OBITER DICTUM OR RATIO DECIDENDI? EXAMINING ENVIRONMENTAL RIGHTS IN CENTRE FOR POLLUTION WATCH (COPW) V NIGERIAN NATIONAL PETROLEUM CORPORATION (NNPCL)*

Abstract

The Supreme Court's decision in Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation has generated sustained debate within Nigerian environmental jurisprudence regarding the precedential status of the Court's pronouncements on the justiciability of the right to a clean and healthy environment. This debate has been amplified by the recent English decision in Bille & Ogale, which treated Opara v. Shell as reflecting the authoritative Nigerian position and characterised the Supreme Court's environmental rights analysis in COPW as obiter dicta, on the premise that the sole issue before the Court was locus standi. This article challenges that characterisation. Through a close doctrinal examination of the judgments in COPW, including both the lead and concurring opinions, it argues that the Supreme Court's engagement with environmental degradation as a threat to life, health, and human survival was not incidental but constituted the indispensable reasoning upon which locus standi was expanded. By grounding standing in the enforceability of constitutional and statutory obligations under sections 33 and 20 of the 1999 Constitution, the Oil Pipelines Act, and Article 24 of the African Charter on Human and Peoples' Rights, the Court necessarily affirmed the justiciability of environmental rights. The article concludes that these findings form part of the ratio decidendi of COPW and[1] represent the current and binding position of Nigerian law on environmental rights and public interest standing.

Keywords: *Ratio Decidendi*, *Obiter Dictum*, Justiciability of Environmental Right, *Amicus Curiae*, Lead Judgment, Concurring Judgment

1. Introduction

Environmental degradation arising from oil exploration and production has long posed profound challenges to human health, livelihoods, and legal accountability in Nigeria. In oil-producing communities, contamination of land and water resources has generated persistent disputes not merely over environmental protection, but over the extent to which environmental harm attracts constitutional protection and judicial enforcement. Central to these disputes are questions of justiciability, that is, whether a claimed right is of such a legal character as to be capable of adjudication and enforcement by a court of law, rather than being confined to the realm of policy or moral aspiration. The judicial trajectory toward recognising environmental protection as a justiciable component of fundamental rights in Nigeria commenced with *Gbemre v. Shell Petroleum Development Company (Nig.) Ltd*[2], where the Federal High Court held that gas flaring violated the constitutional rights to life and dignity of the human person, as well as Article 24 of the African Charter on Human and Peoples' Rights. By treating environmental degradation as directly impairing enforceable rights under Chapter IV of the Constitution, *Gbemre* marked a significant doctrinal shift. However, this trajectory suffered a major

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[2] (2005) AHRLR 151 (NgHC 2005).

setback a decade later in *Opara v. Shell Petroleum Development Company*[3], where the Court of Appeal rejected that rights-based approach, holding that environmental claims could not, through judicial creativity, be subsumed within the catalogue of justiciable fundamental rights. *Opara* thus reinstated a restrictive conception of environmental rights and re-entrenched uncertainty as to their enforceability. It was against this unsettled jurisprudential background that the Supreme Court decided *Centre for Pollution Watch v. Nigerian National Petroleum Corporation* (*COPW*)[4]. The case arose from an action instituted by a non-governmental organisation seeking, inter alia, the restoration of the Ineh and Aku streams, the sole sources of water for the Acha Autonomous Community in Abia State, following an oil spill allegedly caused by the respondent's negligence. The appellant further sought medical intervention for affected residents, contending that the respondent failed to prevent or contain pollution it knew to be dangerous to ecosystems and human health. The suit was struck out at first instance, and the dismissal affirmed on appeal, solely on the ground that the appellant lacked locus standi.

On further appeal, the Supreme Court was called upon to determine a single issue: whether the appellant possessed the requisite locus standi to maintain the action. Sitting as a full panel of seven justices and assisted by amici curiae, the Court unanimously allowed the appeal. In doing so, it expressly linked environmental pollution to the constitutional rights to life and dignity under section 33 of the 1999 Constitution, read together with section 20 of the Constitution and Article 24 of the African Charter. The Court reasoned that conduct which threatens the health of a community necessarily threatens life itself and therefore engages enforceable constitutional guarantees. Notwithstanding the clarity of this reasoning, *COPW* has been criticised on the basis that its pronouncements on environmental rights constitute mere obiter dicta, that is, judicial observations made in the course of reasoning but not essential to the decision and therefore lacking binding authority. By contrast, the ratio decidendi of a case refers to the legal principle or rule of law that is necessary for the decision and upon which the outcome depends; it is this element of a judgment that binds lower courts within the judicial hierarchy. The contention that *COPW* falls into the former category rests on the premise that locus standi, rather than environmental rights, was the sole issue before the Court.

