

SUPREME COURT OF NIGERIA
14TH JANUARY, 2011. SC. 157/2000
CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN,
F. F. TABAI, I. T. MUHAMMAD, S. A.
MUNTAKA-COOMASSIE, JJSC

1. MRS. SINMISOLA CAREW APPELLANT
(Trading under the name and style
of Bolaji Carew & Co. Solicitors to the
Estate of Alhaja Adijatu Ayoola Balogun)
AND
2. MRS. IYABO OMOLARA
OGUNTOKUN & Ors. RESPONDENT

LEGAL PRACTITIONERS - Professional fees - Claim for - S. 16 of
Legal Practitioners Act - The demand for probate fees and valuation
fees to be paid - Goes beyond the professional fees - As envisaged by
the Act (H1)

ADMINISTRATION OF ESTATES - Wills - Validity of clause - Ap-
pointment of solicitors - Where a testator by his will appoints a solici-
tor for the estate - Such appointment is void - As it becomes opera-
tional in futuro (H2)

ADMINISTRATION OF ESTATES - Wills - Solicitors - Scope of ser-
vice - The services of such a solicitor terminates on death of the tes-
tator - Thereafter the estate falls to the beneficiaries and executors to
manage (H3)

APPEALS - Findings - On locus standi - Propriety - Court of Appeal's
finding on locus standi was proper - As it was not merely the locus to
sue for professional fees that was in issue - But for other reliefs (H4)

ACTIONS - Parties - Locus standi - How determined - The locus of a
party must be viewed against his competence - To institute an action
- And seek redress of a right - That can be enforced by law (H5)

ADMINISTRATION OF ESTATES - Solicitors to estate - Appointment

of - Since such appointment takes effect after the death of a testator
- It is the executors of the estate that can make such appointment (H6)

APPEALS - Preliminary objections - Raised in briefs - When to move
- Counsel must move same before hearing of substantive appeal -
After three clear days notice to appellant (H7)

APPEALS - Preliminary objection - Hearing - Sufficiency of notice -
Where objection is embedded in respondent's brief - Deemed as filed
on the day of hearing - There is insufficient notice to the other party (H8)

COURT PROCESSES - Filed but not moved - Fate of - Such process
is deemed abandoned by the party - Like the case of appellant's
objection before the Court of Appeal (H9)

FACTS

The plaintiff/appellant commenced action by an originating summons against the defendants before the High Court of Lagos State for the determination of a sole question as to whether the 1st to 3rd respondents, as executors of the will of one late Alhaja Balogun, had a right to refuse to pay the probate, valuation and solicitor's fees as demanded by appellant, as solicitor to the "Will and Estate" of the late Alhaja Balogun. It was the case of appellant that she had been the testatrix's solicitor for sometime before her death and that the testatrix had made a will prior to her death, in which she appointed appellant as solicitor "for the will and her estate", while appointing the 1st to 3rd respondents as executors/executrix. On the basis of the said appointment, appellant upon the death of the testatrix and without authority from either the executors or the beneficiaries under the will, applied for probate, incurring sundry expenses in the process which included valuation fees paid to estate valuers. When the probate fees were due for payment, the respondents were unwilling to pay, hence she brought the instant action to compel them to pay not only the probate fees but also the valuation fees and her own professional fees as solicitor to the "Will and Estate".

Upon service of the originating processes, the 2nd respondent

filed two motions on notice seeking to either set aside the originating summons or move the court to order for pleadings, on the ground that the case was not such as could be determined on an originating summons. The learned trial judge heard and dismissed the applications on the ground that it is premature. Aggrieved, 2nd respondent appealed to the Court of Appeal, challenging inter alia, the jurisdiction of the trial court on the ground that appellant lacked locus standi to bring the suit, which appeal was allowed. Dissatisfied, appellant has brought this appeal to the Supreme Court.

ISSUES FOR DETERMINATION

(1) *“Whether the Court of Appeal rightly or wrongly held, that the appellant has no locus standi to sue the 1st - 3rd respondents for the recovery of professional fees and valuation expenses.*

(2) *Whether the Court of Appeal was right or wrong in its decision that the appellant (whose firm was appointed by the testatrix as solicitors to the will and to the estate) lacks the locus standi to sue the 1st to 3rd Respondents (named as executrix and executors of the will) to compel them to pay appropriate probate fees/duties to the probate registrar of the High Court of Lagos State.*

(3) *Whether the death of the testatrix Alhaja Adijatu Ayoola Balogun was capable of terminating the appointment of the appellant's firm as solicitors to the will and to the estate of Alhaja Ayoola Balogun.*

(4) *Whether the Court of Appeal was right or wrong to have ignored the appellant's objection that grounds 1 and 5 of the notice of appeal are incompetent.”*

HELD (Unanimously dismissing the appeal per **MUKHTAR JSC**)
LEGAL PRACTITIONERS - Professional fees - Claim for

1. Now, I have already reproduced the question that called for determination as is stated in the originating summons, and the reliefs sought in the commencing part of this judgment. My understanding of the content of both the question and the reliefs is that it is not a claim based on legal fees only, but a claim that involved an infraction into the management of the estate of the testatrix Alhaja Adiatu Ayoola Balogun. The demand or claim of probate fees to be paid to the probate registrar, and payment of valuation fees goes beyond a solicitor's fees, which is not envisaged by section 16 of the Legal Practitioners Act, Cap. 207, Laws of the Federation of Nigeria, 1990.

Wills - Validity of clause - Appointment of solicitors

2. By virtue of paragraphs (2) and (3) supra, the services of the ap-
pellant was engaged by the testatrix, who has been her solicitor for
B sometime, and whom she appointed as solicitor to her will. Now, I
will look at the will to see if there was any further instruction that
reflects or alludes to the acts of the appellant which culminated into
the fees demanded. It is a fact that paragraph 24 of the will, Exhibit
C 1, states the following:-

“24. I appoint the legal firm of Bolaji Carew & Co. at Western
House Broad Street Lagos as the lawyers for the will and my estate.”
Underlining is mine.

