered by the Respondents as Executors.

(d) The Respondents did not contest the issue of *locus standi* raised by the Appellants in the pretrial Conference Form 18.

It was also submitted by learned counsel for the Appellants that, the issue of*locus standi*raised herein is an issue of law that this Court can make finding on by virtue of Section 16 of the Court of Appeal Act, since oral evidence is not required in the construction of the Will of late Otunla wherein the property covered by the Will is at Orita Basorun and Logun Village and not Omolayo Area, Akobo, Ibadan, where the Appellants have their houses. That, the decision of the Supreme Court in Ajao v. Sonola (supra) is relevant to the facts of this case since the Will of late Otunla that the Respondents are relying on his Support of their reliefs did not contain the property of the Appellants at Omolayo Area, Akobo, Ibadan.

Learned Counsel for the Appellants went on to submit that, the Court below held that the Appellants did not file a Further Affidavit to deny the deposition of the Respondents in Paragraphs 4 and 5 of their Counter Affidavit that Ismaila Ajani a defence witness, confirmed that it is the same land purportedly brought by Oyebamiji, the Vendor to the Appellants from the children of late Otunla. That the Original name of the location of Omolayo School was Bamgbose Village. That those findings are perverse because:

(i) The land agreement exhibited in the Counter Affidavit of the Respondents was not marked and accordingly rejected by the Court;

(ii) The Counter Affidavit did not resolve the contention of the Appellants that property referred to in the Will of late Otunla is at Orita Basorun and Logun Village are not the same with Omolayo Estate, Akobo, Ibadan or Bamgbose Village, off Olorunda Abaa, Ibadan;

(iii) The Court below raised the issue that the Appellants did not file Further Affidavit to the Counter Affidavit of the Respondents *Suo motu* without inviting counsel to address on it, and therefore violated Section 36 (1) of the 1999 Constitution relating to fair hearing.

We were accordingly urged to resolve all the issues raised by the Appellants in their favour and to allow the Appeal.

In response, learned counsel for the Respondents began by contending that the attitude of an appellate Court is to find out whether or not the decision appealed against is correct and not whether the reasons given by the Lower Court for its decision are wrong or right. That the decision of the Lower Court may be affirmed as correct by the Appeal Court in spite of the fact that the Lower Court had given the wrong reason for its decision. The cases of Ngige v. Akunyili (2012) 15 NWLR (pt. 1323) p. 343 at 364 - 365 Paragraphs H - A; Dalfam (Nig.) Ltd v. Okaku Intl Ltd (2001) 15 NWLR (pt. 735) p. 203 at 243 Paragraphs A-D and Durosaro v. Ayorinde (2008) 8 NWLR (pt. 927) p. 407 at 423 Paragraphs C - D were cited in support. It was therefore submitted that the learned trial Judge was right to have dismissed the application of the Appellants and to order that the Suit be heard and determined on the merit for the reasons stated in the Ruling.

Learned Counsel for the Respondents then submitted that, the issue of *locus standi* is a fundamental issue touching on the competence of the Plaintiff to be heard before the Court, and thus the jurisdiction of the Court to entertain the Claim. The case of Tetas Petroleum Co. & Ors v. Texaco Nigeria Plc & Ors (2008) 1 FWLR (pt. 411) p. 1003 at 1038 - 1039 was cited in support. The cases of Disu v. Ajilowura (2006) 14 NWLR (pt. 1000) p. 783 at 804 Paragraphs E - G and A.G; Kaduna State v. Hassan (1985) 2 NELR (pt. 8) p. 483 at 522 were also cited to further submit that, the concept of *locus standi* is predicated on the assumption that no Court is obliged to provide remedy for a Claim in which the Plaintiff has a remote hypothetical interest or none. The case of Ladejobi v. Oguntayo (2004) 18 NWLR (pt. 904) p. 149 at 178 was then cited to submit that, Courts are enjoined to do everything legitimately possible to uphold the Plaintiff’s right of access to Court. In other words, that the Court’s attitude to *locus standi*should be liberal.

