

PRAGMATIC DIFFERENCES AND INTERSECTIONS BETWEEN JUSTICIABILITY AND COMPETENCE IN THE ADJUDICATORY PROCESS IN NIGERIA

Prof Obiaraeri, N. O.^{1*}

^{1*} Faculty of Law, Imo State University, Owerri, Nigeria.

* **Correspondence:** Prof Obiaraeri, N. O.

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ABSTRACT: Adjudication without jurisdiction is a nullity. Justiciability and competence otherwise called locus standi are two of the many factors that can rob the Court of its jurisdiction. Although these two concepts are different, they are often misunderstood to mean the same thing. Deploying the doctrinal research method, this paper considered statutory provisions and judicial decisions on the concepts of justiciability and competence and found that while justiciability relates to the adjudicatory power of the Court over the matter, competence relates to the capacity of the person maintaining the suit. To resolve this quagmire, it was recommended that when objection to jurisdiction is taken, Counsel must be clear on which leg the objection is standing in order to assist the trial Court determine whether objection is taken as to the justiciability or competence or locus standi of the party as this will enhance both the speed and transparency of adjudicatory process.

Keywords: *competence, locus standi, justiciability, jurisdiction*

1.0 Introduction

It is not unusual in legal circles to mistake or confuse the meaning of the terms “justiciability” and “competence”. A

matter is justiciable if it is proper to be examined in a Court of law whereas competence or locus standi denotes “the legal capacity to institute or commence an action in a Court of law or tribunal”. While a non-justiciable matter remains incompetent because it cannot be adjudicated upon by the Courts, not all justiciable matters presented before a Court are competent as the party presenting the matter may not be possessed of the requisite locus standi. Resolving this conundrum often presents very serious problems in the adjudicatory process. The aim of this paper is to elucidate the practical differences and intersections between these two closely related but different concepts. To achieve this objective, relevant statutory provisions and judicial decisions handed down by the superior Courts will be examined as they affect both concepts. For ease of understanding, the paper is thus divided into segments to examine the following: meaning or import of justiciable/justiciability; the meaning or import of competence; pragmatic differences and correlations between justiciability and competence; recommendations and the way forward; and conclusions.

2.0 Meaning or import of justiciable/justiciability

As earlier pointed out, there is a general misconception about the two different concepts - justiciability and competence. Although both of them attach to or relate to the jurisdiction of the Court, they do not mean one and the same thing. In *Ufomba v INEC*,ⁱ it was held, per Ogunbiyi, JSC, held that “The word justiciable is defined at page 944 of the Black's Law Dictionary Ninth Edition thus- ‘A case or dispute properly brought before a Court of justice: capable of being disposed of judicially.’” As held in *Adekoya v Jakande & Ors*,ⁱⁱ a suit or matter is justiciable if it is proper to be examined in Courts of justice. Thus, a suit or matter that is not proper to be examined by the Court is not justiciable. The concept of non-justiciability is best illustrated by the provision under *paragraph (c) of subsection 6 of section 6* of the Nigerian Constitution 1999 as amended which provides as follows:

“(6) The judicial powers vested in accordance with the foregoing provisions of this section-

... (c) shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.”

The notion or idea that Chapter II provisions are not justiciability means that the Courts cannot adjudicate on or interpret any provisions on rights contained therein. By reason of the foregoing, only the fundamental rights provided for in the fourth Chapter of the Nigerian Constitution, 1999 as amended are expressly justiciable. For the avoidance of doubt, these are- (i) Right to life in *section 33*; (ii) Right to dignity of human person in *section 34*; (iii) Right to personal liberty in *section 35*; (iv) Right to fair hearing in *section 36*; (v) Right to private and family life in *section 37*; (vi) Right to freedom of thought, conscience and religion in *section 38*; (vii) Right to freedom of expression and the press in *section 39*; (viii) Right to peaceful assembly and association in *section 40*; (ix) Right to freedom of movement in *section 41*; (x) Right to freedom from discrimination in *section 42*; (xi) Right to acquire and own immovable property anywhere in Nigeria in *section 43*; and (xii) Right to “prompt payment of compensation upon compulsory acquisition of property” in *section 44*. In the case of *Hectares Konsorts Ltd & Anor v Lower Benue River Basin Development Authority & Ors*,ⁱⁱⁱ it was held that a cause of action arises under the fourth Chapter of the Constitution as amended when a person alleges that any of the fundamental rights constitutionally provided for and to which he is entitled, has been, is being, or is likely to be infringed. An aggrieved person is entitled to seek legal redress and recover appropriate remedies (which includes pecuniary damages) if the court finds that his fundamental rights have been infringed.” This was also the earlier decision in the case of *Diamond Bank v Opara & Ors*.^{iv}

