

‘STANDING’ ROOM ONLY: A VINTAGE ISSUE IN ESTATE ADMINISTRATION CLAIMS

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ABSTRACT

The doctrine of standing or locus standi governs the rule of competency of a person that submits their grievances to the court. A beneficiary, usually an incompetent plaintiff due to the lack of locus standi, is not a qualified litigant to seek the court's intervention in administering the deceased's estate. The prevailing legal position in Malaysia is that the estate beneficiaries are not authorised to bring forth any action against any party on behalf of the estate, until a sealed order of the letter of representation has been presented. The fundamental issue in question is whether the doctrine of standing has denied the inherent right of beneficiaries to exploit the deceased's estate. Hence, in light of this scenario, this paper aims to analyse the tendency of the court on deciding cases that relates to the standing of beneficiaries who are not personal representatives, when they submit claims on behalf of the estate. In this context, this paper uses the content analysis method to analyse past concluded cases and relevant legal provisions. This paper concludes that the Federal Court had whittled down the strict rule that beneficiaries should first obtain the grant of letters of representations for deceased's estates by providing the locus standi to submit any legal claims on behalf of the estates. Therefore, by allowing the claims made by the beneficiaries, the court has acknowledged the existence of special circumstances that can be applied to exceptional cases.

Keywords: *Locus standi and standing, Right of estate beneficiaries, Estate administration.*

INTRODUCTION

“If a man may have an action, for the same reason a hundred thousand may, the courts would be flooded with claims.”

Iveson v Moore 1 Ld Raym 486, 492 (1699)

Doctrine of standing indicates that a person is permitted to be heard, and can appear before the court in a legal proceeding. Moreover, it is a procedure that prevents the abuse of the legal process which was instituted by law to prevent time wasting and further loss of public funds through frivolous and vexatious litigations. Doctrine of standing or ‘standing in courts’ is a terms commonly used in the United States of America, while the courts in England uses its Latin phrase, known as *locus standi*. It is a vintage term from time immemorial in legal claims (Backer, 2012). Garner (2011) defined *locus standi* as a right to bring forth action or to be heard in a given forum.

Generally, a person is legally attentive to the consequences of an event that would potentially affect them regardless on whether it will advance or curtail their legal rights (*Amon v. Raphael Tuck & Sons Ltd.* (1955), [1956] 1 Q.B. 357). Thus, in order to have a standing in of action, the plaintiff in every case must be legally attentive to the consequence of the particular issue being claimed. Subsequently, it is important to identify if the person has a standing or *locus standi* to start a legal proceeding, and to understand if the outcome enforced would pose sufficient stake to the person that raises the judicial process. Therefore, the concept of standing discussed in this paper focuses on the party that is pursuing a claim, and not on the claims that are anticipated to be resolved. It emphasizes the capacity of the plaintiff to sue, which is the very pillar and root of the claim itself. (*Supreme Envy Sdn Bhd v. Abul Rahim bin Sinon (suing and acting as personal representative and representing the estate of Sinon bin Karnen, the deceased) & Anor* [2017] 1 MLJ 43).

In a documented case, Abdul Hamid CJ, when delivering his judgment in the Supreme Court case of *Government of Malaysia*

v. Lim Kit Siang [1988] 2 MLJ 12 observed that *locus standi* is generally understood as the right of a party to appear and be heard by a tribunal. An applicant is said to have *locus standi* when making a claim in a court of law, if the court recognizes his or her ability to institute and maintain the proceedings. The issue of standing is widely diverse from the issues of substantive value, especially with regards to the legal capacity of the applicant. Under certain circumstances, an applicant might have the standing to bring forth a case, although it may potentially fail in due course on grounds that it lacks merit.