This debate has been further sharpened by the recent decision of the English court in *Bille & Ogale*, which treated *Opara v. Shell* as the most authoritative statement of Nigerian law and characterised the Supreme Court's environmental rights analysis in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* as non-binding. This approach has since been echoed by the Nigerian Court of Appeal in *National Human Rights Commission v. NNPCL*[5], where *Opara* was similarly relied upon as authoritative, notwithstanding the intervening and superior decision of the Supreme Court in *COPW*. Such a characterisation risks artificially severing the doctrine of locus standi from the substantive legal interests it exists to protect and departs from long-established judicial principles governing standing and precedent. As this article demonstrates, the Supreme Court's expansion of standing in *COPW* was explicitly anchored in its determination that environmental degradation engages enforceable constitutional and statutory rights. That determination was neither collateral nor gratuitous; it supplied the normative and juridical foundation upon which the Court's conclusion on standing necessarily rested and therefore forms part of the ratio decidendi of the case. Through a doctrinal analysis of both the lead judgment and the concurring opinions, this

[3] (2015) LPELR-24798 (CA).
[4] (2019) 5 NWLR (Pt. 1666) 518 (SC).
[5] (Unreported Suit No. CA/A/864/18), Judgment delivered on the 18 July 2025 by Hon. Justice Okon Efreti Abang, JCA at Court of Appeal, Abuja Division.

article contends that *COPW* articulates the current and binding position of Nigerian law on the justiciability of the right to a clean and healthy environment, marking a decisive recalibration of constitutional jurisprudence with far-reaching implications for public interest litigation, environmental accountability, and the protection of community rights.

2. *Ratio Decidendi* vs *Obiter Dictum*: Unpacking the Difference

A proper appreciation of the controversy surrounding the Supreme Court's decision in COPW necessarily requires a clear understanding of the doctrinal distinction between ratio decidendi and obiter dictum. This distinction is not merely academic; it determines whether a judicial pronouncement constitutes binding law or persuasive commentary. The classification of the Supreme Court's findings on the justiciability of the right to a clean and healthy environment therefore turns on whether those findings formed the legal foundation upon which the case was decided or were incidental observations made in passing. In Nigerian jurisprudence, ratio decidendi has been consistently defined as the principle of law upon which a court's decision is founded. It is the legal reasoning that resolves the issues joined by the parties and leads directly to the outcome of the case. Because it is essential to the decision, the ratio decidendi possesses binding force under the doctrine of *stare decisis* and serves as precedent in subsequent cases with similar facts. Conversely, obiter dictum refers to statements or observations made by a court which, though contained in the judgment, are not necessary for the resolution of the dispute before it and therefore lack binding authority. This distinction was succinctly articulated by Omokri, J.C.A. in *Duke v. Global Excellence Communications Ltd*[6], where His Lordship stated that ratio decidendi is 'the principle of law upon which a particular case was decided,' while obiter dictum consists of comments 'not necessary for the determination of the case under consideration.' The Court emphasized that while ratio decidendi binds future courts, obiter dictum does not. Similar affirmations appear in *Afro-Continental (Nig.) Ltd. v. Ayantuyi*[7], *Rossek v. A.C.B. Ltd.*[8], and *Haruna v. Modibbo*[9].

The Supreme Court has further clarified that ratio decidendi is not to be extracted from isolated statements in a judgment but must be distilled from the issues submitted for determination and the facts upon which those issues were resolved. In *United Bank for Africa Ltd. v. Stahlbau GMBH & Co.*[10], the Court held that the ratio of a case 'is determined on considerations of the issues in the dispute between the parties and the facts pleaded and found in support of the contention of the issues.' Reinforcing this position, Ogunbiyi, J.S.C. in *Ogbolosingha v. B.S.I.E.C.*[11] described ratio decidendi as 'the rule of law on which the Court's decision is founded,' cautioning that judgments must always be read in the context of the facts and issues that necessitated the decision. Equally important is the principle that opinions expressed on matters upon which no issue was joined by the parties amount to obiter dictum. As held in *Bamgboye v. University of Ilorin*[12], such opinions cannot ground an appeal precisely because they do not form part of the decision-making core of the judgment. This underscores the functional test for identifying ratio decidendi: Was the legal proposition necessary for resolving the issue before the court? If the answer is in the affirmative, the proposition is ratio; if not, it is obiter. Applying these settled principles, the question in *COPW v. NNPC* is not whether the

[6] (2007) 5 NWLR (Pt. 1026) 81 at 115.
[7] (1995) 9 NWLR (Pt. 420) 411.
[8] (1993) 8 NWLR (Pt. 312) 382.
[9] (2004) 16 NWLR (Pt. 900) 487.
[10] (1989) 3 NWLR (Pt. 110) 374 at 402.
[11] (2015) 6 NWLR (Pt. 1455) 311 at 343.
[12] (1999) 10 NWLR (Pt. 622) 290.

Supreme Court discussed environmental rights, but whether its pronouncements on the justiciability of the right to a clean and healthy environment were indispensable to resolving the issue of locus standi. Locus standi is not determined in a vacuum; it depends on whether the subject matter of the litigation implicates legally enforceable interests. Where a claimant's standing is predicated on the infringement or threatened infringement of constitutional or statutory rights, the court must necessarily determine the nature, scope, and enforceability of those rights before it can decide whether the claimant has standing to sue. This doctrinal reality exposes the weakness of the argument that the Supreme Court's treatment of environmental rights in *COPW* was merely *obiter*. If the Court could not have expanded locus standi without first recognizing that environmental degradation threatens life, health, and human dignity in a manner cognizable under the Constitution and relevant statutes, then such recognition cannot be dismissed as incidental. Rather, it becomes part of the legal reasoning that sustained the decision.

