



THE LEGAL AUTHORITY OF PRIVIES TO SUE WITHOUT PROBATE OR LETTERS OF ADMINISTRATION

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INTRODUCTION

In Nigeria, only executors or administrators who have obtained probate or letters of administration possess the legal capacity to sue or defend actions in a representative capacity on behalf of a deceased's estate. However, for privies who often seek to defend property interests, this rule can lead to significant delays and procedural obstacles. The uncertainty surrounding their rights to sue without formal probate or letters creates legal ambiguities and sometimes impede access to justice, particularly when it comes to urgent or time sensitive claims.

This paper seeks to critically analyse the extent to which privies are permitted to initiate legal proceedings without first obtaining probate or letters of administration. It defines key terms and explores relevant judicial trends, statutory exceptions, and equitable principles that may allow such actions.

DEFINITION OF TERMS

A deceased person is considered to have died either testate or intestate. Testacy refers to the circumstance where a person dies leaving a valid will, thereby determining the disposition of their estate (inheritance).[1] The will contains testamentary stipulations that extend to the appointment of individuals ("Executors") who shall administer the estate and may apply for Probate. Intestacy occurs when an individual dies without leaving a will, resulting in the disposition of their estate according to statutory provisions or customary laws.[2]

1] O. Umeh, 'An Analysis of the Principles and Implication of Intestacy Under Nigerian Customary Law' Omaplex Law Firm (2024) <<https://omaplex.com.ng/ananalysisoftheprinciplesandimplicationofintestacyundernigeriancustomaryl原因/>> assessed 11th April, 2025

[2] Ibid

Probate is the legal confirmation of a will and grants executors the authority to carry out its instructions.[3] It is only issued when a valid will exists and executors are named in it. Probate administration refers to the legal process involved in issuing or revoking Probate where they left a will (testate) or Letters of Administration or not (intestate) for the estate of a deceased person.[4] Probate validates an executor's authority, while Letters of Administration grant authority to an administrator. Neither executors nor administrators are permitted to manage a deceased person's estate until the appropriate grant is issued, and their authority is limited to the assets specified in the grant.[5]



Personal representatives are the executors, original or by representation, or administrators for the time being of a deceased person.[6] They are the individuals appointed to manage the deceased's estate with responsibilities; such as paying debts and liabilities, distributing assets according to the will, and owe fiduciary duties to the estate and beneficiaries.[7]

[3] N. A. M. Anthony 'Administration of Estates and Probates: A Critical Assessment' Ochendo: An African Journal of Innovative Studies Vol. 3 No. 1 (2022) 198214 <<https://acjol.org/index.php/ochendo/article/view/3717/3640>> assessed 11th April, 2025

[4] *ibid*

[5] *ibid*

[6] Section 2 Administration of Estates Law of Lagos State, 2015

[7] *ibid*

Privies are individuals who have close relationships or connections with the deceased or the estate. They include; spouses, children (biological), next of kin, beneficiaries (named in the will or entitled to benefit from the estate) and dependants. In *Adalma Tankers Bunkering Services Ltd & Anor v CBN & Ors*^[8] a privy was defined by the Supreme Court as “a person whose title is derived from and who claims through a party. Privies are: (a) Privies in Law (as Testator and Executor; Intestate and Administrator) (b) Privies in blood such as Blood Relations, Ancestors, Heirs (c) Privies in Estate, such as Vendors and Purchasers of Land.” Privies are therefore either personal representatives or beneficiaries (heirs).

GENERAL RULE ON RIGHT OF ACTION AND PERSONS WITH LOCUS TO PROTECT THE ESTATE OF A DECEASED

The Administration of Estates Law of various States in Nigeria and the High Court (Civil Procedure) Rules of the various states regulate the management and administration of a deceased's property. In Lagos State, the relevant laws are the Administration of Estates Law, Administration of Estates (Small Estates Payments Exemption) Law and the Lagos State High Court (Civil Procedure) Rules 2019. Section 10 (1) of the Administration of Estates Law of Lagos State provides that upon a person's death, any estate they owned that doesn't automatically cease upon their death will transfer to their personal representative.