The instructions given in clause 24 of the will and the appointment of
D the appellant as lawyer for the will and estate is void, as it was to
become operational in futuro, when the testatrix would have been
dead. As a lawyer to the will, the appellant completed her instruc-
tions when the will had been drafted, sealed, and read over to the
executors and beneficiaries. That aspect of the clause is in tandem
E with the law, but the later part of the clause on the estate is question-
able, and not tenable. (p. 112 F/113 D)

Wills - Solicitors - Scope of service

3. This brings me to the argument of the learned counsel for the
F respondents that the relationship of the appellant on the will termi-
nated on the death of the testatrix, and that she ceased to be the
solicitor to the estate. I think that even without the consideration of
the authorities cited by learned counsel, common sense dictates that
G the services of the appellant terminated on the death of the testatrix,
for after her death the estate became that of the beneficiaries and
executors to administer and manage. The duty to administer and
manage in the instant case fell on the respondents, and it is very
clear, as can be gathered from the depositions reproduced above
H that the respondents did not extend the duties to the appellant.
(p. 113 A)

APPEALS - Findings - On locus standi - Propriety

4. It was not merely the appellant’s locus standi to sue for profes-

sional fees that was in issue per se. The lower court was therefore in order to treat and find on the appellant's locus standi, as follows:-

“It is apparent that the chambers of Bolaji & Co. (solicitor) which SINMI claimed to be representing in this suit she initiated, were neither beneficiaries nor trustees under the will of the deceased. They were not also made executors/executrix under the said will. It is therefore a strange occurrence that a person appointed merely as a solicitor to the will and estate of the testatrix could take it upon herself to be intermeddling with the estate of the deceased and even bringing a suit against the executors and executrix of the will. In the manner she brought the suit, it was quite obvious that SINMI assumed that she had an interest or right independent of the beneficiaries and executors/executrix and good enough to make her compel them to pay the probate fees, her professional fees and the estate surveyors fees. I think the approach of SINMI is misconceived and unsupportable in law.” (p. 114 C)

ACTIONS - Parties - Locus standi - How determined

5. Whatever approach the learned counsel would like this court to adopt, is a matter that must be looked at very carefully, in determining whether in fact the appellant had legal interest or locus standi to institute the action. The standi of a party must be viewed against his competence or right to institute an action in a court of law to seek redress, reliefs or assertion of a right that can be enforced by law. The term denotes the legal capacity of a party to institute legal proceedings in a court of law against another party. (p. 115 C)

Solicitors to estate - Appointment of

6. The word ‘estate’ in that clause, in the context of this discussion is defined in Black’s Law Dictionary 7th Edition as:-

“The property that one leaves after death; the collective assets and liabilities of a dead person.”

If one applies this definition to the situation on the ground, then it is expected that the appointment was supposed to take effect even after the death of the testatrix Alhaja Adijat Balogun. The power to administer or authorise the administration of the estate became that of the executors and executrix, who would have given instructions to either Bolaji Carew and Co. or any other firm of solicitors

they wished to engage.

Obviously the firm of Bolaji Carew & Co. though, not duty bound to apply for probate, took it upon itself to do so without the directive or authority of the beneficiaries of the estate. It is clear that the respondents did not so authorise, for if they did, the appellant
B would have exhibited her authority, and the respondents would not have resisted the payment of the fees, which incidentally they claimed were excessive.

In the light of the above discussions, I answer issue (3) in the affirmative, and so dismiss grounds 3 and 6 of appeal to which it is
C married. (p. 117 B/118 C)

Preliminary objections - Raised in briefs - When to move

7. It is obvious from the above proceeding that the 1st respondent's
D counsel did not move their preliminary objection, for if he had moved it, it would have been so reflected in the above proceeding. Authorities abound that make the formal moving of preliminary objections by parties moving them at the hearing of appeals necessary, as required by the law, some of them have been cited by learned counsel
E as stated above.

In a recent case of *Magit v. University of Agriculture Makurdi*, Ogbuagu JSC, had the following to say on the need to move a preliminary objection, even if it is argued in a brief of argument:-

*"However, on a more serious note, the method of raising a
F preliminary objection, apart from giving the appellant three clear days notice before the date of hearing, is now firmly settled. It may be in the respondent's brief, by a formal separate notice or written
G objection or both. But there is need for the respondent or his counsel, with the leave of the court, to move the objection before the hearing of the substantive appeal."* (p. 119 G/120 C)

Preliminary objection - Hearing - Sufficiency of notice

8. It is also instructive to note that, it was the day that the appeal was
H heard that the appellant's (then respondent's) brief was deemed as filed, so the required notice on the preliminary objection was not given to the respondent (then the appellant). The provision of the Court of Appeal rules was in the circumstance contravened. (p. 120F)

COURT PROCESSES - Filed but not moved - Fate of

9. It is a cardinal principle of law that any process that is filed in court and which the party who has filed it has not deemed it necessary to pursue, either by taking further steps or doing certain things like moving the court, in compliance with requirements of the law, as in this case, the court will be correct to assume that the process has been abandoned by the party, and so deem the said process as duly abandoned. B

In this case, the appellant having abandoned her preliminary objection in the Court of Appeal, cannot complain that the court refused to pronounce on it. The learned justices did not therefore err in this respect. In this vein this last issue is resolved in favour of the respondents, and grounds 1 and 5 of appeal to which it is married fail and they are dismissed. (p. 120 G) C

REPRESENTATION D

Mrs. O. Badewole for the Appellant.

Mr. J. O. Odubela, with him, O. Dalaawo and B. Aduloju for the 1st Respondent.

Mr. Olatunde Adejuigbe, with him, Soji Toke for the 2nd and 3rd Respondents. E

CASES REFERRED TO

Ajide v. Kelani 1985 3 NWLR part 12 page 248

Katto v. CBN 1999 6 NWLR part 607 page 390 F

Egbe v. Alhaji 1990 1 NWLR part 128 page 588

Akanbi v. Raji 1998 10 NWLR part 591 page 373

Tiza v. Begha 2005 15 NWLR part 949 page 616

Saraki v. Kotoye 1992 9 NWLR part 264 page 156 G

Idehen v. Idehen 1996 6 NWLR part 198 page 382

Inakoju v. Adelake 2007 4 NWLR part 1025 page 423

Okolo v. U. B. N. Ltd. 1990 2 NWLR part 539 page 618

Salami v. Muhammed 2000 9 NWLR part 673 page 469

Ladejobi v. Oguntayo 2004 18 NWLR part 904 page 149 H

Umar v. W. G. C. Nigeria Ltd. 2007 7 NWLR part 1032 page 117

Adefulu & Ors. v. Oyesile & Ors. 1989 5 NWLR part 122 page 377

Oyo v. Mercantile Bank of Nigeria Ltd. 1989, 3 NWLR part 108 page 113

Attorney General, Kaduna State v. Hassan 1985 2 NWLR part 8 page 483

STATUTE & RULES REFERRED TO

Legal Practitioners Act, Cap. 207 LFN, 1990, s. 16

- B Lagos State High Court Civil Procedure Rules, O. 58 r. 11 and O. 8 r. 11

BOOKS REFERRED TO

- C Bewstead on Agency, 18th edition, page 615
Williams and Metiner - Executors, Administrators and Probate, 15th edition, page 985
Black's Law Dictionary, 7th edition

