IN THE SUPREME COURT OF NIGERIA

Suit No: SC288/2000

Petitioner: Alhaja Silifat Ajilowura
And
Respondent: Taofik Disu & 13 Ors

Date Delivered: 2006-07-07

Judge(s): Idris Legbo Kutigi , Sylvester Umaru Onu , Umaru Atu Kalgo , Niki Tobi , Ignatius Chukwudi Pats-Acholonu , Alom

Judgment Delivered

This appeal is against the decision of the Lagos Division of the Court of Appeal which affirmed the ruling of the High Court of Justice, Lagos State. In that ruling the learned trial judge dismissed a motion on notice in which the defendant/appellant had sought the striking out of the action filed by the plaintiff/respondent in which she claimed the following reliefs against the defendants/appellants:-

\"(a) A declaration that the deed of gift dated 17th day of May 1975 purportedly made between Tawakalitu Ajiun, Aminatu Abeke and Momodu Lawani Ishola is null and void and of no effect.

(b) A declaration that the late Momodu Lawani Ishola (father of the 1st and 2nd defendants) had no legal or equitable interest/title in both No. 48, Aroloya Street, Lagos and 60 Smith Street, Lagos.

(c) An Order of Perpetual Injunction restraining the defendants (particularly the 1st and 2nd defendants) either by themselves agents or privies from further interfering in any manner whatsoever and howsoever with the rights of the plaintiff and her co-beneficiaries over the control and management of both 48, Aroloya Street, Lagos and 60, Smith Street, Lagos.

(d) An Order directing, the 3rd to 5th defendants to produce their last rent receipts to the plaintiff and her co-beneficiaries and to desist from further payment of rents to the 1st and 2nd defendants or to any person other than the plaintiff and her co-beneficiaries or their accredited agents.

(e) An Order directing the 1st and 2nd defendants to render account of all rents collected from 48, Aroloya Street, Lagos from October 1979 to October, 1989.

(f) An Order directing the 1st and 2nd defendants to render account of all rents collected from 60 Smith Street, Lagos from October 1979 to the date of judgment.\"

The case put forward by the plaintiff as per her statement of claim is that she and the 1st, and 2nd defendants are the great grand children and grand children of the original owner of the properties in dispute, while the 3rd -14th defendants are tenants. According to her the late Disu Dada was survived by three children, including her grandmother when he died. He devised his real properties which were not specifically devised in his will to her grandmother and Animotu Abeke. Both authorized Momodu Lawani, their brother to collect rents from the properties as their agent for an agreed fee. This arrangement continued until he died. Thereafter his widow and 1st and 2nd defendants took over the collection of the rents, but did not remit same to Tawakalitu Ajiun and/or Animotu Abeke, despite complaints by them. The widow of the late Momodu Lawal and her children, 1st and 2nd defendants claimed that the properties belonged to Momodu Lawal, hence a search was conducted at the land registry where the plaintiff discovered a deed of grant purportedly made between Momodu Lawal and his sisters conveying the properties to him as gift. The plaintiff maintains that this deed of gift was a fraud. Consequently the plaintiff instituted this action.

The defendants did not file a statement of defence, but filed a motion on notice, urging the High Court to strike out the

writ of summons, statement of claim and the plaintiff\'s action for lack of jurisdiction, and that the grounds upon which it was brought was that the plaintiff has no right, capacity or title to institute the action, or alternatively that the action is incompetent. The motion on notice was supported by an affidavit the pertinent depositions of which are as follows:-

\"2. I have perused the Writ of Summons, Statement of Claim and all other processes filed in this action which form part of the records of the Honourable Court.

3. My perusal of the processes revealed that the plaintiffs claim is in respect of the proprietary interest, rents, accounts (amongst other reliefs) relating to the properties known as 48, Aroloya Street, Lagos and 60 Smith Street, Lagos.

4. My perusal of the processes do not reveal the authority which enables the plaintiff to institute this action.\"

Learned Counsel for the two sides made submissions on the motion, and the learned trial judge considered the submissions, and found no merit in the application and dismissed it after observing thus :-

\"If the defendants are desirous of raising the issue of the locus standi of the plaintiff in instituting this action they ought first to file their defence in which that issue is pleaded and thereafter file a notice of preliminary objection to complain about the capacity of the plaintiff to institute this action.\"

Aggrieved by the dismissal of the motion, the defendants appealed to the Court of Appeal on four grounds of appeal. The Court of Appeal found no merit; in the appeal, it dismissed it and affirmed the decision of the trial court. Again, dissatisfied, the defendant appealed to this court on six grounds of appeal from which they distilled two issues for determination in their brief of argument which they exchanged with the plaintiff/respondent and which were adopted at the hearing of this appeal. The appellant issue are as follows:-

\"(a) Were the learned Justices of the Court of Appeal correct when they held that the Appellants ought to have filed a Statement of Defence before raising the preliminary point of locus standi'

(b) Were the learned justices of the Court of Appeal correct when they held that the Respondent had established not only her source of title but also her capacity and locus standi'.\"

A single issue was raised in the respondent\'s brief of argument, and the issue is:~

\"Has the appellants in raising their objection to the plaintiffs capacity or locus standi to institute this action complied with the relevant Rules of court (i.e. High Court of Lagos State) dealing with demurrer' And if No, what is the proper Order this Honourable Court should make in the circumstances'\'\'\'

The appellants filed an appellants' reply brief of argument also. I will adopt the issues in the appellants\' brief and deal with them together, for they are both interwoven.