In intestacy, where statutory laws apply, there is a set order of priority of succession and persons who may apply for the grant of letters of administration for the distribution of the residuary estate of the deceased. Section 49 provides that the estate is shared based on a set order of priority: first to the spouse, then children, parents, siblings, and extended family.^[9] If no relatives exist, the estate goes to the State, unless customary law applies.^[10] Spouses are treated individually, and in cases of uncertain death order, the law assumes the spouse did not survive.^[11] The law also overrides conflicting customary laws for those married under the Marriage Act, except in cases involving land or where the estate would otherwise go to the State.^[12]

The legislative intent of Section 49(5) is to clearly establish and outline the list of hierarchy for the determination of people that can be appointed. It is mainly to exclude customary law in relation to the estate of persons to which the provision applies.^[13]

^[8] (2022) LPELR57036 (SC)

^[9] Administration of Estates Law of Lagos State, 2015

^[10] *ibid*

^[11] *ibid*

^[12] *ibid*

^[13] *Obusez v. Obusez* (SC 405/2001) [2007] NGSC 13

A deceased's real and personal property passes to the administrators in the same manner as it would to executors upon appointment by the court.[14] However, during the period between the person's death and the official appointment of administrators, both the real and personal estate temporarily vest in the court until the grant of administration is issued.[15]

Therefore, the grant of Probate legally confirms an Executor's authority to manage a deceased person's estate, even though this authority initially stems from the Will. An Administrator on the other hand derives power solely from the Letters of Administration, and without it, cannot function in that role. Therefore, while Probate validates an Executor's authority, Letters of Administration establish an Administrator's authority. In both cases, executors and administrators cannot act until the appropriate grant is issued. This legal requirement ensures that only authorized individuals can act on behalf of and/or deal with the estate of the deceased.

Therefore, the general rule is that only a legally appointed executor or administrator has the authority to manage and enforce the rights of a deceased person's estate. Without a formal grant of representation, privies typically do not have the legal standing to act on behalf of the estate. The decision of the Supreme Court in the celebrated case of *The Admin. & Exec. of the Estate of Abacha v. EkeSpiff & Ors*[16], is most significant with regard to the right of privies of a deceased to bring an action in a representative capacity, on behalf of the Estate of the deceased. In that case, the Supreme Court resolved the question of whether the Appellant sued as “*Administrator of the Estate of General Sani Abacha*” at the trial court without evidence of the obtainment of grant documents. The Court held that “*a person has no locus standi and lacks competence to bring an action in a representative capacity as an Administrator of the Estate of a deceased person until he has been granted the Letters of Administration. In other words, it is the grant of the Letters of Administration that confers the right to sue or be sued in the name of the Estate of a deceased person.*”

[14] N. A. M. Anthony ‘Administration of Estates and Probates: A Critical Assessment’ *Ochendo: An African Journal of Innovative Studies* Vol. 3 No. 1 (2022) 198214 <<https://acjol.org/index.php/ochendo/article/view/3717/3640>> assessed 11th April, 2025

[15] Section 10

[16] (2009) LPELR3152(SC)

PROCEDURAL AND SUBSTANTIVE CHALLENGES FOR PRIVIES WITHOUT GRANT OF REPRESENTATION

1. Inability to Deal with the Estate of the Deceased

A privy faces numerous regulatory and procedural obstacles in administering the Estate of a deceased person when it fails to first obtain the requisite grant documents. These challenges range from the inability to access or manage certain assets such as funds held in commercial banks in the name of the deceased to significant restrictions on their capacity to initiate or defend suits in a representative capacity on behalf of the estate^[17].



2. Risk of Asset Waste or Loss Due to Statutes of Limitation

Due to failure to obtain or delay in obtaining grant documents, assets of the estate may not be properly managed or monitored thereby leading to depreciation or waste or interference from third-parties. In other instances, claims for assets of the estate may become time-barred under limitation laws.