D **LEAD JUDGMENT BY MUKHTAR JSC**

The appellant initiated a court proceeding against the respondents by way of originating summons, seeking the determination of the following question:-

- E *"1. Whether the executors and executrix, i.e. the 1st to 3^d respondents of the Will of late Alhaja Adijatu Ayoola Balogun, have a right to refuse to pay probate and solicitors fees and expenses, from the available funds in Afribank PLC., one of the deceased bankers or from any of her Bankers.*

F **RELIEFS SOUGHT**

- i. *An order that the Probate Fees of N8,493,286,000 be paid to the Probate Registrar from the N17,008,082.82 standing to the credit of late Alhaja Adijatu Ayoola Balogun (deceased) in her account with the 4th respondent, the Afribank Issa Williams (Branch),*
G *Lagos.*

- ii. *An order that the applicant solicitors fees of N8,000,000.00 and the valuation fees of N1,300,000.00 for their services for the issuance of the grant of Probate of the deceased's WILL, be paid to the applicant from the deceased account with the 4th respondent."*

- H An affidavit in support of the originating summons was filed, and exhibited thereon are documents related to the claim. The 2nd respondent thereafter filed a motion on notice for:-

"1. AN ORDER setting aside the issue and service of the Originating Summons caused to be issued and served by the

Applicant in this suit.

OR ALTERNATIVELY

AN ORDER allowing amendments to be made and ORDER pleadings in this case.

GROUND'S OF THE APPLICATION

1. *The nature of the claim in this case is not such that could be determined on an Originating Summons.* ^B

2. *The claim of the Applicant involves more than the construction of the WILL of the Deceased testatrix and (ii) the contract of the applicant.*

3. *There is involved apparently a substantial dispute of facts.* ^C

The 2nd respondent also swore to a counter affidavit to the originating summons, exhibiting certain documents. The learned counsel for the applicant moved the motion and the learned trial judge considered all the submissions and at the end of the day dismissed the application after finding as follows:- ^D

"I have taken time to read the affidavit in support of the Originating Summons and the counter affidavit deposed to by the second Defendant. I am of the opinion that the conflicts which are said to be in the two affidavits are narrow, insignificant, flimsy and relate to irrelevant issues, some of the so called conflicts are alien to the issues placed before the court and are not sufficiently material to the case to justify pleadings being ordered. ^E

It is my judgment that the conflict in the two affidavits are certainly not irreconcilable. Besides there are documents attached to the two affidavits which can be used to determine which of the conflicting versions of the affidavits is true. ^F

The 2nd respondent moved another motion for the following orders:- ^G

(i) setting aside the service of the originating summons and the affidavit in this case on the 1st to 3rd (now first and 3rd Defendants on the ground that the summons disclosed no reasonable cause of action against the 1st and 3rd Respondents,

(ii) Originating summons is only ideal in matters which call for construction and interpretation. The learned trial judge after a careful consideration of the matter, dismissed the application on the ground that it is premature, and in the process found thus:- ^H

"However, in this application, the 1st and third Respondents

have failed and refused to depose to and file a counter affidavit. The failure to file a counter affidavit to the originating summons makes it impossible for the court to come to a decision whether there are serious disputes as to facts.

It is not possible for the court to look at the affidavit in support in the originating summons alone without more and conclude that there are likely to be dispute. That will amount to speculation. The court does not involve itself in speculation."

Dissatisfied with the two rulings, the 2nd respondent appealed to the Court of Appeal on seven grounds of appeal. The court found merit in the appeal and allowed it, for it found that the trial court lacked jurisdiction. The concluding part of the judgment reads:-

"The conclusion I have come to that the 1st respondent (SINMI) lacked the locus standi to have brought the originating summons, should ordinarily only directly affect the motions before us on appeal. However, the implication is that the suit itself is structurally defective such that the lower court lacked the jurisdiction to entertain it. The conclusion I have come to is that the suit ought to be struck out. I accordingly make an order striking out the suit."

The applicant in the trial court was not happy with the decision and has appealed to this court. Briefs of argument were exchanged by learned counsel to all the parties, and these were adopted at the hearing of the appeal in this court. In accordance to the rules of this court issues for determination were raised in the briefs of argument. I will reproduce the issues, starting with the issues formulated in the appellant's brief of argument.

The issues are:-

(1) *"Whether the Court of Appeal rightly or wrongly held, that the appellant has no locus standi to sue the 1st - 3rd respondents for the recovery of professional fees and valuation expenses.*

(2) *Whether the Court of Appeal was right or wrong in its decision that the appellant (whose firm was appointed by the Testatrix as solicitors to the will and to the estate) lacks the locus standi to sue the 1st to 3rd Respondents (named as executrix and executors of the will) to compel them to pay appropriate probate fees/duties to the probate registrar of the High Court of Lagos State.*

(3) *Whether the death of the testatrix Alhaja Adijatu Ayoola Balogun, was capable of terminating the appointment of the appellant's*

firm as solicitors to the will and to the estate of Alhaja Ayoola Balogun.

(4) Whether the Court of Appeal was right or wrong to have ignored the appellant's objection that grounds 1 and 5 of the notice of appeal are incompetent."

The issues raised in the 1st respondent's brief are:-

"(i) Whether the Appellant has locus standi to sue the 1st to 3rd Respondents in the manner and circumstances in which she did,

(ii) Whether the death of Alhaja Adijatu Ayoola Balogun did not terminate the appointment of the Appellant's firm as solicitors to the estate; and

(iii) Whether a court is bound to consider an issue abandoned by a party."

In the 2nd and 3rd respondents' brief of argument, the following issues were formulated

(i) Whether or not the purported appointment of the Appellant as solicitor to the Will and her Estate by the testatrix, Alhaja Adijatu Ayoola Balogun is not void and unenforceable in law such as to deprive the Appellant of the requisite locus standi to maintain an action pursuant to the said appointments?

(ii) Whether the Appellant was in fact instructed at all such as to vest her with the requisite capacity to institute legal action for recovery of professional fees for work done in furtherance of the alleged instruction?