For reasons best known to the learned Senior Advocate for the appellants, rather than go straight to his arguments and submissions on the appeal in this court, he took a substantial part of the appellants' brief of argument referring to his submissions in the Court of Appeal. The learned Senior Advocate referred to excerpts of the judgment of the lower court which he reproduced in his brief of argument. The various excerpts read:-

\"The crucial question here is the applicable law. There is no doubt that demurrer (sic) proceedings have been abolished in view of clear provision of Order 23 Rule (1) of the High Court Civil procedure Rules of Lagos State. To my mind the applicable law under which a preliminary point of law can be raised is Order 23 rule 2. This is clear from the Supreme Court\'s decision in Lasisi v. Attorney (sic) General of Oyo State (1982) 1 All NLR (Pt. 1) p.24

The Court of Appeal in the case of Otunba Adeniran Ogunsanya v. Chief Dada Ogunsanya (1990) 6 NWLR (Pt. 156) p. 347 of 360, when considering the question whether locus standi can be raised in a motion under Order 22 Rule 4,

Awogu, JCA. had this to say:-

\"The question here is whether locus standi can be raised in a motion under Order 22 Rule 4, as appears to have been done in this case. Although the appellant was said to have been in reply (sic), was the issue of locus standi really before the trial judge on a motion under order 22 Rule 4' I do not think so
.....
Under Rules 2 and 3 therefore an issue of locus standi or jurisdiction may be raised and disposed of. They cannot however be so raised under Rule 4
,.....'

I must say that this position taken in Bambe and Abubakir cases, (supra) on the one hand and the case of Dada v. Ogunsanya (supra) which is much later and current case, I can see conflicting decisions which in principle ought to be resolved in favour of the Supreme Court later cases in Lasisi Dadare v. Attorney-General of Oyo State and Dada v. Ogunsanya (both supra)\".

According to the learned Senior Advocate the justices of the Court of Appeal were in error not only in the conclusions they reached, but their reasoning. He cited the cases of Adegoke .Motors_Ltd. V. Adesanya (1989) 3 NWLR Part 109 page 250, and Adesokan v A..G. Oyo State (1982) All NLR page 26.

Learned counsel for the respondent has argued that the Court of Appeal as well as the High Court were quite in order to dismiss the appellant objection, and that on the authority of Dada v. Ogunsanya supra, this court should hold that the appellants have failed to comply with the mandatory provisions of Order 23 Rule 2 supra. He further submitted that there was nothing to distinguish between the Dada v. Ogunsanya's case supra and the present case, as the appellants are wont to get this court to see. According to him what the Supreme Court did in that case was to settle the law as to the modalities of raising objection on grounds of locus standi and what Rules of Order 23 should be invoked.

Now, I will reproduce the motion on notice which the appellants filed and moved in respect of the kernel of this appeal. It reads:

\"TAKE NOTICE that this Honourable Court will be moved on Monday 31st day of October 1994 at the hour of Nine O\'clock in the forenoon or so soon thereafter as counsel may he heard on behalf of the defendants for an order pursuant to the inherent jurisdiction of the Honourable court striking out the Writ of Summons, Statement of Claim and the plaintiffs action for lack of jurisdiction.

AND FURTHER TAKE NOTICE that the grounds upon which this action is brought is that the plaintiff has no right, capacity or title to institute this action/alternatively the action is incompetent.

AND FURTHER TAKE NOTICE that at the hearing of this application the defendants will rely on all processes filed in this action which form part of the records of the Honourable court.\"

As is obvious on the face of the motion paper supra, the appellants did not state the law or the rules under which they brought the application, but after a year or thereabout of filling the motion, he filed what he described as a notice of intention to rely on the Administration of Estates Law Cap. 2 Laws of Lagos State 1973, which reads :-

\"TAKE NOTICE that at the resumed hearing of the Defendant\'s motion (dated 19/10/94) on Wednesday the 6th December 1995, the defendants will rely on the provisions of Sections 8 and 10 of the Administration of Estate Law Cap. 2 of Lagos State 1973; Order 22 Rule 4 of the High Court of Lagos State Civil Procedure Rules 1972 and the inherent jurisdiction of this Honourable court\".

So when learned counsel moved the application he relied on the above law and rules of procedure when he canvassed his argument. I will reproduce the said rules of order 23 supra hereunder. They are :-

\"No demurrer shall be allowed.

2. Any party shall be entitled to raise by his pleading any point of law and unless the court or judge in chambers otherwise orders, any point so raised shall be disposed of by the judge who tries the cause at or after the trial.

