IN THE HIGH COURT OF JUSTICE

EDO STATE OF NIGERIA

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON. JUSTICE H. A. COURAGE-OGBEBOR, (JUDGE)

ON FRIDAY THE 16TH DAY OF APRIL, 2021

B E T W E E N: SUIT NO.B/26/2019.

1. DANIEL EGBERANMWEN ISIBOR

2. NOGIERU EGHOSA .O. ISIBOR …….. CLAIMANTS/APPLICANTS

3. MRS. ELIZZABETH OSATO EKE

4. MR. SUNDAY OMOREGBE

AND

PASTOR BLESSED OSARENREN IGHIWI …….DEFENDANT/RESPONDENT

R U L I N G

The Defendant filed a notice of Preliminary Objection praying for an order striking out this suit for want of jurisdiction as the claimants before the court have no locus standi to bring this action. The application is supported by an affidavit of 6 paragraphs and a written address.

The claimants/Respondents filed a counter-affidavit and a written address. The Applicant filed a further affidavit and a reply on points of law.

It is the contention of the defendant/Applicant that the claimants who are beneficiaries in a Will cannot sue for title in any property devised to them when the said property is still vested in the executors. He also argued that the Will has not been admitted to probate and there is no vesting assent executed in favour of the claimants as beneficiaries and that this action is premature and incompetent.

He further argued that the claimant as beneficiaries can only sue on behalf of the estate of the deceased but not on individual basis. He relied on:

**UNOKA vs. AGILI (2007) 11 NWLR (pt 1044) 122 at 143.**

**IGBOIDU vs. IGBOIDU (1990) 1 NWLR (pt 585) 37.**

**OJIKUTU vs. FELLA (1954) 14 WACA 628**, that the permissible action must be brought for the estate not for the individual benefit of the beneficiaries. He urged the court to strike out the suit for incompetence.

The claimants’ counsel on his part argued that the 2nd claimant as an executor can bring an action on behalf of the Estate of the deceased without the beneficiaries. The claimants in this suit who claim to be beneficiaries in a Will claim as follows:-

“Wherefore the claimants claim against the Defendant as follows:-

1. A declaration that they are the persons entitled to a statutory right of occupancy over the parcel of land situate at Ward 34/F Egba Community measuring 200ft by 200ft now in dispute and not the Defendant.
2. N5, 000,000.00 (Five Million Naira) being general damages from the Defendant for their trespass to the land.
3. Perpetual injunction restraining the Defendant, his servants, agents and privies from further or continue (sic) acts of trespass on the land”

The claimants pleaded in paragraphs 5 and 6 of the Statement of Claim thus:-

“5. The said Roland Isibor died testate, by the virtue of his Will dated

11th day of March 2006.

6. In the Will of the said Roland Isibor the parcel of land now in

dispute was given to the claimants.”

There is nothing more in the statement of claim as regards the Will whether it was read and admitted to probate. Paragraph ‘1’ of the statement of claim stated that the claimants are relatives of the late Roland Osaigbovo Isibor without stating their relationships.

It is clear from the pleading and the reliefs that the claimants sued and are claiming in their personal capacities and they are not claiming on behalf of the estate of the late Roland Isibor.

It is trite law that beneficiaries to a Will are not entitled to sue for any property devised to them when the said property is still vested in the Executor and or Executrix of the Will. See the case of:- **OJIKUTU vs. FELLA 14 WACA 628 at 629 MENKITI vs. AGINA (1965) NMLR 127 at 128**

It is only when a vesting Assent is made by the Executor or Executrix to a beneficiary that the estate or interest to which the Assent relates can vest on such beneficiary. A beneficiary therefore cannot claim his share in the estate of the deceased testator until the Executors have given their assent to the vesting of the property on him. See section 40 of the Administration of Estate law 1976 , laws of Bendel State applicable in Edo States. See also the case of:-

**ONUKA & ORS vs AGILI & ORS (2007) 11 NWLR (pt 1044) 122.**

The learned counsel to the claimants had contended that the claimants could be deemed executors de son tort and can bring an action. It was held in AGILI’S case (supra) relying on the definition in Jowitts Dictionary of the English law that Executor de son tort is an executor of his own wrong, without a legal authority, an intruder to the detriment of the estates, beneficiaries or creditors. He is a third party not being the legal representative of the personal estate of the deceased and not a beneficiary but some one who intermeddles with the estate of the deceased. He is therefore a person with no legal capacity to sue but an action can be maintained against him. An executor de son tort cannot bring an action himself in right of the deceased, but actions may be brought against him not only by the rightful executor or administrator but by any creditor or legatee. The claimants in this case cannot maintain an action for the benefit of the estate which legal representatives can do. They have not sued on behalf of the estate of the deceased but in their private capacities. The claimants therefore lack the legal capacities to institute this suit. A person who makes a claim which in actual fact belongs to some one else has no locus standi before the court.

See: **OLORIEDE vs. OYEBI (1984) 5 SC 1 at 16.**

It is well settled that where a plaintiff has no locus standi, the court has no jurisdiction to entertain the action and same must be struck out.

See: **NWANKWO vs. NWANKWO (1992) 4 NWLR (pt 238) 693 at 702**

**EREBOR vs. MAJOR & COMPANY (NIG) LTD & ANOR (2001) 5 NWLR (pt 706) 300 at 308.**

In the circumstances of all above this suit is struck out.

**JUSTICE H.A. COURAGE-OGBEBOR**

**(J U D G E)**

*COUNSEL*

*M. O. OKHUAROBO ESQ. - FOR THE APPLICANT*

*M. I. ENEDION ESQ. - FOR THE RESPONDENT*