Therefore, *locus standi* is a necessary precondition before any party could take action, whereby in the absence of capacity, the court has the inherent jurisdiction to deny the parties their claims on the grounds that the proceedings have been scandalous, frivolous or vexatious (Jalil, 2004) or has been a waste of the Court's processes, according to Order 18 rule 9 of Rules of Court 2012 (*Yoong Khong Fah & Ors v. Nfc Clothier Sdn Bhd* [2017] 1 LNS 225). Hence, it is necessary for a plaintiff to establish the threshold requirements of *locus standi* when sustaining an action. This principle has been discussed thoroughly in *Khor Chai Seang & Ors v. Khor Teng Tong Holdings Sdn Bhd & Ors* [2018] 1 LNS 515 and *Amran bin Ab Rahman & Ors v. Dato' Hj Ikmal Hisham bin Abdul Aziz & Ors* [2015] 7 MLJ 736.

For instance, the Court of Appeal in the case of *Jigarlal Kantilal Doshi v. Amanah Raya Berhad (as the administrator of the estate of the late Kantilal Prabhulal Doshi, deceased) and other appeals* [2014] 8 CLJ 704 had stipulated that a proceeding filed by a person who does not have a *locus standi* will be rendered null and void. The *locus standi* will not be restored even after the plaintiff may later procure interest in the suit, as was enforced in *Benjamin Lim Keong Hoe v. Lim Kok Thay & Ors* [2018] 1 LNS 618.

Hence, the fundamental issue that needs to be discussed is whether the doctrine of standing has denied the inherent right of beneficiaries to exploit the deceased's estates. In light of this scenario, this paper aims to analyse the tendency of the court on deciding cases that relates to the standing of a beneficiary if they wish to take legal action or grievances claims on behalf of the deceased's estates, or

to act within their capacity under the estate administration to bestow authority to personal representatives appointed by the court.

Estate Administration

The historical evolution of the administration of estates had originated from a practice based on the local customary norms in Malay States that eventually progressed to a more organized system under the influence of the English Common Law. The introduction of the civil court system was established and modeled according to the Royal Charter of Justice of 1807, 1826 and 1855 (Mohd Noor, 2017). The civil court system was then gradually developed through time to drive the formation of other administrative bodies that were in charge of succession matters, which included the administration of estates (Drs Nasrul & Mohd Salim, 2018; Drs Nasrul, Mohd Salim, Md. Said & Abdul Manap, 2017; Noordin et al., 2012).

Malaysia is blessed with myriads of laws and distinct sets of legal and institutional frameworks to govern the probate and administration of estates. The administration of estates in West Malaysia is further divided into three categories namely; administration of small estates, administration of non-small estates, and administration of estates of small values. Each category is based on a diverse set of legal frameworks which have been inconveniently enforced within different institutional framework of administrative bodies (Mohd Noor, 2017). The administration of estates, specifically the grant of probate and letter of administration, has been documented in para 4(e) (i) of the Federal List in Ninth Schedule of the Federal Constitution. The exclusivity of jurisdiction is given to the High Court without excluding the restricted jurisdiction of Syariah courts that may include certain aspects that relates to Islamic law provided under Article 121(1A) Federal Constitution, as evident in section 24(f) of the Court of Judicature Act 1964. The law is stated as follows:

‘without prejudice to the generality of Article 121 of the Constitution the High Court shall, in the exercise of its jurisdiction, have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force

within its local jurisdiction which includes jurisdiction to grant probates of wills and testaments and letters of administration of the estates of deceased persons leaving property within the territorial jurisdiction of the Court and to alter or revoke such grants.’

The substantive legal provisions can be found in Probate and Administration Act 1959, whilst the legal procedures are further explained in Order 71 and 72 of Rules of Court 2012. Apart from the High Court, the system is also supported and implemented by two separate administrative bodies, which are the Small Estate Distribution Division and Public Trust Corporation. (Halim, 2018). The former is governed by the Small Estate (Distribution) Act 1955 (Act 98), while the latter is governed by the Public Trust Corporation Act 1995 (Act 532). Essentially, the process for the administration of estates by the High Court begins with the commencement of the application for letters of representation and ends with the distribution of the estate, whereby the proceeds are subsequently delivered to the estates’ beneficiaries. On the other hand, the procedure at the Small Estates Distribution Section is initiated by petitioning for the small estate administration to issue the distribution order by the Registrar, either through direct transmission, grant of letters of administration, or order for sale (Sundrum, 2006; Sundrum, 2012a, Sundrum, 2012b).

