



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E263 OF 2020

WINES & SPIRITS (KENYA) LIMITED.....PLAINTIFF

VERSUS

ORIENT TRANSJOPA COMPANY LIMITED.....1ST DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....3RD DEFENDANT

-AND-

MARGARET WAMBUI CHUCHU.....INTENDED INTERESTED PARTY/APPLICANT

DAMARIS WANJIKU WAIGANJO.....INTENDED INTERESTED PARTY/APPLICANT

LUCY WAITHERA KIMANGA.....INTENDED INTERESTED PARTY/APPLICANT

RULING

1. There are two applications dated 22nd February 2021 and 9th April 2021 for joinder. The Notice of Motion dated 22nd February 2021 seeks orders:-

(a) That leave be granted to the applicant herein to be enjoined and/or impleaded in these proceedings as an interested party.

(b) That costs of this application be provided for.

2. The grounds are on the face of the application. Basically that the interested party/applicant is beneficiary/heir of the Estate of Philip Gichuri Waiganjo. A certificate of confirmation of grant has been issued in High Court Succession Cause No. 2658 of 2015.

3. The application is supported by the affidavit of Margaret Wambui Chuchu, the applicant herein sworn on the 16th February 2021. This application is not opposed. Mr. Kivuva for the plaintiff told the court that the plaintiff does not oppose the application by the interested parties to be enjoined.

4. The Notice of Motion dated 22nd February 2021 is accordingly allowed. The costs do abide the outcome of the main suit.

5. The Notice of Motion dated 9th April 2021 seeks orders:-

1. That Damaris Wanjiku Waiganjo and Lucy Waithera Kimanga be enjoined in these proceedings as interested parties.

2. That costs of this application be provided for.

6. The grounds are that the subject property namely LR NO 209/138/46 (IR NO 57649) Nairobi was distributed in the Succession Cause No 2658 of 2015 (In the matter of the Estate of Philip Gichuri Waiganjo (Deceased). That as per the confirmed grant the subject property was distributed to the effect that it be sold and the proceeds shared equally among Damaris Wanjiku Waiganjo, Lucy Waithera, John Gichuri

Waiganjo and Margaret Chuchu.

7. The application is supported by the affidavit of Damaris Wanjiku Waiganjo and Lucy Waithera sworn on the 9th April 2021.

8. Mr. Kivuva for the plaintiff told the court that the plaintiff does not oppose the application for joinder of those parties to these proceedings. The 1st defendant opposes this application. There are grounds of opposition dated 26th April 2021 by the said 1st defendant.

9. **Order 1 rule 10(2)** provides that:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

10. In their affidavit, the applicants have stated their interest in the suit property. I find that they have demonstrated their need to participate in these proceedings. No prejudice will be occasioned to the 1st defendant if these two are allowed to participate in these proceedings.

11. I find merit on this application and the same is allowed. The costs of this application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 10th day of June 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Kivuva for the Plaintiff

Mrs. Khisa for the 1st Defendant

No appearance for the 2nd and 3rd Defendants

Ms Murithi for Mr. Njuguna for the 1st Interested Party

Ms Kiarie for J. Thongori for 2nd and 3rd Interested Party

Phyllis - Court Assistant