3. If, in the opinion of the court or a judge in chambers, the decision of such point of law substantially disposes of the whole action or of any distinct cause of action, ground of defence, set off, counter'claim, or reply therein, the court or judge may thereupon dismiss the claim, or reply therein, the court or judge may thereupon dismiss the action or make such other order therein as may be just.

4. The court or judge in chambers may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or judge in chambers may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

5. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby and the court may make binding declarations of right whether any consequential relief is or could be claimed, or not'

The defendants/appellants predicated their objection on Rule 4 of Order 23 supra, which relates to reasonable cause of action. The processes which the defendants/appellants sought to strike out at that stage of proceedings were the writ of summons and statement of claim and at that stage a statement of defence had not been filed by the defendants. It is pertinent at this juncture that I peruse the statement of claim, and reproduce the relevant averments. The material paragraphs in the statement of claim are :-

\"2. The plaintiff is a great grandchild of late Disu Dada, the original owner of the properties known as 48, Aroloya Street Lagos and 60, Smith Street, Lagos which are the subject matter of this suit.

3. The 1st and 2nd defendants are grand children of late Disu Dada through late Momodu Lawani Ishola.

5. The late Disu Dada was survived by three (3) children viz: Tawakalitu Ajiun (grandmother of the plaintiff herein). Animolu Abeke and Momodu Lawani Ishola.

6. The plaintiff avers that late Disu Dada, the original owner of the properties which are the subject matters of this suit as averred in paragraph 2 above, died testate. The plaintiff shall at the hearing of this suit rely on the will.

7. By his will, late Disn Dada devised his real properties which were not specifically devised under the Will (i.e. the properties which are the subject matters of this suit) to Tawakalilu Ajiun and Animotu Abeke with a direction to the executor of the will to collect the rents and share same equally between the two beneficiaries.

8. By the same will Momodu Lawani Ishola (father of the Ist and 2nd defendants) was to be given the sum of two shillings and six pence and nothing more for reason therein contained.

9. On the death of late Disu Dada, Tawakalitu Ajiun and Animolu Abeke started collecting rents from the two properties but both later agreed that Momodu Lawani Ishola should be collecting the rents as their agent for an agreed fee.

10. Momodu Lawani Ishola continued to collect the rents from the tenants of both properties as his sisters's agent and remitting same to them until the 3rd day of October 1979 when he died.

11. On the death of Momodu Lawani Dada his widow, Alhaja Amudalat Disu (now deceased) and the 1st and 2nd defendants took over the collection of rents from both properties but without remitting same to Tawakalitu Ajiun and/or Animotn Abeke both of whom survived their brother. This situation continued despite serious complaints by Tawakalitu Ajiun, Animotu Abeke and the plaintiff amongst others.

12. When the situation persisted, the plaintiff advised the tenants of the properly known as 48 Aroloya Street, Lagos to stop paying rents to Alhaja Amudalat Disu (widow of the late Momodu Lawani Ishola) and the 1st and 2nd defendants and the tenants co'operated with the plaintiff.

13. Consequent upon the position averred in paragraph 12 above, Alhaja Amudalat Disu instituted an action against two of the tenants in suit No. 8/89 for arrears of rent.

14. The plaintiff on becoming aware of suit No. 8/49 applied to the court to be joined as a third party so as to be able to protect her interest in the property (her grandmother Tawakalitu Ajiun having died in 1980 intestate). The application was granted as prayed.

15. However, suit No. 8/89 was abandoned by Alhaja Amudalat Disu due to the joinder of the plaintiff which made it clear to the court that she (i.e. Alhaja Amudalat Disu) had no interest in the said property.\"

The plaintiff by paragraph (2) above has shown her interest in the properties in dispute by tracing her relationship to the original owner of the property. In subsequent, averments she traced the ownership of the properties to her grand mother who inherited the properties from the original owner of the properties i.e Disu Dada, and how the properties came under the control of her uncle who was the father of the 1st and 2nd defendants. The refusal of the widow of her uncle and the 1st and 2nd defendants to release the properties to her mother and her aunt to whom the properties were devised by the said Disu Dada. She has disclosed that by virtue of her mother\'s interest in the properties, she also has and can claim vested interest in the properties over which she is entitled to the rents accruable from them. At that stage of the proceedings she has definitely established that she had locus standi to sue the defendants for her interest in the properties that are subject of controversy.

Now, at that stage, the only way the defendants/appellants could challenge the capacity or locus of the plaintiff to sue them would have been to file a statement of defence which will meet the averment in the statement of claim headlong and disclose her incompetence to file the suit. Without the statement of defence there was no way the judge could have been able to determine the issue of locus standi in the circumstance. Although in determining the locus standi of a party, a careful perusal of the statement of claim will suffice. In a case where the opponent is challenging the capacity of a party to sue i.e its locus, as in this case, a statement of defence is very necessary. I think even if it is not so provided in the rules of the High Court, common sense dictates that a statement of defence should be filed, in order to assist the court in deciding the competence of the case before it, for the consequence of striking out a suit may be grave on a plaintiff. See Imade v. Military Administrator, of Edo State 2001 6 NWLR part 709 page 478. The objection raised is that of law, being one of jurisdiction. By virtue of Rule 1 of order 23 of the Lagos State High Court Civil Procedure Rules supra demurrer has been abolished, and so the course open to the defendants would have been to file a statement of defence raising the objection as I have indicated above. It is in this vein that I agree with the learned trial judge when he held as follows in his ruling:-