Learned Counsel for the Respondents then drew our attention to the cases of Disu v. Ajilowura (supra); Unity Bank Plc v. Bouari (2008) 7 NWLR (pt. 1086) p. 372 at pages 397 - 398 per Ogbuagu, JSC and U.B.A Plc v. B.T.L Industrial Ltd (2004) 18 NWLR (pt. 904) p. 180 at 219, to submit that in determining the *locus standi* of a Plaintiff, the Court should look at the substance of the Claim and the totality of the averments in the Statement of Claim. The cases of Duhu v. Oladejo (2004) 17 NWLR (pt. 903) p. 621 at 643 and E.T & E.C. (Nig.) Ltd v. Nevico Ltd (2004) 3 NWLR (pt. 806) p. 327 at 342 were further referred to; and to also submit that a member of a family has the capacity to sue to protect family property or to protect his interest which has been or is being threatened by any wrongful alienation or sale. The cases of Babayeju v. Ashamu (1998) 9 NWLR (pt. 567) p. 546; Ugwu v. Agbo (1977) 10 S.C. p.27 and Melifonwu v. Egbiyi (1982) 9 S.C. p. 145 were also cited in support.

It was also submitted by learned counsel for the Respondents that having regard to the totality of the materials before the trial Court, particularly the reliefs sought by the Respondents and the averments in the Statement of Claim, the learned trial Judge rightly held that the Appellants’ application challenging the Respondents’*locus standi*lacked merit. In respect of the contention of the Appellants that the learned trial Judge was wrong to have relied on the Land Agreement executed between Oyebamiji and the children of Chief L. A. Otunla (deceased), having held that the said Agreement was not an exhibit before him, it was submitted that there is a difference between the depositions in an Affidavit and the exhibit attached to it. That in any case, the trial Court never stated in its Ruling that its decision dismissing the application was based on the said Land Agreement. That a careful reading of the Ruling will show that all the trial Court did was to refer to and rely on the depositions in Paragraphs 1, 4 and 5 of the Respondents’ Counter-Affidavit which made reference to the Land Agreement dated the 12/1/78, and which document has been listed and filed in the trial Court by one Ismaila Ajani. The case of Chief M.O.A. Agbaisi & Ors v. Ebikorefe (1997) 4 NWLR (pt. 502) p. 630 at 649 and Aina v. Obabiolorunkosi (1986) 2 NWLR (pt. 22) p. 316were then cited to submit that the Court can look at any document before it in the determination of any issue before it.

Learned Counsel for the Respondents went on to submit that, the argument of the Appellants that the learned trial Judge raised and resolved an issue*Suo motu* on the issue of *locus standi* is misconceived in law, because in the determination of the *locus standi* of the Respondents, the trial Court is not allowed to rely on the depositions in the Affidavit of the Defendant challenging the *locus standi* or on the Statement of Defence. The cases of Okafor v. Onedibe (2003) 9 NWLR (pt. 825) p. 399 at 411 Paragraphs A - D and Adesokan v. Adegorolu 3 NWLR (pt. 493) p. 261 were cited in support. It was then submitted that:

(i) The Will of late Otunla attached to the Appellants’ Affidavit cannot be competently considered to determine the Respondents’ *locus standi;*

(ii) The decision of the Supreme Court in Ajao v. Sonola (supra)is unhelpful to the Appellants because in the present case, the Respondents have not claimed that they are the administrators or executors of the Will of late Otunla. That all the Respondents have done as the children of late Otunla is to approach the Court to declare that the sale or transfer of some plots of land which they allege form part of the Estate of their late father, [is] illegal, null and void.

The cases of Chief Gani Fawehinmi v. N.B.A & Ors (No. 2) (1989) 2 NWLR (pt. 105) p. 558 at 650; Kenneth Ogoala v. the State (1991) 3 S.C.N.J. p. 61 at 82 and Mrs Tejumade A. Clement & Anor v. Mrs B.J. Iwuanyanwu & Anor (1989)  4 S.C.N.J. (pt.II) p. 213 at 220 - 221 were then cited to contend that the facts of this case are dis-similar to that in Ajao v. Sonola (supra). That, in any case, the Respondents’ Suit before the trial Court have nothing to do with the construction of the Will of late Otunla as erroneously submitted by the Appellants.

It was further submitted by learned counsel for the Respondents that, it is immaterial that the parcels of land which the Appellants claim to have bought from Oyebamiji are not mentioned in the Will of the Respondents’ father. That what is paramount is that the plots of land which the Appellants claimed to have bought belong to the Respondents’ father, as the Respondents’ claim is that they had not been validly sold or transferred to the person from whom the Appellants claim title.