It is against this conceptual framework that the central question of this article arises: having regard to the established meanings of *ratio decidendi* and *obiter dictum*, are the Supreme Court's findings on the justiciability of the right to a clean and healthy environment in *COPW* characterised as obiter dicta, or do they constitute the ratio decidendi of the case? The analysis that follows, through a careful examination of the reasoning of each of the seven Justices who constituted the panel, seeks to demonstrate that these findings were not peripheral reflections but formed the juridical backbone of the Court's decision. Before turning to that judicial analysis, however, it is necessary to examine the foundational arguments that shaped the Court's engagement with environmental justiciability. Central to this foundation were the submissions of one of the amici curiae invited by the Supreme Court, A.B. Mahmoud, SAN, whose intervention crystallised the human rights implications of environmental degradation and provided the analytical lens through which the Court approached the issue.

3. A. B. Mahmoud, SAN: Laying the Foundation for Environmental Justiciability

The decision of the Supreme Court in COPW represents a seminal moment in Nigerian environmental and constitutional jurisprudence. Although the formal issue before the Court concerned the appellant NGO's locus standi, the Court's engagement extended far beyond a technical procedural inquiry. It was deeply rooted in the substantive implications of environmental degradation and its impact on constitutionally protected rights, most notably the right to life guaranteed under section 33 of the Constitution of the Federal Republic of Nigeria 1999. Recognizing the limitations of the orthodox doctrine of locus standi, which traditionally confines access to court to individuals demonstrating personal injury, the Supreme Court invited five distinguished amici curiae to provide insight into public interest litigation in environmental matters: Wole Olanipekun, SAN; Adegboyega Awomola, SAN; A.B. Mahmoud, SAN; Lucius C. Nwosu, SAN; and Dayo Apata, Solicitor-General (Federation). Among them, A.B. Mahmoud, SAN, proved particularly instructive in articulating the normative and constitutional foundations for expanding standing to NGOs acting on behalf of affected communities. Mahmoud SAN structured his submissions under distinct but interrelated themes. Under the heading 'Court's duty to protect the environment,' he invoked Sections 16(2), 17(2)(d), 17(3), and 20 of the Constitution, emphasizing that the State bears a constitutional obligation to safeguard and improve the environment. He also highlighted the domestication of the African Charter on Human and Peoples' Rights under the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[13], situating environmental protection within the broader framework of human rights obligations enforceable by Nigerian courts.

[13] Cap. A9, LFN 2004

Turning to 'A case for Non-Governmental Organizations (NGOs) in Environmental Protection,' Mahmoud SAN argued that NGOs should be permitted to sue to seek redress for environmental degradation where affected communities lack the means to litigate. He submitted that the Court should adopt a holistic or 'community reading' of the Constitution, guided by Section 13 and reinforced by judicial precedents such as *Okogie and Ors v. Attorney-General, Lagos State*[14], which suggest that certain provisions of Chapter II may be rendered justiciable where linked to enforceable rights or statutory obligations. The Court established that while Chapter II provisions are generally non-justiciable, they may, in certain circumstances, inform the interpretation of enforceable rights or statutory obligations. Mahmoud SAN further drew attention to Section 17(4) of the Oil Pipelines Act, made pursuant to Sections 13 and 20 of the Constitution, noting that it provides the statutory framework for environmental protection in oil pipeline operations. He explained that the Oil and Gas Pipeline Regulations, particularly Regulation 9(a)(ii), (b)(ii), and (b)(iii), require license holders to institute mechanisms for accident prevention, environmental remediation, and control of accidental discharges. He also cited Section 14, which prohibits the deposition of materials in water that diminish its domestic use, and Sections 11(5) and 19–22, which provide for compensation to affected persons.

In Mahmoud SAN's submission, the legislature had already satisfied its constitutional obligation to protect the environment under Sections 13 and 20, leaving the judiciary to operationalize and enforce these obligations. He urged the Court to effectuate these constitutional provisions by applying the Oil Pipelines Act and to resist rigid adherence to the restrictive doctrine of locus standi. Through this detailed exposition, Mahmoud SAN provided the Supreme Court with the jurisprudential anchor to recognize environmental harm as a violation of human rights and to justify expanding standing for NGOs. His submissions laid the foundation upon which the Court approached the substantive question of environmental justiciability, transforming what might have been a narrow procedural inquiry into a precedent-setting affirmation of the link between human rights, environmental protection, and public interest litigation.

A full bench of the Supreme Court, comprising seven Justices, Walter Samuel Nkanu Onnoghen, C.J.N (as he then was, Presiding), Chima Centus Nweze, J.S.C. (Lead Judgment), Musa Dattijo Muhammad, J.S.C., Kumai Bayang Aka'ahs, J.S.C., Kudirat Motonmori Olatokunbo Kekere-Ekun, J.S.C. (now the CJN)., John Inyang Okoro, J.S.C., and Ejembi Eko, J.S.C., heard the appeal, underscoring the profound importance of the matter and the foundational principles at stake. The panel, both directly and indirectly, adopted the perspective advanced by A.B. Mahmoud, SAN, and developed their respective analyses from that foundation, emphasizing that environmental degradation constitutes a direct threat to constitutionally protected rights, particularly the right to life under Section 33 of the Constitution. In doing so, the Court affirmed that extending locus standi to the appellant NGO was not a mere procedural concession but a critical component of the ratio decidendi, anchoring the decision firmly in substantive constitutional and environmental law.