(iii) Whether the Appellant in her purported role as solicitor to the estate of the testatrix, possesses the legal capacity to institute action to compel the 1st - 3rd Respondents as executors of the will of the testatrix, to pay probate fees to the probate registrar?

(iv) Whether the Notice of Preliminary objection filed by the Appellant herein as Respondent in the lower court to the competency of grounds 1 and 5 of the 1st Respondent's notice of appeal as Appellant in the lower court was properly raised and argued?

The 4th respondent raised only one issue, and the sole issue is:-

Whether the Court of Appeal rightly held that the Appellant had no locus standi to sue to compel the 1st to the 3rd Respondents to pay probate fees as well as solicitors and valuation fees from the funds standing to the credit of late Alhaja Adijatu Ayoola Balogun's account with the 4th Respondents.

I will commence the treatment of this appeal with the appellant's issues (1) and (2), which are in *pari materia* with issues (1) and (2) in the 1st respondent's brief of argument, issues (1) and (2) of the 2nd and 3rd respondents and the sole issue in the 4th respondent's brief of argument. It is the contention of the learned counsel for the appellant that the appellant's locus standi to sue for professional fees was never an issue before the High Court, and since it was not an issue there was no, decision of the High Court on the point. According to him, it is trite law that an appeal must be predicated on a decision of a lower court and a ground of appeal that is not based on the decision of a lower court is incompetent and should be disregarded. Reliance was placed on the authorities of *Egbe v. Alhaji* 1990 1 NWLR part 128 page 588, *Saraki v. Kotoye* 1992 9 NWLR part 264 page 156, *Odubeko v. Fowler* 1993 7 NWLR part 308 page 637, and *Akanbi v. Raji* 1998 10 NWLR part 591 page 373. The learned appellant's counsel consequently submitted that the Court of Appeal should not have decided that she lacked locus standi to sue for her professional fees when lack of locus did not form part of the ratio of the decision of the High Court. The learned counsel conceded that the appellant's locus standi to intermeddle with the estate and insist on payment of appropriate probate fees was an issue before the High Court, in the appellant's motion dated 16th June, 1997, but that issue was resolved in favour of the appellant by the High Court. It is the contention of learned counsel that the appellant, a legal practitioner after the death of the testatrix rendered professional services in connection with the estate and what she was claiming was her professional fees, which section 16 (1) of the Legal Practitioners Act, Cap. 207 Laws of the Federation, 1990 confers locus standi on her. Fie referred to the cases of 1978 4 SC. III, *NEPA v. Oyekanmi* 1992 4 NWLR part 237, page 636, *Chuka Okoli v. Crusader Insurance Co. Ltd.* 1994 2 NWLR part 329 page 635, and *Oyo v. Mercantile Bank of Nigeria Ltd.* 1989, 3 NWLR part 108 page 113. The learned counsel further submitted that the Court of Appeal gravely erred, when it held that the appellant lacked the locus standi to sue for her professional fees.

The reply of the 1st respondent in this appeal to the above submissions is that it is only the person in whom it is vested, the aggregate of the enforceable right in court that has the capacity to

sue. Reliance was placed on the cases of Attorney General of Anambra State v. Attorney General of the Federation 2007 12 NWLR part 1047 page 1, Thomas v. Olufosoye 1986 1 NWLR part 18 page 669, Inakoju v. Adelake 2007 4 NWLR part 1025 page 423, and Umar v. W. G. C. Nigeria Ltd 2007 7 NWLR part 1032 page 117. It is the submission of learned counsel that considering the claim of the ap- B
pellant as contained in her originating summons, the appellant has not disclosed any locus standi as to entitle her to institute the action. He referred to the reliefs sought in the originating summons which he said was not the business of the appellant to seek the enforcement of the probate fees, but that of the probate registrar. As for the 2nd C
relief, which the learned counsel submitted was a subsidiary part of the 1st relief, and that there were conditions under the Legal Practitioners Act that regulate such claim, and that the appellant has not shown that this is what she was seeking and that such claim was in accordance with the law regulating it, he relied on the case of Oyo v. D
Mercantile Bank Nig. Ltd. 1989 3 NWLR part 108 page 213. It was further submitted that the appellant disclosed no locus standi to bring the action. As for the appellant's argument that the appellant's locus E
standi to sue for professional fees was never an issue before the High Court, the learned counsel for the 1st respondent referred to page 181 of the record of appeal which reveal that locus standi was an issue, and show that their ground of appeal consequent upon which the issue of locus standi was formulated and the basis upon which the F
judgment of the Court of Appeal was based was certainly a decision of the court. In this wise, the argument of the appellant was misconceived and the cases of Egbe v. Alhaji supra are irrelevant and should be discountenanced.

In their brief of argument, the 2nd and 3rd respondents submit- G
ted that as solicitors to the will, the services of the appellant was limited to the preparation of the will in accordance with the instructions of the testatrix, ascertaining that all legal requirements towards ensuring the validity of the will are met and that the will is firmly lodged and registered in the probate registry. Upon the demise of the testa- H
tor, the solicitor will also be obliged to make necessary arrangements for the reading of the will so that the executors will be identified and the business of managing the estate will be commenced. Another submission of the learned counsel is that once the will has been read

and the executors have been identified, the solicitor would have effectively concluded his instructions. The learned counsel further argued that a will takes effect only upon death, and so it is upon the death of a testator that the estate automatically comes into being and becomes operational in terms contained in the Will. He referred to sections 2 and 3 of the Administration of Estates law of Lagos State, and *Rowley Homes & Co. v. Border* 1977 1 All ER 801. The learned counsel further submitted that when the Estate came into operation following the death of the testatrix it is only the executors who possessed any powers to do anything or appoint anybody to do things or take any steps in relation to the estate. He referred to *Cooper v. Phibbs* 1867 L. R. 2 H. L. 69.