On the argument of the Appellants that the learned trial Judge raised the issue of the failure of the Appellants to file a Further Affidavit against Paragraphs 4 and 5 of the Respondents’ Counter Affidavit, it was submitted by learned Counsel for the Respondents, that it is within the competence of the learned trial Judge to evaluate Affidavit evidence and to comment on the state of the Affidavits filed, having regards to the relevant legal principles governing the reception, evaluation and ascription of probative value to such Affidavits. The cases of Okoye v. C.P.M.B. Ltd (2008) 15 NWLR (pt.1110) p. 355 at 362 Paragraphs B - C and Ahmed v. C.B.N. (2013) 11 NWLR (pt. 1365) p. 352 at 368 were then cited to further submit that in the application of those legal principles, the trial Judge need not call for address from counsel. The cases of Inegbedion v. Selo Ojemen (2013) 8 NWLR (pt. 1356) p. 211 at 225 and Ugwuanyi v. NICON Ins. Plc (2013) 11 NWLR (pt. 1366) p. 546 were also cited to further submit that, in any case, the law is well settled that, depositions in an Affidavit which have not been denied specifically or controverted are treated as unchallenged and are to be acted upon by the Court.

Learned Counsel for the Respondents then drew our attention to the case ofAkeredolu v. Akinremi (1989) 3 NWLR (pt. 108) p. 164 at 175, to submit that having regards to the principles governing the determination of the *locus standi* of a Plaintiff, the learned trial Judge was not wrong when he dismissed the Appellants challenge to the *locus stand*i of the Respondents to institute the action. We were accordingly urged to resolve the sole issue raised against the Appellants and to dismiss the appeal.

In reply to the Respondents on points of law, learned counsel for the Appellants contended that all the authorities cited by the Respondents are against the findings of the trial Court for the following reasons:

(a) None of the decisions decided that once pleadings have been completed the case must proceed to trial without disposing of the issue of *locus standi.*

(b) The decision of the Supreme Court in Disu v. Ajilowuracited is against the Respondents as the issue of *locus standi* of the Respondents was never resolved. The case of Dee Oroh v. Buraimoh (1990) 7 NWLR (pt. 134) p. 641 at 644 was cited in support.

It was further submitted by learned counsel for the Appellants that, the right of action on any issue that affects the estate of late Otunla is in the executors and administrators of the estate of late Otunla and not in the Respondents. That the issue involved here is not that there is no proper administration of the estate of L. A. Otunla, in which case the beneficiaries can maintain an action against the executors and administrators, but that the houses of the Appellants at Omolayo Area, Akobo, Ibadan are part of his estate. It was thus argued that there is no right of action in the Respondent now that the locations of his property are at Orita Basorun and Logun Village and not Logun Village and not at Akobo, Ibadan where the Appellants’ houses were built.

Learned Counsel for the Appellants also contended that the argument of the Respondents that the dispute before the trial Court has nothing to do with the construction of the Will of late Otunla cannot be sustained, since the issues raised in Paragraphs 2, 3, 4, 6 and 7 of the Statement of Claim wherein the Respondents did not answer the crucial issue that the parcel of land bought from Oyebamiji in 1978 when the father of the Respondents was alive cannot form part of his estate, he having only died in 1979.

Now, there is no dispute that the issue at hand has to do with the Appellants’ challenge to the *locus standi* of the Respondents to institute the action. In law,*locus standi* connotes the legal capacity of a person to institute legal action in a Court of law. Thus, for a person to approach the Court, he must be able to show that his civil rights and obligations have been or are in danger of being violated or infringed upon. *Locus Standi* also means the standing or title of a person to sue.*Locus Standi*has therefore been regarded as the legal standing of a person to sue, initiate or undertake any judicial process or the right of such person to be heard in litigation before a Court of law, without let or hindrance. It is a condition precedent for proper initiation of any judicial proceeding and therefore goes to the competence of or jurisdiction of the Court to entertain the action. Accordingly, where a Plaintiff has no*locus standi,* his action will be incompetent and the Court would have no jurisdiction to hear or entertain the action. See Pam v. Mohammed (2008) 16 NWLR (pt. 112) p. 1; Opobiyi & Anor v. Muniru (2011) LPELR-8232 (SC); Bakare & Ors v. Ajose-Adeogun & Ors (2014) LPELR-22013 (SC); Wari & Ors v. Mobil Inc. of America & Anor (2013) LPELR-21996 (CA) per Garba, JCA and Dada v. Ogunsanya (1992) NWLR (pt. 232) p. 754. Thus in the case of Yesufu v. Governor of Edo State & Ors (2001) 13 NWLR (pt. 731) p. 517, Ogundare, J.S.C. said:

the issue of *locus standi* goes to the competence or standing of the Plaintiff to institute the action at all. *Locus Standi*is the legal capacity of Plaintiff/Claimant to institute an action in a Court of law in exercise of his right under Section (6) (6) (b) of the Constitution of the Federal Republic of Nigeria, 1979. That is why it can be raised in limine after the Statement of Claim has been filed and served. If the Plaintiff's Statement of Claim discloses no personal interest in the claim put forward by him, he will have no *locus standi*to institute the action and the Court will have no jurisdiction to entertain same.

In the determination of the*locus standi*of a Plaintiff, it should be noted that, the Defendant who challenges such *locus standi* is deemed to have accepted as true the averments in the Plaintiff’s Statement of Claim. This is because, the settled law is that when a Court is called upon to determine the *locus standi*of a Plaintiff in an action, it must confine itself to the Writ of Summons and the Statement of Claim before it and no more. In other words, the Statement of Claim is the exclusive process that donates *locus standi*. Thus, Bage, J.C.A. (as he then was) in the case of Oshoffa & Ors v. Kosoko & Ors (2013) LPELR-22145 (CA) said:

In the case of DANIYAN V. IYAGIN (2002) 7 NWLR (pt. 766) 375 Paragraphs F -Gthis Court stated as follows:

whenever a Court is called upon to determine whether a Plaintiff has*locus standi* or not, the Court is bound to confine itself to the Writ of Summons and the Statement of Claim before it and no more, as the issue of *locus standi* is a matter of law. Even if the Statement of Defence has been filed at the time objection was made, the Court is still bound to confine itself to the Statement of Claim to decide whether the Plaintiff has *locus standi.*

Similarly, this Court, per Okoro, JCA (as he then was) in the case of Olaniyan v. Adeniyi (2007) All FWLR (pt. 387) p. 916 at 936 Paragraphs C - E said:

*Locus Standi* is usually deduced or determined from all the facts averred in the Statement of Claim. The Court’s approach is to look at the Statement of Claim to ascertain whether the Plaintiff’s sufficient interest has been disclosed and how the said interest has arisen from the subject matter of litigation. Where, in the course of scrutinizing the Statement of Claim, the averments disclose the interest of the Plaintiff and the interest is threatened with violation or actually violated by the Defendant, the Plaintiff would be adjudged by the Court to have clearly shown sufficient interest to entitle him to sue on the subject matter.

Such views as expressed by this Court above, have received judicial approval by the Supreme Court in several cases, such as Disu v. Ajilowura (2006) 14 NWLR (pt. 1000) p. 783 where Tobi, J.S.C (of blessed memory) said:

This Court has consistently held that in the determination of *locus standi,* the Plaintiff’s Statement of Claim should be the only process that should receive the attention of the Court. It is the cynosure of the exercise. I will take only two cases. In Adesokun v. Prince Adegorolu (1997) 3 NWLR (pt. 493) p. 261, this Court held that in order to determine whether a Plaintiff has *locus standi* or not, it is the Statement of Claim that one looks at. It is a well-established principle of law that a Defendant who challenges in limine the*locus standi* of the Plaintiff is deemed to accept as correct all the averments contained in the Plaintiff’s Statement of Claim.

In Owoduni v. Registered Trustees of Celestial Church of Christ (2000) 6 S.C. (pt.II) 60; (2000) 10 NWLR (pt. 675) 315,this Court held that the question whether or not a Plaintiff has*locus standi*in a suit is determined from a totality of all the averments in his Statement of Claim. Thus, in dealing with the *locus standi*, of a Plaintiff, it is his Statement of Claim alone that has to be carefully scrutinized with a view to ascertaining whether or not it has disclosed his interest and how such interest has arisen in the subject matter of the action.