Amanah Raya Berhad plays various roles in the administration of an estate. One of its primary role is that the organization could either act as a trustee, a personal representative or administrator of the undistributed funds, and produces the summary for the administration of the deceased’s moveable property (Halim, Mohd Salim, Hassan, Mohd Noor & Arshad, 2015). Conversely, the Syariah Court will only deal with the legal aspect, in accordance to Islamic law, such as the issuance of inheritance certificate for the purpose of distributing the deceased Muslims’ estate, and to resolve issues regarding Islamic inheritance such as the claim by the surviving spouse as to jointly acquired property, issues on legitimacy of children of the deceased, validity of wills executed by the deceased Muslim and the status of *hibah* or gift disposed by the deceased during his lifetime under the Islamic law (Halim, 2018).

Hence, this paper emphasizes the discussion on the administration of estates in the High Court that governs testate estate and deceased's estate that are worth more than RM 2 million. This paper will also present a discussion on the right of beneficiaries to take action on behalf of the estates. However, the right of beneficiaries to sue other parties on their own capacity will not be discussed in this paper.

Doctrine of Standing in Estate Administration

Doctrine of standing has been an old notion in the estate administration claim. Although the laws in Malaysia allow any person who has a cause for action to begin and carry out proceedings in the Court, in accordance to Order 5 Rule 6 (1) of Rules of Court 2012, there is an additional requirement regarding the capacity with respect to estate administration. Generally, the personal representative of the deceased must represent the estate of a deceased person (Backer, 2012). This is due to the mandate imposed by law that all legal claims with respect to deceased estates can only be carried out by the personal representatives that have been appointed by the court through the grant of letter for probate, or letter of administration by the High Court in accordance to the Probate and Administration Act 1959 and Order 71 and 72 of Rules of Court 2012. Section 39 of Probate and Administration 1959 highlighted the importance of estate representation. The section states the following;

‘Where a person dies intestate his movable and immovable property until administration is granted in respect thereof shall vest in the Corporation in the same manner and to the same extent as it vests in the Probate Judge in England. Then, on the making of an order for a grant of administration by the Court all such property shall vest in the administrator.’

A personal representative who is named and carries out the instructions written in the deceased's will is known as executor, while a person acting as a personal representative of a deceased person that did not leave any will is known as an administrator (Halim, 2018; Pearce et al., 2010; Raman, 2005; Sidhu, 2005; Sundrum, 2006). In other words, the two different aspect of estate representation, namely executor and administrator, are based on the nature of their

appointment (Halim & Mohd Noor, 2014b). The term ‘personal representative’ also includes any person who takes possession and manages the properties of a deceased person and performs their obligation thoroughly in the estate administration (Section 2 of Civil Law Act 1956). A personal representative is a fiduciary that has been put in charge of administering the estate of a deceased’s person, and perform their task with the highest degree of trust and good faith to ensure that the estate is administered accordingly (Halim & Mohd Noor, 2014a; Halim & Mohd Noor,2015).

Sawyer and Spero (2015) have described personal representatives as the people who administers the estate that has been left by the deceased. Occasionally, they are assumed to be stepping into the deceased person’s shoes in managing the properties of the estate, and to administer the estate similarly to what the deceased would have done when they were alive (Halim & Mohd Noor, 2016). However, they are subjected to many rules during the management of the estate. Personal representatives may be either executors or administrators, depending on their appointment by the testator’s will, however, all personal representative have essentially the same responsibilities. Beneficiaries, on other hand, is a person who is eligible to receive the property that has been written in a will, or a person who has already received the property.

