

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 733 of 2005

MBURU MWAURAPLAINTIFF

V E R S U S

1. MARGARET WANJIRU

2. MANGU INVESTMENT CO. LTD

3. KYANJAU FARMERS CO-OPERATIVE SOCIETY.....DEFENDANTS

R U L I N G

When this suit came up for substantive hearing on 22nd July, 2008, it emerged that the 1st Defendant had served the Plaintiff with a notice of preliminary objection to the suit dated 21st July, 2008. The objection was then set down for arguments on 16th October, 2008. On that date learned counsel for the Plaintiff stated that he was not ready to answer the preliminary objection because, he said, this suit involves distribution of the estate of a deceased person called BARBANAS MWAURA. He therefore requested that the suit be transferred to Family Division. He stated further that there are other suits between the same parties over the same subject-matter that are pending before the Family Division.

In opposing transfer to the Family Division, learned counsel for the 1st Defendant pointed out that the pleadings in this suit show clearly that this is a purely civil suit, and that it does not at all involve distribution of any deceased person's estate. Counsel further stated that he was not aware of any other suit between the same parties over the subject-matter.

It was the duty of the learned counsel for the Plaintiff to place before the court evidence of existence of these other alleged suits between the same parties over the same subject-matter said to be pending before the Family Division. No such evidence was placed before the court. Not even case numbers were quoted.

The preliminary objection raised is that the present suit is *res judicata* and therefore an abuse of the process of the court. That is an issue that this court can deal with even if there existed other suits between the same parties over the same subject-matter. As I have already said, there is no evidence of the existence of these other suits. I therefore find no reason to transfer this suit to the Family Division. The request by learned counsel for the Plaintiff is therefore refused with costs to the 1st Defendant. It is so ordered.

DATED AT NAIROBI THIS 21ST OCTOBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 7TH DAY OF O