\"It is premature at this state for the defendants to raise an issue of law while they have not yet filed their statement of defence in which they are enjoined by law to raise that issue of law first before filling an application to set that down for hearing, before trial.\"

Learned SAN for the appellants in attacking the reproduced excerpts of the judgment of the court below reproduced an excerpt in the Adegoke\'s case supra in his brief of argument. I will in this judgment reproduce the portion of the judgment in the case of Chief Gani Fawehinini v. Nigerian Bar Association and Ors (No.2) 1987 2 NWLR Part.105 page 558 which the learned Justice of the Supreme Court reproduced in the said Dada v.Ogunsanya (both supra). It reads :-

\"Our law is the law of the practitioner rather than the law of the philosopher. Decisions have drawn their inspiration and their strength from the very facts which framed the issues for decisions. Once made, these decisions control future judgments of the courts in like or similar cases. The facts of two cases must either be the same or at least similar before the decision in the earlier case can be used in a later case, and even there, merely as a guide. What the earlier decision

established is only a principle, not a rule. Rules operate in an all or nothing dimension. Principles do not. They merely incline decisions one way or the other. They form a principium or a starting point. Where one ultimately lands from that starling point will largely depend on the peculiar facts and circumstance of the case in hand.\"

On the strength of the principle propounded in the Adegoke's case supra the learned SAN has argued that it is only if the same or similar issue was contested in Lasisi Fadare's case, can the case be relevant to their case in the Court of Appeal, and he submitted that the Lasisi Fadare's case is not relevant to their case. According to him the facts and issues in Lasisi Fadare\'s case are different from the instant case, for whereas a statement of defence was filed in that case, none was filed in the instant case. He further submitted that the Lasisi Fadare's case did not decide that a preliminary point of law such as locus standi cannot be raised without filing a statement of defence, contrary to the view taken by the Court of Appeal, because no such issue arose or was decided in that case. The issue contested in Fadare\'s case was the propriety of the court entertaining a preliminary point raised under order 22 rule 2 of the High Court of Western Nigeria Civil Procedure Rules after a statement of defence had been filed, instead of taking, evidence. He however concedes that the case of Madu v. Ononuju (1986) 3 NWLR part 26 page 23 bears some relevance to the issue in this appeal, but has submitted that since it is a decision of the Court of Appeal which decided the same issue differently from Bambe's case it must give way to Bambe's case under the doctrine of precedent.

In reply learned counsel for the respondent has argued that the Lasisi Fadare and Madu\'s Ononuju\'s cases are relevant to this appeal. The learned SAN reiterated his earlier argument that the Lasisi Fadare\'s case is not similar to the instant one in the appellants\' reply brief, submitting that Lasisi Fadare\'s case interpreted the provisions of order 22 rules 2 and 3 of the High Court (Civil Procedure Rules) of Western Nigeria, which is not in pari materia with the provisions of the Lagos State High Court Civil Procedure Rules under consideration. The former rule states the following :-

\"2. Any party shall be entitled to raise in his pleadings any point of law and any points so raised shall be disposed of by the Judge who tries the case at or after the trial provided that by consent of the parties or by order of the court or a Judge on the application of either party the same may be set down for hearing, and disposed of at any time before the trial\".

(Underlining mine).

The heavy weather sought to be made of the above underlined added to the rule, which is not contained in the Lagos High Court Rules, is not necessary, for to my mind and for all intent and purposes, it does not affect the substance of the provision. The important and pertinent part of the provision is the first part of it which is in pari materia with Rule 2 of Order 23 of the said Lagos State High Court Rules. The distinction the learned SAN, is trying to draw between the Lasisi Fadare\'s case and the instant case on the point that pleadings had already been filed in the Fadare\'s case, whereas none has been filed in the instant case is not tenable, for the kernel of the legal position in both cases is the stage at which such preliminary objections can be raised when the issue involved is a point of law, and the issue raised in the present case is that of law, as it is the issue of locus standi as is disclosed in paragraph (4) of the appellants affidavit in support of motion for striking out. Being an issue of locus standi, the preliminary objection should have come by way of order 23 Rule 2 and not Rule 4 under which the learned SAN for the appellants came in the trial court. That being the case, the decision of Kawu JSC in the case of Dada v. Ogunsanya 1992 3 NWLR part 232 page 754 is illuminating. In the judgment the learned justice considering the position of the law, as regards the concept of locus standi and how lack of it can be raised said :-

\"It is settled law that locus standi is the legal capacity to institute an action in a court of law - Thomas v. Olufosoye (1986) 1 NWLR (Part 18) 669, and if a person had no legal standing to institute an action, the court will have no jurisdiction to entertain his claims. See Madukolu v. Nkemdili (l992) I Ail N,L,R,.587 at 595, (1962) 2 SCNLR 341. The main question raised in issues 1 and 2 for determination in this appeal is whether the issue of locus standi, which is admittedly an issue of law, can properly be raised under Order 22, Rule 4 of the High Court of Lagos Slate (Civil Procedure) Rules, 1972 (supra). I think the Court of Appeal, in its judgment fully dealt with the matter and, in my view, correctly construed the provisions of the Rules when in its judgment it stated as follows :-

\"The question here is whether locus standi can be raised in a motion under Order 22 Rule 4, as appears to have been done in this case. Although the appellant was said to have been heard in reply was the issue of locus standi really before the trial judge on a motion under Order 22 Rule 4' I do not think so.
....\".