General Principle

It is undisputed that the general rule or principle upheld by the courts have consistently been the appointment of an independent legal representative when a beneficiary to a deceased’s estate has no interest in managing the estate and foregoes their legal title to commence any decision, regardless if the person died testate or intestate. Hence, by the laws in Malaysia, the beneficiaries will not be able to interfere with the deceased’ estates, unless they are appointed as the legal representatives of the estate. In other words, an executors or administrators of a deceased’ estate can act on behalf of the estate, after being granted grants of probate or letters of administration from the court. Therefore, the beneficiary that has been presented with a grant of letter of representation will then be lawfully protected, and acquire the *locus standi* to bring any legal action or claim to the court. The processes mentioned will have to

be in accordance to the Probate Administration Act 1959 and the Rules of the Court of 2012, Order 71 and Order 72 (Mohd Noor & Abd. Aziz, 2016)

The Malaysian courts have repeatedly given recognition to the rule that a person must have the sealed order of the High Court before undertaking any legal proceedings in court. In view of the statute that deals with probate and administration of estates, the authority of the appointed personal representative is very high to satisfy *locus standi*. Moreover, it is dependent on the facts, circumstances, or urgency of the matter. The justifications on why letters of representation must be obtained before commencement of the action for the benefit of estate is well established. (Mohd Noor & Abd. Aziz, 2016). Thus, estates beneficiaries are not entitled to take any action against any party until a sealed order of the letter of representations has been presented. Although the court has the discretion to judicially choose any person to be granted the letter of representations, the court has a tendency to grant administrative authority, when the deceased has died intestate or if the deceased left a will, to the person that has the largest beneficial interest in the estate (Mohd Noor, 2017).

This strict law states that estates beneficiaries has no *locus standi* to take legal action without attaining the grant of the letters of representation for the estate of the deceased in the early stages, as observed in the case of *Ingall v. Moran* [1944] 1 KB 160. The legal precedent was put forward by the Federal Court decision in *Deraman & Ors v. Mek Yam* [1977] 1 MLJ 52. The court's verdict was against the appellants as they had not taken out representation to their father's estate and therefore, had no standing to institute the legal claim. The case was for an application by the beneficiaries to registered the 5/10 undivided share in the land owned by the deceased 'Din bin Salleh', in their names as the lawful beneficiaries of the estate. The court judged that the beneficiaries had no standing to initiate a legal proceeding to apply for the registration of the title that converts the land to their names. The court further ruled that the person who had a standing in this particular case is the legal representatives of the estate, and not the beneficiaries of the deceased.

The rigidity of the law extends to the circumstances where a person who sues as an administrator, does not have the letters of

administration at the commencement of an action. In other words, a person in such position will have no power to sue qua administrator. In *Ang Hoi Yin v. Sim Sie Hau* [[1969] 2 MLJ 3, the plaintiffs brought an action against the defendant who has been granted the letters of administration by the court. The defendant entered a conditional appearance and applied to set aside the writ based on the reason that the plaintiffs had not acquired the *locus standi* as the plaintiffs were not granted the letters of administration. Hence, the court ruled that since the plaintiffs had not extracted the grant of letters of representation, they had no power to sue as administrator and therefore, the court had rejected the suit on the grounds of nullity.

In the case of *King Hock Ching v. Ung Siew Ping* [1974] 2 MLJ 16, the court ruled that the right of action to sue on the subject matter must be based on the plaintiff's right as the administrator during the commencement of an action, on the grounds that they have the right to manage the assets from the estate of the deceased. The decision to intervene with the decision in the case *Ong Bee Yam v. Osprey Sdn Bhd & Ors* [1997] 5 CLJ 408, whereby Elizabeth Chapman JC claimed that before a right of action can be enforced by an administrator, it must be incorporated into the grant of letters of administration as part of the deceased person's estate.

Nevertheless, the requirement to obtain the letters of administration is confine to actions related to any share of the deceased's estate. For instance, in *Ooi Jim & Anor v. Ai Eit & Ors.* [1977] 2 MLJ 105, the court ruled that to institute an action for a declaration on the status of her husband, letters of administration was not needed to be presented. It is also unnecessary for the beneficiaries to apply for the letter of representation, if they were suing on their own capacity and not on behalf of the estate.