It remains settled therefore, that in the determination of*locus standi*, the Plaintiff’s Statement of Claim is the only process that should be considered. See also Resque Construction Co. Ltd & Anor v. Adesola & Ors (2013) LPELR-22142 (CA) per Galinje, JCA (as he then was); Adesanoye v. Adewole (2006) 14 NWLR (pt. 1000) p. 242 at 274 Paragraphs D - E and Ojukwu v. Ojukwu & Anor (2008) 4 NWLR (pt. 1078) p. 435. It therefore means that the Statement of Defence, if one has been filed is not relevant. See Ajayi v. Adebiyi (2012) 11 NWLR (pt. 1310) p. 137; A.G; Kwara State v. Olawale (1993) 1 NWLR (pt. 272) p. 645. Thus, in the case of Adesokan v. Adegorolu (1993) 3 NWLR (pt. 179) p. 293 at 305 - 306, it was held that:

In an application to determine whether a Plaintiff has*locus standi* or not, the Judge is bound to confine himself within the four walls of the Writ of Summons and the Statement of Claim and no more, as the issue of *locus* *standi* is a matter of law. Even if the Statement of Defence has been filed at the time the objection was made, the Judge would still be bound to confine himself to the Statement of Claim of the Plaintiff to decide whether he have (sic) a *locus standi.*   
[underlining mine].

In the instant case, the Appellants filed an Affidavit deposing to facts upon which they challenged the *locus standi* of the Respondents. It is my view that they are entitled to do so, but such Affidavit to be relevant to the determination of the issue of*locus standi,* the depositions therein must relate to facts pleaded in the Statement of Claim. This is to avoid a situation where the trial Court will be lured into pronouncing an issues which should be ventilated at the substantive trial.

In the determination of this Suit, the learned trial Judge referred to Paragraphs 3, 4 and 5 of the Appellants’ Affidavit in Support of their objection to the*locus standi*of the Respondents and Paragraphs 1, 4, and 5 of the Counter-Affidavit of the Respondents to find at page 103 line 6-11 of the Record of Appeal as follows:

The basis of the 6th -13th Defendants claims that the Claimants have no*locus standi*to institute this action as could be gleaned from their supporting Affidavit and their Written Address in support of the Affidavit is that the Deeds of Conveyance referred to in the Will of the Claimants’ Late father do not relate to any parcel of land at Omolayo Estate, Akobo, Ibadan and no land in the area was bequeathed to the Claimants in the Will.

Having perused the Record of Appeal, I am of the view that the learned trial Judge rightly set out the issue forming the basis of the Appellants’ challenge to the *locus standi* of the Respondents to initiate the action. This is clearly seen in page 54 where the Appellants in answer to Paragraph 11 of the Pre-Trial Information Sheet stated that they shall contend before the trial that:

There is no *locus standi* in the Claimants to institute the action as the plots of land on which the 6th -13th Defendants built their houses did not form part of the Estate that Late Otunla by his Will bequeathed to the Claimant or any member of the Otunla family.

The learned trial Judge referred to the reliefs claimed by the Respondents in their Statement of Claim and Paragraph 3 of the Statement of Claim to hold that:

The landed property in dispute was described as being situated at Omolayo Estate, Akobo, Ibadan in Paragraph 3 of the Statement of Claim whilst reliefs 1 & 2 of the Writ of Summons described them as being at Akobo Area, Ibadan. This is the claim of the Claimant before this Court which they have to prove before they can succeed.

The 6th -13th Defendants cannot rely on the fact that the Will of late Chief Otunla did not relate to any parcel of land at Omolayo Estate, Akobo, Ibadan or at Bamgbose Village of Olorunda Abaa Road, Ibadan as basis of their claim that the Claimants have no*locus standi* to institute the action at this stage.

The Claimants’ Claim is that most of the sale of the land being occupied by the Defendants were sold by people who had no authority to deal in or sell the land of the Estate of late Chief Otunla i.e their late father."

To determine whether the above stated findings of the trial Court is correct, it is my view that it will be necessary to have recourse to the Statement of Claim. The Respondents, as Claimants in the Court below had pleaded in Paragraphs 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 17, 20 and 21 of the Statement of Claim as follows:

1. The Plaintiffs are children of Late Chief L. A. Otunla and has (sic) their family house at Nalende Street, Ibadan.

2. The 1st and 2nd Defendants are the accredited agent and/or representatives of the Estate of the Late Chief L. A. Otunla having been so appointed in the last testamentary deposition and Will made by the said Late Chief L. A. Otunla deposited at the High Court probate Registry, Ibadan in June, 1979.