Put differently, it is not all matters that are ripe to be tried or inquired into in Court justiciable.^v In *Uwazuruonye v Governor of Imo State & Ors*,^{vi} Rhodes-Vivour, JSC, expounded on what a justiciable matter is as follows:

“A justiciable matter is one in which the plaintiff has a cause of action therefore where cause of action is lacking, the issue cannot be justiciable. Courts only consider justiciable issues or controversy and do not bother spending precious judicial time with hypothetical disputes or one that is academic or moot. See *Oyeneye v Odugbesan* (1972) 4 SC 244, *Okulate v Awosanya* (2000) 2 NWLR (Pt. 646) 530, *Bakare v A.C.B. Ltd* (1986) 3 NWLR (Pt. 26) 47, *Bamgboye v UNILORIN* (1999) 10 NWLR (Pt. 622) 290.”

Furthermore, what is meant by justiciable interest was explained by Obaseki, JSC in *Afolayan v Ogunrinde*^{vii} as follows: “(1) a cause of complaint; (2) civil right or obligation fit for determination by a Court of law; (3) dispute in respect of which a Court of law is entitled to invoke its judicial powers to determine under *section 6(6)(b)* of the 1999 Constitution.” This line of reasoning was followed, per Wambai, JCA, in *Akoma & Ors v Onwusibe*.^{viii} Finally, a right is justiciable when it is capable of being legally enforced when it is derived from the existence of reciprocal rights, duties and obligations between the parties created by statute as held in *Obu & Ors v SPDC Ltd & Anor*.^{ix}

Another of example of non-justiciable matter is a statute barred suit which robs the Court of its jurisdiction. Generally speaking, “jurisdiction is a threshold issue and the case of a plaintiff that has been caught up by a statute of limitation ought not to be accepted, adjudicated upon and determined by a Court”. For example, the Imo State Limitation Law, 1994 is a statute of limitation and its *section 3* makes specific provisions relating to maximum timeline allowed for recovery of land thus: “No action shall be brought by any person to recover land after the expiration of ten years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims, to that other person.” A “statute of limitation” was interpreted by the in the case of *Aremo II v Adekanye*^x as “the statute which prescribe period of limitation for instituting certain actions and regulate subsistence of cause of action”.

From the body decided cases the following can be surmised as some of the effect of a statute barred action namely:

(a) Where a statute prescribed a period within which an action must be commenced, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Where an action is statute barred, a Plaintiff who might otherwise have a cause of action loses the right to enforce it by judicial process because, the period of the time laid down by the limitation for instituting such an action has elapsed. Proceedings cannot be instituted after the limitation period. In *Nigerian Ports Authority Plc v Lotus Plastics Ltd*,^{xi} it was held that “it is trite that where the law provides for the bringing of an action within a prescribed period in respect of a cause of action accruing to a plaintiff, proceedings shall not be brought after the time prescribed by the statute had expired”. Under *section 3* of the Imo State Limitation Law, 1994, “any suit brought for recovery of land after the expiration of ten years from the date on which the right of action accrued is null and void”. A suit determined without jurisdiction is waste of precious time of court.

(b) A suit brought outside a statutorily limited period is statute barred. It attacks the jurisdiction of the Court and can be raised at any stage of the trial. In *Amaechi & Ors v Ayozie*,^{xii} it was raised and upheld on appeal by a Defendant/Appellant who was adjudged unsuccessful in the High Court.

(c) If for any reason a Plaintiff is deprived or deprives himself of his cause of action by reason of his non diligence in ventilating his grievance in court, he no longer has a cause of action and if he eventually comes to court on the same set of circumstances, it will not disclose a cause of action. As held in *Aremo II v Adekanye*,^{xiii} “any suit instituted under such circumstances where the Plaintiff has lost the right to enforce his perceived rights therefore discloses no cause of action”.