In *Omar Ali bin Mohd. & Ors v. Syed Jajaralsadeq bin Abdulkadir Alhadad & Ors* [1995] 3 SLR 388, the court ruled that the beneficiaries had *locus standi* in the estate proceeding as they were suing within their own capacity as beneficiaries of the estate for a declaration to protect the property of the estate, and to prevent the sale of the property to the fifth defendant. The beneficiaries succeeded in proving that they had an equitable right in the estate of the deceased's dying intestate. In this circumstances, the beneficiaries

had the right of equity which allowed them to seek an equitable remedy for declaratory judgement on behalf of the estate, as was previously expressed by Gillard J in *Re Atkinson* [1971] VR 612.

The preceding notion has also been applied in the case of *Siti Fatimah Awang Ya v. Director & Anor* [2017] 1 LNS 2241. In this particular case, the court had set aside the need for a letter of representation, where the applicant applied for an order to disclose the documents. This is because the application made did not include a cause of action, but was mainly for a disclosure order for the documents from the deceased husband of the plaintiff. Therefore, the court found that it was not necessary for the plaintiff to prove that she was the spouse, and subsequently considered her as the lawful personal representative of the deceased's estate. The court ruled that a supporting affidavit filed by the plaintiff is adequate to proof that she was the wife of the deceased, and subsequently has a locus in the application.

In *Ng Thau Shing v. George Justine & Other Cases* [2005] 6 CLJ 80, Richard Malanjum J (as he was referred to) displayed that the plaintiff had the standing to instigate the claims, even though he did not gain the relevant document for the letters of administration. The plaintiff was pursuing for an identification on the status of the signature of the deceased that was allegedly forged by another party.

The Shifting Paradigm in 2007

The strict rule that beneficiaries have no *locus standi* to institute any action on behalf of deceased's estate, in the absence of the letter of representation, has been whittled down in 2007 by the Federal Court decision in *Al Rashidy Kassim & Ors v Rosman Roslan* [2007] 3 CLJ 361. The court allowed a claim made by the beneficiaries without first obtaining the letter of administration by acknowledging that this was an exceptional case, mainly due to the existence of special circumstances for the purpose of protecting and preserving the assets of the deceased's estate.

One of the issue that was brought to the court in the *Al Rashidy's* case is whether the beneficiaries of the deceased person, without first obtaining the letters of administration, have a standing or locus

standi to initiate an action to protect and to recover land which has been fraudulently acquired by an outsider. The beneficiaries in this case was hoping that the court would provide declaratory relief to nullify the transfer of the deceased's estate and declared it void on the premise of fraud committed by the respondent administrator. The court granted the declaratory relief which suggested that the beneficiaries had the standing or *locus standi* to commence the action in the absence of the letters of administration, but reassured that the decision was only applicable due to special circumstances for the restricted purpose of protecting and preserving the deceased's estate. Furthermore, in the same case, the estate's beneficiaries intended to reclaim the disputed land from the administrator who was not only fraudulently claiming the land to himself but upon passing over the said land, the party injured the fruit trees and destroyed the buildings erected on the land when they intended to sell the land to a third party. The damages may have resulted in the failure of the land to be sold. Moreover, it is in pursuant to the principle of indefensibility of the title in *Adorna Properties Sdn. Bhd. v. Boonsom Boonyamit* [2001] 2 CLJ 133 that conferred the instantaneous indefeasible title to a purchaser who in good faith provided valuable examination, before being overruled by another Federal Court decision in *Tan Ying Hong v Tan Sian San & Ors* [2010] 2 CLJ 269

Privy Council in *Joseph Hayim and Another v. Citibank N.A. and Another* [1987] AC 730, had earlier acknowledged the special circumstances found in the *Al Rashidy's* case. The court in this case dictated that a beneficiary has no cause of action against a third party except in certain circumstances that led to a disappointing, explicable or inexcusable action undertaken by the entrusted person when performing their duty as the trustees to the beneficiary. The trustee had either failed to safeguard the trust estate, or the interest of the beneficiary in the trust estate. The Singapore Court of Appeal in *Wong Moy (Administratrix of the Estate of Theng Chee Khim, (deceased) v. Soo Ah Choy* [1996] 3 SLR 398 applied the principles set out in *Joseph Hayim*, where the judge shared the same view that the administration was stopped by situations that were not within her control to take action against the respondent, as the grant of administration could not be extracted. There was adequate proof presented that showed special circumstance existed to qualify her to bring action of *qua* a beneficiary, on behalf of her children as

beneficiaries of the deceased's estate. All aspects of the case should be deliberated, including the nature of the assets, the question of the personal representative, and the reason for the default of the personal representative. Therefore, the failure to extract the letters of administrations of the estate was due to the lack of ability from the appellant to acquire the essential clearance from the Commissioner of Estate Duty.