The learned counsel for the 4th respondent in reply to the appellant learned counsel's argument submitted that the locus standi of the appellant to intermeddle with the estate of the deceased by compelling the 1st- 3rd respondents to pay probate fees as well as solicitors and valuation fees from the funds standing to the credit of the testatrix was an issue in the High Court and the Court of Appeal. It was argued that even at that, locus standi being an issue of jurisdiction, it can be raised at anytime even on appeal. He referred to *Adefulu & Ors. v. Oyesile & Ors.* 1989 5 NWLR part 122 page 377. He repeated the argument of the 2nd and 3rd respondents that the relationship of solicitor and client is terminated by the client's death even though no notice thereof has been given to the solicitor. He referred to the cases of *Swarlfager v. Wells* 1942 53 Cal App 2nd 522, 128, *Re Levines Estate* 1936 247 App Div 19, 286 NYS 513, and *Teter v. Irwin* 1991 69 W Va 200 71 SE 115. He further submitted that since the authority of an agent is personal and is revoked by death, neither party can, generally speaking sue the executor of the other after the death of either, and that the death of a principal deprives the agent of any one for whom to act. Reference was made to *Bewstead on Agency* 18th Edition page 615, *Williams and Metiner -Executors, Administrators and Probate* 15th Edition at page 985, *Drew v. Nunn* 1879 4 Q. B. D. 661; and *Williams v. Ball* 1917 1 Ch. 1. It was further submitted that a careful examination of the originating summons and the affidavit in support, show that the appellant was not simply suing the 1st to 3rd respondents for her professional fees as claimed but she was primarily seeking to have a say or in fact impose

her views as solicitor to the will and estate, on how the moneys standing to the credit of the account of the deceased with the 4th respondent were to be applied or disbursed.

Now, I have already reproduced the question that called for determination as is stated in the originating summons, and the reliefs sought in the commencing part of this judgment. My understanding of the content of both the question and the reliefs is that it is not a claim based on legal fees only, but a claim that involved an infraction into the management of the estate of the testatrix Alhaja Adiatu Ayoola Balogun. The demand or claim of probate fees to be paid to the probate registrar, and payment of valuation fees goes beyond a solicitor's fees, which is not envisaged by section 16 of the Legal Practitioners Act, Cap. 207, Laws of the Federation of Nigeria, 1990. The learned counsel for the appellant has made reference to the Act on her right to institute the action in the High Court. Perhaps, I should reproduce this provision at this juncture. It reads:-

“16 (1) Subject to the provisions of this Act, a legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction.”

Could charges referred to above include probate and valuation fees? To be able to answer this question I will have to look at the relevant documents exhibited to the supporting affidavit.

Although the provision confers rights on a legal practitioner to initiate action to recover his/her legal fees, it does not automatically vest the right on the appellant, as charges to my mind in this context does not include probate and valuation fees. What then brought about the claim of these fees? Was there an instruction to that effect or was there an agreement that the appellant should incur such expenses, and that they will be refunded back to the appellant? The supporting affidavit to the originating summons will be of assistance at this juncture of this judgment and I will reproduce the relevant paragraphs hereunder. They read:-

“2. That the deceased Alhaja Adiatu Ayoola Balogun was a client of the firm for a period of about 15 years before her death on 29/5/1996 and I have solely been in charge of her briefs to the chambers since 1986 till her death in 1996.

3. That the deceased by her will dated 3/9/1987 appointed

our law firm as the solicitor to the will and her estate and the first 3 defendants executors of the WILL. (The Will is herewith attached and marked Exhibit 1).

4. That the 1st and 2nd Defendants are children, beneficiaries, and executors of the deceased.

B 5. The Will was read to the children/beneficiaries by the probate registrar of the High Court, July, 1996.

6. That the Will has now fully been processed and it is ready for issuance of probate upon the payment of assessment fee of N8,493,286.00 (Probate Registrar's letter of Assessment dated 24/1/97 is herewith attached and marked Exhibit 2).

C 7. That the information at paragraph 6 above was duly communicated to the 1st to 3rd defendants by my letter of 10/2/97 (copy of which is hereby attached and marked Exhibit.

D 8. That although there is enough fund in the deceased's account at the Afribank PLC. Issa Williams branch Lagos to settle payment of the probate fees, the 1st to 3rd defendants have continuously refused to instruct the chambers to use the funds despite my oral and written advice to them to do so.

E 9. That instead the 2nd defendant had on occasions stated in my presence that since benefit could be derived from estate left by her deceased husband in which she is an executor without any probate, there was no need to pay such assessment fees merely for the purpose of obtaining probate when such funds could be shared and used by the beneficiaries."

F **By virtue of paragraphs (2) and (3) supra, the services of the appellant was engaged by the testatrix, who has been her solicitor for sometime, and whom she appointed as solicitor to her Will. Now, I will look at the will to see if there was any further instruction that reflects or alludes to the acts of the appellant which culminated into the fees demanded. It is a fact that paragraph (24) of the will, Exhibit 1, states the following:-**

H **"24. I appoint the legal firm of Bolaji Carew & Co. at Western House Broad Street Lagos as the lawyers for the will and my estate."**

Underlining is mine.

I believe it is in consequence of this clause in the will that the

appellant took it upon herself to go to the extent she did to incur such expenses and fees, which the appellant has alluded vide paragraph (9) supra was without the approval of the 2nd defendant.

This brings me to the argument of the learned counsel for the respondents that the relationship of the appellant on the will terminated on the death of the testatrix, and that she ceased to be the solicitor to the estate. I think that even without the consideration of the authorities cited by learned counsel, common sense dictates that the services of the appellant terminated on the death of the testatrix, for after her death the estate became that of the beneficiaries and executors to administer and manage. The duty to administer and manage in the instant case fell on the respondents, and it is very clear, as can be gathered from the depositions reproduced above that the respondents did not extend the duties to the appellant. As a matter of fact they are completely opposed to the appellant stretching her authority to suffocate them, so to speak. ***The instructions given in clause 24 of the will and the appointment of the appellant as lawyer for the will and estate is void, as it was to become operational in futuro, when the testatrix would have been dead. As a lawyer to the will, the appellant completed her instructions when the will had been drafted, sealed, and read over to the executors and beneficiaries. That aspect of the clause is in tandem with the law, but the later part of the clause on the estate is questionable, and not tenable.***

On the point that the appellant's locus standi to sue for professional fees was never an issue, and therefore the appeal to the lower court was not predicated on a decision of the High Court, certain excerpts of the rulings appealed against will throw more light to the argument. One of the rulings which is also the subject of appeal in the Court of Appeal, and which was for an order compelling the Respondents to pay proceeds of sale of the deceased's motor vehicles into court and other reliefs, contains the following:-

"The submission that the plaintiff has failed to disclose sufficient interest legal interest or locus standi is to my mind misconceived. It is not in dispute that the firm of solicitors of the plaintiff is mentioned and appointed as solicitors (sic) not only to the will but also to the estate. That is where the plaintiffs derived her legal interest. It is

also not in dispute that the plaintiff has pursued and processed the will up to the stage when estate was assessed for payment of probate fees."

