IN THE HIGH COURT OF KIRIBATI 2016

CIVIL CASE NO. 69 OF 2015

	[MATIFA RAURENTI (SUING AS [ADMINISTRATRIX OF THE ESTATE OF [TEHUMU RAURENTI THE DECEASED)	PLAINTIFF
	[	
BETWEEN	[AND	
	[	
	[ATTORNEY GENERAL IRO MINISTRY [OF HEALTH AND MEDICAL SERVICES	RESPONDENT

Before: The Hon Chief Justice Sir John Muria

29 August 2016

Ms Batitea Tekanito for the Plaintiff
Ms Taaira Timeon for the Respondent

JUDGMENT

Muria, CJ: The plaintiff, Matifa Raurenti, has sued out a writ suing as Administratrix of the estate of Tehumu Raurenti (Deceased) against the defendant claiming damages under the *Fatal Accident Act (UK)* and damages under the *Law Reform Act 1934* in respect of the death of the deceased. Both Acts are applicable to Kiribati. Counsel should be diligent in properly citing the law. The latter Act should be properly cited as the *Law Reform (Miscellaneous Provisions) Act 1934*.

2. The defendant now seeks to challenge the legal standing or legal capacity of the plaintiff to bring this action. The case for the applicant/defendant is that as the plaintiff has not been appointed as personal representative of the

deceased, she does not have the legal capacity to commence this action. Counsel for the defendant, therefore, submitted that the action should be struck out.

3. Ms Tekanito accepts that the plaintiff has not been formally appointed by the Court to be the personal representative of the deceased. Counsel, however, submitted that there is no requirement that the plaintiff should be formally appointed by the Court before she can commence the proceedings.

4. Counsel further submitted that as the mother of the deceased, the plaintiff is the personal representative of the deceased, entitling her to bring the action pursuant to section 2(1) of the *Fatal Accident Act (UK)*. Counsel made reference to the Samoan case of *Sua –v- Attorney General* [2013] WSSC 1 to support her argument.

5. Unfortunately for the plaintiff, the case of *Sua –v- Attorney General*, does not support her case. In fact, that case supports the defendant's argument in the present case. The Court pointed out in *Sua –v- Attorney General* that the claim under the *Fatal Accidents Act 1974* or the *Law Reform Act 1964* must be brought by the executor (if the deceased died testate) of the deceased or by the administrator of the deceased (if the deceased died intestate). The proper plaintiff in that case should be the executor or administrator of the deceased, not the plaintiff who was only a next-of-kin of the deceased.

6. There is no suggestion in the present case that the deceased died testate and that the plaintiff was appointed executrix of the deceased's estate under a Will. There is no evidence of the deceased leaving a Will in this case.

7. There is also no evidence to show that the plaintiff had been appointed administratrix of the estate of the deceased under a grant of Letters of

Administration. This is consistent with the plaintiff's admission that she has not been appointed administratrix of the deceased's estate.

8. The pleadings describe the plaintiff as **"suing as Administratrix of the Estate"** of the deceased. However, an administrator or administratrix of deceased's estate is a personal representative of the deceased appointed as administrator or administratrix under a grant of letters of administration to administer the estate of the deceased. Clothed with authority under the grant of Letters of Administration, the administratrix or administrator is competent to bring an action on behalf of the dependents and the estate of the deceased.

9. There has never been a grant of Letters of Administration made by the Court appointing the plaintiff as administratrix of the deceased's estate in this case, before or after she commenced this action. The plaintiff is therefore not competent to bring the present action against the defendant.

10. The position in law is clearly set out in *Ingall –v- Moran* [1944] 1 KB 160 (CA) where the head note states as follows:

> ***"The plaintiff issued a writ in an action brought by him under*** **the Law Reform (Miscellaneous Provisions) Act 1934,** ***claiming to sue in a representative capacity as administrator of his son's estate, but he did not take out letters of administration until nearly two months after the date of the writ:-***
>
> ***Held, that the action was incompetent at the date of its inception by the issue of the writ, and that the doctrine of the relation back of an administrator's title, on obtaining a grant of letters of administration, to the date of the intestate's death could not be invoked so as to render the action competent".***

The action in that case was held to be a nullity, and therefore void *ab initio*.

11. A similar position was found in the case of *Eriue Matauea and Tuuti Teboitabu –v- Kiribati Copra Society* (5 August 2016), High Court Civil Case 45 of 2014. In that case the plaintiffs who are the parents of the deceased brought the action as dependents of the deceased without having been appointed as administrators of the estate of the deceased. The Court held that the plaintiffs in that case had no legal standing to bring the action.

12. In the present case, the preliminary point of law raised must be determined in favour of the defendant. The plaintiff lacks the legal capacity to bring the action. Without the grant of Letters of Administration appointing the plaintiffs as administratrix of the estate of the deceased, the plaintiffs are not competent to bring the present action.

13. The present action is a nullity and therefore void *ab initio*. It is hereby struck out. No order for costs.

Dated the 2nd day of September 2016

SIR JOHN MURIA
Chief Justice