Following the decision in *Wong Moy (Administratrix of the Estate of Theng Chee Khim, (deceased))* (1996), the court on the *Al Rashidy* case suggested that the extraordinary circumstances should not be restricted solely on cases for which the personal representative had defaulted in reclaiming the property of the estate, as all the circumstances of the case should be deliberated by the court to obtain a just decision. Based on the decision in the case of *Re Atkinson* [1971] VR 612 and *Omar Ali Mohd & Ors v. Syed Jajaralsadeq Abdulkadir Alhadad & Ors* [1995] 3 SLR 388., the court further considered that it must proof that the beneficiary has, at best, an equitable right in the estate of the deceased to authorize the beneficiary to pursue on behalf of the estate through a declaratory judgment.

It is interesting to note that the right of protection and preservation of a deceased's estate is distinguishable either from their right of authority or from an interest to share in the property of the deceased. The latter is usually identified as a preemptive attempt for fraud and mistakes. The court, in *Hj. Ali Omar & Anor v. Lim Kian Lee & Ors* [2002] 8 CLJ 443, allowed a declaratory relief when the plaintiff, as one of the beneficiaries of the estate of the deceased, was apprehended with the standing to protect and preserve the property of the deceased's estates.

The Judicial Decision After 2007

The courts after 2007 was divided when deciding on cases that was related to the issue of standing in estate administration. Some of the cases refrain themselves in the sphere of influence of special circumstance to protect and preserve the deceased estate. The court is usually reluctant to allow any legal claims, in the absence of the letter of representation without a strong justification to protect and

preserve the deceased estates. The Court of Appeal in *Law Hock Key & Anor v. Yap Meng Kan & Ors* [2008] 3 CLJ 470 for example, had observed and supported the above statement. In the aforementioned court case, the plaintiff has acted to claim the right of their deceased mother, in their father's estate. Although the plaintiffs are the heirs and beneficiaries, they were not legally authorized due to their failure to apply for a letter of representation for their mother's estate. Therefore, they have no standing to pursue any legal action against the defendant.

The court in *Thor Lye Suan v. Chua Siew Kee (Cai Xiuqi) & Ors* [2017] 10 CLJ 250 also came to same decision. The court ruled that the plaintiff did not bring the action as an administrator, but as a beneficiary and was also representing the other beneficiaries of the estate. In these circumstances, the special circumstance which would provide the plaintiff with *locus standi* to initiate the legal proceedings was not applicable. Likewise, the court in *Mohd Azmi Che Omar v. Mohd Zawawi B Mat Ghani* [2018] 1 LNS 550 has ruled that the absence of the letter of representation was the main reason for the failure to prove that the plaintiff is the trustee and/or administrator of the estate of his late mother, Selamah.

Furthermore, the Court of Appeal in *Dato' Ramesh Rajaramam v. Datin Zalikha Abd Rahman & Ors* [2014] 5 CLJ 669 dictated that in light of *Al Rashidy's* case, the courts will not grant locus unless it can be shown that it was crucial and advantageous to protect and preserve the interest of the deceased's estate. In view of the statute that deals with probate and administration of estates, the threshold for the purported administrator is very high to expedite the *locus standi* test. The special circumstances of protecting and preserving the deceased's estate has resulted to multiple allegations of fraud and misrepresentation by the court in *Supreme Envy Sdn Bhd v. Abul Rahim bin Sinon (suing and acting as personal representative and representing the estate of Sinon bin Karnen, the deceased) & Anor* [2017] 1 MLJ 43 and *Poziah Mat Jusoh v. Mohd Sabri Ghazali & Anor* [2018] 1 LNS 217.