(d) Jurisdiction is a threshold issue as held in *Okumagba v Egbe*,^{xiv} *Argungu v Argungu*^{xv} and *A-G Federation v Abacha*.^{xvi} In *Humbe v A-G Benue State*,^{xvii} it was reiterated that "once it is established that an action is statute barred, it is beyond the jurisdiction of the Court to hear and determine same. This is because jurisdiction is a threshold matter. It is the live wire of the matter before the Court. It has been

variously described as the blood, live wire, or threshold of an action before the Court. It strikes at the root of every case before the Court. Unless the Court is vested or clothed with the appropriate jurisdiction to hear and determine a matter, the beauty, eloquence, excellence, the industry invested in the conduct, adjudication and judgment in the matter is wasted judicial investments, dead *ab initio*".^{xviii}

3.0 Meaning or import of "competence"

In pragmatic terms, "competence" means "adequate fitness or ability, legal capacity, power jurisdiction." This was the decision in *Abiola & Ors v INEC & Anor*.^{xix} Competence is another term or usage for *locus standi* which is a Latin phrase that means sufficient interest. In this paper, they are used interchangeably. The term "*locus standi*" denotes legal capacity to institute proceedings in a court of law. It is used interchangeably with terms like "standing" or "title to sue". The requirement of *locus standi* is mandatory as the judicial power is constitutionally limited to the determination of a "case" or controversy or a "matter" which is defined by reference to criteria which include the legal capacity of the parties to the litigation." The requirement is not a product of judicial expedience and public policy. It is trite that "there can be no adjudication of a suit on the merit where there is no jurisdiction or competence on the part of the trial Court to hear and determine the matter".^{xx} *Locus standi* denotes the legal capacity to institute or commence an action in a competent Court of law or tribunal. *Locus standi* is the legal right of a party to an action to be heard in litigation before a Court of law or tribunal. The term entails the legal capacity of instituting or commencing an action in a competent Court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever. The issue of *locus standi* is a condition precedent to the determination of a case on merit. Where a Plaintiff has no *locus standi* to bring a suit, the suit becomes incompetent and the Court lacks the jurisdiction to entertain it, the only order the Court can make in the circumstance is that of dismissal.^{xxi} The law is fairly settled that without *locus standi*, which is "the legal capacity of a party to institute an action in a Court of law", the Court is robbed of "jurisdiction to hear and determine any claim/action". *Locus standi* and jurisdiction are interconnected. Stressing the importance of jurisdiction, Bello, CJN (as he then was) held in *Utih & Ors v*

Onoyivwe & Ors^{xxii} that “jurisdiction is blood that gives life to the survival of an action in a court of law and without jurisdiction, the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise.”

Where a party lacks *locus standi* in a matter, the Court by implication, will be bereft of the requisite competence to decide on the matter. In *Council of Legal Education v Dange & Ors*,^{xxiii} Uwa, JSC, explicated the intricate connection as follows:

“*Locus standi* and jurisdiction are interwoven in the sense that *locus standi* goes to affect the jurisdiction of the Court before which an action is brought. Thus, where there is no *locus standi* to file an action, the Court cannot properly assume jurisdiction to entertain the action. *Locus standi* being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal by any of the parties without leave of Court or by the Court itself *suo motu*. The issue can be raised, after the plaintiff has duly filed his pleadings by a motion and or in a statement of defence. *Locus standi* to institute proceedings in a Court is not dependent on the success or merits of a case; it is a condition precedent to the determination of a case on the merits. *Owodunni v Registered Trustees of C.C.C* (2000) 6 SC (Pt. III) 60, *Madukolu v Nkemdilim* (1962) 2 SCNLR 314, *Klifco v Holfmann* (1996) 3 NWLR (Pt.435) 276.”

It is not unusual for justiciability to be mixed up with competence, but they do not mean one and the same thing. The Court of Appeal, per Ngwuta, JCA, in *Adedolapo & Ors v The Military Administrator of Ondo State & Ors*^{xxiv} clearly illuminated this when it held as follows:

“I think learned Counsel for the respondents mixed up two different concepts - justiciability and competence. A suit or matter is justiciable if it is proper to be examined in Courts

of justice. See *Oluyemi Adekoya v L. K. Jakande & Ors* (1978) ICCHJ 115 at 127. On the other hand, "competence means adequate fitness or ability, legal capacity, power jurisdiction" See *Uwaifo v A-G. Bendel State & Ors* (1982) 7 SC 124 at 212 & 284; (1983) 4 NCLR 1.

A matter cannot be described as not justiciable just because there is non-compliance with the prescribed conditions and procedure for bringing it before the Court. Such matter may be incompetent but yet justiciable on compliance with conditions and procedure for invoking the jurisdiction of the Court. In the appeal before the Court, I will proceed on the premise that the appellants' suit is attacked on ground of defect in procedure as distinct from defect in competence. See *Unibiz (Nig.) Ltd. v CBCL* (2001) 7 NWLR (Pt. 713) 534."