3. Liability as an Executor De Son Tort

A person who has not obtained requisite grant documents but proceeds to wrongfully meddle with the assets of the estate of a deceased risks exposure to being treated as an Executor de son tort and may be held liable for any losses or improper dealings. In **Ruthlinz Interl Invest. Ltd. v. Ihebuzor**^[18] the Court of Appeal held as thus:

[17] *Fasuyi v Uche* (2022) LPELR58729(CA)

[18] (2016) 11 NWLR (Pt. 1524) 409

“A person who has not been lawfully appointed an executor or administrator of an estate may by reason of his own intrusion upon the affairs of the estate be treated for some purposes as having assumed the executorship of the estate and such a person is called an executor de son tort.”

4.Risk of Wasted Resources and Time

Without a proper grant of probate or letters of administration, any suit instituted by a privy may be deemed incompetent and struck out by the court, particularly when brought in a representative capacity. This procedural limitation severely affects their ability to act “on behalf of the estate of the deceased” and can be fatal to an otherwise meritorious claim. Given the often slow pace of judicial proceedings, a privy may only discover after several years of litigation that they lack the requisite locus standi, resulting in wasted time, resources, and emotional effort.[19]

5.Internal Family or Beneficiary Conflicts

Unauthorised interference or meddling with the assets of the estate of a deceased may lead to allegations of mismanagement, transparency and accountability. This may occasion internal disputes among family members and beneficiaries which could amount in litigation or bad blood between siblings.

This risk of internal dispute extends to initiating legal action without requisite authority or grant document, particularly over determining the person with the right to represent the estate. Such actions may raise concerns that privy who initiated the suit seeks to gain an undue advantage or assert a superior interest in the estate’s administration.

5

6.Delay in the Distribution of Estate Assets

As indicated in preceding paragraphs, a privy is not permitted to deal with the assets of a deceased, including the distribution of same to the beneficiaries, without the obtainment of grant documents[20]. Consequently, non-obtainment of grant documents may lead to delays in the distribution of the assets of the deceased and increase the possibility of interference of meddling from third-parties or executors de son tort.

[19] Ibid.

[20] Supra note 15.

EXCEPTION TO THE GENERAL RULE ON RIGHT OF ACTION

While actions cannot be instituted in respect of a deceased's estate unless probate or letters of administration are obtained, in certain circumstances, rights may be enforced by persons who are not duly appointed. These persons are generally referred to as privies and the legal authority they exercise is governed by a combination of statutory laws, customary law, and judicial precedents. The case of **Otukpo v. John**^[21] is instructive in this regard.



In that case, in an effort to assert the title of their late father, John Agbalikwunu, over a parcel of land measuring approximately 7' x 50' adjoining Plot No. A2, Unguwar Television, Kaduna, the Respondents (as Claimants) instituted an action in a representative capacity on behalf of themselves and the family. The Appellant, as Defendant, filed a defence and counter-claimed for a declaration of title.

The trial court found in favour of the Claimants and dismissed the counter-claim. Dissatisfied, the Defendant appealed to the Court of Appeal, raising among other grounds, the issue of jurisdiction arguing that the Respondents lacked locus standi as sued in a representative capacity as children of the late John Agbalikwunu but did not show in evidence letters of administration which entitled them to sue, which he argued were necessary to maintain the action.

In response, the Respondents contended that they sued as heirs in a representative capacity, not as personal representatives or administrators of the estate, and were therefore not required to produce letters of administration. In resolving the question, the Court of Appeal held thus:

[21] (2000) 8 NWLR (Pt. 669) 507

"an action in tort accrues to the children of a deceased person who died intestate under English law. And this is the law that governs the issue of probate in Kaduna State. If an injury is done after the death of a testator or intestator to the goods or chattels forming part of his estate... The provision of Order 5, rules 1 & 2 of the High Court of Kaduna State (Civil Procedure) Rules enables some of the children to appear as representatives of the others, and the representatives would be properly before the court to sue in an action in tort to protect the estate of their father. Before the grant of letters of administration, the children of the deceased should be able to protect the property of their deceased parent."