It is clear from the strength of the reproduced excerpt of the Dada\'s case supra, that the motion in this case was brought and moved under the wrong rule of the Lagos State Civil Procedure Rules, having held that the objection was on locus standi, and not lack of reasonable cause of action. Rule 2 of Order 23 supra is as clear as crystal on the modality of raising an issue of law, which it states should be by pleadings, and the pertinent question to be asked is, if the appellants failed to file a statement of defence stating their objection, would they be said to have adopted the correct modality' I think not. The argument canvassed at length by learned Senior Advocate for the appellants on the distinction between the case of Dada v Ogunsanya supra and the instant case to my mind is, with due respect of no consequential value, as whatever differences exist are minor and do not go to the root of the purport of the applicable rules of court reproduced supra.

Indeed, even in a later decision of this court the germane principle in the case of Lasisi Fadare v. Attorney- General of Oyo State was re echoed, as is encapsulated in the case of Madu v. Ononuju 1986 3 NWLR Part 26 page 23 as follows:-

\"In my opinion that will be bringing back the old demurrer in a different form. But demurrer has been expressly abolished in Bendel and the Western states. The procedure adopted by Mr. Agbakoba can, no doubt be adopted in the Eastern States of Nigeria under Order XXIX of the High Court Rules as well as in the Federal High Court under Order 27 of the Federal High Court Rules. In those courts, the defendant can take a point of law before filing his defence and if he fails, pleadings will be ordered
.....

The situation in Lagos, Bendel and the Western Slates has been summarized by Nnamani, J.S.C. in Lasisi Fadare and Ors v. Attorney General of Oyo State (1982) 4 S.C. 1 where he said

.....
\"It seems to me that having regard to this a close look at the wording of Order 22 Rule 2 shows that it envisages a situation in which pleadings have been filed by both parties and issues joined. The issues can be disposed off by the trial judge at or after the trial.\"

On this interpretation of the rule which is binding on this court, it appears quite clear to me that the learned SAN for the appellants was clearly mistaken in the procedure he has adopted.

I think the Court of Appeal was perfectly right in adopting and applying the principle in the Fadare\'s case supra for the issues in the cases are similar, as they dealt with demurrer. The principle in Fadare\'s case is very much alive.

Learned SAN in further treating the issue, canvassed further argument that there is no conflict between the cases of Bambe v. Aderinola, and Abubaki v.Smith supra relied upon by learned counsel, and the present case, as expressed by the court below. It is a fact that in the former case this court held the contrary, on appeal against the dismissal of the suit by the learned trial judge upon the application of the defendant/respondent in that case seeking an order to dismiss the suit on the ground that the plaintiffs were not proper parties before the court. The crucial view of this court in that case reads thus:

\"In construing the provisions of Rule 1, it will be wrong to ignore the provisions of Rules 2 to 4. Order 22 is similar to Order 25 of the Rules of the Supreme Court applicable in England in 1963. Order 22 not only abolishes demurrers but substitutes a mere summary process for getting rid of pleadings which show no reasonable cause of action. (1963. The Annual Practice, page 571). As the objection taken in the instant case could, if upheld, dispose of the whole action, we are of the view that it comes within the ambit of Order 22. We find ourselves unable to support the view expressed by the learned trial judge that the objection was premature

.....
unless the necessary and proper plaintiffs are before the court, it will be futile to proceed to adjudicate on the issues in controversy as the action cannot be regarded as being properly constituted.\"

Methinks there is distinction between the facts of the above reproduced case, and the Bambe\'s case, and the Lasisi Fadare\'s case and the instant case, most especially the Abubakir case.

Learned SAN has urged the court to apply previous decision in Bambe v. Aderinola as being the only relevant decision to the issue in this appeal and hold that it was not obligatory for the appellants to have filed a statement of defence before complaining about the plaintiff's locus standi. He referred to order 6 Rule 5 (4) of the Supreme Court (as amended) which states thus:-

\"(4) If the parties intend to invite the court to depart from one of its own decisions, this shall be clearly stated in a separate paragraph of the brief, to which special attention should be drawn, and the intention shall also be restated as one of the reasons'

Drawing inspiration from the above rule of this court, the learned SAN has urged the court to depart from and overrule Dada v. Ogunsanya in the event that this court comes to the conclusion that Bambe\'s case conflicts with the decision in Dada\'s case supra, for the following reasons which he stated in his brief of argument :-

(a) Bambe\'s case was not considered or cited in Dada v. Ogunsanya;

(b) No arguments on the issue involved in this appeal were canvassed in Dada\'s case so that no assistance was received by the court from counsel before reaching its decision;

(c) The issue involved in this appeal was the only issue in respect of which argument were fully canvassed and which formed the basis of decision in Bambe\'s case;

(d) A proper construction of Order 22 Rule 2 of the High Court of Lagos State (Civil Procedure) Rules only suggests that a point of law may be raised as on entitlement in the pleading, it does not impose a duty on a defendant to raise such a point of law on his pleading.

