



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**JUDICIAL REVIEW DIVISION**

**MISCELLANEOUS CIVIL APPL. NO. 103B OF 2013**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NAIROBI CITY COUNCIL ..... RESPONDENT**

**AND**

**LUZIKI HOLDINGS LIMITED ..... 1<sup>ST</sup> INTERESTED PARTY**

**ELIZABETH WANJIRA EVANS ..... 2<sup>ND</sup> INTERESTED PARTY**

**MARY WANJIRU GACHEGE ..... 3<sup>RD</sup> INTERESTED PARTY**

***EXPARTE* CHRISTINE WANGARI GACHEGE Suing on behalf of the Estate of**

**RAHAB WANJIRU EVANS**

**RULING**

1. This case has been brought by Christine Wangari Gachege on behalf of the Estate of Rahab Wanjiru Evans (deceased). According to the grant of letter of administration dated 15<sup>th</sup> January 2001, the administrators of the estate are Christine Wangari Gachege, Elizabeth Wanjira Evans, Mary Wanjiru Gachege and Peter Gachigi Njogu who is now deceased.
2. The other administrators have not consented to these proceedings as they have indeed joined them as interested parties opposing the claim.
3. The capacity to agitate any suit on behalf of the estate of the deceased inheres in the administrators duly appointed by the court (See **section 79** of the *Law of Succession Act (Chapter 160 of the*

*Laws of Kenya*). They act jointly at all times and in the event of a dispute among them, as is apparent in this case, the dispute must be resolved by the court that issued the grant of letters of administration. One administrator out of the others lacks the capacity to bind the estate or any of the administrators or file suit alone on behalf of the estate.

4. In the circumstances, this suit is incompetent, it cannot be sustained. I warn myself that striking out of a suit is a drastic remedy but where there is no capacity of the parties, the axe must fall.
5. The Notice of Motion dated 28<sup>th</sup> March 2013 must be struck out. It is hereby struck out with costs to the respondent and interested parties.

**DATED and DELIVERED at NAIROBI this 22<sup>nd</sup> day of January 2014**

**D.S. MAJANJA**

**JUDGE**