3. The Plaintiffs aver that in the said Will of their Late father, Chief L. A. Otunla, the landed properties registered as Nos: 14/14/1940, 5/5/1942, 44/44/1927, 3/3/1764, 2/2/1752, 58/58/1940, 3/3/1941, 57/57/1940, 7/7/1941, 59/59/1940, respectively, lying being and situate at Omolayo Estate, Akobo, Ibadan were mentioned as forming part of the real properties of the Estate devised to all the children of Late Chief Otunla including the Plaintiffs.

4. The Plaintiffs shall at the hearing rely and found on the Certified True Copies of the said Will and title documents referred to earlier in this Statement of Claim.

5. The Plaintiffs avers (sic) that the 1st and 2nd Defendants were joined to this action because upon the discovery of a clear reckless and fraudulent sales of their father’s land in year 2004, the Defendants were unable to act or take action in respect of the same, as they were found to have compromised their instruction and one of them was neck deep in the events leading to the institution of this action.

6. The Plaintiffs avers (sic) that upon the completion of the probate processes and the expenses, the executors granted assent to the children in respect of the properties in which they are beneficiaries including those subject of this action

10. The Plaintiffs avers (sic) that upon the death of their father, Iya Bashorun and one Baba Sala, approached Late Mrs Otunla informing her that her husband left a vast area or expanse of land which some people known as “Omo Onile” has (sic) started selling off, they then introduced one land speculator to her called Alhaji Oyebanji, the 4th Defendant, to her.

11. These people i.e; Baba Sala, Iya Bashorun and Late Mrs Otunla then sold 5 acres of the land to Alhaji Oyebanji at N3,000 per Acre while the later only paid for 3 Acres i.e N9,000.

12. The Plaintiffs avers (sic) that the said Alhajii Oyebanji, it was stated paid N6,000 to the 1st Defendant who then was not an executor, also went ahead to sell another 5 Acres while Baba Sala invited her Aunty, Mrs Abigel Otunla to share in the “Cake Sharing” while the later also sold 5 Acres again to the 4th Defendants.

13. The Plaintiffs aver that it was also disclosed to the family that the 3rd Defendant on seeing the “Money Spinning Venture” and the bazaar which their father’s properties had been turned into, also sold 3 Acres of the land to the 4th Defendant.

14. The Plaintiffs avers (sic) that the entire land holding of the Estate as registered at the Lands Registry Ibadan was 33 Acres.

15. The 1st Defendant and Mrs. Abigel Otunla between them, illegally sold a total of 19 Acres to the 4th Defendant and particularly when they lacked the capacity to so act.

17. The Plaintiffs were then informed that a bold attempt was made by the original executors of the Estate in the persons of Mr. Olasehinde and late Mr. Ajayi Otunla to take action against these people but for the death of Mr. Ajayi Otunla and the resignation of Mr. Olasehinde, all these were not known to the Plaintiffs and the Estate of the deceased late Chief Otunla.

20. The Plaintiffs shall at the hearing contend that none of the Vendors in the illegal disposal of their father’s properties had the authority of the Estate to sell an inch of the land, the wives of late Chief Otunla had no authority, the daughter—3rd Defendant had no authority, even the 1st Defendant then had no authority to sell. He was then an executor and he never sold as executor but as an individual without the knowledge, consent or approval of the second executor

21. The Plaintiffs avers (sic) that most of the sales were carried out by total strangers to the Will of Late Chief L. A. Otunla in clear violation of Section 15 of the Will forbidding the sale or distribution or apportioning of his landed properties until the child attains the age of 21 years.