In fact, this right to commence an action in the interest of the estate has been held to extend to all privies of the deceased. The court would therefore favour the doctrine of necessity and prevention of injustice principle by allowing the privies to act to preserve or protect estate interests during delays in getting probate or letters of administration. In the case of **Fasuyi v. Uche**[22], the Respondent, acting for himself and the Pius and Udoh families, sued to assert his Late Sister, Madam Nwa Monday Udoh's ("**Late Madam Udoh**") title to the land situate at Igbo Ologbo, Ayobo Area of Lagos State ("Subject Property") and acquired under the Ayobo Native Law and Custom. Late Madam Udoh had commenced developing the subject property before her death in 2001. Subsequently, the Respondent discovered in 2007 that the Appellant had begun construction on the property. After the Kabiyesi of Ayobo ruled in his favour in a customary meeting, the Respondent sued for a declaration of ownership and damages.

The trial court granted all reliefs in favour of the Respondent. On appeal, the Appellant challenged the Respondent's locus standi, arguing he lacked capacity to sue as he was neither a legal beneficiary nor had proved that the families had joint ownership of the land, as title remained with the deceased. In response, the Respondent contended that his standing derived from his blood relationship with the deceased and a mandate from the families, asserting that family members may sue to protect family property, regardless of formal letters of administration. He argued the estate was not unrepresented, and thus the Administrator-General had no role. In reply, the Appellant maintained that such rights only exist if family ownership is proved, which had not been done in this case. In resolving the issue, the Court of Appeal, went further to outline in what capacity a Privy may commence an action to protect the interest of the Estate as follows:



“However, the Appellant has also argued that the Respondent did not have the Locus Standi to sue on the basis that the Respondent did not obtain Letters of Administration to commence this action, the owner being a deceased. However, I consider the submission of the Appellant on the question of letter of administration as a sheer red herring because the Respondent did not sue the Appellant as Administrator of the estate of the deceased, he has sued the Appellant as a privy to the titleholder (his late sister) which he has established to this Court. Therefore, the Respondent does not need to prove to this Court whether or not he possesses (a) Letter of Administration in respect of the Estate of the Deceased before he is eligible to bring this action.

From the foregoing, it is evident that a Privy (including executors) may maintain an action with regard to the estate of the deceased, without need to prove obtainment of grant documents. However, such action must be maintained in the personal capacity/name of the Privy. Essentially, the privy must commence the action in his own name, else the action will be incompetent.

Furthermore, it is pertinent to note that the locus standi of a privy to maintain an action does not derive from being a beneficiary or being entitled to a benefit under the Estate, rather it relates to a relationship between the Privy and the Deceased. Indeed, all the privy has to establish is the nature of the relationship with the Deceased. In *Fasuyi v. Uche*[23] the court held that the Respondent was a Privy in Blood to the Late Madam Nwa Monday Udoh and therefore derives his interest in the Property in dispute from being a privy to the Deceased, as such he is entitled to maintain the suit.

WHEN PRIVIES CAN SUE WITHOUT PROBATE OR LETTERS OF ADMINISTRATION IN NIGERIA

1. Customary Law Inheritance

Where a person who is governed by customary law gets married under the Marriage Act and later dies without a will (intestate), the distribution of their property that could have been left by will shall be done according to the provisions of the Administration of Estates Law, not according to customary law despite any conflicting customs.[24] However, in certain circumstances, heirs may enforce rights without probate or letters of administration where property devolves under customary law. Where the residuary estate (the remainder after debts and specific gifts) would otherwise go to the State as bona vacantia (i.e., when there are no heirs), it shall instead be distributed according to customary law, and not claimed by the State.[25] Also, real property (like land) that, under customary law, cannot be passed on by will shall still be inherited according to customary law, even if this conflicts with the general rule above.[26]

Therefore, under various Nigerian customary law, family property or inheritance rights may be enforced by the eldest surviving child or family head or a person entitled to benefit under the custom, without formal probate or Letters of Administration. We shall examine some of the principles relating to the native law and custom of select tribes in Nigeria.