The above foundational understanding sets the stage for a detailed examination of each Justice's reasoning, illustrating how their opinions collectively reinforce the justiciability of environmental rights and the legitimacy of extending public interest standing to NGOs and other concerned actors.

[14] (1981) 2 NCLR 337.

4. Examination of the Supreme Court's Reasoning

Chima Centus Nweze, J.S.C. (Delivering the Lead Judgment)

Justice Nweze's lead judgment supplies the decisive jurisprudential basis for the Supreme Court's extension of locus standi in *COPW v. NNPC*. Although the appeal turned formally on standing, his Lordship's reasoning makes clear that locus standi was resolved through a substantive engagement with environmental degradation and the legal consequences of its impact on public and community interests. Central to this reasoning were the submissions of the amici curiae, particularly A.B. Mahmoud, SAN, who drew the Court's attention to the constitutional and statutory foundations of environmental justiciability. Justice Nweze accepted the submission that the appellant's action sought to vindicate the rule of law by compelling compliance with environmental statutes enacted pursuant to sections 13 and 20 of the Constitution. He rejected an absolutist reading of section 6(6)(c), holding that: 'The non justiciability of Section 6 (6)(c) of the Constitution is neither total nor sacrosanct…' Relying on *Olafisoye v. FRN*[15], his Lordship articulated the principle that Chapter II becomes justiciable where it is read in 'mutual conflation' with other constitutional provisions or with Acts of the National Assembly that give it concrete legal effect. In the instant case, section 20 of the Constitution was rendered enforceable through section 17(4) of the Oil Pipelines Act and the Oil and Gas Pipeline Regulations, which impose clear duties to prevent pollution and protect land and water. On the facts pleaded, Justice Nweze found that the respondent had allegedly acted in violation of both its constitutional and statutory obligations, thereby occasioning: 'injury to public interest or public injury.' It was this finding of legally cognisable injury, flowing from environmental degradation, that framed the question of standing. Rejecting a restrictive, private-law conception of locus standi, his Lordship adopted a public law approach, drawing on Dr. Thio's conception of the judicial function as one aimed at preserving legal order (*jurisdiction de droit objectif*)[16]. He reinforced this position with Lord Diplock's warning against a 'grave lacuna' in public law if public-spirited groups are barred by technical standing rules from invoking judicial oversight (*R v. Inland Revenue Commissioners*)[17]. Against this background, Justice Nweze concluded that: 'in environmental matters, such as the instant one, NGOs… have the requisite standi to sue.' This conclusion did not arise in isolation. It flowed directly from the Court's recognition that environmental degradation engages enforceable constitutional and statutory duties and inflicts real harm on affected communities. Accordingly, Justice Nweze's analysis of environmental rights was not obiter; it formed the legal and normative foundation upon which locus standi was extended and thus constitutes a core component of the ratio decidendi of the decision.

Walter Samuel Nkanu Onnoghen, (C.J.N as he then was)

The concurring judgment of Onnoghen, CJN reinforces the conclusion that the Supreme Court's extension of locus standi in *COPW v. NNPC* was grounded in the substantive impact of environmental degradation on human life and community welfare. His Lordship began by emphasising that the appellant's interest was 'clear and unambiguous' and that the action was neither mischievous nor speculative, but one aimed at addressing conduct that had resulted in: 'injury to the health of the people and/or dangerous to the environment… to enforce the law and save lives and protect or restore the environment.' This framing is significant. By identifying environmental harm as an injury to health and life, Onnoghen, CJN located the issue of standing within the realm of legally cognisable

[15] (2004) 4 NWLR (Pt. 864) 580 (SC.

[16] L Thio, 'The Theory and Practice of Judicial Review of Administrative Action in Singapore' (1997) 5 *Asia Pacific Law Review* 1, 7–9.

[17] *R v Inland Revenue Commissioners, ex p National Federation of Self-Employed and Small Businesses Ltd* [1981] UKHL 2, [1982] AC 617 ('National Federation of Self-Employed' case).

harm, rather than abstract policy concern. In justifying a liberal approach to standing, his Lordship relied on comparative public law authority, notably *R v. Greater London Council, ex parte Blackburn*[18], and Lord Denning's statement that where a public authority acts unlawfully in a manner that 'offends or injures thousands,' affected persons may properly invoke the court's jurisdiction. This authority was deployed not as mere analogy, but to underscore the constitutional necessity of judicial intervention where widespread harm is alleged. Onnoghen, (CJN as he then was) further grounded standing in positive legal duties imposed by the Oil and Gas Pipelines Act, which requires pipeline operators to prevent oil escape and consequent damage to 'human lives and the environment,' recognising the inherently dangerous nature of petroleum operations. He reinforced this statutory duty with common law principles of nuisance, particularly *Rylands v. Fletcher*[19], thereby situating environmental protection within both statutory and common law frameworks. Crucially, his Lordship concluded that where an NGO seeks enforcement of these obligations 'vis-à-vis the rights of the affected communities to maintain a healthy environment,' such an organisation 'should be heard.' He rejected the characterisation of the appellant as a busybody, describing the suit as a legitimate public interest litigation, and affirmed that the law of locus standi has evolved beyond exclusive reliance on the Attorney-General to include 'public spirited individuals and NGOs.' Although Onnoghen, acknowledged that the formal question was whether sufficient interest had been disclosed, his reasoning demonstrates that such interest was established precisely because environmental degradation threatens life, health and community survival. His concurrence, read together with the lead judgment, confirms that the Court's engagement with environmental rights was integral to the determination of locus standi, and therefore forms part of the ratio decidendi of the case rather than a peripheral observation.

