



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1617 OF 2016

IN THE MATTER OF THE ESTATE OF RAHAB NJANJA NJOROGE (DECEASED)

DANSON NJOROGE.....PETITIONER

VERSUS

RAPHAEL KINYUA WANJIRU.....OBJECTOR

AND

HARVEST CENTRE FELLOWSHIP

CHURCH.....PROPOSED INTERESTED PARTY

RULING

1. The deceased Rahab Njanja Njoroge died intestate on 17th January 2002. Her estate comprised of land title number Dagoretti/ Kangemi/813 measuring one acre. A grant of letters of administration intestate was made to Danson Njoroge (the petitioner) on 4th April 2017. The grant is pending confirmation.
2. Harvest Centre Fellowship Church filed the present summons dated 22nd June 2018 seeking leave to be joined as an interested party in this suit. The application was based on the grounds that:
 - a. on or about 2001 they purchased 0.5 acres of Dagoretti/ Kangemi/813 from the deceased at the price of Kshs.1,600,000/= and have since been in possession of the parcel;
 - b. they have heavily invested and/or developed the property after the purchase by erecting and running a school in the name and style of Grace Harvest Academy;
 - c. the deceased passed on prior to the finalization of the transfer of the said 0.5 acres to them;
 - d. the acquisition of the letters of administration to facilitate the processing of the title deed in their name has been interfered with by 3rd parties who claim to have unclear interests in the property;
 - e. they are apprehensive that 3rd parties in gross abuse of the court process will mislead the court with falsehood and innuendos claiming to be the owners of title Number Dagoretti/ Kangemi/813 measuring approximately 0.5 acres in a bid to deprive them ownership;
 - f. they have shown sufficient interest in the suit herein and are apprehensive that the applicant may misrepresent facts to the court and the court may grant orders that may be adverse to their interests;
 - g. the joinder will enable the court to fairly and justly determine the dispute between parties and their inclusion to the suit is necessary for effectual adjudication of all the issues; and

h. the parties to the suit will not be prejudiced by the joinder.

The application was supported by the affidavit of Dr. David W. Wanyama dated 22nd June 2018.

3. The application was opposed by the petitioner through his replying affidavit dated 23rd August 2018. It was his case that the deceased under a seller/purchaser agreement dated 24th July 2001 and executed by the parties on the said date offered to sell to the proposed interested party 0.5 acre interest in the subject property; that the completion date for the said sale/purchase was 31st August 2001; that by the time of the deceased's death on 17th January 2002 the intended interested party had not completed the purchase of the portion of the estate; that the administrator of the estate wrote and personally engaged the applicant to settle the balance owed if they intended to complete the transaction which they ignored and refused to honor; that in good faith and in the administration of the estate of the deceased, the administrators proposed to allocate a portion of the estate proportionate to the deposit received by the deceased should the interested party wish to enter into a fresh agreement with the estate; and that proposed interested party having refused, ignored, neglected to complete the sale/purchase transaction within the stipulated duration has no legal capacity to participate in the petition process as they are neither heirs nor investors in the estate of the deceased.

4. The objector did not file her response to the application.

5. It is now acceptable that the court can, at any stage of the proceedings, upon application by either party or on its own motion, order the name of the person who ought to have been joined or whose presence before the court is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit, to be added or joined as a party (**Attorney General v Kenya Bureau of Standards & another [2018] eKLR**).

6. Under **Order 1 rule 10(2)** of the **Civil Procedure Rules**, in determining whether or not to join a party to a suit the court will consider whether his presence may be necessary in order to enable it effectively and completely adjudicate upon and settle all questions involved in the suit. **Rule 2** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure rules, 2003** defines an "interested party" as

"a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation."

In **Meme –v- Republic [2004]IKLR 637** the Court considered other factors that may lead to joinder of a party. They were:-

- i. joinder of a person because his presence will result in the complete settlement of the questions involved in the proceedings;
- ii. joinder to provide protection for the rights of the party who would otherwise be adversely affected in law; and
- iii. joinder to prevent a likely course of proliferated litigation.

7. There is no dispute that before the deceased died he entered into an agreement to sell 0.5 acres of his Dagoretti/Kangemi/813 to the proposed interested party. The proposed interested party states that they paid Kshs.1,600,000/= of the same, but the deceased died before transfer could be effected. The petitioner's version is that the proposed interested party did not honour their part of the bargain; that they did not make the payment within the time stipulated in the agreement. Whatever happened, the proposed interested party is laying a claim to 0.5 acres of the deceased's estate in respect of which the petitioner has a grant of letters administration intestate. The petitioner would wish to confirm the grant.

8. On the material availed by the parties, I find that the proposed interested party has an identifiable claim to the estate of the deceased. It is only by being joined in these proceedings that they can pursue that claim. It is only through the sought joinder that the claim can be effectively and completely adjudicated upon.

9. Consequently, I allow the application. The proposed interested party is accorded leave to join the proceedings. They have 14 days to file an affidavit of claim which they will serve on both the petitioner and the objector who shall respond in equal time.

10. The petitioner ought to not to have opposed this request for joinder. I make no order as to costs.

DATED and SIGNED at NAIROBI 11TH OCTOBER 2018

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI 17TH OCTOBER 2018

J.N. ONYIEGO

JUDGE