

J-K Gadzama & PARTNERS

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OUR TRIBUTE TO A PUBLIC INTEREST LITIGATOR PER EXCELLENCE!



INTRODUCTION

Public Interest Litigation, as the name implies, is litigation for the protection of public interest which is instituted not necessarily by the aggrieved party but by any other private person for public interest. It is the power given to the public through judicial activism.

There are countless situations where the victim to a violation does not have the necessary resources either due to poverty, socially or economically disadvantaged position to commence litigation or instances where his freedom to move the Court has been suppressed or encroached upon. In such cases, litigation can commence on the petition of any Public spirited individual who is acting bonafide for public good and not meddlesome interlopers, busybodies, wayfarers or officious intervenors having no public interest but for gain either for themselves or for the glare of publicity.

The traditional rules of proceedings in the adversarial system of law permit only a person whose rights are directly affected to approach the Courts for relief. Likewise, under the common law, a person claiming the writ of **mandamus** had to show that he was enforcing his own personal right and no one else's.

In Nigeria, Court procedures are drawn from the Anglo-Saxon system of jurisprudence. The bulk of the Nation's citizenry are unaware of their legal rights, much less in a position to assert them. The guarantee of fundamental rights and principles enshrined in the Constitution would have remained empty promises for the majority of illiterate and indigent citizens under adversarial

proceedings if the system only permitted those whose rights are directly affected to approach the Courts. It is therefore the foregoing that has crystallized into the need for Public Interest Litigation which is a conscious attempt to transform these promises into reality.

It is trite to note that, in certain cases the legal process tends to intimidate the litigant who feels alienated from the system, likewise, a poor person who enters the legal stream whether as a claimant, witness or party may well find the experience traumatic as a result of the prohibitively expensive and utterly intimidating nature of the legal process.

Similarly, the way the Bar has developed gives issues of legal aid and legal awareness a low priority, thus ensuring that the lawyer is the only route of access to the legal system.

Nevertheless, after all is said and done, many public interest cases have been lost or dismissed in Nigeria as a result of some limitations/challenges, one of which is the issue of **locus standi** (legal standing to sue).

It is interesting to note that in the history of judicial activism in Nigeria, the names of some lawyers and human rights activists would continue to linger on, they include Chief Gani Fawehinmi SAN, Sir Olisa Agbakoba SAN, Femi Falana, Ayo Obe, Prof. Itse Sagay SAN, Tokunbo Ige, Dr. Tunji Abayomi, Mike Ozekhome, Festus Keyamo, Festus Okoye, amongst several others.

The efforts of these great Nigerians have been thwarted by the legal principle that espouses that anyone suing or challenging any act must have sufficient interest, thus perpetuating what many activists have described as "judicial passivism" which in turn encourages government officials to perpetually indulge in corrupt and anti-people ventures knowing fully well that cases instituted to challenged such acts would not see the light of day.

One individual that stood tall in judicial activism and a public interest litigator of no mean repute was the legal colossus, Chief Abdul-Ganiyu Oyesola Fawehinmi who while symbolizing the legal profession in Nigeria

approached it with a rare sense of commitment and passion. A man of incorruptible disposition, a walking encyclopedia, an unsurpassable contributor to legal jurisprudence, he practised, wrote and published law. The Nigerian Weekly Law Reports which he founded in 1986, a must read for every lawyer is unprecedented in innovation, style, content, regularity and accuracy. He ensured that generations of lawyers had books and Law reports to work with.

Chief Fawehinmi was extraordinarily energetic, unbelievably courageous, highly uncompromising and puritanically committed. He displayed an individualism that sometimes annoyed his fellow lawyers but despite that, they had a deep and profound respect for his Court performances, his legal and forensic talents and the tenacious and uncompromising way he pursued and crusaded his beliefs, principles and ideals for the rule of law.

One of his most notable fights, which set a broader standard of review for **locus standi** in subsequent legal intervention (in which he would have been shut out for not possessing the requisite legal interest to sustain the action) was the mysterious killing of Nigerian's leading newspaper editor Dele Giwa by a parcel bomb in 1986. While the Nation wailed and cried for justice, the State was not interested in prosecuting the suspected marauders, but Chief Gani Fawehinmi, the most eloquent advocate for Public Interest Litigation instituted the action. In **Chief Gani Fawehinmi V Akilu & Anor** (1987) 2 NSCC 1265, which action was to compel the Director of Public Prosecution (DPP) of Lagos state to charge to Court, Col. Halilu Akilu and Lt. Col A. K Togun (both top security officers in General Babangida's junta) for conspiracy to murder and the actual murder of Dele Giwa.

