



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CIVIL SUIT NO.32 OF 2009

SAUL GEOFFREY OTOA

EDWIN SUDI OTOA.....PLAINTIFFS

VRS

PATRICK OUNDO OTOA.....DEFENDANT

JUDGMENT

The Plaintiffs Saul Geoffrey Otoa and Edwin Sudi Otoa sues Patrick Oundo Otoa for rectification of register by cancellation of his registration as proprietor of Land Reference Number

E. BUKUSU/S. NALONDO/2011. In their plaint dated 17/04.2009 the Plaintiff avers that the parties are all brothers. Their father George Otoa Mukanda died on the 12/10/1986. He was the registered owner of Land Reference Number E.BUKUSU/S.NALONDO/236 which he sub-divided into two portions namely L.R. NOS. E.BUKUSU/S.NALONDO/2012 and 2011. L.R. No.2011 was registered in the name of one Joseph Otoa. Parcel No.2011 remained in the name of the deceased. After the death of the deceased, the land L.R.2011 was supposed to devolve to the children of the deceased. The Defendant instead registered himself as the sole proprietor. He denied the Plaintiffs their shares of beneficial ownership in the estate of their deceased father. It is the Plaintiffs prayer that the registration be rectified to include the Defendants as equal beneficiaries.

The Defendant was served with summons to enter appearance but failed to defend the suit. The Plaintiff formerly proved his suit.

The only witness Saul Geoffrey Otoa produced the ownership documents of the land in the name of his father George Otoa Mukanda the deceased. He became the registered owner of L.R. NO. E. BUKUSU/S. NALONDO/2011 on 30/03/87. The land was transferred to the Defendant Patrick Oundo Otoa on 02/05/2008. One of the Plaintiffs Geoffrey Otoa lodged a caution on the land on 26/6/2008 to protect his interest and that of the other Plaintiffs. A copy of the title deed shows that the land belonged to the deceased George Otoa Mukanda and ownership changed on 5/6/2008 to the Defendant's name.

The Plaintiffs and the Defendant are children of deceased and were entitled to inherit the land of their father on death. The deceased died on 26/10/1986. The requirements of the law is that a succession cause ought be filed by any of his children or beneficiaries or jointly by two or three of them in order to facilitate inheritance. The copy of register shows that there was no inheritance by way of transmission on death. It is indicated in the relevant section that the land was transferred by the deceased to the Defendant on 5/6/2008. surprisingly this was twenty two (22) years after the death of the deceased. It is not possible that such a transfer would take place because the registered proprietor had passed on many years back.

In the absence of any succession proceedings involving all the survivors of the deceased, an inference can be drawn that the registration into the Defendants name was obtained by fraud. The Plaintiff has supported his case with documentary evidence which is uncontroverted. There is a handwritten will whose contents are not legible. Whatever the contents may be there is no way that the land of the deceased would be distributed without going through a succession cause to the very end.

It is my finding that the Plaintiffs have proved their case against the Defendant on the balance of probabilities. I enter judgment in favour of the Plaintiffs against the Defendant in terms of the prayers in the plaint. The Land Registrar Bungoma is hereby directed to rectify the register for land reference NO.E. BUKUSU/S. NALONDO/2011 by canceling the name of Patrick Oundo Otoa. The title reverts to the name of the deceased George Otoa Mukanda to enable the family engage in succession proceedings.

The costs of the suit to the Plaintiffs.

F. N. MUCHEMI

JUDGE

Judgment dated and delivered on the 13th day of July, 2011 in the presence of Mr. Makali for Murunga for the Plaintiff.

F. N. MUCHEMI

JUDGE