It is clear therefore, that the above pleadings, and indeed the entirety of the Respondents’ case is that certain parcels of land that made up the entire estate of their late father, Chief L. A. Otunla were sold or disposed of in violation of the Will of the testator. The Appellants contended that the parcels of land upon which they built their houses do not form part of the estate of the late Chief Otunla. It is therefore my view that this issue is not one of law, but of fact to be proved by evidence. In other words, it would be for the Respondents to prove by evidence at the trial, that the land upon which the Appellants built was part of the estate of late Otunla, and that it was illegally sold to them. The Appellants having pleaded that they are the children of late Otunla and that they are entitled to inherit under his will, have, in my humble view established their interest and that such interest has allegedly been violated. The issue raised by the Appellants, in my view, relate only to the identity of the land in contention. The learned trial Judge was therefore right when he held that the issue cannot form or constitute the basis for denying the Respondents of the*locus standi* to institute the action. Whether or not they will eventual succeed in proving their case, is not the issue at this stage. That will be decided after all the parties have laid their cards on the table. Accordingly, I hereby hold that the learned trial Judge was right when he held that the Respondents have the requisite *locus standi* to institute the action in this Suit No. I/438/2008.

On the whole therefore, it is clear that this Appeal has no merit. It is accordingly dismissed. The Ruling of the Court below, delivered on the 25th day of September, 2012 in this Suit is hereby affirmed. The case is returned to the Chief Judge for hearing on the merit based on the pleadings already filed.

I make an order of Thirty Thousand Naira (N30,000.00) as cost against the Appellants in favour of the Respondents.

**CHINWE EUGENIA IYIZOBA, J.C.A.:**

I had the privilege of reading in draft the judgment just delivered by my learned brother, HARUNA SIMON TSAMMANI JCA. I agree with his reasoning and conclusions. There is no doubt that the motion dated 16/01/2017 filed by learned counsel for the Appellant after the appeal had been argued on 12/01/17 and reserved for judgment asking for leave to further address the Court is nothing short of an attempt to arrest the judgment; even if learned counsel did not specifically use that phrase. This procedure is strange and unknown under our Rules of Court. Counsel lost sight of the fact that under Order 18 Rule 10 of the Court of Appeal Rules 2011 where a Respondent fails to file a brief, he will not be heard in oral argument. Granting the application of the Appellant to further address us after judgment had been reserved means that such a Respondent can also apply after judgment had been reserved to be allowed to address the Court. The confusion such course will lead to, can only be imagined. My learned brother has in the lead judgment made reference to numerous authorities in support of our stand that the motion is outside the Rules of our Court and cannot be entertained.

On the substantive appeal, in the case ofIN RE-IJELU VS L.S.D.P.C (1992) NWLR (Pt. 266) 4141,the Supreme Court per Mohammed JSC observed:

*“Locus standi or standing to sue is an aspect of justiciability and as such the problem of locus standi is surrounded by the same complexities and vagaries in justiciability. The fundamental aspect of locus standi* *is that it focuses on the party seeking to get his complaint before the High Court not on the issue he wishes to have adjudicated.”*

Since the issue raised by the appellant in their challenge of *locus standi*of the Respondents relate to the identity of the land in dispute, the learned trial judge was right when he held that the issue cannot constitute a basis for denying the Respondents*locus standi* to institute the action. I agree that the appeal lacks merit. I also dismiss it. I abide by the consequential orders in the lead judgment.

**NONYEREM OKORONKWO, J.C.A.:**

I have had the opportunity of reading the draft of the judgment in this appeal by my learned brother *Haruna Simon Tsammani JCA.*

The appeal relates to *locus standi*which translate to interest or standing upon which a suit is founded. A suitor at law must have sufficient interest to protect in bringing a suit or action. There must be some benefit corporeal or incorporeal, tangible or intangible which must be inhere or affect the suitor-at-law. Such suitor must not be a meddlesome interloper fanning the embers of trouble or commotion and having nothing of his own in it.

Neither is*locus standi*a spanner that a litigant throws into the works just for the purpose of stirring argument and confusion. It must be genuinely raised in the pleadings and brought up by motion or by the Court.

In this appeal, the respondents’ suit was for declaration in respect of property which they claim by devotion from their late father Chief L.A. Otunla. This was kernel of respondents’ claim in their Writ of Summons and their Statement of Claim which are the only source-pool for determining *locus standi.*There was therein enough disclosure of interest in the respondents to sustain the action.

The objection was like a loose spanner thrown into the works which ricochets and halts the machinery however temporarily but with no merits at all. The trial judge was right in holding that *locus standi*existed to justify the actions.

I agree with my learned brother *Haruna Simon Tsammani JCA* that the appeal lacks merit and ought to be dismissed. I also dismiss the appeal and abide by the orders made.