Musa Dattijo Muhammad, J.S.C.

In his concurring judgment, Musa Dattijo Muhammad, J.S.C. provides critical doctrinal reinforcement for the position that the Supreme Court's approach to environmental protection in COPW v. NNPC formed part of the ratio decidendi of the decision. His Lordship expressly acknowledges the submissions of Adegboyega Awomola, L.E. Nwosu, and A.B. Mahmoud, SAN, Adopting the submissions of the amici, Muhammad, J.S.C. holds that, by virtue of sections 16(2), 17(2)(d), 17(3), and 20 of the Constitution of the Federal Republic of Nigeria 1999, read together with section 17(4) of the Oil Pipelines Act, Cap O7, LFN 2004, and the Oil and Gas Pipeline Regulations, Nigerian courts are under a duty to protect the environment. His Lordship states unequivocally that courts would 'fail in that duty' if they declined to facilitate the protection these constitutional and statutory provisions have put in place. This reasoning mirrors, in practical terms, the conflagration principle articulated in the lead judgment by Nweze, J.S.C., under which provisions that may appear non-justiciable when viewed in isolation acquire enforceable force when read cumulatively with operative legislation. On this approach, sections 16 and 17 of the Constitution supply the social and welfare objectives of governance, section 20 of the Constitution provides an express environmental mandate, and the Oil Pipelines Act and subsidiary regulations translate those objectives into concrete legal obligations, thereby rendering environmental protection judicially cognisable. This doctrinal foundation informs His Lordship's approach to locus standi. Muhammad, J.S.C. endorses a liberal construction of standing by relying on comparative public law authorities, notably *R v. Secretary of State for Foreign and Commonwealth Affairs, ex parte World Development Movement Ltd*[20] and *R v.*

[18] (1976) 1 WLR 550
[19] (1868) L.R 3 H.R 330.
[20] (1995) 1 All ER 611 at 620

Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Business Ltd[21], where courts expanded access to justice in order to prevent the frustration of public law duties. These authorities are invoked to demonstrate that strict standing rules must yield where their application would shield breaches of legally recognised obligations from judicial scrutiny. Consistent with this approach, Muhammad, J.S.C. rejects the insistence on the traditional 'injury test' in the context of environmental harm, observing that: 'To insist that the appellant herein satisfies the injury test in order to maintain an action, is to sustain injustice that would otherwise be obviated by the instant suit.' This statement recognises the collective and diffuse nature of environmental injury, particularly where environmental degradation implicates the human rights of affected communities, including the right to life. Locus standi is thus expanded not as a procedural concession, but as a necessary mechanism for enforcing the conflagrated constitutional and statutory duties owed in respect of environmental protection. His Lordship further anchors this flexible approach to standing in established Nigerian and comparative jurisprudence by adopting the dictum of Bello, J.S.C. (as he then was) in Adesanya v. President of Nigeria[22], that the sufficiency of interest depends on the facts and circumstances of each case, with reference to *Bengal Immunity Co. v. State of Bihar*[23], *Frothingham v. Mellon*[24], *Thorson v. Attorney-General of Canada*[25], and *McKinlay v. Commonwealth*[26]. By situating locus standi within this context-sensitive framework, Muhammad, J.S.C. reinforces the view that access to court must expand where necessary to give effect to substantive legal duties.

Read holistically, the concurring judgment demonstrates that the Court's liberalisation of locus standi was predicated on the enforceability of environmental obligations arising from the combined force of constitutional values and implementing legislation. In this sense, Muhammad, J.S.C.'s reasoning operationalises Nweze, J.S.C.'s conflagration principle and confirms that environmental protection in COPW was treated as a substantive, enforceable legal interest. The recognition of environmental justiciability was therefore an indispensable step in sustaining the competence of the action, and not a mere obiter observation.

Kumai Bayang Aka'ahs, J.S.C.

The concurring judgment of Kumai Bayang Aka'ahs, J.S.C. reinforces the Supreme Court's emergent jurisprudence on environmental justiciability by expressly endorsing a policy-oriented expansion of locus standi grounded in the protection of human rights. His Lordship's reasoning is notably informed by the submissions of A. B. Mahmoud, SAN, who appeared as *amicus curiae* and whose intervention provided a coherent framework for linking environmental protection to enforceable constitutional and statutory norms. Aka'ahs, J.S.C. adopts Mahmoud, SAN's central proposition that environmental rights are inseparable from human rights, particularly the right to life. While acknowledging the orthodox position that the provisions of Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 are ordinarily non-justiciable, His Lordship accepts the argument that there has been a discernible shift in judicial thinking, whereby such provisions may become enforceable when read together with other constitutional guarantees or implementing statutes. This approach reflects a deliberate move away from rigid formalism towards a purposive and context-sensitive interpretation of the Constitution. Applying this reasoning to the facts, Aka'ahs, J.S.C. emphasizes that the subject

