

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL & LAND CASE 602 OF 2009

ELIZABETH WANJIRA EVANS..... PLAINTIFF

- VERSUS -

CITY COUNCIL OF NAIROBI DEFENDANT

RULING

1. By a notice of motion dated 19th July 2011, the applicant, Christine Wangari Gachege, prays to be enjoined into the suit. the principal grounds are set out in her deposition sworn on even date. She is the plaintiff's sister. In succession cause number 96 of 2000 *Re estate of Rahab Wanjiru Evans*, they were named as administratrices of the estate of their mother.
2. The applicant avers that the plaintiff has made material non disclosure to the court. In paragraph 10 of the amended plaint dated 16th April 2009, the plaintiff pleads that there is no other suit pending save for Resident Magistrate's case number 186 of 1996. The applicant refers to no less than two cases touching on the suit property: Nairobi High Court case 504 of 2002 *Christine Wangari Gachege Vs City Council of Nairobi and Attorney General*, and Nakuru Civil Appeal, Court of Appeal, 233 of 2007 *Christine Wangari Gachege Vs Elizabeth Wanjira Evans and 11 others*. The appeal arises out of a decision of the High Court at Nakuru in succession cause 96 of 2000. The applicant avers that she only came to know of the present suit when her lawyers stumbled upon it on the daily cause list. She is thus apprehensive that the plaintiff may mislead the court.
3. The motion is contested. The plaintiff says she has already called evidence and closed her case. Joinder at this late hour would be prejudicial to expeditious disposal of the suit. The plaintiff says the other suits involve different parties and that the estate had not authorized the institution of the suits. The plaintiff contends that the applicant has not shown any new evidence to be led in this suit. She also challenges some annexures to the supporting affidavit as forgeries. Lastly, she averred that her interest in the present suit is only to preserve the estate. All those matters are buttressed by a replying affidavit sworn on 20th September 2011.
4. I have heard the rival submissions. I take the following view of the matter. Order 1 rules 1 and 10 confer power on the court, either *suo moto* or an application by a party, to enjoin new parties to the suit. The test laid is whether the joinder is necessary to effectually and completely adjudicate the dispute. See *Kingori Vs Chege and 3 others* [2002] KLR 243. The motion is thus properly before the court. The applicant is a sister of the plaintiff. They are joint administratrices of their mother's estate together with Peter Gachigi Njogu and Mary Wanjiku Gachigi. That fact is clear from the interim grant of letters of administration intestate issued in succession cause number 96 at the High Court in Nakuru. From the evidence before me, the applicant and plaintiff have little faith in each other's conduct of this and other suits. The present suit is brought on behalf of the estate of Rahab Wanjiru Evans, deceased. I find that all the persons named as administrators are entitled to bring proceedings. I was thus at a loss why the plaintiff would object so strongly to the joinder.
5. I foresee problems ahead. Upon joinder, the applicant and the plaintiff may disagree on conduct of this litigation. The matter is partly heard. The plaintiff has closed her case. There could thus be prejudice to the defendants. But the defendants have not objected to the joinder. I reach the inescapable conclusion that the plaintiff seeks to shut out the applicant in bad faith. The plaintiff is less than transparent. There might be no nexus between this suit and the other suits. The applicant may not even bring fresh flavor to

the suit. But I find it odd for the plaintiff to ask what the applicant's interest is. The suit relates to the estate. She is an administratrix and beneficiary. Her interest is obvious. If she has lost faith in her co-administratrix, she is entitled to join in the suit. To that extent, I find she is a necessary party for effectual and complete adjudication of this suit. I am also alive to article 159 of the constitution and sections 1A and 1B of the Civil Procedure Act. This court is enjoined to do substantial justice to the parties. It seems clear to me that the plaintiff had not been authorized by all her co-administrators to bring this suit. The applicant was not even aware of it. Her joinder is the only viable option to avoid a multiplicity of actions.

6. Granted the evidence and the law I find that the applicant's notice of motion has merit. I order that Christine Wangari Gachege be enjoined into the suit as a plaintiff. Costs shall be in the cause.

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 17th day of July 2012.

G.K. KIMONDO
JUDGE

Ruling read in open court in the presence of

Mr. Nyamiaka for Onduso for the Applicant.

No appearance for the Plaintiff.

No appearance for the Defendant.