Here again, the latter part of clause 24 in the will comes to play, because if the instruction on the estate is held not to be legal or valid, but is confined only to the will, then the legal interest or locus standi will be unquestionable, because the bone of contention will be the legal fees only. But here it goes beyond that, the relief transcends the professional fees only, but extends to claims of other fees as is contained in the originating summons.

Ground (5) of the appeal before the Court of Appeal was predicated upon the above reproduced portion of the learned trial court's ruling, and it is instructive to note that it flowed from the submission on the complaint of the 2nd defendant/appellant. ***It was not merely the appellant's locus standi to sue for professional fees that was in issue per se. The lower court was therefore in order to treat and find on the appellant's locus standi, as follows:-***

"It is apparent that the chambers of Bolaji & Co. (solicitor) which SINMI claimed to be representing in this suit she initiated were neither beneficiaries nor trustees under the will of the deceased. They were not also made executors/executrix under the said will. It is therefore a strange occurrence that a person appointed merely as a solicitor to the will and estate of the testatrix could take it upon herself to be intermeddling with the estate of the deceased and even bringing a suit against the executors and executrix of the Will. In the manner she brought the suit, it was quite obvious that SINMI assumed that she had an interest or right independent of the beneficiaries and executors/executrix and good enough to make her compel them to pay the probate fees, her professional fees and the estate surveyors fees. I think the approach of SINMI is misconceived and unsupportable in law."

The learned counsel for the appellant has submitted that as a legal practitioner whose firm was appointed by the testatrix as solicitors to the Will and to the estate, she has the obligation to ensure that pending the grant of probate, the affairs of the estate are managed in accordance with the law. He referred to order 58 rule 11 and order

8 rule 11 of the Lagos State High Court Civil Procedure Rules. It was further submitted that in the circumstance, the appellant has the locus to proceed to court, for the determination of whether the 1st - 3rd respondents can legally refuse to pay the probate fees to the High Court of Lagos State, and non payment of appropriate fees on the estate amounts to tax evasion, and it is a crime. He referred to the case of Seven Up Bottling PLC v. LS/RB 2000 3 NWLR part 650 page 565. According to learned counsel this court has abandoned the narrow approach adopted in the case of Senator Adesanya v. The President of Nigeria 1981 2 NCLR 338, and has adopted a broad and liberal approach, as in Fawehinmi v. Akilu 1987 18 NCLR part 11 page 1265. ***Whatever approach the learned counsel would like this court to adopt is a matter that must be looked at very carefully, in determining whether in fact the appellant had legal interest or locus standi to institute the action. The standi of a party must be viewed against his competence or right to institute an action in a court of law to seek redress, reliefs or assertion of a right that can be enforced by law. The term denotes the legal capacity of a party to institute legal proceedings in a court of law against another party.*** See Attorney General, Kaduna State v. Hassan 1985 2 NWLR part 8 page 483, and Ladejobi v. Oguntayo 2004 18 NWLR part 904 page 149.

In the light of the supra discussions, I resolve the two issues in favour of the respondents, and dismiss the grounds of appeal from which they were distilled.

I will now proceed to issue (3) in the appellant's brief of argument, which is in pari materia with issue (2) in the 1st respondent's brief of argument, which deals with the appointment of the appellant's firm as solicitors to the will and estate on the death of the testatrix. The learned counsel for the appellant attacked a portion of the judgment of the Court of Appeal which reads as follows:-

"The general principle of law is that the death of the principal deprives the agent of any one for whom he can act. See Re: Williams v. Ball (1917) I Chanec. If the appointment of Bolaji Carew & Co. was expected to come into effect after the death of the deceased, the consequence was that, the firm of solicitors did not derive any authority from the appointment under the WILL but only after the executors and executrix have in execution of the terms of the will for-

mally appointed the firm as solicitors to the estate. Until this has been done, BOLAJI CAREW & CO. would have no authority to act as solicitor to WILL and estate of the deceased.....where did the solicitors derive their authority from or were they agents of the deceased. When a person dies, neither he nor afortiori, an agent for the deceased can litigate in his stead.”

The learned counsel has conceded that the death of the principal ordinarily terminates the authority of an agent, but submitted that the William’s case relied upon by the court supra is absolutely inapplicable to this appeal. The learned counsel argued that contrary to the decision of the Court of Appeal, a will is an ambulatory document, which has no force, or effect until the death of the testatrix. He cited the case of *Beddington v. Baumann* 1903 AC 13 at 19, and adopts the views of Megarry & Wade *Law of Real Properties* 5th Edition page 503. Reliance was also placed on *Re Chapman* 1904 1 Chanc. page 431, and *Idehen v. Idehen* 1996 6 NWLR part 198 page 382.

The learned counsel for the appellant further submitted that since a will can only speak on the death of the testatrix, upon the death of late Alhaja Adijatu Balogun, her firm’s appointment as solicitors to the will and to the estate as well as the appointment of the 1st – 3rd Respondents, as executrix and executors of the will, become operational. He posed certain questions on the conduct of 1st - 3rd respondents, that may negate the stance that the appellant’s authority terminated on the death of the testatrix.

In reply, the learned counsel for the 1st respondent has argued that on the death of the testatrix the authority of the appellant terminated, and since Bolaji Carew & Co. is neither a beneficiary nor an executor, the authority to act further in respect of the will must be obtained from the beneficiaries/executors and executrix of the will. The cases of *Swartfager v. Wells* supra, and *Re: Levine’s estate* supra were cited. The learned counsel posed the following questions in his brief of argument:-

- “who instructed the firm of Balaji Carew and Co. to;
 (i) complete the probate, and
 (ii) institute an action against the 1st, 2nd and 3rd respondents herein who are the executors/executrix.”

I will now go back to the excerpt of the judgment which I

have reproduced supra. It may well be that the principles of law in the William's case are not on all fours with the instant ones, and not absolutely applicable with the facts of the instant case, as argued by the learned counsel, I think the rationale behind the finding of the lower court's reasoning is in respect of the interpretation of clause 24 in the will which it said was conditional and revocable, for the fact that the appointment of Bolaji Carew & Co. was also for the testatrix's estate. ***The word 'estate' in that clause, in the context of this discussion is defined in Black's Law Dictionary 7th Edition as:-***
"The property that one leaves after death; the collective assets and liabilities of a dead person."

If one applies this definition to the situation on the ground, then it is expected that the appointment was supposed to take effect even after the death of the testatrix Alhaja Adijat Balogun. The power to administer or authorise the administration of the estate became that of the executors and executrix, who would have given instructions to either Bolaji Carew and Co. or any other firm of solicitors they wished to engage.