[23] Supra

[24] Section 49 (5) Administration of Estates Law, Lagos 2015

[25] Section 49 (5) (a)

[26] Section 49 (5) (b)

Starting with the Yoruba native law and custom, in **Agara & Ors v. Agunbiade & Ors**[27], at page 20 – 21, the Court of Appeal outlined the principles which underpin succession Yoruba native law and custom, as thus:

"It should be reiterated, that the principle regarding succession under Yoruba native law and custom has long been settled in a plethora of authorities. In LEWIS VS. BANKOLE (supra). Most especially, the findings of the privy council are to the effect that- (i) when the founder of a family dies, the eldest son called the "Dawodu" succeeds to the headship of the family with all that that implies, including residence and the given of orders in his father's house or compound; (ii) on the death of the eldest surviving son, the next Eldest surviving child of the founder, whether male or female, is the proper person to succeed as head of the family; (iii) if there is going to be any important dealing with family property all branches of the family must be consulted, and representation on the family council is also per strip according as there are wives with children. (iv) the division is into equal shares between the respective branches; regard being had to any property already received by any of the founder's children during his lifetime; (v) the founder's grandchildren only succeed to such Rights as their immediate parents had in the family property (vi) the founder's compound or house is usually regarded as the "family house" which must be preserved for posterity.

Furthermore, there are two systems of distribution of assets among the children of the deceased under Yoruba native law and custom. These systems are Idi-Igi and Ori-Ojori. The idi-igi method distributes the estate per the number of wives the deceased had no matter the disparity in the number of children among the wives. The ori-ojori method on the other hand, considers the number of children and shares out the property equally among the children.

Meanwhile, under Benin Customary law of inheritance, it is the eldest surviving son who inherits the "igiogbe", which is the house his deceased father lived and died, provided he performed the requisite burial rites. Indeed, in **Omokaro & Ors v. Omokaro & Ors**[28], the Supreme Court held that the eldest son of a deceased

[27] (2012) LPELR-8390(CA)

[28] (2021) LPELR-58389(SC)

person does not inherit the deceased's property until after the completion of the "second" or secondary burial ceremonies that is, funeral obsequies. It is only after this ceremony of Ukpomwan that the family distributes the property of the deceased. However, until the exercise of distribution under customary law has been performed, the eldest son retains all the property of the deceased in trust for himself and the children of the deceased.[29]

This emphasises the difference between the Benin the Yoruba customary law of inheritance, in that, unlike the Bini Native law and custom where the first or eldest son of a deceased Benin man inherits exclusively, the last house where the deceased father lived and died, under Yoruba customary law of inheritance, where a Yoruba man had died, the house where he lived and died would remain a family house to which all the children of the deceased would have access.[30]

Under the Igbo native law and custom of inheritance, on the intestate death of a testator, his first son inherits his father's personal property, which includes his personal staff, the 'ofò', any traditional titles the father held during his lifetime, his clothing, and the family residence, commonly referred to as the 'obi' and is responsible for managing and overseeing the remaining assets of their father.[31]

2.Actions for personal interest or direct injury

Equity will not suffer a wrong without a remedy, therefore, dependents of the deceased (spouse, children, parents) may sue in their own capacity for loss of dependency resulting from the wrongful death of the deceased.[32] Section 2 of the Fatal Accidents Act, 1976 specifically provides that the action be brought by or in the name of the executor or administrator.[33] However, the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it, where there is no executor or administrator or if no action was brought within six months after the death by and in the name of the executor or administrator.[34]

While a testator has a right to dispose of his property by will, by virtue of section 2 (1) of the Wills Law of Lagos State[35], his/her spouse or/and children (privies), may apply to the Court for an order on the ground that the disposition of the estate by the will does not make reasonable financial provision for them. In the case of a surviving spouse, reasonable financial provision means whatever amount is fair for them to

[29] Arase v. Arase (1981) 5 S.C. 33 at 62 Idigbe, JSC,

[30] Olowu v. Olowu (1994) 4 NWLR (Pt. 336) 90

[31] M. T. Otu, M Nabiebu, 'Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis', European Journal of Social Sciences, (2021) Vol. 62 No 2, 50-63, <<http://www.europeanjournalofsocialsciences.com/>> accessed 12th April, 2025

[32] Section 1, Fatal Accidents Act 1976 (Cap F6 LFN 2004)

[33] Section 2 (1)

