



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL & TAX DIVISION**

**CIVIL SUIT NO 142 OF 2015**

**NANCY WANJA GATABAKI.....PLAINTIFF**

**-VERSUS-**

**JACARANDA HOLDINGS PROPERTY LIMITED.....1ST DEFENDANT**

**SURAYA PROPERTY GROUP LIMITED .....2ND DEFENDANT**

**AND**

**GEORGE NJOROGE KIHANYA.....1ST INTERESTED PARTY**

**DR. FRANK NJOROGE.....2ND INTERESTED PARTY**

**JOSEPH KANURI.....3RD INTERESTED PARTY**

**JOHNSON KINYANJUI.....4TH INTERESTED PARTY**

**PATRICK MACHARIA KOORO..... 5TH INTERESTED PARTY**

**VINCENT KURIA MUCHIRU.....6TH INTERESTED PARTY**

**CATHERINE MUTHONI KURIA.....7TH INTERESTED PARTY**

**RAHAB MWIHAKI KAROKO.....8TH INTERESTED PARTY**

**DR. SAMUEL MUNDATI GATABAKI.....9TH INTERESTED PARTY**

**RULING**

1. When the matter came up for mention on 5/5/2021, **Mr. Ashford Muguku**, advocate applied orally to have **Mrs. Dorothy Wanjiku Ngucu** joined as an interested party in this case.

2. The oral application was made under **Order 1 Rule 25 of the Civil Procedure Rules**. The grounds upon which the application was made was that, the plaintiff and 2nd defendant have failed to release to her the original titles for the parcels of land that she had purchased consisting of; **LR Nos. 28223/38, LR 28223/52 and 28223/53** measuring 1.5 acres. That the said properties were part of the larger property that is the subject matter of this suit.

3. **Mr. Muturi**, Learned Counsel for the plaintiff, opposed the application stating that **Mrs. Dorothy Wanjiku** had filed another suit, **HCCC 760/2012** against the plaintiff and the 1st defendant. That the instant suit emanated from a development contract and not possession of land. He argued that the joinder of **Ms. Wanjiku** would delay the matter.

4. I have considered the opposing parties' submissions as well as the record. It is true that the present suit arise out of a development contract between the plaintiff, the 9<sup>th</sup> interested party and the defendants.

5. However, it turned out that the plaintiff and the 9<sup>th</sup> interested party had there before entered into sale agreements with 3<sup>rd</sup> parties over the same subject property. The interest of the other interested parties is the same as that of the applicant herein. Although she has come late in the day, she can be joined without causing any violence to the suit or delaying the trial.

6. **Mr. Muturi** submitted that the applicant should file her claim before the Environment and Land Court. That is an argument that defeats the purpose and spirit of **Article 159 of the Constitution** that requires expedited delivery of justice. There is no luxury in the judicial time. The transaction between the applicant and the plaintiff must have been and indeed was a commercial transaction.

7. In the circumstances, the Court finds that it will be in the interest of justice and expeditious resolution of this protracted matter that the said **Dorothy Wanjiku Ngucu** be enjoined as an interested party in this Consolidated suit. Accordingly, she is enjoined accordingly.

8. The said **Dorothy Wanjiku Ngucu** is to file and serve her witness statements and paginated bundle of documents within 14 days of the date hereof.

9. As such and in reference to the consolidation order made on 20/4/2021, the head file being HCCC No. 142 of 2015 and further for ease of reference, the parties shall henceforth be referred to as follows: -

- |                                    |   |                                   |
|------------------------------------|---|-----------------------------------|
| a) Nancy Wanja Gatabaki            | - | Plaintiff                         |
| b) Jacaranda Holdings Property Ltd | - | 1 <sup>st</sup> Defendant         |
| c) Suraya Property Group Limited   | - | 2 <sup>nd</sup> Defendant         |
| d) George Njoroge Kihanya          | - | 1 <sup>st</sup> Interested Party  |
| e) Dr. Frank Njoroge               | - | 2 <sup>nd</sup> Interested Party  |
| f) Joseph Kanuri                   | - | 3 <sup>rd</sup> Interested Party  |
| g) Johnson Kinyanjui               | - | 4 <sup>th</sup> Interested Party  |
| h) Patrick Macharia Kooro          | - | 5 <sup>th</sup> Interested Party  |
| i) Vincent Kuria Muchiru           | - | 6 <sup>th</sup> Interested Party  |
| j) Catherine Muthoni Kuria         | - | 7 <sup>th</sup> Interested Party  |
| k) Rahab Mwihaki                   | - | 8 <sup>th</sup> Interested Party  |
| l) Dr. Samuel Mundati Gatabaki     | - | 9 <sup>th</sup> Interested Party  |
| m) Lucy Gathoni Githire            | - | 10 <sup>th</sup> Interested Party |
| n) Hon. Njehu Gatabaki             | - | 11 <sup>th</sup> Interested Party |
| o) Dorothy Wanjiku Guchu           | - | 12 <sup>th</sup> Interested Party |

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY, 2021.**

**A. MABEYA, FCI Arb**

**JUDGE**