Now, the appellant ensured that the will was read to the beneficiaries and executors of the deceased, which I believe was a duty she legally discharged, in accordance with the content of the will. Thereafter, she commenced some actions in her own volition. It is instructive that I reproduce some salient depositions in the supporting affidavit to the originating summons, at this juncture. They are:-

"6. That the will has now fully been processed and it is ready for issuance of probate upon the payment of assessment Fee of N8,493,286.00 (Probate Registrar's letter of Assessment dated 24/1/97 is herewith attached marked Exhibit 2).

7. That the information in paragraph 6 above was duly communicated to the 1st to 3^d defendants by my letter of 10/2/97 (copy of which is hereby attached and marked Exhibit 3).

8. That although there is enough fund in the deceased's account at the Afribank PLC Issa Williams branch Lagos to settle payment of the probate fees, the 1st to 3^d defendants have continuously refused to instruct the chambers to use the funds despite my oral and written advice to them to do so."

In all the documents exhibited by the appellant, none was to the effect that the appellant was authorized or instructed to act as

stated in paragraphs 6 and 7 supra. In fact, by the very deposition in paragraph (8) supra it can be implied that the appellant acted in her own volition without the input of the respondents, who were as at that stage the beneficiaries and executors of the estate. As a matter of fact, there was a denial of such authority by the 1st respondent in paragraph (15) of her counter-affidavit which reads:-

“15. That apart from the appointment of the firm of Bolaji Carew & Co., as Lawyers for the will and the Estate of the Deceased the Executors have never agreed to appoint or retain the services of the Applicant.”

Obviously the firm of Bolaji Carew & Co. though, not duty bound to apply for probate, took it upon itself to do so without the directive or authority of the beneficiaries of the estate. It is clear that the respondents did not so authorise for if they did, the appellant would have exhibited her authority, and the respondents would not have resisted the payment of the fees, which incidentally they claimed were excessive.

In the light of the above discussions, I answer issue (3) in the affirmative, and so dismiss grounds 3 and 6 of appeal to which it is married.

The last issue for determination in the appellants brief of argument is in pari materia with issue (3) in the 1st respondent's brief of argument, and issue (4) in the 2nd & 3rd respondent's brief of argument. The complaint of the appellant revolves around the preliminary objection which she raised in the court below and for which argument was proffered in her respondent's brief of argument. The appellant's grouse is that the Court of Appeal failed to make any pronouncement on her objection to grounds 1 and 5 in the notice of appeal. According to the learned counsel for the appellant the Court of Appeal was in grave error when it failed to decide on the validity or otherwise of the objection to the said grounds of appeal for it was duty bound to do so. He placed reliance on the cases of Katto v. CBN 1999 6 NWLR part 607 page 390, and Katto v. CBN 1991 9 NWLR part 214 page 126. The learned counsel fully argued that if the Court of Appeal had decided on the competence of the grounds, especially ground 5 which raised the issue of locus standi it would have been struck out, and since the appeal was decided exclusively on locus standi; without ground 5 the appeal would have been dismissed.

The argument of the learned counsel for the 1st respondent is that the appellant as the 1st respondent did not move the court to hear her preliminary objection because it is trite law that while notice of objection may be given in the brief, it does not dispense with the need of the respondent to move the court at the oral hearing for the reliefs sought. He placed reliance on the cases of *Nsirim v. Nsirim* 1990 3 NWLR part 138 page 285, *N. H. R. I v. Aiyeade* 1997 11 NWLR part 530 page 541, and *Oforkire v. Madike* 2003 FWLR part 147 page 1090. B

The learned counsel for the 2nd and 3rd respondents in reply to the appellant's argument on this issue, referred to order 10 r. 1 of the Court of Appeal Rules, 2007. C

The learned counsel further submitted that what the Court of Appeal did was in order, for having found that the appellant has no locus standi it was unnecessary to consider other issues including the preliminary objection which the appellant failed to move. He placed reliance on the case of *Attorney General, Ekiti State v. Daramola* 2003 FWLR part 169 page 1121. D

The argument of the learned counsel for the 2nd and 3rd respondents on this issue are in essence the same as the above. E

Before I delve into the merit or otherwise of the argument, I will look at the proceedings of the court on the day the appeal was heard, and the brief containing the preliminary objection was adopted. On 10/2/2000 when the appeal was taken and adjourned for judgment, the following transpired inter alia:- F

“Odubela: Appellant’s brief was filed on 12/7/99. I adopt it. I ask that the appeal be allowed.

Osipitan: The 1st respondent’s brief was deemed filed this morning. I adopt it. I urge the court to dismiss the appeal. G

Dabiri: The brief for 2nd and 3rd Respondents was filed on 1/11/99. I adopt it. I ask that the appeal be dismissed.”

It is obvious from the above proceeding that the 1st respondent’s counsel did not move their preliminary objection, for if he had moved it, it would have been so reflected in the above proceeding. Authorities abound that make the formal moving of preliminary objections by parties moving them at the hearing of appeals necessary, as required by the law, some of them have been cited by learned counsel as stated H

above. I however wish to re echo the words of Obaseki JSC, in the Nsirim’s case above:-

“.....the objection should have been by way of motion or notice before the hearing of the appeal so that arguments on it can be heard by the court. While notice of objection may be given in the brief, it does not dispense with the need for the Respondent to move the court at the oral hearing of the relief prayed for. This preliminary objection not having been raised and argued at the oral hearing the Court of Appeal cannot be condemned as having erred in allowing the then appellant (now Respondent) to argue his appeal.”

In a recent case of Magit v. University of Agriculture Makurdi, Ogbuagu JSC, had the following to say on the need to move a preliminary objection even if it is argued in a brief of argument:-

“However, on a more serious note, the method of raising a preliminary objection, apart from giving the appellant three clear days notice before the date of hearing, is now firmly settled. It may be in the respondent’s brief, by a formal separate notice or written objection or both. But there is need for the respondent or his counsel, with the leave of the court, to move the objection before the hearing of the substantive appeal.”

As I have already pointed out above, the appellant, then the 1st respondent in the court below did not move the preliminary objection. **It is also instructive to note that it was the day that the appeal was heard that the appellant’s (then respondent’s) brief was deemed as filed, so the required notice on the preliminary objection was not given to the respondent (then the appellant). The provision of the Court of Appeal Rules was in the circumstance contravened.**

It is a cardinal principle of law that any process that is filed in court, and which the party who has filed it has not deemed it necessary to pursue, either by taking further steps or doing certain things like moving the court, in compliance with requirements of the law, as in this case, the court will be correct to assume that the process has been abandoned by the party, and so deem the said process as duly abandoned.

