

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL SUIT NO 66 OF 2013

1. EPHANTUS GIKONYO MAINA

2. HARRISON MAINA GIKONYO

3. JOHN MWANGI MAINA..... PLAINTIFFS

VERSUS

MURAGURI GATHEGU..... DEFENDANT

R U L I N G

1. In this suit the Plaintiffs seek the main relief of a declaration that the Plaintiffs are the biological children of the Defendant and therefore entitled to inherit the Defendant's movable and immovable properties as provided for under the **Law of Succession Act, Cap 160**. The Plaintiffs are adults. The Defendant is alive and well

2. The Defendant has raised a preliminary objection to the suit on points of law by notice of motion dated 19/12/2014. Those points of law are –

(a) That the suit is *res judicata* vide **Murang'a CMCC No 166 of 2012**.

(b) That the suit does not disclose a reasonable cause of action.

3. In Murang'a CMCC No. 166 of 2012 the same Plaintiffs sued the same Defendant for the main relief of an order to direct the Defendant to transfer to the Plaintiffs respectively land parcels **LOC 14/KAMUNE/2380, 2381 and 2382**. They pleaded in that suit that they are the biological sons of the Defendant; that they are all adults; that the Defendant was required by law and equity to provide for them, including giving them land; that the Defendant intended to disinherit them; and that the Defendant should therefore be ordered to transfer to them the aforesaid parcels of land in order to fulfil his responsibility to them under the law.

4. A preliminary objection on a point of law was raised to that suit to the effect that no proper cause of action in law was disclosed. In a considered ruling dated and delivered on the 28/10/2013 that court upheld the preliminary objection and dismissed the case. The Plaintiffs then filed the present suit.

5. This new suit is not any different from the previous suit. In the present suit, just as in the previous suit, the Plaintiffs are attempting to enforce their perceived rights of inheritance under the Law of Succession Act in respect to the estate of a living person, the Defendant. Cap 160 aforesaid deals with the estates of deceased persons, not living ones. In this regard the Plaintiffs' suit is obviously misconceived; they have to wait until the Defendant's estate is available for distribution under Cap 160. It cannot be available while he is living.

6. The notion that a father is obliged in law to provide for adult children is by and large anathema. There may be limited instance where a father may be compelled in law to provide for adult children, but generally speaking, any adult of sound mind and body is under obligation to provide for himself or herself and not expect that responsibility to be taken up by anyone else, not even his or her father.

7. Be all that as it may, the Plaintiffs' earlier suit was dismissed for failure to disclose a reasonable cause

of action. The same claim has been made again in this new suit. The claim is *res judicata*. I so hold.

8. In the event the Plaintiffs' suit is hereby struck out with costs to the Defendant. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 10TH DAY OF NOVEMBER 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 11TH DAY OF NOVEMBER 2016