[21] (1982) AC 617 at 639.
[22] (1981) 5 SC 112.
[23] (1955) 2 SCR 603
[24] (1923) 262 U.S. 447.
[25] (1975) 1 SCR 138.
[26] (1975) 135 CLR 1.

matter of the action was a burst oil pipeline allegedly discharging crude oil into waterways, contaminating sources of drinking water, destroying aquatic life, flora and fauna, and endangering the health and lives of the host community. In this context, His Lordship accepts the submission that section 33 of the Constitution, which guarantees the right to life, is directly implicated. Any act or omission that threatens the health of a community, he reasons, necessarily threatens life itself and therefore constitutes a breach of the constitutional right to life. Environmental degradation is thus elevated from a policy concern to a constitutional wrong.

Aka'ahs, J.S.C. further accepts Mahmoud, SAN's reliance on sections 13 and 20 of the Constitution, which impose a duty on the State to protect the environment and empower the National Assembly to enact laws giving effect to that obligation. His Lordship notes that this mandate has been exercised through the Oil Pipelines Act, Cap O7, LFN 2004, particularly section 17(4), which subjects pipeline licences to regulations concerning public safety and the prevention of pollution of land and water. When read together with Regulation 9(a)(ii)(b)(ii)(iii) of the Oil and Gas Pipeline Regulations, these provisions impose concrete obligations on licence holders to prevent accidents, control pollution, and undertake remedial measures in the event of accidental discharges. In accepting this statutory framework as enforceable, Aka'ahs, J.S.C. effectively affirms that sections 13 and 20 of the Constitution acquire justiciable force through legislative implementation. Once the National Assembly has enacted laws to actualise the environmental objectives of Chapter II, the courts are duty-bound to 'give vent' to those constitutional provisions by applying the relevant statutes. This reasoning dovetails with the conflagration principle articulated by Nweze, J.S.C., whereby constitutional directives, when fused with implementing legislation, form an enforceable normative whole. His Lordship also takes cognisance of the National Policy on the Environment[27], which recognise the pivotal role of Non-Governmental Organisations in environmental protection. By placing NGOs at the centre of environmental governance, national policy itself contemplates their participation in enforcement. Denying such organisations locus standi would therefore frustrate both statutory intent and declared policy objectives.

Finally, Aka'ahs, J.S.C. situates the case within the broader contemporary reality of global environmental challenges, including climate change, pollution, biodiversity loss, and environmental degradation. He accepts that affected communities often lack the financial capacity to litigate against powerful corporate actors and government agencies, and that refusing standing to public-spirited organisations would leave environmental wrongs unchecked. Drawing on comparative experience from other Commonwealth jurisdictions such as England, Australia, and India, His Lordship agrees that Nigeria must similarly relax its traditional rigidity in public interest litigation. It is on these grounds, and for the more detailed reasons articulated by Nweze, J.S.C., that Aka'ahs, J.S.C. concludes that the Supreme Court, as a court of policy, ought to expand the locus standi of the plaintiff. His concurrence thus confirms that the enlargement of standing was a necessary juridical response to environmental harm understood as a human rights violation, and not a discretionary or incidental gesture.

Kudirat Motonmori Olatokunbo Kekere-Ekun, J.S.C (Now CJN)

In her concurring judgment, Kudirat Motonmori Olatokunbo Kekere-Ekun, CJN. highlights the essential role of public-spirited organisations in enforcing environmental protections, particularly

[27] Federal Ministry of Environment, National Policy on the Environment (Revised edn, Government of the Federal Republic of Nigeria 2016) paras 8.1–8.2.

where statutory agencies fail to act. She observes that legislations and agencies such as the National Environmental Standards and Regulation Enforcement Agency (NESREA) Act, 2007, the National Oil Spill Detection and Response Act, and NOSDRA, as well as various state environmental laws, are designed to regulate and respond to environmental degradation. Yet, gaps arise when these agencies fail to discharge their duties, or where pollution affects unowned or communal land, as in the case at hand. Drawing on R v. Inspectorate of Pollution & Anor., Ex parte Greenpeace Ltd. (No. 2)[28], Kekere-Ekun, J.S.C. notes that where government agencies fail to act, the public would otherwise be left without a remedy, underscoring the necessity for judicial recognition of NGO standing to sue on behalf of affected communities. Her Lordship anchors this reasoning firmly in constitutional and international law, citing section 17(4) of the Oil Pipelines Act, sections 20 and 33 of the Constitution, and Article 24 of the African Charter on Human and Peoples' Rights. She emphatically states: 'These provisions show that the Constitution, the Legislature and the African Charter on Human and Peoples' Rights, to which Nigeria is a signatory, recognise the fundamental rights of the citizenry to a clean and healthy environment to sustain life.' This statement crystallises the legal foundation for recognising environmental degradation as a violation of fundamental rights, thereby justifying the expansion of locus standi to enable NGOs to enforce these rights. Applying these principles to the facts, Her Lordship. observed that the appellant has demonstrated that its members and the wider public were affected by pollution of the Ineh and Aku streams/rivers, resulting in the destruction of marine life, water contamination, and loss of flora and fauna. By seeking enforcement of statutory obligations on behalf of these communities, the appellant meets the threshold of sufficient interest to bring the suit.