Learned counsel for the respondent has submitted that juxtaposing or placing side by side the principles of law or the position taken by this court in such cases as Abubakir and Bambe\'s cases supra, on the one hand and that of Dada a much later and current case, a clear conflict would have been made, but then there is no conflict at all. It is learned counsel\'s argument that the appellants have not given reasons why this court should not follow the principles in Lasisi Fadare\'s case, and why there should be such a departure. Learned counsel referred to the cases of Eperokun v. University of Lagos (1986) 4 NWLR Part 34 page 162, and Adisa V. Oyinwola (2000) 9 NWLR part 674 page 116.

Looking at the cases relied upon by the learned SAN very carefully, coupled with the analysis of them on the premise of the excerpts reproduced supra, there is no gainsaying that there is no conflict whatsoever. Before cases can manifest conflicts or establish such, the facts and issues must be similar. The issue of the abolition of demurrer was the pivot of the cases and their decisions are virtually based on that. But then, whether or not there was conflict does not detract from the fact that in an application like the one before the trial court, in which certain facts have to be resolved, a statement of defence becomes absolutely necessary. Mere affidavit evidence are not enough to establish such issue as has given rise to this appeal, As a matter of fact the supporting affidavit of the motion that sought to strike out the suit did not contain much that will persuade any judge to grant the prayer sought therein. In order to do justice to the case, pleadings should have been completed, and the objections raised therein. In other words, all facts would have been put on the table if the defendants/appellants had filed their statement of defence to enable the trial judge ascertain and determine whether in fact the plaintiff/respondent had locus standi. That the court below used the word 'conflicting' in the lead judgment is no big deal, the most important thing is that it gave strength to the later and more recent cases of Lasisi Fadare v. Attorney- General of Oyo State and Dada v. Ogunsanya supra which it relied upon and adhered rightly to the principles therein. As for the departure from the Dada\'s case supra sought by the appellants, the reasons given by them

are not compelling enough to persuade this court to depart from or to overrule the said Dada v. Ogunsanya\'s case. That Bambe\'s case was not considered or cited in Dada\'s case is of no consequence. The same goes for reasons (b) - (d) reproduced above given by the appellants in their brief of argument. This court will not depart or overrule its earlier decisions at the whims and caprices of a party as such exercise is not automatic. The party must convince the court that it is necessary to do so and in the process furnish it with cogent reasons. In the instant case the appellants have failed to do so, and so they cannot succeed on this score. The law is settled on this. See Tewogbade v. Obadina (1994) 4 NWLR part 338 page 326, and Odi v. Osafile (1985) 1 NWLR, part 1 page 17.

For the foregoing reasons I resolve the two issues supra in favour of the respondent and dismiss all the grounds of appeal. The end result is that the appeal fails in its entirety. It has no merit at all and it is dismissed. It is hereby ordered that the case be remitted to the High Court of Lagos State, where pleadings will be completed. The costs of N10,000.00 is awarded to the respondent, against the appellants.

Judgement delivered by
Idris Legbo Kutigi, J.S.C.

The Defendants/Appellants have asked this Court to overrule its decision in Dada v. Ogunsanya (1992) 3 N.W.L.R. (PT. 232) 754 because according to them it conflicts with our earlier decisions in Bambe & Ors v. Aderinola & Ors. (1977) All N.L.R. 5 and Fadare & Ors v. Att. Gen. of Oyo State (1982) All N.L.R. 26. I have read the three eases and I am unable to find any conflict between Dada v. Ogunsanya (supra) on one hand, and Fadare v. Att. Gen. of Oyo State (supra) and Bambe v. Aderinola (supra) on the other hand. There is no doubt, demurrer proceedings have been abolished in view of the clear provision of Order 23 Rule I of the High Court Civil Procedure Rules of Lagos State. I think it is settled that the issue of locus standi or jurisdiction being a point of law cannot properly be raised under Order 23 Rule 4 as was done by the Appellants in this case. However, the issue may be raised under Rules 2 & 3 by pleadings. The Plaintiffs/Respondents have sufficiently demonstrated by pleading in paragraphs 2-14 of their Statement of Claim that they have locus standi to sue. The Defendants/Appellants can only effectively challenge them by filing their own pleadings, i.e the Statement of Defence and joining issues with them. They cannot be permitted to revive demurrer which has since been buried, through the back door. I think the Court of Appeal was right in its decision.