(In this case the preliminary objection. See Tiza v. Begha 2005 15 NWLR part 949 page 616, Okolo v. U. B. N. Ltd. 1990 2 NWLR part 539 page 618, Salami v. Muhammed 2000 9 NWLR part 673 page 469, and Ajide v. Kelani 1985 3 NWLR part 12 page 248.)

In this case, the appellant having abandoned her preliminary objection in the Court of Appeal, cannot complain that the court refused to pronounce on it. The learned Justices did not therefore err in this respect. In this vein this last issue is resolved in favour of the respondents, and grounds 1 and 5 of appeal to which it is married fail and they are dismissed.

In the final analysis, this appeal lacks merit and substance, and it is hereby dismissed in its totality. I affirm the judgment of the lower court. I also make no order as to costs, in view of the nature of the case.

A notice of cross-appeal was filed by the 1st respondent in this appeal, as can be seen on page 508 of the printed record of appeal, but it is apparent that it has been abandoned, for learned counsel Mr. Odubela who adopted his brief of argument in this appeal, made no mention of the cross-appeal. There are no briefs of argument in respect of the cross-appeal either, so it is deemed as having been abandoned. As a matter of fact none of the counsel referred to it.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, MUKHTAR JSC, just delivered.

My learned brother has dealt exhaustively with the issues calling for determination in the appeal. I therefore have nothing more to add. I adopt his reasoning and conclusions as mine and accordingly dismiss the appeal with costs as accused and fixed in the said lead judgment.

Appeal dismissed.

TABAI JSC

I have had the benefit of reading, in draft, the lead judgment

of my learned brother Mukhtar JSC and I agree with the reasoning and conclusion therein that the appeal has no merit.

In the Lead judgment the originating summons, the question which calls for determination, the reliefs claimed and substantial parts of the supporting affidavit were reproduced. The 2nd Respondent filed
B a motion dated 11/07/1997 and prayed for:-

“1. An order setting aside the issue and service of the originating summons caused to be issued and served by the Applicant in this suit

C *OR*
in the alternative, an order allowing amendments to be made and order pleadings in this case”

The grounds of the application were stated to be:-

D *“(1) the nature of the claim in this case is not such that could be determined on an originating summons.*

(2) The claims of the applicants involve more than the construction of the Will of the deceased testatrix and the contract of the applicant.

E *(3) There is involved apparently a substantial dispute of facts.”*
The 2nd Respondent also filed a 16 paragraph counter affidavit to the originating summons in which she asserted that paragraphs 2, 9, 10, 11, 12, 13 and 16 of them were not correct. In particular she made far ‘reaching allegations in the following paragraphs:

F *“4 That contrary to paragraph 9 of the said affidavit, I, the 1st Defendant had never disputed the need to apply for probate which will necessarily attract fees but against the collusion of the Applicant with persons employed by him including the firm of Ade Epega & Co. who gave outrageous bogus and exaggerated valuation of the*
G *properties comprised in the estate of the deceased.*

9. That one of the reasons for the institution of this suit by the Applicant is my resistance of the attempts made by the Applicant and his agents including amongst others Ade Epega & Co. to exploit the proceeds of the estate to the detriment of the beneficiaries to
H *whom I owe judiciary duty.*

10. Further to paragraph 9 hereof, the firm of Ade Epega & Co. was encouraged by the Applicant to inflate the value of the properties comprised in the estate of the deceased in order to charge higher amount of fees for such a valuation.

11. *That the Applicant encouraged the over valuation in order to charge excessive fees.*

12. *That all the valuation given on paragraph 12 of the said affidavit is unreasonable, excessive and deliberately inflated and has no basis.*

13. *That in response to paragraph 13 of the said affidavit the bill of N9,000,000.00 (Nine Million Naira) is excessive and baseless and has not been taxed.* B

15. *That apart from the appointment of the firm of Bolaji Carew & Co. as “lawyers for the will and the Estate” of the deceased the Executors have never agreed to appoint or retain the services of the Applicant.”* C

Despite the above which clearly shows substantial dispute of facts the trial court did not see the need to order pleadings. The main allegation in focus in the counter affidavit is that the applicant in collusion with the firm of Ade Epage and Co. deliberately inflated the valuation in order to charge unreasonably excessive fees to the detriment of the beneficiaries. These allegations cannot just be wished away. In my view the trial court was clearly in error and the court below had the duty to intervene in the circumstances. D E

On the specific issue of locus standi I am persuaded by the argument of learned counsel for the Respondents that upon the death of the testatrix and after the will has been read and the executors identified it is only the executors of the Will who have the authority to do anything on the estate including its management and control. It is the executors of the will that have the authority to appoint their solicitors to handle legal issues concerning the estate. In my view the provision of clause 24 of the will notwithstanding upon the death of the testatrix, the legal client and solicitor relationship ceased. G EZENWOSU v. NGONADI (1988) 3 NWLR part 81 at 163; (1988) 1 N. S. C. C. 1071 cited by learned counsel for the 2nd and 3rd Respondents dealt with the issue of whether a dead person can file a valid notice of appeal and is therefore not strictly on all fours with the issue under consideration. I am however of the considered view that the principle therein applies with equal force to this case. H

Even the reliefs claimed raised a number of unanswered questions, which naturally would have warranted the order of pleadings. On whose instruction did the Appellant incur the probate fees of

N8,493,286.00? Who gave the Appellant the authority to sue for the recovery of the stated probate fees? Who granted the Appellant the authority to engage the services of professional valuers to value the properties of the deceased? And with whom did the Appellant negotiate and agree on the solicitor's fees of N8,000,000.00?

B The answers to these questions would show clearly the lack of locus standi of the Appellant to file the suit.

 For the foregoing and the fuller reasons contained in the lead judgment, I also dismiss the appeal for lack of merit. I abide by the
C consequential orders contained in the lead judgment.

MUHAMMAD JSC

 I had the privilege of reading before now, the judgment just
D delivered by my learned brother, Mukhtar, JSC. I agree with the reasoning process and conclusion arrived at by my learned brother. I, too dismiss the appeal and affirm the judgment of the court below. I abide by the consequential orders including that of costs made in
E the leading judgment.

F

G

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