Subsequently, in the hearing of the suit, one of the principles of law that came up for determination before the Supreme Court was the extent or nature of **locus standi** of individuals in criminal prosecution, Obaseki JSC who read the lead judgment said:

*“ There have been cases where brother assaults or kills brother, cases where a father assaults or kills his son, where a son kills his father, where a husband kills his wife and where a wife kills her husband, if consanguinity of blood relationship is allowed to be the only qualification for **locus standi**, then crimes such as listed above, will go unpunished and may become the order of the day ad destabilize society. Can it be said that the death of Dele Giwa is not a sad and bitter loss to his friend, lawyer and confidant as it is to his family? The right of private persons to initiate criminal proceedings is not a new creation, it has existed from colonial times and even before colonial times... The answer to the second question therefore in my view is in the affirmative, that is that the appellants has **locus standi**”.*

Fawehinmi V Akilu (supra) hatched the brother's keeper theory in Nigeria, giving the law on **locus standi** a human face.

Interestingly, as a measure of one man's impact on his society, the same General Ibrahim Babangida described Fawehinmi as the most outstanding and consistent human rights activist that Nigeria has produced. Little wonder that the masses dubbed him the “Senior Advocate of the Masses (SAM) long before he was made a Senior Advocate of Nigeria (SAN) in 2001.

Chief Gani Fawehinmi symbolised different things to different people, he was a man for whom silence was never an option, who became the very loud conscience of about 160 million Nigerians, for whom no tyrant was too big to be challenged. He was the undisputed champion of the interests and causes of the underdog.

By and large, Chief Gani contributed in no small way to laying down judicial principles, a case in point is **FALOBI V FALOBI**, where he was Counsel for the appellant and the issue before the Court was the propriety or otherwise of a Court to hear oral evidence where there are conflicts in an affidavit.

It was Chief Fawehinmi's contention at the Court of Appeal that, the trial judge was erroneous in acting on conflicting affidavits without directing parties to call for oral evidence. Thereafter, the Supreme Court held that:

“When a Court is faced with affidavits which are irrevocably in conflict, the judge hearing the case, in order to resolve the conflict properly, should first hear oral evidence from deponents or such other witnesses as the parties may be advised to call.”

CELEBRATED CASES

His Public Interest Litigation cases include but are not limited to the following:

- Chief Gani Fawehinmi -V- Akilu & Anor.
- Chief Gani Fawehinmi -V- N.N.P.C & Ors
- Chief Gani Fawehinmi -V- Central Bank of Nigeria (CBN) & Ors.
- Chief Gani Fawehinmi -V- Shonekan; which was an action challenging the Interim National Government (ING) which IBB handed over to rather than returning to democracy after 1993.
- Chief Gani Fawehinmi -V- General Sani Abacha; which was an action challenging the unconstitutional and disappropriate composition of the Provisional Ruling Council by General Abacha.

- Chief Gani Fawehinmi -V- General Abdulsalam & 7 Ors, an action that sought a declaration that it constituted an abuse of power contrary to S.15 (5) of 1979 constitution for the Federal Military Government to increase or allow the increase of fuel price.
- Chief Gani Fawehinmi & Ors. -V- General Abdulsalami Abubakar & Ors, which sought to compel Abdulsalami & General Ibrahim Babanginda to render full accounts to the Court of all expenses incurred by both the Federal and State Government and their Agencies in and out of Nigeria from 1st Jan 1986 to August 1998.
- Chief Gani Fawehinmi & 5 Ors. -V- AG of Federation & Ors, for a declaration that the Electoral Act 2001 was unconstitutional, null and void and that the proviso to S.80 (1) of the said Act was not passed by the National Assembly.
- Chief Gani Fawehinmi -V- President Olusegun Obasanjo, where he sought a declaration that the remuneration of former heads of State was outrageous.

Admirably, his human rights exertions were well recognized the world over and in 1993, he won the Bruno Kreisky Prize for Human Rights Advocacy. Subsequently in 1996, he won the American Bar Association Award for Human Rights and in 1998 he was awarded the Bernard Simons Memorial Award of the International Bar Association (IBA). He was the first black African and third recipient of the coveted award.

A man of conscience, he rejected the highest honour that can be bestowed on a citizen by the Nigerian government - Order of the Federal Republic, (OFR) in 2008 to protest misrule since independence.

