

LOCUS STANDI: THE COURT IS NO PLACE FOR BUSYBODIES - (Rita Keevil, Family Law)

Any person who wants to bring a matter to Court must show that he has locus standi. That means he must show that he has the right or capacity to bring a matter to Court and a right to appear in Court. Locus standi is the opposite side of the coin to jurisdiction. As a result, a party instituting legal proceedings of any nature must show that both he and the party being sued must, in layman's terms, have a real interest in the matter being brought to Court. This is generally simple enough when the party is a natural person but less simple when the party is a trust or an association. Such a litigant must show his authority to sue or be sued (locus standi) and that the other party is one over which the Court can exercise its jurisdiction. It is a common error in litigation involving a trust or association to assume that the trust or association have either locus standi or that the Court can exercise jurisdiction over the trust or association.

It is the duty of the party instituting Court proceedings to make out a case that he has locus standi and that the Court can exercise jurisdiction over the party on the other side. If he fails to do this his case will fail. He will not have an opportunity to correct his error.

An opposing party can raise the issue of an absence of locus standi at any time in the proceedings.

The Courts may not condone the lack of locus standi even if the parties agree between them to litigate with one another. If locus standi is absent the proceedings are invalid. In addition, in the event that it cannot be shown that the Court has jurisdiction over the other party, the proceedings will again be a nullity.

In our law a trust is not a legal person, but a legal institution of its own type therefore it must sue and be sued in the name of the trustee(s). Although there appear to be conflicting decisions, our Courts have held that a trust is not a legal personality but merely an aggregate of assets and liabilities. Unless one or more of the trustees is/are authorised to act by the remaining trustee or trustees, all the trustees must be joined in suing if the trust institutes proceedings and all the trustees must again be joined as defendants if the trust is being sued. In either case, the trustees must be cited in their representative capacities. Even if one trustee has been authorised by the others to institute action on behalf of a trust does not necessarily confer locus standi on that trustee.

Our Courts have also ruled on the issue of locus standi as relates to associations. The answer to the question of whether or not an association is a juristic person is to be found in its rules or constitution which will show its nature and objectives. Thus, it is advisable to always attach a copy of the rules or constitution and make reference to the provision conferring of locus standi, or which gives the Court jurisdiction, as it arises from that document.

An association wishing to sue in its own name must show, at the very least, that it is an unincorporated body of persons capable of owning a beneficial interest in property. This must be established in the founding papers.