In *Poziah Mat Jusoh v. Mohd Sabri Ghazali & Anor* [2018] 1 LNS 217, the court ruled that the plaintiff, who is a beneficiary, had an

interest in the estate of Pesaka Mat Jusoh, who is his late father. The application that was made by the plaintiff was not to claim the 14 lots for himself, but to demand for the defendant's name to be removed as the proprietor due to the speculation that the change in the name made by the defendant was fraudulent and invalid. The plaintiff further demanded that all the properties should be restored back to 'Pesaka' Mat Jusoh and an apportionment of the 'pesaka' be made to all the other beneficiaries, including Ghazali himself. Hence, the plaintiff was not required to obtain the letter of representation before making the claim relating to the deceased's estate in this case.

Further cases have elaborate the additional requirements of special circumstances. For instance, the legal principle relating to the right of the beneficiary to bring a legal claim on estate administration has been extensively documented by the court in the case of *Mohd Faizi Mohd Nor v. T Kiara Green Development Sdn Bhd & Ors* [2017] 1 LNS 1882. The court opined that an estate beneficiary is not eligible to take any action against any party until a sealed order of the letter of administration has been extracted. The court acknowledged that a beneficiary of an estate, at the very least, has an equitable interest with regards to the estate administration. However, there are exceptional circumstances that would give the right to a beneficiary of an estate to initiate legal proceedings, in order to protect and preserve the estate of the deceased. These exceptional circumstances are dependent on circumstances of the case that have to be considered by the court when deciding the claims. However, the beneficiaries are not entitled to claim for general and special damages on behalf of the estate, as such a claim can only be made by the legal representative of the estate.

In the past, some courts have substituted the letter of representation with *faraid* certificate that allows legal action to be undertaken by the beneficiaries. The court in *Mohd Salim bin Said & Ors v. Tang Pheng Kee & Anor and another appeal* [2014] 6 CLJ 485 and *Sulaiman Ahmad & Ors v. Jemain Mohamed & Ors* [2018] 1 LNS 603 opined that the *faraid* certificates were the prime evidences in corroborating that the appellants were the rightful beneficiaries of the deceased. Nevertheless, the decision made by the court needs to be interpreted with caution, and should take into consideration

the principle recapitulated in the Federal Constitution and Court of Judicature Act 1964.

Despite the foregoing discussion, the leniency of the strict rule is not extended to any claim of damages. The threshold set by the Federal Court in *Al Rashidy Kassim & Ors v Rosman Roslan* [2007] 3 CLJ 361 to qualify for special circumstances is that the claimants, in the absence of the letters of representation, were not entitled to claim for general and special damages on behalf of the estate, and further dictated that the claim can only be made by the legal representative of the estate. The caveat was further postulated by the Federal Court that the beneficiaries were not entitled to claim for general or special damages for which the claims can only be pursued by the legal representative on behalf of the estate, as was observed in *Chew Huat Jin & Ors v. Andrew Lim Tatt Keong & Ors* [2013] 8 CLJ 533. The court in *A Santamil Selvi Alau Malay & Ors v. Dato 'Sri Mohd Najib Tun Abdul Razak & Ors* [2015] 4 CLJ 1035 further stated that the reason for a cause of action to expire, is not an appropriate reason to justify special circumstances.

CONCLUSION

The above legal propositions of the higher courts evidently show that only upon the extraction of the grant of letter of administration, would the plaintiff beneficiary be duly clothed with a representative character and have the *locus standi* to bring any legal claims on behalf of deceased's estate. The 'standing room' in estate administration is only applicable to personal representatives who possess a sealed order, which is either a letter of probate or letter of administration from the Malaysian High Court. Nevertheless, the strict rule that beneficiaries have no *locus standi* to bring any action without first obtaining the grant of the letters of administration of the estate of the deceased has been whittled down through the existence of special circumstances which can be applied to a small degree and only to exceptional cases. The doctrine of standing does not deny the inherent right of beneficiaries to exploit the deceased's estates. Subsequently, the law provides a systematic procedure in estate administration to ensure that the deceased's estate is properly managed and the beneficiaries' interest is appropriately protected.

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