[34] Section 2 (2)

[35] Section 2 (1) Wills Law Chap W2 Laws of Lagos State

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[29] Arase v. Arase (1981) 5 S.C. 33 at 62 Idigbe, JSC,

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[31] M. T. Otu, M Nabiebu, 'Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis', European Journal of Social Sciences, (2021) Vol. 62 No 2, 50-63, <<http://www.europeanjournalofsocialsciences.com/>> accessed 12th April, 2025

[32] Section 1, Fatal Accidents Act 1976 (Cap F6 LFN 2004)

[33] Section 2 (1)

[34] Section 2 (2)

[35] Section 2 (1) Wills Law Chap W2 Laws of Lagos State

receive considering all circumstances, regardless of whether it is needed for their maintenance, except where a valid customary judicial separation was in effect and ongoing at the time of death.[36] This application is also only exercisable within six months from the grant of probate.[37]

3. Jointly Owned Property (Survivorship Rights)

Where property or accounts were jointly held with the deceased, the surviving joint owner can sue without probate based on the right of survivorship. Joint tenancy grants co-owners equal rights to a property and includes the right of survivorship, meaning that when one co-owner dies, their share automatically transfers to the surviving co-owners without requiring probate.[28] The deceased's interest ends at death and does not pass to heirs, relatives, or anyone named in a will or trust. This process continues until one surviving owner holds the entire property.

Upon the death of a joint tenant in a family, the deceased's interest automatically in the property automatically vests in the surviving joint tenant(s) by virtue of the right of survivorship, without the necessity for probate or letters of administration.[39] The transfer of title operates solely on proof of death and no further evidence of intention or act of disposition by the deceased is required.[40] This mode of succession is a legally recognized and efficient means of vesting title in the surviving joint tenant(s), particularly within family arrangements.

4. Customary or Summary Probate Procedures for Small Estates

In some states and customary courts, small estates are typically managed through a simpler and more affordable process than larger ones. While the exact procedures may differ by state, the goal is to ease the burden on families by offering streamlined applications and reduced court fees. Therefore, small estate claims can be brought based on customary inheritance, especially in matters related to land disputes or chieftaincy titles, without formal probate or letters of administration. In Bayelsa, where a deceased who resided in the state before his/her death leaves behind personal property, including money held by any individual, bank, or other institution, with a total value not exceeding N2, 000 000 (Two Million Naira), the estate will be considered a

[36] Section 2 (2)

[37] Section 2 (3)

[38] B. McKort, 'Right of Survivorship for Joint Tenants' Law Depot, 2025, <<https://www.lawdepot.com/right-of-survivorship/?loc=US>> accessed 12th April, 2025

[39] LawTeacher, 'Joint Tenancy v Tenancy In Common' LawTeacher.net (2018) <<https://www.lawteacher.net/lectures/land-law/co-ownership/joint-tenancy-v-tenancy-in-common/?vref=1>> accessed 13th April 2025

[40] S. P.A. Ajibade & Co 'Co-Ownership Of Property And The Right Of Survivorship' (2022) <<https://www.mondaq.com/nigeria/landlord-tenant-leases/1184360/co-ownership-of-property-and-the-right-of-survivorship>> accessed 12th April, 2025

small estate and will be subject to the provisions of the Bayelsa State Administration of Estates Law.[41] Administration of Estate Laws and Probate Rules do not apply to such estates.[42] The surviving spouse, children (including adopted) are entitled to apply for the issuance of a Certificate.[43] In the absence of such spouse and/or children, the parents, siblings of whole blood and half blood, uncles and aunts are entitled to apply for the issuance of a certificate in order to priority.[44]



5. Protection of the Interest of the Estate

As outlined above, personal representatives may bring actions to protect the Estate from third-party adverse interest or even from interference or mismanagement by Executors de son tort, beneficiaries or personal representatives. Indeed, this right to sue ensures that the beneficiaries of the Estate benefit or enjoy the assets of the Estate.