In conclusion, Kekere-Ekun, C.J.N. affirms that the expansion of locus standi in this case is driven primarily by the human implications of environmental degradation. The appellant demonstrated that pollution of the Ineh and Aku streams/rivers directly threatened the health, livelihood, and lives of affected communities. By recognising that environmental harm is inseparable from violations of the right to life (s.33, Constitution) and the State's duty to protect the environment (s.20, Constitution) and implementing statutes such as the Oil Pipelines Act, the Court ensures that justice is accessible to those most affected. As she rightly notes, 'These provisions show that the Constitution, the Legislature and the African Charter on Human and Peoples' Rights… recognise the fundamental rights of the citizenry to a clean and healthy environment to sustain life.' It is therefore the human dimension of environmental harm, its direct impact on communities' health and well-being, that underpins and justifies the Court's liberalisation of standing in this appeal.

John Inyang Okoro, J.S.C.

John Inyang Okoro, J.S.C. grounds his concurrence firmly in the human impact of environmental degradation and the public interest in environmental protection. He rhetorically asks: 'In the situation which the poverty-stricken people of Acha Autonomous community have found themselves, who would sue among them for the remediation and/or restoration of their ravaged streams and environment if the appellant, a Non-Governmental Organization (NGO) is refused access to Court on their behalf?' His Lordship emphasizes that affected communities often lack the resources to bring legal actions themselves, and that the environment is not the property of any particular individual but a public good. Consequently, when government agencies fail, refuse, or neglect their statutory duties, NGOs acting in the public interest are justified in bringing actions to enforce compliance and ensure the remediation, restoration, and protection of the environment. Okoro, J.S.C. explicitly links the relaxation of locus standi to environmental cases and public interest litigation, reflecting a purposive

[28] (No. 2) [1994] 4 All ER 329.

approach aimed at protecting both the environment and human life. He affirms that the appellant has sufficient standing to sue and concludes by fully endorsing the reasoning and orders of the lead judgment of Nweze, J.S.C., including all consequential orders relating to costs. In essence, his concurrence underscores that the human dimension, health, livelihood, and community well-being, is central to the Court's decision to expand standing in environmental matters. By doing so, the Court ensures access to justice where the environment and human rights intersect, particularly for vulnerable and impoverished communities.

Ejembi Eko, J.S.C.

Ejembi Eko, J.S.C., affirms that environmental protection is intrinsically linked to human rights, emphasizing that the right to a healthy environment constitutes a human right under Nigerian law. Echoing the submissions of A.B. Mahmoud, SAN, amicus curiae, he underscores that Article 24 of the African Charter on Human and Peoples' Rights, together with Sections 33(1) and 20 of the Constitution, must be read collectively to inform the determination of locus standi in environmental matters. In this regard, Article 24 of the African Charter provides that 'All people shall have the right to a general satisfactory environment favourable to their development,' Section 33(1) of the Constitution guarantees that 'Every person has a right to life,' and Section 20 mandates that 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of the country.' Collectively, these provisions affirm that the protection of the environment is not merely regulatory but central to the enforcement of constitutionally guaranteed human rights. Eko, J.S.C. stresses that, as a domesticated international treaty, the African Charter forms part of Nigeria's corpus juris. He reinforces that Nigerian courts have a continuing duty to protect human rights entrenched in international treaties, citing *Molokwu v. C.O. P*[29] and *Adewole v. Jakande (1981)*[30]. Importantly, Justice Eko's reasoning reflects a judicial evolution. In his concurring judgment in *Opara v. SPDC* (2015)[31], he held:

> The cause of action for the suit, the subject matter of this appeal, is environmental pollution from oil and gas exploration. The cause of action in the dispute situates the dispute in the tort of nuisance, which, in my firm view, does not fall within any of the fundamental human rights either under Chapter IV of the Constitution 1999 or the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 2004.

This restrictive view was later broadened in *COPW*, where he recognized environmental harm as a violation of fundamental human rights, stating:

> Section 17(4) of the Oil Pipelines Act mandates that all licenses must comply with the Act's provisions and any regulations regarding public safety and pollution prevention. Moreover, section 33 of the 1999 Constitution guarantees the right to life, while section 20 emphasizes the state's duty to enhance and protect the environment. Article 24 of the African Charter on Human and Peoples' Rights asserts the right of all individuals to a satisfactory environment conducive to their development. Collectively, these legal frameworks underscore the fundamental right of citizens to a clean and healthy environment. The Acha Community and residents living near the Ineh and Aku streams rely on these rivers for drinking water, fishing, and other economic activities. They possess a right to a favorable environment, integral to their development, alongside a

[29] (1972) 2 ECSLR 979 at 801.
[30] 1 NCLR 262.
[31] (2015) LPELR-24798 (CA).

> constitutional guarantee of the right to life. The state, including the defendant, a statutory corporation, has a duty to protect this community from harmful pollutants and to improve the quality of the water, air, land, and forests that sustain their livelihoods. The African Charter on Human and Peoples' Rights, as an international treaty incorporated into Nigerian law, obligates Nigerian courts to uphold and protect the human rights enshrined therein. As long as Nigeria remains a signatory to this Charter and other international environmental treaties, the courts will continue to safeguard these rights for its citizens.

