

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**HCT – 01 – CV – CS – 038 OF 2022**

**1. JOSEPH MUHUMUZA KAAHWA**

5 **2. KWEMARA KAFUZI GELASE**

**3. BWIRUKA RICHARD ::: PLAINTIFFS**  
**(T/A Kaahwa, Kafuuzi, Bwiruka & Co. Advocates)**

**VERSUS**

10 **MBABULIMA JEREMIAH ::: DEFENDANT**

**BEFORE: HON. JUSTICE VINCENT WAGONA**

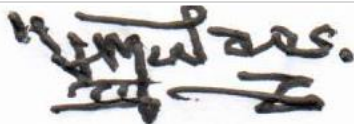
**JUDGMENT**

**Introduction:**

15 The plaintiffs filed this suit against the defendant on **16.6.2022** to recover special and general damages, interest for money had and received (unjust enrichment), fraudulent misrepresentation and costs of the suit.

**Background:**

20 The case of the plaintiffs was as follows: That on the instructions of Bukombi Yokoniya Ibrahim (now deceased), on **9.2.2015** the plaintiffs filed a Civil Suit No. 25 of 2015 in the Chief Magistrates Court (Fort-portal) against Chongqing International Construction Corporation (CICO) under the Law Reform (Miscellaneous Provisions) Act and Workers Compensation Act as a dependent



(father) of Mbabulima Nason (deceased) to recover special and general damages for compensation for the death of his son Mbabulima Nason.

5 That the plaintiff dully represented the said BukombiYokoniya Ibrahim until the completion of the case in a judgment dated **20.12.2017**.

That on **30.11.2018**, the defendant by false representation purported to be the Bukombi Yokoniya Ibrahim and he instructed M/s Stanley Omony & Co. Advocates, to represent the plaintiff in the said Civil Suit No. 25 of 2015.

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That on **7.12.2018**, the defendant without authority filed a bill of costs which was taxed and allowed at Shs 15,500,000/=. That on **21.12.2018**, the defendant and his counsel M/s Stanley Omony & Co. Advocates and the judgment debtor entered into a consent order and the defendant received the total judgment debt of Shs  
15 51,608,000/=.

That the plaintiffs learnt about the consent order for payment and on 1<sup>st</sup> February 2019 wrote to their client, Mr. Bukombi Yokoniya Ibrahim and when they went to serve him, he was found bed ridden on his death bed and he denied any knowledge  
20 of the said actions of the defendant and he denied receiving the money; that the plaintiff's client Bukombi Yokoniya Ibrahim later died on **17.8.2019**.

The plaintiffs averred and contended that the defendant's actions of instructing M/s Stanley Omony & Co. Advocates, filing a bill of costs and receiving the decretal  
25 sum in Civil Suit No. 25 of 2015 was done stylishly through deceit and misrepresentation. The plaintiffs stated the particulars of misrepresentation as: (a)

purporting to be the plaintiff and instructing M/s Stanley Omony & Co. Advocates in Civil Suit No. 25 of 2015; (b) filing the bill of costs without the plaintiffs' consent; (c) receiving the decretal sum therein' and (d) executing documents as the plaintiff.

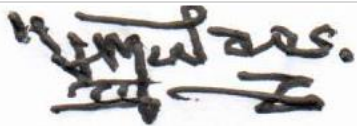
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The plaintiffs averred and contended that as a result of the defendant's actions, the plaintiffs who were counsel for the judgment creditor were liable to account to the estate of their deceased client and costs due to the plaintiffs were taken by the defendant for which the plaintiffs claimed special damages. The particulars of special damages included Shs 36,108,000 being the decretal sum in Civil Suit No. 10 25 of 2015; and Shs 15,500,000/= being costs, making a total sum of Shs 51,608,000/=.

The plaintiff further contended that they had a duty to account to the plaintiff or his 15 legal representative for the proceeds of Civil Suit No. 25 of 2015 which duty the plaintiffs cannot fulfil when the defendant is still holding the decretal sum in the said suit. That the plaintiffs have been greatly inconvenienced by the defendant's actions for which they claim general damages. The plaintiffs thus asked court to enter judgment in their favour and grant the reliefs sought.

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The defendant was served with the plaint per the affidavit of service sworn by Mr. Mwirumubi Godfrey dated 15<sup>th</sup> July 2022 filed on record on 19<sup>th</sup> July 2022. The defendant did not file a written statement of defense within the 15 days prescribed under the Civil Procedure Rules. Court on the 11<sup>th</sup> May 2023 entered a default 25 judgment under Order 9 rule 6 of the Civil Procedure Rules allowing the plaintiffs to proceed ex-parte.



**Issues:**

In the scheduling notices filed by the plaintiffs, the following issues were framed:

- 1. Whether the defendant is liable for misrepresentation.**
- 2. Whether the plaintiffs are entitled to the remedies claimed in the plaint.**

5 I found it necessary to frame a third issue:

- 3. Whether the plaintiffs had locus to represent the estate of the late Bukombi Yokoniya Ibrahim.**

**Representation:**

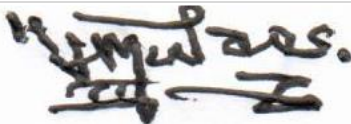
10 Mr. Businge A Victor of M/s Ngaruye Ruhindi, Spencer & Co. Advocates represented the plaintiffs and filed written submissions which I have considered.