I have had the privilege of reading in advance the judgment just delivered by my learned brother Mukhtar, JSC. I agree with her conclusion that the appeal is without merit. It is dismissed with costs as assessed. The case is sent back to the trial High Court for the Defendants/Appellants to file their pleadings and for the trial to proceed. I endorse the order for costs.

Pronouncement by
Idris Legbo Kutigi. J.S.C.
(Presiding)

Pursuant to Section 294(2) of the Constitution of the Federal Republic of Nigeria

Hon. Justice I. C. Pats-Acholonu who participated with us in the appeal agreed at our Conference to dismiss the appeal.

Judgement delivered by
Sylvester Umaru Onu, J.S.C.

1 have read before now the judgment just delivered by my learned brother Mukhtar, JSC. I am in entire agreement with her that the appeal lacks merit and must perforce fail.

Accordingly, I dismiss the appeal with an order that the ease be sent back to the trial High Court for the

Defendants/Appellants to file their pleadings and for the trial to proceed with similar costs as awarded in the Court below.

Judgement delivered by
Umaru Atu Kalgo, J.S.C.

I have read in draft the leading judgment of my Lord Mukhtar JSC in this appeal. I entirely agree with the reasoning and conclusions reached therein which I fully adopt as mine. My Lord Mukhtar has painstakingly dealt with the issues which arose in the appeal and I have nothing useful to add thereon. I am also satisfied that there is no merit in the appeal. I therefore dismiss the appeal with costs as assessed in the leading judgment.

Judgement delivered by
Niki Tobi, J.S.C.

I have read in draft the judgment delivered by my learned brother, Mukhtar, JSC, and I agree that the appeal should be dismissed. The respondent as plaintiff instituted a suit in the High Court of Lagos State by a writ of summons and Statement of Claim. The appellants as defendants, without filing statement of defence, raised an objection by a motion on notice on the competence of the respondent to initiate the action. The appellants questioned the locus standi of the respondent.

The learned trial Judge dismissed the motion on the ground that the appellants ought to have filed a statement of defence. He also held the view that the respondent had disclosed her interest as a beneficiary of the estate of her great grand-father and so had locus standi. An appeal to the Court of Appeal was dismissed. That Court also affirmed the decision of the trial Judge. The Court also held that \"the respondent as an individual member of the late Disu Dada\'s family can sue to protect her interest in the family and the family properly.\" This is a further appeal by the appellants. Briefs were filed and duly exchanged. Mukhtar, JSC, has adequately taken the arguments of counsel and I need not set them out as in the brief unless necessary for my purpose.

The only issue I will take is Issue No. 1 of the appellants\' brief and it is whether the learned Justices of the Court of Appeal were correct when they held that the appellants ought to have filed a statement of defence before raising the preliminary point of locus standi. Two decisions of this Court have taken the centre stage in this appeal. They are Bambe v. Alhaji Aderinola (1977) All NLR 5 and Dada v Ogunsanya (1992) 3 NWL.R (Pt. 232) 754.

Learned Senior Advocate for the appellants submitted that the case of Dada v. Ogunsanya relied upon by the trial Judge that a statement of defence must be filed before locus standi can be raised does not apply as the case did not decide that issue. To learned counsel, the decision applicable is that of Bambe v. Alhaji Aderinola. Learned counsel for the respondent used Dada v Ogunsanya as it relates to compliance with the relevant Rules of the High Court of Lagos State. He relied on the decision of Kawu, JSC, in respect of Oder 22 Rule 14 of the High Court of Lagos State (Civil Procedure) Rules, 1972.

The learned trial Judge invoked the decision in Dada in the same context when he said at page 14 of the Record:

\"Locus standi is a fundamental issue that the lack of it by the plaintiff dispossesses the court of the jurisdiction to entertain the action. It is beyond question that the issue of locus standi is a point of law. That being so it is clear to me that the issue of locu standi cannot be raised in a motion. See Dada v. Ogunsanya (1992) 3 NWLR (Pt. 232 page 754 paragraphs 6 to 11 per Kawu JSC where he had this to say inter alia...'

With respect, this Court did not say in Dada as credited to it by the trial Judge that the issue of locus standi being a point of law cannot be raised in motion. This Court made a specific statement in respect of specific Order and rule of the High Court of Lagos State (Civil Procedure) Rules, 1972. And it is Order 22 Rule 4 thereof. There was no such blanket

statement as made by the learned trial Judge.

The Court of Appeal in its judgment of 23rd November, 2000 credited the following statement to Kawu, JSC at page 13 of the Record:

'The issue of locus standi, being a question of law cannot be raised in a motion under Order 22 Rule 4 of the High Court of Lagos State (Civil Procedure) as the said Order 22 Rule 4 deals with the striking out of claim and pleadings where no reasonable cause of action or answer is disclosed or where the action is shown to be frivolous or vexatious.'