Applying these principles to the facts of *COPW*, Justice Eko observes that the Acha Community and residents around the Ineh and Aku streams rely on these rivers for drinking water, fishing, and other economic activities. They are directly affected by environmental degradation, which constitutes a human rights violation. The State, including the statutory corporation defendant, therefore owes a duty to protect the community from pollutants and safeguard water, air, land, forests, and wildlife essential to their survival, livelihood, and development.

In conclusion, Justice Eko emphasizes that the human implications of environmental harm justify granting standing to NGOs and other public-spirited actors to sue on behalf of affected communities. His shift from a restrictive view in *Opara* to a broader, rights-based approach in *COPW* reflects the Supreme Court's authoritative position on the justiciability of the right to a clean and healthy environment, cementing the human impact principle as central to environmental litigation in Nigeria.

5. Author's Concluding Analysis: *Ratio Decidendi*, Not *Obiter Dictum*

A proper classification of the Supreme Court's findings in *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* must be grounded in orthodox common-law principles governing ratio decidendi rather than in a narrow or formalistic fixation on the manner in which the issue for determination was framed. Although the sole formal issue before the Court concerned locus standi, that issue was incapable of resolution in the abstract. Standing is not self-executing; it presupposes the existence of a legally cognisable and enforceable interest. The Court was therefore compelled, as a matter of legal necessity, to determine whether environmental degradation, particularly where it threatens life, health, and human dignity, engages rights and obligations recognised by law. Absent such a determination, the extension of locus standi to the appellant NGO would have been devoid of juridical foundation. It follows that the Supreme Court's engagement with sections 33 and 20 of the Constitution of the Federal Republic of Nigeria 1999, section 17(4) of the Oil Pipelines Act, Cap O7, Laws of the Federation of Nigeria 2004, the subsidiary regulations made thereunder, and Article 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004, was neither incidental nor gratuitous. Rather, this engagement constituted the indispensable reasoning that sustained the Court's conclusion on standing. In line with settled authority that ratio decidendi encompasses all legal propositions necessary for the resolution of the issues joined by the parties, the Court's recognition of environmental harm as a legally enforceable threat to life and health formed the logical bridge between the facts pleaded and the conclusion reached. This conclusion is not weakened by the principle, affirmed in *Bamgboye v. University of Ilorin*[32], that opinions expressed on matters upon which no issue was joined amount to obiter dictum and cannot ground an appeal. On the contrary, that principle reinforces the present analysis. The functional test remains whether the legal proposition was necessary for resolving the issue before the court. In *COPW*, the question of environmental justiciability was not a collateral excursion into an unjoined

[32] (1999) 10 NWLR (Pt. 622) 290.

matter; it was a logically prior and legally indispensable inquiry embedded within the determination of locus standi itself.

As consistently held by the Supreme Court, the *ratio* of a decision is not extracted from isolated passages or the formal framing of issues, but from the reasoning essential to the outcome. In *United Bank for Africa Ltd v. Stahlbau GMBH & Co*[33], the Court held that the ratio decidendi of a case must be determined from the issues in dispute and the facts found in support thereof. This position was reaffirmed in *Ogbolosingha v. Bayelsa State Independent Electoral Commission*[34], where Ogunbiyi, J.S.C. emphasised that every judgment must be read in the context of the facts proved and the issues resolved. Attempts to diminish the binding force of the Supreme Court's position by divorcing the lead judgment of Nweze, J.S.C. from the concurring opinions of the other Justices are equally unsustainable.[35] The style or structure of a concurring judgment does not diminish its legal effect. So long as a concurring judgment does not contradict the lead judgment, it forms part of the decision of the Court and carries equal precedential weight. Indeed, concurring judgments often reinforce the ratio by elucidating it from complementary perspectives. This position is firmly supported by Nigerian authority. In *Enang v. Umoh & Ors*[36], the Court of Appeal affirmed that a concurring judgment, even where it adopts a different route to the same conclusion, carries equal legal weight with the lead judgment. Similarly, in *Oil & Gas Export Free Zone Authority v. Osanakpo*[37], Ejembi Eko, J.S.C. reiterated that 'a concurring judgment has equal weight with or as a lead judgment,' provided it does not conflict with it. Ultimately, the legal position taken by the Supreme Court in *COPW v. NNPC* is abundantly clear when the judgment is read as a whole. No amount of rhetorical reframing can diminish the Court's express and reasoned recognition of environmental degradation as a justiciable threat to life, health, and human survival. Properly analysed, those findings were central to the Court's determination and therefore constitute binding ratio decidendi rather than passing judicial commentary.

[33] (1989) 3 NWLR (Pt. 110) 374 at 402.
[34] (2015) 6 NWLR (Pt. 1455) 311 at 343.
[35]G. Omoaka, SAN, First Expert Report (8 November 2024), submitted in *Bille and Ogale Group Litigation v Royal Dutch Shell Plc*, High Court of Justice, King's Bench Division, Claim Nos. KB-2023-000252 and KB-2023-002200, before May J, wherein the learned Senior Advocate expressed the view that the concurring judgments in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* constitute obiter dicta and not part of the lead judgment.
[36] (2010) 11 NWLR (Pt. 1205) 171.
[37] (2018) 7 NWLR (Pt. 1618) 193.