



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**JUDICIAL REVIEW DIVISION**  
**MISC. APPL. NO. 73 OF 2010**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE REGISTRAR**

**THIKA DISTRICT LANDS REGISTRY.....1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**AND**

**RAHAB WANJA MAINA.....INTERESTED PARTY**

**AND**

***EX-PARTE APPLICANTS***

**DAVID IRUNGU MAINA**

**LOISE NJERI IRUNGU**

**JUDGMENT**

1. This matter came up for hearing today, 9<sup>th</sup> September 2013, but when the matter was called out for hearing counsel for the *ex-parte* applicant, who was present earlier in the morning was not present in court. I therefore proceeded to hear the matter in presence of the respondents' counsel.
2. The issue in this matter is whether the court should issue an order of mandamus to compel the registrar, Thika Lands Registry, to register and or effect the transfer dated 18<sup>th</sup> October 2004 transferring Land Parcel Number Ruiru East Block 5/103 from Margaret Wanjiru Kahuru to David Irungu Maina and Loise Njeri Maina.
3. I have considered all the material before the court including the verifying affidavit and the

replying affidavit sworn by the District Land Registrar. The *ex-parte* applicants' case is that they purchased the suit property from the registered owner, one Margaret Wanjiru Kahuru. After completing the documentation, they lodged the transfer for registration. The application was rejected by the Land Registrar who stated that the reason for declining registration was that there was suspected fraud in the subject transaction arising out of a forged title.

4. An order of mandamus is a discretionary remedy and in view of the allegations of fraud and the fact that the third party has not participated in these proceedings, I am constrained to dismiss the matter. I also take the view that the issue of fraud must be litigated in ordinary court proceedings in order to determine the rights of the parties to the suit property.
5. Orders accordingly.

**DELIVERED** and **DATED** at **NAIROBI** this 9<sup>th</sup> day of September 2013.

**D.S. MAJANJA**

**JUDGE**

Mr Wamotsa, Litigation Counsel, instructed by the State Law Office for the respondents.