



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**JUDICIAL REVIEW DIVISION**

**MISC. APPL. NO. 163 OF 2012**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE COMMISSIONER OF LANDS ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF SURVEY ..... 3<sup>RD</sup> RESPONDENT**

***EX-PARTE***

**JANE WAIRIMU MWANGI ..... 1<sup>ST</sup> APPLICANT**

**SAMWEL MANGI ..... 2<sup>ND</sup> APPLICANT**

**NELSON MUKUNA MWANGI ..... 3<sup>RD</sup> APPLICANT**

**ERIC NJAU MWANGI ..... 4<sup>TH</sup> APPLICANT**

**BENSON K MWANGI ..... 5<sup>TH</sup> APPLICANT**

**JOHN MWAURA MUIGAI ..... 6<sup>TH</sup> APPLICANT**

**GRACE MUTHONI MWAURA ..... 7<sup>TH</sup> APPLICANT**

**NICHOLAS KABUCHO MURIMI ..... 8<sup>TH</sup> APPLICANT**

**MARY MUKAMI KARIITHI ..... 9<sup>TH</sup> APPLICANT**

**STEPHEN KARIITHI MUNGAI ..... 10<sup>TH</sup> APPLICANT**

**AND**

**COUNCILLOR JOSHAT WAICHAHI**

**CITY COUNCIL OF NAIROBI AND 23 OTHERS ..... INTERESTED PARTIES**

**JUDGMENT**

I have considered this matter, the depositions and submissions and it concerns on-going litigation in the Chief Magistrates' Court, to wit **CMCC No. 1796 of 2009** between the *ex-parte* applicants and the interested parties concerning the property known as Land Reference No. 209/7260/175 to 209/7260/176(IR 23787). There are also other case file in the High Court, Environment and Land Division which concern the suit land. The suits, it appears, were filed when the Magistrate Court's directed that the interested parties in the court case pending in the subordinate court should file separate suits to determine their matters.

The Notice of Motion dated 20<sup>th</sup> May 2012, seeks an order of certiorari to quash the decision of the 3<sup>rd</sup> respondent approving Deed Plans relating to the suit properties pending hearing and determination of **CMCC No. 1796 of 2009**.

In my view a deed plan is an integral part of the title to property and where the suit pending before the court deals with ownership, then the court will direct its inquiry to the incidents of ownership and accordingly make the declaration. Such declaration or other relief may be enforced against the relevant parties.

Judicial Review is a discretionary remedy and one of the factors to be considered is whether there is an efficacious remedy available and whether the circumstances warrant the grant of such an order. The material before the Court is clear that there are several suits concerning the properties in dispute and the courts called upon to adjudicate the issue of ownership will carry out a full inquiry. The grant of an order of judicial review would undercut the pending suit by interposing an order that may affect the real and effective determination of the matters at hand.

I am satisfied that the issues raised in respect of the Deed Plans to the suit properties can be dealt with by the court where the case is filed. In the circumstances, the Notice of Motion dated 20<sup>th</sup> May 2012 is dismissed with no order as to costs.

**DATED and DELIVERED at NAIROBI this 1<sup>st</sup> day of October 2013**

**D.S. MAJANJA**

**JUDGE**

**Mr Kiarie instructed by Ndegwa Kiarie and Company Advocates for the ex-parte applicants.**

**Mr Mwangi instructed by Irungu Mwangi Ng'anga'a T. T. And Company Advocates for the interested parties.**

**Mr Mosoti, instructed by Momanyi and Associates for the Nairobi City Council.**