4.0 Pragmatic differences and correlations between justiciability and competence

Having explained the respective meanings of justiciability and competence/locus standi, it remains to articulate their correlations and differences in practical terms. Arguably, the first consideration before presenting a matter in Court is to determine whether the matter is justiciable. This means, whether the issue in contention is one the Court can properly adjudicate upon. Thereafter, the next consideration should be the competence of the party seeking to sue or be sued. In *Thomas & Ors v Olufosoye*,^{xxv} it was decided, per Obaseki, JSC, that "competence or *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 inherent in justiciability. The fundamental aspect of *locus standi* is that it focuses on the party seeking to get his complaint before the court not on the issues he wishes to have adjudicated. Justiciability relates to the adjudicatory power of the Court over the matter while competence relates to the capacity of the person bringing the matter to Court."

With respect to correlation or intersection, both justiciability and competence attach to “the jurisdiction of the Court”. Importance of jurisdiction in the process of adjudication cannot be overemphasised. As held in *Obu & Ors v SPDC Ltd & Anor*,^{xxvi} “it is no longer a moot point that the question of jurisdiction is of absolute importance in adjudicatory process. It is the life wire in any adjudication. Where there is no jurisdiction to hear and determine a matter, everything done in such want of jurisdiction is a nullity.” On the authority of the old classical decision in *Madukolu & Anor v Nkemdilim*,^{xxvii} “the Court has a duty to do away with the congestion of cases filed before it particularly where those cases are frivolous. The action has not disclosed a reasonable cause of action and the facts disclosed are not justiciable.”

Furthermore, the consequences that flow from adjudication where the suit is either non-justiciable or there is no competence or *locus standi* are the same as adjudication without jurisdiction which aggregate or amount to waste of precious judicial time and a nullity. Furthermore, where a suit is either non-justiciable or there is no *locus standi* to file an action, the Court cannot properly assume jurisdiction to entertain the action. These being issues of jurisdiction, they can be raised at any stage or level of the proceedings in a suit even on appeal by any of the parties without leave of Court or by the Court itself *suo motu*. The issue of locus standi is a condition precedent to the determination of a case on merit. Where a plaintiff has no *locus standi* to bring a suit, the suit becomes incompetent and the Court lacks the jurisdiction to entertain it, the only order the Court can make in the circumstance is that of dismissal as held in *Mohammed v NDIC*.^{xxviii} In the same wise, a suit maintained in Court without being justiciable is also liable to be dismissed.

5.0 Recommendations and way forward

The foregoing detailed analysis has revealed that it is important that when objection is being taken or about to be taken “on the jurisdiction of a Court to adjudicate over a matter”, Counsel must not mix up the two different concepts - justiciability and competence. Hence, it is recommended that Counsel must be clear on which leg the objection is standing in order to assist the trial Court in determining whether objection is being taken as to the propriety of the subject matter of the suit

(justiciability) or competence or *locus standi* of the party before the Court. It is further recommended that during the process of adjudication, the *judex* should also take note of the cardinal differences between the two concepts although the consequences of non-justiciability and lack of locus or competence is to rob the Court of jurisdiction. In all cases, a suit or matter is justiciable if it is proper to be examined in Courts of justice while competence means adequate fitness or ability, legal capacity, power jurisdiction.

6.0 Conclusion

The differences between justiciability and competence or *locus standi* are practical and should be clearly noted in the adjudicatory process. Although both attach to the jurisdiction of the Court, it will be wrongful to predicate or mistake an objection that attacks the jurisdiction of the Court based on justiciability with one that attacks the jurisdiction of the Court based on lack of competence or *locus standi*. Jurisprudential elegance will compel a clear understanding of these juridical differences as vividly espoused in this paper. It remains good law that litigation is not a matter of planting mines to deceive the opponent with a view to destroying his case undeservedly *in limine*. On the contrary, litigation is a process where the parties set out their cases frankly and fully for the determination of the court. A trickish and miserly presentation of a client's case is not part of good advocacy. Tobi, JSC, in *Newswatch Communications Ltd v Atta*^{xxix} admonished that “Litigation is not a game of chess where players outwit themselves by dexterity of purpose and tricks, rather, it is a contest by judicial process where the parties place on the table of justice facts relied on and reliefs sought.”

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^v For further reading, see NO Obiaraeri, *Denatured Human Rights in Nigeria- A new normal is Possible*, (Owerri, Imo University Press, 2024).

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