REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND DIVISION

ELC. CASE NO. 1228 OF 2013

PETER AMBROSE NG'ANG'A …….……..…PLAINTIFF

VERSUS

GLADYS NYAMUHU NDEGWA……..……1ST DEFENDANT

NYAKINYUA INVESTMENTS LTD……..……2ND DEFENDANT

RULING

Coming up before me for determination is the Chamber Summons dated 18th April 2014 in which the Plaintiff/Applicant is seeking for orders that Nyakinyua Investments Limited be joined in this suit as the 2nd Defendant.

The Application is supported by the grounds set out in the face of it together with the Supporting Affidavit of Peter Ambrose Nganga, the Plaintiff/Applicant herein, sworn on 18th April 2014 in which he averred that Nyakinyua Investments Limited is a central player in his claim in this suit and that such joinder is absolutely necessary to effectually and completely adjudicate on the issues in controversy herein.

The issue arising for my determination is whether to allow the joinder of Nyakinyua Investments Limited as the 2nd Defendant in this suit. The applicable law on this issue is to be found in **Order 1 Rule 3** of **the Civil Procedure Rules, 2010** which provides as follows:

> **"All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise."**

In order to determine whether the Plaintiff has any right of relief against Nyakinyua Investment Ltd, I have to ascertain the level of involvement of this company in this particular suit. In this suit, the Plaintiff claims that he entered into an agreement for sale with the 1st Defendant, Gladys Nyamuhu Ndegwa, for the sale of some 100 ordinary shares in Nyakinyua Investments Limited, a private land buying company, vide Share Certificate No. 4567 at an agreed price of Kshs. 100,000/- which the Plaintiff claims to have paid in full to the 1st Defendant. The Plaintiff claims that that Share Certificate represented a parcel of land located in Ruiru which he took possession of and erected a perimeter wall. The Plaintiff claimed that that parcel of land was allocated to the 1st Defendant by the Nyakinyua Investment Limited through Ballot Number 2144. The Plaintiff now claims that the 1st Defendant is seeking to dispossess him of the suit land through overt acts with the result that he is apprehensive that the suit land may be transferred to third parties to his detriment and loss.

Judging by the above, there is no question in my mind that Nyakinyua Investments Limited is a pertinent party to this suit and should be enjoined as a 2nd Defendant owing to the reason that the Plaintiff's claim

over the suit land is predicated on a transaction of transfer of shares in Nyakinyua Investments Limited and by extension the parcel of land which was allocated to the 1st Defendant through Ballot No. 2144. The Plaintiff therefore has a right to relief against Nyakinyua Investment Limited which must shed light on the transfer transaction, if any, conducted between the Plaintiff and the 1st Defendant in respect of shares held under Share Certificate No. 4567 and the resultant parcel of land the subject matter of this suit.

To that extent therefore, I am convinced that this Application is merited and proceed to allow the same. Costs shall be in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 25TH

DAY OF JULY 2014.

MARY M. GITUMBI

JUDGE