Immediately after the above, the Court of Appeal said:

\"Applying the above judicial decision to the present one, it can be said that the learned trial judge was right in dismissing the Appellant\'s preliminary objection as same clearly transgressed Order 22 Rule 2 and 3.\"

I searched in vain in the Law Report where Kawu, JSC made the above statement credited to him. The learned Justice did not make such a statement. I see the problem and it is this. The Court of Appeal lifted the first six lines of ratio (3) at page 757 of the Report and credited the statement to page 771 thereof. Apart from the fact that there is no such statement at page 771 of the Report, the lead judgment, of Kawu, JSC ended at page 765. It is the concurring judgment of Omo, JSC that extended to page 771. And even then, the statement quoted by the Court of Appeal is not at page 771 though Omo, JSC used the words \"frivolous\" and \"vexatious\".

And what is more, Dada did not decide that a statement of defence must be filed before locus standi can be raised. I therefore agree entirely with learned counsel for the appellants that the case is \"therefore inapplicable.\"

And that takes me to the second case. It is the case of Bambe v. Alhaji Aderinola. It is an earlier decision of this Court. In that case, after pleadings were ordered, the plaintiffs filed their Statement of Claim and served the defendants. The defendants did not file a defence. The 1st to 7th defendants filed an application contending that the plaintiffs had no competence to bring the action. The learned trial Judge dismissed the application. He said at page 8 of the Report:

\"There can be no doubt that the application is in the nature of a demurrer and cannot be allowed until pleadings are completed.\"

In allowing the appeal, the Supreme Court, per Madarikan, JSC, said:

\"The main points canvassed before us on behalf of the appellants posed the following question: was the learned trial Judge right in the view he has undertaken that the application was in the nature of a demurrer, and that by virtue of Order 22 Rule 1, it could not be allowed until pleadings were completed. '. We find ourselves unable to support the view expressed by the learned trial Judge that the objection was premature.\"

Although the case had to do with proceedings in lieu of demurrer, it is apposite and relevant to this case. In demurrer proceedings, the defendant is deemed to have admitted the averments in the Statement of Claim. Similarly, in the procedural concept of locus standi the defendant relies on the statement of claim and urges the court to strike out the matter on the ground that the statement of claim does not donate locus standi to the plaintiff. In both processes, the averments in the statement of claim are the final arbiter, if I may use that expression unguardedly.

The Court of appeal held that the decisions in the two cases are in conflict and the court made some efforts to resolve the so-called conflict by favouring the later decision of this Court in Dada. With respect, I do not see any conflict between Bambe and Dada. If there is any, it is caricatured and not real. The issues in the two cases are different. Apart from the factual differences, Bambe had nothing to do with the decision of the High Court and the Court of Appeal that a defendant must file a statement of defence before raising objection on locus standi. That was the issue in Dada.

This Court is conscious of its final appellate status and the need to correct itself in appropriate cases. This does not mean that it must respond to litigants who make applications to set aside a judgment of the Court on grounds of alleged

conflict. Cases are built on facts and facts, being the fountain head of the law, are mostly different in each case. In view of the fact that decisions are made on facts and not in vacuo or in a vacuum, this Court must be convinced that its decisions are in conflict to enable it resolve the position in the interest of stability of the common law of Nigeria. I do not see any conflict in the two decisions and so the choice of dropping one of them is not available to this Court.

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 (1977) 3 NWLR (Pt. 493) 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 Owodunmi v. Registered Trustees of Celestial Church of Christ (2000) 10 NWLR (Pt. 675) 315, this Court held that the question whether or not a plaintiff has locus standi in a suit is determinable 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.

I have thoroughly examined the statement of claim and I am satisfied that the respondent as plaintiff has the locus standi to institute this action, she being a member of Late Disu Dada\'s family. I too therefore dismiss the appeal. I award N10,000.00 costs against the appellants.

Judgement delivered by
Francis Fedode Tabai, J.S.C.

I have read in draft the leading judgment of my learned brother Mukhtar JSC and I agree with the conclusion that the appeal be dismissed.

The settled principle of law is that it is the Statement of Claim that determines a Plaintiffs locus standi to sue. This principle is restated in Global Transport Oceanico S. A. & Anor v. Free Enterprises Nigeria Ltd (2001) 5 NWLR (Part 706) 426 at 443; Elendu v Ekwoaba (1995) 3 NWLR (Part 306) 704.

It is also settled principle that the Plaintiff must, in the Statement of Claim disclose sufficient interest or threat of injury to enable him to invoke the judicial process. See Professor T. M. Yusufu v. Governor of Edo State and Visitor Edo State University & Ors (2001) 13 NWLR (Part 731) 517 at 533; Adesanya v. The President (1981) 2 NCLR 358; Adefulu v Oyesile (1989) 5 NWLR (Part 122) 377.

In this case the Plaintiff asserts in the statement of claim that she is a great grandchild of the original owner of the property late Disu Dada. She asserts that on his death, late Disu Dada was survived by three children amongst them Tawakalitu Ajiun her grandmother. The totality of the assertions in the Statement of Claim shows that she has an interest in the properties in dispute. The consequence is that she has the necessary locus standi to sue.

For this and the fuller reasons contained in the judgment, of my learned brother, Mukhtar. JSC, I also dismiss the appeal for lack of merit. The case should be remitted back to the trial court for parties to conclude their pleadings and trial to commence. I also assess the costs of this appeal at N10,000.00 against the Appellants.