For example, in the case of **Ejigini v. Ezenwa & Ors**[45] the wife of the Late Christopher Ezenwa (**“the Deceased”**), sued the 2nd Defendant, who had been nominated as one of the Executors in the deceased will, for disposing the subject property to the 1st Defendant/Appellant, without the consent and authority of the other Executors. In its judgment, the Court of Appeal affirmed the right of the deceased to institute the suit and stated thus:

[41] Administration of Estates (Small Estates Payment Exemption) Law, 2011

[42] *ibid*

[43] *ibid*

[44] *ibid*

[45] (2003) LPELR-10329(CA)

"The 2nd defendant was one of the executors of the Will and lacked the capacity to single handedly sell part of the estate of the deceased without the knowledge and concurrence of the other executors. The sale of 91, Ikwerre Road, Port Harcourt was therefore, improper. I entirely, agree with the trial Court on that score on page 133, lines 1-6. The 2nd defendant could not sell the property alone in whatever capacity. The transaction is therefore, rendered voidable at the instance of the other executors..."

COMPARATIVE ANALYSIS BETWEEN THE RIGHTS OF PRIVIES TO INSTITUTE ACTIONS WITHOUT THE GRANT IN NIGERIA AND ENGLAND AND WALES

Traditionally, under common law, actions cannot be brought until the grant of probate or letters of administration. In the case of **Ingall V Moran**,^[46] the court held that a claim arising from a deceased person's injury vests in the executor upon death if a will exists, or in the court until letters of administration are granted in cases of intestacy. As the claimant issued a writ before obtaining letters of administration, he had no legal standing or title to sue, and the action was a nullity. The court emphasised that such a defect could not be cured by later amendments or retroactive validation, and all proceedings based on the invalid writ, including the judgment, were void. The appeal was dismissed.

This position although similar to the general rule in Nigeria that privies cannot sue without the grant of probate. It is interesting to note that the Civil Procedure Rules 1998 provides a procedure for instituting proceedings in situations where a personal representative has not been appointed. Rule 57. 16 (3A) provides that: -[1]

Where no grant has been obtained, the claimant may make a claim without naming a defendant and may apply for directions as to the representation of the estate. The written evidence must –

- (a) explain the reasons why it has not been possible for a grant to be obtained;*
- (b) be accompanied by the original or a copy (if either is available) of the will or other testamentary document in respect of which probate or letters of administration are to be granted; and*
- (c) contain the following information, so far as known to the claimant:*
 - (i) brief details of the property comprised in the estate, with an approximate estimate of its capital value and any income that is received from it;*

[46] 1944 JELR 80274 (KB)

[47] Civil Procedure Rules, 1998

- (ii) brief details of the liability of the estate;*
- (iii) the names and addresses of the persons who are in possession of the documents relating to the estate; and*
- (iv) the names of the beneficiaries and their respective interests in the estate.*

Rule (3B) provides that, “where a claim is made in accordance with paragraph (3A), the court may give directions as to the parties to the claim and as to the representation of the estate either on the claimant’s application or on its own initiative.”[48] Section 4 of the 1975 Act as amended, confirms that nothing prevents the making of an application under the Act before representation with respect to the estate of the deceased person is taken out.[49]

This therefore means that privies can apply to be appointed or protected as opposed to the administration of Estates Law which has no specific statutory provision for this. The practice and procedure in England and Wales therefore provide a broader framework permitting actions before the grant of probate and making provisions for court appointed representatives to facilitate urgent litigation. Urgent filings or injections may be allowed and such actions would likely be regularised retrospectively

CONCLUSION

Whereas the general rule requires privies to obtain grant documents before initiating legal actions relating to the estate of a deceased, privies may maintain an action in their personal capacity to protect the estate’s interest. However, such action must be undertaken in the interest of the estate and its rightful beneficiaries. This guarantees proper management of the estate, safeguards the rights of the beneficiaries and ensures compliance with the stipulations of the law.

That said, the involvement of legal counsel is essential. The complexity of probate procedures and the severe consequences of procedural missteps make it imperative to engage a qualified lawyer—not only for the grant application process but also for guiding privies in the lawful administration of the estate. Legal advice helps ensure compliance, reduce risk, and promote fairness in distributing the estate according to law.

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