Consequently, it appears there is little any one can do to immortalize Chief Fawehinmi because he placed himself in the consciousness of most Nigerians by embodying the truism that law should be used as a tool for social engineering and should reach the people rather than the people reaching the law. The wave of emotion that swept Nigeria on the news of his death, the evocation of eulogies since his transition to immortality and the statements across the political spectrum is an indication of his wide popularity.

CONCLUSION

Bearing in mind the power and importance of Public Interest Litigation in making the provisions of the Constitution a living reality for a large number of citizens, there is need for a shift in the centre of gravity of justice from the traditional individualism of **locus standi** to the community orientation of Public Interest Litigation. Therefore, certain issues of procedural jurisprudence as

they relate to access to justice for the people beyond the blinkered rules of “**locus standi**” of British import have to be considered.

Furthermore, Nigeria has so much to learn from India in the area of Public Interest Litigation and do away with the principle of **locus standi** in cases involving public interest. This if done, will be the most appropriate way to immortalize this great legal icon who has changed the course of legal practice in Nigeria and charted a new path in legal jurisprudence for others to follow.

Adieu Chief, may we find more of your kind in the hallowed Chamber of our calling.

News from the Firm

It is with profound joy and a sense of achievement the Counsel in Chambers and all Staff of the Firm congratulate the Principal Partner, Chief Joe-Kyari Gadzama (SAN) on the successful completion of the training course at the Institute for Public-Private Partnerships, (IP3) North Kent, Arlington, USA in September, 2009, which led to the award of a Certificate of Achievement in PPP.

BAR NEWS

1. **Section on Public Interest and Development Law (SPIDEL) Workshop on Child's Rights Act.**
Date: Tuesday, 1st December, 2009.
Venue: Uyo, Akwa Ibom State.
2. **National Executive Council (NEC) Meeting, Nigerian Bar Association.**
Date: Wednesday, 9th - Friday, 11th December, 2009.
Venue: Enugu, Enugu State.
3. **The Common Wealth Regional Law Conference, 2010.**
Date: Sunday, 8th - Thursday, 11th April 2010.
Venue: Abuja, Nigeria.
4. **Inter Pacific Bar Association, 20th Annual Conference.**
Date: Sunday, 2nd - Wednesday, 5th May 2010.
Venue: Singapore.
5. **International Bar Association (IBA) Conference.**
Date: Sunday, 3rd - Friday, 8th October, 2010.
Venue: Vancouver, Canada.

PHOTO NEWS:



The Principal Partner receiving a Certificate of Achievement from the Institute of Public-Private Partnerships (IP3) in September, 2009 at North Kent, Arlington, USA.

PHOTOS FROM THE RECENTLY CONCLUDED 2009 IBA CONFERENCE IN MADRID, SPAIN.



Representatives from the Firm of Messrs J-K Gadzama & Partners, at the IBA Conference in Madrid, Spain. From Left to right, D.H. Bwala Esq., Prof. Bolaji Owasanoye, A.C.Ozioko Esq., Chief Gadzama, SAN.



Chief Gadzama, SAN with Nigeria's Ambassador to Spain, Mr. Obed Wazani and the Ambassador's daughters in Madrid, Spain.



Babatunde Raji Fashola SAN, Governor of Lagos State (left), Chief Gadzama SAN (right), behind them is Hon. Babatunde Ogala, Chairman, House Committee on Judiciary, Lagos State House of Assembly, at the just concluded IBA Conference 2009.



Former Inspector General of Police, Mr. Sunday Ehindero, Former Director Legal, Mr. M. A. Abubakar, former Attorney-General of the Federation and Minister of Justice, Chief Bayo Ojo, SAN, Chairman, SPIDEL, NBA, Chief Gadzama, SAN at Santander Golf Course in Madrid, Spain at the just concluded IBA Conference.

PARTNERS IN THE FIRM

- (1) CHIEF JOE-KYARI GADZAMA MFR, SAN, FCIArb.
- (2) PROFESSOR BOLAJI OWASANOYE
- (3) ALHAJI RASHEED O. YUSUF ESQ., ACIArb.
- (4) LAWAN ABANA ESQ., ACIArb.
- (5) TOYIN UKO, ESQ., ACTI
- (6) ABEL C. OZIOKO ESQ.

Established in 1989 JK Gadzama & Partners is one of Nigeria's leading law Firms with a diverse portfolio of public and private sector clients and national and international transaction experience.

DISCLAIMER: The information contained in this Newsletter is not legal advice. Please consult a lawyer for legal assistance.

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