**Submissions for the Plaintiffs:**

15 Learned counsel for the plaintiff contended that plaintiffs diligently prosecuted Civil Suit No. 25/2015 up to completion. That the defendant filed a bill of costs and engaged M/s Stanley Omony & Co. Advocates and received a sum of Shs 51,608,000/= being the decretal sum and costs; that the plaintiffs consulted their client Bukombi Yokonia Ibrahim who denied knowledge of the defendant's actions.

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Learned counsel cited the Black's Law Dictionary 8<sup>th</sup> edition that defines misrepresentation as the act of making false or misleading assertion about something usually with the intent to deceive. He contended that the defendant filed a bill of costs purporting to be the plaintiff whereas not and signed a consent as  
25 such to receive payment of the judgment debt in Civil Suit No. 25 of 2015; that he instructed another advocate purporting to be the plaintiff whereas not.



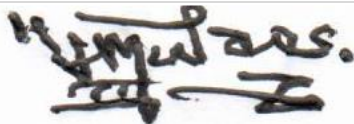
Learned counsel submitted in relation to the second issue that the plaintiffs had proved that as a consequence of the misrepresentation, the defendant received a sum of Ugx 51,608,000/=. That as such the defendant should be ordered to refund the same at an interest of 30% from 21<sup>st</sup> December 2018 when he received the same. Learned counsel also prayed that the defendant be ordered to pay a sum of Ugx 50,000,000/= as general damages with interest from the date of the judgment till payment in full. He also prayed for costs of the suit.

### CONSIDERATION BY COURT:

I will first deal with the 3<sup>rd</sup> issue: **Whether the plaintiffs had locus to represent the estate of the late Bukombi Yokoniya Ibrahim.**

In paragraph 6 of the plaint, it is stated that: *“The plaintiffs shall aver and contend that as a result of the defendant’s actions, the plaintiffs who were Counsel for the judgment creditor are liable to account to the estate of their deceased client and the costs due to the plaintiffs were taken by the defendant for which the plaintiffs shall claim special damages.”* In effect, the plaintiffs brought the suit on behalf of their deceased client or the estate of the deceased. This begs the question whether the plaintiffs had *locus standi* to bring this suit.

The term *“Locus standi”* was defined in **Law Society of Kenya Vs. Commissioner of Lands and others, Civil Case No. 464 of 2000**, thus: *“Locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in court.* In **Dima Enterprises Poro Vs. Inyani**



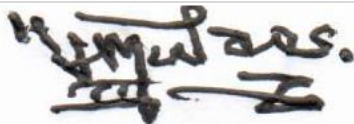
**Godfrey, Civil Appeal No. 17 of 2016**, the Hon. Justice Mubiru described locus thus: *“The terms locus standi literally means a place of standing. It means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding”*

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Bukombi Yokoniya Ibrahim the client of the plaintiffs died on **17.8.2019**. The plaintiffs filed this suit against the defendant on behalf of the deceased client or his estate on **16.6.2022**. Typically, the death of a client terminates the attorney-client agency relationship, and the attorney’s authority to act ends. Without authorization  
10 from the deceased’s representative, an attorney of a deceased client is without authority to act.

Under Section 25 of the Succession Act Cap. 162, all property in an intestate estate devolves upon the personal representative of the deceased upon trust for those  
15 persons entitled to the property. Under Section 9, subject to section 4 of the Administrator General’s Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction. Under  
20 Section 192, letters of administration entitle the administrator to all rights belonging to the intestate. Under Section 279, the duty to collect and organize the property and debts that were due to the deceased are vested in the administrator or executor.

A beneficiary of an estate has locus to present any claim that is intended to protect  
25 the estate. Justice Mubiru in **Dima Enterprises Poro Vs. Inyani Godfrey (supra)**

A handwritten signature in black ink, appearing to read 'Inyani Godfrey', is written over a horizontal line.

gave the following narrative: *“As a matter of principle, a beneficiary has standing to sue in his or her own right provided the interests which such beneficiary seeks to protect are germane to the estate and the claim or the relief sought requires individual participation of the rest of the beneficiaries..... Absence of a prior grant would not debar the maintenance of a suit whose purpose is to claim, preserve and protect the estate of the deceased, wherever it may be lying. It appears to me that there is no such impediment on the rights of beneficiaries.”*

The long established principle of law is that persons who are legally entitled to bring legal actions to protect the estate of the late are; (a) a beneficiary under the estate, (b) an administrator or legal representative (c) the Administrator General under the Administrator General’s Act.

An advocate in my view loses instructions to represent a natural person the moment the person dies. An advocate cannot continue to act on behalf of the estate of the late without instructions either from a beneficiary of the estate or an administrator. The fact that the plaintiffs claimed part of the costs awarded in Civil Suit No. 25/2015 did not vest them with any interests in the estate granting them locus to sue on behalf of the deceased or his estate.

The claim of the plaintiffs in my view is limited to the part of the costs awarded which they are entitled to and they would ordinarily file a claim to recover costs which are due to them but not to file a suit on behalf of the estate.

The plaintiffs in my view had no **locus standi** to file this suit to recover the decretal sum due to the estate of the late without instructions either from a

beneficiary of the estate or an administrator of the estate. They only had locus to file a claim against the estate in respect of costs due to them.

I therefore strike out the suit with no orders as to costs. It is so ordered.



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Vincent Wagona

**High Court Judge**

**FORT-PORTAL**

10 **DATE: 24/8/23**

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